RESERVE

MONTANA ADMINISTRATIVE REGISTER

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ISSUE NO. 24

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

TABLE OF CONTENTS

Page Number

NOTICE SECTION

BEFORE THE BOARD OF CHIROPRACTORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to applications, reciprocity, reinstatement and fees	))))	NOTICE OF PROPOSED AMENDMENT OF RULES PERTAINING TO THE PRACTICE OF CHIROPRACTIC

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 23, 1993, the Board of Chiropractors proposes to amend the above-stated rules.

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

"8.12.601 APPLICATIONS, EDUCATIONAL REQUIREMENTS (1) through (4) will remain the same.

(5) Applicants must furnish official verification from all states in which they are currently licensed. Verification must be sent directly to the board office from the other state."

Auth: Sec. 37-1-131, ~~37-1-134,~~ 37-12-201, MCA; IMP, Sec. 37-1-131, ~~37-1-134,~~ 37-12-302, 37-12-304, ~~37-12-307~~, MCA

REASON: This amendment is being proposed to provide for verification of licensure status from states in which the applicant is currently licensed. The verification would provide the Board with notice of any disciplinary actions sanctioned or pending against an applicant in another state.

"8.12.605 RECIPROCITY (1) will remain the same.

(2) The board may require the applicant to have passed the Special Purposes Examination for Chiropractic (SPEC) administered by the national board of chiropractic examiners. The board will accept the passing score established by the national board of chiropractic examiners."

Auth: Sec. 37-12-201, 37-12-304, MCA; IMP, Sec. 37-12-304, 37-12-305, MCA

REASON: Greater use of the SPEC exam would allow the Board to administer examinations in conjunction with other states and would make it easier to implement such aspects of examinations as reciprocity. The SPEC examination would not be used for initial licensure purposes and would not replace the National Board Parts I, II and III, but would allow applicants licensed in another state the opportunity to take the SPEC examination for reciprocity. SPEC examinations are designed for applicants who have been in practice for some time, for reciprocity/endorsement consideration, and for individuals who have a suspended or revoked license and are seeking reinstatement. The SPEC examination may also be used for other special uses, such as impairment evaluation.

"8.12.609 REINSTATEMENT (1) through (3)(g) will remain the same.

(4) All applicants for reinstatement of license shall pass the Special Purposes Examination for Chiropractic (SPEC) administered by the national board of chiropractic examiners."

Auth: Sec. 37-12-201, 37-12-304, MCA; IMP, Sec. 37-12-304, 37-12-323, MCA

REASON: See reason for proposed amendment to 8.12.605 above.

"8.12.615 FEE SCHEDULE

(1) Application fee ($25 shall be retained for administrative costs)	~~$125.00~~	$150.00
(2) through (3)(b) will remain the same.		
(4) Late renewal fee	~~35.00~~	50.00
(5) through (9) will remain the same.		
(10) License verification fee		12.00"

Auth: Sec. 37-1-134, 37-12-201, MCA; IMP, Sec. 37-1-134, 37-12-302, 37-12-303, 37-12-304, 37-12-307, MCA

REASON: The Board amendment is necessary because of the large number of applications being requested. The amount of applications being mailed has increased 150% since January, 1992. This fee will cover the costs of printing the application forms and law and rule books, and will also cover postage.

The late renewal fee is being increased because the board's fees must be commensurate with program area costs. The board is processing a large number of late renewals and the process is not being adequately covered by the lower fee.

The verification fee is being proposed to cover the cost of verifying licensure status in other states for applicants to Montana and also to cover verifications for Montana licensees seeking licensure in other states.

3. Interested persons may present their data, views or arguments concerning the proposed amendments in writing to the Board of Chiropractors, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., January 21, 1993.

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 Chiropractors, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., January 21, 1993.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25

members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 33 based on the 329 licensees in Montana.

BOARD OF CHIROPRACTORS
DWAYNE BORGSTRAND, D.C.
CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 14, 1992.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to definitions, utilization plans, protocol, informed consent, prohibitions, supervision; repeal of rules pertaining to prescriptions, allowable functions and revocation or suspension of approval; and adoption of new rules pertaining to prescribing/dispensing authority, scope of practice, termination and transfer and training of physician assistants	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT, REPEAL AND ADOPTION OF NEW RULES PERTAINING TO A PHYSICIAN ASSISTANT-CERTIFIED

TO: All Interested Persons:

1. On January 13, 1993 at 9:00 a.m., a public hearing will be held in the downstairs conference room, Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment, repeal and adoption of rules pertaining to physician assistants.

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

"8.28.1501 DEFINITIONS As used in this subchapter the following definitions apply:

(1) "Applicant" means a person ~~intending~~ seeking to practice as a physician~~'s~~ assistant-certified.

~~(2) "Board" means the Montana state board of medical examiners provided for in 2-15-181, MCA.~~

(3) will remain the same but will be renumbered (2).

(3) "Certificate" means that authorization granted by the board of medical examiners to a physician assistant-certified to practice in the state of Montana.

~~(4) "Physician's assistant means a health care practitioner who performs such tasks, acts, or functions as are approved by the board and assigned by his supervising physician.~~

(4) "Remote site" means a site other than the supervising physician's customary place(s) of practice.

~~(5) "Protocol" means the rules prescribing the proper relationship between a physician's assistant and other health care practitioners and which describe the manner of their interaction.~~

~~(6)~~ (5) "Supervising physician" means a person licensed under Title 37, ~~C~~chapter 3, MCA, who is authorized by the board to supervise the practice of a physician~~'s~~ assistant-certified ~~under the conditions of an approved utilization plan~~.

(6) "Supervision" means accepting responsibility for, and overseeing the medical services of a physician assistant-certified by telephone, radio, or in person as frequently as the board shall determine is necessary considering the location, nature of practice, and experience of the physician assistant-certified and the supervising physician. Unless otherwise specified by the Board, the constant physical presence of the supervising physician is not required.

~~(7) "Supervision" means communication between the physician's assistant and the supervising physician by telephone, radio, or in person as frequently as the board shall determine is necessary considering the location, nature of practice, and experience of the physician's assistant and the supervising physician.~~

(7) "Utilization plan" means that document which describes the duties, responsibilities, and scope of practice of the physician assistant-certified as delegated by the supervising physician and approved by the board.

~~(8) "Utilization plan" means the description of the authority of a physician's assistant and his supervising physician which addresses supervision, protocols, limitation of practice as to specialty and locations, and the delegation of functions by the supervising physician to the physician's assistant.~~"

Auth: Sec. 37-20-201, MCA; IMP, Sec. 37-20-202, MCA

REASON: Deleted sections are unnecessary; the same term is defined elsewhere. The new definitions clarify and more accurately represent current national and statewide standards and practices.

"8.28.1502 BOARD POLICY (1) Ensuring the provision of quality health care to the people of Montana shall be the primary consideration of the board when administering these rules. ~~A physician's assistant is to be regarded as an extension of and not a substitute for a physician's care.~~"

Auth: Sec. 37-20-201, MCA; IMP, Sec. 37-20-202, MCA

REASON: Montana has an ever-increasing need for and use of competent non-physician health care providers, especially in rural areas. Physician assistants, practicing under the supervision of physicians, meet those needs in a larger capacity than that of mere "extension of" a physician's care. The "extension" concept is archaic and does not accurately reflect current needs or practice.

"8.28.1503 QUALIFICATIONS OF PHYSICIAN'S ASSISTANT-CERTIFIED (1) will remain the same.

(a) 3 ~~statements of good moral character~~ written personal references;

(b) a copy of a diploma issued by ~~an A.M.A.~~ a physician assistant program approved by the ~~physician's assistant program~~ American medical association committee on allied health education and accreditation;

(c) will remain the same.

(d) a current certificate issued by the national commission on certification of physician~~'s~~ assistants;

~~(e) must appear before the board for permanent certification and must have sponsoring physician appear with the physician assistant.~~

(2) will remain the same.

(a) the applicant's professional educational background;

(b) the applicant's work experience since completing physician assistant training;

(c) a statement that the applicant has not had a ~~certification as a physician's assistant~~ physician assistant license refused, suspended or revoked by any other state, territory, district, or county for reasons which related to his ability or morals.

(3) ~~For purposes of section 37-20-101(3), MCA, the board will accept the examination recognized by the National Commission on Physician's Assistants.~~ The board may require the applicant and/or the applicant's supervising physician to appear before the board or a representative of the board."

Auth: Sec. 37-20-201, MCA; IMP, Sec. 37-20-101, 37-20-402, MCA

REASON: The amendments simplify the application and credentialing process and provide for better, more informative background checks on the physician assistant.

"8.28.1504 APPLICATION (1) An ~~A~~applications for certification or for approval of a physician~~'s~~ assistant-certified utilization plan shall be submitted on forms available from the department and received in the board office not later than 15 days prior to the next scheduled board meeting.

(2) ~~The form~~ An application for licensure shall be signed by the applicant ~~, physician's assistant, the supervising physician, and any other physician who may supervise the applicant in the absence of the supervising physician~~.

~~(3) The application shall be accompanied by:~~

~~(a) a proposed utilization plan;~~

~~(b) proof of insurability of the physician's assistant from liability for his errors, omissions, or actions. A certified letter is acceptable stating the state physician assistant will be insured after the certification is received.~~

(3) An application for approval of a utilization plan shall be signed by the applicant physician assistant-certified, the supervising physician, and all alternate supervising physicians."

Auth: Sec. 37-20-201, MCA; IMP, Sec. Sec. 37-20-301, 37-20-402, MCA

REASON: The amendments clarify the requirements for both certification and utilization plan approval.

"8.28.1506 UTILIZATION PLAN (1) through (1)(a)(i) will remain the same.

(ii) the location of the supervising physician's office or hospital assignment in relationship to the location where the physician~~'s~~ assistant-certified ~~intends to work,~~ proposes to practice.

(b) the physician assistant-certified's proposed scope of practice:

~~(c) intended protocols;~~

~~(d)~~ (c) plans for supervision when the supervising physician is not available~~, such as in emergencies~~;

~~(e)~~ (d) any other information which will assist the board in determining that the physician~~'s~~ assistant-certified will be adequately supervised.

~~(2) When a proposed utilization plan intends to provide authority for the physician's assistants to assist the physician in a medical institution, proof shall be submitted indicating the concurrence of the institution.~~

~~(3) When a utilization plan proposes day to day contact by telephone or radio only, the plan must provide for an in-person survey and inspection by the supervising physician of the physician's assistants' facility, patient records, and office procedures no less frequently than once every 15 calendar days.~~

~~(a) A utilization plan which proposes such supervision will be approved only in those cases which are deemed compelling by the board, considering, but not limited to, the following:~~

~~(i) the qualifications of the physician's assistant;~~

~~(ii) the proposed location of the practice;~~

~~(iii) the availability of other medical services;~~

~~(iv) such other considerations of public need and necessity deemed appropriate.~~

~~(4) An identification tag which uses the term "Physician Assistant" in 16 point type or larger, must be conspicuously worn by the physician's assistant when working.~~

~~(5) The patient has the right to be treated by the supervising physician if he is available.~~

(2) When a utilization plan describes remote site practice:

(a) the supervising physician and the physician assistant-certified must work together in direct contact for a minimum of two weeks before the physician assistant-certified delivers services in the remote site; and

(b) the supervising physician must inspect the remote site, and review patient records and office procedures at least once every 30 days."

Auth: Sec. 37-20-201, MCA; IMP, Sec. 37-20-301, MCA

REASON: The board is deleting existing subsection (2) because proof of medical institution concurrence in physician assistant practice is not necessary for board regulation; it is a matter that can safely be left to the institution's credentialing and privileging process. The current rule impermissibly engrafts a requirement not imposed by statute.

Existing subsection (3) is being deleted because the requirement for on-site supervision every 15 days is often unworkable, for example, in satellite settings. The regulation effectively prevents the development of part-time health care clinics in the small, rural or remote communities where health care is most needed. In other settings, the amount of supervision can be adequately addressed in the particular utilization plan. The proposed new requirement for two weeks direct contact is to ensure familiarity in practice patterns between the physician assistant-certified and the supervising physician. The requirement for at least monthly on-site supervision and chart review is to ensure continued familiarity and quality control.

Subsections (4) and (5): This language appears in proposed amendments to ARM 8.28.1510 for better rule organization.

"8.28.1507 PROTOCOL ~~(1) A licensed health care practitioner who would normally be obligated to carry out the instructions of a licensed physician shall be professionally obligated to carry out the instruction of a physician's assistant when there is reasonable cause to believe or the practitioner knows that the instructions were given by or in consultation with the supervising physician.~~

~~(2) Physician's assistants who are approved by the board shall provide a copy of the approved utilization plan to all other health care practitioners with whom they reasonably believe they will interact on a regular basis.~~

(1) ~~(3)~~ The filing of the utilization plan with a hospital or other medical facility where the physician~~'s~~ assistant-certified will regularly ~~perform his/her functions~~ practice will constitute compliance with this rule."

Auth: Sec. 37-20-201, MCA; IMP, Sec. 37-20-202, 37-20-403, MCA

REASON: The deleted language in subsection (1) and (2) is repetitive of statutory language in section 37-20-403, MCA, and impermissible engrafts additional, non-statutory requirements. The amendment to subsection 3 of this rule clarifies the manner in which a physician assistant-certified can fulfill the statutory requirement.

"8.28.1510 INFORMED CONSENT (1) The patient's informed consent for services by a physician~~'s~~ assistant-certified must be obtained in cases of a surgical nature, except for emergency care~~, and the patient must be informed of the procedures to be performed by the physician's assistants under the supervision of the supervising physician~~.

(2) Except in emergencies and surgical settings, the physician assistant-certified must wear an identification tag that identifies him or her using the term "physician assistant" whenever caring for patients.

(3) The physician assistant-certified's certificate issued by the board, or an accurate and representative copy, must be displayed in a conspicuous place in the physician assistant-certified's primary place of practice.

(4) A patient has the right to be treated by the supervising physician instead of the physician assistant-certified if the physician is available."

Auth: Sec. 37-20-201, MCA; IMP, Sec. 37-20-202, MCA

REASON: The language being deleted is redundant. Subsections (2) and (3) are proposed because the clear identification of physician assistants-certified is desirable to avoid public confusion with other health care providers. Subsection (2) was previously set forth in ARM 8.28.1506. Subsection(4) was also previously set forth in ARM 8.28.1506 but has been placed in this more logical place for clarification purposes.

"8.28.1512 PROHIBITIONS (1) A supervising physician shall not permit a physician~~'s~~ assistant-certified to independently practice medicine. Supervision must be maintained at all times.

(2) a physician~~'s~~ assistant-certified shall not:

(a) maintain or manage an office separate and apart from the supervising physician's primary office for treating patients unless the board has granted the ~~supervising physician-specific permission~~ physician assistant-certified authority to ~~establish such an office~~ do so;

~~(b) independently bill patients or third-party carriers for services provided;~~

~~(c) independently delegate a task assigned to him by his supervising physician to another individual;~~

~~(d) list his name independently in any telephone directory for public use, using the title "physician's assistant" or "P.A." or any other term that would indicate that he is a physician's assistant;~~

~~(e)~~ (b) perform acupuncture in any form~~, or~~.

~~(f) pronounce a patient dead in any setting.~~"

Auth: Sec. 37-20-201, MCA; IMP, Sec. 37-20-202, MCA

REASON: Subsection (2)(a) unnecessarily interferes with the open and timely provision of health care to Montana citizens, especially in communities where the physician assistant-certified may be the only primary health care provider.

Subsection (2)(b) impermissibly engrafts a prohibition not established by statute. See section 37-20-405, MCA, which affirmatively states entities which may bill for physician assistant service, but contains no restriction against direct billing. The subsection may also impermissibly and unconstitutionally interfere with interstate commerce, and is not necessary to protect the public.

Subsection (2)(c) is in conflict with section 37-20-403, MCA, which allows physician assistants-certified to delegate duties to other health care providers.

Subsection (2)(f) is not necessary for the protection of the public. Physician assistants-certified have training and knowledge sufficient to distinguish between life and death. The timely management of arrangements for deceased persons will be enhanced by allowing physician assistants-certified to make the same pronouncement as medical doctors, and coroners who are generally laymen.

"8.28.1513 SUPERVISION OF MORE THAN ONE PHYSICIAN'S ASSISTANT-CERTIFIED (1) The board may allow a physician to supervise more than ~~a~~ one physician~~'s~~ assistant-certified only upon a ~~conclusive~~ showing that the physician has ~~of~~ the ability to ~~adequately~~ supervise more than ~~a~~ one physician~~'s~~ assistant-certified adequately.

(2) through (d) will remain the same."

Auth: Sec. 37-20-201, MCA; IMP, Sec. 37-20-202, MCA

REASON: Experience has demonstrated that health care availability is greatly enhanced when supervising physicians can share responsibility for multiple physician assistants, and vice versa.

3. The Board is proposing to repeal ARM 8.28.1509, 8.28.1511, 8.28.1514, and 8.28.1515. ARM 8.28.1509 is being repealed because the rule is in direct conflict with recent legislation allowing for physician assistant prescribing. ARM 8.28.1511 is being repealed because allowable functions are set forth in the utilization plan. Delineation by rule here is unduly restrictive given the constantly changing field of medicine. ARM 8.28.1514 is being repealed because proposed new rule III restates in clearer and more specific form the circumstances in which a utilization plan approval is terminated. ARM 8.28.1515 is being repealed because the language is subsumed in proposed new rule III. The authority section is 37-20-201, MCA, and the implementing sections are 37-20-104, 37-20-202 and 37-20-301, MCA.

4. The proposed new rules will read as follows:

"I PRESCRIBING/DISPENSING AUTHORITY (1) A physician assistant-certified may prescribe, dispense and administer medications as allowed by the utilization plan.

(2) The physician assistant-certified shall record his or her federal drug enforcement administration registration number with the board as part of the utilization plan.

(3) The physician assistant-certified's name should be reflected as the prescriber on containers of medications dispensed upon the prescription of a physician assistant-certified."

Auth: Sec. 37-20-201, MCA; IMP, Sec. 37-20-404, MCA

REASON: Implements recent legislation authorizing physician assistants to prescribe legend drugs.

"II SCOPE OF PRACTICE (1) The scope of practice will be generally defined in the utilization plan. Representative tasks, duties, and responsibilities will be delineated in a standard scope of practice, approved by the Board. The physician assistant-certified may carry out such additional tasks, duties, and responsibilities as are commensurate with the physician assistant-certified's training and experience and as are delegated by the supervising physician."

Auth: Sec. 37-20-202, MCA; IMP, Sec. 37-20-301, MCA

REASON: Provides greater flexibility to Board and supervising physician in approving practice within the abilities of a physician assistant and reflective of current, developing health care practices.

"III TERMINATION AND TRANSFER (1) An approved utilization plan is terminated whenever:

(a) a physician assistant-certified discontinues his participation in the utilization plan; or

(b) the license of the supervising physician is suspended or revoked by action of the board.

(2) An approved utilization plan is suspended whenever the supervising physician discontinues his participation therein; however, the physician assistant-certified may apply to the board to substitute another supervising physician.

(3) Whenever participation in a utilization plan is terminated by either the supervising physician or the physician assistant-certified, the supervising physician and the physician assistant-certified must each independently provide the board with a written explanation of the reason(s) participation in the utilization plan was terminated."

Auth: Sec. 37-20-201, MCA; IMP, Sec. 37-20-202, MCA

REASON: This rule updates and clarifies old rules 8.28.1514 and 8.28.1515.

"IV TRAINING OF STUDENT PHYSICIAN ASSISTANTS (1) A physician assistant student training in Montana is not required to apply for licensure under these rules.

(2) A physician assistant student must train under the supervision of a physician who is licensed or physician assistant-certified who is certified in Montana.

(3) A physician assistant student training in Montana must:

(a) be currently enrolled in a physician assistant training program accredited by the American medical association; and

(b) conspicuously wear an identification badge indicating that he is a "physician assistant student" whenever engaged in patient care activities."

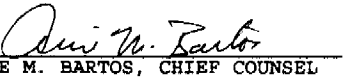
Auth: Sec. 37-20-202, MCA; IMP, Sec. 37-20-202, MCA

REASON: Implements recent legislation delegating board authority to regulate training of student physician assistants in Montana.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Medical Examiners, Lower Level, Arcade Building, Helena, Montana 59620-0407, to be received no later than January 21, 1993.

6. Patricia I. England, attorney, has been designated to preside over and conduct the hearing.

BOARD OF MEDICAL EXAMINERS
PETER BURLEIGH, M.D.
CHAIRMAN

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 14, 1992.

BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to examinations and reciprocity licenses	)	NOTICE OF PROPOSED AMENDMENT OF 8.34.414 EXAMINATIONS AND 8.34.417 RECIPROCITY LICENSES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 23, 1993, the Board of Nursing Home Administrators proposes to amend the above-stated rules.

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

"8.34.414 EXAMINATIONS (1) through (3)(c) will remain the same.

~~(4) A passing score in examinations prepared by the professional examination service, or the national association of boards and passing score in an open book examination relating to the provisions of the Montana long term care facility licensing law and regulations will be required of each applicant.~~

~~(5)~~ (4) Each applicant shall be required to attain a ~~final~~ passing scaled score, as determined by the national association of boards of examiners for nursing home administrators, on an ~~of at least 113 raw score in~~ examinations prepared by the professional examination service, or the national association of boards~~, and~~. In addition, each application must attain a final score of at least 90% in the open book examination relating to the provisions of the Montana long-term care facility licensing law and regulations.

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

Auth: Sec. 37-1-131, 37-1-134, 37-9-201, 37-9-203, 37-9-304, MCA; IMP, Sec. 37-1-134, 37-9-201, 37-9-203, 37-9-301, 37-9-303, 37-9-304, MCA

"8.34.417 RECIPROCITY LICENSES (1) An application for licensure by reciprocity without examination must include a signed statement from the examining board of another jurisdiction attesting:

(a) that the applicant attained a ~~minimum raw~~ passing scaled score, as determined by the national association of boards of examiners for nursing home administrators on an examination ~~administered~~ prepared by the professional examination service or the national association of boards; and ~~setting forth~~

(b) that the applicant holds a currently valid license as a nursing home administrator in that jurisdiction.

(2) will remain the same."

Auth: Sec. 37-9-201, 37-9-203, MCA; IMP, Sec. 37-9-301, 37-9-303, MCA

REASON: The proposed amendments will bring the rules into compliance with the request of the National Association of Boards of Examiners for Nursing Home Administrators that all jurisdictions provide for a standardized, scaled scoring system developed by the National Association. The amendments will also create more appropriate standards for both licensure by examination and licensure by reciprocity. It was pointed out to the Board that the scaled score is psycometrically sound and supportable based on a role delineation study and passpoint setting group. It will also comply with pending federal OBRA regulations.

3. These proposed amendments would be retroactive to October 1, 1992. The retroactive date is provided to comply with the request received from the National Association of Boards of Examiners for Nursing Home Administrators, during the summer of 1992, that the Board change its scoring system to provide for a scaled scoring system. Retroactive application of the amendments will increase the number of passing examinees from the examination administered in October of 1992.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Nursing Home Administrators, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be submitted no later than January 21, 1993.

5. 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 the request along with any comments he has to the Board of Nursing Home Administrators, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than January 21, 1993.

6. 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.

BOARD OF NURSING HOME ADMINISTRATORS
MOLLY MUNRO, CHAIRMAN

ANNIE M. BARTOS
RULE REVIEWER

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

Certified to the Secretary of State, December 14, 1992.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to licensure--outfitter examination	))))	NOTICE OF PROPOSED AMENDMENT OF 8.39.503 LICENSURE--OUTFITTER EXAMINATION

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 23, 1993, the Board of Outfitters proposes to amend the above-stated rule.

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

"8.39.503 LICENSURE--OUTFITTER EXAMINATION (1) and (2) will remain the same.

(3) An applicant who has failed the examination shall ~~not~~ be eligible to take the next regularly scheduled examination. ~~However,~~ after submitting an ~~new~~ updated application and new examination fee~~, an unsuccessful applicant may retake the examination at any scheduled examination thereafter~~.

(4) will remain the same."

Auth: Sec. 37-1-131, 37-47-201, MCA; IMP, Sec. 37-47-201, 37-47-305, MCA

REASON: ARM 8.30.503(3) delays the process of licensure by requiring that applicants wait six months to retake the outfitter examination after failure. The amendment will eliminate the waiting period.

3. Interested persons may present their data, views or arguments concerning the proposed amendment in writing to the Board of Outfitters, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., January 21, 1993.

4. If a person who is directly affected by the proposed amendment 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 Outfitters, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., January 21, 1993.

5. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, 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 OUTFITTERS
IRVING L. "MAX" CHASE, CHAIRMAN

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

Anne M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 14, 1992.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Accreditation Standards: Procedures	))))	NOTICE OF PROPOSED AMENDMENT OF ARM 10.55.601, ACCREDITATION STANDARDS: PROCEDURES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 23, 1993, the Board of Public Education proposes to amend ARM 10.55.601 Accreditation Standards: Procedures.

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

10.55.601 ACCREDITATION STANDARDS: PROCEDURES (1) through (2) remain the same.

~~(3) For school years 1989-90 and 1990-91, accreditation will be based on the school's submission of the fall report and a preliminary plan for meeting the new standards. The fall report shall reflect the required standards the school is currently meeting. For the school year 1989-90, the preliminary plan will show how the school had organized its planning efforts. For the school year 1990-91, the plan will describe how the school will meet those standards which become effective in subsequent years. These plans will be submitted by December 1 of each year to the office of public instruction on forms provided by them. An assessment of the plan will be included in the office of public instruction's recommendation of accreditation status to the board of public education. (Eff. 7/1/89; Repeal 7/1/91)~~

~~(4)~~ (3) Effective on July 1, 1989, schools are required to maintain present programs that meet current standards until such standards are superseded. In addition, schools are expected to maintain current programs that conform to standards which have been adopted but have a delayed effective date.

~~(5) Effective on January 1, 1992, schools unable, for financial reasons, to meet the requirements of ARM 10.55.712 (2)(a); 10.55.904 (4)(h); 10.55.709 (2); 10.55.902 (5)(j); 10.55.903 (2)(i); 10.55.710 (2); may file a notice of deferral with the office of public instruction.~~

(4)(a) Effective January 1, 1992, schools unable, for financial reasons, to meet the requirements of ARM 10.55.705 (2)(d), 10.55.712 (2)(a) or 10.55.904 (4)(h) may file an initial notice of deferral with the office of public instruction.

(b) Effective January 1, 1994, schools unable, for financial reasons, to meet the requirements of ARM 10.55.709 (2), 10.55.710 (2), 10.55.902 (5)(i) or 10.55.903 (2)(i) may file an initial notice of deferral with the office of public instruction.

~~(b)~~(c) The notice of deferral must be filed on a form provided by the office of public instruction and approved by the board of public education.

~~(c)~~(d) The notice of deferral must contain the following information:

(i) through (iv) will remain the same.

~~(d)~~(e) The notice of deferral must be signed by the chairman of the school board and in districts with superintendents, the superintendent.

~~(e)~~ (f) Upon the initial filing of the notice of deferral, the standard(s) will be deferred for two school years, ~~commencing the July 1 after the filing of the notice.~~ If a school files a subsequent notice of deferral on a standard(s) already subject to a deferral, the office of public instruction will review the notice and recommend to the board of public education whether an additional two-year deferral should be granted.

AUTH: Sec. 20-4-114, MCA IMP: Sec. 20-2-121, MCA

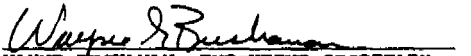
3. The Board proposes this amendment because the board has determined that under the current rule a number of schools have requested deferral even though the rule was not slated to go into effect for several years in the future. This rule change would prevent schools from applying for deferrals prior to the year in which the rule becomes effective.

4. Interested parties may submit their data, views or arguments in writing to Bill Thomas, Chairperson, Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than January 21, 1993.

5. If a person who is directly affected by the proposed amendment wishes to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Bill Thomas, Chairperson, Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than January 21, 1993.

6. If the Board 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 51 as there are 514 school districts presently in Montana.



WAYNE BUCHANAN, EXECUTIVE SECRETARY
BOARD OF PUBLIC EDUCATION

Certified to the Secretary of State, 12/14/92.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Student Assessment	)))	NOTICE OF PROPOSED AMENDMENT OF ARM 10.56.101 STUDENT ASSESSMENT NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On January 23, 1993, the Board of Public Education proposes to amend ARM 10.56.101, Student Assessment.

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

10.56.101 STUDENT ASSESSMENT (1) through (2) (a) will remain the same.

(2)(b) not using norm-referenced tests to test in grade levels three four, eight and eleven; or

(2)(c) using only parts of the approved norm-referenced test; have until July 1991 to comply with this subsection. The test will be administered to students in grades three four, eight and eleven in reading, language arts, math, science, and social studies. A spring test will be given and the test date will be within the empirical norm date time frame for the selected test. If the spring test date falls outside the empirical norm date time frame, appropriate interpolated norms must be used. All scores will be sent to the office of public instruction with the annual fall report in a format specified by the office of public instruction and approved by the board of public education.

(3) through (6) remain the same.

AUTH: Sec. 20-2-121 IMP: Sec. 20-2-121

3. The Board proposes to amend this rule to address that in many schools grades kindergarten through third are multigrade classrooms and therefore may not have identifiable third graders. The rule change would allow testing to begin in fourth grade, which in every school would have students identified as fourth graders.

4. Interested parties may submit their data, views or arguments in writing to Bill Thomas, Chairperson of the Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than January 21, 1993.

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

or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Bill Thomas, Chairperson of the Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than January 21, 1993.

6. If the Board 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 51 as there are 514 school districts presently in Montana.

Wayne D. Buchanan

Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State, 12/14/92.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 24.9.314, Document format, filing and service; and Rule 24.9.329, Exceptions to proposed orders	)))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 23, 1993, the human rights commission proposes to amend ARM 24.9.314 and 24.9.329. ARM 24.9.314 relates to the format, filing and service of documents in a contested case before the commission. ARM 24.9.329 relates to the procedures for the filing of exceptions to a hearing examiner's proposed order in a contested case prior to consideration of that proposed order by the Commission.

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

24.9.314 DOCUMENT FORMAT, FILING AND SERVICE

(1)-(3) Remain the same.

(4) Parties shall submit the original or original copy and one copy ~~six copies~~ of all submissions for the record~~,~~ until entry of the proposed order, unless otherwise directed by the commission or its hearing examiner. After a proposed order has been entered, parties shall submit the original or original copy and six copies of all submissions unless otherwise directed by the commission. ~~In lieu of the requirement that six copies of submissions be filed by the parties, the commission or its hearing examiner may require a party filing exceptions to any proposed order to file sufficient copies of the record as may be required for proceedings before the commission.~~

(5)-(6) Remain the same.

(7) Filing of a facsimile copy of a document of no more than 20 pages, which is an exact duplicate of the original, shall meet the filing requirements of these rules if the facsimile copy is followed within 5 days by filing of the original or original copy of the document and required copies.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-505, 49-3-308, MCA.

