RESERVE

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ISSUE NO. 15

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the adoption of new rules for the administration and enforcement of laws regulating standards for companies considered to be in hazardous financial condition, regulating annual audited reports, regulating life and health reinsurance agreements, regulating reports by holding company systems, establishing accounting practices and procedures to be used in annual statements, regulating credit for reinsurance, including letters of credit, and establishing standards for valuation of insurer securities and other invested assets	)))))))))))))	NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

1. On September 3, 1993, at 9:00 o'clock a.m., MDT, a public hearing will be held in the east conference room on the ground floor of the Mitchell Building, 126 North Roberts Street, Helena, Montana. The hearing will be to consider the proposed adoption of new rules pertaining to the administration and enforcement of laws regulating standards for companies considered to be in hazardous financial condition, regulating annual audited reports, regulating life and health reinsurance agreements, regulating reports by holding company systems, establishing accounting practices and procedures to be used in annual statements, regulating credit for reinsurance, including letters of credit, and establishing standards for valuation of insurer securities and other invested assets.

2. The proposed new rules provide as follows:

RULES REGARDING COMPANIES CONSIDERED TO BE IN HAZARDOUS FINANCIAL CONDITION

RULE I STANDARDS FOR EVALUATING FINANCIAL CONDITION OF REGULATED COMPANIES (1) The following standards or criteria, either singly or a combination of two or more, may be considered by the commissioner in determining whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to the policyholders, creditors or the general public:

(a) Adverse findings reported in financial condition and market conduct examination reports;

(b) The national association of insurance commissioners (NAIC) insurance regulatory information system and its related reports;

(c) The ratios of commission expense, general insurance expense, policy benefits, and reserve increases to annual premium and net investment income which could lead to an impairment of capital and surplus;

(d) Whether insurer's asset portfolio, when viewed in light of current economic conditions, is of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;

(e) The ability of an assuming reinsurer to perform, and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written, as well as the financial condition of the assuming reinsurer;

(f) Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than fifty percent (50%) of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

(g) Whether any affiliate, subsidiary or reinsurer is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations;

(h) Contingent liabilities, pledges, or guaranties which, either individually or collectively, involve a total amount which in the opinion of the commissioner may affect the solvency of the insurer;

(i) Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer;

(j) The age and collectibility of receivables;

(k) Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness, and reputation deemed necessary to serve the insurer in such position;

(l) Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

(m) Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of a material amount in the books of the insurer;

(n) Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner; and

(o) Whether the company has experienced or will experience in the foreseeable future cash flow and/or liquidity problems.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-2-1517, MCA

RULE II SCOPE OF COMMISSIONER'S DISCRETION (1) For the purposes of making a determination of an insurer's financial condition under this rule, the commissioner may:

(a) Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding;

(b) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;

(c) Refuse to recognize the stated value of accounts receivable, if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(d) Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included, if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve-month period.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-2-1517, MCA

RULE III POSSIBLE ADMINISTRATIVE SANCTIONS AGAINST COMPANIES IN HAZARDOUS CONDITION (1) If the commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the policyholders or the general public, then the commissioner may, upon such a determination, issue an order requiring the insurer to:

(a) Reduce the total amount of present and potential liability for policy benefits by reinsurance;

(b) Reduce, suspend, or limit the volume of business being accepted or renewed;

(c) Reduce general insurance and commission expenses by specified methods;

(d) Increase the insurer's capital and surplus;

(e) Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;

(f) File reports in a form acceptable to the commissioner concerning the market value of an insurer's assets;

(g) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;

(h) Document the adequacy of premium rates in relation to the risks insured;

(i) File, in addition to regular annual statements, interim financial reports on the form adopted by the national association of insurance commissioners or in such format as promulgated by the commissioner.

AUTH: 33-1-313, 33-2-1321, and 33-2-1517, MCA
IMP: 33-2-1321 and 33-2-1517, MCA

RULE IV ADMINISTRATIVE REMEDIES AVAILABLE TO INSURERS (1) Any insurer subject to an order under Rule III may request a hearing or appeal from the order pursuant to 33-2-1321, MCA.

AUTH: 33-1-313, 33-2-1321, and 33-2-1517, MCA
IMP: 33-2-1321 and 33-2-1517, MCA

RULES REGARDING ANNUAL AUDITED REPORTS

RULE V DEFINITIONS (1) For the purposes of this subchapter, the following terms shall have the following meanings:

(a) "Audited financial report" means and includes those items specified in Rule VIII.

(b) "Accountant" and "Independent Certified Public Accountant" means an independent certified public accountant or accounting firm in good standing with the American institute of CPAs (AICPA) and in all states in which they are licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.

(c) "Insurer" means a licensed insurer as defined in 33-1-201 and 33-2-1501, MCA, or an authorized insurer as defined in 33-1-201, MCA.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-2-1517, MCA

RULE VI PURPOSE AND SCOPE (1) The purpose of this rule is to improve the surveillance of the financial condition of insurers by the department of insurance of the state of Montana by requiring annual examinations by independent certified public accountants of the financial statements reporting the financial position and the results of operations of insurers.

(2) Except as specifically provided herein, every insurer shall be subject to these rules. Insurers having direct premiums written in this state of less than $1,000,000 in any calendar year and less than 1,000 policyholders or certificateholders of directly written policies nationwide at the end of such calendar year shall be exempt from these rules for such year (unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities). Insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of $1,000,000 or more will not be exempt.

(3) Foreign or alien insurers filing audited financial reports in another state, pursuant to such other state's requirement of audited financial reports which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from these rules if:

(a) A copy of the audited financial report, report on significant deficiencies in internal controls, and the accountant's letter of qualifications which are filed with such other state are filed with the commissioner in accordance with the filing dates specified in Rules VII, XIII, and XIV,

respectively (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance).

(b) A copy of any notification of adverse financial condition report filed with such other state is filed with the commissioner within the time specified in Rule XI. This rule does not prohibit, preclude or in any way limit the commissioner from ordering and/or conducting and/or performing examinations of insurers under the rules, regulations, practices, and procedures of the department.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-2-1517, MCA

RULE VII FILING AND EXTENSIONS FOR FILING OF ANNUAL AUDITED FINANCIAL REPORTS (1) All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the commissioner on or before June 1 for the year ended December 31 immediately preceding. Upon 90 days advance notice, for good cause, the commissioner may require an insurer to file an audited financial report earlier than June 1.

(2) Extensions of the June 1 filing date may be granted by the commissioner for thirty-day periods upon showing by the insurer and its independent certified public accountant of good cause for an extension. Request for extension must be submitted in writing not less than 10 days prior to the due date and must be in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-2-1517, MCA

RULE VIII CONTENTS OF ANNUAL AUDITED FINANCIAL REPORT

(1) The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended, all in conformity with statutory accounting practices prescribed, or otherwise permitted, by the department of insurance of the state of domicile.

(2) The annual audited financial report shall include the following:

(a) Report of independent certified public accountant.

(b) Balance sheet reporting admitted assets, liabilities, capital, and surplus.

(c) Statement of operations.

(d) Statement of cash flows.

(e) Statement of changes in capital and surplus.

(f) Notes to financial statements. These notes must be the same as those required by the appropriate national association of insurance commissioners annual statement instructions and any other notes required by generally accepted accounting principles and must also include:

(i) A reconciliation of differences, if any, between the audited statutory financial statements and the annual statement

filed pursuant to sections 33-2-701, 33-4-313, 33-7-118, 33-30-107, and 33-31-211, MCA.

(ii) A summary of ownership and relationships of the insurer and all affiliated companies.

(g) The financial statements included in the audited financial report shall be prepared in a form, and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner, and the financial statement must be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. In the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

AUTH: 33-1-313, 33-2-1517, and 33-5-413, MCA
IMP: 33-2-1517 and 33-5-413, MCA

RULE IX DESIGNATION OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT (1) Each insurer required by these rules to file an annual audited financial report must, within 60 days after becoming subject to such requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audited required by these rules. Insurers not retaining an independent certified public accountant on the effective date of this rule shall register the name and address of their retained certified public accountant not less than 6 months before the date when the first audited financial report is to be filed.

(2) The insurer shall obtain a letter from the accountant, and file a copy with the commissioner, stating that the accountant is aware of the provisions of Title 33, MCA, and the administrative rules of the department that relate to accounting and financial matters, and affirming that he will express his opinion on the financial statements in terms of their conformity with the statutory accounting practices prescribed or otherwise permitted by that department, specifying such exceptions as he may believe appropriate.

(3) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within 5 business days notify the department of this event. The insurer shall also furnish the commissioner with a separate letter within 10 business days of the above notification, stating whether in the 24 months preceding such event there were any disagreements with the former accountant on any matters of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him to make reference to the subject matter of the disagreement in connection with his opinion. The disagreements required to be reported in response to this rule include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements

contemplated by this rule are those that occur at the decision-making level, that is between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request such former accountant to furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he does not agree; and the insurer shall furnish such responsive letter from the former accountant to the commissioner, together with its own.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-2-1517, MCA

RULE X QUALIFICATIONS OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT (1) The commissioner shall not recognize any person or firm as a qualified independent certified public accountant that is not in good standing with the AICPA and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant.

(2) Except as otherwise provided herein, an independent certified public accountant shall be recognized as qualified as long as he or she conforms to the standards of his or her profession, as contained in the code of professional ethics of the AICPA and rules and regulations and code of ethics and rules of professional conduct of the Montana board of public accountants or its counterparts in sister states.

(3) No partner or other person responsible for rendering a report may act in that capacity for more than 7 consecutive years. Following any period of service such person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of 2 consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The commissioner may consider the following factors in determining whether relief should be granted:

(a) Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

(b) Premium volume of the insurer; and

(c) Number of jurisdictions in which the insurer transacts business.

(4) The commissioner shall not recognize as a qualified independent certified public accountant, nor accept any annual audited financial report prepared in whole or in part, by any natural person who:

(a) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;

(b) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this rule; or

(c) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this rule.

(5) The commissioner may hold a hearing pursuant to 33-1-701, MCA, to determine whether a certified public accountant is qualified and, after considering the evidence and arguments presented, may decide whether the accountant is qualified to express his opinion on the financial statements in the annual audited financial report filed pursuant to these rules and may require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of these rules.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-1-701 and 33-2-1517, MCA

RULE XI CONSOLIDATED OR COMBINED AUDITS (1) An insurer may make written application to the commissioner for authority to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements, if the insurer is part of a group of insurance companies which utilizes a pooling, or one hundred percent reinsurance, agreement that affects the solvency and integrity of the insurer's reserves and such insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

(a) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet.

(b) Amounts for each insurer subject to this section shall be stated separately.

(c) Noninsurance operations may be shown on the worksheet on a combined or individual basis.

(d) Explanations of consolidating and eliminating entries shall be included.

(e) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-2-1517, MCA

RULE XII SCOPE OF EXAMINATION AND REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT (1) Financial statements furnished pursuant to Rule IV hereof shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. Consideration should also be given to such other procedures illustrated in the Financial Condition Examiner's Handbook promulgated by the NAIC, as the independent certified public accountant deems necessary.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-2-1517, MCA

RULE XIII NOTIFICATION OF ADVERSE FINANCIAL CONDITION (1) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within 5 business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner, as of the balance sheet date currently under examination, or that the insurer does not meet the minimum capital and surplus requirement of 33-2-109, 33-2-110, 33-4-401, 33-5-401, 33-30-201, and 33-31-216(9), MCA, as of that date. An insurer who has received a report pursuant to this rule shall forward a copy of the report to the commissioner within 5 business days of receipt of such report, and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive such evidence within the required 5-business-day period, the independent certified public accountant shall furnish to the commissioner a copy of its report within the next 5 business days.

(2) If the accountant, subsequent to the date of the audited financial report filed pursuant to this rule, becomes aware of facts which might have affected his report, it has the obligation to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the AICPA.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-2-1517, MCA

RULE XIV REPORT ON SIGNIFICANT DEFICIENCIES IN INTERNAL CONTROLS (1) In addition to the annual audited financial statements, each insurer shall furnish the commissioner with a written report prepared by the accountant, describing significant deficiencies in the insurer's internal control structure noted by the accountant during the audit, in accordance with SAS No. 60, "Communication of Internal Control Structure Matters Noted in an Audit" (AU section 325 of the professional standards of the AICPA, which requires an accountant to communicate significant deficiencies (called "reportable conditions") noted during a financial statement audit to the appropriate parties within an entity. No report should be issued if the accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report must be filed annually by the insurer with the department within 10 days after the filing of the annual audited financial statements. The insurer shall provide a description of remedial actions taken or proposed to correct significant deficiencies, if such actions are not described in the accountant's report.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-2-1517, MCA

RULE XV ACCOUNTANT'S LETTER OF QUALIFICATIONS (1) The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

(a) That the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the code of professional ethics and pronouncements of the AICPA and the rules of professional conduct of the Montana board of public accountants or its applicable counterpart in a sister state.

(b) The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement, and whether each is an independent certified public accountant. Nothing within these rules shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards.

(c) That the accountant understands the annual audited financial report and his or her opinion thereon will be filed in compliance with these rules and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers.

(d) That the accountant consents to the requirements of Rule XII and that the accountant consents and agrees to make available for review by the commissioner, his designee or his appointed agent, the workpapers, as defined in Rule XII.

(e) A representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the AICPA.

(f) A representation that the accountant is in compliance with the requirements of Rule X of these rules.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-2-1517, MCA

RULE XVI DEFINITION, AVAILABILITY, AND MAINTENANCE OF CPA WORKPAPERS (1) Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to his examination of the financial statements of an insurer. Workpapers, accordingly, may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his or her examination of the financial statements of an insurer and which support his or her opinion thereof.

(2) Every insurer required to file an audited financial report pursuant to these rules shall require the accountant to make available for review by department examiners, all workpapers prepared in the conduct of his or her examination and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the department, or at any other reasonable place designated by the

commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the department has filed a report on examination covering the period of the audit, but no longer than 7 years from the date of the audit report.

(3) In the conduct of the aforementioned periodic review by the department examiners, photocopies of pertinent audit workpapers may be made and retained by the department. Such reviews by the department examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the department.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-2-1517, MCA

RULE XVII EXEMPTIONS AND EFFECTIVE DATES (1) Upon written application of any insurer, the commissioner may grant an exemption from compliance with these rules if the commissioner finds, upon review of the application, that compliance with this rule would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within 10 days from a denial of an insurer's written request for an exemption from this rule, such insurer may make a written request for a hearing on its application for an exemption. Such hearing shall be held in accordance with 33-1-701, MCA.

(2) Domestic insurers retaining certified public accountants on the effective date of this rule who qualify as independent shall comply with these rules for the year ending December 31, 1993, and each year thereafter unless the commissioner permits otherwise.

(3) Domestic insurers not retaining certified public accountants on the effective date of these rules who qualify as independent may meet the following schedule for compliance, unless the commissioner permits otherwise.

(a) As of December 31, 1993, file with the commissioner:

(i) A report of an independent certified public accountant;

(ii) Audited balance sheets; and

(iii) Notes to audited balance sheet.

(b) For the year ending December 31, 1994, and each year thereafter, such insurers shall file with the commissioner all reports required by these rules.

(4) Foreign insurers shall comply with these rules for the year ending December 31, 1993, and each year thereafter, unless the commissioner permits otherwise.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-1-701 and 33-2-1517, MCA

RULE XVIII CANADIAN AND BRITISH COMPANIES (1) In the case of Canadian and British insurers, the annual audited financial report must be defined as the annual statement of total business on the form filed by such companies with their domiciliary supervision authority, duly audited by an independent chartered accountant.

(2) For such insurers, the letter required in Rule IX must state that the accountant is aware of the requirements relating to the annual audited statement filed with the commissioner pursuant to Rule VII and must affirm that the opinion expressed is in conformity with such requirements.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-2-1517, MCA

RULES REGULATING LIFE AND HEALTH REINSURANCE AGREEMENTS

RULE XIX SCOPE OF RULES (1) These rules apply to all domestic life and accident and health insurers and to all other licensed life and accident and health insurers which are not subject to a substantially similar regulation in their domiciliary state. These rules also apply to licensed property and casualty insurers with respect to their accident and health business. These rules do not apply to assumption reinsurance, yearly renewable term reinsurance or certain nonproportional reinsurance such as stop-loss or catastrophe reinsurance.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-2-1517, MCA

RULE XX ACCOUNTING REQUIREMENTS (1) No insurer subject to these rules may, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the department if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

(a) Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall (using assumptions equal to the applicable statutory reserve basis on the business reinsured). Renewal expenses include commissions, premium taxes, and direct expenses including, but not limited to, billing, valuation, claims, and maintenance expected by the company at the time the business is reinsured;

(b) The ceding insurer can be deprived of surplus or assets at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer, except that termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, shall not be considered to be such a deprivation of surplus or assets;

(c) The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the agreement upon voluntary termination of in-force reinsurance by the ceding insurer shall be considered such a reimbursement to the insurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement;

(d) The ceding insurer must, at specific points in time scheduled in the agreement, terminate, or automatically recapture all or part of the reinsurance ceded;

(e) The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts other than from income realized from the reinsured policies;

(f) The agreement does not involve transfer of all of the significant risk inherent in the business being reinsured.

(i) Significant risks include, but are not limited to, the following:

(A) Morbidity.

(B) Mortality.

(C) The risk that a policy will voluntarily terminate prior to the recoupment of a statutory surplus strain experienced at issue of the policy (lapse risk).

(D) The risk that invested assets supporting the reinsured business will decrease in value, the main hazards being that assets will default or that there will be a decrease in earning power (credit quality risk). This risk excludes market value declines due to changes in interest rate.

(E) The risk that interest rates will fall and funds reinvested (coupon payments or monies received upon asset maturity or call) will therefore earn less than expected (reinvestment risk).

(F) The risk that interest rates rise and policy loans and surrenders increase or maturing contracts do not renew at anticipated rates of renewal (disintermediation risk).

(ii) Risk categories for types of insurance covered by these rules are summarized in the following chart: (+ denotes significant risk; 0 denotes insignificant risk.)

LINES OF INSURANCE	A	B	C	D	E	F
Health Insurance--other than LTC/LTD*	+	0	+	0	0	0
Health Insurance--LTC/LTD*	+	0	+	+	+	0
Immediate Annuities	0	+	0	+	+	0
Single Premium Deferred Annuities	0	0	+	+	+	+
Flexible Premium Deferred Annuities	0	0	+	+	+	+

LINES OF INSURANCE	A	B	C	D	E	F
Guaranteed Interest Contracts	0	0	0	+	+	+
Other Annuity Deposit Business	0	0	+	+	+	+
Single Premium Whole Life	0	+	+	+	+	+
Traditional Non-Par Permanent	0	+	+	+	+	+
Traditional Non-Par Term	0	+	+	0	0	0
Traditional Par Permanent	0	+	+	+	+	+
Traditional Par Term	0	+	+	0	0	0
Adjustable Premium Permanent	0	+	+	+	+	+
Indeterminate Premium Permanent	0	+	+	+	+	+
Universal Life Flexible Premium	0	+	+	+	+	+
Universal Life Fixed Premium	0	+	+	+	+	+
Universal Life Fixed Premium	0	+	+	+	+	+

*LTC = Long Term Care Insurance
LTD = Long Term Disability Insurance

(g) The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not [other than for the classes of business excepted in (i) below] either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the commissioner which legally segregates, by contract or contract provision, the underlying assets.

(i) Notwithstanding the requirements of (1)(g), the assets supporting the reserves for the following classes of business and any classes of business which do not have a significant credit quality, reinvestment or disintermediation risk may be held by the ceding company without segregation of such assets:

(A) Health Insurance--LTC/LTD;
(B) Traditional Non-Par Permanent;
(C) Traditional Par Permanent;
(D) Adjustable Premium Permanent;
(E) Indeterminate Premium Permanent;
(F) Universal Life Fixed Premium (exclusive of dumped-in premiums).

(ii) Any formula for determining reserve interest rate adjustment must be one which reflects the ceding company's investment earnings and incorporates all realized and unrealized gains and losses reflected in the statement.

(h) Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within 90 days of the settlement date.

(i) The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured.

(j) The ceding insurer is required to make representations or warranties about future performance of the business being reinsured.

(k) The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

(2) Notwithstanding subsection (1), an insurer subject to this rule may, with the prior approval of the commissioner, take such reserve credit or establish such asset as the commissioner may deem consistent with the Montana insurance code and rules of the department, including actuarial interpretations or standards adopted by the department.

(3) Agreements entered into after the effective date of these rules which involve the reinsurance of business issued prior to the effective date of the agreements, along with any subsequent amendments thereto, shall be filed by the ceding company with the commissioner within 30 days from the date of execution. Each filing shall include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall consider these rules and applicable actuarial standards of practice when determining the proper credit in financial statements filed with the department. The actuary shall maintain adequate documentation and be prepared to describe the actuarial work performed for inclusion in the financial statements and to demonstrate that his or her work conforms to these rules.

(a) Any increase in surplus net of federal income tax resulting from arrangements described in this subsection shall be identified separately on the insurer's statutory financial statement as a surplus item (aggregate write-ins for gains and losses in surplus in the capital and surplus account of the annual statement) and recognition of the surplus increase as income shall be reflected on a net of tax basis on the line captioned "reserve adjustments on reinsurance ceded" of the annual statement, as earnings emerge from the business reinsured.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-2-1517, MCA

RULE XXI WRITTEN AGREEMENT (1) No reinsurance agreement or amendment to any agreement may be used to reduce any liability or to establish any asset in any financial statement filed with the department, unless the agreement, amendment or a binding letter of intent has been duly executed by both parties no later than the "as of date" of the financial statement.

(2) In the case of a letter of intent, a reinsurance agreement or an amendment to a reinsurance agreement must be executed within a reasonable period of time, not exceeding 90 days from the execution date of the letter of intent, in order for credit to be granted for the reinsurance ceded.

