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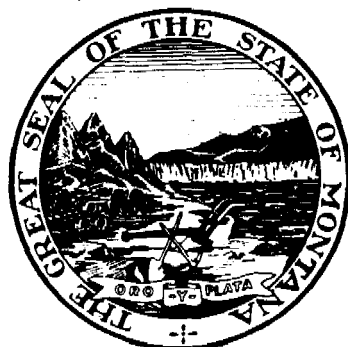
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FEB 28 1992

OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

1992 ISSUE NO. 4
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PAGES 257-350



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MONTANA ADMINISTRATIVE REGISTER

FEB 28 1992

ISSUE NO. 4

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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

In the matter of the proposed)	NOTICE OF PUBLIC HEARING FOR
adoption of new rule I)	PROPOSED ADOPTION OF NEW RULE I
pertaining to the)	PERTAINING TO THE CONSTRUCTION
construction industry premium)	INDUSTRY PREMIUM CREDIT PROGRAM
credit program and amendments)	AND AMENDMENTS OF RULES
of rules pertaining to)	2.55.320, 2.55.321, 2.55.322,
classifications and the)	2.55.324, and 2.55.325
establishment of premium)	
rates)	

TO: All Interested Persons:

1. On March 18, 1992, the State Compensation Mutual Insurance Fund will hold a public hearing at 2:00 p.m., in Room 303 of the State Compensation Mutual Insurance Fund Building, 5 South Last Chance Gulch, Helena, Montana, to consider the adoption of new rule I, and amendments of rules 2.55.320, 2.55.321, 2.55.322, 2.55.324, and 2.55.325 pertaining to the State Compensation Mutual Insurance Fund.

2. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule implements the construction industry premium credit program for the state fund's construction industry policyholders.

3. The proposed new rule is as follows:

RULE I. CONSTRUCTION INDUSTRY PREMIUM CREDIT PROGRAM

(1) Effective July 1, 1992, the state fund shall offer a program which provides a premium credit to insureds in the construction industry who pay their workers wages in excess of the state's average weekly wage.

(2) To become eligible for the program, the insured must meet all of the following criteria:

(a) have an active state fund policy effective on or before August 1 of the year preceding the fiscal year to which the premium credit factor will be applied. The policy must remain active through the remainder of the survey period fiscal year;

(b) maintain accurate individual employee records of the total hours worked and payroll by class code and make those records available for verification and audit;

(i) If a payroll audit period includes all or a portion of a fiscal year to which a construction credit applies, the survey period will also be audited to determine the proper credit for the payroll audit period even though the survey period may be more than 3 years prior.

(ii) If the verification or audit reveals hourly records are not available, the insured is disqualified from the program.

(iii) If the insured fails to make the records available within a reasonable period of time after contact, the insured is disqualified from the program.

(iv) If the application of the insured was originally disapproved based on criteria (2)(d) or (2)(e) but otherwise qualified and a subsequent verification or audit results in adjustments which determine the insured actually met those criteria, a credit will be applied retroactively.

(c) apply for the premium credit program and submit the completed and signed application form on or before November 1 of each year;

(d) have paid an average hourly wage equal to or in excess of the state's average weekly wage as published by the Department of Labor and Industry for the fiscal year of the survey period; and

(e) have at least 50% of the manual premium during the survey period attributable to one or more of the eligible construction class codes.

(3) The following class codes are the construction codes eligible for the construction industry premium credit program:

3365	5040	5146	5215	5403	5479	5538	6005	6229	6319	7601
3724	5057	5160	5221	5437	5480	5551	6017	6233	6325	7605
3726	5059	5183	5222	5443	5491	5645	6018	6251	6365	7855
5020	5069	5188	5223	5445	5506	5651	6045	6252	6400	9521
5022	5086	5190	5348	5462	5507	5703	6204	6260	7536	9552
5037	5102	5213	5402	5474	5508	6003	6217	6306	7538	

(4) The following credit percentages, filed by the National Council on Compensation Insurance (NCCI) with the Montana Insurance Commissioner, are to be applied to the manual premium of the insured's construction class codes during the survey period to determine the premium credit factor for the fiscal year beginning July 1, 1992:

Average Hourly Wage Credit Percentage

\$ 8.39 or less	None
\$ 8.40-\$ 9.39	.25%
\$ 9.40-\$10.39	.50%
\$10.40-\$11.39	.75%
\$11.40-\$12.59	1.00%
\$12.60-\$13.59	6.00%
\$13.60-\$14.59	7.00%
\$14.60-\$15.59	8.00%
\$15.60-\$16.59	9.00%
\$16.60-\$17.59	10.00%
\$17.60-\$18.59	11.00%
\$18.60-\$19.59	12.00%
\$19.60-\$20.59	13.00%
\$20.60 and above	14.00%

(5) Procedures and processes for the premium credit program are:

(a) On or before September 30 of each year, the state fund will provide an application form to all active insureds with a policy effective date on or before August 1 of that year and who are assigned one or more of the construction codes listed in (4).

(b) The insured must sign the application, report total payroll and hours worked by class code (both construction and non-construction) for the survey period and return the form by November 1. Following are the only allowed exceptions to reporting total payroll and/or actual hours worked:

(i) The premium portion of overtime wages must be excluded.

(ii) In the absence of specific hourly records for salaried employees, the insured must report total payroll and an assumed 40 hours per week.

(iii) In the absence of specific hourly records for covered corporate officers, the insured must report total payroll, subject to the officer minimum and maximum payroll reporting requirements in effect for the survey period, and an assumed 40 hours per week.

(iv) If specific hourly records are maintained for covered corporate officers, the insured must report those hours and total payroll, subject to the officer minimum and maximum payroll reporting requirements in effect for the survey period.

(v) Covered owners must report an assumed 40 hours per week and payroll (wages) equal to their elected coverage level in effect for the survey period.

(c) The state fund will determine whether the insured meets the criteria, approve or disapprove the application and notify the insured of approval or disapproval.

(i) If approved, the notice will include the premium credit factor which will become effective on July 1 of the next fiscal year.

(ii) If disapproved the notice will specify the reason(s) for disapproval.

(d) The state fund will calculate the premium credit factor of each insured based on the information reported for the survey period. The state fund reserves the right to verify or audit the records of the insured before and/or after the premium credit factor is calculated to verify the information submitted and to adjust the premium credit factor accordingly if necessary.

(e) The premium credit factor will be calculated as follows using the information for the survey period provided by the insured or as adjusted by verification or audit:

(i) The average hourly wage will be calculated for each of the construction and non-construction class codes by dividing payroll by the number of hours worked.

(ii) The manual premium will be calculated for each construction and non-construction class code by multiplying the payroll, divided by 100, times the manual class code rate in effect for the insured during the survey period.

(iii) The manual premium for each construction class code will be multiplied by the appropriate credit percentage to determine the construction credit dollar amount and these amounts will be totaled for the survey period.

(iv) The total of the construction credit dollar amounts will be divided by total manual premium and the result will be subtracted from 1.0000 to arrive at the premium credit factor.

(f) The state fund will include the insured's premium credit factor on the payroll and premium reports for the following fiscal year.

(g) An insured's premium credit factor will terminate on June 30 of the fiscal year to which it applies or upon cancellation of the policy, whichever occurs first.

(6) The following definitions apply to the construction industry premium credit program:

(a) Application - A form supplied by the state fund to all insureds with an active policy on or before August 1 of the applicable survey period year and assigned one or more of the construction class codes.

(b) Credit Percentage - The percentage shown in (4) for each average hourly wage. This percentage will be applied to the manual premium of each construction class code during the survey period.

(c) Fiscal Year - A one year period beginning on July 1 and ending on the following June 30.

(d) Premium Credit Factor - The factor as calculated in (5)(e). This factor will be shown on Payroll and Premium Reports for the following fiscal year and will be applied to the insured's total standard premium for that fiscal year.

(e) Survey Period - The third calendar quarter, July 1 through September 30, preceding the fiscal year to which the premium credit factor will apply.

AUTH: Sec. 39-171-2315 and 2316, MCA; IMP: Sec. 39-71-2211, 39-71-2311 and 39-71-2316 MCA.

Rationale: The Legislature in 1991 passed a bill effective July 1, 1992, codified at 39-71-2211, MCA, which requires insurers to offer a method of computing premiums which credits those policyholders whose employees are high wage earners. The State Fund was given the option of adopting NCCI's program or developing their own. The rule is the State Fund's program for implementing the credit scale plan.

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

2.55.320 METHOD FOR ASSIGNMENT OF CLASSIFICATIONS OF EMPLOYMENTS (1) - (2) remain the same.

(3) The state fund staff shall assign its insureds to classifications contained in the classifications section of the state compensation mutual insurance fund policy services

underwriting manual issued July 1, 1991 through June 30, 1992, and will use the classifications section issued July 1, 1992 from that date forward. Those That sections of the manual ~~is~~ are hereby incorporated by reference. Copies of the classification section of the manual may be obtained from the Underwriting Department of the State Fund, 5 South Last Chance Gulch, Helena, Montana 59601.

AUTH: Sec. 39-71-2315 and 2316 MCA; IMP, Sec. 39-71-2311 and 39-71-2316 MCA.

Rationale: This amendment is being proposed at this time as additions and modifications are continually introduced by the NCCI and as the rules incorporate the classification section of the Underwriting Manual by reference, we also update our rule when that section is amended.

2.55.321 CALCULATION OF EXPERIENCE RATES (1) For each classification, the state fund staff in consultation with the actuary and with approval of the board shall calculate an experience rate based upon the experience of the class. The experience rate must be based on a review of the total incurred losses and total payroll in the classification during up to 10 full fiscal years immediately preceding the date of review, adjusted by an expense ratio. "Fiscal year" means the year beginning July 1. The experience rate is derived by dividing the weighted selected liabilities by the weighted selected payroll which has been multiplied by a loss development factor. The number of selected payroll and liability years and the weight of each shall be approved by the board.

(2) Remains the same.

AUTH: Sec. 39-71-2315 and 2316 MCA; IMP, Sec. 39-71-2311 and 2316 MCA.

Rationale: A recent court decision has clarified that the Board of Directors of the State Fund must make final ratemaking decisions and Sec. 39-71-2316(6) requires that the process, procedure, formulas and factors for premium rates for classifications be in administrative rules. This amendment clarifies that the Board is the body making the decisions in implementing the ratemaking process, and clarifies that the Board is selecting the number of payroll and liability years to be used and the weight to be applied to each year in the ratemaking process.

2.55.322 CALCULATION OF CREDIBILITY WEIGHTED RATE (1) If the payroll, premium, and losses in a particular classification are not sufficient to provide a meaningful and credible statistical basis for estimating an equitable distribution of costs, the state fund staff in consultation with the actuary and with approval of the board shall determine a credibility weighted rate for each classification. The credibility factors, approved by the board, may range from .01 through 1.00 and are based on graduated increments of

expected liability. The expected liability is weighted selected payroll times the current manual rate times an expected loss rate recommended by the actuary and approved by the board. The experience rate times a credibility factor, plus the current manual rate times one minus the NCCI factor plus the existing NCCI rate times the NCCI factor all times one minus the credibility factor yields the credibility weighted rate for a class code. The board will approve the NCCI factor. The state fund staff with approval of the board may substitute for an existing NCCI rate if another source of rates in use in Montana is more appropriate.

(2) The credibility weighted rate is assigned to a classification in order to modify the experience rate. It is based on the actuary's recommendation of the reliability and predictability of the classification's statistical data. In determining the credibility weighted rates, the state fund actuary shall consider the experience rate, existing manual rate, existing NCCI rate or substitute rate, payroll, premium, and losses.

AUTH: Sec. 39-71-2315 and 2316 MCA; IMP, Sec. 39-71-2311 and 39-71-2316 MCA.

Rationale: A recent court decision has clarified that the Board of Directors of the State Fund must make final ratemaking decisions and Sec. 39-71-2316(6) requires that the process, procedure, formulas and factors for premium rates for classifications be in administrative rules. These amendments clarify that the Board is the body making the decisions in implementing the ratemaking process.

The language regarding the use of the NCCI factor in the ratemaking process is being added to more fully implement the requirement in 39-71-2316 that the State Fund use NCCI rates as a basis for setting their own rates. The final change in (1) regarding the substitution of another source of rates for an existing NCCI rate would be utilized when rates in use by insurers other than the State Fund are more appropriate for a state fund risk and the amendment gives the board the discretion to make that decision in order to keep the state fund neither more nor less than self-supporting.

2.55.324. PREMIUM RATESETTING (1) The board shall approve the overall rate adjustment that provides an amount sufficient to meet the aggregate revenue projections. Except as provided in subsections (2) through ~~(5)~~(6), to establish a premium rate for a classification for the following fiscal year, the state fund staff in consultation with the actuary and with approval of the board shall apply the overall rate adjustment factor to each credibility weighted rate in an amount sufficient to ensure that the aggregate of the premium for all classifications provides an amount sufficient to meet the actuarially determined aggregate revenue projections.

(2) Remains the same.

(3) The state fund staff in consultation with the actuary and with approval of the board may set a classification's rate at a percentage of the National Council on Compensation Insurance (NCCI) rate based on a factor recommended by the state fund actuary of not more than 80% 150% of the NCCI rate or not less than 50% of the NCCI rate or at the rate of an equivalent class code recommended by NCCI or the state fund actuary. These situations include, but are not limited to:

(a) - (d) remain the same.

(4) The state fund, subject to the approval of the state fund board of directors, may limit the percentage amount of premium rate increases or decreases if the limitation is applied to all classifications and the state fund is maintained on an actuarially sound basis. In establishing a limitation, the state fund may consider such factors as market share, catastrophic or unusual losses, rate stabilization, and economic impact on the state fund. The state fund board of directors will approve the limit any one large loss will impact the experience of a classification.

(5) Remains the same.

(6) For each construction class code defined in new rule I, the state fund staff in consultation with the actuary and with approval of the board will calculate and apply an additional factor to offset the anticipated credits in new rule I. These factors will be applied to each construction class code after the credibility weighted rate and before the overall rate adjustment.

AUTH: Sec. 39-71-2315 and 2316 MCA; IMP, Sec. 39-71-2211, 39-71-2311 and 2316 MCA.

Rationale: (3) It has been noted through analysis that as the carrier of last resort, the state fund covers employers with poor loss experience. Therefore a rate above the NCCI rate may be appropriate.

(4) The State Fund is required by Sec. 39-71-2316(6) to put the ratemaking process in rule form. This amendment will clarify that this procedure is part of the ratemaking process and further implements the court decision to clarify that the board is making the decisions in the ratemaking process.

(6) The amendment is necessary to keep the construction industry program self-sustaining as required by 39-71-2211. The amendment is in conjunction with the proposed new Rule I in implementing 39-71-2211 in the ratemaking process.

2.55.325 VARIABLE PRICING WITHIN A CLASSIFICATION

(1) - (4) remain the same.

(5) Notwithstanding paragraphs (1) through (4), the state fund may at any time place an insured in a pricing category with a higher premium rate based upon consideration of other relevant factors including, but not limited to:

(a) Remains the same.

(b) an insured's prior policy was cancelled for nonsubmission of payroll reports, nonpayment of premium, failure to pay increased deposit when required, failure to reimburse the state fund for expended medical deductible amounts, failure to cooperate in an audit or material misrepresentation;

(c) - (h) remain the same.

AUTH: Sec. 39-71-2315 and 2316 MCA; IMP, Sec. 39-71-2311 and 2316 MCA.

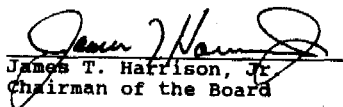
Rationale: The medical deductible plan has been adopted in rule form previously, however, failure to reimburse the state fund for medical deductible amounts needs to also be included as a reason for placing an insured in a pricing tier with a higher rate.

6. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to state fund attorney Nancy Butler, Legal Department, State Compensation Mutual Insurance Fund, 5 South Last Chance Gulch, Helena, Montana 59604-4759, no later than March 26, 1992.

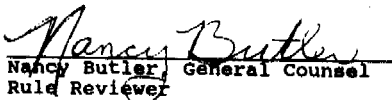
7. The State Fund Legal and Underwriting Departments have been designated to preside over and conduct the hearing.



Dal Smilie, Chief Legal Counsel
Rule Reviewer



James T. Harrison, Jr.
Chairman of the Board



Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State February 18, 1992.

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

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

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 28, 1992, the Board of Landscape Architects proposes to amend the above-stated rule.
2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined)

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

(3) ~~Landscape Architects Fee Schedule~~ The fees for landscape architects are as follows:

(a) Application (not included in examination fees)	\$ 75.00	125.00
(b) Certificate (license)	35.00	50.00
(c) Examination (full)	380.00	
(d) (c) Examination - Section Test 1	45.00	15.00
Section Test 2	45.00	20.00
Section Test 3	120.00	65.00
Section Test 4	90.00	60.00
Section Test 5	80.00	
Test 6		70.00
Test 7		35.00

~~(e) UNE Re-evaluation per sheet for performance problems~~ 35.00

(f) through (h) will remain the same but will be renumbered (d) through (f).

~~(i) (g) Reexamination registration fee~~ 25.00 50.00

(4) will remain the same."

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

REASON: The amendments are being proposed to set fees commensurate with program area costs as provided for in section 37-1-134, MCA. The test fees to be charged are set by the Council of Landscape Architectural Registration Boards (CLARB) who supply the exam. The re-evaluation fee is being deleted since the examinee now pays it directly to CLARB and the board no longer performs exam re-evaluations.