24.9.329 EXCEPTIONS TO PROPOSED ORDER (1) Following entry of a proposed order in a contested case and prior to consideration of that order by the commission, parties adversely affected by the proposed order shall have the opportunity to file exceptions, present briefs and present oral argument as provided by this rule.

(a) Once a proposed order is entered in a contested case, all parties shall thereafter submit an original or original copy and six copies of all submissions for the record unless otherwise directed by the commission. The commission staff may reject and return any submission which does not include the required number of copies.

(2) Pursuant to 2-4-621(3), MCA, the commission in its final order may reject or modify the conclusions of law and interpretations of administrative rules in the proposed order but may not reject or modify the findings of fact unless the commission first reviews the complete record. The commission may accept or reduce any recommended award or penalty but may not increase it without reviewing the complete record.

(a) Unless all parties stipulate otherwise, a party filing exceptions requiring commission review of the complete record, must file six copies of all contested case pre-hearing submissions, hearing exhibits, a transcript of the hearing, all post-hearing submissions and the proposed order.

(b) A party filing exceptions not requiring commission review of the complete record must file six copies of all portions of the contested case record, including the proposed order, required for the commission's review of the exceptions.

(3) ~~(2) When a party intends to make exception to a conclusion of law, and commission review will not require a review of a transcript of hearing~~ If a party making exceptions does not intend to file a transcript of the hearing, the party must file and serve the exceptions, ~~and~~ a supporting brief and the portions of the record required for commission review of the exceptions within 20 days of service ~~the date of entry~~ of the proposed order. Any opposing party must file and serve an answer brief within 10 days of service of the exceptions and supporting brief. The party making exceptions must file and serve any reply brief within 10 days of service of the answer brief.

(4) ~~(3) When a party intends to file exceptions to a finding of fact or to a conclusion of law and commission review will require a transcript of hearing and:~~ If a party making exceptions intends for the commission to review a transcript of the hearing and:

(a) a transcript of the hearing has been prepared and filed with the commission prior to issuance of the proposed order, the party must file and serve the exceptions, ~~and~~ a supporting brief and the record within 20 days of ~~the date of entry~~ service of the proposed order. Any opposing party must file and serve an answer brief within 10 days of service of the exceptions and supporting brief. The party making exceptions must file and serve any reply brief within 10 days of service of the answer brief.

(b) a transcript of the hearing has not been prepared and filed prior to issuance of the proposed order,

(i) within 20 days of service of the proposed order, ~~the~~ a party making exceptions must file a notice of intent to file exceptions stating that commission review of a transcript of

the hearing is required. ~~within 20 days of the date of entry of the proposed order.~~

(ii) After the notice of intent to file exceptions is filed, ~~the~~ a party making exceptions must arrange for preparation of a transcript of the hearing at his or her own expense. The party making exceptions must file an original and six copies of the transcript with the commission within 40 days of ~~the date of~~ filing ~~of~~ the notice of intent to file exceptions.

(iii) If ~~both parties~~ more than one party gives notice of intent to file exceptions, ~~they~~ all parties making exceptions which require review of a transcript of the hearing must share equally in the cost of the transcript and copies.

(iv) ~~The~~ A party making exceptions must file the exceptions, ~~and~~ a supporting brief and the record within 20 days of the date of filing the transcript. Any opposing party must file and serve an answer brief within 10 days of service of the exceptions and supporting brief. The party making exceptions must file and serve any reply brief within 10 days of service of the answer brief.

(4)-(5) Remain the same.

(6) ~~The commission deems the failure of a party to timely file a brief in support of exceptions to be a waiver of the right to oral argument and will not hear argument in such cases. However, if a party who has filed exceptions fails to timely file a supporting brief, any opposing party may request permission from the commission to submit a brief in opposition to the exceptions.~~ If a party making exceptions fails to file a brief in support of exceptions within the time provided by this rule, or within any extension of time granted, any opposing party may move to strike the exceptions. If an opposing party fails to file a brief in opposition to exceptions within the time provided by this rule, or within any extension of time granted, that party will not be heard at oral argument except by permission of the commission.

AUTH: 49-2-204, 49-3-106, MCA; IMP: 49-2-505, 49-3-308, MCA.

3. The commission proposes to amend ARM 24.9.314 to eliminate the need for parties to file multiple copies of submissions for the record prior to commission review of a proposed order when it becomes necessary for the parties to file sufficient copies of documents for each commission member to receive a copy. The commission also proposes to amend ARM 24.9.314 to clarify that filing requirements may be met through the filing of a facsimile followed by an original. The commission proposes to amend ARM 24.9.329 to clarify that parties making exceptions must file an original and six copies of all submissions so that each commission member will have a copy of the record, to clarify the standard of review of exceptions to proposed orders, to allow parties to stipulate that commission review will not require review of the complete record, to clarify the procedures for filing a hearing transcript and to provide a procedure when a party does not timely file a brief.

4. Interested parties may submit their data, views or arguments on the proposed rulemaking in writing to the Montana Human Rights Commission, P.O. Box 1728, Helena, MT 59624-1728, no later than January 21, 1993.

5. If a person who is directly affected by the proposed rulemaking wishes to express data, views or arguments orally or in writing at a public hearing, the person must make written request for a hearing and submit this request along with any written comments to the Montana Human Rights Commission, P.O. Box 1728, Helena, MT 59624-1728, no later than January 21, 1993.

6. If the agency receives requests for a public hearing on the proposed rulemaking from either 10% or 25, whichever, is less, of the persons who are directly affected by the proposed amendments, 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 more than 25 persons based upon the number of potential parties to cases in Montana.

MONTANA HUMAN RIGHTS COMMISSION
JOHN B. KUHR, CHAIRPERSON

By: Anne L. MacIntyre
ANNE L. MacINTYRE
ADMINISTRATOR
HUMAN RIGHTS COMMISSION STAFF

Certified to the Secretary of State December 14, 1992.

I certify that I have been appointed by the head of the Department of Labor and Industry to review departmental rulemaking notices and that I have reviewed this rulemaking notice pursuant to section 2-4-110, MCA.

David A. Scott
David Scott

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

In the Matter of Proposed Adoption of New Rules and Amendments to Existing Rules Regarding Telecommunications Services and General Utility Tariff and Price List Filing Requirements; and Repeal of Rule 38.5.3340.	)))))))	NOTICE OF PUBLIC HEARING ON ADOPTION AND AMENDMENT OF TELECOMMUNICATIONS RULES AND UTILITY TARIFF FILING REQUIREMENTS AND REPEAL OF ARM 38.5.3340

TO: All Interested Persons

1. On February 23, 1993 at 9:00 a.m. in the Bollinger Hearing Room, Montana Public Service Commission, 1701 Prospect Avenue, Helena, Montana, a hearing will be held to consider the proposals identified above.

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

38.5.2601 TARIFFS AND PRICE LISTS: FILING FEES AND COPIES (1) and (2) Remain the same.

(3) Every utility which changes its price list sheets for rates, tolls and charges or its detariffed service sheets, shall file the sheets accompanied by a filing fee of five dollars ($5) per page up to a maximum filing fee of $500 per filing.

(4) All tariff, price list and detariffed service sheet filings shall be accompanied by a letter of transmittal describing the type of filing and including the information required in ARM 38.5.2801.

(5) An original and three (3) copies of all tariff, price list and detariffed service sheet filings shall be filed with the commission. If a rate increase (or an increase in a maximum rate provision) is being requested, an original and ten (10) copies shall be filed. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-204, 69-3-301, 69-3-302, 69-3-304, MCA

38.5.2703 NOTICE (1) Any person, corporation or organization wishing to be on ~~the~~ a commission's telecommunications mailing list shall submit their name and address, in writing, to the Assistant Administrator, Utility Division, Montana Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and clearly indicate, by reference to this rule, that they want to be on ~~the~~ a telecommunications mailing list. A yearly fee ~~will~~ may be charged to recover the cost of this service. AUTH: Sec. 69-3-822, MCA; IMP, Secs. 69-3-803(3) and 69-3-807, MCA

38.5.2715 RELAXED FORBEARANCE ~~(1) Any telecommunications provider may apply to the commission for forbearance from regulation. The commission shall determine if forbearing from regulation would facilitate competition. The application shall be verified and contain the following information:~~

~~-----(a)--the name and address of the applicant;~~
~~-----(b)--a description of the service to be offered and the facilities used to offer the service;~~
~~-----(c)--the name and address of the customer to be served;~~
~~-----(d)--the market area to be served;~~
~~-----(e)--the party or parties offering similar alternative service to the customer;~~
~~-----(f)--a description of the alternative service offered and the market area; and~~
~~-----(g)--an affidavit verified by the customer to be served, containing:~~
~~-----(i)-- a description of the types of services sought by the customer;~~
~~-----(ii)- a statement that the customer has received a bid from an alternative provider for such services;~~
~~-----(iii)- the names(s) of the alternative provider(s) submitting the bid(s); and~~
~~-----(iv)- the types of services offered in the bid(s).~~
~~-----(h)-- A certificate of service verifying compliance with subsection (2).~~
~~-----(i)--the commission may require other information that is reasonably related to determine the existence of an alternative offer except information relating to the cost of providing the service.~~
~~-----(2)--When a telecommunications provider files a forbearance application with the commission, it must simultaneously mail copies of the application to all persons and entities on the telecommunications mailing list established by ARM 38.5.2703.~~
~~-----(3)--The commission's determination shall be based on the existence of a viable competitive offer. The telecommunications service provider seeking forbearance has the burden of establishing that a viable competitive offer exists.~~
~~-----(4)--The commission shall approve or deny the application within 15 days of receipt of the completed application. If the commission takes no action within 15 days, the application is granted.~~

(1) Any telecommunications provider may apply to the commission for forbearance of regulation for purposes of negotiating an individual customer contract pursuant to §69-3-808, MCA, in accordance with the procedures set forth in this rule. The procedures specified herein must be satisfied before a telecommunications provider may offer an individual customer contract containing rates which differ from the provider's applicable tariffs or price lists.

(2) A telecommunications provider requesting forbearance approval for a particular customer must file an application with the commission containing all of the following information:

(a) the name and address of the telecommunications provider requesting forbearance;

(b) the name, address and telephone number of the customer;

(c) a description of the telecommunications service(s) to be offered the customer, including specific references to the provider's tariffs and price lists, and the market area to be served.

(d) A statement that either:

(i) Another telecommunications provider has given the customer an oral or written competitive offer to provide the same or similar service(s) for which forbearance is requested; or

(ii) The customer has requested a quotation of prices from another telecommunications provider having tariffs or price lists for similar services on file with the commission.

(e) the name, address and telephone number of the alternative provider referred to in (d), if known.

(3) The forbearance application containing the information required by subsection (2) shall:

(a) be verified under oath in accordance with Montana law, §1-6-101 et seq., MCA;

(b) be served by mail on all persons and entities on the commission's forbearance mailing list, on the same day that it is filed with the commission; and

(c) include a certificate of service verifying service as required in subsection (b).

(4) If a complete application is filed and served in full compliance with the above requirements, the application shall be deemed automatically granted one (1) day after the date of filing, without the necessity of formal commission action. Approval shall authorize the provider to negotiate rates with the customer without regard to its tariffs or price lists.

(a) The application shall be deemed automatically denied if it is incomplete, inaccurate or fraudulent.

(b) The automatic approval provided above shall be deemed void if it is demonstrated at a later date that the application was incomplete, inaccurate or fraudulent at the time it was filed.

(5) The commission reserves the right to investigate, request additional information or hold hearings at any time regarding forbearance applications, negotiations, contracts or the service and rates provided to forbearance customers. The commission may amend the terms or adjust the rates of any forbearance contract; or order such other relief as may be appropriate. If the commission determines that the rates charged under forbearance contracts were or are below costs, it may issue appropriate orders to ensure that the provider's shareholders, and not ratepayers, are responsible for any costs not recovered through the contract rates. AUTH: Sec. 69-3-822, MCA; IMP, Sec. 69-3-808, MCA

38.5.2716 ~~FILING OF NEGOTIATED CONTRACT~~ FORBEARANCE CONTRACTS (1) After ~~notification that~~ forbearance is granted, the telecommunications ~~service~~ provider may negotiate with a the customer for the provision of the ser-

vice(s) without regard to its filed tariffs or price lists. Within ten days ~~of~~ after reaching a final contract or agreement, ~~or other evidence of the service to be provided,~~ the telecommunications provider shall file with the commission:

(a) A copy of the final contract or agreement; and

(b) The charges and conditions of service.

(2) ~~If no contract is reached the telecommunications provider must notify the commission in writing.~~ For the term of the contract, the telecommunications provider may provide service pursuant to the contract rates, without regard to the rates in its tariffs or price lists. However, the provider remains bound by all other service terms and conditions in its tariffs and price lists, and all other applicable provisions of law.

(3) If a contract or agreement is not finalized with the customer within sixty (60) days after the forbearance application is granted, the provider shall immediately file a status report with the commission, indicating whether negotiations are continuing or whether the customer has reached an agreement with an alternative provider. Additional reports shall be filed every 60 days thereafter, if any change has occurred. AUTH: Sec. 69-3-822, MCA; IMP, Sec. 69-3-808

38.5.3302 DEFINITIONS In the interpretation of these rules, the following definitions shall be used:

(1) through (2) Remain the same.

(3) "Carrier" means any exchange carrier, ~~or~~ interexchange carrier, operator service provider, inmate calling provider or other telecommunications provider.

(4) through (22) Remain the same.

AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

38.5.3331 BUSINESS OFFICES AND TOLL-FREE TELEPHONE INFORMATION (1) Each carrier, operator service provider and inmate calling provider must have at least one business office to provide customers and others with access to personnel who can provide information on services and rates, accept and process service applications, explain customers' bills, adjust errors, and generally represent the carrier. If one business office serves several exchanges or states, toll-free calling to that office must be provided and the office must be staffed during Montana business hours. Local exchange companies shall also provide a toll-free number for other carriers, on bills rendered on behalf of ~~the ARM 38.5.3340~~ carriers, operator service providers and inmate calling providers, ~~and interexchange carriers,~~ and upon request of callers. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

38.5.3332 CUSTOMER BILLING (1) through (1)(a)(ii) Remain the same.

(iii) the toll-free telephone number of the company's business office serving the customer;

(iv) through (4) Remain the same.

(5) Billing. Telecommunications service regulated by the Montana public service commission cannot be denied or terminated because of nonpayment for nonregulated services or services provided by other carriers, except for other carrier's regulated services that cannot be disconnected or discontinued separate from local service. A telecommunications provider's bill to its customer shall clearly distinguish between ~~both~~ regulated and nonregulated service ~~and tariffed and detariffed service~~. Regulated and nonregulated service may appear on the same bill but must be presented as separate line items.

(a) Remains the same.

(6) Late billing. If a carrier fails to bill a customer within 30 days after a service is provided, the customer must be allowed an equal period of time to pay the late-billed charges as it took the carrier to bill the customer. During this period, late payment charges must not be assessed on the late-billed service charges, and the carrier is prohibited from taking any collection actions against the customer other than monthly notice by mail of the unpaid charges. Any such monthly notice must not threaten any further collection action, and must contain a verbatim statement of this subsection. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102, 69-3-201 and 69-3-221, MCA

38.5.3337 PAY TELEPHONES (1) through (3) Remain the same.

~~(a)--Each exchange carrier shall file an annual report with the commission, listing the pay telephones within its jurisdiction which are not in compliance with applicable tariff requirements on file with the commission. Concurrently with the filing of the annual report, each exchange carrier shall serve notification of noncompliance and potential termination upon each owner of such pay telephones. If the pay telephones on the annual report are not brought into full compliance within thirty (30) days following notification of the owners of said pay telephones, the exchange carrier shall immediately terminate service thereto. The provisions of this rule and applicable tariffs shall be included in the notice sent to the pay telephone owners.~~

(4) All carrier-owned and customer-owned pay telephones are required to provide emergency call routing services as required by ARM (Rule XXVII).

(5) All carrier-owned and customer-owned pay telephones are prohibited from call blocking, as defined in ARM (Rule I(2)(b)).

(6) All carrier-owned and customer-owned pay telephones are required to enable operator service providers to comply with ARM (Rules II, V and XXVII).

(7) All carrier-owned and customer-owned pay telephones are required to enable inmate calling providers to comply with ARM (Rule VIII).

(8) Each exchange carrier shall file an annual report with the commission, listing the pay telephones within its service area which are not in compliance with applicable tariff requirements or commission rules. Concurrently with the filing of the annual report, each exchange carrier shall serve notification of noncompliance and potential termination upon each owner of such pay telephones. If the pay telephones on the annual report are not brought into full compliance within thirty (30) days following notification of the owners of the pay telephones, the exchange carrier shall immediately terminate service thereto. The provisions of the applicable tariffs and commission rules shall be included in the notice sent to the pay telephone owners. AUTH: 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

38.5.3338 AUTOMATIC DIALING - ANNOUNCING DEVICES

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

(2) This ~~section~~ rule should not be construed to apply to any automatic security device installed at the request of ~~the~~ a tenant or owner of ~~the~~ premises for security, emergency, health, environmental, or other monitoring purposes.

(3) All use of automatic dialing-announcing devices must comply with 45-8-216, MCA and 47 U.S.C. §227.

~~(3)~~ (4) If ~~the~~ an automatic dialing - announcing device user fails to comply with the provisions of this ~~section~~ rule, the exchange carrier providing originating service must refuse to provide service after notice is given until the noncompliance is remedied. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

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

Operator Service Provider Rules

RULE I. DEFINITIONS (1) The provisions of this subchapter shall apply to all operator service providers which provide intrastate "regulated telecommunications services" in Montana as defined in the Montana Telecommunications Act, §69-3-801 et seq., MCA. Operator service providers must comply with all provisions of these rules on all intrastate telephone calls. Federal laws are applicable to interstate calls.

(2) As used in these rules:

(a) "Operator service provider" means any person, firm or entity which provides any automated or live assistance to a consumer to arrange for billing or completion, or both, of an intrastate telephone call through a method other than:

(i) automatic completion with billing to the telephone from which the call originated, or

(ii) completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer.

The term "operator service provider" shall exclude "inmate calling provider" as that term is defined in ARM (Rule VIII(1)), except as may otherwise be provided by rule or commission order.

(b) "Call blocking" means prohibiting or restricting a consumer's access to a carrier which offers service in the same local exchange area by means of equal access or an access code, including but not limited to 1-800, 950-XXXX, and 10XXX-0+ dialing sequences.

(c) "Call splashing" means the transfer of a telephone call from an operator service provider to another operator service provider or carrier in such a manner that the subsequent provider or carrier is unable or unwilling to determine the location of the origination of the call and, because of such inability or unwillingness, is prevented from billing the call on the basis of such location. AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Secs. 69-3-102, 69-3-201 and 69-3-802, MCA

RULE II. GENERAL REQUIREMENTS (1) Each operator service provider must:

(a) Identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charges. Each operator service provider must also identify itself to the called party on collect calls, and to the billed party when verifying third party billed calls.

(b) Upon request, fully and immediately disclose to the consumer, at no charge, a quotation of the rates and charges for a call, the provider's method of collecting its charges, a description of the provider's method of resolving consumer complaints, a toll-free telephone number which can be used to report complaints to the provider, and all other requested information pertinent to the consumer's use of the provider's services.

(c) Permit the consumer to terminate the telephone call at no charge before the call is connected to the called party.

(2) Bills for operator service provider calls must be sent to the person responsible for payment within 30 days after the calls are made.

(3) All operator service providers must connect the consumer to the local exchange company operator upon request, at no charge.

(4) The name, address and toll-free telephone number of the operator service provider must appear on all bills to consumers containing charges for the operator service provider's services.

(5) When a caller seeks to charge a call on a calling card or credit card other than one issued by the operator service provider, the caller shall be informed that the operator service provider's rates will apply, and the caller must be given a quotation of the applicable rates before the call is connected.

(6) Unless otherwise specifically provided by commission rule or order, all operator service providers must comply with all regulatory requirements imposed by Montana state statutes and rules, including but not limited to the Montana Telecommunications Act (§69-3-801 et seq., MCA), the Montana telecommun-

ications service standards (ARM 38.5.3301 et seq.) and the Montana Telecommunications Act Rules (ARM 38.5.2701 et seq.). AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Secs. 69-3-102, 69-3-201 and 69-3-802, MCA

RULE III. CALL BLOCKING PROHIBITED (1) All agreements or contracts between an operator service provider and an owner of a pay telephone instrument or private telecommunications system must contain a provision which prohibits call blocking. This requirement applies to all contracts or agreements entered into after the effective date of this rule; however, all operator service providers must comply with subsection (2) of this rule at all times, including during the remaining term of all existing contracts and agreements.

(2) Operator service providers are prohibited from requiring or providing call blocking at any telephone instrument. Operator service providers are prohibited from offering service at any telephone instrument where call blocking exists. AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Secs. 69-3-102, 69-3-201 and 69-3-802, MCA

RULE IV. CALL SPLASHING PROHIBITED (1) Call splashing is prohibited, except as provided in subsection (2).

(2) Call splashing is only permitted after:

(a) The consumer requests to be transferred to another carrier or provider,

(b) The consumer is informed prior to incurring any charges that the rates for the call may not reflect the rates from the actual originating location, and

(c) The consumer then consents to be transferred.

(3) Operator service providers shall not bill for a call that does not reflect the location of the origination of the call, except for calls completed pursuant to subsection (2). AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Secs. 69-3-102, 69-3-201 and 69-3-802, MCA

RULE V. EMERGENCY CALL ROUTING (1) Upon receipt of any emergency telephone call, an operator service provider must immediately provide emergency call routing service in accordance with the requirements of ARM (Rule XXVII).

(2) An operator service provider is prohibited from receiving "0-" calls from a telephone instrument unless the operator service provider complies with all provisions of this rule and ARM (Rule XXVII). If an operator service provider is unable to comply with this rule and ARM (Rule XXVII), all "0-" calls must be automatically and immediately routed to the local exchange company operator. AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Secs. 69-3-102, 69-3-201 and 69-3-802, MCA

RULE VI. DUTY TO INFORM (1) All operator service providers must inform the owners of telephone instruments where they provide service of the requirements of this subchapter and ARM (Rules IX and XXVII). AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Secs. 69-3-102, 69-3-201 and 69-3-802, MCA

RULE VII. DENIAL OF SERVICE (1) If an operator service provider subscriber, such as a pay telephone owner, motel, hotel, hospital, university, public transportation facility, or any private telecommunications system, operates a telephone instrument which fails to comply with any provision of ARM (Rules I through V, IX or XXVII), the local exchange company which provides the subscriber with originating telephone service must refuse to provide service, after notice, until the subscriber's telephone instruments are in full compliance. AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Secs. 69-3-102, 69-3-201 and 69-3-802, MCA

RULE VIII. INMATE CALLING PROVIDERS (1) As used in this rule, "inmate calling provider" means a carrier or operator service provider which provides regulated telecommunications services by means of coin or coinless pay telephones for the use of inmates in correctional facilities.

(2) Inmate calling providers must:

(a) Comply with the provisions and requirements applicable to operator service providers contained in ARM (Rules II(1),(2),(4),(5) and (6), IV and V). Call blocking is permitted.

(b) On collect calls, the operator must obtain a positive response from the called party of his or her willingness to accept the charges prior to connecting the call and beginning to charge for it. Positive response means either verbal acceptance or a pulse/tone-generated positive response. If no positive response is received, the inmate calling provider must terminate the call and no charge will ensue.

(3) Inmate calling providers are exempt from the provisions of this subchapter, except as provided in this rule or as provided in federal statutes and regulations.

(4) Unless otherwise specifically provided by commission rule or order, all inmate calling providers must comply with all regulatory requirements imposed by Montana state statutes and rules, including but not limited to the Montana Telecommunications Act (§69-3-801 et seq., MCA), the Montana telecommunications service standards (ARM 38.5.3301 et seq.) and the Montana Telecommunications Act Rules (ARM 38.5.2701 et seq.). AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Secs. 69-3-102, 69-3-201 and 69-3-802, MCA

RULE IX. UNANSWERED CALLS (1) All carriers, operator service providers and inmate calling providers are prohibited from charging consumers any amount for incomplete or unanswered telephone calls. AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Secs. 69-3-102, 69-3-201 and 69-3-802, MCA

Interexchange Carriers

RULE X. APPLICABILITY (1) The rules in this subchapter govern the adjustment of rates and set other regulatory requirements for intrastate interexchange carriers subject to the jurisdiction of the Montana public service commission.

(2) For purposes of this subchapter, "interexchange carriers" include AT&T, MCI, Sprint, Touch America, American Sharecom and all other common carriers which provide intraLATA or interLATA regulated telecommunications service, but do not also provide local exchange service.

(3) Unless otherwise specifically provided by commission rule or order, interexchange carriers must comply with all regulatory requirements imposed by Montana state statutes and rules, including but not limited to the Montana Telecommunications Act (§69-3-801 et seq., MCA), the Montana telecommunications service standards (ARM 38.5.3301 et seq.) and the Montana Telecommunications Act Rules (ARM 38.5.2701 et seq.). AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Secs. 69-3-102, 69-3-201 and 69-3-801 et seq., MCA

RULE XI. TARIFFS AND MAXIMUM ALLOWABLE RATES (1) All interexchange carriers must maintain tariffs on file and approved by the commission. The tariffs must include "maximum allowable rates" and terms, conditions and descriptions of all intrastate regulated telecommunications services offered by the interexchange carrier in Montana. The "maximum allowable rate" which shall be listed in the tariff for each service, is the maximum rate which can be charged pursuant to a price list filed pursuant to ARM (Rule XII).

(2) Tariffs can only be changed by commission order, following the applicable notice and procedural requirements of Title 69, MCA, and the Montana Administrative Procedure Act, Title 2, chapter 4, MCA.

(3) Tariffs must be filed and maintained as "schedules" in §69-3-301, MCA. AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Secs. 69-3-102, 69-3-201, 69-3-301 and 69-3-801 et seq., MCA

RULE XII. PRICE LISTS (1) In addition to the tariffs required in ARM (Rule XI), interexchange carriers must maintain a separate set of price lists on file with the commission, which contain a brief description and the actual rates charged consumers, for all intrastate regulated telecommunications services offered by the interexchange carrier in Montana. The description can be a brief summary of the detailed terms and conditions for the service found in the tariff, but must be consistent with the tariff.

(2) The rate in the price list can never exceed the "maximum allowable rate" contained in the approved tariff for the service. The price list rates shall be the only rates lawfully charged consumers.

(3) Price lists cannot alter the terms and conditions contained in the tariff for the service.

(4) Price lists must be filed and maintained as "schedules" in §69-3-301, MCA. AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Secs. 69-3-102, 69-3-201 and 69-3-801 et seq., MCA

RULE XIII. PRICING FLEXIBILITY (1) Interexchange carriers may refile a price list by filing a proposed new price list with the commission which complies with the provisions of this subchapter, and mailing a copy to the commission's interexchange carrier mailing list at least seven (7) days prior to the proposed effective date of the new price list. The interexchange carrier must simultaneously file a certificate of service which affirms compliance with this rule.

(2) A proposed new price list becomes automatically effective for services rendered seven (7) days after filing and service is completed pursuant to subsection (1); no commission action or approval is necessary.

(3) If an interexchange carrier files a proposed new price list which designates an effective date more than seven (7) days after a filing made pursuant to subsection (1), the new price list becomes automatically effective for services rendered after such designated date. AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Secs. 69-3-102, 69-3-201 and 69-3-801 et seq., MCA

RULE XIV. ACCESS CHARGE FLOW-THROUGH (1) All interexchange carriers are required to flow-through any changes to local exchange company access charges to the maximum allowable rates in their tariffs.

(2) Whenever a Montana local exchange company's carrier access charges increase or decrease, all interexchange carriers must make a filing with the commission, requesting approval of a commensurate change in maximum allowable rates for appropriate services. All interexchange carriers must make such a filing with the commission no later than fifteen (15) days after the effective date of the change in local exchange company access charges.

(3) The exact nature and appropriate distribution of the access charge flow-through is subject to commission review, and must be approved by the commission. AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Secs. 69-3-102, 69-3-201 and 69-3-801 et seq., MCA

RULE XV. RATES ABOVE COSTS (1) All interexchange carrier rates must be above relevant incremental costs. AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Sec. 69-3-811, MCA

RULE XVI. RELAXED FORBEARANCE (1) Interexchange carriers may deviate from the rates in their price lists for individual customer contracts, pursuant to the relaxed forbearance procedure set forth in ARM 38.5.2715 and 38.5.2716. AUTH: Sec. 69-3-822, MCA; IMP, Sec. 69-3-808, MCA

RULE XVII. ANNUAL REPORTS (1) Interexchange carriers are required to file annual reports with the commission, in a form prescribed by the commission, as required by §69-3-203, MCA. AUTH: Secs. 69-3-103, 69-3-821 and 69-3-822, MCA; IMP, Secs. 69-3-102, 69-3-201, 69-3-203 and 69-3-801 et seq., MCA

RULE XVIII. MARKET DATA FILING REQUIREMENTS (1) Interexchange carriers are required to file market data information in the form and manner as may be prescribed by commission action. AUTH: Secs. 69-3-103, 69-3-106, 69-3-202, 69-3-203, 69-3-206, 69-3-208, 69-3-821 and 69-3-822, MCA; IMP, Secs. 69-3-102, 69-3-201, 69-3-203 and 69-3-801 et seq., MCA

New Services

RULE XIX. APPLICABILITY (1) ARM (Rules XIX through XXV) apply to applications by carriers, as defined in ARM 38.5.3302(3), for the approval of a new telecommunications service pursuant to §69-3-810, MCA, and the provision of such services. As an alternative to the procedures in ARM (Rules XIX through XXV), carriers may elect to request that a new telecommunications service be detariffed pursuant to the commission's general detariffing rules, ARM 38.5.2711 through 38.5.2712, or §69-3-807(4), MCA; or approved as a tariffed service. AUTH: Sec. 69-3-822, MCA; IMP, Sec. 69-3-810, MCA

RULE XX. DEFINITIONS (1) For purposes of ARM (Rules XIX through XXV), "new service" means any service that is introduced separately or in combination with other services, and:

(a) Is not functionally required to provide local exchange service;

(b) Is not a repackaged current service; and

(c) Is not a direct replacement for a regulated telecommunications service. AUTH: Sec. 69-3-822, MCA; IMP, Sec. 69-3-810, MCA

RULE XXI. FILING REQUIREMENTS (1) A carrier must file an application with the commission requesting approval of a new service pursuant to §69-3-810, MCA, in accordance with the following filing requirements. The carrier must file an application containing the following information:

(a) A description of the service;

(b) The proposed terms and conditions under which the service would be offered;

(c) A proposed minimum price for the service;

(d) The proposed price list sheets for the service, containing the information required in ARM (Rule XXIII(2)).

(e) Detailed answers to the following:

(i) Is the service functionally required to provide local exchange service? Explain.