(3) The reinsurance agreement must contain provisions to the effect that:

(a) The agreement constitutes the entire agreement between the parties with respect to the business being reinsured thereunder and that there are no understandings between the parties other than as expressed in the agreement; and

(b) Any change or modification to the agreement is null and void unless made by amendment to the agreement and signed by both parties.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-2-1517, MCA

RULE XXII EXISTING AGREEMENTS Insurers subject to these rules must reduce to zero by December 31, 1995, any reserve credits or assets established with respect to reinsurance agreements entered into prior to the effective date of these rules which, under the provisions of these rules would not be entitled to recognition of the reserve credits or assets; provided, however, that the reinsurance agreements must have been in compliance with laws or regulations in existence immediately preceding the effective date of these rules.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-2-1517, MCA

RULES REGARDING REPORTING BY HOLDING COMPANY SYSTEMS

RULE XXIII DEFINITIONS (1) For the purposes of this subchapter, the following terms shall have the following meanings:

(a) "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

(b) "Foreign insurer" shall include an alien insurer, except where clearly noted otherwise.

(c) "Ultimate controlling person" means that person which is not controlled by any other person.

(2) Unless the context otherwise requires, other terms found in these rules are used as defined in 33-1-201, 202, and 1101, MCA. Other nomenclature or terminology is according to the Montana insurance code, or industry usage if not defined by the Code.

AUTH: 33-1-313 and 33-2-1517, MCA IMP: 33-2-1517, MCA

RULE XXIV FORMS--GENERAL REQUIREMENTS (1) Forms A, B, C, and D are intended to be guides in the preparation of the statements required by 33-2-1104, 33-2-1111, and 33-2-1113, MCA.

They are not intended to be blank forms which are to be filled in. The statements filed must contain the numbers and captions of all items, but the text of the items may be omitted, provided the answers thereto are prepared in such a manner as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

(2) One complete copy of each statement including exhibits and all other papers and documents filed as a part thereof, must be filed with the commissioner by personal delivery or mail addressed to the commissioner of insurance of the state of Montana. A copy of Form C shall be filed in each state in which an insurer is authorized to do business, if the insurance regulator of that state has notified the insurer of its request in writing, in which case the insurer has 30 days from receipt of the notice to file such form. At least one of the copies shall be manually signed in the manner prescribed on the form. Unsigned copies must be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority must also be filed with the statement.

(3) Statements should be prepared on paper 8 1/2" x 11" (or 8 1/2" x 14") in size and preferably bound at the top or the top left-hand corner. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of all statements, financial statements, and exhibits must be clear, easily readable and suitable for photocopying. Debits in credit categories and credits in debit categories must be designated so as to be clearly distinguishable as such on photocopies. Statements must be in the English language and monetary values must be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it must be accompanied by a translation into the English language and any monetary value shown in a foreign currency normally shall be converted into United States currency.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1104, 33-2-1111, 33-2-1113, and 33-2-1517, MCA

RULE XXV FORMS--INCORPORATION BY REFERENCE, SUMMARIES, AND OMISSIONS (1) Information required by any item of Form A, Form B, or Form D may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority, or any other document may be incorporated by reference in answer or partial answer to any item of Form A, Form B, or Form D provided such document or paper is filed as an exhibit to the statement. Excerpts of documents may be filed as exhibits if the documents are extensive. Documents currently on file with the commissioner

which were filed within three years need not be attached as exhibits. References to information contained in exhibits or in documents already on file must clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter must not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear, or confusing.

(2) Where an item requires a summary or outline of the provisions of any document, only a brief statement must be made as to the pertinent provisions of the document. In addition to such statement, the summary or outline may incorporate by reference particular parts of any exhibit or document currently on file with the commissioner which was filed within three years and may be qualified in its entirety by such reference. In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, a copy of only one of such documents need be filed with a schedule identifying the omitted documents and setting forth the material details in which such documents differ from the documents a copy of which is filed.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1104, 33-2-1511, 33-2-1113, and 33-2-1517, MCA

RULE XXVI FORMS--INFORMATION UNKNOWN OR UNAVAILABLE AND EXTENSION OF TIME TO FURNISH (1) Information required need be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonably available to the person filing, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted, subject to the following conditions:

(a) The person filing shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof; and

(b) The person filing shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

(2) If it is impractical to furnish any required information, document, or report at the time it is required to be filed, there may be filed with the commissioner a separate document:

(a) identifying the information, document, or report in question;

(b) stating why the filing thereof at the time required is impractical; and

(c) requesting an extension of time for filing the information, document, or report to a specified date.

(3) The request for extension will be deemed granted unless the commissioner within 30 days after receipt thereof notifies the person that the request is denied.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1104, 33-2-1111, 33-2-1113, and 33-2-1517, MCA

RULE XXVII FORMS--ADDITIONAL INFORMATION AND EXHIBITS (1) In addition to the information expressly required to be included in Form A, Form B, Form C, and Form D, there must be added such further material information, if any, as may be necessary to make the information contained therein not misleading. The person filing may also file such exhibits as it may desire in addition to those expressly required by the statement. Such exhibits must be so marked as to indicate clearly the subject matters to which they refer. Changes to Forms A, B, C, or D must include on the top of the coverage page the phrase: "Change No. (insert number) to" and must indicate the date of the change and not the date of the original filing.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1104, 33-2-1111, 33-2-1113, and 33-2-1517, MCA

RULE XXVIII FILING OF FORM A REGARDING ACQUISITION OR CONTROL (1) A person required to file a statement pursuant to 33-2-1104, MCA, shall furnish the required information on Form A, hereby made a part of these rules.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1104 and 33-2-1517, MCA

RULE XXIX AMENDMENTS TO FORM A (1) The applicant shall promptly advise the commissioner of any changes in the information so furnished on Form A arising subsequent to the date upon which such information was furnished but prior to the commissioner's disposition of the application.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1104 and 33-2-1517, MCA

RULE XXX REPORTING ACQUISITION OF DOMESTIC INSURERS (1) If the person being acquired is deemed to be a "domestic insurer" solely because of the provisions of 33-2-1104, MCA, the name of the domestic insurer on the cover page should be indicated as follows:
"ABC Insurance Company, a subsidiary of XYZ Holding Company."
(2) Where a domestic is being acquired, references to "the insurer" contained in Form A must refer to both the domestic subsidiary insurer and the person being acquired.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1104 and 33-2-1517, MCA

RULE XXXI FILING OF FORM B--ANNUAL REGISTRATION OF INSURERS (1) An insurer required to file an annual registration statement pursuant to 33-2-1111(2), MCA, shall furnish the required information on Form B, hereby made a part of these rules.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1111 and 33-2-1517, MCA

RULE XXXII AMENDMENTS TO FORM B (1) An amendment to Form B must be filed within 15 days after the end of any month in which there is a material change to the information provided in the annual registration statement.

(2) Amendments must be filed in the Form B format with only those items which are being amended reported. Each such amendment must include at the top of the cover page "Amendment No. (insert number) to Form B for (insert year)" and must indicate the date of the change and not the date of the original filings.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1111 and 33-2-1517, MCA

RULE XXXIII SUMMARY OF REGISTRATION--STATEMENT FILING (1) An insurer required to file an annual registration statement pursuant to 33-2-1111(2), MCA, is also required to furnish information required on Form C, hereby made a part of these regulations. An insurer shall file a copy of Form C in each state in which the insurer is authorized to do business, if requested by the commissioner of that state.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1111 and 33-2-1517, MCA

RULE XXXIV ALTERNATIVE AND CONSOLIDATED REGISTRATIONS (1) Any authorized insurer may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under 33-2-1111, MCA. A registration statement may include information not required by 33-2-1111, MCA, regarding any insurer in the insurance holding company system even if such insurer is not authorized to do business in this state. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required in its state of domicile, provided:

(a) the statement or report contains substantially similar information required to be furnished on Form B; and

(b) the filing insurer is the principal insurance company in the insurance holding company system.

(2) The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a brief statement of

facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.

(3) With the prior approval of the commissioner, an unauthorized insurer may follow any of the procedures which could be done by an authorized insurer under paragraph (1) above.

(4) Any insurer may take advantage of the provisions of 33-2-1111(8) and (9), MCA, without obtaining the prior approval of the commissioner. The commissioner, however, may require individual filings if he deems such filings necessary in the interest of clarity and ease of administration or for the public benefit.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1111 and 33-2-1517, MCA

RULE XXXV DISCLAIMERS AND TERMINATION OF REGISTRATION (1) A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control another person (hereinafter referred to as the "subject") must contain the following information:

(a) the number of authorized, issued, and outstanding voting securities of the subject;

(b) with respect to the person whose control is denied and all affiliates of such person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of such shares concerning which there is a right to acquire, directly or indirectly;

(c) all material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person;

(d) a statement explaining why such person should not be considered to control the subject.

(2) A request for termination of registration shall be deemed to have been granted unless the commissioner, within 30 days after he receives the request, notifies the registrant otherwise.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1111, 33-2-1112, and 33-2-1517, MCA

RULE XXXVI FILING OF FORM D--TRANSACTIONS SUBJECT TO PRIOR NOTICE (1) An insurer required to give notice of a proposed transaction pursuant to 33-2-1113, MCA, shall furnish the required information on Form D, hereby made a part of these rules.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1113 and 33-2-1517, MCA

RULE XXXVII EXTRAORDINARY DIVIDENDS AND OTHER DISTRIBUTIONS (1) Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders must include the follows:

(a) The amount of the proposed dividend;

(b) The date established for payment of the dividend;

(c) A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value, together with an explanation of the basis for valuation;

(d) A copy of the calculations determining that the proposed dividend is extraordinary. The work paper must include the following information:

(i) The amounts, dates, and forms of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurers own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year.

(ii) Surplus as regards policyholders (total capital and surplus) as of the 31st day of December next preceding;

(iii) If the insurer is a life insurer, the net gain from operations for the 12-month period ending the 31st day of December next preceding;

(iv) If the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the 31st day of December next preceding and the two preceding 12-months periods; and

(v) If the insurer is not a life insurer, the dividends paid to stockholders excluding distributions of the insurer's own securities in the preceding two calendar years.

(e) A balance sheet and statement of income for the period intervening from the last annual statement filed with the commissioner and the end of the month preceding the month in which the request for dividend approval is submitted; and

(f) A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs.

(2) Subject to 33-2-1114, MCA, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within 15 business days following the declaration thereof, including the same information required by (1)(d)(i)-(v) hereof.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1114 and 33-2-1517, MCA

RULE XXXVIII ADEQUACY OF SURPLUS (1) The factors set forth in 33-2-1113(6), MCA, are not exclusive. In determining the adequacy and reasonableness of an insurer's surplus, no single factor will necessarily be controlling. The commissioner

will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the commissioner will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the commissioner will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1113 and 33-2-1517, MCA

FORM A

STATEMENT REGARDING THE ACQUISITION OF CONTROL OF OR MERGER WITH A DOMESTIC INSURER

_____
Name of Domestic Insurer

BY

_____
Name of Acquiring Person (Applicant)

Filed with the Department of Insurance of the state of Montana

_____
(State of domicile of insurer being acquired)

Dated: _____, 19 _____

Name, Title, Address, and Telephone Number of Individual to Whom Notices and Correspondence Concerning this Statement Should be Addressed:

_____

_____

_____

_____

ITEM 1. INSURER AND METHOD OF ACQUISITION

State the name and address of the domestic insurer to which this application relates and a brief description of how control is to be acquired.

ITEM 2. IDENTITY AND BACKGROUND OF THE APPLICANT

(a) State the name and address of the applicant seeking to acquire control over the insurer.

(b) If the applicant is not an individual, state the nature of its business operations for the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence. Briefly describe the business intended to be done by the applicant and the applicant's subsidiaries.

(c) Furnish a chart or listing clearly presenting the identities of the inter-relationships among the applicant and all affiliates of the applicant. No affiliate need be identified if its total assets are equal to less than 1/2 of 1% of the total assets of the ultimate controlling person affiliated with the applicant. Indicate in such chart or listing the percentage of voting securities of each such person

which is owned or controlled by the applicant or by any other such person. If control of any person is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile. If court proceedings involving a reorganization or liquidation are pending with respect to any such person, indicate which person, and set forth the title of the court, nature of proceedings, and the date when commenced.

ITEM 3. IDENTITY AND BACKGROUND OF INDIVIDUALS ASSOCIATED WITH THE APPLICANT

State the following with respect to (1) the applicant if (s)he is an individual or (2) all persons who are directors, executive officers or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual.

(a) Name and business address;

(b) Present principal business activity, occupation, or employment including position and office held and the name, principal business, and address of any corporation or other organization in which such employment is carried on;

(c) Material occupations, positions, offices, or employment during the last five years, giving the starting and ending dates of each and the name, principal business, and address of any business corporation or other organization in which each such occupation, position, office or employment was carried on; if any such occupation, position, office, or employment required licensing by or registration with any federal, state, or municipal governmental agency, indicate such fact, the current status of such licensing or registration, and an explanation of any surrender, revocation, suspension, or disciplinary proceedings in connection therewith.

(d) Whether or not such person has ever been convicted in a criminal proceeding (excluding minor traffic violations)during the last ten years and, if so, give the date, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

ITEM 4. NATURE, SOURCE, AND AMOUNT OF CONSIDERATION

(a) Describe the nature, source, and amount of funds or other considerations used or to be used in effecting the merger or other acquisition of control. If any part of the same is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading securities, furnish a description of the transaction, the names of the parties thereto, the relationship, if any, between the borrower and the lender, the amounts borrowed or to be borrowed, and copies of all agreements, promissory notes, and security arrangements relating thereto.

(b) Explain the criteria used in determining the nature and amount of such consideration.

(c) If the source of the consideration is a loan made in the lender's ordinary course of business and if the applicant wishes the identity of the lender to remain confidential, he must specifically request that the identity be kept confidential.

ITEM 5. FUTURE PLANS OF INSURER

Describe any plans or proposals which the applicant may have to declare an extraordinary dividend, to liquidate such insurer, to sell its assets to or merge it with any person or persons or to make any other material change in its business operations or corporate structure or management.

ITEM 6. VOTING SECURITIES TO BE ACQUIRED

State the number of shares of the insurer's voting securities which the applicant, its affiliates, and any person listed in Item 3 plan to acquire, and the terms of the offer, request, invitation, agreement, or acquisition, and a statement as to the method by which the fairness of the proposal was arrived at.

ITEM 7. OWNERSHIP OF VOTING SECURITIES

State the amount of each class of any voting security of the insurer which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the applicant, its affiliates, or any person listed in Item 3.

ITEM 8. CONTRACTS, ARRANGEMENTS, OR UNDERSTANDINGS WITH RESPECT TO VOTING SECURITIES OF THE INSURER

Give a full description of any contracts, arrangements, or understandings with respect to any voting security of the insurer in which the applicant, its affiliates, or any person listed in Item 3 is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been entered into.

ITEM 9. RECENT PURCHASES OF VOTING SECURITIES

Describe any purchases of any voting securities of the insurer by the applicant, its affiliates or any person listed in Item 3 during the 12 calendar months preceding the filing of this statement. Include in such description the dates of purchase, the names of the purchasers, and the consideration

paid or agreed to be paid therefor. State whether any such shares so purchased are hypothecated.

ITEM 10. RECENT RECOMMENDATIONS TO PURCHASE

Describe any recommendations to purchase any voting security of the insurer made by the applicant, its affiliates, or any person listed in Item 3, or by anyone based upon interviews or at the suggestion of the applicant, its affiliates, or any person listed in Item 3 during the 12 calendar months preceding the filing of this statement.

ITEM 11. AGREEMENTS WITH BROKER-DEALERS

Describe the terms of any agreement, contract, or understanding made with any broker-dealer as to solicitation of voting securities of the insurer for tender and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard thereto.

ITEM 12. FINANCIAL STATEMENTS AND EXHIBITS

(a) Financial statements and exhibits must be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.

(b) The financial statements must include the annual financial statements of the persons identified in Item 2(c) for the preceding five fiscal years (or for such lesser period as such applicant and its affiliates and any predecessors thereof shall have been in existence), and similar information covering the period from the end of such person's last fiscal year, if such information is available. Such statements may be prepared on either an individual basis, or, unless the commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business.

The annual financial statements of the applicant must be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the applicant and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the applicant is an insurer which is actively engaged in the business of insurance, the financial statements need not be certified, provided they are based on the Annual Statement of such person filed with the insurance department of the person's domiciliary state and are in accordance with the requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of such state.

(c) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting

material relating thereto, any proposed employment, consultation, advisory, or management contracts concerning the insurer, annual reports to the stockholders of the insurer and the applicant for the last two fiscal years, and any additional documents or papers required by Form A or Regulation Sections 4 and 6.

ITEM 13. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of section 33-2-1104, MCA, _____ has caused this application to be duly signed on its behalf in the city of _____ and state of _____ on the _____ day of _____, 19 _____.

(SEAL)_____
Name of Applicant

BY_____
(Name) (Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

STATE OF _____)
: ss.
County of _____)

The undersigned hereby certifies that (s)he has duly executed the attached application dated _____, 19 ___, for and on behalf of _____;
(Name of Applicant)
that (s)he is the _____ of such company and that
(Title of Officer)
(s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information, and belief.

(Signature)_____

(Type or print name beneath)_____

FORM B

INSURANCE HOLDING COMPANY SYSTEM ANNUAL REGISTRATION STATEMENT

Filed with the Department of Insurance of the state of Montana

By

_____
Name of Registrant

On Behalf of Following Insurance Companies

Name Address

_____

_____

_____

_____

Date: _____, 19____

Name, Title, Address, and Telephone Number of Individual to Whom Notices and Correspondence Concerning this Statement Should be Addressed:

_____

_____

_____

ITEM 1. IDENTITY AND CONTROL OF REGISTRANT

Furnish the exact name of each insurer registering or being registered (hereinafter called "the Registrant"), the home office address and principal executive offices of each; the date on which each registrant became part of the insurance holding company system; and the method(s) by which control of each registrant was acquired and is maintained.

ITEM 2. ORGANIZATIONAL CHART

Furnish a chart or listing clearly presenting the identities of all interrelationships among all affiliated persons within the insurance holding company system. No affiliate need be shown if its total assets are equal to less than 1/2 of 1% of the total assets of the ultimate controlling person within the insurance holding company system unless it has assets valued at or exceeding (insert amount). The chart or listing should show the percentage of each class of voting

securities of each affiliate which is owned, directly or indirectly, by another affiliate. If control of any person within the system is maintained other than by the ownership or control of voting securities, indicate the basis of such control. As to each person specified in such chart or listing, indicate the type of organization (e.g., corporation, trust, partnership) and the state or other jurisdiction of domicile.

ITEM 3. THE ULTIMATE CONTROLLING PERSON

As to the ultimate controlling person in the insurance holding company system furnish the following information:

(a) Name.
(b) Home office address.
(c) Principal executive office address.
(d) The organizational structure of the person, i.e., corporation, partnership, individual, trust, etc.
(e) The principal business of the person.
(f) The name and address of any person who holds or owns 10% or more of any class of voting security, the class of such security, the number of shares held of record or known to be beneficially owned, and the percentage of class so held or owned.
(g) If court proceedings involving a reorganization or liquidation are pending, indicate the title and location of the court, the nature of proceedings, and the date when commenced.

ITEM 4. BIOGRAPHICAL INFORMATION

Furnish the following information for the directors and executive officers of the ultimate controlling person: the individual's name and address, his or her principal occupation, and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past ten years.

ITEM 5. TRANSACTIONS AND AGREEMENTS

Briefly describe the following agreements in force and transactions currently outstanding or which have occurred during the last calendar year between the registrant and its affiliates:

(a) loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the registrant or of the registrant by its affiliates;
(b) purchases, sales, or exchanges of assets;
(c) transactions not in the ordinary course of business;
(d) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the registrant's assets to liability, other than insurance contracts entered into in the ordinary course of the registrant's business;

(e) all management agreements, service contracts, and all cost-sharing arrangements;
(f) reinsurance agreements;
(g) dividends and other distributions to shareholders;
(h) consolidated tax allocation agreements; and
(i) any pledge of the registrant's stock and/or of the stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

No information need be disclosed if such information is not material for purposes of Section 4 of the Act.

Sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving one-half of 1% or less of the registrant's admitted assets as of the 31st day of December next preceding are not deemed material. (Note: Commissioner may by rule or order provide otherwise.)

The description must be in a manner as to permit the proper evaluation thereof by the commissioner, and shall include at least the following: the nature and purpose of the transaction, the nature and amounts of any payments or transfers of assets between the parties, the identity of all parties to such transaction, and relationship of the affiliated parties to the registrant.

ITEM 6. LITIGATION OR ADMINISTRATIVE PROCEEDINGS

A brief description of any litigation or administrative proceedings of the following types, either then pending or concluded within the preceding fiscal year, to which the ultimate controlling person or any of its directors or executive officers was a party or of which the property of any such person is or was the subject; give the names of the parties and the court or agency in which such litigation or proceeding is or was pending:

(a) Criminal prosecutions or administrative proceedings by any government agency or authority which may be relevant to the trustworthiness of any party thereto; and
(b) Proceedings which may have a material effect upon the solvency or capital structure of the ultimate holding company including, but not necessarily limited to, bankruptcy, receivership, or other corporate reorganizations.

ITEM 7. STATEMENT REGARDING PLAN OR SERIES OF TRANSACTIONS

The insurer shall furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions, the purpose of which is to avoid statutory threshold amounts and the review that might otherwise occur.

ITEM 8. FINANCIAL STATEMENTS AND EXHIBITS

(a) Financial statements and exhibits should be attached to this statement as an appendix, but list under this item the financial statements and exhibits so attached.

(b) The financial statements must include the annual financial statements of the ultimate controlling person in the insurance holding company system as of the end of the person's latest fiscal year.

If at the time of the initial registration, the annual financial statements for the latest fiscal year are not available, annual statements for the previous fiscal year may be filed and similar financial information must be filed for any subsequent period to the extent such information is available. Such financial statements may be prepared on either an individual basis, or unless the commissioner otherwise requires, on a consolidated basis if such consolidated statements are prepared in the usual course of business.