3. Interested persons may present their data, views or arguments concerning the proposed amendments in writing to the Board of Landscape Architects, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than March 26, 1992.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Landscape Architects, Lower Level, Arcade Building, Helena, Montana 59620-0407, no later than March 26, 1992.

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 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 5 based on the 54 licensees in Montana.

BOARD OF LANDSCAPE ARCHITECTS
BRUCE LUTZ, CHAIRMAN

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 18, 1992.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF 8.40.404 FEE SCHEDULE AND
to fees and the proposed) PROPOSED ADOPTION OF NEW
adoption of a new rule per-) RULES PERTAINING TO, PHARMACY
taining to pharmacy techni-) TECHNICIANS
cians)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On March 28, 1992, the Board of Pharmacy proposes to amend and adopt the above-stated rules.
2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.40.404 FEE SCHEDULE (1) through (12) will remain the same.

(13) Utilization plan approval fee 150.00

(14) Annual utilization plan renewal fee 75.00"

Auth: Sec. 37-7-201, MCA; IMP Sec. 37-7-309, MCA

3. The proposed new rules will read as follows:

"I USE OF PHARMACY TECHNICIAN (1) A pharmacy technician may not perform any task or function allowed under any statutory section or rule unless a registered pharmacist is physically present within the pharmacy.

(2) A pharmacy technician may not perform tasks which require the exercise of the pharmacist's independent professional judgement, including but not limited to patient counseling, oral prescription orders, and substitution of generic drugs.

(3) No medication may be released to a patient without verification by a registered pharmacist of the tasks or functions which were performed by the pharmacy technician in relation to that medication."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-101, 37-7-307, MCA

"II QUALIFICATIONS OF PHARMACY TECHNICIAN (1) A person who acts as a pharmacy technician under the provisions of a utilization plan must be:

(a) at least 18 years old; and

(b) a high school graduate or have attained an equivalent degree."

Auth: Sec. 37-7-201, MCA; IMP Sec. 37-7-307, MCA

"III APPLICATION FOR APPROVAL OF UTILIZATION PLAN

(1) A registered pharmacist in good standing in the state of Montana may apply to the board for permission to use

the services of a pharmacy technician by submitting to the board:

- (a) an application on a form prescribed by the board;
- (b) a summary of the utilization plan, to include information showing compliance with all requirements set forth in these rules, plus all other requirements of sections 37-7-307, 37-7-308, and 37-7-309, MCA, and this chapter;
- (c) the appropriate fee for initial approval of the plan;
- (d) any changes in the utilization plan, including technician training, must be re-submitted to the board for approval before implementation of the changes by the supervising pharmacist.

(2) Any number of registered pharmacists employed in the same pharmacy may sign as supervising pharmacist of a pharmacy technician, in compliance with the one-to-one ratio as set forth in these rules, on a single utilization plan submitted for approval to the board by that pharmacy."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-308, 37-7-309, MCA

"IV TASKS AND FUNCTIONS OF PHARMACY TECHNICIAN (1) A pharmacy technician may perform the following tasks or functions under the provisions of an approved utilization plan:

- (a) remove a stock bottle from the shelf and count and pour the contents into a suitable container. The stock bottle must be quarantined together with the prescription until the supervising pharmacist performs a final check and maintains appropriate records;
- (b) type a prescription label and affix it to a prescription bottle, with a final check and any patient counseling to be performed by a pharmacist;
- (c) enter prescription information into a data processing system under the supervision of a pharmacist who must be able to check all entries;
- (d) maintain prescription records, including prescription numbers, refill data, and other information on the patient profile system;
- (e) prepackage unit dose drugs for internal distribution. These prepackage unit dose drugs must be quarantined together with bulk containers until the supervising pharmacist performs a final check and maintains appropriate records.
- (f) sell nonprescription drugs in their original containers without engaging in patient counseling, and refer all questions to the registered pharmacist;
- (g) receive and check in pharmaceuticals, including controlled substances, if the pharmacy technician initials and dates all invoices with the actual date the drugs were received;

(h) participate in the biennial inventory of controlled substances, providing a pharmacist supervises the process. The supervising pharmacist must co-sign the inventory with the pharmacy technician.

(i) compound parenteral solutions, irrigations, and other sterile solutions if a mechanism for verification by the supervising pharmacist exists that includes checking of: the original order; additives; dosages; and clarity of IV solution, where appropriate.

(2) The board reserves the right to evaluate and amend the functions allowable by a pharmacy technician, with final determination in the sole discretion of the board."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-307, MCA

"V. PHARMACY TECHNICIAN TRAINING (1) A supervising pharmacist shall:

(a) provide initial training to a pharmacy technician that relates to the tasks the technician may perform pursuant to the supervising pharmacist's utilization plan;

(b) assure the continuing competence of a pharmacist technician through inservice education and training to supplement the initial training; and

(c) prepare and maintain a written record of initial and inservice training for on-site inspection by the board. The record shall contain the following information:

(i) name and signature of the person receiving the training;

(ii) dates of the training;

(iii) general description of the topics covered; and

(iv) name and signature of the person supervising the training.

(2) An initial training program must include on-the-job practical training and didactic education that is commensurate with the tasks and functions a pharmacy technician may perform. A supervising pharmacist must obtain the board's approval of an initial training program prior to undertaking the training of a pharmacy technician pursuant to the program.

(3) Verification of completion of training, by test or otherwise, shall be recorded by the supervising pharmacist, and shall be available for inspection with the training record."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-307, MCA

"VI. CONTENTS OF TRAINING COURSE (1) A pharmacy technician training course must include instruction in:

(a) orientation to the practice of pharmacy;

(b) pharmacy terminology and basic pharmaceuticals;

(c) state and federal laws relating to the practice of pharmacy;

(d) pharmaceutical calculations;

(e) processing prescription drug orders;

(f) telephone procedure and communication;

(g) pharmaceutical compounding;

- (h) intravenous admixture, if applicable;
 - (i) use of pharmacy computer systems, if applicable."
- Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-307, MCA

"VII INSPECTION OF UTILIZATION PLAN AND TRAINING RECORD

(1) The supervising pharmacist shall make the utilization plan and training record available for inspection by the board during the normal business hours of the pharmacy."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-308, MCA

"VIII RATIO OF PHARMACY TECHNICIANS TO SUPERVISING

PHARMACISTS (1) Except as provided in subsection (2), a registered pharmacist in good standing may supervise the services of only one technician at any time.

(2) A registered pharmacist in good standing may supervise the services of two technicians at the same time if both are performing any of the following procedures:

- (a) intravenous admixture and other sterile product preparation;
- (b) filling of unit dose cassettes;
- (c) prepackaging; or
- (d) bulk compounding."

Auth: Sec. 37-7-201, MCA; IMP, Sec. 37-7-307, 37-7-308, 37-7-309, MCA

REASON: These rules are being proposed to implement Sec. 37-7-307, 37-7-308, and 37-7-309, MCA, mandated by the 1991 Legislature.

4. Interested persons may present their data, views or arguments concerning the proposed adoption in writing to the Board of Pharmacy, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than March 26, 1992.

5. If a person who is directly affected by the proposed adoption or 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 Pharmacy, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than March 26, 1992.

6. If the Board receives requests for a public hearing on the proposed adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed adoption or 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. Ten percent of those

persons directly affected has been determined to be 114 based on the 1137 licensees in Montana.

BOARD OF PHARMACY
ROBERT KELLEY, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 18, 1992.

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
adoption of new rules pertain-	)	PROPOSED ADOPTION OF NEW RULES
ing to respiratory care prac-	)	PERTAINING TO THE LICENSURE OF
titioners	)	RESPIRATORY CARE PRACTITIONERS

TO: All Interested Persons:

1. On April 3, 1992, at 10:00 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 adoption of new rules pertaining to the licensure of respiratory care practitioners.

2. The proposed new rules will read as follows:

"I. BOARD ORGANIZATION (1) The board of respiratory care practitioners (hereinafter 'board') hereby adopts and incorporates the organizational rules of the department of commerce as listed in chapter 1 of this title."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 2-4-201, MCA

"II. PROCEDURAL RULES (1) The board hereby adopts and incorporates the procedural rules of the department of commerce as listed in chapter 2 of this title."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 2-4-201, MCA

"III. PUBLIC PARTICIPATION RULES (1) The board hereby adopts and incorporates the public participation rules of the department of commerce as listed in chapter 2 of this title."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 2-4-201, MCA

"IV. BOARD FILING PRACTICE (1) All submissions to the board, or requests of the board, must be made in writing to the office of the board before they will be acted on by the board. Correspondence from the board of any specific nature shall be signed by the president. Routine matters will be handled by the administrative assistant."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 2-4-201, MCA

"V. DEFINITIONS (1) The board defines "emergency procedures" as that term is used in section 37-28-102, MCA, to include, but not be limited to, known and physician-approved protocols relating to life-sustaining procedures in emergency situations in the absence of the immediate direction of a physician. Emergency respiratory care may also be provided during transportation of a patient and under any circumstances where an epidemic, public disaster or other emergency necessitates respiratory care.

(2) The board defines "unqualified practice" as that term is set forth in section 37-28-101, MCA, as follows:

- (a) performing acts beyond the authorized scope of respiratory care for which the individual is licensed,
 - (b) assuming duties and responsibilities within the practice of respiratory care without adequate preparation or when competency has not been maintained,
 - (c) performing new respiratory care techniques or procedures without proper education and practice;
 - (d) assigning functions of licensed respiratory care practice to persons not qualified to perform such functions or delegating respiratory care responsibilities to others contrary to Title 37, chapter 28, MCA, and the regulations enacted pursuant thereto.
- (3) The board defines "clinical supervision" as the availability of a licensed respiratory care practitioner for purposes of immediate communication and consultation with the student or temporary permit holder during the course of treatment by the student or temporary permit holder.
- (a) Clinical supervision is required for temporary permit holders and students."

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

"VI. APPLICATION FOR LICENSURE (1) Any person seeking a license shall complete and submit to the board of respiratory care practitioners an application form which is provided by the board office, accompanied by the application fee and required documents.

(2) If the application is incomplete the application will be returned to the applicant.

(3) Each application shall be accompanied by:

- (a) the required fee;
- (b) a photocopy of the applicant's national board of respiratory care certificate which certifies successful completion of the entry level certification examination, or registry examination administered by the national board of respiratory care; or
- (c) a completed request for verification of credentials form from the national board of respiratory care.

(4) Date of high school graduation, or GED or its equivalent.

(5) Name and location of school of respiratory care, in compliance with 37-28-202(1)(ii), MCA.

(6) Name and address of employer with dates of employment verified.

(7) The board may request such additional information or clarification of information provided in the application as it deems reasonably necessary."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 37-28-201, 37-28-202, MCA

"VII. EXAMINATION (1) The board determines that a scaled score of 75 on a 0 to 99 scale on the certification examination for entry level respiratory therapy practitioners examination, utilized by the national board of respiratory care, shall be adopted by reference as the accepted testing requirement for licensing in this state."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 37-28-104, 37-28-202, MCA

"VIII TEMPORARY PERMIT (1) Any person seeking a temporary permit shall complete and submit to the board of respiratory care practitioners an application form which is provided by the board office.

(2) If the application for temporary permit is not completed in accordance with the instructions, the application will be returned to the applicant.

(3) Each application shall be accompanied by:

(a) a check or money order in the amount required,

(b) a letter explaining the reason temporary permit is being sought, i.e.:

(i) awaiting documentation, reciprocity proof from other states; or

(ii) awaiting exam results from the NBRC; or

(iii) student respiratory care practitioner who expects to graduate within 30 calendar days of application date for temporary permit.

(4) The application fee for temporary permit may be applied to the application fee for a licensed respiratory care practitioner if that temporary permit holder applies for the licensed respiratory care practitioners license within 6 months from issuance of the temporary permit.

(5) The board may request such additional information or clarification of information provided in the application as it deems reasonably necessary.

(6) Temporary permit holders must practice only under clinical supervision."

Auth: Sec. 37-28-104; IMP, Sec. 37-28-206, MCA

"IX RECIPROCITY (1) The board will grant a reciprocal license to applicants whose requirements in that state, territory or country, are not less than the requirements for licensure in the state of Montana.

(2) Applications will be reviewed on a case by case basis."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 37-28-202, MCA

"X PROCEDURES FOR RENEWAL (1) Renewal date is one year after date of issuance of license and annually thereafter.

(2) Renewal forms will be provided by the board.

(a) The renewal notice will be mailed 6-8 weeks in advance of the date of renewal.

(b) A second notice will be mailed by certified mail 60 days after the renewal date.

(c) The 90th day after the renewal date a certified letter will be mailed to lapsed licensees advising them that their licenses are expired because of a failure to renew.

(3) Documentation of having complied with the continuing education requirement is due at the time of renewal.

(4) A license to practice respiratory care lapses and is invalid 90 days after the expiration date printed on the face of the license, pursuant to section 37-28-203, MCA.

(5) An applicant whose license has expired may apply for relicensure between 91 days and 3 years following the renewal date by providing documents of having acquired 20 continuing education units, as defined by rule, within 24 calendar months preceding re-application and by paying the application fee of \$60.00.

(6) After 3 years following the relicensure date the applicant must reapply according to 37-1-141, MCA, and in addition will re-test under procedures promulgated by the national board of respiratory care with the passing score set by the national board of respiratory care."

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

"XI CONTINUING EDUCATION REQUIREMENTS (1) Upon annual renewal of licensure, each respiratory care practitioner must document 15 continuing education units in the preceding 12 months. One continuing education unit is equivalent to 50 minutes in length.

(2) It is the sole responsibility of each licensee to meet the continuing education requirement, and to provide documentation of his/her compliance with his/her renewal form. The board will not permit excess units to be carried over from one licensing renewal year to the next.

(3) A licensee who fails to obtain a sufficient number of continuing education units may satisfy the requirement by taking and passing the national board of respiratory care certified respiratory therapy technician examination or the registered respiratory therapy examination during the preceding 12 months."

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

"XII TRADITIONAL EDUCATION BY SPONSORED ORGANIZATIONS

(1) Continuing education programs sponsored by the following organizations are presumed to be pre-approved by the board:

(a) Institutions approved by the joint review committee for respiratory therapy education and courses approved by the American association for respiratory care, the Montana society for respiratory care, the American thoracic societies, the American college of cardiology, the American college of chest physicians, the American nurses association, the national society for cardiopulmonary technologists, the American lung association, the American lung association of Montana, the Montana heart association, the Montana and American medical association, the Montana hospital association, respiratory care journal (American association of respiratory care sponsored).

(b) Approved activities in this category include:

(i) seminars;
(ii) workshops;
(iii) conferences;
(iv) in-service program; and
(v) correspondence courses accompanied by a study guide, syllabus, bibliography and/or examination.

(2) All units in this section must be documented on the renewal form."

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

"XIII. NON-ACCREDITED SPONSORSHIPS (1) Non-accredited sponsorships should be submitted to the Montana board of respiratory care practitioners for its consideration for approval so that the board members may review the proposal. (2) Activities allowed in this category could include correspondence course materials which are germane to the profession and are usually accompanied by a study guide, syllabus, bibliography and/or examination; activities sponsored by allied health professionals relevant to the needs of the individual professional which do not meet new rule XII definition.

(3) Credit units are based on report and relevance statement by the applicant and one credit unit will be assigned for each 50 minutes involved. The report must include a statement of the activity, its title, name of instructor, and his or her credentials.

(4) All units in this section must be documented on the renewal form."

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

"XIV. TEACHING (1) No more than 10 credit units may be applied in this category based on a report by the licensee, with credit units being awarded on a two-to-one ratio. For a one hour presentation, the presenter will be awarded two credit units.

(2) This includes teaching addressed to allied health professionals. Any given activity may be submitted for continuing education credit units only once.

(3) Credit units spent in preparation, review and/or evaluation of activities which are different from the applicant's usual and customary professional employment, and which are not requested as credits in any other category may be submitted under this section.

(4) Individuals employed by universities and colleges may not claim credit units in this section for conducting courses that are a part of the regular course offering of those institutions, even if those courses are offered in the evening or summer, or for individuals enrolled in a degree program or vocational, technical schools."

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

"XV. PAPERS, PUBLICATIONS, JOURNALS, EXHIBITS, VIDEOTAPES, INDEPENDENT STUDY AND COLLEGE COURSE WORK (1) A maximum of 10 credit units not sponsored by organizations listed by new rule XII, may be applied in this section based upon report by the licensee.

(2) An outline of the objectives or a reference citation for the paper, journal, videotape, etc., germane to the profession must be submitted to the board.

(3) Any given activity can be used for continuing education credit units only once.

(4) College course work, which is germane to the profession and contributes directly to the professional competence of the respiratory care practitioner, may be claimed in this section in the following manner:

(a) One (1) semester hour is equal to 1.5 continuing education units;

(b) One (1) quarter hour is equal to 1 continuing education unit."

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

"XVI CONTINUING EDUCATION REPORTS (1) The board, in its discretion, reserves the right to deny credit for continuing education units derived from new rules XIII, XIV and XV that did not receive prior approval of the board."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 37-28-202, MCA

"XVII WAIVER OF CONTINUING EDUCATION REQUIREMENT (1) In the event of hardship such as a disabling illness or other personal emergency which substantially interferes with a licensee's ability to meet the minimum requirement of 15 credit units prior to the deadline, the board may approve a waiver of the continuing education requirement. There must be a written request submitted to the board by the renewal date. Such request for approval for a waiver shall be in writing and shall set forth the reasons why the licensee was unable to earn the minimum number of credit units required prior to the deadline."