(ii) Is the service, or any component thereof, similar to any past or present service offered by any carrier in Montana (including the applicant)? The applicant must provide details, including a list of such services, the name(s) of such carrier(s), and a description of the differences between the services.

(iii) If any service is identified in (ii), explain why the proposed new service:

(A) is not a repackaged current service, and

(B) is not a direct replacement for a regulated telecommunications service.

(f) The relevant incremental cost of providing the service, including supporting work papers and analysis. Cost information may be filed on a proprietary basis pursuant to §69-3-105, MCA;

(g) Identify any products or services offered by unregulated firms, or firms other than carriers, which could compete with the proposed new service, describe their availability in Montana, and describe the differences between those products or services and the proposed new service;

(h) A statement on the first page of the application containing the following: "Notice: This application for approval of a new telecommunications service is being filed with the Montana public service commission pursuant to §69-3-810, MCA. Interested parties which appear on the commission's new services telecommunications mailing list are receiving a copy of this application pursuant to ARM (Rule XXI); and should file any comments they have regarding this filing within 10 days after this application was filed with the commission, at the following address:

Mr. Dennis Crawford
Montana Public Service Commission
P.O. Box 202601
1701 Prospect Avenue
Helena, MT 59620-2601

The commission may take action on this filing after the ten day comment period elapses. If the commission has not acted on this filing within 30 days following issuance of this notice, the applicant may proceed to offer the new service on a detariffed basis (i.e. with reduced regulatory oversight of rate changes and maximum rates). This application is governed by ARM (Rules XIX through XXV)."

(2) The complete application must be served by first class mail on the parties listed on the commission's new services telecommunications mailing list, on the same day that it is filed with the commission. The complete application must also be served in the same manner and at the same time on all persons or entitles who have requested or inquired about the provision of such service from the carrier within the previous six (6) months. Certification of such service must be filed by the carrier with the commission no later than one day after the application is filed and served. AUTH: Sec. 69-3-822, MCA; IMP, Sec. 69-3-810, MCA

RULE XXII. APPROVAL PROCESS (1) The 10 day period immediately following the filing and service of the application constitutes a comment period for interested parties. However, nothing herein shall be interpreted to preclude interested parties from filing comments or requesting a hearing more than 10 days after filing and service of the application.

(2) Following the 10 day comment period, the commission may:

(a) Approve the application,

(b) Deny the application,
(c) Suspend the offering of the service, or
(d) Grant interim approval of the offering of the service.

(3) If the commission has not acted within 30 days following the filing and service of the application, the carrier may proceed to offer the service.

(4) Regardless of the form of approval, disapproval or suspension, the commission may conduct further investigations, hold hearings or public meetings, and take other appropriate actions at any time.

(5) In deciding whether to approve a new service as detariffed, the commission may consider:

(a) whether the service falls within the definition of "new service," §69-3-808, MCA and ARM (Rule XX);

(b) whether approval is consistent with the purposes of the Montana Telecommunications Act, §69-3-802, MCA;

(c) whether approval would encourage competition, have no effect on competition, or be anti-competitive;

(d) whether approval would violate any other provisions of the Montana Telecommunications Act, §69-3-801 et seq., MCA or Title 69, MCA; and

(e) any other information or factor relevant to the public interest. AUTH: Sec. 69-3-822, MCA; IMP, Sec. 69-3-810, MCA

RULE XXIII. PROVISION OF NEW SERVICE (1) A new service which has been approved as provided above, may be offered on a "detariffed" basis. For purposes of this rule, "detariffed" means that the rates for the service may be changed without commission approval (above a minimum rate), but the service otherwise remains fully regulated.

(2) At the time the service is offered to the public, the carrier must file a compliance price list with the commission containing:

(a) The terms, conditions and description of the service;

(b) The minimum rate for the service; and

(c) The rate to be charged for the service.

(3) The compliance price list filed pursuant to subsection (2) must be consistent with the conditions of commission approval. If approval occurred automatically following the passage of 30 days, pursuant to ARM (Rule XXII(3)), the compliance price list must contain the same terms, conditions, description and minimum price that were contained in the application.

(4) The rate charged for the service must be above the minimum rate and above relevant incremental costs at all times.

(5) The minimum rate in the price list cannot be changed without subsequent commission approval.

(6) The service must be offered in accordance with the terms, conditions and description contained in the price list.

(7) The terms, conditions and description of the service cannot be changed without subsequent commission approval. AUTH: Sec. 69-3-822, MCA; IMP, Sec. 69-3-810, MCA

RULE XXIV. PRICE LIST REVISIONS (1) A carrier may request a change in a price list rate for a new service by filing a proposed new price list with the commission which complies with the provisions of these rules, and mailing a copy to the commission's new services telecommunications mailing list at least seven (7) days prior to the proposed effective date of the new price list rate. The carrier must concurrently file a certificate of service which affirms compliance with this rule.

(2) Proposed new price list rates become automatically effective for services rendered seven (7) days after filing and service is completed pursuant to subsection (1); no commission action or approval is necessary.

(3) If a carrier designates an effective date more than seven (7) days after a filing made pursuant to subsection (1), the new price list rate becomes automatically effective for services rendered after such designated date.

(4) The automatic approval process described in this rule is only available to change a price list rate to another rate which is also above the minimum rate in the current price list. Formal explicit commission approval is required to alter the minimum rate or the terms, conditions and description contained in the price list. AUTH: Sec. 69-3-822, MCA; IMP, Sec. 69-3-810, MCA

RULE XXV. RETARIFFING (1) The commission retains the right to retariff a detariffed new service.

(2) The commission may initiate a proceeding, or an interested party may petition, for the retariffing of a detariffed new service in accordance with the procedure described in ARM 38.5.2714. AUTH: Sec. 69-3-822, MCA; IMP, 69-3-810, MCA

RULE XXVI. WITHDRAWAL (1) A carrier may request withdrawal of a current telecommunications service pursuant to §69-3-810(4), MCA, in accordance with the following procedure. This rule shall not preclude a carrier from requesting withdrawal of a service pursuant to other procedural methods which are consistent with the Montana Administrative Procedure Act and other applicable provisions of law.

(2) An application requesting commission approval of withdrawal of a current service must contain the following information:

(a) The name and address of the applicant;

(b) The name and description of the service, including specific reference to tariffs and/or price list sheets;

(c) The approximate number of Montana customers currently subscribing to the service from the applicant;

(d) The names of other carriers capable of offering the same or similar service to the applicant's current customers, if known;

(e) The current price for the service;

(f) An explanation of the reasons why the applicant is requesting withdrawal of the service; and

(g) Any disadvantages, adverse effects or hardships which may be incurred by customers due to withdrawal of the service, if known.

(3) The complete application must be filed with the commission and copies served on the same day by first class mail, to all current subscribers of the service and the Montana consumer counsel. The applicant may request approval by the commission of an alternative method of subscriber notification. Certification of such service must be filed with the commission no later than one day after the application is filed and served.

(4) The withdrawal of the service shall be deemed automatically approved without commission action 30 days after a complete application is filed and served in accordance with the requirements of this rule. However, the commission may suspend withdrawal on its own motion or upon request of an interested party. During the suspension period, the applicant must continue to offer the service on the same terms and conditions. The commission may conduct such investigations or hearings as it deems appropriate during suspension, and may enter an order approving or denying the withdrawal, or take such further action as may be appropriate. AUTH: Sec. 69-3-822, MCA; IMP, Sec. 69-3-810, MCA

RULE XXVII. EMERGENCY CALL ROUTING (1) Upon receipt of any emergency telephone call, a carrier must immediately connect the call to the appropriate emergency service which serves the reported location of the emergency. If the location of the emergency is not known, the carrier must immediately connect the call to the appropriate emergency service which serves the originating location of the call.

(2) Consumers shall not be charged for any emergency call.

(3) A carrier must stay connected on an emergency call until it is determined that the caller has been connected to the proper emergency service provider.

(4) Carriers must provide emergency call routing, as provided in this rule, on a full-time basis, 24 hours per day, 7 days per week. AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Secs. 69-3-102, 69-3-201 and 69-3-802, MCA

4. Rule 38.5.3340 proposed to be repealed can be found on page 38-894 of the ARM. AUTH: 69-3-103 IMP: 69-3-102, 69-3-201, MCA.

5. RATIONALE: 38.5.2601 - Currently ARM 38.5.2601 only refers to "tariff sheets." Many regulated utilities file "price lists" and/or "detariffed service sheets" with the commission. The proposed amendment makes it clear that the $5 filing fee applies to tariff, price list and detariffed ser-

vice sheets. Proposed subsection (4) adds a requirement that tariff, price list and detariffed service sheet filings be accompanied by a letter of transmittal describing the filing and containing other information as required in ARM 38.5.2801. Most regulated utilities voluntarily include some type of transmittal letter with their filings. This proposed subsection would require a letter of transmittal and specify its contents.

Subsection (5) specifies the number of copies which must be filed with the Commission, to satisfy internal and administrative needs.

38.5.2703 - The Commission may or may not choose to assess an annual fee for firms and individuals to be on a Commission telecommunication's mailing list. The proposed amendment clarifies this, by replacing "will" with "may." Other minor changes are being proposed to update the Commission's address, and to reflect the fact that the Commission maintains more than one telecommunications mailing list, for various specific purposes.

38.5.2715 and 38.5.2716 - The Commission considered the current forbearance rules and process in two recent contested cases, and decided therein to adopt an alternative "relaxed forbearance" process for particular telecommunications utilities. See Order No. 5548b in Docket No. 88.11.49; and Order No. 5535g in Docket No. 90.12.86. These proposed amendments will adopt a relaxed forbearance process uniformly applicable to all Montana regulated telecommunications providers. They are intended to supersede the forbearance provisions of Order No. 5548b and No. 5535g.

38.5.3302 - The proposed amendment to 38.5.3302(3) will expand the definition of "carrier" to include operator service providers, inmate calling providers and other telecommunications providers, for purposes of applying the Montana Telecommunications Service Standards (ARM 38.5.3301 through 38.5.3371).

38.5.3331 & 38.5.3332(1)(iii) - The proposed amendments are intended to clarify that the rule's provisions are applicable to all regulated telecommunications providers in the state, including carriers, operator service providers and inmate calling providers.

38.5.3332 - (5) The requirement to distinguish between tariffed and detariffed services probably just adds unnecessary confusion to customer bills and it probably means little to a customer. Thus, ARM 38.5.3332(5) is being amended accordingly.

(6) Even though ARM 38.5.3332(1)(a) requires carriers to provide monthly bills when charges have been incurred during the month, there have been occurrences when computer errors or mistakes in bill processing cause delays of several months in customer billing. This rule will ensure that customers who are presented with late bills for carrier charges will not be pressed for immediate and full payment, but instead will be able to pay the charges over time.

38.5.3337 - The proposed changes to 38.5.3337 will require carrier-owned and customer-owned pay telephones to comply with other proposed new rules; including emergency call routing, prohibiting call blocking, other operator service provider requirements, and inmate calling provider requirements. Other minor language changes are also proposed.

38.5.3338 - The 1991 Montana legislature adopted a new criminal provision regarding the use of automated telephone systems for the selection and dialing of telephone numbers. House Bill No. 279, Chapter 230, L. 1991, codified as §45-8-216, MCA. The 1991 U.S. Congress also adopted additional requirements regarding these systems as part of the Telephone Consumer Protection Act of 1991. Dec. 20, 1991, P.L. 102-243, 105 Stat. 2395, codified as 47 U.S.C. §227. The proposed amendment to ARM 38.5.3338, requires exchange carriers to refuse service to entities not in compliance with §45-8-216, MCA or 47 U.S.C. §227.

Rules I, II, III, IV, V, VI - The Commission's current "AOS" (Alternative Operator Services) Rule, ARM 38.5.3340 was adopted in 1989. Since that time the Commission has continued to receive consumer complaints regarding operator services provided at locations such as payphones, hotels, motels, hospitals, universities, and other private telephone systems. In 1990, Congress passed the Telephone Operator Consumer Services Improvement Act of 1990, 47 U.S.C. §226; and the Federal Communications Commission subsequently adopted implementing regulations. 47 C.F.R., §64.703, et seq. In January, 1992, AT&T filed a Petition with the Commission requesting adoption of additional operator services rules. In light of the above, the Commission has reviewed its current rule and is proposing new broader operator service rules in order to protect consumers and promote competition. The rules are intended to insure the provision of adequate information to consumers before incurring charges, and to protect against unfair and anti-competitive practices.

In particular, Rule III would prohibit call blocking, in order to protect the ability of consumers to choose between various carriers and operator service providers. Call Splashing would be prohibited by Rule IV in most instances, in order to prevent consumer confusion, dissatisfaction and billing disputes. Rule V would impose the emergency call routing procedures of Rule XXVII on operator service providers.

Rule VII - Rule VII is a slight rewording of current ARM 38.5.3340(2), and is a means of ensuring compliance with Rules I through V.

Rule VIII - The Commission has received a number of complaints and inquiries regarding inmate calling services. In addition, the Commission has previously granted waivers of its current AOS Rule (38.5.3340) to inmate calling providers. The Commission is proposing Rule VIII in order to adopt a specific set of regulations applicable only to inmate calling services. Consumer protection in a correctional environment is the goal of proposed Rule VIII. Previously granted waivers will

no longer be valid since they will be superseded by these rules.

Rules I through VIII - The Commission intends to codify Rules I through VIII in a new Subchapter of Chapter 5, Title 38, ARM, entitled "Operator Service Providers and Inmate Calling Providers."

Rule IX - Rule IX is being proposed to prohibit consumers from being charged for incomplete or unanswered calls. Please note that Rule IX will be placed in Subchapter 33, Chapter 5 of Title 38, ARM (the Montana Telecommunications Service Standards), and therefore, operator service providers and inmate calling providers will also be required to comply with Rule IX. See Rule II(6) and Rule VIII(4).

Rules X, XI, XII, XIII, XIV, XV, XVI, XVII and XVIII - The purpose of Rules X through XVIII is to establish a consistent regulatory structure applicable to AT&T and the other common carriers. The source of these rules can be found in the evidentiary record and decision in the Commission's OCC Docket, Docket No. 88.11.49, PSC Order No. 5548b (March 4, 1992). PSC Order No. 5548b serves as the pattern for these proposed rules. The maximum rate, pricing flexibility and flow-through provisions (Rules XI through XIV) also originated in PSC Order No. 5049d and 5274a (Re: AT&T). See also AT&T Telecommunications Tariff Sec. 2L. Rule XV would require rates to be above costs, consistent with §69-3-811, MCA. Rule XVI would apply the relaxed forbearance process to interexchange carriers. Rules XVII and XVIII would impose Annual Report and Market Data filing requirements upon interexchange carriers, consistent with §69-3-203, MCA, and Order No. 5548b. The exact contents of the report requirements are subject to Commission review and approval, as appropriate. The Commission intends to codify Rules X through XVIII in a new Subchapter of Chapter 5, Title 38, ARM, entitled "Interexchange Carriers."

Rules XIX through XXVI- Proposed Rules XIX through XXV establish a procedure for the filing and consideration of "new service" applications pursuant to §69-3-810, MCA, which was enacted by the 1991 Montana legislature. Rule XXVI would establish a procedure for the filing and consideration of "withdrawal" applications pursuant to §69-3-810(4), MCA. The Commission intends to codify Rules XIX through XXVI in Subchapter 27, Chapter 5, Title 38, ARM.

Rule XXVII - Proposed Rule XXVII would impose strict emergency call routing procedures on all types of telecommunications providers, and would prohibit any charge for emergency calls. Please note that Rule XXVII will be placed in Subchapter 33, Chapter 5 of Title 38, ARM (the Montana Telecommunications Service Standards), and therefore, operator service providers and inmate calling providers will also be required to comply with Rule XXVII. See Rule II(6) and Rule VIII(4).

38.5.3340 - This rule is being repealed and its provisions are replaced by Rules I-VII.

6. Statement of Intent (Re: Rules X through XVIII). The Commission intends to review the regulatory structure established in Order No. 5548b (Docket No. 88.11.49) and by

Rules X through XVIII in 1994. The Commission invites interested parties to file comments with the Commission as provided in Order No. 5548b. The 1994 review is independent of this rulemaking process.

MCI, Sprint, Touch America and American Sharecom were specifically required by Order No. 5548b to file tariffs and price lists with the Commission. These rules are intended to apply to the Respondents in Docket No. 88.11.49 and all other intrastate interexchange carriers subject to Commission jurisdiction. Any interexchange carriers which do not presently have tariffs and price lists approved and on file with the Commission must make the appropriate filings with the Commission immediately upon the adoption of these rules.

7. 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 (original and 10 copies) to Ivan C. Evilsizer, P.O. Box 202601, 1701 Prospect Avenue, Helena, Montana 59620-2601 no later than February 8, 1993.

8. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

Danny Oberg, Chairman

Reviewed By

CERTIFIED TO THE SECRETARY OF STATE DECEMBER 14, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.15.121 and 42.17.111 relating to Taxation of Indian Income	NOTICE OF THE PROPOSED AMENDMENT of ARM 42.15.121 and 42.17.111 relating to Taxation of Indian Income

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 11, 1993, the Department of Revenue proposes to amend ARM 42.15.121 and 42.17.111 relating to taxation of Indian income.

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

42.15.121 TAX STATUS OF INDIANS (1) ~~The term "Indian" is construed to mean an enrolled member of an Indian tribe. An Indian's income is taxable to the same extent as that of non-Indians, subject only to the following exceptions:~~

~~(a)~~ An ~~Indian residing~~ enrolled tribal member who resides on an Indian reservation and is an enrolled member of a tribe which resides on that reservation is not taxable with respect to income derived from sources within the exterior boundaries of ~~an~~ that Indian reservation or ceded strip. When income is earned both on and off reservations, it shall be allocated according to the source.

~~(b) An Indian, regardless of residence, is not taxable with respect to income derived directly from allotted or restricted lands held in trust by the United States for the Indian's benefit of a tribe.~~

~~(2) An Indian residing outside the exterior boundaries of an Indian reservation has no special exemption other than income derived from allotted or restricted lands, as set forth in subsection (1)(b) of this section.~~

AUTH: 15-30-305 MCA; IMP: 15-30-101(12) MCA.

42.17.111 WHO MUST WITHHOLD AND WHO IS SUBJECT TO WITHHOLDING (1) through (5) remain the same.

(6) Applicable to tax years beginning January 1, 1993, and later. Wages paid to a member of an Indian tribe are subject to withholding unless all of the following conditions are met:

(a) the employee is an enrolled member of a recognized Indian tribe;

(b) a certificate of enrollment is filed by the employee with the employer;

(c) the employee resides on ~~an Indian~~ his or her tribe's reservation and,

(d) the wage is compensation for services performed within the boundaries of ~~an Indian~~ the enrolled member's reservation.

(7) remains the same.
AUTH: 15-30-305 MCA; IMP: 15-30-202 MCA.

3. Amendments to ARM 42.15.121 and 42.17.111 are proposed to clarify that an enrolled member who lives on a reservation other than the reservation of his tribe is taxed in the same manner as a nonmember.

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

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

no later than January 22, 1993.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than January 22, 1993.

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

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State December 14, 1992.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD OF THE STATE OF MONTANA

In the matter of the amendment of 2.43.612, 2.43.613 and 2.43.614 to comply with new statutory deadlines for certifying annual benefit payments and for distributing increases to eligible retirees	NOTICE OF AMENDMENT

TO: All Interested Persons.

1. On September 10, 1992, the Public Employees' Retirement Board published notice of the proposed amendment of the above rules concerning certification of eligibility for and amounts of annual benefits and payment of benefit adjustments at page 1900 of the 1992 Montana Administrative Register, issue number 17.

2. The board has amended the rules as proposed.

3. No written or oral comments or testimony were received from any interested party.

4. The amendment of these rules will be effective on December 25, 1992.

5. The authority for each of the rules are found in sections 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-12-2-3, 19-13-202, and Title 19, Chapter 15 MCA, and each of the rules implement Title 19, Chapter 15, MCA.

By: Terry Teichrow
Terry Teichrow, President
Public Employees' Retirement Board

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State on December 3, 1992.

BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of a new rule pertaining to direct entry midwives	))))	NOTICE OF ADOPTION OF A NEW RULE PERTAINING TO DIRECT ENTRY MIDWIFE EDUCATION STANDARDS

TO: All Interested Persons:

1. On October 15, 1992, the Board of Alternative Health Care published a notice of public hearing at page 2225, 1992 Montana Administrative Register, Issue number 19 on the proposed adoption of a new rule pertaining to direct entry midwife education standards. The hearing was held on November 17, 1992, at 9:00 a.m. at the Department of Commerce Building in Helena.

2. The Board has adopted new rule I (8.4.504) exactly as proposed.

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

COMMENT NO. 1: The proposed rule does not contain a list of acceptable programs, and needs clearer guidelines on how to satisfy the educational requirements necessary.

RESPONSE: The Board does not have the resources to approve specific schools or programs, as it cannot make site visits, etc. The proposed rule will instead allow greater flexibility for a variety of programs to fit within the education requirements. The applicant will be required to demonstrate how their particular education meets these minimum requirements.

BOARD OF ALTERNATIVE HEALTH CARE
MICHAEL BERGKAMP, M.D., CHAIRMAN

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

Anne M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 14, 1992.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption of a new rule for the administration of the Treasure State Endowment Program	)))))	NOTICE OF ADOPTION OF NEW RULE I (8.94.3801) INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE TREASURE STATE ENDOWMENT PROGRAM (TSEP)

TO: All Interested Persons:

1. On October 29, 1992, the Local Government Assistance Division of the Department of Commerce published a notice of public hearing on the proposed adoption by reference of the above-stated rule at page 2323, 1992 Montana Administrative Register, issue number 20. The hearing was held on November 18, 1992 in the downstairs conference room of the Department of Commerce building.

2. The Division has adopted new rule I (8.94.3801) exactly as proposed; however, in response to comments received during the review period, the Department has made several changes in the application guidelines and these changes are discussed in item 3 below.

3. No members of the public attended the hearing, but the Department did receive 16 written and numerous oral comments before and during the public comment period provided for by the Administrative Procedure Act. A summary of these comments and the Department's responses to them follow:

COMMENT: Several persons commented that the amount of TSEP funds projected to be available for local public facilities projects is insufficient to meet the needs of Montana's communities.

RESPONSE: The amount of funding available for TSEP is statutorily established. The administrative rules for the program will have no impact on the amount of available funding.

COMMENT: Several persons commented that the biennial review cycle for TSEP is not responsive enough and will make it difficult for communities to effectively combine TSEP funding with federal funding programs or to use TSEP funds for local economic development projects which require a more timely commitment from funding sources.

RESPONSE: The biennial review cycle for TSEP is statutorily established. The administrative rules for the program cannot affect the procedures established by the Legislature to review and approve applications for TSEP funding.

COMMENT: County commissioners, special district representatives, and the bond counsel for the state recommended that water, sewer, and solid waste districts be able to apply directly for TSEP funding instead of having a county government apply on their behalf. Most stated that it

would not be appropriate to insert a county government as an intermediary between a financial obligation of a special purpose district and the state.

RESPONSE: The eligible applicants for TSEP are statutorily established. The administrative rules for the program cannot affect the governmental entities which are eligible to apply. However, the Department will recommend to the Legislature that the statute be amended to permit special districts to apply directly.

COMMENT: Many persons commented that TSEP should provide funding to help communities prepare preliminary engineering plans. The Department received more comments on the need for financial assistance for preliminary engineering than on any other issue. The lack of funding to prepare preliminary engineering studies is viewed as a major obstacle to communities in developing and constructing local public facilities projects, not just for TSEP but for all state and federal funding programs.

RESPONSE: The final draft of the TSEP guidelines includes a provision that would allow deferred loans for funding preliminary engineering costs. Several persons suggested such an approach, based on previous federal programs. TSEP funds could be advanced to a community for preliminary engineering. The TSEP loan would be reimbursed when overall construction financing is arranged by the community.

COMMENT: Two persons suggested that the Department should consider establishing an abbreviated pre-application procedure for TSEP to screen potential applicants and to make application less expensive.

RESPONSE: The option of a pre-application procedure was seriously considered by Department staff and by an interagency group the Department coordinates called WASACT (Water and Sewer Agencies Coordinating Team). The WASACT group includes the DOC Community Development Block Grant and Community Technical Assistance Programs, the DNRC Water Development Program, the DHES State Revolving Fund (for sewer project loans) and Water Quality Bureau, the Board of Investments INTERCAP Program, the U.S. Farmers Home Administration, the U.S. Economic Development Administration, the Midwest Assistance Program, and the Montana Association of County Water and Sewer Systems.

Representatives of these programs and organizations discussed the issue of a pre-application process at length. The WASACT members concluded that the greatest impediment for applicants is the cost of preliminary engineering. They agreed, however, that a pre-application process without a preliminary engineering study would have little value since it is that crucial information that allows the reviewing agencies to assess the extent of the need, the soundness of the technical alternatives proposed for resolving the problem, and the cost-effectiveness of each. If TSEP can resolve the preliminary engineering obstacle through a program of deferred

loans, it will accomplish the goal of making TSEP (and other funding alternatives) more accessible for smaller communities.

COMMENT: Several persons commented that the Department should consider several financial indicators to assess an applicant's need for TSEP assistance, rather than a single indicator.

RESPONSE: The Department has revised the guidelines to respond to this concern. The final draft authorizes the Department to consider each applicant's overall financial capacity and need, using several indicators.

COMMENT: Several persons commented that limiting TSEP matching grants to $500,000 may be too restrictive.

RESPONSE: The Department has deleted the ceiling on matching grants. The final draft provides for two levels of grants:

(a) an "affordability" grant of up to 50% of project costs, and

(b) a "hardship" grant of from 50% up to 75% of project costs for communities that are facing extreme financial distress and a threat to public health.

COMMENT: Several persons commented that the TSEP debt service subsidies should be guaranteed for the life of public facility bonds in order to be acceptable to the private bond market.

RESPONSE: The Department has deleted all language that would have restricted the term of the debt service subsidy.

COMMENT: Some persons commented that the long-term debt service subsidy should not be limited to $500,000.

RESPONSE: The Department has deleted the proposed $500,000 cap on the debt service subsidy. The bonding authorities the Department consulted recommended a maximum subsidy of 50 percent of the total debt service to assure local commitment to the project and bond repayment.

COMMENT: Several persons commented that interest rate subsidies should not be limited to five years, as is the case under the Department of Natural Resources and Conservation's Water Development Program.

RESPONSE: The Department agrees that limiting an interest rate subsidy to a five year term may not be realistic. However, the Department has retained the proposed language regarding loans, which restates existing policy for the DNRC Water Development Program. The Department concluded that it would be inappropriate to administratively establish a more favorable loan policy than that offered by DNRC since the funds for the loan policies were approved by the Legislature in 1987 and have been followed by the Legislature since then. The Legislature may wish to address this issue in the 1993 session.

COMMENT: Several persons commented that the proposed deadline for application submittal of December 1, 1992, was

too restrictive.

RESPONSE: The Department has changed the deadline for application submittal to December 31, 1992. The Department concluded that a later due date for applications was imperative if local governments were to have a reasonable amount of time to prepare applications.

5. No other testimony or comments were received.

LOCAL GOVERNMENT ASSISTANCE
DIVISION
DEPARTMENT OF COMMERCE

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 14, 1992.

**BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA**

In the matter of the amendment of Organizational Rules	)))	NOTICE OF AMENDMENT OF ARM 10.51.104 RESPONSIBILITY ASSIGNED BY STATUTE AND ARM 10.51.105 BOARD STAFF

To: All Interested Persons

1. On July 16, 1992 the Board of Public Education published a notice of proposed amendment concerning ARM 10.55.104 Responsibility Assigned By Statute and ARM 10.51.105 Board Staff on pages 1451-1452 of the Montana Administrative Register, Issue number 13.

2. The board has amended rule 10.51.105 as proposed and amended rule 10.51.104 with the following changes:

10.51.104 RESPONSIBILITY ASSIGNED BY STATUE (1) through (1)(a) will remain the same.

(b) The certification standards and practices advisory council was statutorily created to ~~investigate~~study relevant issues and advise the board of public education on matters related to teacher, school administrator, and specialist certification of individuals admitted to practice in the elementary and secondary schools of Montana. The scope of this ~~investigation~~study and advice includes preservice and inservice education, professional practices and ethical conduct, teacher education programs, and renewal, denial, suspension, or revocation of certificates. The advisory council may conduct appropriate research related to the forgoing areas of ~~investigation~~study by such means as trial programs and collection of data from current programs. The advisory council must present its findings and recommendations to the board at least once each year and on other occasions as the advisory council deems necessary. The advisory council may not administer a program or function or set policy.

3. At the public hearing which was held on September 14, 1992, one person testified as a proponent and no persons testified as opponents. There were no written comments received prior to August 30, 1992, the date on which the board closed the hearing record.

4. The reason for the amendment to the rules was to include the Certification Standards and Practices Advisory Council, the Montana School for Deaf and Blind and to delete the Fire Services Training School from the board's supervisory responsibilities.

Wayne G Buchanan

Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 12/14/92.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of Rule I and the amendment of Rules 11.12.101, 11.12.413 and 11.12.416 pertaining to youth care facilities.	)))))	NOTICE OF ADOPTION OF RULE I AND THE AMENDMENT OF RULES 11.12.101, 11.12.413 AND 11.12.416 PERTAINING TO YOUTH CARE FACILITIES

TO: All Interested Persons

1. On October 29, 1992, the Department of Family Services published notice of public hearing on the proposed adoption of Rule I, and the amendment of Rules 11.12.101, 11.12.413 and 11.12.416 pertaining to youth care facilities, at page 2325 of the 1992 Montana Administrative Register, issue number 20.

2. On November 19, 1992, a public hearing was held in the auditorium of the Department of Social and Rehabilitation Services building, located at 111 Sanders, Helena, Montana, to consider the proposed adoption of Rule I and the amendment of Rules 11.12.101, 11.12.413 and 11.12.416, pertaining to youth care facilities.

3. The department has adopted Rule I [ARM 11.12.417] as proposed, and has amended Rules 11.12.101, 11.12.413 and 11.12.416 as proposed, with the following changes: (language added to the previously published notice underlined, language deleted interlined)

RULE I [11.12.417] THERAPEUTIC YOUTH GROUP HOME, MEDICAL NECESSITY CRITERIA (1) Moderate and intensive level therapeutic youth group home services must be ordered by a licensed physician, a licensed clinical psychologist, a licensed master level social worker (MSW), or a licensed professional counselor (LPC), and must be authorized by the department.

(a) Providers of moderate level therapeutic youth group home services shall accept placement of only those children who meet at least ~~two~~ three of the medical necessity criteria listed in ~~section 2~~ subsection (2) below.

(b) Providers of intensive level therapeutic youth group home services shall accept placement of only those children who meet at least ~~three~~ five of the medical necessity criteria listed in ~~section 2~~ subsection (2) below.