Unless the commissioner otherwise permits, the annual financial statements must be accompanied by the certificate of an independent public accountant to the effect that such statements present fairly the financial position of the ultimate controlling person and the results of its operations for the year then ended, in conformity with generally accepted accounting principles or with requirements of insurance or other accounting principles prescribed or permitted under law. If the ultimate controlling person is an insurer which is actively engaged in the business of insurance, the annual financial statements need not be certified, provided they are based on the Annual Statement of such insurer filed with the insurance department of the insurer's domiciliary state and are in accordance with requirements of insurance or other accounting principles prescribed or permitted under the law and regulations of such state.

(c) Exhibits must include copies of the latest annual reports to shareholders of the ultimate controlling person and proxy material used by the ultimate controlling person; and any additional documents or papers required by Form B or Regulation Sections 4 and 6.

ITEM 9. FORM C (TO BE FILED WITH FORM B)

A Form C, Summary of Registration Statement, must be prepared and filed with this Form B.

ITEM 10. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of section 33-2-1111, MCA, the registrant has caused this annual registration statement to be duly signed on its behalf in the city of _____ _____ and state of _____ on the _____ day of _____, 19_____.

(SEAL) _____
Name of Registrant

BY _____
(Name) (Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

The undersigned certifies that (s)he has duly executed the attached annual registration statement dated _____, 19_____, for and on behalf of _____;
(Name of Company)
that (s)he is the _____ of such company
(Title of Officer)
that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein set forth are true to the best of his/her knowledge, information, and belief.

(Signature) _____

(Type or print name beneath) _____

FORM C

SUMMARY OF REGISTRATION STATEMENT

Filed with the Department of Insurance of the state of Montana

By

_____
Name of Registrant

On Behalf of Following Insurance Companies

Name Address

_____

_____

_____

_____

Date: _____, 19____

Name, Title, Address, and Telephone Number of Individual to Whom Notices and Correspondence Concerning This Statement Should Be Addressed:

_____

_____

_____

Furnish a brief description of all items in the current annual registration statement which represent changes from the prior year's annual registration statement. The description shall be in a manner as to permit the proper evaluation thereof by the commissioner, and shall include specific references to Item numbers in the annual registration statement and to the terms contained therein.

Changes occurring under Item 2 of Form B insofar as changes in the percentage of each class of voting securities held by each affiliate is concerned, need only be included where such changes are ones which result in ownership or holdings of 10 percent or more of voting securities, loss or transfer of control, or acquisition or loss of partnership interest.

Changes occurring under Item 4 of Form B need only be included where: an individual is, for the first time, made a director or executive officer of the ultimate controlling person; a director or executive officer terminates his or her

responsibilities with the ultimate controlling person; or in the event an individual is named president of the ultimate controlling person.

If a transaction disclosed on the prior year's annual registration statement has been changed, the nature of such change shall be included. If a transaction disclosed on the prior year's annual registration statement has been effectuated, furnish the mode of completion and any flow of funds between affiliates resulting from the transaction.

The insurer must furnish a statement that transactions entered into since the filing of the prior year's annual registration statement are not part of a plan or series of like transactions whose purpose is to avoid statutory threshold amounts and the review that might otherwise occur.

SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of section 33-2-1111, MCA, the registrant has caused this summary of registration statement to be duly signed on its behalf in the city of _____ _____, and state of _____ on the ____ _____ day of _____, 19_____.

(SEAL) _____
Name of Registrant

By _____
(Name) (Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

The undersigned certifies that (s)he has duly executed the attached summary of registration statement dated _____ _____, 19_____, for and on behalf of _____ _____; that (s)he is the _____
(Name of Company) (Title of Officer)
of such company and that (s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the

facts therein set forth are true to the best of his/her knowledge, information, and belief.

(Signature) _____

(Type or print name beneath) _____

FORM D

PRIOR NOTICE OF A TRANSACTION

Filed with the Department of Insurance of the state of Montana

By

_____
Name of Registrant

On Behalf of Following Insurance Companies

Name Address

_____

_____

_____

_____

Date: _____, 19____

Name, Title, Address, and Telephone Number of Individual to Whom Notices and Correspondence Concerning This Statement Should be Addressed:

_____

_____

ITEM 1. IDENTITY OF PARTIES TO TRANSACTION

Furnish the following information for each of the parties to the transaction:

(a) Name.
(b) Home office address.
(c) Principal executive office address.
(d) The organizational structure; i.e., corporation, partnership, individual, trust, etc.
(e) A description of the nature of the parties' business operations.
(f) Relationship, if any, of other parties to the transaction to the insurer filing the notice, including any ownership or debtor/creditor interest by any other parties to the transaction in the insurer seeking approval, or by the insurer filing the notice in the affiliated parties.
(g) Where the transaction is with a non-affiliate, the name(s) of the affiliate(s) which will receive, in whole or in substantial part, the proceeds of the transaction.

ITEM 2. DESCRIPTION OF THE TRANSACTION

Furnish the following information for each transaction for which notice is being given:

(a) A statement as to whether notice is being given under section 33-2-1113(2), MCA.
(b) A statement of the nature of the transaction.
(c) The proposed effective date of the transaction.

ITEM 3. SALES, PURCHASES, EXCHANGES, LOANS, EXTENSIONS OF CREDIT, GUARANTEES OR INVESTMENTS

Furnish a brief description of the amount and source of funds, securities, property, or other consideration for the sale, purchase, exchange, loan, extension of credit, guarantee, or investment, whether any provision exists for purchase by the insurer filing notice, by any party to the transaction, or by any affiliate of the insurer filing notice, a description of the terms of any securities being received, if any, and a description of any other agreements relating to the transaction such as contracts or agreements for services, consulting agreements, and the like. If the transaction involves other than cash, furnish a description of the consideration, its cost and its fair market value, together with an explanation of the basis for evaluation.

If the transaction involves a loan, extension of credit or a guarantee, furnish a description of the maximum amount which the insurer will be obligated to make available under such loan, extension of credit or guarantee, the date on which the credit or guarantee will terminate, and any provisions for the accrual of or deferral of interest.

If the transaction involves an investment, guarantee, or other arrangement, state the time period during which the investment, guarantee, or other arrangement will remain in effect, together with any provisions for extensions or renewals of such investments, guarantees or arrangements. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the maximum amount which can at any time be outstanding or for which the insurer can be legally obligated under the loan, extension of credit, or guarantee is less than, (a) in the case of non-life insurer's, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders or, (b) in the case of life insurers, 3% of the insurer's admitted assets, each as of the 31st day of December next preceding.

ITEM 4. LOANS OR EXTENSIONS OF CREDIT TO A NON-AFFILIATE

If the transaction involves a loan or extension of credit to any person who is not an affiliate, furnish a brief description of the agreement or understanding whereby the proceeds of the proposed transaction, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase the assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit, and specify in what manner the proceeds are to be used to loan to, extend credit to, purchase assets of, or make investments in any affiliate. Describe the amount and source of duns, securities, property, or other consideration for the loan or extension of credit and, if the transaction is one involving consideration other than cash, a description of its cost and its fair market value together with an explanation of the basis for evaluation. Furnish a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given if the loan or extension of credit is one which equals less than, in the case of non-life insurer's, the lesser of 3% of the insurer's admitted assets or 25% of surplus as regards policyholders or, with respect to life insurers, 3% of the insurer's admitted assets, each as of the 31st day of December next preceding.

ITEM 5. REINSURANCE

If the transaction is a reinsurance agreement or modification thereto, as described by Section 33-2-1113(2)(a)(ii)(C), MCA, furnish a description of the known and/or estimated amount of liability to be ceded and/or assumed in each calendar year, the period of time during which the agreement will be in effect, and a statement whether an agreement or understanding exists between the insurer and non-affiliate to the effect that any portion of the assets constituting the consideration for the agreement will be transferred to one or more of the insurer's affiliates. Furnish a brief description of the consideration involved in the transaction, and a brief statement as to the effect of the transaction upon the insurer's surplus.

No notice need be given for reinsurance agreements or modifications thereto if the reinsurance premium or a change in the insurer's liabilities in connection with the reinsurance agreement or modification thereto is less than 5% of the insurer's surplus as regards policyholders, as of the 31st day of December next preceding.

ITEM 6. MANAGEMENT AGREEMENTS, SERVICE AGREEMENTS, AND COST-SHARING ARRANGEMENTS

For management and service agreements, furnish:

(a) a brief description of the managerial responsibilities, or services to be performed.
(b) a brief description of the agreement, including a statement of its duration, together with brief descriptions of the basis for compensation and the terms under which payment or compensation is to be made.

For cost-sharing arrangements, furnish:

(a) a brief description of the purpose of the agreement.
(b) a description of the period of time during which the agreement is to be in effect.
(c) a brief description of each party's expenses or costs covered by the agreement.
(d) a brief description of the accounting basis to be used in calculating each party's costs under the agreement.

ITEM 7. SIGNATURE AND CERTIFICATION

Signature and certification required as follows:

SIGNATURE

Pursuant to the requirements of section 33-2-1113, MCA, _____ has caused this notice to be duly signed on its behalf in the city of _____ and state of _____ on the _____ day of _____, 19_____.

(SEAL) _____
Name of Applicant

By _____
(Name) (Title)

Attest:

_____
(Signature of Officer)

_____
(Title)

CERTIFICATION

The undersigned certifies that (s)he has duly executed the attached notice dated _____, 19_____, for and on behalf of _____; that
(Name of Applicant)
(s)he is the _____ of such company and that
(Title of Officer)
(s)he is authorized to execute and file such instrument. Deponent further says that (s)he is familiar with such instrument and the contents thereof, and that the facts therein

set forth are true to the best of his/her knowledge, information, and belief.

(Signature) _____

(Type or print name beneath) _____

_____

RULES REGARDING CREDIT FOR REINSURANCE

RULE XXXIX DEFINITIONS (1) For the purposes of this subchapter, the following terms have the following meanings:

(a) "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

(b) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

(c) "Obligations", as used in Rule XXXX(1)(j) of this subsection, means:

(i) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(ii) Reserves for reinsured losses reported and outstanding;

(iii) Reserves for reinsured losses incurred but not reported; and

(iv) Reserves for allocated reinsured loss expenses and unearned premiums.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1216 and 33-2-1517, MCA

RULE XXXX TRUST AGREEMENT CONDITIONS (1) The trust agreement required by 33-2-1216(5)(c), MCA, must be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution as defined in 33-2-1501, MCA, and include the following conditions:

(a) The trust agreement must create a trust account into which assets shall be deposited.

(b) All assets in the trust account must be held by the trustee at the trustee's office in the United States, except that a bank may apply for the commissioner's permission to use a foreign branch office of such bank as trustee for trust agreements established pursuant to this section. If the commissioner approves the use of such foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in (1)(c)(i) must also be presentable, as a (1)(c)(i) matter of legal right, at the trustee's principal office in the United States.

(c) The trust agreement must provide that:

(i) The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(ii) No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(iii) It is not subject to any conditions or qualifications outside the trust agreement; and it shall not contain references to any other agreements to documents except as provided for under (1)(j).

(d) The trust agreement must be established for the sole benefit of the beneficiary.

(e) The trust agreement must require the trustee to:

(i) Receive assets and hold all assets in a safe place;

(ii) Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;

(iii) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(iv) Notify the grantor and the beneficiary within 10 days of any deposits to or withdrawals from the trust account;

(v) Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(vi) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of, but with notice to, the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

(f) The trust agreement must provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination must be delivered by the trustee to the beneficiary.

(g) The trust agreement must be made subject to and governed by the laws of the state in which the trust is established.

(h) The trust agreement must prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

(i) The trust agreement must provide that the trustee shall be liable for its own negligence, willful misconduct or lack of good faith.

(j) Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is the custom and practice to provide a trust agreement for a specific purpose, such a trust agreement may, notwithstanding any other conditions in this regulation,

provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:

(i) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(ii) To make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(iii) When the ceding insurer has received notification of termination of the trust account and when the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged 10 days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account in the name of the ceding insurer in any qualified United States financial institution as defined in 33-2-1501, MCA, apart from its general assets, in trust for such uses and purposes specified in subparagraphs (i) and (ii) above as may remain executory after such withdrawal and for any period after the termination date.

(k) The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by 33-2-1216(5)(c), MCA, so long as these required conditions are included in the trust agreement.

(2) The trust agreement required by this rule may include any or all of the following conditions:

(a) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after receipt by the beneficiary and grantor of the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after receipt by the trustee and the beneficiary of the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(b) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time-to-time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends must be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(c) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution may be made without prior approval of the beneficiary, unless the trust agreement specifies

categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitution which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in Rule XXXXII(1)(b) of this subchapter.

(d) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(e) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary must, with written approval by the beneficiary, be delivered over to the grantor.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1216 and 33-2-1517, MCA

RULE XXXXI CONDITIONS APPLICABLE TO REINSURANCE AGREEMENTS

(1) Reinsurance agreements entered into in conjunction with trust agreements under these rules must include the following:

(a) A requirement that the assuming insurer enter into a trust agreement and establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

(b) A requirement that assets deposited in the trust account be valued according to their current fair market value and consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments of the types permitted by the Montana insurance code, or any combination of the above, provided that such investments are issued by an institution that is not the parent, subsidiary, or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. When a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement;

(c) A requirement that the assuming insurer, prior to depositing assets with the trustee, execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may, whenever necessary, negotiate these assets without consent or signature from the assuming insurer or any other entity;

(d) A requirement that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

(e) A requirement that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and must be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(i) To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;

(ii) To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;

(iii) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. The account must include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses and unearned premium reserves; and

(iv) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

(2) The reinsurance agreement may also contain provisions that:

(a) Give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(i) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn, so as to maintain at all times the deposit in the required amount, or

(ii) After withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount. The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

(b) Provide for:

(i) The return of any amount withdrawn in excess of the actual amounts required for (1)(e)(i)(ii) and (iii) of this rule or, in the case of (1)(e)(iv), any amounts that are subsequently determined not to be due; and

(ii) Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to (1)(e)(iii).

(c) Permit the award by any arbitration panel or court of competent jurisdiction of:

(i) Interest at a rate different from that provided in (2)(b)(ii),
(ii) Court of arbitration costs,
(iii) Attorney's fees, and
(iv) Any other reasonable expenses.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1216 and 33-2-1517, MCA

RULE XXXXII RESTRICTIONS ON AMENDMENT OF TRUST AGREEMENTS (1) No amendment to the trust agreement may be effective unless reviewed and approved in advance by the commissioner.
AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1216 and 33-2-1517, MCA

RULE XXXXIII FINANCIAL REPORTING (1) A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with the department in compliance with the provisions of this rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account must be equal to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1216 and 33-2-1517, MCA

RULE XXXXIV EFFECT OF FAILURE TO IDENTIFY BENEFICIARY (1) The failure of any trust agreement to specifically identify the beneficiary as defined in Rule XXXIX of this subchapter shall not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1216 and 33-2-1517, MCA

RULE XXXXV EFFECT OF LOSS OF ACCREDITATION BY ASSUMING REINSURER (1) Credit will not be granted to a domestic ceding insurer with respect to reinsurance ceded after October 1, 1993, if the assuming insurer's accreditation has been denied or revoked by the commissioner after notice and hearing.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1216 and 33-2-1517, MCA

RULE XXXXVI SURPLUS DETERMINATION OF A GROUP OF INCORPORATED INSURERS UNDER COMMON ADMINISTRATION (1) The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of $10,000,000,000 required by 33-2-1216(5)(b), MCA,

must be calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the NAIC and which has continuously transacted an insurance business outside the United States for at least 3 years immediately prior to making application for accreditation, shall consist of funds in trust in an amount not less than the assuming insurers' liabilities attributable to business ceded by United States ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group and, in addition, the group shall maintain a joint trusteed surplus of which $100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall file a properly executed Form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any members examined will bear the expense of any such examination. The group shall make available to the commissioner annual certifications by the members' domiciliary regulators and their independent public accountants of the solvency of each member of the group.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1216 and 33-2-1517, MCA

RULE XXXXVII THE PERIOD FOR PAYMENT OF TRUST FUNDS SUBJECT TO CLAIMS (1) Contested claims under 33-2-1216(5)(c), MCA, shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1216 and 33-2-1517, MCA

RULES REGARDING LETTERS OF CREDIT

RULE XXXXVIII DEFINITIONS (1) As used in this subsection, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator, or liquidator).

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1216 and 33-2-1517, MCA

RULE IL TERMS AND CONDITIONS OF LETTERS OF CREDIT (1) Applicable standards of acceptability for issuers of letters of credit under 33-2-1217, MCA, include the following:

(a) The letter of credit must contain an issue date and date of expiration and must stipulate that the beneficiary need

only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented.

(b) The letter of credit must indicate that it is not subject to any condition or qualifications outside of the letter of credit.

(c) The letter of credit itself must not contain reference to any other agreements, documents, or entities, except as provided in subsection 9 below.

(2) The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section must be clearly marked to indicate that such information is for internal identification purposes only.

(3) The letter of credit must contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(4) The term of the letter of credit must be for at least one year and must contain a clause which prevents the expiration of the letter of credit without due notice from the issuer. Such clause must provide for a period of no less than 30 days' notice prior to expiration date or nonrenewal.

(5) The letter of credit must state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), and whether all drafts drawn thereunder must be presentable at an office in the United States of a qualified United States financial institution.

(6) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (publication 400), then the letter of credit must specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 19 of Publication 400 occur.

(7) The letter of credit must be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to 33-2-1501, MCA.

(8) If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in (7) then the following additional requirements must be met:

(a) The issuing qualified United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts, and

(b) The clause preventing expiration without due notice from the issuer must provide for 30 days' notice prior to expiration date for nonrenewal.

(9) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

(a) Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.

(b) Require the assuming insurer and ceding insurer to agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(i) To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

(ii) To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;

(iii) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves); and

(iv) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

(10) All of the foregoing provisions of paragraph 9 must be applied without diminution due to insolvency on the part of the ceding insurer or assuming insurer.

(11) Nothing contained in paragraph 9 precludes the ceding insurer and assuming insurer from providing for:

(a) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Paragraph (9)(b)(iii), and/or

(b) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the case of Paragraph (9)(b)(iv), any amounts that are subsequently determined not to be due.

(12) When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is the custom and practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of paragraph (9)(b) require that the parties enter into a "Trust Agreement" which may be incorporated into the reinsurance agreement or be a separate document.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1217 and 33-2-1517, MCA

RULE L LIMITS ON USE OF LETTER OF CREDIT TO REDUCE LIABILITY (1) A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department unless an acceptable letter of credit with the filing

ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1217 and 33-2-1517, MCA

RULE LI OTHER SECURITY FOR PAYMENT OF OBLIGATIONS UNDER CONTRACT (1) A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control as another form of security acceptable to the commissioner under 33-2-1217(2)(d), MCA.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1216 and 33-2-1517, MCA

RULE LII REINSURANCE CONTRACTS AS SECURITY (1) Credit will not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of these rules or otherwise in compliance with 33-2-1216, MCA, after the adoption of this rule, unless the reinsurance agreement:

(a) Includes a clause which requires that the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding insurer without diminution because of the insolvency of the ceding insurer; and

(b) Includes a provision whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, and has agreed to comply with all requirements necessary to give such court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of such court or panel.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1217, and 33-2-1517, MCA

RULE LIII CONTRACTS AFFECTED (1) All new and renewal reinsurance transactions entered into after October 1, 1993, shall conform to the requirements and these rules if credit is to be given to the ceding insurer for such reinsurance.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1216, 33-2-1217, and 33-2-1517, MCA

RULE LIV FORM FOR SUBMITTING TO STATE AUTHORITY AND JURISDICTION (1) The following is Form AR-1 to be used for filing by an accredited reinsurer with the commissioner, of evidence of submission to the state's jurisdiction and to the

state's authority to examine records as required by 33-2-1216(3) and (5), MCA.

AUTH: 33-1-313 and 33-2-1517, MCA
IMP: 33-2-1216 and 33-2-1517, MCA

FORM AR-1
CERTIFICATE OF ASSUMING INSURER

I, _____, _____
(name of officer) (title of officer)

of _____, the assuming insurer
(name of assuming insurer)
under a reinsurance agreement(s) with one or more insurers domiciled in

_____ hereby certify that
(name of state)

_____ ("Assuming Insurer"):
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in

_____
(ceding insurer's state of domicile)
for the adjudication of any issues arising out of the reinsurance agreement(s), agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement(s) to arbitrate their disputes if such an obligation is created in the agreement(s).

2. Designates the Insurance Commissioner of _____
(ceding insurer's state of domicile)
as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement(s) instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Insurance Commissioner of

_____ to examine its books and records
(ceding insurer's state of domicile)
and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in

_____ reinsured by Assuming Insurer and
(ceding insurer's state of domicile)
undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.

Dated: _____

_____
(name of assuming insurer)

By: _____
(name of officer)

_____
(title of officer)

RULES REGARDING VALUATION OF SECURITIES

RULE LV VALUATION OF SECURITIES OTHER THAN THOSE SPECIFICALLY REFERRED TO IN STATUTES (1) Securities and assets other than those specifically referred to in 33-2-532, 533, 534, and 535, MCA, must be valued in accordance with valuation standards of the NAIC published in its 1990 Accounting Practices and Procedures manual and its 1992 Valuation of Securities manual.

(2) The department hereby adopts and incorporates herein by reference the standards adopted by the NAIC for valuation of securities and other investments appearing in its 1990 Accounting Practices and Procedures manual and its 1992 Valuation of Securities manual. These are nationally-recognized models for such standards. Copies of the manuals are available for inspection at the office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, Helena, Montana. Copies of the Accounting Practices and Procedures manual and the Valuation of Securities manual may be obtained by writing to the National Association of Insurance Commissioners, 120 West 12th Street, Suite 1100, Kansas City, MO 64105-1925. Persons obtaining copies of such manuals may be required to pay the NAIC's costs of providing such copies.