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

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

(a) Application fee	\$20.00
(b) License fee	40.00
(c) Renewal fee	40.00
(d) Temporary permit	60.00."

Auth: Sec. 37-1-134, 37-28-104, MCA; IMP, Sec. 37-28-202, 37-28-203, MCA

"XIX COMPLAINT PROCESS (1) Complaints or charges shall be investigated by the department at the request of the board on the board's own motion, or upon receipt of a written complaint filed with the board."

Auth: Sec. 37-1-101, 37-1-121, 37-1-131; IMP, Sec. 37-1-101, 37-1-121, 37-1-131, MCA

"XX UNPROFESSIONAL CONDUCT In order to implement the provisions of section 37-28-210, MCA, the board defines "unprofessional conduct" as follows:

- (1) Unqualified practice, as defined by new rule V;
- (2) Abandoning, neglecting, or otherwise physically or emotionally abusing a patient requiring respiratory care.
- (3) Intentionally or negligently causing physical or emotional injury or abuse to a client or patient or sexual contact with a client or patient in a clinical setting.
- (4) Failing to safeguard the patient's dignity and right to privacy in providing services.
- (5) Violating the confidentiality of information or knowledge concerning the patient.

(6) Inaccurately recording, falsifying or otherwise altering any record of a patient or health care provider.

(7) Exercising undue influence on the patient including the promotion or sale of services, goods, appliances or drugs in such a manner as to exploit the patient for financial gain of the respiratory care practitioner, or of a third party.

(8) Assisting any individual to violate any law or regulation guiding the actions of a respiratory care practitioner, including aiding and abetting any person not duly licensed as a respiratory care practitioner to represent himself as one or allowing another person to use one's respiratory care practitioner's license.

(9) Impersonating another licensed respiratory care practitioner or impersonating any applicant or acting as a proxy for any applicant in any respiratory care licensing examination.

(10) Advertising in any manner which is false, fraudulent, or misleading.

(11) Failure to cooperate with an investigation authorized by the board by refusing to respond to a complaint filed by a patient or refusing to comply with an administrative subpoena obtained by the board.

(12) Practicing respiratory care when unfit to perform procedures and make decisions in accordance with the license held because of physical, psychological or mental impediment.

(13) Practicing respiratory care when physical or mental ability to practice is impaired by alcohol or drugs.

(14) Diverting drugs, supplies or property of patients or health care providers.

(15) Possessing, obtaining, furnishing or administering prescription drugs to any person, including oneself, except as directed by a person authorized by law to prescribe drugs.

(16) Failure to disclose existence of a suspension, revocation, or restriction of the individual's license to practice respiratory care by competent authority in any state, federal or foreign jurisdiction, or failure to show cause why such suspension, revocation, or restriction should not be used to prohibit licensing in the state of Montana.

(17) Conviction of any misdemeanor or felony relating to the licensee's professional practice. For the purposes of this subsection, conviction includes, but is not limited to, those instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section denies rights guaranteed under section 37-1-201, MCA.

(18) Engaging in a clinical setting or in the course of treatment involving contact with the public while suffering from a contagious or infectious disease involving serious risk to public health without informing patient or exercising precautions to prevent transmission.

(19) Promotion for personal gain of any unnecessary or ineffective drug, device, treatment, procedure or service.

(20) Use of any other respiratory care practice that fails to conform to accepted standards and that reflects adversely on the health and welfare of the public."

Auth: Sec. 37-28-104; IMP, Sec. 37-28-210, MCA

"XXI REINSTATEMENT (1) A person whose license has been suspended or revoked under 37-28-210, MCA, may petition the board for reinstatement after an interval as determined by the board in the order."

Auth: Sec. 37-28-104, MCA; IMP, Sec. 37-28-210, MCA

"XXII BOARD SEAL (1) The seal of the board shall bear the words 'State of Montana Board of Respiratory Care Practitioners.'"

Auth: Sec. 37-28-103, 37-28-104; IMP, Sec. 37-28-103, MCA

REASON: These rules are being proposed to implement Chapter 28, Title 37 mandated by the 1991 Montana Legislature.

3. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Respiratory Care Practitioners, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, 59620-0407, no later than March 28, 1992; however, the Board advises that it will not entertain any comments received after 5:00 p.m., April 1, 1992.

4. Robert P. Verdon, attorney, has been designated to preside over and conduct the hearing.

BOARD OF RESPIRATORY CARE
PRACTITIONERS
RICH LUNDY, CHAIRMAN

BY: Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE
Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State February 18, 1992.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of amendment)
of Accreditation Standards)
requirements of)
Administrators)
ADMINISTRATORS AND 10.55.705
ADMINISTRATIVE PERSONNEL

TO: All Interested Persons

1. On March 19, 1992 at 9:30 a.m., or as soon thereafter as it may be heard, a public hearing will be held in the Lewis and Clark County Library 120 S. Last Chance Gulch, Helena Montana, in the matter of the proposal to amend ARM 10.55.703 Certification and Duties of Building level Administrators, 10.55.704 and 10.55.705 Administrative Personnel.

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

10.55.703 CERTIFICATION AND DUTIES OF BUILDING LEVEL ADMINISTRATOR: PRINCIPAL (1) (a) will remain the same.

(b) Except as provided in Rule 10.55.704 (2) (a) (ii), (b) (ii), and (c) (iii), have a certificate endorsed at the level assigned as an administrator;

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

AUTH: Sec. 20-2-114 IMP: Sec. 20-2-121

10.55.704 ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF DISTRICT SUPERINTENDENTS (1) will remain the same.

(2) Beginning 7/1/92 district superintendents shall be assigned as follows: ~~a--combined--elementary-high--school district--with--fewer--than--4--FTE--certified--staff--shall--employ--a--district--superintendent--on--a--full--or--part-time--basis--An independent--elementary--district--with--fewer--than--4--FTE certified--staff--may--employ--a--district--superintendent--on--a--full or--part-time--basis--or--they--shall--use--the--county superintendent--~~

(a) A combined elementary-high school district:

(i) A full or part-time district superintendent shall be employed for a district with fewer than 5 FTE certified staff.

(ii) A half-time (.5 FTE) district superintendent shall be employed for a district with 5-29 FTE certified staff. A full-time individual may fulfill the positions of half-time district superintendent and half-time building administrator(s).

(iii) A full-time (1 FTE) district superintendent shall be employed for a district with 30 or more FTE certified staff, or 551 or more students.

(b) A county high school district:

(i) A full-time or part-time district superintendent shall be employed for a district with fewer than 5 FTE certified staff.

(ii) A half-time (.5 FTE) district superintendent shall be employed for a district with 5-29 FTE certified staff. A full-time individual may fulfill the positions of half-time district superintendent and half-time building administrator(s).

(iii) A full-time (1 FTE) district superintendent shall be employed for a district with 30 or more FTE certified staff, or 551 or more students.

(c) An independent elementary school district:

(i) A full or part-time district superintendent shall be employed for a district with fewer than 5 FTE certified staff or the district shall utilize the services of the county superintendent to fulfill the duties of district superintendent as outlined in Rule 10.55.702.

(ii) A half-time (.5 FTE) district superintendent and a full or half-time building administrator as defined in Rule 10.55.705(2) shall be employed at a district with 5-17 FTE certified staff or the district shall utilize the services of the county superintendent to fulfill the services of the district superintendent as outlined in Rule 10.55.702.

(iii) A half-time (.5 FTE) district superintendent shall be employed for a district with 18-29 FTE certified staff. A full-time individual may fulfill the positions of half-time district superintendent and half-time building administrator(s).

(iv) A full-time (1 FTE) district superintendent shall be employed for a district with 30 or more FTE certified staff, or 551 or more students.

(3) A combined elementary-high school district or a county high school district or an independent elementary school district with 100 or more FTE certified staff shall employ a full-time curriculum coordinator to supervise the educational program. The curriculum coordinator must hold a Class 3 administrative certificate. An independent elementary district with 4-17 FTE certified staff shall use the county

~~superintendent or employ at least a half-time district superintendent in addition to the building administrator. If properly certified, one full-time individual may fulfill the position of district superintendent and building principal.~~

(4) Any district may seek alternatives to the above requirements including sharing a district superintendent (see "Alternative Standard", ARM 10.55.604). Where a district superintendent is shared, one superintendent may serve all the cooperating districts. If a district superintendent is shared within the requirements of Rule 10.55.704, an alternative standard need not be applied for by the district. A combined elementary-high-school-district or a county-high-school district with 4-17 FTE-certified staff shall employ at least a half-time district superintendent in addition to the building administrator. If properly certified, one full-time individual may fulfill the position of district superintendent and building principal.

(5) through (8) will remain the same.

AUTH: Sec. 20-2-114 IMP: Sec. 20-2-121

10.55.705 ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF BUILDING ADMINISTRATORS (1) (a) will remain the same.

(b) ~~In any school district with a combined elementary and secondary combined elementary and high school district with an enrollment of more than 50 but less than 150 students and where the superintendent serves as both the elementary and secondary principal, the superintendent shall devote half-time in each school to administration and supervision.~~

(c) In any combined elementary and high school district where the combined elementary-and-secondary enrollment exceeds 150 but is less than 300, the superintendent may serve as half-time elementary or high school principal. The district must employ a half-time elementary or high school principal for the other unit in the district. The superintendent shall devote half-time as principal of the assigned school, or, in any combined elementary and high school district where the combined elementary-and-secondary enrollment exceeds 150 but is less than 300, and where the superintendent serves as both elementary and secondary principal, the district must employ a half-time administrative--assistant assistant administrator. The administrative--assistant shall be defined as person who holds a bachelor's degree and presents evidence of working toward the administrator's certificate on a planned program. If an administrative--assistant is employed in lieu of a principal, the assistant must have already completed at least 15 credits in an approved administrative program leading to

~~the principal endorsement. The district must insure that the administrative assistant intern shows continued progress in that roll within a three year period. The assistant administrator shall be defined as a person who holds a bachelor's degree, a current Montana teaching certificate and~~

~~(i) be enrolled in a planned program leading to administrative endorsement with an accredited college or university, or~~

~~(ii) presents evidence of enrollment in an administrative or supervisory intern program approved by the Board of Public Education, or~~

~~(iii) currently holds an appropriate administrative or supervisory endorsement. Assistant administrators lacking an appropriate administrative or supervisory endorsement may observe and supervise but shall not formally evaluate certified staff except as authorized by the Board of Public Education.~~

(d) through (g) will remain the same.

(2) Beginning 7/1/92 school districts shall employ appropriately endorsed administrators, except as provided in ARM 10.55.704 (2) (a) (ii), (b) (ii), and (c) (iii), as follows:

(a) A district superintendent or supervising teacher and county superintendent for schools with less than 4 5 FTE certified staff.

(b) .5 FTE for schools with 4-17 5-17 FTE certified staff.

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

(3) Beginning 7/1/92 in schools with more than one building administrator, the first administrator shall be appropriately endorsed as principal. The additional administrators may shall have either administrative endorsement(s) at the appropriate level(s) and in the area(s) that accurately reflect their supervisory responsibilities. For example, a school may assign a properly certified and endorsed curriculum coordinators to supervise the appropriate instructional programs.

(4) Beginning 7/1/92 in schools with at least three FTE building administrators who are administratively endorsed, release time of department coordinators or chairpersons may be counted toward additional building administration. Department coordinators or chairpersons counted toward building administration may observe and supervise but shall not supervise or formally evaluate classroom instruction.

AUTH: Sec. 20-2-114 IMP: Sec. 20-2-121

3. The Board is proposing the amendment to the rules because this change is needed to clarify the original intent of the rule with regard to appropriately endorsed building administrators in small schools (those employing between 4 and 17 FTE). The change would clarify that a single administrator with either a secondary or elementary endorsement may serve as an administrator in small schools with both elementary and secondary students. The change is also needed to correct an error in the present rule which leaves a gap between schools with 4-11 FTE and 18-29 FTE.

4. Interested parties may submit their data, views or arguments either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Bill Thomas, Chairperson of the Board of Public Education, 33 S. Last Chance Gulch, Helena, Montana 59620, no later than March 27, 1992.

5. Bill Thomas, Chairperson to the Board of Public Education, 33 S. Last Chance Gulch, Helena, Montana, has been designated to preside over and conduct the hearings.

Bill Thomas

BILL THOMAS, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

Wayne S. Buchanan
BY:

Certified to the Secretary of State, February 18, 1992.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the) NOTICE OF THE PROPOSED AMENDMENT
proposed amendment of ARM) OF ARM 11.14.324 AND 11.14.418
11.14.324 and 11.14.418) PERTAINING TO OVERLAP DAY CARE
pertaining to overlap day) REQUIREMENTS
care requirements)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On April 16, 1992, the Department of Family Services proposes to amend ARM 11.14.324 and 11.14.418 pertaining to overlap day care.

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

11.14.324 GROUP DAY CARE HOMES. SPECIAL PROGRAM REQUIREMENTS Subsection (1) remains the same.

(2) Overlap care.

(a) There may be situations, such as before and after school, when the number of children in care over two (2) years of age would exceed for a short period of time the licensed or registered capacity.

(i) Overlap of children under two (2) years of age shall not be permitted.

(ii) Overlap care shall not exceed ~~two (2)~~ three (3) hours total in any child-care day.

(iii) Group day care homes that are registered to care for nine (9) or fewer children may care for up to three (3) additional children during the approved overlap time. Group day care homes that are registered to care for ten (10) or more children may care for up to four (4) additional children during the approved overlap time.

(iv) Day care facilities providing two shifts of 24-hour care may be granted ~~two~~ three (3) hours of overlap care for each twelve hours of continuous care upon the written approval of the ~~social worker supervisor or family resource specialist or other department licensing representative.~~

(b) If a provider wishes to provide overlap care, the provider shall file with the department a written plan for this care stating the specific hours in which the overlap will occur and the arrangements for providing adequate activities and supervision to all children during this period.

(c) Overlap care shall not occur until the provider has received written approval of this plan from the department.

AUTH: Section 52-2-704, MCA. IMP: Section 52-2-702, MCA.

11.14.418 FAMILY DAY CARE HOMES. OVERLAP CARE

(1) There may be situations, such as before and after school, when the number of children in care over two (2) years of age would exceed for a short period of time the registered

capacity.

(a) Overlap of children under two (2) years of age shall not be permitted.

(b) Overlap care shall not exceed ~~two (2)~~ three (3) hours total in any child-care day.

(c) Family day care homes that are registered to care for four (4) or fewer children may care for one (1) additional child during the approved overlap time. Family day care homes that are registered to care for five (5) or six (6) children may care for two (2) additional children during the approved overlap time.

(d) Day care facilities providing ~~two shifts of 24~~ 12-hour care may be granted ~~two (2)~~ three (3) hours of overlap for each twelve continuous hours of care upon the written approval of the ~~community social worker supervisor or family resource specialist or other department licensing representative.~~

(2) If a provider wishes to provide overlap care, the provider shall file a written plan for this care stating the specific hours in which the overlap will occur and the arrangements for providing adequate activities and supervision to all children during this period.

(3) Overlap care shall not occur until the provider has received written approval of this plan from the department.

AUTH: Section 52-2-704, MCA. IMP: Section 52-2-702, MCA.

3. Under the current rule, providers are allowed additional children in the facility for a maximum of two hours each day. Many providers and parents have complained that two hours is an insufficient amount of time to provide care to children before and after school. The proposed amendment expands this period of time to three hours. This amendment also updates position titles and clarifies that what has been referred to as "24-hour care" is more clearly referred to as two shifts of 12-hour care.

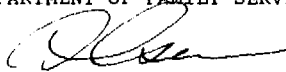
Section 52-2-702, MCA, authorizes the department to draft rules consistent with the Montana Child Care Act (Act). The Act charges the department with the goal of improving the availability of child care while attempting to ensure safe child care programs. Allowing for a greater period of overlap care is reasonably necessary to fulfilling these statutory mandates.

4. Interested persons may submit their data, views or arguments to the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than March 27, 1992.

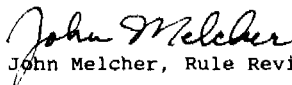
5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than March 27, 1992.

6. If the Department of Family Services receives requests for a public hearing on the proposed rules from either 10% 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 are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

DEPARTMENT OF FAMILY SERVICES



Tom Olsen, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, February 18, 1992.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED AMENDMENT
of Rule 11.16.170) OF RULE 11.16.170 PERTAINING
pertaining to adult foster) TO ADULT FOSTER CARE
care)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On March 28, 1992, the Department of Family Services proposes to amend ARM 11.16.170, pertaining to adult foster care.

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

11.16.170 ADULT FOSTER HOME, PROHIBITED PRACTICES

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

(3) A foster home shall not provide day care services to adults or children, except that a foster home under this rule may provide day care services to children while foster care residents are present in the home for a maximum period of three hours per any twenty four hour period, if special approval is given by the regional administrator. The regional administrator's decision on granting or denying special approval must be based on the following:

(a) facts demonstrating the ability (or, in cases where special approval is denied, the inability) of the operator to provide for the needs of both the child day care enrollees and the foster care residents during the three hour period of time that this rule allows for the presence of both foster care residents and child day care enrollees;

(b) facts bearing on whether there is beneficial social interaction between the foster care residents and the day care enrollees; and

(c) any other relevant facts and/or circumstances bearing on the best interests of the foster care residents and the day care enrollees.