(2) Medical necessity criteria:

(a) The child is at risk of psychiatric hospitalization or placement in a residential treatment facility licensed by the department of health and environmental sciences of the state of Montana.

(b) The child has been removed from his or her home ~~due to~~ and has a mental or emotional ~~problem~~ disorder, the severity of

which impairs his or her ability to function in a ~~family setting~~ less restrictive environment.

(c) The child exhibits behavior which indicates disturbances of a severe or persistent nature, or is at risk of developing disturbances due to mental illness or a history of sexual, physical or emotional trauma.

(d) The child is currently placed, or has a history of previous placement(s), at ~~the~~ an inpatient psychiatric hospital or a residential treatment facility licensed by the department of health and environmental sciences of the state of Montana ~~level~~ and continues to require 24 hour supervision and treatment at a less restrictive level of care.

(e) The child has a poor treatment prognosis in a level of care lower than the moderate or intensive therapeutic youth group home level.

(f) The child has a primary diagnosis of mental illness or serious emotional disturbance (SED) as ~~reflected in the DSM-III-R~~ defined in ARM 46.12.1946, or the child is both SED and developmentally disabled.

Subsection (3) remains the same.

(4) The moderate or intensive level therapeutic youth group home provider shall ensure appropriate involvement of a lead clinical staff (LCS) in each child's care. This involvement shall include an assessment, development of the treatment plan, and medical necessity determination with redetermination at a minimum of six month intervals. Continued placement at the intensive or moderate level will be contingent upon medical necessity, achievement of treatment goals as outlined in the treatment plan, and other conditions as set out in the placement agreement required by ARM 11.12.415.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.
IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

11.12.101 YOUTH CARE FACILITY, DEFINITIONS Subsections (1) through (3)(b) remain the same.

(c) "Moderate level" means the supervision and intensity of treatment required in a therapeutic youth group home to manage and treat children who present emotional and/or behavioral ~~problems~~ disorders as evidenced by meeting ~~two~~ three or more of the medical necessity criteria set forth in ARM 11.12.417. Therapeutic interventions such as individual and group therapy are provided several times per week. In addition to the treatment, the children are provided with 24 hour awake staff supervision.

(d) "Intensive level" means the supervision and intensity of treatment required in a therapeutic youth group home to manage and treat children who present severe emotional and/or behaviorial ~~management problems~~ disorders as evidenced by meeting ~~three~~ five or more of the medical necessity criteria set forth in ARM 11.12.417. Treatment, therapeutic interventions and supervision are tailored to the age and diagnosis of the children served. Therapeutic group and individual interventions are provided several times per day. In addition, specialized

behavior management techniques are incorporated into the treatment and supervision of children requiring intensive level services. The children are provided with 24 hour awake staff supervision.

Subsection (3)(e) remains the same.

(f) "Program manager" is an employee of the moderate or intensive level therapeutic youth group home provider who trains and supervises child care staff, and provides treatment under the clinical supervision of the LCS. Program managers must have a bachelor's degree in a human services field, or the ~~education and~~ experience, or experience and education, equivalent to a bachelor's degree. Human services experience equivalent to a bachelor's degree for a non-degree program manager is six years. Each year of post-secondary education in human services for a non-degree program manager equals one year of experience.

Subsection (3)(g) remains the same.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.
IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

11.12.413 YOUTH GROUP HOME, STAFF Subsections (1) through (5) remain the same.

(6) Moderate level therapeutic youth group home providers must meet additional minimum staffing requirements to provide a therapeutic environment and treatment interventions identified in the child's individual treatment plan as follows:

(a) Child/staff ratio must be no more than 4:1 ~~from 7 a.m. to 3:30 p.m. and 3:1 from 3:30 p.m. to 10:00 p.m.~~ each day for a fifteen hour period beginning at, or between, 7:00 a.m. and 7:30 a.m., when children are in care.

(b) Child/awake staff ratio must be no more than 8:1 ~~from 10:00 p.m. to 7:00 a.m.~~ each night for a nine hour period beginning no earlier than fifteen hours from the time day-time staffing of 4:1 is initiated.

(c) Each program manager shall be responsible for no more than eight children.

(d) There must be adequate staff to allow the LCS, or the program manager who is providing services under the supervision of a masters or higher level clinician, to conduct the following on a weekly basis:

(i) two group treatment sessions per child;

(ii) one individual treatment session per child;

(iii) one treatment team meeting; and

(iv) family therapy when appropriate and medically necessary.

(e) Each LCS shall be responsible for no more than sixteen children.

(7) Intensive level therapeutic youth group home providers must meet additional minimum staffing requirements to provide a therapeutic environment and treatment interventions identified in the child's individual treatment plan as follows:

(a) Child/staff ratio must be no more than 2:1 ~~from 7 a.m. to 3:30 p.m. and 1.5:1 from 3:30 p.m. to 10:00 p.m.~~ each day for a fifteen hour period beginning at, or between, 7:00 a.m. and

7:30 a.m., when children are in care.

(b) Child/awake staff ratio must be no more than 4:1 ~~from 10:00 p.m. to 7:00 a.m.~~ each night for a nine hour period beginning no earlier than fifteen hours from the time that day-time staffing of 4:1 is initiated, when children are in care.

(c) Each program manager shall be responsible for no more than four children.

(d) There must be adequate staff to allow the LCS, or the program manager who is providing services under the supervision of a masters or higher level clinician, to conduct the following on a weekly basis:

(i) three group treatment sessions per child;

(ii) two individual treatment sessions per child;

(iii) two treatment team meetings; and

(iv) family therapy when appropriate and medically necessary.

(e) Each LCS shall be responsible for no more than twelve children.

Subsections (8) and (9) remain the same.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.
IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

11.12.416 YOUTH GROUP HOME, CHILDREN'S CASE RECORDS

Subsections (1) and (2) remain the same.

(3) The provider shall maintain confidentiality of all case records and information in accordance with ARM 11.12.113.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.
IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

4. The department has thoroughly considered all comments received:

Rule I - Medical Necessity Criteria

COMMENT: (Marie Brazier, DFS) Professionals authorized to order therapeutic group home care should be licensed.

RESPONSE: The department agrees and has amended the rule to require licensure of all the professionals who may order the care.

COMMENT: (Geoffrey Birnbaum, Missoula Youth Homes) The criteria for determining medical necessity is weak. Many children and youth currently in existing youth group homes meet the medical necessity criteria for therapeutic youth group home services as outlined in Rule I (ARM 11.12.417 is the code number assigned to Rule I). The youth should have a "demonstrated" need for treatment rather than "potential" need for treatment.

RESPONSE: Medical necessity criteria have been established to determine whether placement of a youth is appropriate at the time of admission. Youth with disorders meeting the criteria

are not necessarily to be placed in the therapeutic youth group home level of care. The department does not intend to place youth able to function in a less restrictive environment in therapeutic youth group homes just because the criteria may be met.

Continued placement based on medical necessity is subject to re-determination. This has been clarified by the addition of language to subsection (4) of Rule I (ARM 11.12.417(4)) mandating that continued placement be according to the medical necessity criteria, treatment goals, and the placement agreement.

The amendments herein also increase the number of medical necessity criteria which must be met. Providers of moderate level treatment will accept placement of only those children who meet at least three of the medical necessity criteria, and providers of intensive level shall accept placement of only those children who meet five of the medical necessity criteria. In addition, the department has amended Rule I to include a subsection, (ARM 11.12.417(2)(c)), which adds "due to mental illness or a history of sexual, physical or emotional trauma," to the medical necessity criteria.

Finally, in reviewing the medical necessity criteria, the department discovered problems with subsection (2)(b) of Rule I, (ARM 11.12.417(2)(b)), as to relying on the youth's inability to function in a "family setting" as criteria for determining the existence of medical necessity for placement in therapeutic group home care. The department has deleted the term and replaced it with "less restrictive environment" to ensure that the intent of the department is not misconstrued. The department intends that this subsection be met regardless of whether the youth is currently placed in a family setting, or in a non-family setting. All that is required is the need for a more restrictive level of care.

COMMENT: (Kathy Ostrander, Department of Family Services, Community Social Worker Supervisor, Hamilton, MT) The words "due to" in Medical Necessity Criteria (b) should be deleted and replaced with "and has".

RESPONSE: The department agrees. The language of subsection (2)(b) of Rule I (ARM 11.12.417(2)(b)) has been changed to ensure that the requirement is not interpreted to mean that removal must be directly caused by the disorder.

COMMENT: (Pete W. Surdock, CASSP Project Director, Department of Corrections and Human Services, and Kathy Ostrander) Section (4) requires redetermination at 6 month intervals. Redetermination should occur at "not less" than 6 month intervals. Also, redetermination should be completed as needed on an individual case with the safeguard that every case will be reviewed at a minimum of 6 month intervals.

RESPONSE: The department agrees. Section (4) will require that medical necessity redetermination of each case be completed at a minimum of 6 month intervals in every case.

COMMENT: (Dave Kraft, Director of Administrative Services, Intermountain Children's Home, Helena, MT) As stated in Rule I (1) (ARM 11.12.417(1)), what does "placement must be authorized by the department" mean?

RESPONSE: Prior to placement of a child in a moderate or intensive level therapeutic youth group home, the department's regional administrator will authorize the placement and subsequent payment on the department's form entitled DFS-1. Because the per diem rate for therapeutic youth group home services has two components, treatment and maintenance, the department will contract for the maintenance payment of only those children and youth who are in the custody of the state for which the department has authorized a payment. However, because the department is paying the state Medicaid match for the treatment portion on behalf of all Medicaid eligible recipients receiving moderate or intensive therapeutic youth group home services, completion of the DFS-1 with authorization by the appropriate DFS regional administrator is required, and will be provided by DFS. Placement authorized by the department will aid in effectuating the administrative requirements outlined above.

COMMENT: (Dave Kraft) As used in Rule I, subsection (2)(a), (ARM 11.12.417(2)(a)), what is the definition of "residential treatment"? Does this medical necessity criteria mean that the child is at risk of residential treatment in a facility such as Intermountain Children's Home (ICH)?

RESPONSE: The department has changed the wording of subsection (2)(a) and (2)(d) to clarify the definition of prior placement, or risk of placement, in residential treatment. The phrase used in these subsections means placement in a residential treatment facility licensed by the Department of Health and Environmental Sciences (DHES). The term will only apply to ICH when and if the facility is licensed as a residential treatment facility by DHES.

COMMENT: (Pete W. Surdock) Subsection (2)(f) implies that children and adolescents with severe emotional disturbance (SED) are defined in the DSM-III-R. This is not the case. SED has been defined by the Department of Corrections and Human Services (DCHS) and is included in the DCHS Montana Public Mental Health System Revised State Plan. SED is also defined in ARM 46.12.1946.

RESPONSE: To address the concern over an appropriate reference, the department has modified subsection (2)(f) of Rule I, (ARM 11.12.417(2)(f)) to refer to ARM 46.12.1946 for the definition of SED.

COMMENT: (Kathy Ostrander) Please clarify Rule I(1) (ARM 11.12.417(1)), which states that both intensive and moderate level therapeutic youth group home services must be ordered by a physician, a clinical psychologist, a masters level social worker (MSW), or a licensed professional counselor (LPC)... can DFS staff order this service if he or she is an MSW or LPC?

RESPONSE: Yes, the department intends that qualified, licensed DFS staff may order therapeutic youth group home services.

AMENDMENT OF RULE 11.12.101 YOUTH CARE FACILITY, DEFINITIONS

COMMENT: (Lauren Van Roekel, Director of Yellowstone Community Homes, Billings, MT) As referenced in (3)(f), explain the education and experience equivalent for a non-degree program manager. We submit that there should be 5 years related work experience to meet this equivalent requirement.

RESPONSE: The department agrees that education and experience equivalent under the rule for employing a non-degree program manager should be explained, and this notice adds language to ARM 11.12.101(3)(f) to set definite criteria for finding the equivalent. However, the department disagrees that 5 years related work experience is sufficient for a program manager without any human services post-secondary education. Six years is needed to guarantee minimum qualifications for non-degree program managers. Non-degree program managers with post-secondary education in human services may use each year of such education toward meeting the six year requirement. For example, one combination would be an individual with human services experience of four years and two years of college involving courses with an emphasis on human services. Such a combination of experience and education would be considered to equal the minimum qualifications which this subsection is designed to mandate.

COMMENT: (Pete W. Surdock) We encourage DFS to consider the use of the language "mental and behavioral disorders" rather than "problems".

RESPONSE: The department agrees. The word "problem" found in Rule I (1)(b) is replaced with the word "disorder". The word "problems" found in ARM 11.12.101(3)(c) and (3)(d) is replaced with the word "disorders". The term better describes the condition sought to be defined.

COMMENT: (Pete W. Surdock) We encourage DFS to amend ARM 11.12.101(2) by striking "residential treatment center" and replacing the phrase with "intensive or moderate treatment center" after the word "approved." Further, we recommend amending ARM 11.12.101(2)(a) by striking "residential treatment center" and replacing it with "intensive or moderate treatment center."

RESPONSE: The department did not propose any amendment of ARM 11.12.101(2) in its notice of hearing. Therefore, the requested changes are beyond the scope of this rule-making. However, the department has amended language in Rule I (ARM 11.12.417) to clarify the meaning of the term residential treatment facility, as discussed above.

COMMENT: (Geoffrey Birnbaum) As referenced in ARM 11.12.101(3)(e), can a Lead Clinical Staff (LCS) position be filled by a staff person with the experience, talent, references and credibility to challenge the requirement of being an MSW, a Clinical Psychologist or a Licensed Professional Counselor (LPC)?

RESPONSE: To guarantee adequate qualifications for each LCS, an objective measure is needed. Therefore, the department has not drafted the rule to allow for more flexibility in allowing group homes to hire an LCS who may have equivalent experience, talent, and references as suggested above.

AMENDMENT OF RULE 11.12.413 YOUTH GROUP HOME, STAFF

COMMENT: (Larry Noonan, AWARE Inc., Anaconda, MT) AWARE applauds the department's efforts in attempting to develop a continuum of care, and in attempting to implement refinancing of services. However, the department must improve its contracts by adding details on the population in the services, access to services, and expectations as well as payment for services. The department must also control the number and location of providers. In regard to staffing, the ratio of the intensive level should be .5 to 6. If the department imposes a ration of .5 to 4, it will be difficult to employ a half-time masters level LCS for a program such as AWARE with 12 children in care.

RESPONSE: The proper provisions for department contracts is an issue which is outside the scope of this rule-making. There currently is no plan in place to limit the number and location of providers, and such a plan is also outside the scope of this rule-making. In regard to staffing, see next comment-response.

COMMENT: (Pete W. Surdock) We encourage DFS to consider further clarification of ARM 11.12.413(6) by adding staff ratios of lead clinical staff (LCS) to children served. The rule establishes program manager ratios but not those of LCS staff whose duties and responsibilities are much greater. Additionally, the lack of such ratios causes a lack of a standard for a critical staff person in the therapeutic setting. We recommend that moderate level be .5 per 8 youth and intensive level be .5 per 4 youth.

RESPONSE: The department agrees. ARM 11.12.413(6) is amended by adding that each LCS shall be responsible for no more than 16 children, and ARM 11.12.413(7) is amended by adding that each LCS shall be responsible for no more than 12 children. The

department does not agree that the intensive level should be staffed 8:1 as advocated by the comment. Given the existing additional requirements already imposed on intensive level homes, 12:1 is the more appropriate ratio for ensuring adequate LCS services while avoiding over-burdensome staffing requirements.

COMMENT: (Lauren Van Rockel) Use the word "counseling" rather than the word "treatment" in 11.12.413 (d)(i) and (ii).

RESPONSE: For consistency, the department has elected to remain with the word treatment because this term is applied throughout the rules.

COMMENT: (John Wilkinson, Administrator, Intermountain Children's Home) The staffing and treatment requirements for intensive level therapeutic youth group home services found in ARM 11.12.413(7) are too prescriptive, and based on the AWARE program in Butte. The kind of prescriptive staffing and treatment requirements that fit AWARE do not fit our population. Alternative language needs to be developed that either embraces the intent of this section, or recognizes another category of intensive level therapeutic youth group home services.

RESPONSE: The AWARE program was developed in response to a request for proposal (RFP) issued by the department. The RFP reflected the need for the type of services AWARE now provides. The intensive level criteria is modeled after the need perceived by the department as first documented by the RFP, not the AWARE program. In regard to the comment on creating a different level of intensive medical necessity, see next comment/response.

COMMENT: (John Wilkinson) Treatment services outlined in ARM 11.12.413(7)(d) are at variance with our (Intermountain Children's Home) program and the age of the children we treat (average age of 9). Children do not respond well in group treatment, and have neither the social nor verbal skills necessary to effectively participate in that kind of therapy. Individual treatment sessions are mostly play therapy sessions, and usually conducted once a week. It is not an issue of how many services were provided, rather, it is the level of integration with which those services are provided and how tightly they were tied together in service of the treatment plan.

RESPONSE: Medicaid reimbursement must be tied to medically necessary services actually provided. The department and SRS have arrived at the Medicaid reimbursable rate for the treatment portion of therapeutic youth group services by projecting the amount of time spent each day by health care professionals as outlined in ARM 11.12.413(7)(d). If the scope and amount of treatment services are changed, the Medicaid rate would also change. Therefore, the flexibility demanded by ICH cannot be built into the rates at this time, and the department will not

be reducing the staffing and treatment requirements for either intensive or moderate level therapeutic youth group home services.

Staff-Time Schedule Comments: (various comments summarized below without identifying specific commentator, response is intended to cover all the comments preceding it)

COMMENT: 11.12.413(6)(a) - change the 7 a.m. to 3:30 p.m. time frame to 7:30 a.m. to 3:30 p.m., and the 3:30 p.m. to 10:00 p.m. time frame to 3:30 p.m. to 10:30 p.m.

COMMENT: 11.12.413(6)(b) - change the 10:00 p.m. to 7:00 a.m. time frame to 10:30 p.m to 7:30 a.m.

COMMENT: 11.12.413(6)(a) - Change child to staff ratio for moderate level from 3:1 during 3:30 p.m to 10:00 p.m. shift back to 4:1 ratio. Reinstate the child to staff ratio to 4:1 from 3:00 p.m. to 10:00 p.m. as originally proposed. (2 comments)

RESPONSE: The times for the differing staff ratios (day and night) have been changed. For a fifteen hour day-time period in a moderate level home, when children are present in the home, a minimum of one staff member per every four children is required. For a nine hour period at night, there must be a minimum of one staff member per every eight children in the home. The exact time that the staffing change occurs is more flexible, e.g., the fifteen hour day-time staff period could begin at 7:15, a.m., and end at 10:15, p.m. The changes to the rule on intensive level homes, where the ratios require more staff, also incorporate the 15 hour day-time and 9 hour night-time staff transition times. The ratios represent minimums, and having more staff on hand than is required during either period of time is not a violation of the rule.

The phrase "when children are in care" has been added to clarify that staff need not be maintained in the home when no children are present, e.g., when all the children are at school. (It is intended that when any child is present a staff member will be present.) Thus, a typical staff scenario might require a moderate level home to initiate the ratio of 4:1 at 7:10 a.m. By 8:30 a.m., all the children are at school, and therefore the rule does not require that the ratio be maintained, even though the fifteen hour day-time period is under way. However, at 3:45 all the children are home from school, and the fifteen hour period does not end until 10:10, p.m. Therefore, the home must ensure that 4:1 staffing is re-instituted until the fifteen hour period expires at 10:10 p.m.

AMENDMENT OF RULE 11.12.416 YOUTH GROUP HOME, CHILDREN'S CASE RECORDS

COMMENT: (Pete W. Surdock) We encourage DFS to address

preservation of confidentiality under this rule, which addresses the maintenance of case plans and records on the youth without indicating the expectation regarding confidentiality. We encourage preservation of confidentiality, but ask that it not preclude sharing of information to assure comprehensive service planning, coordination with multiple providers, and evaluation of the service plan.

RESPONSE: The department has added subsection (3) to ARM 11.12.416 to assure that providers have notice that the concerns addressed in the above comment are already covered by ARM 11.12.113.

COMMENTS PERTAINING TO RATES AND FUNDING

COMMENT: (Geoffrey Birnbaum) Current rates do not meet costs and any flattening of rates would cause severe hardship on our program and our staff. The new rate must be more cost based or continue to be maintained at whatever percentage of costs that can be achieved.

RESPONSE: The department has made every effort to establish an equitable rate based on the staffing requirements and the State's pay scale. Non-salary costs (Maintenance or room and board) are based on the USDA average cost of raising a child.

COMMENT: (John Wilkinson) Before any rate of payment structure is finalized, input from the specific providers involved should be obtained.

RESPONSE: The department has already conducted a wage and salary survey of four potential providers of therapeutic youth group home services.

COMMENT: (Lauren Van Roekel) Testimony at the November 19, 1992 Public Hearing indicated that the anticipated daily rates for the moderate level were stated as $87 to $96, with the final decision being made by December 4, 1992. Based on budget, proposed additional expenses, and a four year average of days of care: we would suggest a daily rate for the moderate level as $106 to $116, which is based on 80% occupancy rate.

RESPONSE: The department determined the rate for the moderate level at $102.37 based on 90% occupancy.

COMMENT: (Geoffrey Birnbaum) Will foster care funding (of therapeutic youth group services) be available when Medicaid reimbursement is discontinued?

RESPONSE: When Medicaid reimbursement is no longer available and it is necessary for the child to remain in the group home, the provider will be reimbursed by DFS per the Foster Care Rate Matrix for children/youth in the custody of DFS.

ADDITIONAL GENERAL COMMENTS

COMMENT: (Geoffrey Birnbaum) I am concerned about the lack of concrete standards for providers. I do not think licensing standards are adequate for a provider to establish the organization as a treatment program. I favor the adoption of some national accreditation or development of standards through a contracted process and established under a separate administration, such as the State Department of Commerce or Correction and Mental Health.

RESPONSE: In addition to these rules which encompass current standards, the department is reviewing licensure standards for therapeutic youth group homes as a whole. Under these rules, the department will issue provisional therapeutic youth group home license(s) for the period of January 1, 1993, through March 31, 1993. The department will give serious consideration to comments pertaining to adoption of national accreditation standards or development of standards through a contracted process at some future date. However, the department is unable to act on the development and adoption of such standards prior to January 1, 1993, the date for implementation of this program through adoption and amendment of these rules.

COMMENT: (Geoffrey Birnbaum) I am concerned over the establishment of two levels of treatment within what was called "intermediate treatment".

RESPONSE: The differing levels of service, and payment, in therapeutic group homes were established in Montana prior to this rule-making. Thus, the rules herein only recognize the differing types of treatment already offered, they do not create them.

COMMENT: (Geoffrey Birnbaum) What is the line between "intensive therapeutic youth group home" and "residential treatment" under Medicaid.

RESPONSE: The requirements of medical necessity for residential treatment facilities licensed by the Department of Health and Environmental Sciences (DHES) are substantially different. Generally, the requirements reflect the higher level of care which is provided in residential treatment facilities. For example, residential treatment facilities licensed by DHES are considered medical institutions much the same as hospitals, but at a lower level of care than hospitals. Admission and continued stays in residential treatment facilities are subject to review by Mental Health Management of America. Also, residential treatment providers offer all services on-campus, including education. These, and other additional requirements, do not apply to therapeutic youth group home providers.

DEPARTMENT OF FAMILY SERVICES

Tom Olsen, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, December 14, 1992.

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

In the matter of the amendment of rules 16.8.1004, 16.8.1423 and 16.8.1424 dealing with incorporating federal regulatory changes	NOTICE OF AMENDMENT OF RULES (Air Quality Bureau)

To: All Interested Persons

1. On October 15, 1992, the board published a notice at page 2243 of the Montana Administrative Register, Issue No. 19, to consider the amendment of the above-captioned rules.

2. At the hearing on this proposal, the Department submitted several minor typographical amendments to the rules as proposed, which the Board has adopted. In particular, there were three places in the rules as proposed where the word "plume" was misspelled, and appeared as "plum". Similarly, the references in the definitions of "administrator" to the Code of Federal regulations were incorrect: in proposed ARM 16.8.1423(a) the correct reference is 40 CFR Part 60, not 40 CFR Part 6; in proposed ARM 16.8.1424(a) the correct reference is 40 CFR Part 61, not 40 CFR Part 6. All of these technical errors have been corrected in this final notice.

Aside from the comments submitted by the Department, written comments were submitted by the Environmental Protection Agency. These comments suggested that the proposed definitions of "administrator" contained in proposed ARM 16.8.1423 and 16.8.1424 be changed to indicate that the Department and EPA have joint jurisdiction over those matters that cannot be delegated by EPA to the state. The Board declines to make this change. Although EPA is making this suggestion to encourage a cooperative effort between the Department and EPA, the ultimate authority in these matters will still reside with EPA. The Board is confident that the Department will cooperatively work with EPA in these areas, but is concerned that making the changes suggested by EPA would mislead sources to believe that the Department may take affirmative action.

No other comments were received by the Board on the proposed rules.

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

16.8.1004 VISIBILITY MODELS (1) All estimates of visibility impact required under this subchapter shall be based on those models contained in "Workbook for ~~Plum~~ Plume Visual Impact Screening and Analysis" (EPA-450/4-88-015, 1988). Equivalent models may be substituted if approved by the department.

(2) The board hereby adopts and incorporates by reference "Workbook for ~~Plum~~ Plume Visual Impact Screening and Analysis" (EPA-450/4-88-015, 1988) which is a federal agency publication setting forth methods by which estimates of visibility impair-

ment may be made. A copy of "Workbook for ~~Plum~~ Plume Visual Impact Screening and Analysis" (EPA-450/4-88-015, 1988) is available for public review and copying at the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

16.8.1423 STANDARD OF PERFORMANCE FOR NEW STATIONARY SOURCES (1) For the purpose of this rule, the following definitions apply:

(a) "Administrator", as used in 40 CFR Part 60, July 1, 1992, means the department, except in the case of those duties which cannot be delegated to the state by the U.S. Environmental Protection Agency, in which case "administrator" means the administrator of the U.S. Environmental Protection Agency.

(b) Same as proposed.

(2)-(4) Same as proposed.

16.8.1424 EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (1) For the purpose of this rule, the terms and associated definitions specified in 40 CFR §61.02, July 1, 1992, shall apply, except that:

(a) "Administrator", as used in 40 CFR Part 61, July 1, 1992, means the department, except in the case of those duties which cannot be delegated to the state by the U.S. Environmental Protection Agency, in which case "administrator" means the administrator of the U.S. Environmental Protection Agency.

(2)-(3) Same as proposed.

DENNIS IVERSON, Director

Certified to the Secretary of State December 14, 1992.

Reviewed by:

Counsel for the Department

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

In the matter of the amendment of rules 16.8.1307, 16.8.1308, and 16.8.1906, and the adoption of new Rule I dealing with open burning permit fees for conditional and emergency open burning permits.	NOTICE OF AMENDMENT OF RULES AND ADOPTION OF NEW RULE I (16.8.1908) (Air Quality)

To: All Interested Persons

1. On October 15, 1992, the department published a notice at page 2285 of the 1992 Montana Administrative Register, Issue No. 19, of the amendment and adoption of the above-captioned rules.

2. The notice of adoption of Rule I incorrectly showed the new rule as 16.8.1907 and it should be corrected to read 16.8.1908.

DENNIS IVERSON, Director

Certified to the Secretary of State December 14, 1992.

Reviewed by:

Eleanor Parker, Attorney

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

In the matter of the amendment of rule 16.28.1005 setting tuberculosis control requirements for employees of schools and day care facilities.	)))))	NOTICE OF AMENDMENT OF RULE 16.28.1005 (Tuberculosis)

To: All Interested Persons

1. On June 25, 1992, the department published notice at page 1303 of the Montana Administrative Register, issue number 12, of the proposed amendment of rule 16.28.1005.

2. The rule, as amended, appears as follows (new material is underlined or bolded; deleted material is interlined):

16.28.1005 EMPLOYEE OF SCHOOL -- ~~SCHOOLS~~ -- DAY CARE FACILITY CARE PROVIDER (1) With the exceptions specified in (2) and ~~(7)~~(3) below~~,~~:

(a) ~~a~~No public or private school as defined in 20-5-402, MCA, ~~or day care facility as defined in section 52-2-703, MCA,~~ or school cooperative may initially employ or continue to employ a person unless that person has provided the school, the cooperative, or the district to which the school belongs ~~or day care facility~~ with:

(i) documentation of the results of a tuberculin skin test done within the ~~prior~~ year prior to initial employment, along with the name of the tester and the date and type of test administered, unless the person provides written medical ~~evidence~~ documentation that s/he is a known tuberculin reactor, in which case section ~~(5)~~(6) applies; and

(ii) if the test results are positive, documentation in the form of a written statement from a physician that the physician has confirmed that the person does not have communicable tuberculosis. For purposes of this subsection, a person who is rehired from one school year to the next is considered to be continuously employed, and the required documentation need not be submitted again prior to employment for any school year subsequent to the first year of employment.

(b) No person, including the owner or operator, may provide care directly to children in a day care facility as defined in 52-2-703, MCA, unless s/he has, on-site at the facility, the documentation described in (a) above.

(2) If a person is already employed by a school, school district, or cooperative, or providing direct child care in a day care facility on December 25, 1992, but has not, by that date, provided the documentation required by (1) above, s/he must provide the required documentation by January 25, 1993; if a skin test is required, it must have been performed after January 25, 1992.

~~(2)~~(3)(a) A person who is not a known tuberculin reactor, is not known to have communicable tuberculosis, and has not had a tuberculin skin test performed as required in (1) above may

be employed in a school or work in a day care facility until the date specified in (b) below if s/he provides the employer with:

(i) a signed and dated written statement by a licensed physician that no such skin test should be performed at that date for medical reasons, along with the specific medical reasons why the test is temporarily inadvisable and the date after which the test may be administered; and

(ii) a signed and dated written statement by a licensed physician that s/he has examined the person to determine whether or not symptoms of tuberculosis exist and has found no such symptoms.

(b) If, within two weeks after the date upon which the physician's statement indicates the test is once again medically acceptable, the ~~employee~~ person has not provided the school, school district, cooperative, or day care facility with the documentation ~~of the results of a tuberculin skin test~~ required by section (1)(a) above, the school, district, cooperative, or day care facility must ~~terminate or~~ suspend that person's employment, or, in the case of a day care facility, that person's direct child care services, immediately until the ~~test results are~~ documentation is submitted to it.

~~(3)~~(4)(a) Each private school and public school district, including a district within a cooperative, ~~and day care facility~~ must keep in its central offices documentation for each current employee of either the date, type, tester, and results of the tuberculin skin test, or the fact that section ~~(5)~~(6) applies, and, if the test results are positive, the required documentation that the employee is not communicable.

(b) Each day care facility must keep on-site the documentation required in (a) above for each person providing direct child care at that facility.

~~(4)~~(5) If the day care worker or school employee's tuberculin skin test is negative, ~~the employee~~ that person need not receive further ~~routine tuberculin testing~~ screening for tuberculosis unless s/he has frequent or close exposure to a person with a communicable pulmonary tuberculosis.