AUTH: 33-1-313 and 33-2-533, MCA IMP: 33-2-533, MCA

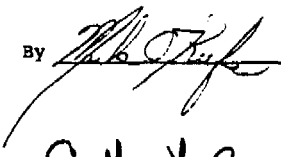
REASON: These rules are being proposed because they are mandated by Chapter 596, Laws of 1993. They substantially resemble the model regulation structure developed by the NAIC and will make Montana insurance regulation uniform with those of other states regarding eligibility for national accreditation to enable insurers domiciled in Montana to do business in this state and other states with a maximum of financial stability and a minimum of regulatory difficulty, that encourages the start-up and expansion of insurance companies domiciled in Montana.

6. 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 Frank Cote, Deputy Commissioner of Insurance, P.O. Box 4009, Helena, Montana 59604, and must be received no later than September 10, 1993.

7. The State Auditor will make reasonable accommodations for persons with disabilities who wish to participate at this public hearing. If you request an accommodation, please contact the State Auditor's Office not later than 5:00 p.m., August 30, 1993, and advise the office of the nature of the accommodation needed. Please contact Frank Cote', Deputy Commissioner of Insurance, P.O. Box 4009, Helena, Montana 59604; telephone (406) 444-5237; toll free dial 1 and then 800-332-6148; fax (406) 444-3497.

8. Geoffrey L. Brazier, 516 Harrison Avenue, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By 

Geoffrey L. Brazier
Rules Reviewer

Certified to the Secretary of State this 2nd day of August, 1993.

BEFORE THE CLASSIFICATION AND RATING COMMITTEE
OF THE STATE OF MONTANA

In the matter of the adoption of new rules on matters subject to notice and hearing before the classification and rating committee.	NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

1. On September 3, 1993, at 9 o'clock a.m., MDT, a public hearing will be held in Room 136 of the Mitchell Building, 126 North Roberts Street, Helena, Montana. The hearing will be to consider the proposed adoption of new rules pertaining to all matters subject to notice and hearing before the classification and rating committee.

2. The proposed new rules provide as follows:

RULE I AGENCY ORGANIZATION (1) History. The classification and rating committee is created by statute. The district court held in Cause No. BDV-91-1585, state of Montana, first judicial district, entitled State Compensation Mutual Insurance Fund v. R/E. Developers, Inc., decided August 14, 1992, that the classification and rating committee is a state agency defined by 2-4-102, MCA. As a state agency, the classification and rating committee is required to promulgate procedural rules pursuant to the Montana Administrative Procedure Act. In 1993, the legislature amended 36-16-1012, MCA, to give the committee express rulemaking authority.

(2) Nature of committee. The classification and rating committee is a state agency as defined by 2-4-102, MCA. Documents and other information concerning the classification and rating committee's actions are made available for public review at the office of the commissioner of insurance. The classification and rating committee consists of five members, of whom four are appointed by the commissioner of insurance and one is appointed by the executive director of the state fund, as provided in 36-16-1011, MCA. The classification and rating committee is staffed as determined necessary by the National Council on Compensation Insurance or such other workers' compensation rating organization as the classification and rating committee may designate.

(3) Inquiries and submissions. Unless otherwise provided in these rules or by special notice, all inquiries and submissions to the classification and rating committee should be made to the Montana Classification and Rating Committee in care of the National Council on Compensation Insurance, Two Tamarac Square, Suite 613, 7535 East Hampden Ave., Denver, CO 80231.

AUTH: Sec. 33-16-1012, MCA.
IMP: Sec. 2-4-201; 33-16-1011; and 33-16-1012, MCA.

RULE II ADOPTION OF MODEL RULES (1) The classification and rating committee adopts and incorporates by reference the following of the attorney general's Model Procedural Rules:

(a) 1.3.102;
(b) 1.3.203 through 1.3.211;
(c) 1.3.216;
(d) 1.3.218; and
(e) 1.3.222 through 1.3.233.

The attorney general's Model Procedural Rules are adopted on a selective basis because certain of the rules are not consistent with the requirement contained in 33-16-1012, MCA, which provides that a hearing conducted before the committee must be an informal proceeding as provided in 2-4-604, MCA.

(2) A copy of the model rules adopted by the classification and rating committee may be obtained from the committee.

AUTH: Sec. 33-16-1012, MCA
IMP: Sec. 33-16-1012; 2-4-201; 2-4-202, MCA

RULE III DEFINITIONS The following definitions apply to this subchapter, unless context or the particular rule requires otherwise:

(1) "Classification" means a category of risk based on the nature of the work performed.

(2) "Classification decision" means the classification assigned by the insurer.

(3) "Classification determination" means the determination made by the committee of the appropriate classification.

(4) "Committee" means the classification and rating committee created under 33-16-1011, MCA.

(5) "Insurer" means an authorized insurer writing workers' compensation coverage in this state, including the state compensation insurance fund.

AUTH: Sec. 33-16-1012, MCA
IMP: Sec. 33-16-1011; 33-16-1012, MCA

RULE IV ADMINISTRATIVE APPEAL OF CLASSIFICATION DECISION (1) An employer may appeal a classification decision by filing a notice of administrative appeal. The notice of administrative appeal must contain a short statement of the reasons for the appeal and a statement of the general nature of the relief sought.

(3) The notice of administrative appeal must be filed with the classification and rating committee.

AUTH: Sec. 33-16-1012, MCA
IMP: Sec. 33-16-1011; 33-16-1012; 2-4-201, MCA

RULE V GENERAL HEARING PROCEDURE (1) This rule implements 33-16-1012, MCA, by setting forth procedural steps that shall be followed in hearings for administrative appeals involving classification determinations.

(2) Classification determination hearings must be informal proceedings held pursuant to 2-4-604, MCA. Classification determination hearings are conducted in such a manner as to

ascertain the substantial rights of the parties. All issues relevant to the classification determination are considered and passed upon. Any party and any witness may, under oath or affirmation, present pertinent evidence subject to examination by the committee and to cross-examination by the opposing party.

(3) With the consent of the committee, the parties may stipulate in writing the facts of the case. A hearing may nevertheless be held if the committee finds such a stipulation inadequate for determination in the administrative appeal.

(4) If any party fails to appear at the hearing, and good cause justifying continuance is not shown, the committee may decide the issues and make a determination on the best evidence available. The hearing may be postponed for good cause upon application to the committee orally or in writing before the hearing is concluded.

(5) The committee may continue any hearing for a reasonable period of time, in order to secure all the evidence that is necessary and to be fair to the parties.

(6) The committee may appoint a hearing examiner to decide all pre-hearing matters and to conduct the hearing. While a party may request the appointment of a hearing examiner, the decision of whether to appoint a hearing examiner rests with the committee.

AUTH: Sec. 33-16-1012, MCA
IMP: Sec. 33-16-1012; 2-4-603; 2-4-604, MCA

RULE VI NOTICE OF HEARING (1) A hearing must be scheduled at a regular or special meeting of the committee.

(2) Written notice of a hearing must be mailed to the parties at least 20 days before the hearing or conference.

(3) A hearing notice must comply with section 2-4-601, MCA, except that the hearing notice shall not contain a statement that a formal proceeding may be waived pursuant to 2-4-603, MCA. The hearing notice shall contain a statement that the hearing must be an informal proceeding as provided in 2-4-604, MCA.

AUTH: Sec. 33-16-1012, MCA
IMP: Sec. 33-16-1012; 2-4-201; 2-4-601; 2-4-604, MCA

RULE VII PRE-HEARING EXCHANGE OF INFORMATION (1) At least 10 days before a hearing, each party must mail or deliver the following information or documents to the committee and to all other parties:

(a) accurate copies of all documentary evidence;

(b) the names, addresses and telephone numbers of all proposed witnesses; and

(c) the telephone numbers where the parties and witnesses may be reached at the time of the hearing.

(2) The employer shall mark and identify each document constituting the employer's documentary evidence with a number, beginning with the number "1". The insurer shall mark and identify each document of the insurer's documentary evidence with a letter, beginning with the letter "A".

(3) Telephone numbers may be updated by either party at

any time prior to hearing.

(4) The committee may prescribe a form to be used in providing the information required by this rule.

AUTH: Sec. 33-16-1012, MCA
IMP: Sec. 33-16-1012; 2-4-201; 2-4-602, MCA

RULE VIII TELEPHONE HEARINGS (1) A hearing may be held by telephone conference call.

(2) An in-person hearing shall be scheduled in Helena if a party makes a written request for such a hearing at least 5 days before a scheduled telephone conference call hearing.

AUTH: Sec. 33-16-1012, MCA
IMP: Sec. 33-16-1012; 2-4-201; 2-3-202, MCA

RULE IX ESTABLISHMENT OF CLASSIFICATIONS (1) The committee hereby adopts and incorporates by reference the NCCI Basic Manual for Workers' Compensation and Employers Liability Insurance, 1980 ed., as supplemented through August 12, 1993, which establishes classifications with respect to employers electing to be bound by compensation plan No. 2 as provided in Title 39, chapter 71, part 22, Montana Code Annotated. A copy of the Basic Manual for Workers' Compensation and Employers Liability Insurance is available for public inspection at the Office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, P.O. Box 200301, Helena, MT 59620-0301. Copies of the Basic Manual for Workers' Compensation and Employers Liability Insurance may be obtained by writing to the Montana Classification and Rating Committee in care of the National Council on Compensation Insurance, Two Tamarac Square, Suite 613, 7535 East Hampden Ave., Denver, CO 80231. Persons obtaining a copy of the Basic Manual for Workers' Compensation and Employers Liability Insurance must pay the committee's cost of providing such copies.

(2) The committee may amend the definition of a rate classification, establish a new rate classification, or delete an existing rate classification pursuant to the rulemaking procedures as provided in Title 2, chapter 4, part 3, Montana Code Annotated and the applicable attorney general's Model Procedural Rules adopted by the committee.

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

RULE X PUBLIC PARTICIPATION GUIDELINES (1) A continuing committee program for public participation shall be observed for each function of the committee. The exact mechanisms for public participation may vary in relation to the resources available, public response, or the nature of the issues involved.

(2) The committee shall provide continuing policy, program, and technical information at the earliest practical time and at a place reasonably accessible to interested or affected persons or organizations so that they can make informed and constructive contributions to committee decision making. News releases and other publications may be used for this purpose as well as informational discussions and meetings with

interested groups. Efforts shall be made to summarize complex and technical materials for public and media use.

(3) The committee shall have a procedure for dissemination of information to interested persons and organizations. Requests for information shall be promptly handled.

(4) The committee shall have a procedure for early consultation and exchange of views with interested or affected persons and organizations on significant activity prior to decision making.

(5) The committee shall maintain a current list of interested persons and organizations, including any who have requested inclusion on such list, for the distribution of information. The committee shall, in addition, notify any interested persons of any public hearing or other decision making proceedings prior to decision making and wherever practical shall supplement this notification with informal notice to all interested persons or organizations having requested such notice in advance. The committee shall make available for public inspection committee meeting agendas and agenda materials at the Office of the Commissioner of Insurance at least five days prior to a committee meeting.

(6) Committee files, other than personnel files and those files required by law or requirements of individual privacy to remain confidential, are open to public inspection. These files are located at the office of the National Committee on Compensation Insurance, Two Tamarac Square, Suite 613, 7535 East Hampden Ave., Denver, CO 80231. Copies of committee files are located at the Office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, P.O. Box 200301, Helena, MT 59620-0301. Copies of specific documents are available from the National Committee on Compensation Insurance or the Office of the Commissioner of Insurance either free or for a reasonable copying charge.

(7) When the committee determines that a proposed decision or action is of significant interest to the public, one person shall be designated as contact person with the public on the proposed decision or action.

(8) The listing of specific measures in this section shall not preclude additional techniques for obtaining, encouraging or assisting public participation.

AUTH: Sec. 33-16-1012, MCA
IMP: Sec. 2-3-103, MCA

3. These rules are being proposed by reason of recent legislation. On April 24, 1993, H.B. 587 became effective. H.B. 587 revises sections 33-16-1011 and 33-16-1012, MCA, to, among other things, provide that the classification and rating committee (1) makes the final determination regarding the establishment of classifications and (2) makes rules necessary for the conduct of business subject to notice and hearing, including review of employer objections to classifications assigned to the employer by an insurer. The classification and rating committee finds it necessary to adopt rules to implement H.B. 587.

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

Robert Carlson, Chairperson
Montana Classification and Rating Committee
c/o National Council on Compensation Insurance
Two Tamarac Square, Suite 613
7535 East Hampden Avenue
Denver, CO 80231

Comments must be received no later than September 13, 1993.

5. The classification and rating committee will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, please contact the Office of the Commissioner of Insurance no later than September 1, 1993, and advise the office of the nature of the accommodation needed. Please contact Bill Lombardi, Executive Assistant, Office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, P.O. Box 200301, Helena, MT 59620-0301; Telephone (406) 444-2495; toll free dial 1 and then 800-332-6148; fax 444-3497.

6. Katharine S. Donnelley, Box 1697, Helena, MT 59624, has been designated to preside over and conduct the hearing.

By: _____
Robert Carlson, Chairperson
Classification and Rating Committee

By: _____
Geoffrey L. Brazier, Rule Reviewer
State Auditor's Office

Certified to the Secretary of State August 2, 1993.

BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to fees and unprofessional conduct, and adoption of new rules pertaining to crematory facility regulation, casket/ containers, shipping cremated human remains, identifying metal disc, processing of cremated remains, and crematory prohibitions	NOTICE OF PROPOSED AMENDMENT AND ADOPTION OF RULES PERTAINING TO CREMATORIES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 11, 1993, the Board of Funeral Service proposes to amend and adopt rules pertaining to crematories.

2. The Board is proposing to amend ARM 8.30.407 and 8.30.701 as follows: (new matter underlined, deleted matter interlined)

"8.30.407 FEE SCHEDULE

(1) Morticians, crematory operator, crematory technician	$75.00
(2) through (4)(c) will remain the same.	
(d) Crematory operator, crematory technician	40.00
(d) will remain the same but will be renumbered (e).	
~~(e)~~ (f) Late renewal penalty - mortuary and crematory license (paid in addition to renewal fee)	100.00
(5) and (6) will remain the same.	
(7) Crematory application fee (includes original license fee)	100.00
(8) Crematory original inspection fee	200.00
(9) Crematory renewal - separate facility	125.00
(10) Crematory renewal - attached to mortuary	50.00
(11) Crematory temporary permit	25.00"

Auth: Sec. 37-1-134, 37-19-202, 37-19-703, MCA; IMP, Sec. 37-1-134, 37-19-402, 37-19-403, 37-19-702, 37-19-703, MCA

REASON: The proposed amendment will set the fee schedule for the application, licensing, renewal and inspection of crematory operator, crematory technician and crematory facilities, as mandated by the 1993 Legislature.

"8.30.701 UNPROFESSIONAL CONDUCT (1) through (1)(y) will remain the same.

(z) removing or possessing dental gold or dental silver from deceased persons without specific written permission of the authorized agent.

(aa) attaching, detaining, claiming to detain, or failing to release any human remains or human cremated remains for any debt or demand, or upon any pretended lien or charges upon delivery of authorization for release of remains."

Auth: Sec. 37-1-131, 37-1-136, 37-19-202, 37-19-311, 37-19-404, MCA; IMP, Sec. 37-1-136, 37-19-311, 37-19-404, MCA

REASON: The proposed amendment will add two specific areas of concern regarding removal of dental gold and silver, and attaching human remains as a "lien," which the Board has not been able to specifically discipline for in the past, but which does constitute unprofessional conduct.

3. The proposed new rules will read as follows:

"I CREMATORY FACILITY REGULATION (1) Each location of a crematory facility is considered a separate location and must be licensed separately from a mortuary, even though they may share the same common building.

(2) The crematory facility shall comply with all local, state and federal building codes and regulations regarding environmental impact on the area in which it is located.

(3) The crematory facility shall provide plans to the board on the interior design and placement of the crematory retort which shall be in a completely fire-proof building and exterior design which includes size and placement of smoke stack and emissions of sediment or smoke from it.

(4) All crematory facilities shall carry full fire protection insurance necessary for operation.

(5) The telephone number of the fire department or rural fire district serving the crematory facility shall be posted in large bold numbers in a conspicuous place near all telephones in the crematory facility as well as in the office, if attached to a mortuary facility.

(6) The crematory operator is responsible for the maintenance and safe operation of retort equipment used in cremations.

(7) All crematory facilities shall be kept and maintained in a clean and sanitary condition and all appliances used in the cremation process of dead human bodies shall be thoroughly cleansed and disinfected.

(8) Floors and walls shall be constructed of an impervious material.

(9) Used caskets or casket parts shall be placed in a storage room not available to the public view.

(10) When the crematory facility is unable to cremate human remains immediately upon taking custody, the human remains shall be placed in a holding area which shall be marked "private" or "authorized personnel only."

Auth: Sec. 37-19-202, 37-19-703, MCA; IMP, Sec. 37-19-703, 37-19-705, MCA

REASON: The proposed new rule will set forth crematory regulations on location, building codes, plans, insurance, fire protection, equipment, sanitation, materials, storage, and holding areas, as the 1993 Legislature mandated crematory licensing for the first time in Montana.

"II CASKET/CONTAINERS (1) All caskets and alternative containers for cremation shall meet the following standards:

(a) be able to be closed to provide a complete covering for the human remains;

(b) be composed of readily combustible materials suitable for cremation;

(c) be resistant to leakage or spillage;

(d) be sufficient for handling with ease;

(e) be able to provide protection for the health and safety of crematory personnel.

(2) The crematory facility, at its discretion, has the right to remove noncombustible materials such as handles or rails from caskets or containers prior to cremation and to discard them with similar materials from other cremations and other refuse in a non-recoverable manner."

Auth: Sec. 37-19-202, 37-19-703, MCA; IMP, Sec. 37-19-705, MCA

REASON: The proposed new rule will provide standards for caskets and other containers to provide guidance for crematories being licensed for the first time as mandated by the 1993 Legislature.

"III SHIPPING CREMATED HUMAN REMAINS (1) Cremated human remains sent through the U.S. mail must be marked, registered, insured, sealed and properly addressed.

(2) Cremated human remains may also be shipped through a common carrier that has an internal tracing system.

(3) Cost of mailing or shipping shall be paid by the authorized agent."

Auth: Sec. 37-19-202, 37-19-703, MCA: IMP, Sec. 37-19-705, MCA

REASON: The proposed new rule will provide standards for shipping cremated human remains to provide guidance for crematories being licensed for the first time as mandated by the 1993 Legislature.

"IV IDENTIFYING METAL DISC (1) It shall be the responsibility of the crematory operator, crematory technician or mortician to see that an identifying metal disc is attached to each receptacle containing human remains. When remains are to be cremated, the disc initially shall be secured to the top of the head end of the casket or alternate container. During the cremation process the disc shall be placed on the control panel, outside the retort.

(2) The identifying metal disc shall be held on the outside control panel of the retort. The disc shall then be placed with the cremated remains inside the urn and the plastic liner.

(3) The identifying metal disc shall be properly secured to each receptacle containing human remains when the remains are delivered to a cemetery, columbarium or mausoleum.

(4) In the case of scattering of cremated remains by a licensee, the identifying metal disc shall be made a part of the licensee's permanent record."

Auth: Sec. 37-19-202, 37-19-703, MCA; IMP, Sec. 37-19-704, 37-19-705, MCA

REASON: The proposed new rule will set up a system for identification of the human remains to avoid potential problems as reported in other states with non-identified remains. The regulations will inform crematories of the procedure to be used, as the crematories are being licensed for the first time, as mandated by the 1993 Legislature.

"V PROCESSING OF CREMATED REMAINS (1) Upon completion of the cremation process, all residual of the cremation process shall be removed form the retort and the cremation chamber swept cleaned. The residual remains shall be placed within a container or tray in such a way that will ensure against commingling with other cremated remains. The identifying metal disc shall be removed from the control panel area and attached to the container or tray to await final processing.

(2) All residual of the cremation process shall undergo final processing.

(3) Should the cremated remains or processed remains not adequately fill the container's interior dimensions, the extra space may be filled with packing material that will not become intermingled with the cremated remains or processed remains, and then securely closed.

(4) When a temporary container is used to return the cremated remains or processed remains, the container shall be placed within a sturdy box and all box seams taped closed to increase the security and integrity of that container. The outside of the container shall be clearly identified with the name of the deceased person whose cremated remains are contained there."

Auth: Sec. 37-19-202, 37-19-703, MCA; IMP, Sec. 37-19-704, 37-19-705, 37-19-706, MCA

REASON: The proposed new rule will provide procedures for processing of cremated human remains, to inform newly licensed crematory operators and technicians, as mandated by the 1993 Legislature.

"VI CREMATORY PROHIBITIONS (1) It is prohibited to cremate fetuses, limbs, and body parts from private or public health agencies, medical doctors or colleges and universities unless appropriate permits and releases are provided to the crematory facility.

(2) Copies of such permits and releases shall remain with the crematory facility and the parties contracting for the cremation services.

(3) Cremation of animals or pets of any type, is strictly prohibited in a crematory facility designed for cremation of human remains."

Auth: Sec. 37-19-202, 37-19-703, MCA; IMP, Sec. 37-19-704, 37-19-705, 37-19-706, 37-19-707, 37-19-708, MCA

REASON: The proposed new rule will set forth prohibitions on crematories to inform newly licensed operators and technicians of the behaviors which are not allowed under their new license mandated by the 1993 Legislature.

4. Interested persons may present their data, views or arguments concerning the proposed amendments and adoptions in writing to the Board of Funeral Service, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., September 9, 1993.

5. If a person who is directly affected by the proposed amendments and adoptions 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 Funeral Service, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513 Helena, Montana 59620-0513, to be received no later than 5:00 p.m., September 9, 1993.

6. If the Board receives requests for a public hearing on the proposed amendments and adoptions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments and adoptions, 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 47 based on the 466 licensees and applicants in the state of Montana.

BOARD OF FUNERAL SERVICE
GUY MISER, 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, August 2, 1993.