AUTH: Sec. 52-5-304, MCA. IMP: Sec. 52-5-303; 52-5-304, MCA.

3. The department amended ARM 11.16.170 on December 27, 1990, by adding language specifically prohibiting day care in adult foster homes. Since that time, the department has reconsidered the imposition of an absolute prohibition, and through this amendment the department intends to allow for limited provision of child day care services where special approval is obtained. Special approval depends on a case by case inquiry using the criteria set out in the proposed additional language. The exception is further limited to ensure that child day care enrollees and adult foster care residents are together in the home for no more than three hours in any given day. This amendment is

reasonably necessary to effectuate the purpose of Section 52-5-303, MCA, which commands the department to obtain, license, and supervise adult foster care homes. This amendment is also reasonably necessary to effectuate the purpose of Section 52-5-304, MCA, which commands the department to implement standards for the safety and comfort of residents in adult foster care homes. Allowing day care assists in obtaining adult foster care homes, while requiring special approval and limiting the hours of day care ensures the safety and comfort of residents. In addition, residents may enjoy interacting with day care enrollees. This amendment is not intended to address specific health and safety requirements of day care facilities. Any adult foster home providing child day care under the exception in the proposed amendment must also meet applicable child day care registration or licensing requirements.

4. Interested persons may submit their data, views or arguments to the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than March 27, 1992.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than March 27, 1992.

6. If the Department of Family Services receives requests for a public hearing on the proposed amendment from either 10% 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 are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

DEPARTMENT OF FAMILY SERVICES



Tom Olsen, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, February 18, 1992.

**BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA**

In the matter of the)	NOTICE OF PUBLIC HEARING ON THE
proposed adoption of)	PROPOSED ADOPTION OF RULES
rules relating to)	RELATING TO SHOOTING RANGE
shooting range)	DEVELOPMENT GRANTS
development grants)	

To: All interested persons

1. On March 18, 1992, at 7 p.m., Department of Fish, Wildlife and Park's Commission Room, Helena, Montana, a public hearing will be held to consider the adoption of rules pertaining to shooting range development grants.

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

RULE I. ELIGIBILITY (1) Any political subdivision of the state, a school district, a public or private shooting/sportsman's organization (with identifiable officers) or a government agency may apply for shooting range development grant. Only applications submitted by an eligible sponsor will be considered.

(AUTH: 87-1-201, MCA, HB 100 L. 1991; IMP: 87-1-201, MCA, HB 100 L. 1991)

RULE II. APPLYING FOR GRANTS (1) To qualify for a shooting range development grant, an applicant must prepare and submit a completed application to the department's conservation education division. For questions, assistance and submission, call or write:

Montana Department of Fish, Wildlife & Parks
Conservation Education Division
Shooting Range Assistance Program
1420 East Sixth Avenue
Helena, Montana 59620
Ph. (406) 444-4046

(2) Applications are reviewed throughout the two-year period (ending June 30, 1993) as long as funds are available. (AUTH: 87-1-201, MCA, HB 100 L. 1991; IMP: 87-1-201, MCA, HB 100 L. 1991)

RULE III. REQUIRED INFORMATION FOR GRANT APPLICATIONS

(1) The following information must accompany a grant request. Incomplete applications will result in delays or the denial of the application.

(a) Each shooting range grant application must contain a comprehensive description of the proposed project. The information presented in the description will be used by the department to review, evaluate and prioritize applications.

The description must provide:

(i) a detailed design description; including construction plans for storage and maintenance structures. A description of activities and design features that conserve water, energy, soils, vegetation, sanitation or other natural resources. The description should cover all major aspects of the proposed project.

(ii) a description of the need for the proposed project. Also, describe how the project will enhance safety, hunter education and public use in the area.

(iii) a list of the work needed to be completed, including a schedule showing completion dates for project segments and cost estimates for each segment.

(iv) one copy of the site plan for the proposed project, including plans for access by persons with disabilities and plans for use by a variety of users. The site plan must show:

- (A) location of proposed work/facilities;
- (B) existing development/facilities;
- (C) north orientation arrow;
- (D) access route(s) to the project;
- (E) safety zones and impact areas;
- (F) how berms, canopies or impact areas ensure safety.
- (V) current photographs of the proposed project area
- (vi) a map showing the location of the proposed project.

The map must show surrounding land ownership, surrounding development, and the location of the proposed project, including road access. For the land that adjoins the project land, identify the historical and current use(s).

(b) If the applicant controls the land where the project is proposed, the applicant must submit satisfactory documentation of a long-term lease, easement or ownership. Long-term leases are those with terms of 20 years or more. Leases with terms of less than 20 years may qualify only under special circumstances. If the applicant does not control the land, the applicant must provide written documentation from the landowner that the property may be used as a shooting range.

(c) Documentation that the applicant offered the public an opportunity to participate in the planning process for the project. At a minimum, the applicant must advertise and hold a public meeting to receive comment before submitting an application. Proof that this meeting was held must be included with the application.

(d) The applicant must submit a commitment to allow future public and hunter education use of the project facilities and documentation of past public and hunter education program use. Hunter/bowhunter education classes must be allowed to use the facility upon request at no charge. The public may be charged a reasonable fee to use the facilities. The department will determine whether the proposed fee is reasonable.

(e) The applicant must submit a commitment to allow the public to use the range facility, including times when club members are using the range. The project may be closed to the

public for club competition events.

(f) The applicant must submit a resolution that approves the application for financial assistance, the project proposal, the commitment to allow public and hunter education program use of the facilities, and certifies the applicant's ability to provide matching funds.

(g) The applicant must submit assurances that the applicant will comply with state and federal regulations as specified by the department.

(AUTH & IMP: 87-1-201, MCA: HB 100, L. 1991)

RULE IV. REIMBURSEMENT OF COSTS (1) Reimbursement requests will be based upon actual costs, verified by receipts.

(AUTH: 87-1-201, MCA, HB 100 L. 1991; IMP: 87-1-201, MCA, HB 100 L. 1991)

RULE V. LAND ACQUISITION (1) Shooting range grant funds may be used to purchase public or private land for the purpose of a shooting range. Fee title to the land must be held by the applicant. The applicant must provide evidence that other adequate land is not available for lease. A copy of the purchase agreement, an appraisal from a qualified appraiser and a commitment for title insurance must be submitted at the time of application. If funding is provided for the purchase of land, the department must be listed on the title for a period of 10 years. Funding assistance will be provided at a maximum 70 percent state, 30 percent applicant matching basis, not to exceed \$25,000 for the state share.

(AUTH: 87-1-201, MCA, HB 100 L. 1991; IMP: 87-1-201, MCA, HB 100 L. 1991)

RULE VI. PROGRESS REPORTS AND INSPECTIONS (1) If funding is provided, quarterly progress reports must be submitted to the department. The department may conduct periodic on-site inspections.

(2) All work and billing must be completed by June 10, 1993, and a report submitted to the department.

(3) Photographs showing completed work must accompany other submitted documentation.

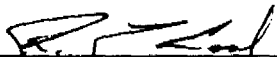
(4) Project sites will also be subject to inspection by the department for 10 years following receipt of a shooting range development grant.

(AUTH: 87-1-201, MCA, HB 100 L. 1991; IMP: 87-1-201, MCA, HB 100 L. 1991)

3. Rationale and reason for proposed rule: In the general appropriations bill the 1991 legislature ordered expenditure of funds for shooting ranges.

4. Interested parties may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Tim Pool, Conservation Education Division, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana, 59620, no later than 5:00 p.m. on March 26, 1992.

5. Eileen Shore, Legal Unit, Department of Fish, Wildlife and Parks has been designated to preside over the hearing.


K. L. Cool, Director
Department of Fish,
Wildlife, and Parks


Rule Reviewer

Certified to the Secretary of State February 18, 1992

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

In the Matter of Proposed	)	NOTICE OF PROPOSED AMENDMENT
Amendment of Rule 38.5.2405	)	OF RULE ON AVERAGE COSTS PER
Regarding Average Costs and	)	UTILITY LINE OR POLE TO
Permissible Utility Charges	)	ACCOMMODATE MOVEMENT OF
to Accommodate House and	)	STRUCTURES
Structure Moves.	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On March 30, 1992 the Department of Public Service Regulation proposes to adopt the following amendment to rule 38.5.2405.

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

38.5.2405 AVERAGE COSTS (1) Average costs for time and materials expended are determined to be:

(a) ~~\$40~~ 49 for each telephone wire moved; except that the cost shall decrease ~~\$7~~ 8.60 for each successive wire moved on the same pole or support structure. (Example: The average cost of moving four wires located on the same support structure is ~~\$140~~ 144.40.),

(b) ~~\$70~~ 85.75 for each telephone wire cut. For purposes of this provision only, a telephone wire is deemed to consist of 25 pairs; for each increment of 25 pairs, or part thereof, contained within the same cable, the average cost shall increase by ~~\$3.75~~ 4.60. (Example: The average cost of cutting a 75 pair telephone cable is ~~\$77.50~~ 94.95.),

(c) ~~\$40~~ 41.50 for each electric wire moved; except that the cost shall decrease ~~\$7~~ 7.25 for each successive wire moved on the same pole or support structure,

(d) ~~\$52~~ 54.00 for each electric wire cut, and

(e) ~~\$147~~ 152.60 for each telephone or electric pole moved. AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-4-603, MCA

3. Rationale: The Department of Public Service Regulation (Department) proposes adopting this amendment to comply with Rule 38.5.2407. Pursuant to 38.5.2407, the public utilities are required to file in each odd-numbered year all average costs as set forth in Rule 38.5.2405, as well as a summary report of dates and locations of movements of structures requiring incurrence of these costs. The Department then is required to publish a notice of proposed rulemaking to establish average costs set forth in 38.5.2405, once these average costs are determined upon the biennial review.

The costs to be determined are for time and materials expended to move or cut utility wires and/or to move telephone or electric poles. The Department derives these average costs from the data submitted by the public utilities pursuant to these rules. According to § 69-4-603(2), MCA, the utilities

share equally in the necessary and reasonable expenses of raising or cutting the wires or removing/moving the poles with the owner of the structure to be moved, if the move interferes with the electric or telephone wires or poles. The rates fixed and determined by the Public Service Commission (Commission) shall be based upon the average costs.

The Commission has determined the average costs for line moves upon submissions from the following public utilities: Montana Power Company, Montana-Dakota Utilities Co., Pacific Power and Light, U.S. West Communications and PTI. AT&T and Washington Water Power had no structure moves in 1989-1990 requiring incurrence of expenses to cut or move wires or poles. The Commission received no responses from the other public utilities.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Denise Peterson, Public Service Commission, 1701 Prospect Avenue, Helena, Montana 59620-2601 no later than March 30, 1992.


5. If a person directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, he/she must make written request for a public hearing and submit this request along with any written comments to Denise Peterson, Public Service Commission, 1701 Prospect Avenue, Helena, Montana 59620-2601, no later than March 30, 1992.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons 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 3 persons/affected entities based upon 23 house and structure movers with PSC certificates of authority and 7 public utilities subject to line/power pole expenses upon a structure move.

7. 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.


HOWARD L. ELLIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE FEBRUARY 18, 1992.


Reviewed By

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

In the Matter of Proposed	)	NOTICE OF PROPOSED ADOPTION
Adoption of a Rule Regarding	)	OF A RULE REGARDING
Pictorial Information Require-	)	PICTORIAL INFORMATION
ments.	)	REQUIREMENTS
)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On March 30, 1992 the Department of Public Service Regulation proposes to adopt a rule regarding pictorial information requirements.

2. The rule proposed to be adopted provides as follows.

RULE 1. STATEMENT O -- PICTORIAL EXHIBIT REQUIREMENTS

(1) Applicant utilities that submit information in accordance with the minimum rate case filing standards for electric, gas and private water utilities shall provide pictorial exhibits, as defined below, for those items which affect the unallocated utility results of operations and the allocated costs of service/rate designs pertaining to Montana operations. Applicant utilities may provide such other pictorial exhibits as will further understanding of their filing.

(a) Each adjustment that is identified in textual or numerical information and causes a ratemaking change to the actual unallocated test year results of operations shall be presented in a flow chart or decision matrix that depicts each factor that caused the adjustment.

(b) The total revenue requirements requested, both interim and permanent, shall be depicted in a pie chart that shows actual unallocated test year results of operations and each adjustment referred to in subsection (a).

(c) Each account, excluding subaccounts, which affects the adjusted unallocated results of operations shall be shown in an individual bar chart. Each bar chart shall include the test year adjusted account value, the test year actual account value, the account value most recently approved by the Montana public service commission in a final rate case order and the actual account values from the previous four years.

(d) Applicant utilities that submit testimony and exhibits which are in response to rebuttal testimony and exhibits of other parties shall include pictorial exhibits which show the effect that the rebuttal submissions have upon the original filings. The submitted testimony and exhibits of each rebutting party shall be depicted in a pie chart that shows the actual unallocated test year results of operations and each adjustment that causes a ratemaking change to the actual unallocated test year results. The allocated cost of service/rate design study of each rebutting party shall be depicted in charts that show each item referred to in subsection (e).

(e) Each component of an applicant's allocated cost of service/rate design study shall be depicted in pie charts or bar charts. Pie charts shall include functionalizations by customer class of all cost categories, classifications by customer class of each functionalized cost category, and moderations and rate designs by customer classes. The values for each functionalized and classified cost category and for each allocator that were most recently approved by the Montana public service commission in a final rate case order and the values that are currently proposed shall be depicted on bar charts. AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-2-101, MCA

3. Rationale: Pursuant to the rules of this chapter applicant utilities must satisfy minimum rate case filing requirements. This rule is intended to improve understanding of a utility's filings.

4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to Tim Sweeney, Public Service Commission, 1701 Prospect Avenue, Helena, Montana 59620-2601 no later than March 30, 1992.

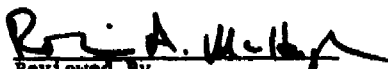
5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Tim Sweeney, Public Service Commission, 1701 Prospect Avenue, Helena, Montana 59620-2601, no later than March 30, 1992.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature; from a governmental 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 four based upon the number of public utilities affected by the proposed rule.

7. 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.


HOWARD L. ELLIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE FEBRUARY 18, 1992.


Reviewed By

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

In the Matter of Proposed	)	NOTICE OF PROPOSED
Amendment of Rule 38.5.3345	)	AMENDMENT TO RULE
Regarding Deferring of	)	38.5.3345
Implementation Until January)	
1, 1993.)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On March 30, 1992 the Department of Public Service Regulation proposes to amend Rule 38.5.3345 regarding deferring of implementation until January 1, 1993.

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

38.5.3345 CHANGE IN CUSTOMER'S INTEREXCHANGE CARRIER

(1) A local exchange carrier shall not change a customer's choice of interexchange carrier to another carrier at a carrier's request unless the customer's written authorization has been obtained by the requesting carrier prior to the request.

(2) A written authorization must contain the following information:

- (a) name and address of customer.
- (b) phone number affected by the change.
- (c) all fees associated with the change.

(d) statement that the written authorization is for the purpose of changing the customer's choice of interexchange carrier.

(e) customer's signature.

(3) This rule becomes effective on January 1, 1993.

AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

3. Rationale: On January 9, 1992 the Federal Communications Commission (FCC) approved certain guidelines affecting primary interexchange carrier selection procedures. In response to petitions filed by AT&T, MCI and US Sprint alleging that concurrent regulation is unnecessary, the public service commission has agreed to defer implementation of this rule for a time period sufficient to fully evaluate the effectiveness of the FCC's new guidelines.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Tim Sweeney, Public Service Commission, 1701 Prospect Avenue, Helena, Montana 59620-2601 no later than March 30, 1992.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with

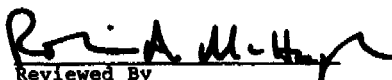
any written comments he has to Tim Sweeney, Public Service Commission, 1701 Prospect Avenue, Helena, Montana 59620-2601, no later than March 30, 1992.

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

7. 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.


HOWARD L. ELLIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE FEBRUARY 18, 1992.


Reviewed By

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

In the matter of the adoption)	NOTICE OF ADOPTION OF NEW
of new Rules 2.55.202 through)	RULES 2.55.202 THROUGH
2.55.403 relating to public)	2.55.403 RELATING TO PUBLIC
participation, board meetings)	PARTICIPATION, BOARD MEETINGS
and the establishment of)	AND THE ESTABLISHMENT OF
premium rates)	PREMIUM RATES

TO: All Interested Persons:

1. On December 26, 1991, the board published notice of the proposed adoption of new Rule I relating to the organization of the state fund; 2.55.202 (Rule II), 2.55.203 (Rule III), 2.55.204 (Rule IV), 2.55.205 (Rule V) relating to public participation; Rule VI relating to awarding contracts; 2.55.206 (Rule VII) relating to board meetings; and 2.55.320 (Rule VIII), 2.55.321 (Rule IX), 2.55.322 (Rule X), 2.55.323 (Rule XI), 2.55.324 (Rule XII), 2.55.401 (Rule XIII), 2.55.325 (Rule XIV), 2.55.402 (Rule XV), 2.55.403 (Rule XVI), 2.55.326 (Rule XVII) relating to the establishment of premium rates. The notice can be found on pages 2521 through 2534 of the 1991 Montana Administrative Register, Issue No. 24.