~~(5)~~(6)(a) If the tuberculin skin test results are significant or if the school employee or day care worker has ever, in the past, had a positive tuberculin skin test with purified-protein derivative and has not had adequate chemoprophylaxis, s/he must be evaluated by a physician, either before or within 1 week after receiving the results of the test, in the case of a test with significant results, or 1 week after commencing employment, in the case of an untreated person with a past positive test result, to ascertain whether or not s/he has any of the following conditions:

(i)-(x) same as proposed.

(b) If any of the conditions listed in subsection ~~(5)~~(6)(a) of this rule are present, the tuberculin-positive school employee or day care worker must be counseled that s/he is at relatively high risk of developing tuberculosis disease and that s/he should complete 6 months of chemoprophylaxis if s/he has not already done so, unless medically contraindicated

according to the standards contained in "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children", a joint statement of the centers for disease control and the American thoracic society, adopted March, 1986.

(c) Further surveillance is not required of a tuberculin-positive school employee or day care worker with any condition listed in subsection ~~(5)~~(6)(a) of this rule who completes 6 months of chemoprophylaxis.

(d) A tuberculin positive school employee or day care worker with any of the conditions listed in subsection ~~(5)~~(6)(a) of this rule who does not complete 6 months of chemoprophylaxis must~~,~~ annually ~~during his/her term of employment,~~ provide his or her employer with documentation from a physician that s/he is free of communicable tuberculosis, or, in the case of a day care facility worker, provide the facility with that documentation.

(e) A tuberculin-positive school employee or day care worker with none of the conditions listed in subsection ~~(5)~~(6)(a) of this rule or with a history of close exposure to a case of communicable pulmonary tuberculosis within the previous 2 years or a history of a negative tuberculin test within the previous 2 years may be released from further routine tuberculosis surveillance following 2 negative chest x-rays one year apart. However, if such an employee or worker does not complete 6 months of chemoprophylaxis as well, s/he must be examined by a physician every 5 years after the second negative x-ray is taken to determine whether symptoms of tuberculosis exist.

~~(6)~~(7) If ~~an~~ a school employee or day care worker is diagnosed as having communicable tuberculosis or being infected with tuberculosis, ~~the employee~~ that person may not work in a school or daycare facility unless proper medical treatment is being followed and, if communicable, until s/he is no longer communicable.

~~(7)~~(8) If ~~an~~ a school employee or day care worker violates any requirement of this rule, ~~the employee~~ that person may not work in a school or daycare facility until s/he complies with the terms of this rule.

~~(8)~~(9)(a) A person employed by a school district who transfers to any other school within the same district need not repeat the actions required by section (1), and the documentation required by section ~~(3)~~(4)(a) must be ~~transferred to the second school by the first~~ maintained at the district's central offices.

(b) If a person employed by a cooperative transfers from one district within the cooperative to another, the actions required by section (1) need not be repeated, but the documentation required by section (4)(a) must be transferred from the first district to the second.

~~(9)~~(10) Same as proposed.

3. The following comments were received; the department's response to each follows:

Comment: Clarification is needed whether the prohibition against employment of individuals who have not complied with the rule applies only to initial hiring or those already employed as well.

Response: The rule applies both to existing and prospective school employees and day care workers; clarifying language was added.

Comment: Current employees who have not already complied with the existing version of the rule cannot meet the requirement of subsection (1) of the proposed rule that test results be submitted within the year prior to employment; therefore, language needs to be added dealing with those circumstances.

Response: Such language was added, giving existing school employees and day care workers one month after the amended rule's effective date to comply.

Comment: In a large district with several schools and a single central location for personnel files for all of them, it would be more efficient to keep TB records in the central location rather than to require each individual school to keep the TB records on its own employees.

Response: The department agreed and added language requiring the records to be in the central offices.

Comment: Would a teacher transferring from one building to another within the same district have to be retested?

Response: No. The rule as proposed allows such transfers without retesting.

Comment: There are often no employees in a small group or family day care home, since they are customarily run by their owners, so restricting the testing requirement to "employees" leaves out a large number of those individuals who will necessarily be in direct contact with children in day care facilities.

Response: The department agreed and amended the rule to cover anyone providing direct child care.

Comment: The Department of Family Services was concerned that, while DHES had statutory authority to set health standards for day care centers, it did not have such authority for group homes or family day care homes.

Response: While it is true that Section 52-2-735, MCA, only gives DHES rulemaking authority to set health standards for day care centers, separate statutory authority--DHES' authority in 50-1-202, MCA, to enact rules controlling communicable diseases, and that in 50-17-103, MCA, to adopt rules

controlling the spread of tuberculosis--allows DHES to place such requirements on family and group day care homes.

Comment: Under current law, tenured teachers must have a hearing before the Board of Trustees before they are suspended or terminated, which interferes with the district's ability to enforce this rule.

Response: Districts have a number of means available to enforce the rule, e.g. adopting the rule as a policy, violation of which is grounds for disciplinary action, and/or making compliance a condition of each year's rehiring. Section 20-4-207, MCA, also allows immediate suspension pending a hearing if a teacher's acts are "contrary to the welfare of the students", which failure to ascertain TB status arguably would be. Collective bargaining agreements should also be entered into carefully to honor and recognize the requirements of this rule.

Comment: Since some school employees are hired for nine-month periods year-to-year, the language in the proposed rule may require annual testing of those employees; therefore, the language should be clarified to require only first-time hirees to be tested.

Response: Clarifying language to that effect was added.

Comment: In regard to paragraph (8) in the notice of proposed amendment, reference to a person employed by an education cooperative as well as a school district should be included since several districts often form such cooperatives for special education purposes and employ itinerant personnel to provide them. In addition, each separate district within a cooperative that a given employee serves should be required to maintain the rule-required documentation.

Response: The department agreed and adopted appropriate language.

Comment: The Administrative Code Committee staff requested further elaboration of the necessity for the rule amendments.

Response: The most important goal of the amendments is to make the rule more easily enforceable by schools or day care facilities against employees or care providers--of which there are currently several--who refuse to produce proof of their TB status. Strengthening the enforcement provisions of the rule now is particularly important because TB, which once was thought to be dying out, has been on the increase and some cases have proved to be more resistant to drug therapy than in the past, making prevention of its spread increasingly vital. The current rule's language, by placing a larger duty of compliance on employees/workers rather than the schools or day care facilities, undercut the ability of those facilities to enforce the rule, a situation these amendments are, in part,

intended to remedy.

Comment: The reference in section (1) to an exception in proposed section (7) is inaccurate, since (7) does not state an exception.

Response: The reference was deleted.

Comment: Although it is clear that no one is to work in a school or day care facility if they have communicable TB, it is not clear what procedure must be followed if the worker has a positive skin test but it is not yet known whether s/he has communicable TB.

Response: Appropriate language was added.

DENNIS IVERSON, Director

Certified to the Secretary of State December 14, 1992.

Reviewed by:

Eleanor Parker
Counsel for the Department

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

In the matter of the amendment of rules 16.44.102, 16.44.110, 16.44.121, 16.44.202, 16.44.303, 16.44.304, 16.44.306, 16.44.320-324, 16.44.402, 16.44.417, 16.44.425, 16.44.505, 16.44.601, 16.44.702 and new rule I dealing with HSWA Cluster I regulations.	NOTICE OF AMENDMENT OF RULES AND ADOPTION OF NEW RULE I (16.44.129) (Hazardous Waste)

To: All Interested Persons

1. On October 29, 1992, the department published notice at page 2330 of the 1992 Montana Administrative Register, Issue No. 20, to consider the amendment and adoption of the above-captioned rules.

2. The department adopted the rules as proposed with one change to correct a typographical error.

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

16.44.102 INCORPORATIONS BY REFERENCE Same as proposed.

16.44.110 ESTABLISHING PERMIT CONDITIONS Same as proposed.

16.44.121 PERMITS BY RULE Same as proposed.

16.44.202 DEFINITIONS Same as proposed.

16.44.303 DEFINITION OF HAZARDOUS WASTE Same as proposed.

16.44.304 EXCLUSIONS Same as proposed.

16.44.306 REQUIREMENTS FOR RECYCLABLE MATERIALS Same as proposed.

16.44.320 CHARACTERISTICS OF HAZARDOUS WASTE -- GENERAL Same as proposed.

16.44.321 CHARACTERISTIC OF IGNITABILITY Same as proposed.

16.44.322 CHARACTERISTIC OF CORROSIVITY Same as proposed.

16.44.323 CHARACTERISTIC OF REACTIVITY Same as proposed.

16.44.324 TOXICITY CHARACTERISTIC Same as proposed.

16.44.402 HAZARDOUS WASTE DETERMINATION; APPLICABILITY OF RULES TO GENERATOR CATEGORIES; SPECIAL REQUIREMENTS FOR CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS Same as proposed.

16.44.417 ANNUAL REPORTING (1)-(2) Same as proposed. (3) Reporting for exports of hazardous waste is subject to the requirements of ARM 16.44.425~~(7)~~ (6) rather than the requirements of this rule.

16.44.425 INTERNATIONAL SHIPMENTS Same as proposed.

16.44.505 MANIFEST SYSTEM Same as proposed.

16.44.601 PURPOSE; APPLICABILITY Same as proposed.

16.44.702 STANDARDS AND REQUIREMENTS FOR PERMITTED FACILITIES Same as proposed.

RULE I [16.44.1291 RESTRICTIONS ON THE LAND DISPOSAL OF HAZARDOUS WASTES Same as proposed.

4. No comments were received.

DENNIS IVERSON, Director

Certified to the Secretary of State December 14, 1992.

Reviewed by:

Counsel for the Department

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of new rules pertaining to investigative protocol) CORRECTED NOTICE

TO: All Interested Persons:

1. On November 12, 1992, the Department of Justice published a notice of adoption of rules pertaining to investigative protocol at page 2466, 1992 Montana Administrative Register, issue number 21. Those new rules were proposed at page 2117, 1992 Montana Administrative Register, issue number 15.

2. The new rules were numbered 23.3.201 through 23.3.205. Those numbers were already assigned to rules pertaining to the Motor Vehicle Division. These new rules should have been numbered 23.2.201 through 23.2.205. Replacement pages for these rules are being prepared for the 12/31/92 date.

BY: Marc Racicot
MARC RACICOT, Attorney General

Judy Browning
Rule Reviewer

Certified to the Secretary of State December 11, 1992

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of rules and a new rule regarding what is classified as wages for purposes of Workers' Compensation and Unemployment Insurance.	)))))	NOTICE OF AMENDMENT OF ARM 24.11.813 AND 24.11.814 AND ADOPTION OF NEW RULE I - 24.29.720

TO ALL INTERESTED PERSONS:

1. On October 29, 1992, the Department published notice at page 2344 of the Montana Administrative Register, Issue No. 20, to consider the amendment of the above-captioned rules and the adoption of new rule I.

2. On November 20, 1992, a public hearing was held in Helena concerning the proposed rules at which oral and written comments were received. Additional written comments were received prior to the closing date of November 27, 1992.

3. After consideration of the comments received on the proposed rules, the Department has adopted the rules as proposed with the following changes:

RULE I PAYMENTS THAT ARE NOT WAGES --- EMPLOYEE EXPENSES

(1) Effective January 1, 1993, payments made to an employee to reimburse the employee for ordinary and necessary expenses incurred in the course and scope of employment are not wages if all of the following are met:

(a) the amount of each employee's reimbursement is entered separately in the employer's records;

(b) the employee could reasonably be expected to incur the expenses while traveling on the business of the employer;

(c) the reimbursement is not based on a percentage of the employee's wages nor is it deducted from wages; and

(d) the reimbursement does not replace the customary wage for the occupation.

(2) Reimbursement for expenses may be based on any of the following methods that apply:

(a) for actual expenses incurred by the employee, to the extent that they are supported by receipts;

(b) for meals and lodging, at a flat rate no greater than the amount allowed to employees of the state of Montana pursuant to 2-18-501(1)(b) and (2)(b), MCA for meals, and 2-18-501(5), MCA for lodging, UNLESS, THROUGH DOCUMENTATION, THE EMPLOYER CAN SUBSTANTIATE A HIGHER RATE;

(c) for mileage, at a rate no greater than that allowed by the United States Internal Revenue Service for the preceding year, provided that the individual actually furnishes the vehicle;

(d) for equipment other than vehicles, the reasonable rental value for that equipment, which for individuals involved

in timber falling may not exceed $22.50 per working day for chain saw and related TIMBER FALLING expenses;

(e) FOR HEAVY EQUIPMENT, INCLUDING BUT NOT LIMITED TO SEMI-TRACTORS OR BULLDOZERS, THE REASONABLE RENTAL VALUE MAY NOT EXCEED 75% OF THE EMPLOYEE'S GROSS RENUMERATION;

~~(e)~~ (f) for drivers utilized or employed by a motor carrier with intrastate operating authority, meal and lodging expenses may be reimbursed by either of the methods provided in subsection (2)(a) or (b) for each calendar day the driver is on travel status; or

~~(f)~~ (g) for drivers utilized or employed by a motor carrier with interstate operating authority, meal and lodging expenses may be reimbursed by the methods provided in subsection (2)(a) or (b), or by a flat rate not to exceed $30.00 for each calendar day the driver is on travel status.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-123, MCA

24.11.813 PAYMENTS THAT ARE NOT WAGES --- EQUIPMENT RENTAL

(1) ~~Except for hand tools and vehicles as provided in this rule,~~ pPayments made by the employer to the employee for rental of equipment owned by the employee are not wages if:

(a) the equipment is necessary for the employee to perform the job;

(b) the employment contract provides for such payments; and

(c) ~~the payments reflect reasonable rental fees compared with the customary wages for such services in the locality~~ amount of each employee's reimbursement is entered separately in the employer's records; and

(d) the reimbursement does not replace the customary wage for the occupation.

(2) The actual expenses incurred by the employee may be considered reasonable rental fees if the employer's records show:

(a) the initial cost of the equipment;

(b) the equipment's depreciation; and

(c) maintenance and operational costs in connection with the services performed for the employer.

(3) With respect to ~~light equipment, such as chain saws, the reasonable rental value may not be greater than 25% of the employee's gross remuneration~~ equipment other than vehicles, the employer may pay an allowance not greater than the reasonable rental value for that equipment, which for individuals involved in timber falling may not exceed $22.50 per working day for chain saw and related equipment expense.

(4) With respect to heavy equipment, including but not limited to semi-tractors or bulldozers, the reasonable rental value may not exceed 75% of the employee's gross remuneration.

(5) Hand tools customarily used in the employee's trade ~~and vehicles used only in transporting the worker to and from the job site~~ have no rental value for purposes of this rule. Any rental payments made with respect to these items are considered wages.

(6) Passenger vehicle expenses may be reimbursed either on the basis of actual receipts or upon mileage, at a rate no greater than that allowed by the United States Internal Revenue Service for the preceding year, provided that the individual actually furnishes the vehicle.

AUTH: Sec. 39-51-301, 39-51-302, MCA IMP: Sec. 39-51-201, MCA

24.11.814 PAYMENTS THAT ARE NOT WAGES --- EMPLOYER EXPENSES

(1) Payments made to an employee to reimburse the employee for ordinary and necessary expenses incurred during the course and scope of employment are not wages if all of the following are met:

(a) the amount of each employee's reimbursement is entered separately in the employer's records;

(b) the employer has documentation that the employee incurred the expenses in conducting business for the employer;

(c) the reimbursement is not based on a percentage of the employee's wage;

(d) the reimbursement does not replace the customary wage for the occupation; and

(e) the reimbursement is may be based on any of the following that apply:

(i) actual expenses incurred by the employee supported by receipts; or

(ii) a flat rate for meals and lodging, no greater than the amount allowed to employees of the state of Montana under 2-18-501 (1)(b) and (2)(b), MCA for meals, and 2-18-501 (5), MCA for lodging ~~503, MCA~~, unless, through documentation, the employer can substantiate a higher rate;

(iii) for drivers utilized or employed by a motor carrier with intrastate operating authority, meal and lodging expenses may be reimbursed by either of the methods provided in subsection (e)(i) or (ii) for each calendar day the driver is on travel status;

(iv) for drivers utilized or employed by a motor carrier with interstate operating authority, meal and lodging expenses may be reimbursed by the methods provided in subsection (e)(i) or (ii), or by a flat rate not to exceed $30.00 for each calendar day the driver is on travel status; or

(v) for mileage, at a rate no greater than that allowed by the United States Internal Revenue Service for the preceding year, provided that the individual actually furnishes the vehicle.

AUTH: Sec. 39-51-301, 39-51-302, MCA IMP: Sec. 39-51-201, MCA

4. The Department has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received, along with the Department's response to those comments:

COMMENT: The Montana Logging Association ("MLA") presented written testimony supporting and justifying a $22.50 per day flat rate for "saw rental", which includes other expenses related to the operation of the chain saw and related timber falling expenses.

RESPONSE: The Department finds that on the basis of the evidence submitted by the MLA that $22.50 per day is a reasonable allowance for "saw rental" and related timber falling expenses.

COMMENT: The State Compensation Mutual Insurance Fund ("State Fund") supports the proposed rule on "saw rental", but suggests that the phrase "related timber falling expenses" be used instead of the proposed phrase "related equipment expenses" in Rule I, section (2)(d), on the grounds that it more accurately reflects the scope of the allowance for "chain saw rental".

RESPONSE: The Department agrees with the comment and has adopted the change as suggested.

COMMENT: Stillwater Mining Company comments that it would find it easier to pay only one rate for per diem, namely the IRS rate. Although it did not have access to the Montana rates, the comment observed that IRS rates take into account the variations of the cost of travel in different locations nationwide. It also suggests that it is inconsistent to use the IRS rate for mileage but the Montana rate for meals and lodging.

RESPONSE: The Department notes first that the Montana mileage rates are the same as IRS rates for the first 1,000 miles per month, and thereafter three cents a mile less that the IRS rate. The Department believes that its proposed mileage rule, by eliminating the 1,000 mile cap, simplifies employer and employee bookkeeping and accounting, and still maintains the use of the state rate as the basis for mileage allowances.

Montana lodging rates for state employees also take into account the varying costs nationwide, and provide for certain "high cost cities". Likewise, the state rate provides for a higher meal reimbursement for out-of-state travel. The "state rates" for mileage, meal and lodging reimbursement and a list of "high cost cities" are available from the Employment Relations Division, by writing or calling for that information.

An employer may reimburse its employees who travel for actual expenses supported by receipts, or pay an allowance based upon the "state rate", or such higher allowance as the employer can document as being justified. The Unemployment Insurance Division has permitted employers to use a higher allowance if the employer's records (supported by receipts) justify a higher allowance. Rule I is being modified to include the same provision as is presently contained in the Unemployment Insurance rule.

COMMENT: The Montana Motor Carriers Association and the State Fund submitted oral and written comments concerning Rule I, sections (2)(e) and (f). They suggest that the rules not be limited to regulated carriers, but apply to unregulated motor carriers as well. They suggest that section (2)(e) include the phrase "or by a motor carrier operating in intrastate commerce" and in section (2)(f) the phrase "or by a motor carrier operating in interstate commerce", just before the language concerning meal and lodging expense reimbursements.

RESPONSE: The Department believes that adding the phrase "operating in interstate commerce" to section (2)(f) would effectively allow any motor carrier to fall within the ambit of that section. In today's economy, even goods being shipped only within the boundaries of Montana may well be "in interstate commerce". An example of goods entering the stream of interstate commerce, even though only being hauled in-state, would be wheat being trucked from a farm in Big Sandy to Great Falls. That wheat might end up being shipped by rail to Seattle or even overseas.

Unregulated motor carriers will still be allowed to pay their drivers a meal and/or lodging allowance under sections (2)(a) or (b). They may reimburse drivers for actual expenses supported by receipts, or pay an allowance based upon the "state rate", or such higher allowance as the employer can document as being justified. See response to Stillwater Mining comment, above.

COMMENT: The State Fund suggests that "75/25 rule" for heavy equipment found in ARM 29.11.814 (4) be incorporated into Rule I.

RESPONSE: The Department agrees with the comment and has adopted the change as suggested.

COMMENT: The State Fund suggests that Rule I should include a section that provides for "allowances for other expenses". It looks to language contained in House Bill 812 in support of its proposal and contends that Department needs to implement an "other expense" rule in order to implement the statutory change.

RESPONSE: The Department disagrees with the State Fund's suggestion that section 39-71-123 (2)(a), MCA (1991) means that the Department must provide for both reimbursements and allowances for "other expenses". The Department's proposed Rule I permits reimbursement of "other expenses" (to the extent that the expense is supported by a receipt). The Department believes that permitting an allowance for "other expenses" will lead to employer abuse by letting an employer disguise as "an allowance" payments that constitute a real economic gain to the employee. Such a practice was disapproved by the Montana Supreme Court in Scyphers v. State Fund, 237 Mont. 424, 774 P.2d 393 (1989). The Department believes that the public interest is better protected by only permitting reimbursement (which need not necessarily be

a full reimbursement) of the actual amount expended by an employee for the nebulous category of "other expenses".

David A. Scott
Rule Reviewer

Mario A. Micone, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: December 14, 1992

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

In the matter of the amendment of rule to make consistent the exclusions from the definitions of employment in the Unemployment Insurance and Workers' Compensation Acts	)))))	NOTICE OF AMENDMENT OF ARM 24.29.706

TO ALL INTERESTED PERSONS:

1. On July 30, 1992, the Department published notice at pages 1573 through 1576 of the Montana Administrative Register, Issue No. 14, to consider the amendment of the above-captioned rule. On September 10, 1992, the Department published notice at page 1948 of the Montana Administrative Register, Issue No. 17, that the public hearing was being continued and the comment period was being extended. On October 15, 1992, the Department published notice at page 2250 of the Montana Administrative Register, Issue No. 19, that the comment period was again being extended.

2. On September 29, 1992, a public hearing was held in Helena concerning the proposed rules at which oral and written comments were received. Additional written comments were received prior to the closing date of November 13, 1992.

3. After consideration of the comments received on the proposed rules, the Department has adopted the rules as proposed with the following changes:

"24.29.706 ELECTION NOT TO BE BOUND - INDEPENDENT CONTRACTOR (1) ~~Sole proprietors or working members of a partnership who consider themselves or hold themselves out as independent contractors and who contract for agricultural services to be performed on a farm or ranch or for broker or salesman services performed under a license issued by the board of realty regulation are not required to elect to be bound under a compensation plan.~~

~~(2)~~ Sole proprietors or working members of a partnership who consider themselves or hold themselves out as independent contractors, ~~other than those in section (1) of this rule,~~ must elect to be bound under a compensation plan, but may elect not to be bound under a compensation plan if the ~~independent contractor~~ sole owner or working member of a partnership submits, on forms provided by the ~~division~~ department, an appropriate application as required by section 39-71-401(3), MCA, and the ~~independent contractor~~ applicant meets all the following conditions:

(a) THERE IS evidence the ~~independent contractor~~ applicant ~~demonstrates he~~ is engaged in an independently established trade, occupation, profession or business, SHOWN by providing

the ~~division~~ department with:

(i) evidence he the applicant pays social security or unemployment taxes on ~~his~~ the applicant's employees or self-employment tax on ~~himself~~; or

~~(ii) his business's workers' compensation insurance policy and name of insurer;~~ or

~~(iii)~~ (ii) a copy of ~~his~~ the applicant's federal or state income tax statement for the most recent tax reporting period that shows income and expenses for ~~his~~ the applicant's business; AND ~~or~~

~~(iv) a copy of his sales dealer agreement signed by him and the hiring agent which indicates he is not an employee according to the internal revenue code rules implementing the 1982 federal tax equity and fiscal responsibility act and that his business activities fulfill the internal revenue service definition of a direct seller.~~

(b) ~~The independent contractor demonstrates he considers himself or holds himself out~~ applicant to be an independent contractor by providing~~es~~ the division DEPARTMENT with~~:~~;

(i) ~~a copy of a current contract in which he is identified as an independent contractor who is free from control or direction over the performance of his services, other than control or direction required by government regulation, and which is signed by the hiring agent and himself;~~ or contract or accepted bid proposal from THE INDIVIDUAL OR ENTITY THE APPLICANT IS CONTRACTING WITH AND FROM ANY OTHER INDIVIDUALS OR ENTITIES THE APPLICANT HAS CONTRACTED WITH IN THE PAST YEAR. Each document should state the applicant is now or was under contract to the INDIVIDUAL OR ENTITY during the past year as an independent contractor free from their control or direction over the performance of the applicant's service, other than control or direction required by government regulation; and

(ii) ~~letters from at least three different hiring agents, each of which states that the independent contractor is currently, or was under contract during the independent contractor's most recent tax year and that during the time of the contract he was free from control or direction over the performance of his services, other than control or direction required by government regulation.~~ OTHER SUPPORTING EVIDENCE SUCH AS, BUT NOT LIMITED TO: printed invoices, business cards, business license or permits, public advertisements, business checking account (authorization card), a business telephone listing, INSURANCE CERTIFICATES, OR FEDERAL HIGHWAY USE TAX RECEIPTS; AND

(c) ~~The independent contractor indicates he performs his services using the judgment that his trade, occupation, profession or business requires rather than hiring agent's instruction on how those services must be provided.~~

~~(d) The independent contractor indicates he performs new or altered services under his contract only if the contract is amended with his consent before the new or altered services are performed.~~

~~(e) The independent contractor~~ applicant ~~indicates he has~~ PROVIDES PROOF OF a large, substantial investment in the tools,

equipment or knowledge essential to the performance of his the applicant's services. The division department may require evidence of:

(i) a large, substantial investment in tools or equipment, SHOWN BY EVIDENCE SUCH AS, BUT NOT LIMITED TO, CERTIFICATE OF TITLE OR OWNERSHIP, PURCHASE AGREEMENT, OR LEASE CONTRACT; or of

(ii) certification of his the applicant's specialty knowledge.

(2) ~~(3)~~ An election under this rule is not valid ~~until approved by the division and the election only remains effective for one year while the independent contractor performs services consistent with the conditions under which the division granted its approval~~ indefinitely upon approval by the department; however, if any future investigation concludes the applicant is not an independent contractor, the exemption will be voided. ~~An election may be renewed each year by meeting the requirements of section (2) of this rule.~~

~~(4) Sole proprietors or working members of a partnership who consider themselves or hold themselves out as independent contractors, other than those in section (1) of this rule and who have employees, may elect not to be bound under a compensation plan, without providing the information required by section (2) of this rule, but providing the following information:~~

~~(a) number of persons employed by the independent contractor other than himself;~~

~~(b) name of workers' compensation insurance carrier providing coverage for his employees; and~~

~~(c) policy number of worker's compensation insurance covering his employees.~~

~~(5) The exemption provided for under this rule is for workers' compensation purposes only. The fact that an independent contractor neither applies for nor receives an exemption does not imply employee status.~~

~~(6) If a person seeking election not to be bound under this rule does not agree with the division's decision, he may request an administrative review in accordance with ARM 24.29.206. If the person does not agree with the division's decision after completion of administrative review procedures, he may request contested case procedures in accordance with ARM 24.29.207.~~

(3) If the applicant seeking this exemption disagrees with the department's decision, the applicant may appeal for a contested case hearing in accordance with ARM 24.29.207."

Auth: Sec. 39-71-203, MCA; IMP, Sec. 39-71-401, MCA

4. The Department has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received, along with the Department's response to those comments:

COMMENT: The Montana Motor Carriers Association ("Motor Carriers") generally supports the proposed changes, but suggests that the term "hiring agent" in section (1)(b)(i) is

inappropriate and that the requirement for up to three contracts is too burdensome for a "new" independent contractor. It also expresses concerns that information contained in the contracts is confidential, which it contends makes it virtually impossible to have anything other than a current contract in the applicants possession.

RESPONSE: The Department agrees that the term "hiring agent" is inappropriate and has developed different language for use in the rule. The Department has eliminated the requirement that a minimum of two previous contracts be submitted, and will look at the past year of business activities of the applicant. The Department recognizes that the terms of business agreements may be sensitive, and will do its best to prevent dissemination of that information. The Department feels, however, that persons who are true independent contractors will keep, as part of their business records, copies of previous contracts.

COMMENT: The Motor Carriers also suggest that the list of evidence in section (1)(b)(ii) is too restrictive, especially for a "new" independent contractor, and that the list be broadened.

RESPONSE: The Department agrees with the suggestion and has changed the language of the amendments by eliminating the list of acceptable evidence. The Department will consider any documentary evidence that is indicative of independent contractor status, and the rule now merely gives examples of supporting documents.

COMMENT: The Motor Carriers also suggest that section (1)(c) is too vague as to what will be accepted as evidence of a substantial investment in tools or equipment.

RESPONSE: The Department has included a list of examples of evidence that it will consider.

COMMENT: The State Compensation Mutual Insurance Fund ("State Fund") supports the rule amendments proposed by the Department. The State Fund opposes the suggestions made by the Motor Carriers. The State Fund feels the suggestions will tend to allow truckers who are not free of control of a motor carrier to whom the trucker is exclusively leased to be certified as an "independent contractor".

RESPONSE: The Department shares the concerns of the State Fund and believes that its rules will not let workers that are not free from control of another be certified as "independent contractors".

COMMENT: The State Fund also expresses concern that "specialty knowledge" may form the basis of certification of independent contractor status, and thus allow persons without any investment

in a business, but merely knowledge of how to perform a task, status as an independent contractor.

RESPONSE: The Department feels that the rules provide an appropriate process for the Department to exercise its judgment when evaluating an application. Certain employments (especially so-called "white collar" jobs, such as accounting) may require very little in the way of tools or equipment, but require specialized knowledge and training.

COMMENT: Gail Coverdell supplied the Department with six pages of written comments, reaching many issues related to ethical and philosophical implications of the concept of "independence" in society. Ms. Coverdell apparently supports the Department's efforts to clarify its administrative rules concerning certification of independent contractors. Ms. Coverdell also echoes most of the objections raised by the Motor Carriers, above.

RESPONSE: The Department responses to the objections raised by the Motor Carriers are given above.

COMMENT: Ms. Coverdell comments that the proposed rules may force people or businesses to fill out "paperwork" that they may not feel is necessary or in their best interest.

RESPONSE: The Department believes that the proposed rules do not require any individual to obtain independent contractor certification. The proposed rules provide a means for a person that has an independently established business to comply with workers' compensation laws without covering themselves and to protect that business' customers from liability that might arise under workers' compensation laws.

COMMENT: Ms. Coverdell also comments that two parties should be free to designate the nature of their business relationship as they see fit, and that their determination should be sufficient.

RESPONSE: The Department believes that it has a regulatory duty, delegated by the Legislature, to protect the public interest by making sure that Montana workers are not exploited by employers in contradiction of Montana labor laws. Montana has statutory and case law defining under what circumstances a person is an independent contractor. Ms. Coverdell should address her concern to the Legislature if she disagrees with existing law.