BEFORE THE BOARD OF PSYCHOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to application procedures, examination and fee schedule	)))	NOTICE OF PROPOSED AMENDMENT OF 8.52.604, 8.52.608 AND 8.52.616 PERTAINING TO THE PRACTICE OF PSYCHOLOGY

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 11, 1993, the Board of Psychologists proposes to amend the above-stated rules.

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

"8.52.604 APPLICATION PROCEDURES (1) through (1)(c) will remain the same.

(2) A completed application file shall consist of the completed and notarized application form, transcripts of all graduate work completed, program and course descriptions from the official college catalog(s), three work samples, and completed reference forms from a minimum of five references of good moral character. An application file must be complete at least ~~60~~ 90 days in advance of the April or October examination dates.

(a) through (5)(a) will remain the same."

Auth: Sec. 37-1-131, 37-17-202, MCA; IMP, Sec. 37-17-302, MCA

REASON: The proposed amendment will give the Board a greater length of time for application evaluation, as the current 60 day requirement does not always allow sufficient time for review, gathering of supplemental material and making a decision on the applications before the candidates must be notified of the exam date and time.

"8.52.608 EXAMINATION (1) The applicant will be notified of the examination time schedule at least ~~1 month~~ 2 weeks in advance. This examination schedule will establish: time(s), place(s), the amount of the examination fee, and other pertinent information and/or instructions.

(2) The board shall determine the subject matter and scope of specialized psychological areas and techniques for the examination. Examinations will be written and oral. These will be conducted by the board or its duly constituted representative(s). The written examinations developed by the national licensing program with the support of the American association of state psychology boards may be given. The acceptable level of performance on the written examination shall be ~~determined by the board based on national norms as established by the American association of state psychology boards or as established by the professional examination~~

~~service which provides the examination and will be announced in advance~~ 70%.

(3) through (5) will remain the same."

Auth: Sec. 37-1-131, 37-17-202, MCA; IMP, Sec. 37-17-303, MCA

REASON: The proposed amendment to subsection (1) will allow for a minimum of two weeks notification of the exam schedule, as the Board often cannot meet and make application decisions in time to send notification a full month in advance.

The proposed amendment to (2) will set the passing rate in Montana at 70%, as recommended by the national examination service.

"8.52.616 FEE SCHEDULE (1) The department will collect the following fees, none of which are refundable:

(a) will remain the same.

(b) Examination fee ~~150.00~~ 275.00

(c) will remain the same."

Auth: Sec. 37-1-134, 37-17-202, MCA: IMP, Sec. 37-17-302, 37-17-303, 37-17-307, 37-17-307, MCA

REASON: The proposed amendment will raise the examination fee to $275.00, to reflect the higher fee now being charged by the national examination service.

3. Interested persons may present their data, views or arguments concerning the proposed amendments in writing to the Board of Psychologists, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., September 9, 1993.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Psychologists, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513 Helena, Montana 59620-0513, to be received no later than 5:00 p.m., September 9, 1993.

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

the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2 based on the approximately 20 applicants in the state of Montana.

BOARD OF PSYCHOLOGISTS
DAVID SCHULDBERG, Ph.D.
CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 2, 1993.

BEFORE THE BOARD OF SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to aide supervision and non-allowable functions of aides	))))	NOTICE OF PROPOSED AMENDMENT OF 8.62.502 SCHEDULE OF SUPERVISION - CONTENTS AND 8.62.504 NONALLOWABLE FUNCTIONS OF AIDES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 11, 1993, the Board of Speech-Language Pathologists proposes to amend the above-stated rules.

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

"8.62.502 SCHEDULE OF SUPERVISION - CONTENTS (1) will remain the same.

(2) Aides must be supervised ~~approximately 20% of the client contract time, of which ten percent (10%) must be direct contact~~ a minimum of 20% of their weekly contact hours. Ten percent of total weekly contract hours must be completed with the supervisor physically present on site, during the aide's interaction with client(s) in a therapy programming situation. Example: aide is contracted for 30 hours per week; total supervision at 20% of 30 hours is 6 hours per week; direct supervision at 10% of 30 hours is 3 hours per week.)"

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-15-102, 37-15-313, MCA

REASON: This proposed amendment will clarify the direct supervision required when employing a speech language pathology aide, as the present language could be interpreted in two different ways. The requirement is for direct physical supervision of the speech language pathology aide for 10% of the total weekly work hours the speech language pathology aide is working.

"8.62.504 NONALLOWABLE FUNCTIONS OF AIDES (1) through (2)(f) will remain the same.

~~(3) Speech aides who were registered with the board between the dates of August 1, 1988 and June 1, 1989, and who were allowed, as part of their registration plan, to conduct evaluations and participate on CSTs and IEPs will continue to be allowed to perform these activities under supervision if they are enrolled in a graduate program for the purpose of completing licensure requirements. However, speech aides who fall under this subsection must meet licensure requirements by September, 1992, or they will no longer be able to conduct these activities.~~

~~Upon annual registration, these aides must provide to the board verification of coursework from the graduate school program attained toward licensure requirements.~~"

Auth: Sec. 37-15-202, MCA; IMP, Sec. 37-15-102, MCA

REASON: This amendment is being proposed because the time limits set forth have now expired and the section is no longer necessary.

3. Interested persons may present their data, views or arguments concerning the proposed amendments in writing to the Board of Speech-Language Pathologists and Audiologists, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., September 9, 1993.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Speech-Language Pathologists and Audiologists, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513 Helena, Montana 59620-0513, to be received no later than 5:00 p.m., September 9, 1993.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 38 based on the approximately 388 licensees in the state of Montana.

BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
CARL CLARK, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 2, 1993.

**BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA**

In the matter of proposed amendment of rule 8.86.301 as it relates to the monthly calculation of the class I milk paid to producers	**) NOTICE OF PROPOSED AMENDMENT)) NO PUBLIC HEARING CONTEMPLATED)) DOCKET #17-93**

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT (SECTION 81-23-101, MCA, AND FOLLOWING), AND ALL INTERESTED PERSONS:

1. On September 20, 1993, the board of milk control (board) proposes to amend ARM 8.86.301(6)(a) on the board's own motion. The proposed change is in response to house bill 516, passed by the 1993 legislature, which will fund the milk and egg bureau of the department of livestock. In that law, which was effective on July 1, 1993, the legislature mandated the collection of an assessment fee of $.1497 per hundredweight (CWT) from the milk producer and that cost reflect as an increase in the producer's price. The legislature determined that the actual cost be assessed on the consuming public and that this was in the best interest and welfare of the public as a whole.

2. The rule as proposed to be amended provides as follows: (full text of the rule is located at pages 8-2529 thru 8-2549, Administrative Rules of Montana)(new matter underlined, deleted matter interlined)

"8.86.301 PRICING RULES

(1)-(6) remains the same.

(a) The minimum prices which shall be paid to producers by distributors in the state of Montana shall be calculated by either applying the flexible economic formula described below or the Minnesota-Wisconsin series plus ~~three dollars ($3.00)~~ three dollars and fifteen cents ($3.15) whichever price is lower. The flexible economic formula utilizes a November 1969 base equalling 100, an interval of 4.5 and consists of seven (7) factors. The factors and their assigned weights are as follows:

	FACTOR	WEIGHT	CONVERSION FACTOR
(i)	Unemployment US (6.67 (3.8 - C) + 100) .05	5%	
(ii)	Unemployment MT. (6.67 (6.1 - C) + 100) .10	10%	

*(iii)	Weekly Wages - Total private (Revised and seasonally adjusted)	15%	.13297873
(iv)	Prices Received by Farmers - MT. ('47 - '49 = 100)	15%	.22960139
(v)	Mixed Dairy Feed	20%	.32258065
(vi)	Alfalfa Hay	12%	.48000000
(vii)	Prices Paid by Farmers - US ('67 = 100)	23%	.41990335
		100%	

*Note: The reported revised weekly wage - total private is seasonally adjusted by dividing each months revised figures by the following factors: Jan. - .9867; Feb. - .9832; March - .9809; April - .9822; May - .9911; June - 1.0053; July - 1.0165; August - 1.0261; Sept. - 1.0136; Oct. - 1.0192; Nov. - 1.0047; Dec. - .9905.

The following table will be used in computing producer prices:

TABLE I

Producer price determination using above formula with November, 1969 - 100 and an interval - 4.5

FORMULA INDEX	PRICE PER CWT	
201.5 - 205.1	~~$12.86~~	13.01
206.0 - 209.6	~~13.09~~	13.24
210.5 - 214.1	~~13.32~~	13.47
215.0 - 218.6	~~13.55~~	13.70
219.5 - 223.1	~~13.78~~	13.93
224.0 - 227.6	~~14.01~~	14.16
228.5 - 232.1	~~14.24~~	14.39
233.0 - 236.6	~~14.47~~	14.62
237.5 - 241.1	~~14.70~~	14.85
242.0 - 245.6	~~14.93~~	15.08
246.5 - 250.1	~~15.16~~	15.31
251.0 - 254.6	~~15.39~~	15.54
255.5 - 259.1	~~15.62~~	15.77
260.0 - 263.6	~~15.85~~	16.00
264.5 - 268.1	~~16.08~~	16.23
269.0 - 272.6	~~16.31~~	16.46
273.5 - 277.1	~~16.54~~	16.69
278.0 - 281.6	~~16.77~~	16.92
282.5 - 286.1	~~17.00~~	17.15
287.0 - 290.6	~~17.23~~	17.38

(i)-(14)(b) remains the same."

AUTH: 81-23-302, MCA
IMP: 81-23-302, MCA

3. ARM 8.86.301(6)(a) is being amended to ensure the $.1497 per CWT deduction from milk producers, to fund the milk and egg bureau (dept. of Livestock) and mandated by H.B. 516, be passed through to the consuming public.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to the Milk Control Bureau, 1520 East Sixth Avenue-Room 50, PO Box 200512, Helena, MT 59620-0512. Any comments must be received no later than September 18, 1993.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Milk Control Bureau, 1520 East Sixth Avenue-Room 50, PO BOX 200512, Helena, MT 59620-0512. A written request must be received no later than September 18, 1993.

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 action; 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 (18) persons based on (176) producers and (5) licensed Montana distributors.

MONTANA BOARD OF MILK CONTROL
MILTON J. OLSEN, Chairman

By: _____
Andy J. Pooley, Deputy Director
Department of Commerce

By: _____
Annie M. Bartos, Rule Reviewer
Commerce Chief Legal Counsel

Certified to the Secretary of State August 2, 1993.

BEFORE THE BUSINESS DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment and adoption of rules pertaining to the microbusiness finance program	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION OF RULES PERTAINING TO THE MICRO-BUSINESS FINANCE PROGRAM

TO: All Interested Persons:

1. On September 3, 1993, a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment and adoption of rules pertaining to the Microbusiness Finance Program.

2. The Business Development Division is proposing to amend ARM 8.99.401, 8.99.404, 8.99.501, 8.99.503, 8.99.505, 8.99.509, and 8.99.511. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

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

(1) through (19) will remain the same.

(20) "Statewide MBDC" means an MBDC that meets all requirements for statewide certification stated herein, and, has a viable plan to provide specialized services to constituents throughout the state, and does not preempt or duplicate efforts of MBDCs within local communities~~, and obtains written indications of support from local MBDCs in the communities in which it plans to offer its services~~."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, 17-6-408, MCA

REASON: Senate Bill 161, enacted by the 1993 Legislature, amended the Montana Microbusiness Development Act by deleting the requirement that a statewide MBDC obtain written support from local development organizations in every community in which it plans to offer its services. This requirement presented a serious barrier to developing a statewide MBDC because it necessitated that the prospective MBDC to obtain numerous written support documents. This "housekeeping" amendment to the department's administrative rules is necessitated by the statutory change.

"8.99.404 CERTIFICATION OF REGIONAL MICROBUSINESS DEVELOPMENT CORPORATIONS (1) through (4)(e) will remain the same.

(f) evidence of ~~matching~~ collateral funds. Such evidence shall include a legally binding commitment from a governmental entity, organization, business, and/or individual pledging at least $1 for every ~~$3~~ $6 in development loan to be borrowed from the program. ~~Matching~~ Collateral funds must be in cash available for deposit with the development loan, or to be pledged as collateral for the development loan. Leveraging

of development loan funds through banks or other lending institutions does not constitute ~~matching~~ collateral funds.

(g) and (h) will remain the same."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-408, MCA

REASON: Senate Bill 161 amended the Montana Microbusiness Development Act by substituting the word "collateral" for the word "match." This change will allow collateral to leverage other funds for MBDC operations or loan fund purposes.

Senate Bill 161 also reduced the minimum collateral ratio from 1:3 to 1:6. These statutory changes necessitated the "housekeeping" amendments to the department's administrative rules noted above.

"8.99.501 DEVELOPMENT LOAN - CRITERIA (1) through (2)(a) will remain the same.

(b) legally binding commitment(s) for ~~matching~~ collateral funds;

(c) through (4)(d) will remain the same."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, 17-6-407, MCA

REASON: Senate Bill 161, amended the Montana Microbusiness Development Act by substituting the word "collateral" for the word "match." This change will allow collateral to leverage other funds for MBDC operations or loan fund purposes. This "housekeeping" amendment to the department's administrative rules is necessitated by this statutory change.

"8.99.503 DEVELOPMENT LOAN - INTEREST (1) and (2) will remain the same.

(3) The interest rate set in the development loan agreement ~~may not be increased during the term of the loan, but~~ may be reduced at the department's discretion. ~~The rate of interest may not be less than 3% a year.~~"

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, MCA

REASON: Senate Bill 161 amended the Montana Microbusiness Development Act by eliminating the three percent minimum interest rate for development loans. This change necessitated a corresponding amendment to the department's administrative rules.

The Department is also proposing this amendment to allow it and the MBDC's greater flexibility in negotiating loan agreement provisions. For example, under certain circumstances, an MBDC may wish to negotiate a variable interest rate with a predetermined maximum. The proposed amendment would not affect the current four percent maximum interest rate.

"8.99.505 DEVELOPMENT LOAN - MATCHING CONTRIBUTIONS AND COLLATERAL (1) ~~Matching~~ Collateral funds must be provided in cash. Leverage provided by financial institutions committing to make microbusiness loans in consequence of a guarantee fund established with the development loan funds does not constitute cash ~~match~~ collateral.

(2) The development loan agreement between the department and an MBDC must specify account(s), or type of account(s), into which the full amount of the cash ~~match~~ collateral must be deposited before the development loan may be disbursed to the MBDC, except that, when the MBDC presents a legally binding commitment for cash ~~match~~ collateral from a federal agency contingent only upon disbursement of the development loan, the development loan may be disbursed prior to deposit of that committed federal portion of the cash ~~match~~ collateral.

(3) In order to assist an MBDC in obtaining ~~match~~ collateral from other sources, the department may provide a legally binding commitment to an MBDC to award a development loan, contingent on receipt and deposit of cash ~~match~~ collateral as specified in the loan agreement. Such a commitment must have an expiration date; the duration of such commitments ~~shall~~ may be no longer than one calendar quarter, so that commitments to MBDCs without ~~matching~~ cash collateral on hand do not unreasonably delay lending to MBDCs with cash ~~match~~ collateral ready and available.

(4) Cash balances of development loan proceeds and ~~matching~~ collateral funds, including guarantee funds and all other funds not loaned out in microbusiness loans, must be:

(a) and (b) will remain the same.

(5) So long as any development loan balance is outstanding between the department and an MBDC, cash ~~match~~ collateral from the MBDC must be maintained in the form of microbusiness loans made from the revolving loan fund, or in the form of such deposits and investments as are specified in paragraph (4) above, in at least the ratio of $1 in cash ~~match~~ collateral to ~~$3~~ $6 in development loan balance outstanding. Reduction of ~~match~~ collateral below this minimum ratio or the minimum established in the development loan agreement between the department and the MBDC, whichever is greater, will be grounds for declaring an MBDC to be in default of the development loan agreement.

(6) ~~Match~~ Collateral held by MBDCs in cash, cash deposits or investments other than microbusiness loans or guarantee funds must be pledged as collateral against the development loan.

(7) An MBDC must provide the department with a first lien against the full amount of all microbusiness loans made from development loan and ~~matching~~ collateral funds.

(8) In the case that proceeds from a development loan are used to establish a revolving loan fund, from which loans are made directly to microbusinesses, cash ~~match~~ collateral must be deposited, invested and lent together with the development loan proceeds, and must be used for only those purposes for which the development loan fund proceeds are used, as defined in 17-6-407(5), MCA.

(9) In the case that an MBDC establishes both a revolving loan fund and a guarantee fund, cash ~~match~~ collateral must be allocated between the guarantee fund and the revolving loan funding the same proportion that development loan proceeds are allocated between the guarantee fund and the revolving loan fund.

(10) through (10)(d) will remain the same.

(i) the MBDC must maintain a reserve fund of ~~matching~~ cash collateral deposited or invested as specified in paragraph (4) above, pledged as collateral against the development loan in the amount of at least $1 for every ~~$3~~ $6 of development loan proceeds allocated to the guarantee fund or the amount specified in the development loan agreement, whichever is greater;

(A) a letter of credit provided to the department as collateral for the development loan by the financial institution or institutions having a guarantee agreement with the MBDC, may at the department's discretion be substituted in place of up to ~~$40,000~~ $18,000 of the reserve fund required under (i) above.

(ii) will remain the same."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, MCA

REASON: Senate Bill 161 amended the Montana Microbusiness Development Act by substituting the word "collateral" for the word "match." This change will allow collateral to leverage other funds for MBDC operations or loan fund purposes. Several of the proposed amendments to the department's rules simply bring the rules into conformance with these statutory changes.

Senate Bill 161 also amended the Montana Microbusiness Development Act by reducing the minimum required loan collateral from 1:3 to 1:6. The department proposed to amend its administrative rules to reflect this statutory change.

The statutory change in the minimum collateral/loan ratio also requires a corresponding reduction in the maximum letter of credit amount for a guarantee fund.

"8.99.509 ADMINISTRATIVE ACCOUNT (1) The microbusiness administrative account into which interest from development loans and other program income is deposited may accumulate an operating reserve equivalent to ~~three~~ twelve months of program administrative expenses.

(2) will remain the same."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-407, MCA

REASON: This amendment will permit the department to accumulate a sufficient cash reserve to meet unanticipated program costs such as those associated with resolving troubled loan funds and conducting special audits.

This amendment is intended to allow the department to manage the MBDC program in a more fiscally responsible manner so as to assure the long-term economic viability of the program.

"8.99.511 MICROBUSINESS LOANS - ELIGIBILITY FOR AND TERMS AND CONDITIONS (1) Microbusiness loan applicants will be required to certify ~~in the manner specified and on forms provided by the department~~ to the MBDCs, that the applicants ~~is~~ are ~~an~~ eligible borrowers from the program as defined in 17-6-403 and 17-6-407(5) and (6), MCA.

(2) through (6) will remain the same."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, 17-6-407, MCA

REASON: The department has never provided the form referred to in this rule and MBDC's appear to be certifying applicants adequately without detailed guidance from the department. This amendment will allow the department to manage the MBDC program in a more efficient manner.

3. The proposed new rule will read as follows:

"I CERTIFICATION OF A STATEWIDE MICROBUSINESS DEVELOPMENT CORPORATION (1) Under the authority granted by section 17-6-406, MCA, the department adopts the following rules for the certification of a statewide microbusiness development corporation.

(2) The department will compile standards of practice for microlending by surveying a selection of revolving loan fund programs and lending institutions targeted to microbusinesses both inside and outside Montana, against which proposals for certification will be measured. This survey will include at least, but will not be limited to, a direct loan program model, a loan guarantee program model, and a group or circle lending program model.

(a) The department will distribute the standards of practice to all persons and organizations responding to requests for proposals to become certified MBDCs, and all others who request the information.

(b) The department with the council will review and update the standards of practice for microlending at least every biennium to reflect evolving standards of practice for microlending and new program models.

(c) The department will review United States General Accounting Office and Generally Accepted Accounting Principles, and choose a standard set of accounting principles against which to measure the administrative procedures of applicants for certification. The department will announce the selected standard set of accounting principles in its requests for proposals for certification.

(3) There is no limit to the number of certified statewide MBDCs; however, only one certified statewide MBDC may be funded at any given time. Statewide MBDCs must comply with 17-6-408(2), MCA.

(a) When the certified and funded statewide MBDC is determined to be in default, that MBDC is considered decertified and no longer funded, and another certified statewide MBDC may apply for and receive a development loan.

(b) To maintain its status as a certified MBDC, an MBDC that is certified but not funded must be reviewed and recertified every four years.

(4) The following information is required to be presented to the department by applicants for certification as a statewide MBDC:

(a) a plan for delivery of management training and technical assistance. The plan will show qualifications of providers, timeline, and cost of training. The plan will

include, but will not be limited to, the subjects of business planning, accounting, financial planning, financial controls, personnel management, marketing, legal aspects of business operation, and loan proposal preparation.

(b) a plan for credit investigation and analysis, and loan analysis of microbusiness loan applicants. The plan will include, but will not be limited to, the manner in which the credit history of microbusiness loan applicants will be determined and evaluated, what business information and history will be required from applicants, and the manner in which confidentiality will be maintained. The plan will include a description of the exact credit approval and denial process, and the qualifications of those who will conduct the investigation, analysis, and evaluation.

(c) a plan for and evidence of ability to administer a revolving loan fund. The plan will include, but will not be limited to, loan servicing documentation, financial oversight and monitoring of borrowers, delinquent loans and collateral collections, internal accounting, financial procedures and controls, business management procedures, loan portfolio risk management policies, measures and procedures, and loan fund balance investment and management practices. The plan will include structure, composition, and organizational relationships of the loan committee and qualifications of its members.

(d) a staffing plan including job titles, job descriptions, necessary qualifications, experience, education and other qualifications of principle manager, and personnel training and supervision.

(e) evidence of broad-based community support, to include letters of support from persons and institutions throughout the state including, but not limited to, local governments, certified community lead organizations, financial institutions, business incubators, business assistance groups, women, and representatives of low-income and minority populations. The evidence must include a full list of names and resumes of board members, demonstrating the minimum requirement for board representation of women, minorities and low-income persons.