2. After consideration of the comments received on the proposed rules, the board has adopted the rules as proposed with the following changes (new material is underlined, deleted material is interlined).

RULE I. ORGANIZATIONAL RULE. NOT ADOPTED.

RULE II. (2.55.202) POLICIES AND OBJECTIVES IN PROVIDING CITIZEN PARTICIPATION IN THE OPERATION OF THE STATE COMPENSATION MUTUAL INSURANCE FUND (1) Remains the same.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 2-3-103, MCA

COMMENT (Rules II-VII): The legal representative of the Montana Health Care Association commented in writing, making a general comment that in his opinion the State Fund rules did not comply with Art. II, Sec. 9, of the Montana Constitution, Montana's Opening Meeting Act, Montana's Public Participation Act and Montana's Public Records Act. He felt the State Fund's proposed rules indicate that public scrutiny and participation will be discouraged rather than encouraged.

RESPONSE: Rules III through VII have been amended where appropriate based on comments of the executive director of the Montana Health Care Association on specific rules as well as on this commentator's comments. Therefore, the comment is overruled as based on the generality of this comment it is difficult, if not impossible, to respond further.

RULE III. (2.55.203) GUIDELINES FOR DETERMINATION OF SIGNIFICANT PUBLIC INTEREST (1)(a) - (b) remain the same.

(c) Any final agency action as defined by 2-3-102(3), MCA, that is of significant interest to the public.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 2-3-103, MCA

COMMENT: At the public hearing, the Executive Director of the Montana Health Care Association commented stating there may be other decisions made by the State Fund that are of significant public interest and that there should be a catch-all phrase that would indicate that there may be other items that would be considered of public interest.

RESPONSE: The comment has merit and for clarification, the rule will be amended to contain additional language which will state: "(c) Any final agency action as defined by 2-3-102(3), MCA, that is of significant interest to the public."

RULE IV. (2.55.204) GUIDELINES FOR STATE FUND PROGRAMS

(1) Remains the same.

(2) The state fund files, other than personnel files and those files required by law or requirements of personal privacy to remain confidential, are open to public inspection in accordance with established state fund policy during office hours. These files are located at the state fund office in Helena. Copies of specific documents are available within a reasonable time, upon a written request for a copying charge plus employee time if applicable upon a written request. A written request may be either mailed, delivered or filled out on a form provided by the state fund if the request is in person. Copies of documents will be mailed to parties upon their specific written request and for payment of copying charges, employee time, if applicable, and mailing costs.

(3) - (5) remain the same.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 2-3-103, MCA

COMMENT: At the public hearing and in writing, comments were received from the Executive Director of the Montana Health Care Association and its legal representative stating that (2) of Rule IV does not make it clear that public records are open to public inspection at all times during business hours, rather than in accordance with State Fund policy.

RESPONSE: The comment has some merit and for clarification purposes, the rule will be amended to state that files are open to public inspection during office hours.

COMMENT: At the public hearing, the Executive Director of the Montana Health Care Association stated that she was unable to get files if they were in the custody of someone who was either on vacation or at National Guard Camp and there should be a process for making records available during business hours at all times.

RESPONSE: This does not appear to be an item that needs to be specifically addressed in the rule and as such is

overruled in that it is obviously an infrequent problem and also impossible for personnel to always know the exact location of all documents not regularly in their custody. The State Fund staff will assist citizens in obtaining requested documents even though custodial personnel may be temporarily unavailable.

COMMENT: At the public hearing, the Executive Director of the Montana Health Care Association requested changes in the rule regarding copies of documents so that simple items should be available upon oral request and that written requests not be required if a voluminous file is gone through and the items desired to copy are merely paper clipped. It was further stated the issue is that the copy is "on demand".

RESPONSE: The comment is overruled as far as the request to eliminate the written request for copies. Also, supplying copies within a reasonable time is not inconsistent with the law on public records. Even "on demand" would have to reasonably contemplate time to locate the document, screen it for privacy concerns, actually make copies and have the document certified. The comment has some merit to the extent that clarification is useful in order to facilitate the procedure in obtaining copies of public documents.

Language will be added to the rule which states that a written request may either be mailed, delivered or filled out on a form provided by the State Fund if the request is in person. Having a form to fill out while making a request for copies after inspection at the State Fund offices does not impose a burden on the person requesting copies of the documents and also assists the person making the copies to verify the documents requested as well as assures the receipt of the requested documents. It should not be difficult to briefly identify in writing a document as it is paper clipped.

COMMENT: At the public hearing, the Executive Director of the Montana Health Care Association stated there is no provision for mailing of documents to interested parties.

RESPONSE: The comment has some merit and to clarify the rule, additional language will be added to state that in addition, copies of documents will be mailed to parties upon their specific written request and for payment of copying charges, employee time if applicable, and mailing costs.

COMMENT: At the public hearing, the Executive Director of the Montana Health Care Association stated it might be appropriate to include a definition or some indication of what kind of items are in fact private.

RESPONSE: The comment is overruled as the Montana Constitution in Art. II, Sec. 9 and 10 recognizes the individual right to privacy unless the merits of public disclosure exceed the demand for individual privacy or there is a compelling state interest. As such, the State Fund is in a position of making a decision each time there is a request for public disclosure to evaluate and weigh the right of

privacy. To request the State Fund to define items with a right of privacy would not be conclusive on the issue.

COMMENT: The legal representative of the Montana Health Care Association commented in writing stating that nothing in state law allows the State Fund to charge employee time for making copies of public records.

RESPONSE: The comment is overruled. A state statute in section 2-6-110, MCA, allows a charge for employee time in the copying of electronic information and charging for employee time is not precluded elsewhere in the statutes.

COMMENT: The legal representative of the Montana Health Care Association commented in writing stating that requiring requests for access for documents to be in writing is unnecessary and not authorized by state law.

RESPONSE: The comment is overruled. A written request is necessary only when copies are desired, not to inspect documents. There is no specific preclusion in the law which prohibits a request to be in writing and it is necessary to clarify the request as well as to be sure a citizen is receiving the correct documents and is being charged for copies of only those items specifically requested.

COMMENT: The legal representative of the Montana Health Care Association commented in writing stating that public records must be available at all times during office hours and a certified copy must be given on demand for public inspection and that the rule delays the public disclosure of documents.

RESPONSE: The comment has some merit and for clarification purposes, the rule will be amended to state that files are open to public inspection during office hours. Providing copies within a reasonable time does not delay public disclosure of documents. Even "on demand" would have to reasonably contemplate time to locate the document, screen it for privacy concerns, actually make copies and have the document certified.

RULE V. (2.55.205) NOTICE AND MEANS FOR PUBLIC PARTICIPATION (1) remains the same.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 2-3-103, MCA

COMMENT: At the public hearing and in written testimony, the Executive Director of the Montana Health Care Association and its legal representative objected to the fact that the rules stated that only one method of public participation need be used. The Executive Director did not object to the methods but objected to the fact that a news release does not always ensure that it will be printed.

RESPONSE: The comment is overruled. Whether or not notice was sufficient is a factual issue and the rule as written sufficiently describes how notice would be given.

~~**RULE VI. AWARDING CONTRACTS (1) Opportunity for citizen involvement in the awarding of contracts shall be provided by**~~

~~observing the laws regarding the awarding of contracts by public agencies. Thus public notice is through the invitation to bid or requests for proposals.~~

COMMENT: The legal representative of the Montana Health Care Association commented in writing stating that the public participation act overlays all requirements of state law regarding issuance of public contracts and that there may be an obligation to give notice and opportunity of public participation in addition to the specific requirements of state law regarding the awarding of contracts.

RESPONSE: The comment has merit. This rule will be deleted from the proposed rulemaking and the State Fund will follow state law regarding the awarding of contracts.

RULE VII. (2.55.206) OPEN MEETINGS (1) All meetings of the state fund board of directors are open to the public, subject to the provisions of Title 2, chapter 3, part 2, MCA. The date, time, and place of a meeting of the board of directors may be obtained by contacting the State Fund, 5 South Last Chance Gulch, Helena, Montana 59601 or by calling (406) 444-6518. Persons interested in receiving on a regular basis written notice of the meeting and a copy of the agenda should write the president of the state compensation mutual insurance fund at the above address.

AUTH: Sec. 39-71-2315 and 2316, MCA; **IMP:** Sec. 2-3-103, MCA

COMMENT: The legal representative of the Montana Health Care Association commented in writing stating that the rule is inadequate and contrary to a court ruling in that it is limited to State Fund board of directors meetings rather than also including meetings conducted by the State Fund executive director and his staff. Also there is no provision for advance notice of meetings, and the rule is identical to the old rule.

RESPONSE: The comment has merit to the extent that additional language can be added to clarify that the State Fund intends advance notice of meetings consistent with the court ruling. The rule will be amended to reflect that the notice and the agenda will be sent on a regular basis to those writing the president. Any dispute over whether or not the advance notice is sufficient, or over the agenda would be a factual dispute as the rule itself clearly allows for notice of meetings. The rule as adopted in the Emergency Rules and this proposed rule are different than the previous rule.

The comment does not have merit in regards to the meetings conducted by the State Fund executive director and his staff in that the executive director and the staff make the day-to-day decisions. Final agency decisions that are of significant interest to the public are made by the Board after notice and in open meetings.

RULE VIII. (2.55.320) METHOD FOR ASSIGNMENT OF CLASSIFICATIONS OF EMPLOYMENTS (1) - (2) remain the same.

(3) The state fund staff shall assign its insureds to classifications contained in the classifications section of the state compensation mutual insurance fund policy services underwriting manual issued July 1, 1991. That section of the manual is hereby incorporated by reference. Copies of the classification section of the manual may be obtained from the Underwriting Department of the State Fund, 5 South Last Chance Gulch, Helena, Montana 59601.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 39-71-2311 and 39-71-2316, MCA

COMMENT: At the public hearing and in written testimony, the Executive Director of the Montana Health Care Association stated that the rule is too vague and fails to set out a process, procedure, formulas, and factors relating to the setting of premium rates and that specific formulas and percentages should be included in the rules.

RESPONSE: The comment does not have merit in that the rule adequately explains how the State Fund assigns classifications.

COMMENT: At the public hearing and in written testimony, the Executive Director of the Montana Health Care Association stated that the rules contained references to the actuary making decisions when it should be the Board and that the rules should be changed to reflect the relationship between the actuary, the Board, and the State Fund staff in regards to making decisions and allowing for public participation if the issue is of significant public interest.

RESPONSE: The comment has some merit and the rule will be amended to clarify that State Fund staff assign classifications.

COMMENT: At the public hearing and in written comments, the Executive Director of the Montana Health Care Association opposed the amendment to the rule on the incorporation by reference of the amendment of the classification section of the state fund underwriting manual to include three retirement living center classification codes by questioning the validity of the C & R Committee mail vote. The grounds offered were that the C & R Committee vote was by mail, that the C & R Committee is subject to open meeting and public participation laws, that the C & R Committee has no provisions within its operating rules for a mail ballot and even if a mail ballot were permissible, only one vote was returned and therefore it was not a majority vote even though those not voting were considered in support of the changes. It was recommended the State Fund delay action on these class codes until the Montana Classification and Rating Committee has taken valid action on the proposal.

RESPONSE: This rule as proposed references the classification section of the underwriting manual issued on July 1, 1991. This comment was written prior to the notice of

the proposed rules and therefore is not pertinent to the rule as proposed and is overruled.

COMMENT: In written comments, the Executive Director of the Montana Health Care Association opposed the incorporation by reference of the amendment of the classification section of the state fund underwriting manual to include three retirement living center classifications codes asking whether the State Fund had determined the number of policyholders affected by the change, the amount of premium and liability involved in the new codes, how premium rates would be assigned the new codes, if the new codes are "credible", how will personal care facilities operated by nursing homes be treated, how will rates be established for the hotel/motel code 9052, as retirement homes move from 9052 to new codes, and how will rates for nursing homes in class code 8829 as a result of retirement homes moving to new codes be established? It is requested that the new codes not be adopted until the above questions were answered, and the State Fund Board considers the proposal's impact.

RESPONSE: This rule as proposed references the classification section of the underwriting manual issued on July 1, 1991. This comment was written prior to the notice of the proposed rules and therefore is not pertinent to the rule as proposed and is overruled.

RULE IX. (2.55.321) CALCULATION OF EXPERIENCE RATES

(1) For each classification, the state fund staff in consultation with the actuary and with approval of the board shall calculate an experience rate based upon the experience of the class. The experience rate must be based on a review of the total incurred losses and total payroll in the classification during up to 10 full fiscal years immediately preceding the date of review, adjusted by an expense ratio. "Fiscal year" means the year beginning July 1. The experience rate is derived by dividing the weighted selected liabilities by the weighted selected payroll which has been multiplied by a loss development factor.

(2) The experience rate for a classification must assume an expense ratio or loss development factor that takes into account operational costs, and administrative costs, and reserve development in order to arrive at total incurred losses and other actuarially predicted costs. The net result is a set of experience-based rates which, based on payroll of the last complete fiscal year, would be expected to develop approximately the same level of revenue as the current set of rates in force after the application of credibility in Rule X, the limits in Rule XII(4) and the exceptions provided in Rule XII(2) and (3).

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 39-71-2311 and 39-71-2316, MCA

COMMENT: At the public hearing and in written testimony, the Executive Director of the Montana Health Care Association

stated that the rules contained references to the actuary making decisions when it should be the Board and that the rules should be changed to reflect the relationship between the actuary, the Board, and the State Fund staff in regards to making decisions, or allowing for public participation if the issue is of significant public interest.

RESPONSE: The comment has some merit and to clarify the rule, it will be amended to reflect the relationship between State Fund staff, the board and the actuary as to final decision making.

COMMENT: At the public hearing and in written testimony, the Executive Director of the Montana Health Care Association stated that the rule is too vague and fails to set out a process, procedure, formulas, and factors relating to the setting of premium rates and that specific formulas and percentages should be included in the rules.

RESPONSE: The comment has some merit and to clarify the rule it will be amended to additionally describe calculation of the experience rates.

RULE X. (2.55.322) CALCULATION OF CREDIBILITY WEIGHTED RATE (1) If the payroll, premium, and losses in a particular classification are not sufficient to provide a meaningful and credible statistical basis for estimating an equitable distribution of costs, the state fund staff in consultation with the actuary and with approval of the board actuary shall determine a credibility weighted rate for each classification. The credibility factors may range from .01 through 1.00 and are based on graduated increments of expected liability. The expected liability is weighted selected payroll times the current manual rate times an expected loss rate recommended by the actuary and approved by the board. The experience rate times a credibility factor, plus the current manual rate times one minus the credibility factor yields the credibility weighted rate for a class code.

(2) The credibility weighted rate is assigned to a classification in order to modify the experience rate. It is based on the actuary's determination recommendation of the reliability and predictability of the classification's statistical data. In determining the credibility weighted rates, the state fund actuary shall consider the experience rate, existing manual rate, payroll, premium, and losses.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 39-71-2311 and 39-71-2316, MCA

COMMENT: At the public hearing and in written testimony, the Executive Director of the Montana Health Care Association stated that the rules contained references to the actuary making decisions when it should be the Board and that the rules should be changed to reflect the relationship between the actuary, the Board, and the State Fund staff in regards to making decisions, or allowing for public participation if the issue is of significant public interest.

RESPONSE: The comment has some merit and to clarify the rule, it will be amended to reflect the relationship between State Fund staff, the board and the actuary as to final decision making.

COMMENT: At the public hearing and in written testimony, the Executive Director of the Montana Health Care Association stated that the rule is too vague and fails to set out a process, procedure, formulas, and factors relating to the setting of premium rates and that specific formulas and percentages should be included in the rules.

RESPONSE: The comment has some merit and to clarify the rule, it will be amended to additionally describe the credibility weighted rate.

RULE XI. (2.55.323) DETERMINATION OF AGGREGATE REVENUE REQUIREMENTS (1) In order to determine the premium rate to be charged to an insured covered by the state fund for the following fiscal year, the state fund actuary shall recommend ~~shall actuarially determine~~ the projected revenue requirements for the year which must be approved by the board of directors. The projected total revenue must be sufficient to cover:

(a) through (c) remain the same.

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

(i) other factors ~~the state fund~~ considered relevant in recommending ~~establishing~~ an accurate projection of revenue requirements.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 39-71-2311 and 39-71-2316, MCA

COMMENT: At the public hearing and in written testimony, the Executive Director of the Montana Health Care Association stated that the rules contained references to the actuary making decisions when it should be the Board and that the rules should be changed to reflect the relationship between the actuary, the Board, and the State Fund staff in regards to making decisions, or allowing for public participation if the issue is of significant public interest.

RESPONSE: The comment has some merit and to clarify the rule, it will be amended to reflect the relationship between State Fund staff, the board and the actuary as to final decision making.

COMMENT: At the public hearing and in written testimony, the Executive Director of the Montana Health Care Association stated that the rule is too vague and fails to set out a process, procedure, formulas, and factors relating to the setting of premium rates and that specific formulas and percentages should be included in the rules.

RESPONSE: The comment has no merit in that the rule adequately explains the factors considered by the professional actuary in the determination of revenue requirements.