David A. Scott
Rule Reviewer

Mario A. Micone, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: December 14, 1992

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

In the Matter of Adoption of Rules on Integrated Least Cost Planning for Electric Utilities and Proposed Amendment of Rules 38.5.1902 and 38.5.1905 Pertaining to Cogeneration and Small Power Production.	)))))))	NOTICE OF ADOPTION OF NEW RULES ESTABLISHING POLICY GUIDELINES ON INTEGRATED LEAST COST RESOURCE PLANNING FOR ELECTRIC UTILITIES IN MONTANA AND AMENDMENT OF RULES 38.5.1902 AND 38.5.1905

TO: All Interested Persons

1. On August 27, 1992 the Department of Public Service Regulation published notice of proposed adoption (No. 38-2-104) of the proposals identified in the above titles at page 1846, issue number 16 of the 1992 Montana Administrative Register. On October 15, 1992 the Department of Public Service Regulation published a Notice of Public Hearing (No. 38-2-106) at page 2269, issue number 19 of the MAR, regarding the same proposals as identified in the Notice published on August 27, 1992.

2. The Department has adopted the following rules as proposed:

RULE IV. 38.5.2004 UNCERTAINTY AND RISK

Comment - The Commission should not attempt to prescribe the details of the planning process as is done in this rule. The rule should be made very general or deleted.

Response - The Commission is not attempting to prescribe the details of the planning process. This rule is designed to illustrate to utilities specific areas of risk, and means of mitigating such risk, which the Commission feels utilities should consider in least cost resource planning. The rule is general; not all types of risk listed in this rule may be applicable to all utilities, for example water availability.

RULE VI. 38.5.2006 OPTIMIZATION OF SUPPLY AND DEMAND-SIDE RESOURCES

Comment - The reserve margins established by power pools should not be subject to scrutiny by the Montana Public Service Commission.

Although reserve requirements may be set by a regional power pool, utilities should still analyze what level of reserve requirement is rational for its system and its customers. The reserve requirement analysis called for in the guidelines should be retained.

The term "temporary avoided cost" in the supply-side resource box in Figure 1 should be eliminated because Rule V does not indicate the use of any particular methodology that may or may not use avoided costs.

Response - The Commission agrees with the positive comments received in response to this rule. The Commission is

not asking utilities to perform any analyses which they should not already be performing.

The term "temporary avoided cost" must be retained. Clearly, use of avoided costs will be necessary in order to acquire cost effective DSM resources -- DSM is considered cost effective up to 115 percent of avoided cost. The reason the avoided cost is termed temporary is that the integration of supply- and demand-side resources takes place before the least cost plan is identified. It is envisioned that the avoided cost figure used for the initial screening may be adjusted through an iterative process. The avoided cost used to set the cost effectiveness level for DSM may not be the avoided cost which finally results from the least cost resource plan.

RULE VII. 38.5.2007 LEAST COST RESOURCE PLANS

Comment - The primary objective of least cost resource plans should be to minimize the costs to ratepayers.

Response - The Commission does not disagree with the literal interpretation of the comment. It is a clear goal of the rules to minimize societal costs and ratepayers are members of society. However, to the extent the comment means minimize rates paid by ratepayers, the Commission does disagree. Least cost planning is not synonymous with lowest possible rates. In order to avoid any misinterpretation, the rule will not be amended.

RULE IX. 38.5.2009 ELECTRIC UTILITY MARKETING GOALS, MARKETING PROGRAMS AND COMPETITION FOR LARGE DISCRETIONARY LOADS

RULE XII. 38.5.2012 SUBMITTING LEAST COST PLANS

Comment - The connection between marginal cost of service studies and rate designs based on least cost plans is unclear given that a utility's total cost of service is based on embedded costs and least cost plans are based on estimated future costs.

Response - There is no connection between embedded costs and marginal costs. The connection between marginal costs and least cost planning is entirely consistent; both involve forward looking costs. Resource plans identify how a utility will meet demand and what it will cost the utility to meet marginal demand. Rate designs are based on marginal costs (reconciled to equal the revenue requirement) not on embedded costs. Thus, the connection between rate design, long run marginal costs and least cost plans is clear to the Commission.

3. The Department has adopted and amended the following rules as proposed with the changes indicated.

RULE I. 38.5.2001 GOAL AND POLICY (1) through (2) Remain the same.

(3) These guidelines do not change the fundamental ratemaking relationship between the utilities and the commission. Rather, they are a restatement of the commission's regulatory objective: to efficiently allocate society's resources to the

~~production of electricity~~ provision of electricity services and ensure just and reasonable rates for consumers.

(4) Remains the same.

(5) Integrated least cost planning may demonstrate that, on the basis of overall societal costs, previously rate-based resources should be abandoned and replaced by new resources. In addition, least cost plans may show that it is in society's best interest for construction of a new resource to be abandoned in favor of some other resource option. If such situations occur, the commission will open separate proceedings in which ~~the utility can attempt to justify such abandonment and can propose a method for treating the costs of abandonment~~ it will determine how recovery of the undepreciated, rate-based capital costs will be accomplished.

(6) and (7) Remain the same.

(8) Until such time as the commission determines that market failures and market barriers ~~to~~ which may interfere with ratepayer investment in conservation have been reduced or eliminated, utility investment in conservation measures installed on the customer's side of the meter should be considered cost effective up to 115 percent of the utility's long-term avoided cost.

(9) through (11) Remain the same. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102, 69-3-106(1) and 69-3-201, MCA.

Comment (1) - The word "all" should be deleted from the sentence "Importantly, this includes actively pursuing all cost effective energy efficiency," in order to avoid creating a "gold rush mentality."

Response - The Commission makes it clear that resources should only be acquired in a timely manner.

Comment (2) - This paragraph should be changed to say utilities should file least cost plans, as opposed to requiring utilities to file least cost plans.

Response - The Commission finds the filing of least cost plans is not optional. Flexibility, as well as risk, exists in how utilities incorporate the guidelines encompassed within the rules into the contents of the plan filed with the Commission.

Comment (3) - Efficient allocation of society's resources should be of secondary consideration.

Response - It is prices which are ultimately responsible for determining the allocation of society's resources. Efficient prices are certainly one, if not the, primary concern of the Commission. Therefore, it is impossible to separate the objective of just and reasonable rates from efficient allocation of society's resources; both concepts are of equal concern. Further, it is the Commission's role in the regulatory process to determine the public interest. The Commission has stated that it is a goal of regulation "to maximize the economic efficiency of [utilities] and the efficient provision of utility service." Order No. 5360e, p. 39, Docket No. 88.6.15 (MPC).

Comment (5) - The first sentence of this paragraph should be deleted.

Response - See response related to Rule III.

Comment (7) - The phrase "existing resources should be operated" is inappropriate and should be deleted.

Response - See response to Rule III.

Comment (8) - The 15 percent cost advantage for DSM is not an appropriate means of addressing market barriers or market failures. The 15 percent advantage involves a double counting of environmental costs associated with supply-side resources. The Commission should clarify whether the avoided cost to which the 15 percent is applied should explicitly include externalities.

Response - The Commission's rule on regulatory and market barriers [Rule XI(2)] links the 15 percent cost advantage to market barriers and market failures, not to externalities. Even if retail prices accurately reflected all costs of production including externalities, it is not clear that investment in DSM would be optimized. The lack of customer awareness of, and access to, demand-side measures and irrational consumer discount rates are examples of market failures and barriers to customer investment in conservation. Until these issues are explicitly addressed, the 15 percent may be appropriate from a societal cost perspective. In addition, the 15 percent may account for the benefits provided by DSM which help mitigate risk. It is highly unlikely that utilities will ever be able to completely quantify all external costs. Moreover, at some point it simply becomes cost ineffective to continue attempting to quantify the external costs that remain. But if these remaining costs are assumed to be zero, there is the risk that the wrong resource choices will be made. Finally, there may be unknown or unquantified benefits associated with DSM and to ignore these benefits further increases the risk that the wrong resources will be selected. When the wrong resources are acquired, society incurs a higher cost. Ratepayers are part of society and will incur their share of these higher costs.

With regard to how the 115 should be applied, the rules indicate that it is to be applied to an avoided cost calculation that "has been adjusted according to the provisions of Rule V." Rule V tells the utility to construct a resource supply curve based on an evaluation of multiple resource attributes, rather than basing the supply curve on an evaluation of utility costs alone. In other words, the utility should estimate the societal cost of each resource option by evaluating the multiple attributes listed in Rule V. They should then select the set of resources which yields the least cost resource plan and then compute the avoided cost based on that resource plan but using only the actually incurred costs of the resources in that plan. The full 115 percent would be applied to this avoided cost calculation. The rules have been amended to make this clear.

RULE II. 38.5.2002 DEFINITIONS (1) through (3) Remain the same.

(4) "Societal cost" consists of all costs ~~which are internal~~ to the utility plus all external costs which are imposed on the global society.

(5) "External costs" or "negative externalities" are costs imposed on society, but which are not directly borne by the producer in production and delivery activities ~~(e.g. as in the production and delivery of energy services)~~. Due to imperfections in, or the absence of, markets, the producer's production and pricing decisions do not account for these costs.

(6) "Planning costs" are the costs of evaluating the future demand for energy services and of evaluating alterntive methods of satisfying that demand. Planning costs include, but may not be limited to, costs associated with:

(a) Remains the same.

(b) identification and evaluation of alternative demand- and supply-side resource options,

(c) Remains the same.

(7) "Portfolio development costs" are costs of preparing a resource in a portfolio for prompt and timely acquisition. Portfolio development costs include, but may not be limited to, costs associated with:

(7)(a) through (7)(c) Remain the same. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102, 69-3-106(1) and 69-3-201, MCA, and Commission policy adopted and described herein at Rule I.

Comment - "Society" should be defined. The second part of the definition of "energy conservation" should be deleted because the mere possession of knowledge cannot result in reduced power consumption; action must be taken. This action will result in increased customer end-use efficiency, which is addressed in the first part of the definition.

Response - A definition of "society" may constrain the Commission in terms of what societal costs can be included in the planning process. Therefore, the Commission will not define "society."

Conservation may result from reduced demand for electricity without any increase in customer end-use efficiency. The reduced demand may be the result of increased knowledge of the societal cost of consumption. Thus, the second part of the definition of "energy conservation" will be retained.

RULE III. 38.5.2003 ENVIRONMENTAL EXTERNALITIES

(1) Negative Eexternalities result in over consumption of goods and services and misallocation of society's resources. It is in society's interest to internalize external costs when the marginal benefits of continued efforts to do so are greater than the marginal costs. Utilities should address external environmental ~~externalities~~ costs in their existing resource portfolios and in resource planning and acquisitions as follows.

(a) A range of environmental impact mitigation and control costs should be quantified. The value of unmitigated environmental impacts should be estimated using the best avail-

able methods for assessing environmental costs. External Environmental ~~externalities~~ costs which are nonquantifiable should not be ignored; they should be incorporated using documented judgment in the multiple attribute evaluation;

(b) Remains the same.

(c) Uncertainty associated with the size and importance of external environmental ~~externalities~~ costs should be incorporated into the risk assessment analysis;

(d) Remains the same.

(e) The external environmental ~~externalities~~ costs associated with all resource alternatives, including continued operation of existing resources, PURPA resources and resources identified through competitive solicitations, should be analyzed consistently. The type of analysis specified in the decision standards in the administrative rules of the Major Facility Siting Act may be used as a reference. See ARM 36.7.101 - 36.7.5502;

(f) Remains the same.

(g) Utilities should recognize the ~~positive externalities~~ external benefits associated with resources that correct or reduce existing environmental damage to, for example, critical airsheds and superfund sites;

(h) Remains the same.

(2) The ~~externalities~~ external costs associated with transmission facilities should be accounted for in the utilities' least cost plans. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102, 69-3-106(1) and 69-3-201, MCA, and Commission policy adopted and described herein at Rule I.

Comment - Integrated least cost planning should apply only to planned resources not existing resources. This rule will cause utilities to consider environmental externalities associated with all existing resources and will result in environmental dispatch rather than economic dispatch. Montana ratepayers will experience higher electric rates with no reduction in environmental externalities.

The phrase "in their existing resource portfolios" is inappropriate and should be deleted. The Commission and utilities have not discussed how to dispatch resources on the basis of societal costs. The rule raises the question whether the ownership costs of resources judged to be no longer a proper part of the resource stack are recoverable.

Consideration of social costs in the operation of existing facilities is rational from the general public's perspective.

This rule represents an inappropriate effort on the part of the Commission to establish environmental policy, policy that should be enacted by Congress or the legislature.

Response - This guideline has implicitly existed since the inception of these rules. The stated goal of the rules is the provision of reliable, efficient energy services at the lowest total cost. The rules stress that resources should be evaluated on the basis of societal costs rather than simply utility costs. The testimony of MPC, HRC, NPRC, NWPPC and DNRC embrace the societal cost perspective of the rules. But

societal cost will not likely be minimized if existing resources are not continually analyzed and compared to alternative resources. It is not enough to only analyze possible alternatives to a new resource that is to be added to the existing stack. This issue relates to the very definition of resource need; need must not be defined only in terms of a capacity or energy deficiency. From a cost perspective a new resource may be needed regardless of the utility's ability to meet demand with an existing resource.

Certain comments appear to try to link this rule to environmental externalities. However, this guideline would be appropriate even if environmental externalities were not considered at all. The need to replace a resource could solely be a function of fuel, operation and maintenance costs. It was argued that the rule will not result in the reduction of external costs because nonjurisdictional utilities will purchase the displaced resource and continue to operate it. It should be remembered that the rules define societal cost in global terms. Given the status of least cost planning around Montana, it is likely a utility outside the jurisdiction of the Montana Commission would only acquire a displaced resource if it would fit into the nonjurisdictional utility's least cost plan. From this perspective, the displaced resource helps to reduce global societal costs and is consistent with the goals of these rules. Nevertheless, since it is the goal of the least cost planning process to minimize societal costs, the impacts of plant abandonment on the global society will be fully analyzed in the separate proceedings opened by the Commission for the purpose of addressing such situations.

The Commission is not attempting to establish environmental policy. Rather, the Commission is attempting to fulfill its regulatory objective as stated in Rule I(4). The Commission recognizes that efficient allocation of society's resources and just and reasonable rates for consumers are not mutually exclusive concepts. Efficient allocation of resources requires that rates reflect the cost to society of committing various resources to particular productive activities. Use of the environment in production activities should not be excluded from any resource cost effectiveness evaluation.

RULE V. 38.5.2005 INITIAL RESOURCE SCREENING (1) A critical component of integrated least cost resource planning and acquisition is the initial screening of demand- and supply-side resource alternatives. This involves weighing, ranking, sizing, evaluating and selecting the individual resources which will eventually form the resource plan. Utilities should use the best scientific and engineering methods available, their own judgment and public comment to weigh and rank the operation of existing resources and the acquisition of new resources based on consideration of multiple resource attributes. Resource attributes are variables that may affect (positively and negatively) the cost society incurs when the resource is acquired and allocated to the production of energy services. Some attributes may be accounted for in ~~internal~~

utility costs; others may represent externalities. Since efficient resource acquisition requires information about the societal resource cost, and since the societal resource cost will be a major determinant of a resource's initial suitability as a least cost resource, ~~it is imperative that~~ utilities should ensure that the cost assigned to each resource reflects all relevant attributes. Attributes that may influence the societal cost of a resource include, but may not be limited to:

(a) through (f) Remain the same.

(g) associated transmission costs. ~~(~~The transmission costs, positive and negative, associated with the resource should be imputed based on relevant long run avoidable costs. The imputed costs should~~,~~ ~~to the extent possible,~~ reflect the utility's best estimate of the opportunity cost value of new or existing transmission capacity that would be consumed by the resource if that resource were acquired. This value should be added to the price of the resource.~~)~~

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

AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102, 69-3-106(1) and 69-3-201, MCA, and Commission policy adopted and described herein at Rule I.

Comment - The statement "... use the best scientific and engineering methods available ..." should be changed to read "... use acceptable scientific and engineering methods ..." to avoid the issue of deciding what methods are best.

Response - The Commission does not find that changing the word "best" to "acceptable" addresses the issue of concern raised in this comment; there would still be the issue of whether EGEAS and PROMOD are acceptable. Therefore, the Commission chooses not to change the rule. In addition, these rules continually urge utilities to use their own judgment. This aspect of the rules provides the utilities flexibility -- something strongly advocated by the utilities. The Commission finds it appropriate for the utilities to use their judgment in choosing the best methods within the context of their individual systems.

RULE VIII. 38.5.2008 RATE DESIGN (1) Remains the same.

(a) explicitly recognize and utilize the ability of rate design to yield demand-side resources. ~~(~~Although rate designs will be determined in contested case proceedings, on-going integrated least cost planning encompasses such proceedings. Therefore, utilities should keep resource planning in mind when proposing rate designs.~~)~~;

(b) ensure that, to the extent possible, the goals and objectives of all rate design efforts are consistent with the goal and definition of integrated least cost planning, while recognizing other rate design objectives such as rate stability. ~~(~~In considering rate design as it relates to integrated least cost resource planning and acquisition, the influence of externalities should be incorporated into prices proposed in rate case proceedings. Total marginal cost of service derived

in rate case proceedings should reflect total societal cost as described in these guidelines.~~)~~

(2) Remains the same. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102, 69-3-106(1) and 69-3-201, MCA, and Commission policy adopted and described herein at Rule I.

RULE X. 38.5.2010 COMPETITIVE RESOURCE SOLICITATIONS

(1) Remains the same.

~~(a) When the demand forecast shows a capacity deficiency of 5 MW or more within two years of the current year, the utility should begin a competitive solicitation. The solicitation should be completed within two (2) years and the results included in the first available least cost planning cycle.~~ Before acquiring any new resources, utilities should thoroughly test the market for cost effective resource alternatives.

~~(b) Exceptions to the direction provided in (a) are as follows. If the utility can demonstrate to the commission that the societal benefits of conducting an all-source competitive solicitation do not justify the societal costs, no solicitation should be conducted. If the demand forecast shows a capacity deficiency less than 5 MW but a legitimate claim has been brought before the commission by QFs, IPPs, members of the utility's advisory group, the Montana consumer counsel or other social interest organizations that societal costs are not being minimized by the utility's existing set of resources, and that a competitive solicitation would be justified on a societal cost basis, then the commission may order the utility to initiate a competitive solicitation.~~ Need for new or alternative resources should not be assessed in terms of capacity deficit only, but ~~rather~~ also in terms of ~~total~~ the avoidable societal costs of existing resources compared to alternative resources.

(c) through (e) Remain the same.

~~(f) The competitive solicitation and acquisition process should deter "cream skimming" on the part of bidders.~~ Bid proposals which involve demand-side resources should not be allowed to develop only the least expensive and most readily obtainable resource potential while stranding other measures which would be cost effective only if acquired in conjunction with those higher return resources. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102, 69-3-106(1) and 69-3-201, MCA, and Commission policy adopted and described herein at Rule I.

Comment - This rule is too restrictive. Predetermined thresholds are inappropriate. The utility should not have to justify to the Commission why a competitive solicitation is not necessary. A more flexible approach would be more effective.

The rule should not focus on capacity deficiencies. The 5 MW trigger is inappropriately small. The rule should focus on the need for utilities to be regularly testing the market.

There is an omission in this rule related to conflict of interest. Utilities are simultaneously directed to balance the objectives of ratepayers with the objectives of shareholders. The utility is in the business of building power plants,

rate basing them and earning a rate of return for their shareholders. Thus, the utility has the incentive to evaluate its own resources higher than those of third party bidders in the competitive solicitation process. To the extent nonutility resources are more cost effective than the utility's resources, this practice will adversely impact ratepayers. MPC's RFP is not transparent. The least cost planning process has failed. MPC is self-dealing to avoid selection of QFs.

Response - The rule has been amended to be less prescriptive. The rules explicitly recognize that utilities have multiple decision objectives which may conflict. Rule I(10) states that utilities can best meet the diverse goals of shareholders, ratepayers and society by involving the public in resource planning and acquisition decision. Transparency is a concept that is stressed time and again in the rules. Rule IV(2)(i) urges utilities to maintain a transparent planning and acquisition process as a means of mitigating risk. Rule VI(3) tells utilities that the application of their planning and acquisition processes should be thoroughly documented. The competitive solicitation process is not separate from least cost planning; it is an element of least cost planning. All other elements of least cost planning in combination with competitive solicitation produce the least cost planning process. A recognition of utilities' conflicting interests is not something that has escaped these rules. The comments regarding this issue seem somewhat premature. MPC was conducting its RFP as these rules were developing. It is too early to say that these rules do not keep utilities from self-dealing in the bidding process; MPC has yet to conduct an RFP under a set of Commission adopted least cost planning rules. Further MPC has yet to attempt to rate base any of the resources it has selected through its RFP. The rules state that least cost planning is an on-going and dynamic process. We are just beginning this process and the Commission finds it untimely to suggest that the process has failed.

RULE XI. 38.5.2011 REGULATORY AND MARKET BARRIERS TO INTEGRATED LEAST COST PLANNING AND ACQUISITION OF DEMAND-SIDE RESOURCES (1) Integrated least cost resource planning and acquisition is an on-going process that may be continually refined and improved. Utilities should continually assess existing barriers which could impede and incentives which could encourage efforts to engage in integrated least cost planning and resource acquisition. These efforts should be thoroughly documented to facilitate efforts to remove the barriers and integrate the incentives.

(2) Utility directed demand-side programs should be focused on specific sectors where market barriers or other market failures prevent demand-side resources from being effectively and efficiently developed. Marginal investment in conservation on the customer's side of the meter should be considered cost effective up to 115 percent of the utility's long-term avoided costs. ~~To be consistent with the guidelines, the long-term avoided cost calculation used for this cost ef-~~

~~fectiveness evaluation should be based on a resource supply curve that has been adjusted according to the provisions of rule V of these guidelines.~~ The avoided cost, to which the 115 percent should be applied, should be based on the avoidable resources in the utility's integrated least cost resource plan.

(3) and (4) Remain the same. AUTH: Sec. 69-3-103; IMP, Secs. 69-3-102, 69-3-106(1) and 69-3-201, MCA, and Commission policy adopted and described herein at Rule I.

Comment - See comments to Rule III.

Response - See response to Rule III.

4. The Department has adopted and amended the following rules with the changes indicated:

38.5.1902 GENERAL PROVISIONS (1) through (4) Remain the same.

(5) All purchases and sales of electric power between a utility and a qualifying facility shall be accomplished according to the terms of a written contract between the parties or in accordance with the standard tariff provisions as approved by the commission. A long-term contract for purchases and sales of energy and capacity between a utility and a qualifying facility greater than ~~2~~ 3 MW in size shall be contingent upon selection of the qualifying facility by a utility through an all-source competitive solicitation conducted in accordance with the provisions of ARM 38.5.2001 - 38.5.2012. Between competitive solicitations, purchases and sales of energy and capacity between a utility and a qualifying facility greater than ~~2~~ 3 MW in size shall be accomplished in accordance with the short-term standard avoided cost tariff approved by the commission or through negotiation of a short-term written contract. The utility shall recompute the short-term and long-term standard tariffed avoided cost rates after following public review and comment on each least cost plan filing, ARM 38.5.2001 - 38.5.2012. The recomputed avoided cost rates should reflect any amendments to the plan due to the comments of the commission and the public. If the qualifying facility is not selected, or ~~did~~ does not participate, in a the first available competitive solicitation, purchases and sales of energy and capacity shall continue only according to the terms of a newly negotiated short-term written contract or in accordance with the newly computed, short-term standard tariffed avoided cost rates. Long-term contracts for purchases and sales of energy and capacity between a utility and a qualifying facility ~~2~~ 3 MW or less may be accomplished according to standard tariffed rates as approved by the commission. The contract shall specify:

(a) through (6) Remain the same. AUTH: Sec. 69-3-103, MCA; IMP, 69-3-102, MCA

Comment - The proposed amendatory language is ambiguous. The rule should not establish avoided costs with explicit external cost adders. Such an avoided cost methodology would be inconsistent with the Commission's statutory powers.

If the Commission intends to reflect avoided social costs explicitly in the standard tariff, payments to QFs should be adjusted to reflect the external costs of the QF.

QFs obtained under the standard rate should not be paid for having avoided environmental damage unless they have undergone an environmental cost analysis themselves.

Default avoided cost tariffs should be recalculated from the least cost plan after the plan has been modified as needed to account for the comments of the Commission and the public.

The cut-off size for QFs that have access to default tariffs should be 3 MW.

The cut-off size for QFs that have access to default tariffs should be 5 MW.

Response - The rule has been amended.

38.5.1905 RATES FOR PURCHASES (1) through (b) Remain the same.

(c) The estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt hour. These costs shall be expressed in terms of individual generating units and of individual planned firm purchases and shall ~~reflect~~ represent the ~~societal cost considerations defined in the commission's~~ avoidable resources in the utility's integrated least cost resource ~~planning~~ developed according to the commission's ~~and acquisition~~ guidelines, ARM 38.5.2001 - 38.5.2012.

(2) through (7) Remain the same. AUTH: Sec. 69-3-103, MCA; IMP, 69-3-102, MCA

Comment - See comment to Rule 38.5.1902.

Response - See response to Rule 38.5.1902.

Danny Oberg, Chairman

Reviewed By

CERTIFIED TO THE SECRETARY OF STATE DECEMBER 14, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.14.102, 42.14.105, 42.14.106, 42.17.105, and 42.31.204 relating to Miscellaneous Taxes	NOTICE OF THE AMENDMENT of ARM 42.14.102, 42.14.105, 42.14.106, 42.17.105, and 42.31.204 relating to Miscellaneous Taxes

TO: All Interested Persons:

1. On October 29, 1992, the Department published notice of the proposed amendment of ARM 42.14.102, 42.14.105, 42.14.106, 42.17.105, 42.31.204 relating to miscellaneous taxes at page 2350 of the 1992 Montana Administrative Register, issue no. 20.

2. No public comments were received regarding these rules.

3. The Department has adopted the amendments as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State December 14, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.15.118 relating to Exempt Retirement Limitation	NOTICE OF THE AMENDMENT of ARM 42.15.118 relating to Exempt Retirement Limitation

TO: All Interested Persons:

1. On October 29, 1992, the Department published notice of the proposed amendment of ARM 42.15.118 relating to exempt retirement limitation at page 2353 of the 1992 Montana Administrative Register, issue no. 20.

2. No public comments were received regarding these rules.

3. The Department has adopted the amendments as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State December 14, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of ARM 42.17.301, 42.17.302, 42.17.303 and ADOPTION of NEW RULES I (42.17.304), II (42.17.305), III (42.17.306), IV (42.17.307), V (42.17.308) VI (42.17.309), VII (42.17.310), VIII (42.17.311) IX (42.17.312), X (42.17.313) XI (42.17.314), XII (42.17.315), XIII (42.17.316) relating to Estimated Tax Payments	NOTICE OF THE REPEAL of ARM 42.17.301, 42.17.302, 42.17.303 and ADOPTION of NEW RULES I (42.17.304), II (42.17.305), III (42.17.306), IV (42.17.307), V (42.17.308), VI (42.17.309), VII (42.17.310), VIII (42.17.311), IX (42.17.312), X (42.17.313), XI (42.17.314), XII (42.17.315), XIII (42.17.316) relating to Estimated Tax Payments

TO: All Interested Persons:

1. On September 10, 1992, the Department published notice of the proposed repeal of ARM 42.17.301, 42.17.302, 42.17.303 and the adoption of new rules I (42.17.304), II (42.17.305), III (42.17.306), IV (42.17.307), V (42.17.308), VI (42.17.309), VII (42.17.310), VIII (42.17.311), IX (42.17.312), X (42.17.313), XI (42.17.314), XII (42.17.315), and XIII (42.17.316) relating to estimated tax payments at page 1988 of the 1992 Montana Administrative Register, issue no. 17.

2. A Public Hearing was held on October 7, 1992, to consider the proposed adoptions and repeals. No one appeared to testify. However written comments were received from Walter J. Kero, from the corporation of Junkermier, Clark, Campanella, and Stevens (certified public accounts). The comments are summarized as follows along with the response of the Department:

COMMENT: A CPA firm indicated the language in rule I is confusing and inconsistent with federal laws and rules. The language in this rule would not take into account wage and salary withholding, estimated tax payments or the elderly homeowners credit in computing a tax liability for making estimated tax payments. They feel this is the wrong intention and would mean, in those situations where a taxpayer had a estimated tax but covered it with withholding or other payments, they would still be required to make estimated tax payments. As a result, these people would be in constant overpayment or refund situations.

RESPONSE: The department agrees the language is confusing. Therefore, the department will amend rule I (42.17.304) to address this concern.

COMMENT: Credits treated as refunds, but applied to future years taxes, should also be considered as an estimated tax payment and utilized in the computation of a taxpayer's tax liability for estimated tax purposes.

RESPONSE: Tax credits that are carried forward are treated as payments. Whether a taxpayer meets the threshold requirements to file estimated taxes is determined after tax credits are applied against their tax liability.

3. As the result of the comments, the department amends rule I (42.17.304) as follows:

RULE I (42.17.304) DEFINITIONS (1) As used in this subchapter, the following definitions apply:

(a) The term "tax liability" means the total tax imposed by Title 15, chapter 30 less any tax credits allowed under Montana law excluding the elderly homeowner/renter credit.

~~(i) For purposes of estimating a taxpayer's tax liability, the tax liability is not decreased by income tax withholding, estimated tax payments or the elderly homeowner/renter credit.~~

~~(ii)~~ A taxpayer's withholding, estimated tax and the elderly homeowner/renter credit will be considered as payments prior to the calculation of the deficiency payment.

Example: A taxpayer has a tax, before credits, of $5,000. He has $1,000 in tax credits. He has withholding of $800 and a elderly homeowner/renter credit of $400. His tax liability for estimated tax purposes is computed as follows:

Tax before credits	$5,000
Credits	(1,000)
Tax liability	$4,000

AUTH: Sec. 15-30-305, MCA; IMP: Sec. 15-30-241, MCA

4. Therefore, the department adopts rule I (42.17.304) with the amendments listed above and adopts and repeals the remaining rules as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State December 14, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of NEW RULES I (42.20.107), II (42.20.108), and III (42.20.109) relating to Valuation for Commercial Property	NOTICE OF THE ADOPTION of NEW RULES I (42.20.107), II (42.20.108), and III (42.20.109) relating to Valuation for Commercial Property

TO: All Interested Persons:

1. On September 10, 1992, the Department published notice of the proposed adoption of Rule I (42.20.107), II (42.20.108), and III (42.20.109) relating to valuation for commercial property at page 1955 of the 1992 Montana Administrative Register, issue no. 17.

2. A Public Hearing was held on October 8, 1992, to consider the proposed new rules. No one appeared to testify.

3. However, written comments were received from George Bennett on behalf of the Montana Bankers Association which are summarized as follows along with the response of the Department:

COMMENT: UNIFORMITY. Constitutional requirements of due process and equal protection, as well as constitutional and statutory mandates of uniformity in assessment and valuation must be met. The proposed rules indicate that the income approach may be used in the valuation of some commercial properties but not others. This can clearly lead to a lack of uniformity in treatment of commercial properties. For example, if most commercial properties are valued by the sales approach and some on an income approach what control is there to assure uniformity?