(f) evidence of collateral funds. Such evidence shall include a legally binding commitment from a governmental entity, an organization, a business, or an individual pledging $1 for every $6 in development loan to be borrowed from the program. Collateral funds must be in cash available for deposit with the development loan, or to be pledged as collateral for the development loan. Leveraging of development loan funds through banks or other lending institutions does not constitute collateral funds.

(g) evidence of sufficient operating income including at least, but not limited to, financial reports for previous two years for an existing organization, and two-year full financial projections for all applicants. In the case of a new organization, evidence shall include principals and board members with successful experience in managing similar amount of funding in a nonprofit corporation.

(h) evidence of adequate business clients to include, but not be limited to, a plan for identifying, qualifying, and marketing to potential borrowers throughout the state."

Auth: Sec. 17-6-406, MCA; IMP, Sec. 17-6-406, 17-6-408, MCA

REASON: This new rule is proposed for adoption to distinguish certification of regional from statewide Microbusiness Development Corporations. Certain of the certification requirements for regional MBDCs contained in 8.99.404 are inapplicable to statewide MBDCs.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Lynn Robson, Business Development Division, Department of Commerce, 1424 - 9th Avenue, Helena, Montana 59620, to be received no later than 5:00 p.m., September 9, 1993.

5. Lynn Robson, Business Development Division, will preside over and conduct the hearing.

BUSINESS DEVELOPMENT DIVISION

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 2, 1993.

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

In the matter of the amendment of rules 16.8.1903 and 16.8.1905 dealing with air quality operation and permit fees	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES

(Air Quality)

To: All Interested Persons

1. On September 17, 1993, at 9:00 a.m., the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

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

16.8.1903 AIR QUALITY OPERATION FEES (1)-(2) Remain the same.

(3) The air quality operation fee is based on the actual or estimated actual amount of air pollutants emitted during the previous calendar year and is the greater of a minimum fee of $250 or a fee calculated using the following formula:

tons of total particulate emitted,
multiplied by ~~$4.00~~ 8.55; plus
tons of sulfur dioxide emitted,
multiplied by ~~$4.00~~ 8.55; plus
tons of lead emitted,
multiplied by ~~$4.00~~ 8.55; plus
tons of oxides of nitrogen emitted,
multiplied by ~~$1.00~~ 2.14; plus
tons of volatile organic compounds emitted,
multiplied by ~~$1.00~~ 2.14.

(4)-(5) Remain the same.

AUTH: 75-2-111, MCA; IMP: 75-2-211, MCA

16.8.1905 AIR QUALITY PERMIT APPLICATION FEES

(1)-(4) Remain the same.

(5) The fee is the greater of:

(a) a fee calculated using the following formula:

tons of total particulate emitted,
multiplied by ~~$2.50~~ 8.55; plus
tons of sulfur dioxide emitted,
multiplied by ~~$2.50~~ 8.55; plus
tons of lead emitted,
multiplied by ~~$2.50~~ 8.55; plus
tons of oxides of nitrogen emitted,
multiplied by ~~$0.60~~ 2.14; plus

tons of volatile organic compounds emitted, multiplied by ~~$0.60~~ 2.14;

(b) Remains the same.

AUTH: 75-2-111, MCA; IMP: 75-2-211, MCA

3. The proposed amendments increase the existing fees associated with the air quality bureau's permit fee program, relating to operation and permit application, and are undertaken in response to actions taken by the 53rd Legislature in the 1993 regular session. The fees are raised from $4.00 to $8.55 per ton of pollutant for particulates, lead and sulfur dioxide, and from $1.00 to $2.14 for nitrogen oxides and volatile organic compounds. These amendments should generate approximately $517,413 in additional revenues for the department's air quality permitting program. This proposal represents an increase to existing fees, and no new fees are proposed.

These amendments are necessary to respond to action taken by the 1993 legislature, which authorized the collection of an additional $517,413 in fee revenues to fund activities associated with the passage of House Bill 318, and the implementation of a permitting program to meet the requirements of Title V of the federal Clean Air Act.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yoli Fitzsimmons, Board of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than September 14, 1993.

5. Raymond W. "Rib" Gustafson has been designated to preside over and conduct the hearing.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State August 2, 1993.

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the adoption of rules containing licensure standards for residential treatment facilities	NOTICE OF PUBLIC HEARING FOR PROPOSED ADOPTION OF RULES (Health Care Facility Licensing)

To: All Interested Persons

1. On September 3, 1993, at 9:00 a.m., the department will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of the above-captioned rules, which establish standards for licensure of residential treatment facilities.

2. The rules, as proposed, appear as follows:

RULE I RESIDENTIAL TREATMENT FACILITY -- APPLICATION OF OTHER RULES (1) To the extent that other licensure rules in this chapter conflict with the terms of [Rules II and III], the terms of [Rules II and III] will apply to residential treatment facilities.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE II RESIDENTIAL TREATMENT FACILITY -- LICENSURE STANDARDS (1) A residential treatment facility must meet the requirements of the following:

(a) The standards for the following categories, contained in the Joint Commission on Accreditation of Health Care Organizations' 1993 Accreditation Manual for Mental Health, Chemical Dependency, and Mental Retardation/Developmental Disabilities Services:

(i) administrative/clinical management, as specified under the following headings:

(A) governance and management (GM);

(B) professional staff organization (PO), with the exception of PO.2.5.8.1;

(C) human resources management (HR);

(D) planning and evaluation (PE);

(E) quality assessment and improvement (QA);

(F) utilization review (UR);

(G) research (RS), if provided;

(H) patient rights (PI);

(I) clinical records management (CR);

(ii) patient services, as specified under the following headings:

(A) patient management (PM);

(B) child and adolescent services (CA);

(C) forensic services (FC), if provided;

(D) special treatment procedures (SC), if provided;

(iii) patient support services, as specified under the following headings:

(A) nutrition services (NU);

(B) emergency services (ER);

(C) pharmacy services (PH), as specified for residential settings in Appendix A;

(D) physical health services (PY);

(E) libraries and information networks (LI);

(F) rehabilitation services (RH), as specified for residential settings in Appendix A;

(iv) environmental management, as specified under the following headings:

(A) plant, technology and safety management (PL), as specified for residential settings in Appendix A;

(B) therapeutic environment (TH);

(C) infection control (IC), with the exception of IC.2.2.1 and IC.2.2.2.2--IC.2.2.4.1; and

(v) for facilities in existence or for which construction had commenced prior to [the effective date of this rule], the interim life safety measures contained in appendix D.

(b) The standards contained in Title 42 CFR, part 441, subpart D, as they exist on October 1, 1992.

(2) A residential treatment facility may not share direct care staff or provide joint activities or treatment in conjunction with another type of health care facility, even if both facilities are under the same management.

(3) The number of residents admitted to the facility and the number of beds in use and/or ready for use may not exceed the number of beds for which the facility is licensed, as indicated on the face of the license issued to it.

(4) The department hereby adopts and incorporates by reference the 1993 Accreditation Manual for Mental Health, Chemical Dependency, and Mental Retardation/Developmental Disabilities Services, published by the Joint Commission on Accreditation of Healthcare Organizations, which contains accreditation standards for facilities providing mental health services, and Title 42 of the Code of Federal Regulations (CFR), part 441, subpart D (effective October 1, 1992), which contains standards for provision of inpatient psychiatric services to individuals under age 21. Copies of these standards are available from the Licensure Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE III RESIDENTIAL TREATMENT FACILITIES--SEPARATE LICENSES (1) Separate residential treatment facility licenses are not required for separate buildings within the same community if they are utilized to provide residential psychiatric care under the same management.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

3. The department is proposing these rules because

50-5-201, MCA, requires every health care facility, including, by definition, a residential treatment facility, to be licensed. Title 50, chapter 5, part 2, requires, as a condition of licensure, that a facility meet licensure standards established by the department. Therefore, these rules are necessary to establish the standards that residential treatment facilities must meet in order to obtain the license the law requires of them.

4. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Mike Craig, Licensure Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than September 10, 1993.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State August 2, 1993.

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the amendment of rules 16.38.301-304, and the adoption of a new rule addressing laboratory fees for food, consumer safety and occupational health analysis.	NOTICE OF PROPOSED AMENDMENT OF RULES AND ADOPTION OF NEW RULE I NO PUBLIC HEARING CONTEMPLATED (Public Health Lab and Chemistry Lab)

To: All Interested Persons

1. On September 14, 1993, the department intends to amend the above-captioned rules and adopt a new rule concerning fees to be charged by the chemistry and public health laboratories of the Department of Health and Environmental Sciences.

2. The rules, as proposed to be amended and adopted, appear as follows (new material in existing rules is underlined or bolded; material to be deleted is interlined):

16.38.301 CHEMISTRY LABORATORY FEES -- AIR (1) Effective ~~July 12, 1991~~ October 1, 1993, fees for air quality analyses are as follows:

Type of analysis	Cost
Total suspended particulate (TSP), hi-vol sampler	$ ~~4.60~~ 6.10 per filter
TSP, dichotomous sampler	~~4.60~~ 6.10 per filter
Sulfate in hi-vol filter	~~10.50~~ 12.60 per filter
Nitrate in hi-vol filter	~~10.50~~ 12.60 per filter
Trace metals-one metal	~~13.20~~ 16.30 per filter
Trace metals-each additional metal	~~5.60~~ 7.30 per filter
Fluoride: Vegetation	~~67.50~~ 80.40
Sulphation rate	~~15.30~~ 18.90 per plate
Dustfall	~~19.10~~ 22.40
Cut strips	~~.70~~ 1.00
Microwave digestion	~~8.60~~ 14.40

AUTH: 50-1-202, MCA; IMP: 50-1-202, MCA

16.38.302 CHEMISTRY LABORATORY FEES -- WATER

(1) Effective ~~July 12, 1991~~ October 1, 1993, fees for analysis of water and water extracts by the chemistry laboratory of the department of health and environmental sciences are as follows:

~~(1) The fee for a standard microbiological (total coliform) analysis is $10.00.~~

~~(2) The fee for a fecal coliform analysis is $10.00.~~

~~(3) The fee for a plate count is $10.00.~~

~~(4)~~ ~~The fees~~ on a per analysis basis to determine the concentration of individual constituents ~~are as follows~~:

Analysis	Cost per Analysis	
Alkalinity	~~10.60~~	12.60
Aluminum	~~5.60~~	7.30
Ammonia	~~10.60~~	12.60
Antimony	~~5.60~~	12.60
Arsenic	~~10.50~~	12.60
Barium	~~5.60~~	7.30
Beryllium	~~5.60~~	7.30
Biochemical Oxygen Demand (BOD)	~~73.80~~	86.10
Bismuth	~~5.60~~	7.30
Boron	~~5.60~~	7.30
Bromide	~~24.80~~	28.70
Cadmium	~~5.60~~	7.30
Calcium	~~5.60~~	7.30
Carbamate Pesticides by 531		75.00
Chemical Oxygen Demand (COD)	~~63.10~~	73.60
Chloride	~~14.60~~	17.40
Chlorinated Pesticides by 508	~~120.00~~	150.00
Chlorophenoxy Herbicides	~~150.00~~	180.00
Chlorophyll		25.10
Chromium	~~5.60~~	7.30
Cobalt	~~5.60~~	7.30
Color (2 tests - pH adjusted)	~~64.20~~	74.90
Conductivity	~~2.60~~	4.90
Copper	~~5.60~~	7.30
Cyanide	~~81.40~~	94.10
Fluoride	~~18.00~~	20.00
Hardness	~~11.20~~	14.60
Hexavalent Chromium	~~100.00~~	120.00
Iron	~~5.60~~	7.30
Kjeldahl Nitrogen	~~15.80~~	21.50
Lead	~~5.60~~	7.30
Magnesium	~~5.60~~	7.30
Manganese	~~5.60~~	7.30
Mercury	~~31.90~~	38.20
Metals scan	~~6.70~~	14.50
Molybdenum	~~5.60~~	7.30
Nickel	~~5.60~~	7.30
Nitrate	~~10.60~~	12.60
Nitrite	~~10.60~~	18.50
Oil and Grease	~~43.70~~	51.10
Ortho-Phosphorus	~~10.60~~	12.60
Pentachlorophenol	~~150.00~~	180.00
Pesticides/PCB/EDB, DBCP by 504/505		120.00
pH	~~1.80~~	4.90
Poly-chlorinated Biphenyls	~~230.00~~	120.00
Potassium	~~5.60~~	7.30

Selenium	~~10.50~~	12.60
Semi-Volatile Organics	~~360.00~~	430.00
Silicon	~~5.60~~	7.30
Silver	~~5.60~~	7.30
Sodium	~~5.60~~	7.30
Strontium	~~5.60~~	7.30
Sulfate	~~14.60~~	17.40
Sulfide	~~110.00~~	130.00
Synthetic Organic Compounds by 525		240.00
Tin	~~5.60~~	7.30
Thallium		12.60
Total Dissolved Solids	~~19.10~~	22.40
Total Organic Carbon	~~22.60~~	26.40
Total Phenolics	~~110.00~~	130.00
Total Phosphorus	~~15.80~~	21.50
Total Suspended Solids	~~19.20~~	22.40
Trihalomethanes	~~120.00~~	140.00
Turbidity	~~5.30~~	6.30
Volatile Organic Compounds	~~120.00~~	140.00
Volatile Suspended Solids	~~19.10~~	22.40
Zinc	~~5.60~~	7.30

~~(5)~~ (2) The fees specified in ~~(1) through (4)~~ (1) of this rule may be lowered by the department of health and environmental sciences when larger batches of samples or a change of analysis method warrant lower fees.

AUTH: 50-1-202, MCA; IMP: 50-1-202, MCA

16.38.303 PUBLIC HEALTH LABORATORY FEES ~~PUBLIC HEALTH LABORATORY~~ (1) ~~As of July 12, 1991, the handling fee is $5.00 per clinical specimen (i.e. from a human body or body fluids) and $10.00 for each environmental specimen, unless the specimen is submitted for an air quality test subject to ARM 16.38.301, a test of drinking water which is covered by ARM 16.38.302, or the screening tests referred to in section (2) of this rule.~~ As of October 1, 1993, the fees for analyses in the public health laboratory of the department of health and environmental sciences are as follows:

Testing Category	Fee
Water, per test	14.00
Newborn Screening Panel	15.00
Cystic Fibrosis	5.00
Viral and Chlamydia Isolation	10.00
HIV	5.00
Rubella	5.00
Syphilis	5.00
HBsAG	7.00
Anti-HBs	10.00
Chlamydia, Direct	8.00
GC, Direct	8.00
Combo GC & Chlamydia, Direct	15.00
Atypical Pneumonia Panel	10.00
Chronic Fatigue Panel	10.00

Encephalitis Panel	10.00
Exanthem Panel	15.00
Respiratory Disease, Short Panel	5.00
Respiratory Disease, Long Panel	10.00
TORCH Panel	10.00
Tick Borne Disease Panel	5.00
Serologic Tests, ordered individually	5.00
IgM	10.00
Mycology	10.00
Ova and Parasites	10.00
Mycobacteriology	10.00
Enteric Panel	10.00
Q.C. Testing	5.00
Bacteriology, ordered individually	5.00

~~(2) Effective July 12, 1991, the fee for screening for inborn errors of metabolism is $9.00. Such screening includes tests for phenylketonuria, congenital hypothyroidism, and galactosemia.~~

~~(3) No handling fee will be charged for a microbiological test on any specimen whose submission to the laboratory was requested by the department.~~

AUTH: 50-1-202, MCA; IMP: 50-1-202, MCA

16.38.304 CHEMISTRY LABORATORY FEES -- WASTES, SOILS AND SLUDGES (1) Effective ~~July 12, 1991~~ October 1, 1993, fees for waste, soil, and sludge analyses are as follows:

Type of analysis	Cost	
Corrosivity	~~12.50~~	14.60
Cyanide	~~81.40~~	94.10
EP Extraction	~~37.30~~	43.50
Herbicides	~~260.00~~	320.00
Ignitability	~~27.60~~	32.30
Microwave Digestion	~~8.60~~	14.40
Pentachlorophenol	~~260.00~~	320.00
Pesticides/PCB	~~230.00~~	280.00
Polynuclear Aromatics	~~350.00~~	430.00
Reactivity	~~37.50~~	43.80
Semi-Volatile Organics	~~50.00~~	430.00
Soxlet Extr. for Semivols	~~180.00~~	178.00
TCLP Extr. - Metals, Semivol	~~37.30~~	43.50
TCLP Extr. - Volatilize	~~62.60~~	73.00
Total Phenolics	~~110.00~~	130.00
Volatile Extraction and Cleanup	~~73.50~~	49.60
Volatile Organic Compounds	~~190.00~~	200.00

(2) Remains the same.

AUTH: 50-1-202, MCA; IMP: 50-1-202, MCA

RULE I LABORATORY FEES -- FOOD, CONSUMER SAFETY, AND OCCUPATIONAL HEALTH (1) Effective October 1, 1993, fees for food, consumer safety and occupational health analyses are as follows:

Type of Analysis	Cost
Blood Lead	$ 17.90
Cholinesterase Activity	21.50
Formaldehyde	28.70
Fat, Moisture, Extenders in Foods	96.80
Coumarin Screen	7.20

AUTH: 50-1-202, MCA; IMP: 50-1-202, MCA

3. The department is proposing these amendments to the rules and the adoption of a new rule because the fee increases and additions they entail are necessary to provide financing for the laboratories to allow their continued operation. Expenditure of the increased amounts was authorized by the 1993 Legislature. Fees reflect actual costs of tests or services.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments and adoption of new rule, in writing to: Dr. Douglas O. Abbott, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than September 9, 1993.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Dr. Douglas O. Abbott, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620. The comments must be received no later than September 13, 1993.

6. If the department 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 25 persons.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State August 2, 1993.

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the adoption of new rules I-XXV dealing with operating permits for certain stationary sources of air pollution.	)))))	NOTICE OF PUBLIC HEARING FOR PROPOSED ADOPTION OF NEW RULES (Air Quality Bureau)

To: All Interested Persons

1. On September 17, 1993, at 9:30 a.m., the Board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of the above-captioned rules.

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

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

RULE I AIR QUALITY OPERATING PERMIT PROGRAM OVERVIEW (1) This subchapter provides for the establishment of a comprehensive air quality operating permit system consistent with the requirements of Title V of the FCAA and the federal operating permit program (57 FR 32250 July 21, 1992, to be codified as 40 CFR Part 70). These regulations, when viewed as a whole, are not invariably limited to the minimum federal requirements and do not invariably impose the strictest optional alternatives. No air quality operating permit issued under this subchapter may be less stringent than necessary to meet all applicable requirements.

(2) The requirements of this subchapter, including provisions regarding schedules for submission and approval or disapproval of air quality operating permit applications, shall apply to the permitting of affected sources under the acid rain program, except as provided herein or in regulations promulgated pursuant to Title IV of the FCAA.

AUTH: 75-2-217, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE II DEFINITIONS As used in this subchapter, unless indicated otherwise, the following definitions apply:

(1) "Administrative permit amendment" means an air quality operating permit revision that:

(a) corrects typographical errors;

(b) identifies a change in the name, address, or phone number of any person identified in the air quality operating permit, or identifies a similar minor administrative change at the source;

(c) requires more frequent monitoring or reporting by the permittee;

(d) allows for a change in ownership or operational control of a source if the department has determined that no other change

in the air quality operating permit is necessary, consistent with [RULE XIX]; or

(e) incorporates any other type of change which the department has determined to be similar to those revisions set forth in (a)-(d), above.

(2) "Affected source" means a source that includes one or more affected units under Title IV of the FCAA.

(3) "Affected states" means all states:

(a) that are contiguous to Montana and whose air quality may be affected by a source requiring an air quality operating permit, permit modification or permit renewal; or

(b) that are within 50 miles of a source requiring an air quality operating permit, permit modification or permit renewal.

(4) "Affected unit" means a unit that is subject to emission reduction requirements or limitations under Title IV of the FCAA.

(5) "Air quality operating permit" or "permit" means any permit or group of permits issued, renewed, revised, amended, or modified pursuant to this subchapter.

(6) "Air quality operating permit modification" or "permit modification" means a revision to an air quality operating permit that does not meet the definition of an administrative permit amendment under this subchapter.

(7) "Air quality operating permit renewal" or "permit renewal" means the process by which an air quality operating permit is reissued at the end of its term.

(8) "Air quality permit revision" or "permit revision" means any air quality operating permit modification or administrative permit amendment.

(9) "Air quality preconstruction permit" means a permit issued, altered, or modified pursuant to subchapters 9, 11, 17, or 18 of this chapter.

(10) "Applicable requirement" means all of the following as they apply to emissions units in a source requiring an air quality operating permit (including requirements that have been promulgated or approved by the department or the administrator through rulemaking at the time of issuance of the air quality operating permit, but have future-effective compliance dates):

(a) any standard, rule, or other requirement, including any requirement contained in a consent decree or judicial or administrative order entered into or issued by the department, that is contained in the Montana state implementation plan approved or promulgated by the administrator through rulemaking under Title I of the FCAA;

(b) any federally enforceable term, condition or other requirement of any air quality preconstruction permit issued by the department under subchapters 9, 11, 17, and 18 of this chapter, or pursuant to regulations approved or promulgated through rulemaking under Title I of the FCAA, including parts C and D;

(c) any standard or other requirement under section 7411 of the FCAA, including section 7411(d);

(d) any standard or other requirement under section 7412 of the FCAA, including any requirement concerning accident prevention under section 7412(r)(7), but excluding the contents of any

risk management plan required under section 7412(r);

(e) any standard or other requirement of the acid rain program under Title IV of the FCAA or regulations promulgated thereunder;

(f) any requirements established pursuant to section 7661c(b) or section 7414(a)(3) of the FCAA;

(g) any standard or other requirement governing solid waste incineration, under section 7429 of the FCAA;

(h) any standard or other requirement for consumer and commercial products, under section 7511b(e) of the FCAA;

(i) any standard or other requirement for tank vessels, under section 7511b(f) of the FCAA;

(j) any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the FCAA, unless the administrator determines that such requirements need not be contained in an air quality operating permit;

(k) any national ambient air quality standard or increment or visibility requirement under part C of Title I of the FCAA, but only as it would apply to temporary sources permitted pursuant to section 7661c(e) of the FCAA; or

(l) any federally-enforceable term or condition of any air quality open burning permit issued by the department under subchapter 13.