RULE XII. (2.55.324) PREMIUM RATESETTING (1) The board shall approve the overall rate adjustment that provides an

amount sufficient to meet the aggregate revenue projections. Except as provided in subsections (2) through (5), to establish a premium rate for a classification for the following fiscal year, the state fund staff in consultation with the actuary and with approval of the board shall apply a the overall rate adjustment factor to each credibility weighted rate in an amount sufficient to ensure that the aggregate of the premium for all classifications provides an amount sufficient to meet the actuarially determined aggregate revenue projections.

(2) The state fund staff in consultation with the actuary and with approval of the board shall evaluate an individual classification to determine whether the process for setting the premium rate results in an equitable rate based on an analysis of the losses and the premium amount and, if the rate is not equitable, may adjust it so that it is equitable. Payrolls have been determined not to be sufficiently verifiable for the horse racing industry and a fee basis shall be used. The fee shall be based on the aggregate revenue requirements of this classification and allocated among the projected number of industry participants.

(3) The state fund staff in consultation with the actuary and with approval of the board may set a classification's rate at a percentage of the National Council on Compensation Insurance (NCCI) rate based on a factor recommended by the state fund actuary of not more than 80% of the NCCI rate or not less than 50% of the NCCI rate or at the rate of an equivalent class code recommended by NCCI or the state fund actuary. These situations include, but are not limited to:

(a) - (d) remain the same.

(4) - (5) remain the same.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 39-71-2311 and 39-71-2316, MCA

COMMENT: At the public hearing and in written testimony, the Executive Director of the Montana Health Care Association stated that the rules contained references to the actuary making decisions when it should be the Board and that the rules should be changed to reflect the relationship between the actuary, the Board, and the State Fund staff in regards to making decisions, or allowing for public participation if the issue is of significant public interest.

RESPONSE: The comment has some merit and to clarify the rule, it will be amended to reflect the relationship between State Fund staff, the board and the actuary as to final decision making.

COMMENT: In written comments, the Executive Director of the Montana Health Care Association opposed the amendment to this rule (2) stating it was too vague to adequately inform employers and the public how the State Fund sets rates. She questioned what is the evaluation, how is equitable defined in

determining the equitable rate, what method other than payroll would be used and how will the fee be determined?

RESPONSE: The portion of the comment dealing with the method other than payroll to calculate premium as well as determining the fee was written prior to the notice of this proposed rule and is overruled. The rule now adequately describes that a fee basis premium is only applicable to the horse racing industry and describes how the fee will be determined. The remainder of the comment has no merit in that the rule adequately describes providing the board the discretion to evaluate individual classifications and adjust rates so they are equitable. In evaluating an individual class code given its makeup, it must be determined if the rate is appropriate to collect adequate but not excessive premium and if not, it should be adjusted so that it is equitable for both the policyholder and the State Fund.

COMMENT: At the public hearing and in written testimony, the Executive Director of the Montana Health Care Association stated that the rule is too vague and fails to set out a process, procedure, formulas, and factors relating to the setting of premium rates and that specific formulas and percentages should be included in the rules.

RESPONSE: The comment has some merit and to clarify the rule, it will be amended to additionally describe premium ratesetting.

COMMENT: At the public hearing and in written comments, the Executive Director of the Montana Health Care Association stated that the actual percentage amounts should be placed in the rule in (3)(d). It was also questioned as to when an experience-based rate would be feasible. It was further stated that they were unable to comment because the rule does not put them on notice of what is intended.

RESPONSE: The comment has no merit. The rule sufficiently describes the factors considered in the situation described in (3)(d). Percentage amounts cannot be inserted in that each situation must be evaluated on a case-by-case basis. When experience is split into two or more codes, this data has previously been reported in the original code so that it cannot be allocated into the new codes, therefore, an accurate experience-based rate is not feasible.

COMMENT: In written comments, the Executive Director of the Montana Health Care Association opposed the amendment to this rule (3) stating it fails to put an employer on notice on how its rates are set. Questions were, what is the definition of appropriate, what is the parameter of the permissible percentage of the NCCI rate, what factor would the State Fund actuary use and what determines the factor, what is the definition of new industry or occupation, what is the definition of an industry or occupation that has changed significantly, what constitutes significant change, what is the State Fund's definition of an industry or occupation with significant changes to class code definition or application,

and the effect of changes within the codes, such as 9052 and 8829. It is recommended to address what a significant change is and that an experience-based rate be used unless it is impossible to develop.

RESPONSE: This comment was written prior to the notice of the proposed rules and the rule as proposed incorporated many of these comments. The comment is otherwise overruled as these types of changes in classification codes occur occasionally and to require the State Fund to do an experienced-based rate each time is not appropriate. When experience is split into two or more codes, this data has previously been reported in the original code so that it cannot be allocated into the new codes, therefore, an accurate experience-based rate is not feasible.

COMMENT: At the public hearing and in written comments, the Executive Director of the Montana Health Care Association stated she does not feel the Board should give itself the authority in the rules to do across the board increases as they should be experienced-based increases so that different class codes will be paying for their own good or bad experience.

RESPONSE: The comment has no merit as circumstances in the future may indicate that an interim rate change should be percentage-based rather than experienced-based and as such the Board of Directors should retain that discretion.

COMMENT: In written comments, the Executive Director of the Montana Health Care Association opposed the amendment to this rule (5) stating that an interim premium rate change should be based on experience rather than a percentage and recommended the State Fund consider raising the rates of those who had limits placed on their rate increases before raising other rates and reevaluate the effect of an increase on those who did not receive rate decreases. It was asked whether once a percentage increase was applied and later experience yields a lower rate, will overpayments be refunded? It was also recommended eliminating rebates to employer groups who participate in association plans.

RESPONSE: The comment has no merit as circumstances in the future may indicate that an interim rate change should be percentage-based rather than experienced-based and as such the Board of Directors should retain that discretion. To apply a percentage increase after removing the limits placed on rate increases or evaluating those who did not receive rate decreases in the last rate adjustment would be inappropriate in that the limits were placed by the Board according to 2.55.305(4), ARM. Limits are a common practice in the insurance industry to stabilize rates for classifications which would otherwise experience extreme changes, and emphasizes the shared risk concept of insurance. The law does not provide for refunds, only dividends and then according to 39-71-2316, MCA. Associations are not receiving rebates. These contractual relationships are for loss control through

programs conducted by the association. The association is reimbursed for the safety program through a small percentage of the total premium of the association members.

RULE XIII. (2.55.401) EXPERIENCE MODIFICATION FACTOR

(1) - (3) remain the same.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 39-71-2311 and 39-71-2316, MCA

COMMENT: At the public hearing and in written testimony, the Executive Director of the Montana Health Care Association stated that the rule is too vague and fails to set out a process, procedure, formulas, and factors relating to the setting of premium rates and that specific formulas and percentages should be included in the rules.

RESPONSE: The comment has no merit in that the rule adequately explains the use of the experience modification factor, also the experience modification factor applies to individual policyholders and it is not part of the determination of premium rates for classifications.

RULE XIV. (2.55.325) VARIABLE PRICING WITHIN A CLASSIFICATION

(1) Effective July 1, 1991, the state fund staff in consultation with the actuary and with approval of the board shall implement variable pricing categories within individual classifications based upon actuarially determined aggregate revenue requirements, annual premium threshold, and the insured's most recent policy effective date, loss ratio and qualification for experience modification. An analysis shall be conducted annually, and will result in placement of insureds into a pricing category for the next fiscal year.

(2) - (5) remain the same.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 39-71-2311 and 39-71-2316, MCA

COMMENT: At the public hearing and in written testimony, the Executive Director of the Montana Health Care Association stated that the rules contained references to the actuary making decisions when it should be the Board and that the rules should be changed to reflect the relationship between the actuary, the Board, and the State Fund staff in regards to making decisions, or allowing for public participation if the issue is of significant public interest.

RESPONSE: The comment has some merit and to clarify the rule, it will be amended to reflect the relationship between State Fund staff, the board and the actuary as to final decision making.

COMMENT: At the public hearing and in written testimony, the Executive Director of the Montana Health Care Association stated that the rule is too vague and fails to set out a process, procedure, formulas, and factors relating to the setting of premium rates and that specific formulas and percentages should be included in the rules.

RESPONSE: The comment has no merit in that the rule adequately explains variable pricing.

RULE XV. (2.55.402) MEDICAL DEDUCTIBLE (1) - (3) remain the same.

AUTH: Sec. 39-71-2315 and 2316, MCA; **IMP:** Sec. 39-71-434, 39-71-2311, and 39-71-2316, MCA

COMMENT: A policyholder commented that he would like to have the deductible portion paid directly by the employer rather than have the State Fund pay the bill, and then bill the employer for reimbursement. He stated he saw a need to report to the state only when the bill exceeds the deductible. He stated that OSHA states that every accident should be reported regardless of how small and stated that the same report could be furnished to the State annually.

RESPONSE: The comment is overruled as section 39-71-434, MCA, requires the insurer to pay the medical provider directly and then seek reimbursement from the employer. To not report an accident to the State Fund until the bills exceed the deductible would violate 39-71-307 of the Montana Workers' Compensation Act, and therefore would require a change of the law to implement this comment. Also it would violate the policyholder's contract of insurance with the State Fund which gives the State Fund the final decision on the compensability of the claims. To be fair to all policyholders insured with the State Fund, an experienced claims examiner should make the decision regarding the compensability of a claim.

COMMENT: At the public hearing and in written testimony, the Executive Director of the Montana Health Care Association stated that the rule is too vague and fails to set out a process, procedure, formulas, and factors relating to the setting of premium rates and that specific formulas and percentages should be included in the rules.

RESPONSE: The comment has no merit in that the rule adequately explains the medical deductible plan. In addition, the medical deductible plan applies to individual policyholders and is not part of the process for determining a premium rate for a classification.

RULE XVI. (2.55.403) VOLUME DISCOUNT Remains the same.

AUTH: Sec. 39-71-2315 and 2316, MCA; **IMP:** Sec. 39-71-2311 and 39-71-2316, MCA

COMMENT: At the public hearing and in written testimony, the Executive Director of the Montana Health Care Association stated that the rule is too vague and fails to set out a process, procedure, formulas, and factors relating to the setting of premium rates and that specific formulas and percentages should be included in the rules.

RESPONSE: The comment has no merit in that the rule adequately explains the volume discount, in addition volume discount applies to individual policyholders and is not part

of the process for determining a premium rate for a classification.

RULE XVII. (2.55.326) MINIMUM YEARLY PREMIUM (1) Remains the same.


(2) In calculating a minimum yearly premium, the state fund staff shall identify the direct and indirect costs associated with the administration of all insurance policy contracts. The costs then must be divided by the number of employers insured by the state fund. Each employer insured by the State Fund must be assessed and pay no less than the minimum yearly premium.

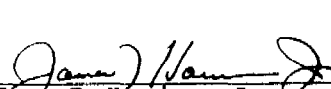
AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 39-71-2311 and 39-71-2316, MCA

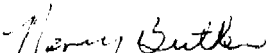
COMMENT: At the public hearing and in written testimony, the Executive Director of the Montana Health Care Association stated that the rule is too vague and fails to set out a process, procedure, formulas, and factors relating to the setting of premium rates and that specific formulas and percentages should be included in the rules.

RESPONSE: The comment has no merit in that the rule adequately explains the process for the minimum yearly premium calculation.

3. Based on the foregoing, the board hereby adopts the rules.


Dal Sallie, Chief Legal Counsel
Rule Reviewer


James T. Harrison, Jr.
Chairman of the Board


Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State February 18, 1992.

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

In the matter of the amendment) NOTICE OF AMENDMENT OF
of rules pertaining to trainers,) RULES PERTAINING TO HORSE
general requirements, exacta) RACING
betting, requirements of)
licensee, and pick (N) wagering)

TO: All Interested Persons:

1. On September 26, 1991, the Board of Horse Racing published a notice of public hearing on the proposed amendment of the above-stated rules at page 1786, 1991 Montana Administrative Register, issue number 18. The public hearing was held on October 16, 1991 at 9:00 a.m., in the Scott Hart Auditorium.

2. The Board has amended 8.22.801, 8.22.1619 and 8.22.1802 exactly as proposed. The Board has amended 8.22.710 and 8.22.1805 as proposed but with the following changes:

"8.22.710 TRAINERS (1) Each trainer shall obtain a license from the board. Minors shall not be licensed as trainers. Any application for trainer's license must establish financial responsibility to the satisfaction of the board. EACH APPLICANT FOR TRAINER'S, OWNER'S, AND OWNER-TRAINER'S LICENSE MUST PROVIDE EVIDENCE OF WORKERS' COMPENSATION INSURANCE OR ITS EQUIVALENT AS DETERMINED BY THE STATE WORKERS' COMPENSATION FUND FOR THE PROTECTION OF HIS EMPLOYEES AND WORKERS PRIOR TO BEING ISSUED A LICENSE. Failure to maintain financial responsibility AND WORKERS' COMPENSATION INSURANCE OR ITS EQUIVALENT shall be grounds for revocation of license.

(2) through (30) will remain the same as proposed."

Auth: Sec. 23-4-104, 23-4-202, MCA; IME, Sec. 23-4-104, MCA

"8.22.1805 PICK (N) WAGERING (1) through (3) will remain the same as proposed.

(4)(a) Pick (N) shall be composed of two separate and distinct parimutuel pools. Seventy-five percent of the gross amount of all sums wagered on pick (N) tickets on each performance shall be paid into a parimutuel pool to be known as "the jackpot". The remaining twenty-five percent of the gross amount of all sums wagered on pick (N) tickets for that performance shall be paid into a parimutuel pool to be known as "the consolation ~~jackpot~~ pool."

(b) will remain the same as proposed.

(c) Subject to the provisions of this rule pertaining to refunds and after deduction of all legal sums therefrom, the net amount in the consolation ~~jackpot~~ pool subject to distribution among winning ticket holders shall be distributed among the holders of pick (N) tickets which correctly designate the most official winners of the contests comprising the pick (N) for that performance.

(d) will remain the same as proposed.

(e) In the event the accumulated jackpot has not been distributed prior to the closing day of the meeting in which the jackpot was generated, the accumulated jackpot and the net amount in the consolation ~~jackpot~~ pool subject to distribution among winning ticket holders shall be distributed among closing day holders of pick (N) tickets which correctly designate the most official winners of the races comprising the closing day pick (N). Where a split meet is held, all jackpot and consolation ~~jackpot~~ pools shall be distributed as stated in this section on the final day of each portion of the split meet.

(f) will remain the same as proposed.

(g) In the event one or more of the races comprising the pick (N) is cancelled for any reason, the distribution of the net amount subject to distribution in the consolation ~~jackpot~~ pool shall be among the holders of parimutuel tickets which correctly designate the most official winners in all of the remaining races comprising the pick (N) during such race days, except that in the event there is officially cancelled or declared as no contest three or more of the races comprising the pick (N), all parimutuel tickets on the pick (N) for that day shall be refunded, and the pick (N) shall be cancelled for that day. No person shall win the jackpot unless that person holds a pick (N) ticket which correctly picks all official winners of the races comprising the pick (N) for that race day. The cancellation of one or more races comprising the pick (N) in any race day shall result in the contribution to the consolation ~~jackpot~~ pool of the amount contributed that day to the jackpot pool. The contribution to that day's jackpot pool will then be distributed along with the remainder of the consolation ~~jackpot~~ pool to the winners of the consolation ~~jackpot~~ pool. Any contributions to the jackpot pool from prior race days will remain in the jackpot pool to be carried over and included in the jackpot pool for the next race day as prescribed in (d) above.

(5) In the event of a dead heat for win between two or more contestants in any pick (N) race, all such contestants in the dead heat for win shall be considered as the winner in the race for the purpose of distributing the jackpot and the consolation ~~jackpot~~ pools.

(6) through (8) will remain the same as proposed.

(9) Each jackpot pool shall have a cap which the jackpot pool shall not exceed. The cap for a pick four jackpot pool shall be \$4,000 or 2,000 times the minimum wager, whichever is less. The cap for a pick five jackpot pool shall be \$30,000 or 15,000 times the minimum wager, whichever is less. The cap for a pick six jackpot pool shall be \$250,000 or 125,000 times the minimum wager, whichever is less. The cap for a pick seven jackpot pool shall be \$1,000,000. The cap for pick eight jackpot pool shall also be \$1,000,000. Prior to the opening of a meet the association may declare a cap for the jackpot pool less than the cap imposed above, provided the cap is in increments of \$1,000. Once the association has selected a cap the association may not alter the cap without prior approval of the board. If, at the close of any race day the amount accumulated in the jackpot pool equals or exceeds the

cap, then at such time the jackpot pool shall be frozen until it is won under the other provisions of the applicable pick (N) rule. Thereafter, the jackpot pool is frozen under these provisions and one hundred percent (100%) of all subsequent contributions shall go to the consolation ~~jackpot~~ pool and be distributed accordingly. Nothing herein shall affect the total distribution of both pools on the closing day of any meet or portion of a split meet.

(10) Prior to the opening of a meet at which a pick (N) wager will be offered, the association may elect to force an early payout of the jackpot pool, as allowed by this rule and in no other manner. The decision shall be made by informing the board in writing prior to the opening of the meet of the association's intent to force an early payout if the conditions of this rule for an early payout are met. If the decision is made, then an early payout of the jackpot pool shall be made as follows. Within 24 hours after the jackpot pool reaches its cap, the association shall designate the race day at which the early payout will be made by informing the board in writing of the designated race day. The designated race day shall be no sooner than 6 calendar days after the cap is reached and no later than 134 calendar days after the cap is reached. If at the conclusion of the last contest comprising the pick (N) of the designated race day, no wager has won the jackpot pool, then the funds in the jackpot pool shall be transferred to the consolation ~~jackpot~~ pool for the designated race day and distributed in the manner in which the consolation ~~jackpot~~ pool is distributed."