RESPONSE: The Montana Constitution states, "The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in a manner provided by law." Montana law states, "All taxable property must be assessed at 100% of its market value except as otherwise provided."

Since there is not an exception to the market value standard for commercial land and improvements, the Department must value the property at market value. There are three generally accepted methods or approaches for determining market value: cost approach; income approach; and the market or sales comparison approach. Market value is determined by considering one or all of the approaches.

Uniformity and equalization is achieved when each property is valued at its market value. The concept of uniformity does not mean that all appraisals must be done utilizing only one of the three approaches to value. It means each property must meet the same market standard.

If the necessary data was available, all three appraisal

approaches could be considered to determine market value. However, the necessary data is not always available for use of all three valuation methods. For example, in a given area there may not be any recent sales of similar commercial property. Additionally, sales of commercial properties often include the sale of the entire business, including personal property. In such circumstances, the sales approach cannot be used to determine current market value. Thus, the issue in appraising any type of property is often deciding which appraisal approach will best determine market value given the existing data and circumstances.

The basic and established theories and methods of appraisal must be applied by the Department just as it is by private appraisers in determining market value for loan purposes. The appraisal process is a systematic, logical method of collecting, analyzing, and processing data into intelligent, well-reasoned value estimates. It is used by both the fee appraiser and the tax appraiser in estimating market value.

The process begins with the definition of the problem i.e., equitable and uniform appraisals rendering market value. The process continues through preliminary survey and planning, data collection and analysis, and application of data through the three approaches to value. The process ends with the correlation and reconciliation of the value estimates to arrive at market value.

It is at this level that the decision of which approach to value best represents the market value of the subject property is made. Determination of which approach renders the most indicative estimate of market value is based on the quantity and quality of the data collected and analyzed in the prior steps of the appraisal process. Thus, the control on uniformity is market value.

COMMENT: MARKET VALUE. Section 15-8-111, MCA., requires that all taxable property must be assessed at 100% of its market value, unless there is a statutory exception (e.g. agricultural lands). This same section defines market value as:

> [T]he value at which property would change hands between a willing buyer and a willing seller, neither being under compulsion to buy or sell and both having reasonable knowledge of relevant facts.

Thus, the statute mandates that sales data is to be the primary factor in property tax valuations.

RESPONSE: Market value is, indeed, the basis of the Montana property taxation process, and it is the value at which a property would be exchanged between a willing seller and a willing buyer. The department agrees it is also a major factor in property tax valuations. However, that doesn't necessarily mean sales are the only consideration for determining market

value of all types of property.

If all properties were sold on a given date through arms length transactions between willing sellers and willing buyers and involved a consideration for just the land and improvements, sales would be the primary factor in property valuations, but they do not. These types of sales are generally not available for commercial properties. Therefore, property tax appraisers and private appraisers rely on the cost and income approaches as the primary considerations in identifying market value of commercial properties. The International Association of Assessing Officers textbook states at page 35:

> Generally, market value is the cash price a property would bring in a competitive and open market. . . . Market value can also be viewed as the present value of future benefits. This view of market value is the basis of the income approach to market value.

At page 83 the textbook states: "The approach recognizes that potential buyers demand property because they anticipate a future stream of income."

Available sales information can be used in the application of the income approach. The basic formula of the income approach is MARKET VALUE = INCOME/RATE. RATE as used in the income formula refers to a capitalization rate, or rate of return, and is determined by examining rates of return the owners and investors receive on similar properties. Thus, RATE can be determined from sales information. This is provided for in the proposed rule.

COMMENT: DATA BASE. In 1975, the department finally persuaded the legislature to enact the Realty Transfer Act, 15-7-301 et seq., MCA, and the purpose of the Act was to:

> [O]btain sales price data necessary to the determination of statewide levels and uniformity of real estate assessments by the most efficient, economical, and reliable method.

First of all the legislature found that the sales approach was the most efficient, economical, and reliable method; as it obviously is. Secondly, the department has had for almost two decades a source of information to build a data base on sales information. At this time the department probably has little, if any, information on rentals. Can a sound data base really be derived?

RESPONSE: Certainly the sales comparison or market approach to determining market value is an acceptable method, but it is not the only method. It is an intricate method to use for commercial properties since commercial sales usually include the sale of the business and personal property making it difficult

to isolate the portion of the sale price attributable to the land and buildings. The sales comparison approach is most successful in valuing residential properties. And, in fact, the valuation of residential properties may have been the primary consideration when the realty transfer certificate program was initiated.

The Realty Transfer Act does not stipulate which valuation approach to use in the appraisal of property. Of course, sales information received from realty transfer certificates provide the critical data base from which information required for all three approaches to value is obtained.

The department has been collecting information to be used with the income approach. For example, income and expense data has been collected by the Butte-Silver Bow Appraisal office since 1986. Continual solicitation of income and expense data from property owners will provide an up-to-date data base for the income approach. The use of the income approach has repeatedly been encouraged and upheld by the tax appeals boards.

COMMENT: RELIABILITY. The department states in the proposed rules that it will use generally accepted procedures as outlined by the International Association of Assessing Officers in the text "Property Assessment And Appraisal Administration" for determining "normal net operating income." This text tells us at page 237: "The income approach is more difficult to apply than either the cost or sales comparison approaches."

The text is correct and the reasons for this are many but mainly because of the difficulty in obtaining rental information and in the interpretation thereof. But more importantly the income approach is more speculative because you have two unknowns to use in the equation. The unknowns are, first, the value, and then the proper capitalization rate. Thus, if you have reliable sales figures, value can be derived. With the income approach, even if you have reliable rental figures, there can be dispute as to the proper rate of capitalization.

RESPONSE: The income approach is indeed difficult to apply. However, that does not authorize the appraiser to ignore the use of this approach to value. The complexity in applying the income approach does not invalidate its accuracy. Since that is most often the commercial property "valuation approach of choice" by tax representatives and fee appraisers, property tax appraisers are confronted by it and must use it on a regular basis. Certainly disputes can arise over issues such as the proper capitalization rate, but these are not unlike disputes over comparable properties in the sales comparison approach or depreciation rates in the cost approach.

The income approach is valid for commercial properties and should be considered by property appraisers if data is available. The "Encyclopedia Of Real Estate Appraising", Third Edition, Prentice-Hall, 1978, p. 60 states:

> Investors purchase income-producing properties for the future dollar benefits that they will produce. The Income Approach is, therefore, a primary approach to the valuation of such real estate.

In each step of the income approach, data is derived from the market. The first step of the income approach is estimating the potential income from the property. The appraiser must identify the rental rate prevailing in the market for comparable properties. This represents what a given property should be renting for based on analysis of actual rents for comparable space in the area. This same process of market data collection and analysis is repeated in each subsequent step of the income approach.

Another step in the income approach is capitalization of the income identified. Capitalization is the process of discounting net operating income to a present worth estimate. The capitalization rate at which income expectancies are discounted is influenced by the thinking and actions of investors in the market place. This influence is directly reflected in sales of income producing properties.

Capitalization rates are either determined from actual net operating income and market sales prices or from expectations and behavior of purchases of income producing properties. The information for the development of the latter rate again comes directly from the market itself in the form of analysis of actual data from comparable properties.

As with each of the three approaches to value, data is gathered to turn "unknowns" into "knowns" and an estimate of market value.

COMMENT: ACTUAL OR THEORETICAL RENTALS. The proposed rules will allow the department to use not actual rentals, but economic rent. Economic rent is defined in the proposed rules as "the rent that is justified for the property based on an analysis of comparable rental properties and upon past, present, and projected future rent of the subject property." And the proposed rule goes on to state of "economic rent" that, "It is not necessarily contract rent which is the rent actually paid by a tenant."

To use theoretical rentals, rather than actual rentals adds a further element of speculation (and manipulation) since there will be three unknowns, viz., the value, the rental, and the rate of capitalization.

No one using the sales approach would suggest that anything other than actual sales be used; so why suggest that anything other than actual rentals be used?

The concept of "economic rent" is an apparition appearing only in the dreams of economic theorists. Actual sales and actual rentals can be determined, but to search for the phantom "economic rent" is to invite the wildest kind of manipulation.

Additionally, the text cited by the department, cited

above, states that "economic rent" is "surplus productivity"; see the index. The text defines "surplus productivity" (economic rent) at page 88 as: "Surplus productivity is income remaining after costs of labor, capital, and management have been paid."

"Surplus productivity" is explained at pages 179-80 of the text, where we are again told:

> The principle of surplus productivity states that returns attributable to land are what remain after returns to labor, management, and capital are satisfied.

It is one thing to use actual rental figures but quite another to use "economic rent." (Or "surplus productivity" if you please.)

We would suggest that only actual rentals be used and only after a truly broad and representative data base is developed, and that rental values only be used as a double-check on the values developed by the sales approach.

RESPONSE: The comment is an appropriate one. The department will use actual rent or income from as broad and representative data base as can be developed. When the income approach can be used, the results will be considered along with the results from the other approaches in determining market value.

Market rent is established through the collection and analysis of actual rents for comparable space. The term market rent does not imply a theoretical rent. Market rent analysis results in the determination of the most typical rent a property should bear when interacting in the market place. A typical buyer will consider the market rent, or what the market will bear, when purchasing an income producing property. The principle of surplus productivity seems to be more closely related to land rents. To avoid confusion or concern, the rule is amended to change the "economic rent" references to "market rent".

The concept of market rent in the income approach is comparable to the concept of comparable sales in the sales approach. In both cases, comparable properties aid in determining market value of a property.

4. As a result of the comments received the Department amends Rule II (42.20.108) as follows:

NEW RULE II (42.20.108) INCOME APPROACH (1) remains the same.

(2) The following procedures apply when valuing commercial property using the income approach:

(a) Typical property net income "I" shall reflect ~~economic~~ market rents not investment value income or other rents.

(b) ~~Economic~~ Market rent is the rent that is justified for

the property based on an analysis of comparable rental properties and upon past, present, and projected future rent of the subject property. It is not necessarily contract rent which is the rent actually paid by a tenant.

(c) through (f) remain the same.

(3) and (4) remain the same.

AUTH: 15-1-201, MCA; IMP: 15-7-111, MCA.

5. Therefore, the Department adopts Rule II (42.20.108) with the amendments listed above and adopts Rule I (42.20.107) and Rule III (42.20.109) as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State December 14, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) to ARM 42.22.101 and 42.22.122) relating to Situs Property for) Centrally Assessed Railroads))	NOTICE OF THE AMENDMENT to ARM 42.22.101 and 42.22.122 relating to Situs Property for Centrally Assessed Railroads

TO: All Interested Persons:

1. On October 29, 1992, the Department published notice of the proposed amendment to ARM 42.22.101 and 42.22.122 relating to situs property for centrally assessed railroads at page 2356 of the 1992 Montana Administrative Register, issue no. 20.

2. A Public Hearing was held on November 23, 1992, to consider the proposed amendments. No oral or written comments were received.

3. The Department adopts the amendments as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State December 14, 1992.

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

In the matter of the adoption of [Rule I] 46.12.517 and the amendment of rules 46.12.514, 46.12.515 and 46.12.516 pertaining to kids count and early periodic screening diagnosis and treatment services	))))))	NOTICE OF THE ADOPTION OF [RULE I] 46.12.517 AND THE AMENDMENT OF RULES 46.12.514, 46.12.515 AND 46.12.516 PERTAINING TO KIDS COUNT AND EARLY PERIODIC SCREENING DIAGNOSIS AND TREATMENT SERVICES

TO: All Interested Persons

1. On October 29, 1992, the Department of Social and Rehabilitation Services published notice of the proposed adoption of [Rule I] 46.12.517 and the amendment of rules 46.12.514, 46.12.515 and 46.12.516 pertaining to kids count and early periodic screening diagnosis and treatment services at page 2359 of the 1992 Montana Administrative Register, issue number 20.

2. The Department has amended rules 46.12.514 and 46.12.516 as proposed.

3. The Department has adopted [Rule I] 46.12.517, KIDS COUNT/EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT as proposed.

4. The Department has amended the following rule as proposed with the following changes:

46.12.515 KIDS COUNT/EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), REQUIRED SCREENING AND PREVENTIVE SERVICES Subsections (1) through (2)(g)(ii) remain as proposed.

(iii) Counseling about the systemic use of fluoride must be given to a child when fluoride is not available through the community water or school programs~~; and~~.; AND

~~(iii)~~ (iv) ~~dental screening for children over the age of three may be initiated to a dentist through general public health/school screens or self referral.~~ AFTER ERUPTION OF THE FIRST TOOTH, ANY CHILD MAY BE REFERRED DIRECTLY TO A DENTIST FOR A DENTAL SCREENING THROUGH ANY SCREENING PROGRAM OR BY SELF-REFERRAL.

Subsections (2)(h) through (2)(h)(iii) remain as proposed.

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

5. The Department has thoroughly considered all commentary received:

COMMENT: The Department received a comment requesting clarification of the intent of deleting the old language in ARM 46.12.515(2)(g)(iii).

RESPONSE: The Department intended to alter the language in this section to include updated age guidelines. The section has been amended and renumbered accordingly.

6. These amendments will be effective January 1, 1993.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 14, 1992.

VOLUME NO. 44 OPINION NO. 43

APPROPRIATIONS - Application of statutory appropriation requirement;
APPROPRIATIONS - Fund transfers between accounts within the state treasury;
RETIREMENT SYSTEMS - Fund transfers between accounts within the state treasury;
MONTANA CODE ANNOTATED - Sections 17-2-102, 17-7-502, 19-9-1007(3), 19-9-1011.
MONTANA CONSTITUTION - Article VIII, section 14.

HELD: When a statute authorizes a transfer of monies between accounts within the state treasury, a statutory appropriation is not required under either the Montana Constitution or the Montana statutes.

December 3, 1992

Mark Cress, Acting Administrator
Public Employees' Retirement Division
1712 Ninth Avenue
Helena MT 59620-0131

The Honorable Andrea "Andy" Bennett
State Auditor
Room 270, Mitchell Building
Helena MT 59620-0301

Dear Mr. Cress and Ms. Bennett:

You have requested my opinion concerning the following question:

> Does a fund transfer from a special revenue account to a pension trust fund account require a statutory appropriation?

The Montana Constitution, Article VIII, section 14, requires that "[e]xcept for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof." In 1985, the Legislature enacted section 17-7-502, MCA, which defines a statutory appropriation and also lists the requirements for a valid statutory appropriation. This statute provides that "[a] statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency." § 17-7-502(1), MCA. It also provides that before a statutory appropriation is effective the law containing the statutory appropriation must be listed in section 17-7-502(3), MCA, and must specifically state that a statutory appropriation

is made as provided in section 17-7-502, MCA. § 17-7-502(2)(a) and (b), MCA.

Your question concerns the fund transfer from a special revenue account into a pension trust fund account that occurs as a result of section 19-9-1011, MCA, and whether such a transfer is valid in light of section 17-7-502, MCA. Section 19-9-1011, MCA, specifies the monthly allowance paid to a retired police officer on or after July 1, 1975, or to his surviving spouse or dependent child. Subsection (2) of that section provides:

> At the beginning of each fiscal year, the administrator shall request and the state auditor shall pay to the administrator from the premium tax collected from insurance sold in this state to insure against the risks enumerated in 19-11-512(3) an amount sufficient to fund the allowance adjustment provided for in subsection (1).

This section is not listed in section 17-7-502, MCA, nor does it refer to section 17-7-502, MCA, as required for a valid statutory appropriation. However, the Montana Constitution requires a statutory appropriation only when "money shall be paid out of the treasury." See Mont. Const. Art. VIII, § 14 (emphasis added). Neither the Montana Constitution nor the Montana statutes require such an appropriation when monies are transferred between accounts within the state treasury. See also State ex rel. Gould v. Cooney, 49 St. Rptr. 410, 411, 831 P.2d 593, 595 (1992) ("However, as described in the Attorney General's ballot statement fiscal note, the 'measure redirects coal severance tax from the permanent trust to a treasure state endowment trust.' On its face, this measure is not an appropriation of money").

The state treasury consists of several fund categories and types that are outlined in section 17-2-102, MCA. This fund structure includes three categories: the governmental fund, the proprietary fund, and the fiduciary fund. A special revenue fund is included in the governmental fund category and a pension trust fund is included in the fiduciary fund category. § 17-2-102(1)(a)(ii) and (b)(iii), MCA. Thus, both the special revenue fund and the pension trust fund are part of the state treasury. The Legislature provided for a transfer of funds into the pension trust fund account via section 19-9-1011, MCA, to cure an inequity in the system by ensuring that police officers who retired on or after July 1, 1975, or their surviving spouse or dependent child or children, will receive a cost of living adjustment. See Minutes, House State Administration Committee, February 19, 1985 (consideration of House Bill No. 754). This transfer does not require a statutory appropriation under either the Montana Constitution or the Montana statutes.

I recognize that some of the retirement systems' statutes which transfer monies from one account to another contain the

statutory appropriation language. See, e.g., § 19-9-1007(3), MCA. However, this unnecessary language does not alter the fact that the requirements of section 17-5-502, MCA, do not need to be followed when monies are being transferred between accounts within the state treasury.

THEREFORE, IT IS MY OPINION:

> When a statute authorizes a transfer of monies between accounts within the state treasury, a statutory appropriation is not required under either the Montana Constitution or the Montana statutes.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 44 OPINION NO. 44

JUDGES - Nonretroactivity of amendment to statute regarding judges' retirement system;
RETIREMENT SYSTEMS - Nonretroactivity of amendment to statute regarding judges' retirement system;
STATUTES - Nonretroactivity of amendment to statute regarding judges' retirement system;
STATUTORY CONSTRUCTION - Nonretroactivity of amendment to statute regarding judges' retirement system;
MONTANA CODE ANNOTATED - Sections 1-2-209, 19-5-502;
MONTANA LAWS OF 1989 - Chapter 664.

HELD: The benefit increase provided for in the amendment to section 19-5-502, MCA, which became effective on July 1, 1991, applies prospectively to judges in the Montana judges' retirement system who retire or retired after its effective date. It does not apply retroactively to judges who retired prior to the effective date of the amendment, regardless of whether they retired before or after the date the amendment was enacted.

December 4, 1992

Kelly Jenkins, Counsel
Public Employees' Retirement Board
Department of Administration
1712 Ninth Avenue
Helena MT 59620-0131

Dear Mr. Jenkins:

On behalf of the Public Employees' Retirement Board, you have requested my opinion on the following questions:

1. Does the benefit increase provided for in the amendment to section 19-5-502, MCA, which became effective on July 1, 1991, apply to judges in the Montana judges' retirement system who retired prior to the effective date of the amendment?

2. Is the answer different for judges who retired after the 1989 enactment of the amendment, but before its July 1, 1991 effective date?

Prior to July 1, 1991, section 19-5-502, MCA, provided:

> Upon retirement from service, a member shall receive a service retirement allowance which shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of

> his aggregate contributions at the time of retirement. The state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of 3 1/3% per year of his final salary for the first 15 years' service and 1% per year for each year's service thereafter.

The amendment to section 19-5-502, MCA, which became effective on July 1, 1991, altered only the section's final sentence. That sentence now provides:

> The state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of 3 1/3% per year of his final salary for the first 15 years' service and 1.785% per year for each year's service after 15 years. [Emphasis added.]

Your question concerns whether this amendment, which provides for larger retirement allowances, applies to judges who retired prior to the effective date of the amendment.

Resolution of this issue involves a two-step process. First, it must be determined if the proposed application of the amendment would be retroactive in effect. If not, the application sought is prospective and the inquiry ends. If the application sought would be retroactive, then in order to validate such an application, there must exist a legislative intent that the amendment operate retroactively. Neel v. First Federal Savings and Loan Association, 207 Mont. 376, 383-84, 675 P.2d 96, 100 (1984).

A retroactive law is one which "takes away or impairs vested rights acquired under existing laws or creates a new obligation, imposes a new duty or attaches a new disability in respect to transactions already past." Neel, 207 Mont. at 384, 675 P.2d at 101. Applying amended section 19-5-502, MCA, to judges who retired prior to the effective date of the amendment would constitute a retroactive application of the law because application of the amendment to those judges would impose a new obligation on the retirement fund, an obligation to pay previously retired judges increased benefits based upon a new formula. See Lugar v. New, 418 N.E.2d 248, 254 (Ind. Ct. App. 1981) (the rights and obligations of the parties in the annuity contract the retired employees now hold became vested prior to the amendment. The effect of the amendment as advocated by the retirees would materially alter the contract and impose additional obligations on the pension fund).

Under Montana law, there is a presumption against retroactive application of statutes. Neel, 207 Mont. at 386, 675 P.2d at 102. A statute is presumed to operate prospectively and not retrospectively unless it appears by clear, strong language or by necessary implication that the Legislature intended to give

it retroactive force and effect. § 1-2-209, MCA; Neel, 207 Mont. at 386, 675 P.2d at 102; Sheehan v. Rohrer, 464 A.2d 739, 740 (R.I. 1983). The language of amended section 19-5-502, MCA, does not indicate any legislative intent that it have retroactive effect. The language looks to the future, not to the past. It provides that "[u]pon retirement from service, a member shall receive a service retirement allowance." The language does not refer or apply to judges who have already retired. I find no clear, strong language or necessary implication that the Legislature intended to give the amendment retroactive force and effect. I therefore conclude that it may be applied prospectively only.

The majority of cases concerning the prospective or retrospective application of pension statutes are in accord with my conclusion, holding that amendments increasing pension benefits do not apply retroactively to persons who retired prior to the amendment absent language expressly making the increased benefits applicable to those already retired. E.g., Sheehan, 464 A.2d at 740; Anderson v. City of Seattle, 471 P.2d 87, 88-89 (Wash. 1970); Atchison v. Retirement Board of Police Retirement System of Kansas City, 343 S.W.2d 25, 31 (Mo. 1960); Lugar, 418 N.E.2d at 254.

My conclusion that the Legislature intended the increase in the retirement allowance to have prospective application is further supported by the legislative history of the amendment. Proponents testified before the legislative committees considering the amendment that the prior law penalized judges who worked over 15 years and that the amendment was offered to encourage judges to stay on the bench longer than 15 years. Minutes, Senate Committee on Judiciary, January 31, 1989, Sen. Mazurek (sponsor), at 11; Minutes, House Committee on State Administration, March 8, 1989, Sen. Mazurek (sponsor), at 2-3, Chronister, at 4. The intent of the amendment as presented to the Legislature was clearly to encourage judges to remain on the bench, not to benefit judges who had already retired. Moreover, in response to a question from a member of the House Committee on State Administration, the assistant administrator of the Public Employees' Retirement Division informed the committee that "a judge who retires after the effective date of the bill would have his benefits accrue at the new rate; anyone currently retiring would not have a change in his retirement allowance because of this bill." Minutes, House Committee on State Administration, March 8, 1989, King, at 6. The recorded legislative history contains no evidence of an intention to apply the amendment retrospectively. I therefore conclude that the amendment to section 19-5-502, MCA, may be applied prospectively only.

Your second question concerns whether judges who retired after the 1989 enactment of the amendment, but before its July 1, 1991 effective date, should be treated differently than are judges who retired prior to the 1989 enactment of the statute. It has

also been brought to my attention that, while the effective date of the portion of Senate Bill 241 that amended section 19-5-502, MCA, was expressly delayed until July 1, 1991, other sections of SB 241 that are unrelated to your inquiry became effective on July 1, 1989. See 1989 Mont. Laws, ch. 664, §§ 2, 3, 7. A question has been raised regarding judges who retired after the July 1, 1989, effective date of the portion of the bill which is unrelated to your inquiry, but before the effective date of the amendment to section 19-5-502, MCA. I find no basis for concluding that the timing of the enactment of the amendment, or the effective date of another portion of the bill, in any way alters the effective date of the amendment at issue. It is the general rule in Montana that a statute speaks as of the time it takes effect and not as of the time it was passed. Butler v. Local 2033 American Federation of State, County and Municipal Employees, 186 Mont. 28, 34, 606 P.2d 141, 142 (1980); Peterson v. Livestock Commission, 120 Mont. 140, 146, 181 P.2d 152, 156 (1947). As the Montana Supreme Court has noted, "Legislation is not effective for any purpose until it becomes operative." Id. The sections of SB 241 which amended section 19-5-502, MCA, and which are applicable to this opinion were not operative until July 1, 1991. They therefore had no effect prior to that time. I conclude that all judges who retired prior to the July 1, 1991, effective date of the amendment are subject to the provisions of the law as it existed prior to July 1, 1991.

THEREFORE, IT IS MY OPINION:

> The benefit increase provided for in the amendment to section 19-5-502, MCA, which became effective on July 1, 1991, applies prospectively to judges in the Montana judges' retirement system who retire or retired after its effective date. It does not apply retroactively to judges who retired prior to the effective date of the amendment, regardless of whether they retired before or after the date the amendment was enacted.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

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 September 30, 1992. This table includes those rules adopted during the period September 1, 1992 through December 30, 1992 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 September 30, 1992, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1992 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

2.21.619 and other rules - Holidays, p. 351, 1004
2.21.803 and other rule - Sick Leave Fund, p. 353, 1005
2.21.908 and other rules - Disability and Maternity Leave - Sick Leave - Parental Leave for State Employees, p. 827, 2372
2.21.5007 Reduction in Work Force, p. 719, 2047
(Public Employees' Retirement Board)
2.43.431 Purchase of Military Service in the Sheriffs' Retirement System, p. 466, 1132
2.43.612 and other rules - Certifying Annual Benefit Payments for Distributing Lump Sum Benefit Increases to Montana Resident Retirees, p. 1900
(State Compensation Mutual Insurance Fund)
I and other rules - Construction Industry Premium Credit Program - Classifications and Establishment of Premium Rates, p. 257, 907

AGRICULTURE, Department of, Title 4

4.5.109 and other rule - Reporting Procedures - Field Evaluations - Council Appointments for the Noxious Weed Trust Fund, p. 1440, 1861

STATE AUDITOR, Title 6

I-III Rules Implementing the Second Tier of the Limited Offering Exemption, p. 354, 1006

I-IV Prohibiting Unfair Discrimination for Previously Uninsured Personal Automobile Insurance Applicants, p. 2436

COMMERCE, Department of, Title 8

(Board of Alternative Health Care)

I Direct Entry Midwife Education Standards, p. 2225

I Licensing by Exam for Midwives, p. 1282, 2048

8.4.301 and other rules - Fees - Direct Entry Midwifery Apprenticeship, p. 2106, 2498

(Board of Architects)

8.6.407 Examinations, p. 721, 1468

(Board of Chiropractors)

8.12.601 and other rules - Applications - Examination - Unprofessional Conduct - Definitions, p. 1542, 2131

(Board of Dentistry)

8.16.601 and other rules - Introduction - Dental Auxiliaries - Exams - Licensure by Credentials - Unprofessional Conduct - Qualifying Standards - Dental Auxiliaries - Denturist Interns, p. 2229

8.17.501 Fee Schedule, p. 725, 1469

8.17.702 and other rules - Renewal - Continuing Education - Continuing Education for the Practice of Dentistry, Dental Hygiene and Denturitry, p. 2236

8.17.808 and other rule - Prior Referral for Partial Dentures - Insert Immediate Dentures, p. 723, 1177, 2132

(Board of Hearing Aid Dispensers)

8.20.401 and other rules - Traineeship Requirements - Fees - Record Retention - Unethical Conduct - Complaints - Disciplinary Actions - Testing Procedures - Continuing Educational Requirements - Notification - Definitions - Forms of Bills of Sale - Contracts and Purchase Agreements - Inactive Status, p. 1284

(Board of Horse Racing)

8.22.601 and other rules - General Provisions - Racing Secretary - Veterinarians - General Requirements - General Rules - Duties of the Licensee - Breakage, Minus Pools and Commissions, p. 1077, 1605, 1862

(Board of Landscape Architects)

8.24.409 Fee Schedule, p. 265, 912

(Board of Medical Examiners)

8.28.402 and other rules - Definitions - Applications - Fees and Renewals - Reactivation of Inactive or Inactive Retired Licenses - Verifications - Fees, p. 356, 1607, 2050

8.28.1505 Fees, p. 1784, 2375

(Board of Nursing Home Administrators)
8.34.414 and other rules - Examinations - Definitions - Applications, p. 1903, 2640
(Board of Occupational Therapists)
I Therapeutic Devices, p. 1, 1008
(Board of Optometrists)
I-III Surgery - Aspects of Surgery Prohibited - Anterior Segment Defined - Optometrist's Role in Post-Operative Care, p. 2625
(Board of Outfitters)
8.39.502 and other rules - Licensure Qualifications - Applications - Renewals - Transfer of License, p. 1292, 2376
(Board of Pharmacy)
8.40.401 and other rules - Definitions - Patient Records - Prospective Drug Review - Patient Counseling, p. 2439
8.40.404 and other rules - Fee Schedule - Wholesale Drug Distributors Licensing, p. 1178, 1754, 2135
8.40.404 and other rules - Fees - Pharmacy Technicians, p. 267, 831, 1608
(Board of Plumbers)
8.44.412 Fee Schedule, p. 2482
(Board of Private Security Patrol Officers and Investigators)
8.50.424 and other rules - Temporary Employment without Identification - Type of Sidearm - Regulations of Uniform, p. 178, 1236
(Board of Public Accountants)
8.54.402 and other rules - Examinations - Education Requirements - Fees, p. 1184, 2136
8.54.904 and other rules - Reports - Alternatives and Exemptions - Reviews and Enforcement, p. 1191, 2138
(Board of Real Estate Appraisers)
8.57.401 and other rule - Definitions - Ad Valorem Tax Appraisal Experience, p. 2443
8.57.406 and other rules - Course Requirements - Fees - Complaint Process - Reciprocity - License and Certificate Upgrade and Downgrade, p. 1082, 1612, 2060
(Board of Realty Regulation)
8.58.406A Application for License - Salesperson and Broker, p. 1545, 2274
(Board of Sanitarians)
8.60.406 and other rules - Employment Responsibilities - Registration Certificates - Renewals and Fees - Continuing Education - Sanitarian-In-Training - Environmental Sanitation, p. 360, 1613
(Board of Speech-Language Pathologists and Audiologists)
8.62.402 and other rules - Definitions - Supervisor Responsibility - Schedule of Supervision - Non-Allowable Functions of Speech Aides - Functions of Audiology Aides, p. 1295

EDUCATION, Title 10

(Superintendent of Public Instruction)

10.6.101 and other rules - School Controversy Contested Cases Rules of Procedure, p. 2110