(11) "Designated representative" means a responsible person or official authorized by the owner or operator of an affected source and of all affected units at the source, to represent and legally bind each owner and operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a source, and the submission of and compliance with permits, permit applications, and compliance plans for the unit and all other matters pertaining to Title IV of the FCAA. Proof of such status shall be evidenced by a certificate of representation submitted pursuant to subpart B of 40 CFR Part 72, specifically 40 CFR section 72.24 (58 FR 3590, January 11, 1993).

(12) "Draft air quality operating permit" or "draft permit" means the version of an air quality operating permit which the department offers for public participation under [RULE XXIV] or affected state review under [RULE XXV].

(13) "Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the air quality operating permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(14) "Emissions allowable under the permit" means a federally enforceable air quality operating permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which

the source would otherwise be subject.

(15) "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under section 7412(b) of the FCAA. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA.

(16) "FCAA" means the federal Clean Air Act, as amended.

(17) "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the Montana state implementation plan, and any permit requirement established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including operating permits issued under an EPA-approved program that is incorporated into the Montana state implementation plan and expressly requires adherence to any permit issued under such program.

(18) "Final air quality operating permit" or "final permit" means the version of an air quality operating permit issued by the department that has completed all review procedures required by [RULE XIV]-[RULE XXV].

(19) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(20) "General air quality operating permit" or "general permit" means an air quality operating permit that meets the requirements of [RULE XVI], covers multiple sources in a source category, and is issued in lieu of individual permits being issued to each source.

(21) "Hazardous air pollutant" means any air pollutant listed as a hazardous air pollutant pursuant to section 112(b) of the FCAA.

(22) "Insignificant emissions unit" means any activity or emissions unit located within a source that:

(a) has a potential to emit less than one ton per year of any pollutant, other than a hazardous air pollutant listed pursuant to section 7412(b) of the FCAA or lead;

(b) has a potential to emit less than 500 pounds per year of lead;

(c) does not have a potential to emit hazardous air pollutants listed pursuant to section 7412(b) in any amount; and

(d) is not regulated by an applicable requirement.

(23) "Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping and that are described in (a)-(c) of this definition. For the purposes of defining "major source," a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(a) A major source under section 7412 of the FCAA, which is defined as:

(i) for pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year or more of any hazardous air pollutant which has been listed pursuant to section 7412(b) of the FCAA, 25 tons per year or more of any combination of such hazardous air pollutants, or such lesser quantity as the department may establish by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) for radionuclides, "major source" shall have the meaning specified by the department by rule.

(b) A major stationary source of air pollutants that directly emits or has the potential to emit, 100 tons per year or more of any air pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);
(ii) Kraft pulp mills;
(iii) Portland cement plants;
(iv) Primary zinc smelters;
(v) Iron and steel mills;
(vi) Primary aluminum ore reduction plants;
(vii) Primary copper smelters;
(viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
(ix) Hydrofluoric, sulfuric, or nitric acid plants;
(x) Petroleum refineries;
(xi) Lime plants;
(xii) Phosphate rock processing plants;
(xiii) Coke oven batteries;
(xiv) Sulfur recovery plants;
(xv) Carbon black plants (furnace process);
(xvi) Primary lead smelters;
(xvii) Fuel conversion plant;
(xviii) Sintering plants;
(xix) Secondary metal production plants;
(xx) Chemical process plants;
(xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(xxiii) Taconite ore processing plants;
(xxiv) Glass fiber processing plants;
(xxv) Charcoal production plants;
(xxvi) Fossil-fuel-fired steam electric plants of more than

250 million British thermal units per hour heat input; or

(xxvii) All other stationary source categories regulated by a standard promulgated under sections 7411 or 7412 of the FCAA, but only with respect to those air pollutants that have been regulated for that category;

(c) For particulate matter (PM-10) nonattainment areas classified as "serious" under Title I of the FCAA or regulations promulgated thereunder, sources with the potential to emit 70 tons per year or more of PM-10.

(24) "Permittee" means the owner or operator of any source subject to the permitting requirements of this subchapter, as provided in [RULE IV], that holds a valid air quality operating permit or has submitted a timely and complete permit application for issuance, renewal, amendment, or modification pursuant to this subchapter.

(25) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation is federally enforceable. As used in this subchapter, this definition does not alter the use of this term for any other purposes under the FCAA, or the term "capacity factor" as used in Title IV of the FCAA or rules promulgated thereunder.

(26) "Proposed air quality operating permit" or "proposed permit" means the version of an air quality operating permit that the department proposes to issue and forwards to the administrator for review in compliance with [RULE XXV].

(27) "Regulated air pollutant" means the following:

(a) nitrogen oxides or any volatile organic compounds;

(b) any pollutant for which a national ambient air quality standard has been promulgated;

(c) any pollutant that is subject to any standard promulgated under section 7411 of the FCAA;

(d) any Class I or II substance subject to a standard promulgated under or established by Title VI of the FCAA; or

(e) any pollutant subject to a standard or other requirement established or promulgated under section 7412 of the FCAA, including but not limited to the following:

(i) any pollutant subject to requirements under section 7412(j) of the FCAA. If the administrator fails to promulgate a standard by the date established pursuant to section 7412(e) of the FCAA, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 7412(e) of the FCAA; and

(ii) any pollutant for which the requirements of section 7412(g)(2) of the FCAA have been met, but only with respect to the individual source subject to the section 7412(g)(2) requirement.

(28) "Responsible official" means one of the following:

(a) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) the delegation of authority to such representative is approved in advance by the department.

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(c) For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of the environmental protection agency).

(d) For affected sources: the designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the FCAA or the regulations promulgated thereunder are concerned, and the designated representative for any other purposes under this subchapter.

(29) "Section 502(b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally-enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(30) "Source requiring an air quality operating permit" means any source subject to the permitting requirements of this subchapter, as provided in [RULE IV].

(31) "State" means any non-federal air quality permitting authority, including any local agency, interstate association, or statewide program. Where such meaning is clear from the context, "state" shall have its conventional meaning.

(32) "Stationary source" means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under section 7412(b) of the FCAA.

AUTH: 75-2-217, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE III INCORPORATIONS BY REFERENCE (1) In this subchapter, and unless expressly provided otherwise, the following is applicable:

(a) Where the board has adopted a federal regulation by reference, the reference in the board rule shall refer to the federal agency regulations as they have been codified in the July 1, 1992, edition of Title 40 of the Code of Federal Regulations (CFR);

(b) Where the board has adopted a section of the United States Code (U.S.C.) by reference, the reference in the board rule shall refer to the section of the U.S.C. as found in the 1988 edition and Supplement II (1990).

(2) For the purposes of this subchapter, the board hereby adopts and incorporates herein by reference the following:

(a) the standard industrial classification manual, 1987, executive office of the President, office of management and budget, (U.S. government printing office stock number 1987 0-185-718), which sets forth a system of industrial classification and definition based upon the composition and structure of the economy;

(b) 40 CFR section 70.3, which sets forth those sources and source categories designated by the administrator as requiring an operating permit pursuant to Title V of the FCAA;

(c) 42 U.S.C. section 7429(g), which defines solid waste incineration unit for the purposes of Title V of the FCAA; and

(d) 42 U.S.C. section 7429(e), which describes those solid waste incineration units that are required to obtain operating permits under Title V of the FCAA.

(e) A copy of the above materials is available for public inspection and copying at the Air Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, 1400 Broadway, Helena, Montana 59620. Copies of the federal materials may also be obtained at EPA's Public Information Reference Unit, 401 M Street SW, Washington DC 20460, and at the libraries of each of the ten EPA Regional Offices. Interested persons seeking a copy of the CFR may address their requests directly to: Superintendent of Documents, U.S. Government Printing Office, Washington DC 20402. The standard industrial classification manual (1987) (Order no. PB 87-100012) may also be obtained from the U.S. Department of Commerce, National Technical Information service, 5285 Port Royal Road, Springfield, Virginia 22161.

AUTH: 75-2-217, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE IV AIR QUALITY OPERATING PERMIT PROGRAM APPLICABILITY

(1) The requirements of this subchapter apply to the following sources:

(a) any major source, as defined in this subchapter;

(b) any source, including an area source, subject to a standard, limitation, or other requirement under section 7411 of the FCAA;

(c) any source, including an area source, subject to a standard or other requirement under section 7412 of the FCAA, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 7412(r) of the FCAA;

(d) any affected source;

(e) any source required to obtain a permit under section 7429(e) of the FCAA;

(f) any source in a source category designated by the administrator as requiring an operating permit pursuant to 40 CFR section 70.3; and

(g) any source required by the FCAA to obtain a Title V

operating permit.

(2) All sources listed in (1) above that are not major or affected sources, or that are solid waste incineration units as defined in section 7429(g) of the FCAA that are not required to obtain a permit pursuant to section 7429(e), are exempt from the obligation to obtain an air quality operating permit for six years after the date this rule is adopted by the board, provided that they submit a complete air quality operating permit application no later than 54 months after such adoption date, as required in [RULE V](2)(e).

(3) The following source categories are exempted from the obligation to obtain an air quality operating permit:

(a) all sources and source categories that would be required to obtain an air quality operating permit solely because they are subject to 40 CFR part 60, subpart AAA (Standards of Performance for New Residential Wood Heaters); and

(b) all sources and source categories that would be required to obtain an air quality operating permit solely because they are subject to 40 CFR part 61, subpart M (National Emission Standard for Hazardous Air Pollutants for Asbestos), section 61.145, (Standard for Demolition and Renovation).

(4) The department may exempt a source listed in (1) above from the requirement to obtain an air quality operating permit by establishing federally-enforceable limitations which limit that source's potential to emit, such that the source is no longer required to obtain an air quality operating permit under this subchapter.

(a) In applying for an exemption under this section the owner or operator of the source shall certify to the department that the source's potential to emit, when subject to the federally-enforceable limitations, does not require the source to obtain an air quality operating permit. Such certification shall contain emissions measurement and monitoring data, location of monitoring records, and other information necessary to demonstrate to the department that the source is not required to obtain a permit under (1), above.

(b) Any source that obtains a federally-enforceable limit on potential to emit shall annually certify that its actual emissions are less than those that would require the source to obtain an air quality operating permit. Such certification shall include the type of information specified in (4)(a), above.

(5) Any source exempt from the requirement to obtain an air quality operating permit may nevertheless opt to apply for a permit under this subchapter.

(6) The air quality operating permit shall include all applicable requirements for all emissions units at a source required to obtain a permit.

(7) Fugitive emissions from a source required to obtain an air quality operating permit shall be included in the permit application and permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(8) Any person may request in writing that the department

make an informal determination as to whether a particular source, which that person operates or proposes to operate, is subject to the requirements of this subchapter. The request must contain such information as is believed sufficient for the department to make the requested determination. The department may request any additional information that is necessary for informally determining the applicability of this subchapter. An informal determination under this section (8) may not be appealed to the board, and does not impair or otherwise limit the opportunity to seek a declaratory ruling under Title 2, Chapter 4, Part 5, MCA.
AUTH: 75-2-217, MCA; IMP: 75-2-217, MCA

RULE V REQUIREMENTS FOR TIMELY AND COMPLETE AIR QUALITY OPERATING PERMIT APPLICATIONS (1) For each source required to obtain an air quality operating permit, the owner or operator shall submit a timely and complete air quality operating permit or renewal application in accordance with this rule.

(2) To be considered timely for the purposes of this rule, a source that is required to obtain a permit pursuant to this subchapter must file its application with the department as follows:

(a) One-third of all sources in existence on the date this rule is adopted by the board, or sources that have obtained air quality preconstruction permits prior to the adoption date of this rule but commence operation after such adoption date, shall submit an air quality operating permit application no later than one year after the adoption date or within 30 days of the date the permit program is approved by the administrator (including partial or interim approval), whichever is later. The remainder of these sources shall submit a permit application no later than one year after the date the permit program is approved by the administrator (including partial or interim approval). Within 30 days after the adoption date of this rule, the department shall notify the one-third of the above-described sources that are required to submit applications for permits under this subchapter by the first deadline set forth above. The method used by the department to determine which of the above-described sources are included in the initial one-third must be fair and equitable and shall to the greatest extent practicable provide for a representative sample of air quality operating permit sources in terms of source size and type.

(b) A source applying for an air quality operating permit for the first time due to the applicability of newly promulgated regulations shall submit a permit application within 12 months after the source becomes subject to the permit program.

(c) Sources required to obtain an air quality operating permit or permit revision that are also required to obtain an air quality preconstruction permit under this chapter shall submit an application for an air quality operating permit or permit revision concurrent with the submittal of the air quality preconstruction permit application. The processing of the air quality preconstruction and operating permits will be coordinated to the greatest extent possible, but each permit will be issued according to the applicable procedures and time frames. Each applica-

tion for an air quality operating permit, permit renewal, or permit revision and the associated preconstruction permit application will be processed independently of any other pending application under this chapter.

(d) For renewal, a source shall submit a complete air quality operating permit application to the department not later than six months prior to the expiration of its existing permit, unless otherwise specified in that permit. If necessary to ensure that the terms of the existing permit will not lapse before renewal, the department may specify in writing to the permitted source a longer time period for submission of the renewal application. Such written notification must be provided at least one year before the renewal application due date established in the existing permit. In no case shall this extended time period or the time period established in the existing permit be greater than 18 months.

(e) Non-major sources exempted from obtaining an air quality operating permit under [RULE IV](2) must submit a complete air quality operating permit application no later than 54 months after the date this rule is adopted by the board.

(f) Applications for initial phase II acid rain permits shall be submitted to the department by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides.

(3) To be deemed complete for the purposes of this rule, a source must file its application for an air quality operating permit, or permit revision with the department as follows:

(a) An air quality operating permit application must provide all information required pursuant to this rule and [RULE VI]. An application for permit revision need supply such information only if it is related to the proposed change, and an application for renewal need only address in detail those portions of the permit application that require revision, updating, supplementation, or deletion. Information submitted pursuant to this rule and [RULE VI] must be sufficient to evaluate the subject source and its application and to determine all applicable requirements. If the applicant provides sufficient information to satisfy the requirements of the application completeness checklist then the application shall be deemed to be administratively complete for the purposes of applying the application shield provided for in [RULE XV], and the department shall notify the applicant of such administrative completeness. Use of the completeness checklist is not intended to replace a substantive completeness review and determination pursuant to this subchapter, but is only intended to facilitate the application of the application shield. A responsible official shall certify the submitted information consistent with [RULE VII]. Except as otherwise provided in [RULE XIV](6) and (7), unless the department determines that an air quality operating application is not substantively complete within 60 days of receipt of the application, such application shall be deemed to be substantively complete.

(b) If, while processing an application for an air quality operating permit or permit revision that has been determined or deemed to be substantively complete, the department determines

that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response (not less than 15 days).

(c) The source's ability to operate without an air quality operating permit, as set forth in [RULE XV], shall be in effect from the date the application is determined or deemed to be administratively complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the department.

(d) Sources that would qualify for a general air quality operating permit must provide written notification to the department of their intent to operate under the terms of the general permit, or must apply for an air quality operating permit consistent with (1), above. The terms of the general permit adopted pursuant to [RULE XVI] may provide for applications which deviate from the requirements of (1) above, and [RULE VI], provided that such requirements are consistent with Title V of the FCAA, and include all information necessary for the department to determine qualification for, and assure compliance with, the general permit.

(e) An application for an air quality operating permit revision that is submitted as a minor modification shall meet the requirements of [RULE VI], and shall include the following:

(i) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) the source's suggested draft permit;

(iii) certification by a responsible official, consistent with [RULE VII], that the proposed permit modification meets the criteria for use of minor modification procedures and a request that such procedures be used; and

(iv) completed forms for the department to use to notify the administrator and affected states as required under [RULE XXV].

(f) An application for an air quality operating permit revision that is submitted as a group processing of minor modifications shall meet the requirements of [RULE VI], and shall include the following:

(i) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) the source's suggested draft permit;

(iii) certification by a responsible official, consistent with [RULE VII], that the proposed permit modification meets the criteria for use of group processing procedures and a request that such procedures be used;

(iv) a list of the source's other pending permit modification applications awaiting group processing, and a determination of whether the requested modification, when aggregated with these other applications, equals or exceeds the threshold set under [RULE XX](7)(b);

(v) certification, consistent with [RULE VII], that the source has notified the administrator of the proposed modification. Such notification need only contain a brief description of

the requested modification; and

(vi) completed forms for the department to use to notify the administrator and affected states as required under [RULE XXV].

(4) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in an application for an air quality operating permit or permit revision shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a substantively complete application, but prior to release of a draft permit.

(5) Where an applicant has submitted information to the department under a judicial determination of confidentiality, the source must submit a copy of such information directly to the administrator. This requirement does not preclude or limit in any manner the right of the applicant to assert to the administrator the confidential status and nature of the information.

AUTH: 75-2-217, 75-2-218, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE VI INFORMATION REQUIRED FOR AIR QUALITY OPERATING PERMIT APPLICATIONS (1) For each emissions unit at a source required to obtain an air quality operating permit the applicant shall include in its application for a permit, permit renewal or permit revision the information described in this rule.

(2) The required information shall be submitted to the department and the administrator on a standard air quality permit application form or in a standard permit application format to be approved by the department. To the extent possible all required information shall also be submitted to the department in electronic form, in a word processing format convertible to or compatible with department software.

(3) Insignificant emissions units need not be addressed in an application for an air quality operating permit, except that the application must include a list of such insignificant emissions units. Insignificant emission units may be listed by category.

(4) An application for an air quality operating permit or permit revision may not omit information that is necessary to determine the applicability of any applicable requirement, to impose any applicable requirement, or to evaluate the fee amount required under subchapter 19 of this chapter.

(5) The applicant shall, at a minimum, provide the information specified below:

(a) identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact;

(b) a description of the source's processes and products (by standard industrial classification code) including any associated with each reasonably anticipated operating scenario identified by the source pursuant to [RULE XIII](1);

(c) an emission inventory of all emissions of pollutants for which the source is major, and an emission inventory of all

emissions of regulated air pollutants. An air quality operating permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under (3), above. The applicant shall provide additional information related to such emissions of air pollutants as necessary to verify which requirements are applicable to the source, and other information that may be necessary to determine any permit fees owed under subchapter 19 of this chapter;

(d) identification and description of all points of emissions described in (c) above, in sufficient detail to establish both the basis for fees and the applicability of any applicable requirement;

(e) emissions rates in tons per year, and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method;

(f) information regarding fuels, fuel use, raw materials, production rates, and operating schedules, to the extent such information is needed to determine or regulate emissions;

(g) identification and description of air pollution control equipment and compliance monitoring devices or activities;

(h) limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the source;

(i) other information related to emissions as required by any applicable requirement (including information related to stack height limitations developed pursuant to section 7423 of the FCAA) or this chapter (including the location of emission units, flow rate, building dimensions, and stack parameters such as height, diameter, and temperature);

(j) results of all dispersion modeling required by the department, except that this subsection may not be construed as a basis for requiring additional dispersion modeling to be done by the source;

(k) all calculations on which the information in (a)-(j) above is based;

(l) citation and description of all applicable requirements;

(m) description of or reference to any applicable test method for determining compliance with each applicable requirement;

(n) other specific information that may be necessary to implement and enforce other applicable requirements of the FCAA or of this chapter or to determine the applicability of such requirements;

(o) an explanation of any proposed exemptions from otherwise applicable requirements;

(p) additional information as determined to be necessary by the department to define reasonably anticipated alternative operating scenarios identified by the source pursuant to [RULE XIII](1) or to define permit terms and conditions implementing [RULE XIII](3) or [RULE XVIII](3) and (4);

(q) a certification of compliance with all applicable requirements by a responsible official consistent with [RULE VII] and section 7414(a)(3) of the FCAA;

(r) a statement of the methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(s) a schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the department; and

(t) a statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the FCAA.

(6) In addition to the information required in (5) above, the applicant shall submit a compliance plan and schedule that contains a description of the compliance status of the source with respect to all applicable requirements, which shall include the following:

(a) for applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements;

(b) for applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed plan or schedule is required by the applicable requirement or the department;

(c) for requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements and a schedule of compliance. The compliance schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or judicial, board or department order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based; and

(d) a schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation.

(7) The compliance plan content requirements specified in (6) above, shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as otherwise provided in regulations promulgated under Title IV of the FCAA with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(8) As applicable, any application submitted pursuant to this subchapter shall use the nationally-standardized forms for the acid rain portions of applications and compliance plans, consistent with regulations promulgated under Title IV of the FCAA.

(9) As part of any application for a permit or general

permit submitted pursuant to this subchapter, the applicant shall provide to the department a copy of all safety rules, policies or requirements that are applicable to a department inspector during an air quality inspection. The applicant shall also immediately notify the department in writing of any subsequent changes to such rules, policies or requirements.

(10) Upon request, the department shall provide to the applicant a completeness checklist that contains the minimum information required under this rule, [RULE V] and [RULE VII] for an application under this subchapter to be determined to be administratively complete for the purpose of application of the application shield.

(11) An applicant is not required to submit information that has been previously submitted to the department, but must reference such previous submittal.

AUTH: 75-2-217, 75-2-218, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE VII CERTIFICATION OF TRUTH, ACCURACY, AND COMPLETENESS (1) Any application form, report, or compliance certification submitted pursuant to this subchapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this subchapter shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

AUTH: 75-2-217, 75-2-218, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE VIII GENERAL REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT (1) Each air quality operating permit shall contain the following general information:

(a) name and mailing address of permittee;

(b) type of operation;

(c) permit milestone dates including, the date the permit application was received, the date the permit application was deemed complete, the date the draft permit was issued, the date the proposed permit was issued, the date the final permit was issued and the permit expiration date;

(d) permit number; and

(e) name of the designated representative.