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

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

COMMENT: Five comments were received opposing the proposed amendment to ARM 8.22.710(1), which in summary stated:

The Board is not presently required to actually collect workers' compensation premiums under the rule, but would be doing a disservice to the horse racing industry in Montana and would be creating severe enforcement problem situations by abandoning its oversight of workers' compensation coverage, and should therefore maintain the requirement that licensees obey the workers' compensation law before being licensed.

RESPONSE: The Board concurred with the comments and has dropped the proposed rule amendment to ARM 8.22.710(1) as shown above.

COMMENT: One comment was received in support of the amendment of 8.22.801.

RESPONSE: The Board acknowledges receipt of the comment.

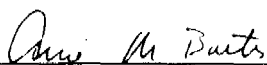
COMMENT: One comment was received suggesting the deletion of the word "jackpot" in regard to the "consolation pool" in ARM

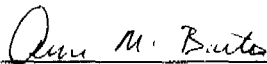
8.22.1805. He stated that the word "jackpot" made the rule confusing.

RESPONSE: The Board concurred and has deleted the word "jackpot" from the rule as shown above.

BOARD OF HORSE RACING
STEVE CHRISTIAN, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, February 18, 1992.

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

In the Matter of Adoption of)	NOTICE OF ADOPTION OF NEW
Optional Rules Governing Rate)	RULES GOVERNING RATE
Filings for Electric, Gas,)	FILINGS FOR ELECTRIC, GAS,
Water and Sewer Rates.)	WATER AND SEWER RATES

TO: All Interested Persons

1. On October 31, 1991 the Department of Public Service Regulation published notice of the proposed adoption of optional new rules governing rate filings for electric, gas, water and sewer rates at page 2004, issue number 20 of the 1991 Montana Administrative Register.

2. The Department has adopted the following rules as proposed:

RULE I. 38.5.601 PURPOSE
RULE II. 38.5.602 SCOPE
RULE V. 38.5.605 FINAL ORDERS -- APPEALS
RULE VIII. 38.5.608 COST OF EQUITY
RULE X. 38.5.610 APPLICATION FOR SUMMARY CLOSURE
RULE XI. 38.5.611 SUNSET/REPEALER

3. The Department has adopted and amended the rules as proposed with the following changes:

RULE III. 38.5.603 EFFECTIVENESS MEASUREMENTS

(1) To measure the effectiveness of this optional rate-making process the commission will evaluate a utility's regulatory rate of return ~~actually-earned~~ without relying upon the ratemaking process set forth in these optional rules.
AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-2-101, MCA

RULE IV. 38.5.604 ELECTION (1) No changes.

(a) The utility elects to process its filing under this sub-chapter, and that it consents to having the rates it is authorized to charge for the utility's services under consideration determined in accordance with this sub-chapter for a period of 71 months from the date of the filing in which it made its election, subject to the provisions of ARM 38.5.605.

(b) through (d) No changes. AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-2-101, MCA

RULE VI. 38.5.606 RATEMAKING PROCEDURE -- GENERAL RATE CASES (1) and (a) No changes.

(b) Test year expenses which are affected by test year replacement of capital facilities used in providing service shall be adjusted so that they accurately reflect, on an annual basis, such replacement.

~~(b)~~ (c) Any costs incurred during the test year that were not adjusted pursuant to ARM 38.5.606(1)(a), shall be adjusted pursuant to the following formula:

Costs x .45 x Consumer Price Index

~~(c)~~ (d) The rate base shall be computed on an end of test year basis.

(d) (e) For matching purposes, test year revenues shall be restated to reflect end of year customer counts and the annualization of known changes in revenues occurring during the test year. In addition, revenues shall be restated to reflect changes known with certainty and measurable with reasonable accuracy prior to the commission's hearing on the utility's application for increased rates, provided no such changes shall be reflected if they occurred more than 13 months from the close of the test period used to determine cost of service in the utility's filing. AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-2-101, MCA

RULE VII. 38.5.607 RATEMAKING PROCEDURES -- LIMITED ISSUE FILINGS (1) A utility which elects to proceed under this sub-chapter shall be permitted by the commission to make limited issue filings that do not meet the requirements of ARM 38.5.101, et seq. Such limited issue filings may only be made when the utility experiences ~~an increase~~ a change in costs which exceeds three percent (3%) of the utility's allowed overall return, in dollars, as determined by the last order in the last general rate case establishing rates for those services that are the subject of the filing or the cost of service filing required in ARM 38.5.604(1)(b), whichever is most recent. AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-2-101, MCA

RULE IX. 38.5.609 COST OF SERVICE FILING (1)(a)(i) No changes.

(ii) If the utility's ~~initial~~ filing does not seek a change in rates, its ~~initial~~ filing need not comply with the provisions of ARM 38.5.103, 38.5.104, 38.5.105, 38.5.112, 38.5.176, 38.5.177 and 38.5.178.

(b) A utility which files an application to change its rates simultaneously with the submission of its ~~initial~~ cost of service filing may include in its ~~initial~~ cost of service filing a rate of return on equity other than that last authorized by the commission.

(c) If the cost of service filing ~~sets--forth~~ establishes a ~~cost--of--service~~ revenue requirement less than that last authorized by the commission, and the utility does not request a decrease in rates to reflect such a change, the utility expressly assumes the burden of proving why its rates should not be decreased to the extent reflected in its cost of service filing.

(d) No change. AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-2-101, MCA

4. Rule VI(1)(b) was amended to include in the test year expenses the test year replacement of capital facilities. The Commission believes this inclusion will provide for a more accurate cost of service determination.

Comment: Montana Consumer Counsel argues that Rule VIII should be deleted because the cost of equity included in rates should reflect the true cost of equity. In other words, there

should be no arbitrary restrictions placed on determining cost of equity.

Response: This rule is designed to preclude a situation whereby a utility elects to file under these optional rules; no intervenor challenges the utility's non-capital costs; an intervenor argues that the optional rules have reduced the risk, hence the cost of capital, and proposes a downward adjustment equal to or greater than the difference between the non-capital costs as computed under the optional rules and the standard filing requirements; and the Commission adopts the proposal. To avoid this contingency the Commission believes the rule should be retained.

Comment: In order to determine the effect of the optional rules relative to the existing system of regulation, Rule III should be amended so that the word "regulatory" is inserted within the phrase "utility's rate of return" and the phrase "actually earned" is deleted.


Response: The intent of this rule is to evaluate the optional rules relative to the existing system of regulation. The suggested amendments clarify this intent and have been adopted.

Comment: To clarify Rule IV, subsection (a), the phrase "it is authorized to charge for the utility's services" should be inserted after the word "rate."

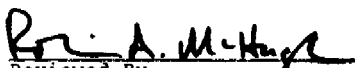
Response: The suggested insertion does clarify the rule and has been adopted.

Comment: Because there is no definition for "cost of service" in Rule IX, subsection (c), a utility may argue that it has no burden of proving the reasonableness of its rates in instances where expenses increase but revenues increase even more. The phrase "cost of service" therefore should be deleted and replaced with "revenue requirement."

Response: The rule as drafted would allow for this contingency and has been amended to conform with the suggested changes.


HOWARD L. ELLIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE FEBRUARY 18, 1992.


Reviewed By

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rule 46.10.823	)	RULE 46.10.823 PERTAINING
pertaining to self-initiated	)	TO SELF-INITIATED SERVICES
services)	

TO: All Interested Persons

1. On November 27, 1991, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.10.823 at page 2256 of the 1991 Montana Administrative Register, issue number 22.

2. The Department has amended the following Rule as proposed with the following changes:

46.10.823 SELF-INITIATED SERVICES EDUCATION OR TRAINING

(1) A person already engaged in education or training ~~at an institution of higher education or a school or other entity offering vocational or technical training~~ at the time that that person would otherwise ~~commence~~ begin participation in JOBS is considered to have self-initiated an education or training program.

Subsection (2) remains as proposed.

(a) the department has conducted an assessment of the education or training and has developed AND APPROVED an employability plan and has determined that the education or training program provides skills for jobs that will lead to self-sufficiency and that are available ~~in the either locally area or areas within Montana the person is willing to move to;~~

Subsection (2)(a)(i) remains as proposed.

(A) THE NUMBER OF SLOTS TO BE FILLED WILL BE DETERMINED BY DIVIDING THE TOTAL SUM OF MONEY AVAILABLE FOR CHILD CARE FOR PERSONS IN SELF-INITIATED PROGRAMS FOR THE BIENNIUM BY THE AVERAGE AMOUNT PER INDIVIDUAL PAID BY THE DEPARTMENT FOR CHILD CARE. APPLICATIONS FOR THE SLOTS WILL BE TAKEN ONCE A YEAR AT A TIME ANNOUNCED BY THE DEPARTMENT.

(B) IF A SLOT IS NOT AVAILABLE AT THE TIME THE DEPARTMENT COMPLETES THE ASSESSMENT, THE PERSON WILL BE PUT ON A WAITING LIST UNTIL A SLOT IS AVAILABLE. THE PERSON'S POSITION ON THE WAITING LIST WILL BE BASED ON THE PRIORITIES SET FORTH IN SUBSECTIONS (2)(a)(i)(B), (2)(a)(i)(C), AND (2)(a)(iii)(A) THROUGH (E). EACH YEAR A NEW WAITING LIST WILL BE ESTABLISHED AFTER THE CLOSE OF THE APPLICATION PERIOD.

(ii) Those currently enrolled PRIOR TO MARCH 1, 1992 in a program of study and approved for self-initiated child care TRAINING OR EDUCATION WHICH HAS ALREADY BEEN APPROVED will continue to have child care paid until the end of the state fiscal year, the end of the current SCHOOL program year, AS DEFINED BY THE SCHOOL if it extends beyond the state fiscal

year or until the end of a registration period preceding the end of the state fiscal year, whichever occurs last.

(A) To receive child care until the completion of their program, those currently approved PRIOR TO MARCH 1, 1992 for the self-initiated program must re-apply for approval and be chosen for one of the limited number of slots.

(B) Such individuals will be given priority in filling the slots over those whose have not yet been approved for child care for self-initiated training or education WAS NOT APPROVED PRIOR TO MARCH 1, 1992. PRIORITY WILL BE GIVEN TO THOSE WHO ARE CLOSEST TO THE COMPLETION OF THEIR PROGRAM.

(C) AS BETWEEN PERSONS HAVING EQUAL PRIORITY PURSUANT TO SUBSECTION (2)(a)(i)(B), PRIORITY WILL BE GIVEN TO A PERSON WHO HAS RECEIVED AFDC CASH ASSISTANCE FOR AT LEAST 36 OF THE PRECEDING 60 MONTHS OVER A PERSON WHO HAS NOT RECEIVED AFDC CASH ASSISTANCE FOR AT LEAST 36 OF THE PRECEDING 60 MONTHS.

(D) AMONG PERSONS HAVING EQUAL PRIORITY PURSUANT TO SUBSECTIONS (2)(a)(i)(B) AND (C), PRIORITY WILL BE GIVEN TO THE PERSON WHOSE APPLICATION WAS FILED EARLIEST.

(iii) AMONG THOSE WHO ARE NOT ENROLLED PRIOR TO MARCH 1, 1992 IN SELF-INITIATED TRAINING OR EDUCATION WHICH WAS ALREADY APPROVED, PRIORITY WILL BE GIVEN IN DESCENDING ORDER OF PREFERENCE TO PERSONS IN THE CATEGORIES DESCRIBED IN SUBSECTIONS (A) THROUGH (E) BELOW. AMONG PERSONS HAVING EQUAL PRIORITY PURSUANT TO SUBSECTIONS (A) THROUGH (E), PRIORITY WILL BE GIVEN TO THE PERSON WHOSE APPLICATION WAS FILED EARLIEST.

(A) PERSONS ATTENDING HIGH SCHOOL OR PARTICIPATING IN EITHER ADULT BASIC EDUCATION OR A GED PROGRAM;

(B) THOSE WHO ARE CLOSEST TO THE COMPLETION OF THEIR PROGRAM;

(C) PERSONS WHO HAVE RECEIVED AFDC CASH ASSISTANCE FOR AT LEAST 36 OF THE PRECEDING 60 MONTHS;

(D) PERSONS WHO HAVE NOT COMPLETED A RECOGNIZED COURSE OF POST-SECONDARY EDUCATION; AND

(E) PERSONS WHO HAVE COMPLETED A RECOGNIZED COURSE OF POST-SECONDARY EDUCATION, SUCH AS VOCATIONAL TRAINING OR AN ASSOCIATE DEGREE PROGRAM WITHIN THE PRECEDING FIVE YEARS AND ARE CURRENTLY WORKING FOR MONETARY GAIN 15 OR MORE HOURS PER WEEK;

(iv) PERSONS WHO HAVE COMPLETED A BACHELOR'S DEGREE WILL NOT BE APPROVED FOR SELF-INITIATED TRAINING OR EDUCATION;

(v) PERSONS WHO WERE PREVIOUSLY APPROVED AND RECEIVED CHILD CARE ASSISTANCE FROM THE DEPARTMENT WITHIN THE PRECEDING YEAR BUT WITHOUT GOOD CAUSE FAILED TO COMPLETE THE PROGRAM WILL NOT BE APPROVED FOR SELF-INITIATED TRAINING OR EDUCATION.

Subsections (2)(b) through (3) remain as proposed.

(a) for the duration of the person's participation in the program UNTIL THE END OF THE PERSON'S CURRENT SCHOOL YEAR AS DEFINED BY THE INSTITUTION THE PERSON IS ATTENDING or until the person is no longer eligible for AFDC, whichever is less OCCURS FIRST; and

Subsection (3)(b) remains as proposed.

AUTH: Sec. 53-4-212 and 53-4-719 MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703,
53-4-705, 53-4-706, 53-4-708 and 53-4-720 MCA

3. The department has thoroughly considered all commentary received:

COMMENT: It has been noted that sections 53-4-703 and 53-4-720, MCA, were incorrectly cited as rulemaking authority for these amendments.

RESPONSE: Those citations have been deleted from the authority section of the rule. They are correct implementing authority but not correct rulemaking authority sections.

COMMENT: A number of comments were received saying that the self-initiated program should not be cut or eliminated because it is a worthwhile program which will help recipients get off welfare and will thus reduce welfare expenditures in the long run. Several of these commentors also expressed concern that if this program is cut or eliminated, parents going to school would be able to afford only sub-standard child care and children would be neglected or abused by their parents because family stress would be increased.

RESPONSE: The self-initiated child care program will be limited, but not eliminated. All participants will be grand-fathered until the end of their current school year. After they complete their school year, slots will hopefully become available for participants to continue their education or training. We eventually hope to serve all of those placed on waiting lists.

Applicants not approved immediately have the choice of waiting for a slot, or continuing with their program of study and finding other resources to pay for their child care until a slot becomes available.

The department also recognizes that there will be a cost savings when AFDC recipients reach self-sufficiency through education and training; that is why this program was not eliminated. However, it is critical that the budget constraints be respected and the growth of this program be controlled.

The department also recognizes that children need to be protected from abuse and neglect. The department feels that it offers choices for parents who are involved in self-initiated

education and training and it is up to parents to make the correct choices for their own children.

COMMENT: It has been noted that the rule does not set forth the criteria which will be used to approve or disapprove a recipient's self-initiated training or education, other than the availability of a slot.

RESPONSE: Subsection (2)(a) of the rule currently sets forth certain criteria for approval of a self-initiated program, namely that the program will provide skills for jobs that will lead to self-sufficiency and that are available locally or within Montana, as determined by the department's assessment and development of an employability plan for the recipient.

The department has also expanded subsection (2)(a)(ii)(B) and added subsections (2)(a)(ii)(C) and (D) and (2)(a)(iii) and its subparts to set forth in more detail which recipients will be given priority for the available slots.

COMMENT: The legality of the proposed limitations on participation in self-initiated training and education was questioned. Specifically questioned was whether such limitations are in compliance with the requirements of the Family Support Act, the Department of Health and Human Services' action transmittal on this subject, and a recent ruling in the case of Miller v. Carlson.

RESPONSE: The department believes that the proposed policy of limiting participation in self-initiated training and education to a pre-set number of slots is in compliance with the requirements of federal law as set forth in the Family Support Act of 1988, Department of Health and Human Services (HHS) policy directives, and applicable case law. As stated in an HHS action transmittal, JOBS-ACF-AT-91-15, dated August 19, 1991, Section 402(g)(1)(A)(i)(II) of the Family Support Act of 1988 only requires child care to be provided for AFDC recipients in education and training if the state approves the activity.

That action transmittal specifically provides that the state may include fiscal constraints in its criteria for approval, or continuation of approval, of education or training activities for both JOBS and non-JOBS individuals. The action transmittal also indicates that the state may use different criteria for the approval of education and training for JOBS and non-JOBS individuals. Thus, in limiting approval for self-initiated training and education to a certain number of slots based on the amount of money appropriated for child care, the department is in compliance with the Family Support Act and HHS policy as expressed in AT-91-15.