10.10.301 and other rules - Regular and Special Education Tuition, p. 832, 1365

10.10.301 and other rules - Special Accounting Practices, p. 2334, 209, 1238

10.16.1108 and other rules - Special Education Complaint Procedures, p. 1442

10.16.1705 Supervisors of Special Education Teachers, p. 1970, 2550, 1360

10.20.202 Foundation Payments, p. 1447, 2142

10.22.104 Spending and Reserve Limits, p. 1449, 2143

10.41.101 and other rules - Vocational Education General Rules, p. 1795

10.44.201 and other rules - Secondary Vocational Education Program Requirements, p. 1725, 2144

10.44.102 and other rules - Vo-Ed Weighted Cost Funding, p. 970, 1756

(Board of Public Education)

10.51.104 and other rule - Responsibility Assigned by Statute - Board Staff, p. 1451

10.55.601 Accreditation Standards: Procedures, p. 839, 1471

10.55.703 and other rules - Certification and Duties of Building Level Administrators - Administrative Personnel, p. 280, 1137

10.56.101 Student Assessment, p. 975, 1472

10.57.210 Teacher Certification - Health Examination, p. 838, 1473

10.57.405 Class 5 Provisional Certificate, p. 846, 1474

10.58.528 Endorsement of Computer Science Teachers, p. 840, 1475

10.66.201 and other rules - External Diploma Program - Operations - Eligibility - Enrollment - Records - Non-Completion of Program - Annual Report, p. 842, 1476

10.67.102 Withholding of Funds for Non-accredited Status, p. 364, 1142

FAMILY SERVICES, Department of, Title 11

I-X Block Grant Payment of Day Care Benefits, p. 751, 1863

11.2.212 Fair Hearings, p. 739, 1366

11.2.401 and other rule - Local Service Areas - Local Youth Services Advisory Councils, p. 1831, 2501

11.5.607 and other rule - Disclosure of Case Records Containing Reports of Child Abuse or Neglect, p. 1829, 2378

11.5.1002 Day Care Rates, p. 1908, 2379

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

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

Requirements for Subdivision Applications, p. 1556, 2145

16.20.401 and other rules - Plan and Specification Review for Small Water and Sewer Systems and Review Fees - Drilling of Water Wells, p. 505, 2152

16.20.602 and other rules - Surface Water Quality Standards - Nondegradation Policy, p. 501, 2064

16.20.1303 and other rules - Montana Pollutant Discharge Elimination Systems and Pretreatment Rules, p. 471, 1241

16.28.1005 Tuberculosis Control Requirements for Employees of Schools and Day Care Facilities, p. 1303

16.44.102 and other rules - Hazardous Waste - Exportation of Hazardous Waste - HSWA Cluster I Regulations, p. 2330

16.44.102 and other rules - Solid and Hazardous Waste - Wood Preserving Operations, p. 1547, 2162

16.44.102 and other rules - Solid and Hazardous Waste - Boiler and Industrial Furnace (BIF) Regulations, p. 2567, 445, 1911, 2502

16.44.202 and other rules - Hazardous Waste - Definitions Related to Hazardous Waste Regulation - Requirements for Counting Hazardous Wastes - Issuance and Effective Date of Permits, p. 1736, 2164

TRANSPORTATION, Department of, Title 18

18.7.105 and other rule - Encroachment of Mailboxes and Newspaper Delivery Boxes on Highway Rights-of-Way, p. 1198, 1868

18.12.101 and other rules - Transfer of Aeronautics and Board of Aeronautics Rules from Department of Commerce to Department of Transportation, p. 2551

CORRECTIONS AND HUMAN SERVICES, Department of, Title 20

20.3.202 and other rules - Definitions - Organization and Management - Personnel - Staff Development and Certification - Seven Treatment Component Requirements, p. 849, 1477

20.3.413 and other rules - Certification System for Chemical Dependency Personnel, p. 2633

20.7.201 and other rules - Resident Reimbursement at Community Correctional Centers, p. 1454, 2286

20.7.1101 Conditions on Probation and Parole, p. 977, 1482

20.14.302 and other rules - Application for Voluntary Admissions to the Montana State Hospital, p. 979, 1483, 2287

20.14.501 and other rules - Certification of Mental Health Professional Persons, p. 865, 1485

(Board of Pardons)

20.25.101 and other rules - Revision of the Rules of the Board of Pardons, p. 2639

JUSTICE, Department of, Title 23

I Drug Abuse Resistance Education (DARE) Trust Fund, p. 2452
I-II Peace Officer Standards and Training - Public Safety Communications Officers, p. 1086
I-V Investigative Protocol by the Department of Justice in the Performance of its Investigative Responsibilities, p. 2117, 2466
1.3.206 and other rules - Amendment of Model Rules and Forms Attached to the Model Rules, p. 770, 1242
23.7.105 and other rule - Adoption of the Uniform Fire Code, International Conference of Building Officials - 1991 Edition of the UFC Standards, p. 1202, 1759, 2074
23.12.101 and other rules - Department of Justice Standardization of Criminal History Information Collection - Implementation of an Arrest Numbering System, p. 2246
23.14.404 Peace Officers Standards and Training, p. 2450
23.17.314 Physical Performance Requirements for the Basic Course, p. 1457, 2075

LABOR AND INDUSTRY, Department of, Title 24

24.11.475 Unemployment Insurance - Approval of Training, p. 1570, 2076
24.11.813 and other rules - What is Classified as Wages for Purposes of Workers' Compensation and Unemployment Insurance, p. 2344
24.11.814 and other rule - What is Classified as Wages for Purposes of Workers' Compensation and Unemployment Insurance, p. 1577, 1949, 2251
24.16.9007 Prevailing Wage Rates - Building Construction, p. 873, 2165
24.29.706 Exclusions from the Definitions of Employment in the Unemployment Insurance and Workers' Compensation Acts, p. 1573, 1948, 2250

STATE LANDS, Department of, Title 26

I-XI Regulations for Forest Practices in the Streamside Management Zone, p. 2252
26.4.301 and other rules - Regulation of Coal and Uranium Mining and Prospecting, p. 2260

LIVESTOCK, Department of, Title 32

32.2.401 Imposition of a Fee Pertaining to Inspection of Game Farm Animals, p. 2348

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

I-VII Requiring Measuring Devices on Watercourses Identified as Chronically Dewatered, p. 2454
36.12.101 and other rules - Definitions - Forms - Application Special Fees, p. 874, 1615
36.12.1010 and other rule - Definitions - Rejection, Modification or Conditioning Permit Applications in the Musselshell River, p. 519, 1396
(Board of Oil and Gas Conservation)
I-XVII Underground Injection Control Program for Class II Injection Wells Under the Federal Safe Drinking Water Act (SDWA), p. 521, 2171
36.22.302 and other rules - Definitions - Bonding of Oil and Gas Wells - Reports - Well Plugging Requirements - Referral of Administrative Matters, p. 1950

PUBLIC SERVICE REGULATION, Department of, Title 38

I Pictorial Information Requirements, p. 296, 1760
I-II and other rule - Fuel Cost Surcharge - Temporary Rate Reductions - Defining "Miles", All Regarding Motor Carriers, p. 2121, 2647
I-XII and other rules - Establishing Policy Guidelines on Integrated Least Cost Resource Planning for Electric Utilities in Montana - Cogeneration and Small Power Production, p. 1846, 2269
38.5.3345 Change In Customer's Interexchange Carriers - Deferring of Implementation Until January 1, 1993, p. 298, 1400

REVENUE, Department of, Title 42

I Delinquent Tax Accounts and Non-Collection Actions, p. 532, 1243
I Imposition of Generation-Skipping Transfer Tax, p. 535, 1246
I-II Liquor Licenses, p. 778, 2192
I-II and other rules - Liquor Licenses, p. 537, 1244
I-III Valuation for Commercial Property, p. 1955
I-IV Recycled Material as it Applies to Income Tax, p. 783, 2196
I-V Forest Land Property Taxes, p. 1227, 2650
42.2.201 Taxpayer or Licensee Lists, p. 1460, 2077
42.11.211 and other rules - Liquor Division, p. 2492
42.11.211 and other rules - Liquor Division, p. 1998
42.12.122 and other rules - Suitability of a Premises for Liquor Licenses, p. 544, 2187
42.14.102 and other rules - Miscellaneous Taxes, p. 2350
42.14.102 Accommodations Tax, p. 1739, 2393
42.15.112 and other rules - Income Tax Returns and Tax Credits, p. 2005, 2555

42.15.116 Net Operating Loss Computations, p. 2023, 2556
42.15.116 Net Operating Loss Computations, p. 775, 1245
42.15.118 Exempt Retirement Limitation, p. 2353
42.16.104 Interest on Unpaid Tax, p. 2012, 2557
42.17.112 and other rule - Withholding, p. 2014, 2558
42.17.301 and other rules - Estimated Tax Payments, p. 1988
42.18.105 and other rule - Montana Reappraisal Plan, p. 2490
42.18.105 and other rules - Montana Appraisal Plan for Residential and Commercial Property, p. 1221, 2078
42.19.402 and other rules - Property Taxes for Low Income Property - Energy Related Tax Incentives - New Industrial Property, p. 2016, 2559
42.20.454 Market Value for Property, p. 1207, 1763
42.21.106 and other rules - Property Taxes for Market Value of Personal Property, p. 1971, 2394
42.22.101 and other rule - Situs Property for Centrally Assessed Railroads, p. 2356
42.22.103 and other rules - Property Taxes for Centrally Assessed Property, p. 1959, 2560
42.23.211 and other rules - Corporation License Tax Division, p. 1209, 1764
42.24.102 and other rules - Subchapter S, p. 1741, 2395
42.31.110 and other rules - Untaxed Cigarettes Under Tribal Agreements, p. 1994, 2563
42.31.110 and other rules - Untaxed Cigarettes Under Tribal Agreements, p. 1217
42.31.404 Emergency Telephone Service Fee, p. 2010, 2569
42.32.104 and other rules - Resource Indemnity Trust Taxes, p. 1203, 1766
42.38.101 and other rules - Abandoned Property, p. 1744, 2570

SECRETARY OF STATE, Title 44

I-IX Voting by Facsimile Transmission for Members of the United States Military Service, p. 1461, 1870
1.2.419 Filing, Compiling, Printer Pickup and Publication Schedule for the Montana Administrative Register for 1993, p. 2270, 2652

(Commissioner of Political Practices)

44.10.331 Limitations on Receipts for Political Committees to Legislative Candidates, p. 389, 1871

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

I and other rules - Kids Count and Early Periodic Screening Diagnosis and Treatment Services, p. 2359
I Statistical Sampling Audits, p. 2272
I At-Risk Child Care Program, p. 1089, 1767
I-VII and other rules - Targeted Case Management for Children and Adolescents, p. 548, 1248
I-VIII Passport to Health Program, p. 998, 1231, 2288
I-XL Medicaid Home and Community Services for Persons Who are Developmentally Disabled, p. 880, 1490

BOARD APPOINTEES AND VACANCIES

House Bill 424, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of HB 424 was that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments made in November, 1992, are published. Vacancies scheduled to appear from January 1, 1993, through March 31, 1993, are also listed, as are current recent vacancies due to resignations or other reasons.

Individuals interested in serving on a new board should refer to the bill that created the board for details about the number of members to be appointed and qualifications necessary.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of December 4, 1992.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES: NOVEMBER, 1992

Appointee	Appointed by	Succeeds	Appointment/End Date
Microbusiness Finance Program Advisory Council (Commerce)			
Ms. Anita Dupuis	Governor	reappointed	11/6/1992
Pablo			8/21/1993
Qualifications (if required): represents minority populations			
Mr. Harold J. Fraser	Governor	reappointed	11/6/1992
Missoula			8/21/1993
Qualifications (if required): represents banking industry			
Mr. Richard T. Greenshields	Governor	reappointed	11/6/1992
East Glacier Park			8/21/1993
Qualifications (if required): represents cities with population under 15,000			
Mr. Donald C. Ingels	Governor	reappointed	11/6/1992
Miles City			8/21/1993
Qualifications (if required): represents cities with population under 15,000			
Ms. Judith Johnston	Governor	reappointed	11/6/1992
Helena			8/21/1993
Qualifications (if required): represents microbusiness owners			
Ms. Jeanne Moeller	Governor	reappointed	11/6/1992
Billings			8/21/1993
Qualifications (if required): represents cities with population greater than 15,000			
Montana Children's Trust Fund Board (Family Services)			
Ms. Judy Birch	Governor	Koutnik	11/16/1992
Helena			1/1/1995
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES: NOVEMBER, 1992

Appointee	Appointed by	Succeeds	Appointment/End Date
Science and Technology Development Board (Commerce)			
Mr. Robert B. Noble, III	Governor	Wilson	11/16/1992
Great Falls			1/1/1995
Qualifications (if required): public member			
Water and Wastewater Operators' Advisory Council (Health and Environmental Sciences)			
Mr. James L. Worthington	Governor	Smith	11/13/1992
Laurel			10/16/1998
Qualifications (if required): representative of municipality			

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1993 through March 31, 1993

Board/current position holder	Appointed by	Term end
Appellate Defender Commission (Administration)		
Mr. Daniel Donovan, Great Falls	Governor	1/1/1993
Qualifications (if required): public defender		
Ms. Randi Mae Hood, Helena	Governor	1/1/1993
Qualifications (if required): public defender		
Judge Dorothy B. McCarter, Helena	Chief Justice	1/1/1993
Qualifications (if required): district judge		
Board of Aeronautics (Commerce)		
Mr. Joe Attwood, Great Falls	Governor	2/1/1993
Qualifications (if required): representative of Montana Airport Managers		
Mr. Joel Fenger, Chester	Governor	2/1/1993
Qualifications (if required): represents Montana Chamber of Commerce		
Mr. Douglas Freeman, Hardin	Governor	2/1/1993
Qualifications (if required): from Montana League of Cities and Towns/ Atty on Board		
Mr. Howard W. Gipe, Kalispell	Governor	1/2/1993
Qualifications (if required): represents Montana County Commissioners Association		
Mr. Phil "Pete" Pederson, Glasgow	Governor	1/2/1993
Qualifications (if required): represents Montana Pilot's Association		
Board of Architects (Commerce)		
Mr. Keith Eugene Rupert, Billings	Governor	3/27/1993
Qualifications (if required): registered architect		
Board of Chiropractors (Commerce)		
Dr. Christopher Buzan, Missoula	Governor	1/1/1993
Qualifications (if required): chiropractor		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1993 through March 31, 1993

Board/current position holder	Appointed by	Term end
Board of Crime Control (Justice)		
Ms. Diane G. Barz, Billings	Governor	1/2/1993
Qualifications (if required): represents court system		
Mr. Don Bjertness, Billings	Governor	1/2/1993
Qualifications (if required): represents court system		
Dr. Gordon Browder, Missoula	Governor	1/7/1993
Qualifications (if required): none specified		
Mr. Robert Butorovich, Butte	Governor	1/2/1993
Qualifications (if required): none specified		
Mr. John T. Flynn, Townsend	Governor	1/2/1993
Qualifications (if required): represents local law enforcement		
Mr. Rick Later, Dillon	Governor	1/2/1993
Qualifications (if required): represents local law enforcement		
Mr. Rex Manuel, Fairfield	Governor	1/2/1993
Qualifications (if required): none specified		
Mr. Don Peterson, Big Arm	Governor	1/2/1993
Qualifications (if required): represents local government		
Rep. Mary Lou Peterson, Eureka	Governor	1/2/1993
Qualifications (if required): represents state government		
Mr. John Pfaff, Miles City	Governor	1/2/1993
Qualifications (if required): none specified		
Chief Mike Shortell, Havre	Governor	1/2/1993
Qualifications (if required): chief of police		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1993 through March 31, 1993

Board/current position holder	Appointed by	Term end
Board of Crime Control (Justice) cont.		
Mr. Jean A. Turnage, Helena	Governor	1/2/1993
Qualifications (if required): none specified		
Board of Dentistry (Commerce)		
Mr. John T. Noonan, Great Falls	Governor	3/29/1993
Qualifications (if required): licensed dentist		
Board of Health and Environmental Sciences (Health and Environmental Sciences)		
Ms. Verna Green, Helena	Governor	1/1/1993
Qualifications (if required): public member		
Dr. Raymond W. "Rib" Gustafson, Conrad	Governor	1/2/1993
Qualifications (if required): licensed Dr. of Veterinary medicine and engaged in food animal medicine		
Dr. P.L. Kathrein, Great Falls	Governor	1/2/1993
Qualifications (if required): has health qualifications-licensed by board		
Dr. Stuart Reynolds, Havre	Governor	1/2/1993
Qualifications (if required): qualified in Human Health services licensed by board		
Board of Horseracing (Commerce)		
Mr. Gibson G. Goodman, Helena	Governor	1/20/1993
Qualifications (if required): member from 4th District		
Board of Housing (Commerce)		
Mr. Russ Dahl, Glasgow	Governor	1/2/1993
Qualifications (if required): public member		
Mr. Joe Gerbase, Billings	Governor	1/2/1993
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1993 through March 31, 1993

Board/current position holder	Appointed by	Term end
Board of Housing (Commerce) cont.		
Mr. Tom Mather, Great Falls	Governor	1/2/1993
Qualifications (if required): informed & experienced in economics, housing or finance		
Mr. George McCallum, Plains	Governor	1/2/1993
Qualifications (if required): informed & experienced in economics, house or finance		
Board of Investments (Commerce)		
Mr. David E. Aageson, Gilford	Governor	1/2/1993
Qualifications (if required): public member		
Mr. John D. Connors, Whitefish	Governor	1/2/1993
Qualifications (if required): public member		
Mr. James E. Cowan, Seeley Lake	Governor	1/2/1993
Qualifications (if required): member of Teachers' Retirement Board		
Ms. Eleanor D. Pratt, Glasgow	Governor	1/2/1993
Qualifications (if required): representative of Public Employees' Retirement Bd		
Mr. Warren Vaughan, Billings	Governor	1/2/1993
Qualifications (if required): informed & experienced in subject of investments		
Board of Labor Appeals (Labor and Industry)		
Mr. Daniel Johns, Kalispell	Governor	1/2/1993
Qualifications (if required): attorney & not a state government employee		
Mr. Joseph E. Thares, Helena	Governor	1/2/1993
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1993 through March 31, 1993

Board/current position holder	Appointed by	Term end
Board of Livestock (Livestock)		
Mr. Leonard Grove, Judith Gap	Governor	3/1/1993
Qualifications (if required): sheep producer		
Mr. Donald L. Herzog, Rapelje	Governor	3/1/1993
Qualifications (if required): representative of hog producers		
Mr. Jerry E. Leep, Amsterdam	Governor	3/1/1993
Qualifications (if required): dairy producer		
Board of Natural Resources and Conservation (Natural Resources and Conservation)		
Mr. Fred Booth, Highwood	Governor	1/1/1993
Qualifications (if required): informed & experienced in natural resources & conservation		
Ms. Mary Ann Sharon, Dillon	Governor	1/1/1993
Qualifications (if required): attorney		
Board of Oil and Gas Conservation (Natural Resources and Conservation)		
Mr. Scott O. Gage, Cut Bank	Governor	1/2/1993
Qualifications (if required): landowner not associated with oil and gas industry		
Mr. Stanley Lund, Reserve	Governor	1/2/1993
Qualifications (if required): landowner who owns mineral rights		
Mr. Robert Rhodes Jr., Billings	Governor	1/2/1993
Qualifications (if required): member from oil and gas industry		
Mr. David Schaenen, Billings	Governor	2/2/1993
Qualifications (if required): member from oil and gas industry		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1993 through March 31, 1993

Board/current position holder	Appointed by	Term end
Board of Pardons (Institutions)		
Mr. Ian Elliot, Bozeman	Governor	1/2/1993
Qualifications (if required): none specified		
Ms. Kathleen M. Fleury, Helena	Governor	1/1/1993
Qualifications (if required): auxiliary member w/ knowledge of Indian culture & problems		
Board of Personnel Appeals (Labor and Industry)		
Ms. Barbara Kapinos, Bozeman	Governor	1/2/1993
Qualifications (if required): member or employee of an employee organization		
Mr. Bob Poore, Butte	Governor	1/2/1993
Qualifications (if required): attorney & has general labor-management experience		
Ms. Becky B. Schneckloth, Helena	Governor	1/2/1993
Qualifications (if required): member or employee of employee organization		
Board of Public Education (Education)		
Mr. Bill Thomas, Great Falls	Governor	2/1/1993
Qualifications (if required): none specified		
Board of Regents of Higher Education (Education)		
Mr. Thomas F. Topel, Billings	Governor	2/1/1993
Qualifications (if required): Republican residing in Second Congressional District		
Board of Respiratory Care (Commerce)		
Mr. Michael R. Biggins, Missoula	Governor	1/1/1993
Qualifications (if required): respiratory care practitioner		
Mr. Philip J. Grainey, Polson	Governor	1/1/1993
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1993 through March 31, 1993

Board/current position holder	Appointed by	Term end
Board of Respiratory Care (Commerce) cont.		
Ms. Pat Johnson, Helena	Governor	1/1/1993
Qualifications (if required): respiratory care practitioner		
Board of Social Work Examiners and Professional Counselors (Commerce)		
Mr. C. James Armstrong, Fort Harrison	Governor	1/2/1993
Qualifications (if required): licensed professional social worker		
Mr. Ervin Booth, Roundup	Governor	1/2/1993
Qualifications (if required): licensed professional counselor		
Ms. Mary Meis, Shelby	Governor	1/2/1993
Qualifications (if required): licensed social worker		
Mr. Patrick Wolberd, Billings	Governor	1/2/1993
Qualifications (if required): licensed social worker		
Board of Social and Rehabilitation Appeals (Social and Rehabilitation Services)		
Ms. Bonnie Frey, Helena	Governor	1/2/1993
Qualifications (if required): public member		
Ms. Laura Lee, Billings	Governor	1/2/1993
Qualifications (if required): public member & an attorney		
Coal Board (Commerce)		
Mr. Robert E. Carroll, Helena	Governor	1/2/1993
Qualifications (if required): represents 1st Congressional District		
Mr. Alan Evans, Roundup	Governor	1/2/1993
Qualifications (if required): represents 2nd Congressional District and member from coal impacted area		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1993 through March 31, 1993

Board/current position holder	Appointed by	Term end
Coal Board (Commerce) cont.		
Mr. Gerald Feda, Glasgow	Governor	1/2/1993
Qualifications (if required): represents 2nd District		
Mr. Ted Fletcher, Ashland	Governor	1/2/1993
Qualifications (if required): represents 2nd District		
Committee for the Humanities (Governor)		
Mr. Ron Bibler, Great Falls	Governor	1/2/1993
Qualifications (if required): none specified		
Ms. Ann Cogswell, Great Falls	Governor	1/1/1993
Qualifications (if required): public member		
Ms. Jamie Doggett, White Sulphur Springs	Governor	1/2/1993
Qualifications (if required): none specified		
Ms. Lee Rostad, Martinsdale	Governor	1/2/1993
Qualifications (if required): none specified		
Developmental Disabilities Planning and Advisory Council (Social and Rehabilitation Services)		
Ms. Kris Bakula, Helena	Governor	1/1/1993
Qualifications (if required): advocacy representative		
Ms. Jean Bradford, Billings	Governor	1/1/1993
Qualifications (if required): represents Region II		
Mr. H. P. Brown, Great Falls	Governor	1/1/1993
Qualifications (if required): consumer member on the council		
Ms. Joyce Curtis, Choteau	Governor	1/2/1993
Qualifications (if required): represents Region II		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1993 through March 31, 1993

Board/current position holder	Appointed by	Term end
Developmental Disabilities Planning and Advisory Council (Social and Rehabilitation Services) cont.		
Sen. Delwyn "Del" Gage, Cut Bank	Governor	1/2/1993
Qualifications (if required): state senator		
Rep. Betty Lou Kasten, Brockway	Governor	1/2/1993
Qualifications (if required): state representative		
Mr. Ken Kronebusch, Conrad	Governor	1/2/1993
Qualifications (if required): consumer member on the council		
Dr. Richard Offner, Missoula	Governor	1/1/1993
Qualifications (if required): representative of university affiliated program		
Mr. Thomas Price, Eureka	Governor	1/1/1993
Qualifications (if required): represents Region V		
Mr. Robert Runkel, Helena	Governor	1/2/1993
Qualifications (if required): represents Superintendent of Public Instruction		
Mrs. Othelia Schulz, Butte	Governor	1/2/1993
Qualifications (if required): representative of Region IV		
Mr. Don Sekora, Helena	Governor	1/1/1993
Qualifications (if required): representative from Department of Family Services		
Mr. Peyton Terry, Glasgow	Governor	1/2/1993
Qualifications (if required): Represents Region I		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1993 through March 31, 1993

Board/current position holder	Appointed by	Term end
Fish and Game Commission (Fish, Wildlife & Parks)		
Mr. Errol T. Galt, Martinsdale	Governor	1/2/1993
Qualifications (if required): none specified		
Mr. William Glenn Stratton, Billings	Governor	1/2/1993
Qualifications (if required): none specified		
Hard Rock Mining Impact Board (Commerce)		
Mr. David R. Calahan, Missoula	Governor	1/2/1993
Qualifications (if required): Western Congresssional District, represents major financial institution, resides in impacted area		
Mr. James McCauley, Boulder	Governor	1/7/1993
Qualifications (if required): elected County Commissioner, resides in impacted area, Western Congressional District		
Mr. Rick Young, Absarokee	Governor	1/2/1993
Qualifications (if required): public member & resides in Eastern Congressional District		
Highway Commission (Highways)		
Mr. Murray Ehlers, Billings	Governor	1/2/1993
Qualifications (if required): from District #5		
Mr. Dan Huestis, Great Falls	Governor	1/2/1993
Qualifications (if required): from District #3		
Mr. Dennis Shea, Butte	Governor	1/2/1993
Qualifications (if required): from District #2		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1993 through March 31, 1993

Board/current position holder	Appointed by	Term end
Human Rights Commission (Labor and Industry)		
Ms. Sarah Arnott, Utica Qualifications (if required): public member	Governor	1/2/1993
Mr. John B. Kuhr, Havre Qualifications (if required): none specified	Governor	1/2/1993
Mr. Ed Regan, Judith Gap Qualifications (if required): none specified	Governor	1/2/1993
Judicial Nomination Commission (Justice)		
Mr. C. David Bliss, Conrad Qualifications (if required): lay member	Governor	1/1/1993
Local Government Records Advisory Council (Secretary of State)		
Mr. Donald Dooley, Helena Qualifications (if required): none specified	Secretary of State	1/22/1993
Mr. Edward Eaton, Helena Qualifications (if required): none specified	Secretary of State	1/22/1993
Ms. Peggy Lamberson, Great Falls Qualifications (if required): none specified	Secretary of State	1/22/1993
Ms. Kathryn Otto, Helena Qualifications (if required): none specified	Secretary of State	1/22/1993
Ms. Marcia Porter, Missoula Qualifications (if required): none specified	Secretary of State	1/22/1993
Ms. Bonnie Ramey, Boulder Qualifications (if required): none specified	Secretary of State	1/22/1993

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1993 through March 31, 1993

Board/current position holder	Appointed by	Term end
Local Government Records Advisory Council (Secretary of State) cont.		
Ms. Lorraine VanAusdol, Bozeman Qualifications (if required): not specified	Secretary of State	1/22/1993
Medical Care Advisory Council (Social and Rehabilitation Services)		
Dr. Paul S. Donaldson, Helena Qualifications (if required): none specified	Director	1/31/1993
Ms. Nancy Ellery, Helena Qualifications (if required): public member	Director	1/31/1993
Mr. Jon Frantsvog, Deer Lodge Qualifications (if required): none specified	Director	1/31/1993
Mr. Dennis Iverson, Helena Qualifications (if required): none specified	Director	1/31/1993
Dr. R.D. Marks, Missoula Qualifications (if required): none specified	Director	1/31/1993
Mr. Mike Mayer, Missoula Qualifications (if required): none specified	Director	1/31/1993
Mr. Erich Merdinger, Helena Qualifications (if required): none specified	Director	1/31/1993
Dr. Bill Peters, Bozeman Qualifications (if required): none specified	Director	1/31/1993
Mr. Hugh Standley, Missoula Qualifications (if required): none specified	Director	1/31/1993

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1993 through March 31, 1993

Board/current position holder	Appointed by	Term end
Milk Control Board (Commerce)		
Mr. Jesse Russell Gleason, Fairfield	Governor	1/2/1993
Qualifications (if required): from 2nd congressional district		
Ms. Dixie Hertel, Moore	Governor	1/1/1993
Qualifications (if required): from 2nd Congressional District, affiliated with Republican party		
Mr. Milton Swede Olson, Whitewater	Governor	1/1/1993
Qualifications (if required): from 2nd Congressional District, affiliated with Republican party		
Montana Arts Council (Education)		
Mr. Henry Badt, Hamilton	Governor	2/1/1993
Qualifications (if required): public member		
Ms. Shirley L. Hanson, Havre	Governor	2/1/1993
Qualifications (if required): none specified		
Ms. Sonia M. Hoffmann, Helena	Governor	2/1/1993
Qualifications (if required): none specified		
Mr. James D. Kriley, Missoula	Governor	2/1/1993
Qualifications (if required): none specified		
Ms. Susan A. Talbot, Missoula	Governor	2/1/1993
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1993 through March 31, 1993

Board/current position holder	Appointed by	Term end
Montana Health Facility Authority Board (Commerce)		
Mr. John Bartos, Hamilton	Governor	1/1/1993
Qualifications (if required): hospital administrator		
Ms. Sandy Johnson, Fairfield	Governor	1/1/1993
Qualifications (if required): professional with expertise in banking		
Montana State Lottery Commission (Commerce)		
Ms. Becky Erickson, Glasgow	Governor	1/1/1993
Qualifications (if required): public member		
Mr. William J. Ware, Helena	Governor	1/1/1993
Qualifications (if required): 5 yrs experience as law enforcement officer		
Passenger Tramway Advisory Council (Commerce)		
Mrs. Van Kirke Nelson, Kalispell	Governor	1/1/1993
Qualifications (if required): skiing public member		
Mr. Kevin Taylor, Marysville	Governor	1/1/1993
Qualifications (if required): ski area operator		
Science and Technology Development Board (Commerce)		
Ms. Annie M. Bartos, Helena	Governor	1/1/1993
Qualifications (if required): attorney and from public sector		
Mr. Tom Breum, Missoula	Governor	1/1/1993
Qualifications (if required): from private sector		
Dr. John Brower, Butte	Governor	1/1/1993
Qualifications (if required): experience in applied technology devel. & from public sector		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1993 through March 31, 1993

Board/current position holder	Appointed by	Term end
Science and Technology Development Board (Commerce) cont.		
Mr. Ken Thuerbach, Victor	Governor	1/1/1993
Qualifications (if required): from public sector		
Mr. Ray Tilman, Butte	Governor	1/1/1993
Qualifications (if required): from private sector		
Tax Appeals Board (Administration)		
Mr. Patrick E. McKelvey, Helena	Governor	3/1/1993
Qualifications (if required):		
Tourism Advisory Council (Commerce)		
Mr. Tom Johnson, Missoula	Governor	1/1/1993
Qualifications (if required): president of Montana Innkeepers Association		