AT-91-15 also requires state agencies to have written criteria for discontinuation of child care prior to a recipient's completion of an approved self-initiated education or training activity. These criteria must establish priorities for discontinuing care and include consideration of the time needed for completion of the activity. The proposed rule specifies that recipients who have already been approved for child care for self-initiated activities will be allowed to retain all benefits for the duration of the school year. The employability plan and associated activities are reviewed and approved on a quarterly or semester basis. All participants will be assessed in accordance with the priorities set forth in the proposed rule.

In Miller v. Carlson, the U.S. District Court for the Northern District of California entered a preliminary injunction enjoining the California Department of Social Services (DSS) from failing to provide child care for AFDC recipients who had been terminated from the JOBS program for fiscal reasons and needed child care to participate in education or training. Miller v. Carlson, 768 F. Supp. 1331 (1991).

In that case the court found that DSS, having previously approved the recipients' training or education when they were participating in JOBS, could not revoke its approval when they were terminated from JOBS for fiscal reasons and refuse to provide child care. The court in its preliminary order did not address the separate question of whether DSS could withhold approval of training or education for financial reasons for recipients whose activity had not been previously approved.

The ruling in Miller was a preliminary order, not a final determination on the merits. It did not rule on the rights of individuals pursuing self-initiated education or training, only persons who had been terminated from JOBS. Further, a holding of the U.S. District Court for the Northern District of California is also not binding on the department. However, to the extent that that holding may be indicative of how some courts may interpret the Family Support Act, it stands only for the proposition that a state may not revoke approval of a previously approved activity purely for financial reasons. It does not indicate that the department may not entertain fiscal considerations in determining whether initially to grant approval to recipients for self-initiated training or education or whether approval is guaranteed for the duration of program or the duration of the assessment period.

Although the ruling in Miller is not binding on the department, the department believes that the proposed rule is consistent with the holding in that case. We have not termi-

nated child care for all recipients in self-initiated training or education. On the contrary, all recipients currently enrolled in an approved self-initiated program will continue to receive child care until the end of their current school year.

4. The department has also made the following changes to the rule as proposed on the first notice:

The parenthetical phrase "(at an institution of higher education or a school or other entity offering vocational or technical training)" has been deleted from subsection (1) because self-initiated training or education is not limited to programs at institutions of higher education or vocational or technical schools. Participation in adult basic education, high school, or GED programs can also constitute self-initiated training or education.

In subsection (2)(a), the words "and approved" have been added to make it clear that the department must approve the recipient's employability plan in order for the recipient's self-initiated training or education to be acceptable.

Two new subsections, (2)(a)(i)(A) and (B), have been added to explain how the department will determine the number of slots available and the process by which slots will be filled using an annual application period and a prioritized waiting list for those who will not receive child care immediately.

In subsections (2)(a)(ii) and (2)(a)(ii)(A), the word "currently" has been deleted and the phrase "prior to March 1, 1992" has been inserted. The purpose of this change is to specify that the grandfathering of participants guaranteed in (2)(a)(ii) applies only to persons who are approved prior to March 1, 1992 and not to all participants once their program of study has been approved. This was the intent of the rule as it was originally proposed to be amended, but the original wording did not accurately express this intent.

In subsection (2)(a)(ii) the term "program year" has been replaced by the term "school year, as defined by the school" and there have been other minor changes in wording regarding enrollment in an approved program. The department recognizes that the term "school year" is more commonly used than the term "program year" and that all schools do not use the term "school year" to mean the same thing. For example, a university or college which is on the semester system might consider the fall and winter semesters from September through June of the next year to be a "school year," while schools on the quarter system might consider a "school year" to cover a different period of time. The wording of (2)(a)(ii) has

therefore been changed to indicate that for purposes of continuing a participant's child care until the end of the school year, the department will apply the definition of "school year" used by the school the participant is attending. The deletion of the words "a program of study and approved for ... child care" and the addition of the words "training or education which has already been approved" in (2)(a)(ii) does not indicate a change in policy. The change was made for stylistic reasons only. The change in wording does emphasize that it is the participant's program of study, not the participant's child care, which is approved by the department.

Subsection (2)(a)(ii) has also been changed to provide that persons whose programs were approved prior to March 1, 1992 will receive child care until the end of their school year. The rule previously guaranteed child care for such persons until the end of the state fiscal year, the end of the school year, or the end of a registration period preceding the end of the fiscal year, whichever occurred last. The department believes that guaranteeing child care until the end of the participant's school year will be sufficient to avoid disruption of the participant's educational program.

Subsection (2)(a)(ii)(B) has been re-worded to emphasize that it is the participant's program of study, not child care per se, which the department approves. The words "prior to March 1, 1992" have been added to make it clear that persons approved prior to that date take priority over persons approved at a later date.

Subsection (2)(a)(ii)(B) also has been changed and subsections (2)(a)(ii)(C) and (D) have been added to state in more detail the priorities applied to persons whose program was approved prior to March 1, 1992. The highest priority is to be given to those who are closest to completing their training or education program. This will allocate limited child care funds first to persons who will complete their program soonest and therefore have the potential to achieve the goal of self-sufficiency soonest. By giving priority to persons who will complete their programs the soonest, the department also ensures that slots will become available to other recipients sooner so that a larger number of recipients will receive child care assistance. If there are two or more participants in this group who are equally close to completing their programs, priority will be given to the participant who has received AFDC cash assistance for at least 36 of the preceding 60 months. Such persons are a JOBS "target group." That is, in the JOBS program, recipients of AFDC for three of the past five years are targeted for special efforts to help them acquire skills and training to overcome long-term dependency on AFDC. If two persons in this group are equally near to

completing their programs and both or neither of them have received AFDC for three of the preceding five years, priority will be given to the person whose application was filed earliest.

Subsections (2)(a)(iii) and (2)(a)(iii)(A) through (E) have been added to set forth the priorities applied to persons whose programs of study were not approved prior to March 1, 1992. The highest priority is given to persons attending high school or participating in adult basic education or a GED program because the department recognizes the importance of a high school diploma or its equivalent to achieve self-sufficiency. Next highest priority is given to persons closest to completion of their programs for the reasons explained above. Next priority is given to the JOBS "target group" discussed above. The lowest priority is given to persons who have completed post-secondary education such as vocational training or an associate degree program within the preceding five years, with the requirement that they be gainfully employed at least 15 hours per week, because the department believes that persons with recent post-secondary training are more likely to have skills to achieve self-sufficiency than persons who fall into the categories which are given higher priority. They should have sufficient skills to obtain at least part-time employment to help support themselves while they are pursuing further education.

Subsections (2)(a)(iv) and (2)(a)(v) have been added to prohibit persons who have completed a bachelor's degree and persons who received child care assistance from the department within the preceding year but failed to complete their program of study without good cause from being approved for self-initiated training or education. The department has put these limits on self-initiated training and education because it believes that persons with a recently acquired bachelor's degree already have sufficient skills to achieve self-sufficiency. The department also considers that it is not desirable to spend the department's limited child care funds on individuals who recently failed to complete a program of study without good cause because they may be less motivated to complete an educational program than other persons who have not dropped out. Therefore, the department has chosen to use its limited child care funds on individuals who have greater need for an education or who are more likely to complete an education program.

Subsection (3)(a) has been changed to state that a person who is provided with child care while participating in self-initiated training or education will receive child care until the end of the person's current school year, rather than until completion of the participant's program. This change is

necessary in order for the department to avoid overspending its appropriation for child care. The rule as previously written required the department to continue paying for child care until the completion of a participant's program once that person was chosen for a slot. In the case of persons enrolling in a lengthy program, such as a four year degree program, this would commit the department to paying for child care for several years even though the department cannot predict what its child care funding will be in future years. All participants will now be required to re-apply for a slot once a year for the next school year.

Dawn Sliva
Rule Reviewer

Julia E. Robins
Director, Social and Rehabilitation Services

Certified to the Secretary of State February 18, 1992.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
Subject
Matter | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1991. This table includes those rules adopted during the period January 1, 1992 through March 31, 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 December 31, 1991, 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 1991 and 1992 Montana Administrative Registers.

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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 January, 1992, are published. Vacancies scheduled to appear from March 1, 1992, through May 31, 1992, 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 February 6, 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: JANUARY, 1992

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Aging Advisory Council (Governor)			
Mr. R.H. (Buff) Hultman	Governor	none listed	1/6/1992
Drummond			7/18/1992
Qualifications (if required):	representative if Region V		
American Indian Monument and Tribal Circle of Flags (Commerce)			
Mr. Pat Lefthand	Governor	Zimmerman	1/28/1992
Pablo			0/0/0
Qualifications (if required):	none specified		
Mr. Tim Zimmerman	Governor	Fleury	1/28/1992
Havre			0/0/0
Qualifications (if required):	represents Little Shell Tribe		
Appellate Defender Commission (Administration)			
Mr. Tom McElwain	Governor	reappointed	1/3/1992
Butte			1/1/1995
Qualifications (if required):	public member		
Board of Chiropractors (Commerce)			
Dr. Marvin S. Harris	Governor	Wilson	1/14/1992
Great Falls			1/1/1995
Qualifications (if required):	chiropractor		
Board of Dentistry (Commerce)			
Ms. Fern Flanagan	Governor	reappointed	1/4/1992
Helena			1/4/1997
Qualifications (if required):	public member and senior citizen		
Board of Horseracing (Commerce)			
Mr. Malcom E. Adams	Governor	Hoffman	1/20/1992
Roscoe			1/20/1995
Qualifications (if required):	resides in 2nd district		

BOARD AND COUNCIL APPOINTEES: JANUARY, 1992

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Horseracing (Commerce) cont.			
Mr. Steve Christian Whitefish	Governor	reappointed	1/20/1992
Qualifications (if required):	resides in 5th district		1/20/1995
Board of Occupational Therapy (Commerce)			
Ms. Diana Margaret Leonard Great Falls	Governor	Amondson	1/9/1992
Qualifications (if required):	occupational therapist		12/31/1995
Board of Real Estate Appraisers (Commerce)			
Mr. A. Farrell Rose Helena	Governor	Moore	1/27/1992
Qualifications (if required):	licensed appraiser		5/1/1994
Board of Regents of Higher Education (Education)			
Mr. James M. Kaze Havre	Governor	reappointed	1/30/1992
Qualifications (if required):	democrat from second Congressional District		2/1/1999
Health Facility Authority Board (Commerce)			
Mr. John Bartos Hamilton	Governor	Solheim	1/6/1992
Qualifications (if required):	hospital administrator		1/1/1993
Judicial Nomination Commission (Justice)			
Mr. C. David Bliss Conrad	Governor	Devier	1/1/1992
Qualifications (if required):	lay member		1/1/1993
Ms. Charmaine R. Fisher Billings	Governor	Byerly	1/1/1992
Qualifications (if required):	lay member		1/1/1994

BOARD AND COUNCIL APPOINTEES: JANUARY, 1992

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Judicial Nomination Commission	(Justice) cont.		
Mr. Jim Mockler	Governor	Wood	1/1/1992
Helena			1/1/1996
Qualifications (if required):	lay member		
Mr. Frank Stock	Governor	Metcalf	1/1/1992
Polson			1/1/1995
Qualifications (if required):	lay member		

*VACANCIES ON BOARDS AND COUNCILS -- March 1, 1992 through May 31, 1992

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Architects (Commerce) Mr. Robert Utzinger, Bozeman Qualifications (if required): 1 reg. architect on MSU School of Architecture staff	Governor	3/27/1992
Mr. Harry Atchison, Havre Qualifications (if required): none specified	Governor	4/25/1992
Board of Athletics (Commerce) Dr. John R. Halsey, Great Falls Qualifications (if required): none specified	Governor	4/25/1992
Dr. Leonard Andrew Vandolah, Conrad Qualifications (if required): none specified	Governor	4/25/1992
Board of Dentistry (Commerce) Ms. Elsie Fox, Miles City Qualifications (if required): public member	Governor	3/29/1992
Mr. Ronald L. Olson, Billings Qualifications (if required): dentist	Governor	3/29/1992
Board of Rail Insurance (Agriculture) Mr. Louis Beirwagen, Big Sandy Qualifications (if required): none specified	Governor	4/18/1992
Board of Nursing Home Administrators (Commerce) Ms. Linda M. Smith, Missoula Qualifications (if required): none specified	Governor	5/28/1992
Board of Optometrists (Commerce) Mr. Larry J. Bonderud, Shelby Qualifications (if required): registered optometrist	Governor	4/3/1992

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1992 through May 31, 1992

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Plumbers (Commerce) Mr. Thor A. Jackola, Kalispell Qualifications (if required): professional engineer qualified in mechanical engineering	Governor	5/4/1992
Board of Professional Engineers and Land Surveyors (Commerce) Mr. Robert T. Hafferman, Kalispell Qualifications (if required): none specified	Governor	4/23/1992
Dr. Fred E. Walter, Butte Qualifications (if required): mechanical engineer	Governor	4/23/1992
Board of Real Estate Appraisers (Commerce) Ms. Connie G. Clarke, Miles City Qualifications (if required): public member	Governor	5/1/1992
Ms. Janet M. Davis, Billings Qualifications (if required): appraiser represent American Institute Real Estate Appraiser	Governor	5/1/1992
Board of Realty Regulation (Commerce) Ms. Marcia J. Allen, Helena Qualifications (if required): licensed real estate broker active in real estate business	Governor	5/9/1992
Board of Veterans Affairs (Military Affairs) Mr. Dale G. Pawlowski, Circle Qualifications (if required): none specified	Governor	5/18/1992
Building Codes Advisory Council (Commerce) Mr. Dick Anderson, Helena Qualifications (if required): not specified	Director	3/31/1992
Mr. Ray Blehm Jr., Helena Qualifications (if required): not specified	Director	3/31/1992

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1992 through May 31, 1992

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Building Codes Advisory Council (Commerce) cont. Ms. Linda Cockhill, Helena Qualifications (if required): not specified	Director	3/31/1992
Mr. Phil Green, Billings Qualifications (if required): not specified	Director	3/31/1992
Mr. Reginald McMurdo, Missoula Qualifications (if required): not specified	Director	3/31/1992
Mr. Pete Mion, Missoula Qualifications (if required): not specified	Director	3/31/1992
Mr. William Novak, Billings Qualifications (if required): not specified	Director	3/31/1992
Mr. John Palmquist, Helena Qualifications (if required): not specified	Director	3/31/1992
Mr. Robert Ross, Kalispell Qualifications (if required): not specified	Director	3/31/1992
Ms. Mitzi Schwab, Helena Qualifications (if required): not specified	Director	3/31/1992
Ms. Kastor Simensen, Wolf Point Qualifications (if required): not specified	Director	3/31/1992
Executive Board of Eastern Montana College (Education) Mr. Bill Tierney, Billings Qualifications (if required): none specified	Governor	4/20/1992

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1992 through May 31, 1992

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Executive Board of Western Montana College (Education) Ms. Pat Blade, Dillon Qualifications (if required): none specified	Governor	4/16/1992
Montana State University Executive Board (Education) Ms. Helen Johnson, Bozeman Qualifications (if required): none specified	Governor	4/17/1992
Public Employees Retirement Board (Administration) Mr. Robert L. Batista, Great Falls Qualifications (if required): none specified	Governor	4/1/1992
State Employee Sick Leave Advisory Council (Governor) Mr. Bob Robinson, Helena Qualifications (if required): office of elected official	Governor	3/1/1992
State Library Commission (Education) Ms. Mary Doggett, White Sulphur Springs Qualifications (if required): none specified	Governor	5/22/1992
Ms. Joanne V. Lerud, Butte Qualifications (if required): none specified	Commissioner	4/1/1992

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1992 through May 31, 1992

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Building Codes Advisory Council (Commerce) cont.		
Ms. Linda Cockhill, Helena Qualifications (if required): not specified	Director	3/31/1992
Mr. Phil Green, Billings Qualifications (if required): not specified	Director	3/31/1992
Mr. Reginald McMurdo, Missoula Qualifications (if required): not specified	Director	3/31/1992
Mr. Pete Mion, Missoula Qualifications (if required): not specified	Director	3/31/1992
Mr. William Novak, Billings Qualifications (if required): not specified	Director	3/31/1992
Mr. John Palmquist, Helena Qualifications (if required): not specified	Director	3/31/1992
Mr. Robert Ross, Kalispell Qualifications (if required): not specified	Director	3/31/1992
Ms. Mitzi Schwab, Helena Qualifications (if required): not specified	Director	3/31/1992
Ms. Kaator Simensen, Wolf Point Qualifications (if required): not specified	Director	3/31/1992
Executive Board of Eastern Montana College (Education)		
Mr. Bill Tierney, Billings Qualifications (if required): none specified	Governor	4/20/1992

VACANCIES ON BOARDS AND COUNCILS -- March 1, 1992 through May 31, 1992

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Executive Board of Western Montana College (Education) Ms. Pat Blade, Dillon Qualifications (if required): none specified	Governor	4/16/1992
Montana State University Executive Board (Education) Ms. Helen Johnson, Bozeman Qualifications (if required): none specified	Governor	4/17/1992
Public Employees Retirement Board (Administration) Mr. Robert L. Batista, Great Falls Qualifications (if required): none specified	Governor	4/1/1992
State Employee Sick Leave Advisory Council (Governor) Mr. Bob Robinson, Helena Qualifications (if required): office of elected official	Governor	3/1/1992
State Library Commission (Education) Ms. Mary Doggett, White Sulphur Springs Qualifications (if required): none specified	Governor	5/22/1992
Ms. Joanne V. Lerud, Butte Qualifications (if required): none specified	Commissioner	4/1/1992