(2) The following standard terms and conditions are applicable to each air quality operating permit issued pursuant to this subchapter:

(a) The permittee must comply with all conditions of the permit. Any noncompliance with the terms or conditions of a permit constitutes a violation of the Montana Clean Air Act, and may result in enforcement action, operating permit modification, revocation and reissuance, or termination, or denial of a permit renewal application under this subchapter. Permits may only be terminated or revoked for continuing and substantial violations.

(b) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit. If appropriate, this factor may be considered as a mitigating factor in assessing a penalty

for noncompliance with an applicable requirement if the source demonstrates both that the health, safety, or environmental impacts of halting or reducing operations would be more serious than the impacts of continuing operations, and that such health, safety, or environmental impacts were unforeseeable and could not have otherwise been avoided.

(c) The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(d) The permit does not convey any property rights of any sort, or any exclusive privilege.

(e) The permittee shall furnish to the department, within a reasonable time, any information that the department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department copies of those records that are required to be kept pursuant to the terms of the permit. This subsection does not impair or otherwise limit the right of the permittee to assert the confidentiality of the information requested by the department, as provided in 75-2-105, MCA.

(f) A permittee must pay application and operating permit fees as a condition of the permit, pursuant to subchapter 19.

(g) Permits under this subchapter will be issued for a fixed term of five years.

(h) If a timely and complete permit application for permit renewal has been submitted, and consistent with the operation of the application shield pursuant to [RULE XV], the existing permit and all terms and conditions contained therein will not expire until the permit renewal has been issued or denied.

(i) The administrative appeal or subsequent judicial review of the issuance by the department of an initial permit under this subchapter shall not impair in any manner the underlying applicability of all applicable requirements, and such requirements continue to apply to the source as if a final permit decision had not been reached by the department.

(j) The department's final decision regarding issuance, renewal, revision, denial, revocation, termination, or reissuance of a permit is not effective until 30 days have elapsed from the date of the decision. The decision may be appealed to the board by filing a request for hearing within 30 days after the date of the decision. A copy of the request shall be served on the department. The filing of a timely request for hearing postpones the effective date of the department's decision until the board issues a final decision. If effective, the permit shield, or application shield, as appropriate, shall remain in effect until such time as the board has rendered a final decision.

(k) The denial by the department of an application for permit issuance, renewal or revision under this subchapter which is the result of an objection by the administrator may not be appealed to the board.

(3) The following additional standard terms and conditions

are applicable to each air quality operating permit issued to an affected source:

(a) Emissions shall not be permitted in excess of any allowances that the source lawfully holds under Title IV of the FCAA or the regulations promulgated thereunder.

(b) No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

(c) No limit shall be placed in the permit on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(d) Any allowances shall be accounted for according to the procedures established in regulations promulgated under Title IV of the FCAA.

(4) Each general air quality operating permit shall contain provisions regarding the following standard terms and conditions:

(a) Compliance shall be required with all requirements applicable to other air quality operating permits.

(b) The criteria by which sources may qualify for the general permit shall be set forth.

(5) Each air quality operating permit issued to temporary sources shall contain provisions regarding the following standard terms and conditions:

(a) Conditions that assure compliance with all applicable requirements at all authorized locations.

(b) Requirements that the owner or operator notify the department at least 10 days in advance of each change in location.

(c) Conditions that assure compliance with all other provisions of this chapter.

AUTH: 75-2-217, 75-2-218, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE IX REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO EMISSION LIMITATIONS AND STANDARDS, AND OTHER REQUIREMENTS (1) Each air quality operating permit issued pursuant to this subchapter shall contain the following:

(a) emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance;

(b) a specific description with appropriate references of the origin of, and authority for, each term or condition contained in the permit, including a description of any differences in form as compared to the applicable requirement upon which the term or condition is based; and

(c) all relevant terms and conditions applicable to a source, including those terms and conditions that are not applicable requirements, which shall be clearly designated as such.

(2) Every requirement contained in an air quality operating permit must be based upon the following:

(a) the FCAA and rules promulgated thereunder, including the Montana state implementation plan and other applicable requirements;

(b) rules, requirements, administrative orders, or permits that have been promulgated, adopted, or issued pursuant to Title 75, Chapter 2, MCA; or

(c) requirements contained in a judicial order or consent decree entered in response to a violation of any rule, requirement, administrative order, or permit that has been promulgated, adopted, or issued pursuant to Title 75, Chapter 2, MCA.

(3) In the air quality operating permit the department shall specifically designate as not being federally-enforceable under the FCAA any terms or conditions included in the permit that are not required under the FCAA or any applicable requirements. Those terms and conditions which the department specifically designates as not being federally-enforceable are not subject to the following rules contained in this subchapter:

(a) [RULE VIII], except for sections (2) and (5). However, while noncompliance with a permit term or condition that is not federally- enforceable may result in an enforcement action by the department, it may not result in permit revocation and reissuance, termination, or denial of a permit renewal application under this subchapter;

(b) [RULE IX], except for sections (1)-(3) and (7);

(c) [RULE X], except for subsections (1)(a) and (3)(a), and sections (2) and (4);

(d) [RULE XI], except for sections (3) and (4);

(e) [RULE XII] and [RULE XIII];

(f) [RULE XIV], except for subsections (1)(a), (b) and (d), and sections (6)-(9), (12) and (13);

(g) [RULE XVI], [RULE XVIII] through [RULE XXIII], and [RULE XXV].

(4) For those sources that are required to develop and register a risk management plan pursuant to section 7412(r) of the FCAA, the air quality operating permit will only require that the permittee comply with the requirement to register such a plan. The content of the plan will not be incorporated into the permit as an applicable requirement.

(5) For affected sources, the permit shall state that where an applicable requirement is more stringent than an applicable requirement from regulations promulgated under Title IV of the FCAA, both provisions shall be incorporated into the permit and shall be enforceable.

(6) If the Montana state implementation plan allows for the determination of an alternative emission limit that is equivalent to the limit contained in the plan, and during the air quality operating permit issuance, renewal, or significant modification process the department elects to make such a determination, any permit containing such alternative equivalent limit shall contain provisions to ensure that the limit is demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(7) The requirement under this subchapter to obtain an air quality operating permit may not be construed as providing a basis for establishing new emission limitations beyond those contained in the underlying requirements to be incorporated into

the permit.
AUTH: 75-2-217, 75-2-218, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE X REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO MONITORING, RECORDKEEPING, AND REPORTING

(1) Each air quality operating permit shall contain the following requirements with respect to monitoring:

(a) All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any required procedures and methods promulgated pursuant to sections 766lc(b) or 7414(a)(3) of the FCAA;

(b) Where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the air quality operating permit, as reported pursuant to (3), below. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement. Recordkeeping provisions may be sufficient to meet the requirements of this section; and

(c) As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.

(2) Each air quality operating permit shall incorporate all applicable recordkeeping requirements and require, where applicable, the following:

(a) Records of required monitoring information that include the following:

(i) the date, place as defined in the permit, and time of sampling or measurements;

(ii) the date(s) analyses were performed;

(iii) the company or entity that performed the analyses;

(iv) the analytical techniques or methods used;

(v) the results of such analyses; and

(vi) the operating conditions at the time of sampling or measurement.

(b) A record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement but not otherwise regulated under the permit, and the emissions resulting from those changes.

(c) Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit. All monitoring data, support information, and required reports and summaries may be maintained in a computerized form at the plant site if the information is made available to department personnel upon request, which may be for either hard copies or computerized format. Strip charts must be retained in their original form at the plant site and shall be

made available to department personnel upon request.

(3) Each air quality operating permit shall incorporate the following requirements relating to reporting:

(a) All applicable reporting requirements must be included in the permit.

(b) Submittal of reports of any required monitoring at least every six months. All instances of deviations from the permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with [RULE VII].

(c) Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. To be considered prompt, deviations shall be reported as part of the routine reporting requirements under (3)(b) above, and if applicable, in accordance with the malfunction reporting requirements under ARM 16.8.705, unless otherwise specified in an applicable requirement.

(4) The requirement to obtain a permit under this subchapter may not be used as the basis for establishing new monitoring, recordkeeping or reporting requirements, except as may be required under (1)(b), above.

AUTH: 75-2-217, 75-2-218, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE XI REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO COMPLIANCE (1) All air quality operating permits shall contain the provisions required by this rule with respect to compliance.

(2) Consistent with [RULE X], all permits shall contain compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit. Any document (including reports) required by a permit shall contain a certification by a responsible official that meets the requirements of [RULE VII].

(3) Each permit shall contain inspection and entry requirements which require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow the department, the administrator or an authorized representative (including an authorized contractor acting as a representative of the department or the administrator) to perform the following:

(a) enter the premises where a source required to obtain a permit is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) inspect at reasonable times any facilities, emission unit, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(d) as authorized by the Montana Clean Air Act and rules promulgated thereunder, sample or monitor at reasonable times any substances or parameters at any location for the purpose of as-

suring compliance with the permit or applicable requirements.

(4) Inspections pursuant to (3) above, shall be conducted in compliance with all applicable federal or state rules or requirements for workplace safety and source-specific facility workplace safety rules or requirements that have been previously supplied to the department in writing.

(5) Each permit shall contain a schedule of compliance consistent with [RULE VI](6).

(6) Consistent with [RULE VI](6), the permit shall require progress reports to be submitted at least semiannually, or more frequently if specified in the applicable requirement or by the department. Such progress reports shall contain the following:

(a) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(b) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(7) Each permit shall contain requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include the following:

(a) A requirement that compliance certifications be submitted at least once per year or more frequently if otherwise specified in an applicable requirement or by the department. Notwithstanding any applicable requirement, the department may specify that compliance certifications be submitted more frequently for those emission units not in compliance with permit terms and conditions.

(b) In accordance with [RULE X], a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices that are contained in applicable requirements.

(c) A requirement that the compliance certification include the following:

(i) the identification of each term or condition of the permit that is the basis of the certification;

(ii) the compliance status as shown by monitoring or other information required by the permit or otherwise reasonably available to the source;

(iii) whether compliance was continuous or intermittent;

(iv) the method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with [RULE X]; and

(v) such other facts as the department may require to determine the compliance status of the source.

(d) A requirement that all compliance certifications be submitted to the administrator as well as to the department.

(e) Such additional requirements as may be specified pursuant to sections 7414(a)(3) and 7661c(b) of the FCAA.

AUTH: 75-2-217, 75-2-218, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE XII REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO THE PERMIT SHIELD AND EMERGENCIES

(1) Except as provided in this section, the department shall include in an air quality operating permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(a) such applicable requirements are included and are specifically identified in the permit; or

(b) the department, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) An air quality operating permit that does not expressly state that a permit shield extends to specific applicable requirements will be presumed not to provide such a shield for those requirements.

(3) Nothing in (1) or (2) above, or in any air quality operating permit shall alter or affect the following:

(a) the provisions of section 7603 of the FCAA, including the authority of the administrator under that section;

(b) the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(c) the applicable requirements of the acid rain program, consistent with section 7651g(a) of the FCAA;

(d) the ability of the administrator to obtain information from a source pursuant to section 7414 of the FCAA;

(e) the ability of the department to obtain information from a source pursuant to the Montana Clean Air Act, Title 75, chapter 2, MCA;

(f) the emergency powers of the department under the Montana Clean Air Act, Title 75, chapter 2, MCA; or

(g) the ability of the department to establish or revise requirements for the use of reasonably available control technology (RACT) as defined in this chapter. However, if the inclusion of a RACT into the permit pursuant to this subchapter is appealed to the board, the permit shield as it applies to the source's existing permit shall remain in effect until such time as the board has rendered its final decision.

(4) An emergency constitutes an affirmative defense to an action brought for noncompliance with a technology-based emission limitation if the conditions of (5) and (6) below, are met.

(5) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(a) an emergency occurred and that the permittee can identify the cause(s) of the emergency;

(b) the permitted facility was at the time being properly operated;

(c) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(d) the permittee submitted notice of the emergency to the department within two working days of the time when emission

limitations were exceeded due to the emergency. This notice fulfills the requirements of [RULE X](3)(c). This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(6) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(7) The provisions in (4)-(6) above, are in addition to any emergency, malfunction or upset provision contained in any applicable requirement.

AUTH: 75-2-217, 75-2-218, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE XIII REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT CONTENT RELATING TO THE OPERATIONAL FLEXIBILITY (1) If requested by the applicant, the department shall issue an air quality operating permit that contains terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the department. Such terms and conditions:

(a) shall require the source, contemporaneously with making a change from one reasonably anticipated operating scenario to another, to record in a log at the permitted facility a record of the reasonably anticipated scenario under which it is operating;

(b) shall extend the permit shield described in [RULE XII] above to all terms and conditions under each such reasonably anticipated operating scenario;

(c) shall provide for the written notification required in [RULE XVIII](1)(e), which will state when the source will shift from one specified reasonably anticipated operating scenario to another such operating scenario; and

(d) shall ensure that the terms and conditions of each such reasonably anticipated operating scenario meet all applicable requirements and the requirements of this subchapter.

(2) A change in operating conditions at a source that does not violate an applicable requirement does not require the use of a reasonably anticipated operating scenario.

(3) If requested by the applicant, the department shall issue an air quality operating permit which contains terms and conditions for the trading or averaging of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading or averaging such increases and decreases without case-by-case review and approval. Emissions trading or averaging may occur subject to the terms and conditions in the permit without being included in a reasonably anticipated operating scenario. Such terms and conditions:

(a) shall include all terms required under [RULES VIII-XI] and this rule to determine compliance;

(b) shall extend the permit shield described in [RULE XII] to all terms and conditions that allow such increases and decreases in emissions;

(c) shall provide for the written notification required in [RULE XVIII](1)(e), which will state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit; and

(d) shall meet all applicable requirements and requirements of this chapter.

AUTH: 75-2-217, 75-2-218, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE XIV AIR QUALITY OPERATING PERMIT ISSUANCE, RENEWAL, REOPENING AND MODIFICATION (1) An air quality operating permit, permit modification, or permit renewal may be issued only if all of the following conditions have been met:

(a) the department has received a complete application for a permit, permit revision, or permit renewal;

(b) the department has complied with the requirements for public participation under [RULE XXIV];

(c) the department has complied with the requirements for notifying and responding to affected states under [RULE XXV];

(d) the conditions of the permit provide for compliance with all applicable requirements and the requirements of this part; and

(e) the administrator has received a copy of the proposed permit, all necessary supporting documentation, and any notices required under [RULE XXV], and has not objected to issuance of the permit under [RULE XXV] within 45 days of receipt of the proposed permit and all necessary supporting documentation; and

(f) if the administrator objects to the issuance of a permit, the department shall, within seven days of receipt of the administrator's objection, send the permit applicant a copy of the objection and any statement received from the administrator.

(2) Except as provided under the initial transition plan, (3) below, or under regulations promulgated under Title IV or Title V of the FCAA for the permitting of affected sources under the acid rain program, the department shall take final action on each air quality operating permit application (including a request for permit modification or renewal) within 18 months of receiving a complete application.

(3) The department shall take final action on at least one-third of all air quality operating permit applications received during the initial transition period annually for a period of three years following approval of the permit program by the administrator.

(4) The department shall take final action on a complete air quality operating permit application containing an early reduction demonstration that has been approved by the administrator under section 7412(i)(5) of the FCAA within nine months of receiving a complete application.

(5) The department shall ensure priority is given to taking action on air quality preconstruction permit applications for construction or modification submitted pursuant to subchapters 9, 11, 17, and 18 of this chapter.

(6) Upon filing, the department shall promptly make a determination as to whether the application is administratively complete, as provided for in [RULE V](3). The department shall provide notice to the applicant of whether the air quality operating permit application is substantively complete. Unless the department requests additional information or otherwise notifies the applicant of substantive incompleteness within 60 days of

receipt of a permit application, the application shall be deemed complete. For modifications processed through the minor modification procedures contained in [RULE XX], the department does not have to provide a completeness determination.

(7) Within 30 days of receipt of a notice of substantive incompleteness, the source shall submit a response to the department supplying the requested information. The department may extend this time period upon request. If a response is not received within this time period the application shall be considered withdrawn, and may be resubmitted. The department shall notify the applicant in writing within 60 days thereafter if the application is still substantively incomplete. This, and any subsequent incomplete notice shall follow the same form and requirements as the original incomplete notice.

(8) The department shall provide a statement that sets forth the legal and factual basis for the draft air quality operating permit conditions (including references to the applicable statutory or regulatory provisions). The department shall send this statement to the administrator and to any other person who requests it.

(9) The submittal of a complete air quality operating permit application does not affect a requirement that a source obtain an air quality preconstruction permit prior to commencement of construction under subchapters 9, 11, 17, or 18 of this chapter.

(10) An air quality operating permit modification for purposes of the acid rain portion of the permit shall be governed by regulations promulgated under Title IV of the FCAA.

(11) The renewal of an air quality operating permit is subject to the same procedural requirements that apply to permit issuance, including those for applications, content, public participation, and affected state and administrator review.

(12) Expiration of an air quality operating permit terminates the source's right to operate unless a timely and complete permit renewal application has been submitted consistent with [RULE XV] and [RULE V](2)(d). If a timely and complete application has been submitted all terms and conditions of the permit, including the application shield, remain in effect after the permit expires.

(13) The department shall provide a minimum of 30 days advance written notice to the holder of an air quality operating permit of the department's intent to revoke the permit or deny the permit renewal application. The notice of intent may not be appealed to the board. The department's final decision to revoke or deny renewal becomes effective and may be appealed to the board as provided for in [RULE VIII](j). Nothing in this section shall limit the emergency powers of the department under the Montana Clean Air Act, Title 75, chapter 2, MCA.

AUTH: 75-2-217, 75-2-218, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE XV OPERATION WITHOUT AN AIR QUALITY OPERATING PERMIT AND APPLICATION SHIELD (1) Except as provided in (2) below, [RULE XVIII](3), and [RULE XX](6) and (10), no source required to obtain an air quality operating permit may operate after the time

that it is required to submit a timely and complete application for a permit, except in compliance with a permit issued under this subchapter.

(2) If a source required to obtain an air quality operating permit submits a timely and complete application for permit issuance or renewal, the source's failure to have a permit is not a violation of this subchapter until the department takes final action on the permit application, except as otherwise noted in this subchapter. This protection becomes effective upon determination by the department that a timely application is administratively complete, as provided for in [RULE V](3), and shall cease to apply if, subsequent to the substantive completeness determination made pursuant to [RULE XIV](6), and as required by [RULE V](3), the applicant fails to submit by the deadline specified in writing by the department any additional information identified as being necessary to process the permit application. If the department's final action on any permit application under this subchapter is appealed to the board, the application shield, if in effect, shall remain in effect until such time as the board renders its final decision.

AUTH: 75-2-217, 75-2-218, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE XVI GENERAL AIR QUALITY OPERATING PERMITS (1) The department may provide for a general air quality operating permit covering a source category with numerous similar sources, if it concludes that the category is appropriate for permitting on a generic basis.

(2) The department may provide for a general permit based upon its own initiative or the application of a source within the source category. The department shall provide a notice and opportunity for public participation, consistent with [RULE XXIV]. Such procedures may be combined with the rulemaking process before the board relating to the adoption and incorporation by reference of the general permit.

(3) A general permit may be used to establish terms and conditions to implement applicable requirements for a source category or for new requirements that apply to sources with existing general permits, or to establish federally-enforceable caps on emissions from sources in a specific category.

(4) A general permit may be appropriate under the following conditions:

(a) there are several permittees, permit applicants, or potential permit applicants who have the same or substantially similar operations, emissions, activities, or facilities;

(b) the permittees, permit applicants, or potential permit applicants emit the same types of regulated air pollutants;

(c) the operations, emissions, activities, or facilities are subject to the same or similar standards, limitations, and operating requirements; and

(d) the operations, emissions, activities or facilities are subject to the same or similar monitoring requirements.

(5) A general air quality operating permit shall include those requirements set forth in [RULE VIII](4).

(6) After a general permit has been proposed by the depart-

ment and formally adopted by the board, a source that intends to operate under the terms of the general permit must provide written notice to the department before it may qualify for the general permit, as required by [RULE V](3)(d). Such notification shall identify the source, provide information sufficient to demonstrate that the source falls within the source category covered by the general permit and is capable of operating in compliance with the terms and conditions of the general permit, and include any additional information that may be specified in the general permit.

(7) Without repeating the public participation procedures required under [RULE XXIV], the department may review a source's written notification, and based upon the information submitted, confirm or deny that the source appears to both qualify for the general permit and be capable of operating in compliance with the terms and conditions of the general permit. The department may request such additional information from the source as may be necessary to make these findings. Such action is not a final permit action for purposes of board review.

(8) The department shall act to make the necessary findings in (7) above, within 90 days of receipt of the notification provided for in (6) above, and shall provide written notice to the source of its findings.

(9) A general permit shall provide that any source whose coverage under the general permit has been confirmed by the department pursuant to (7) above, shall be entitled to the protection of the permit shield for all operations, activities, and emissions addressed by the general permit, unless and to the extent that it is subsequently determined that the source does not qualify for the conditions and terms of the general permit. If the source is later determined not to qualify for the conditions and terms of the general permit, the source may be subject to enforcement action for operation without an air quality operating permit.

(10) The renewal of a general permit is subject to the same procedural requirements, including public participation, that apply to the initial issuance of general permits.

(11) General air quality operating permits may not be authorized for affected sources under the acid rain program, unless otherwise provided in regulations promulgated under Title IV of the FCAA.

AUTH: 75-2-217, 75-2-218, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE XVII TEMPORARY AIR QUALITY OPERATING PERMITS (1) The department may issue an air quality operating permit authorizing emissions from similar operations by the same source owner or operator at multiple temporary locations. The operation must be temporary and involve at least one change of location during the term of the permit. No affected source may be permitted as a temporary source. Permits for temporary sources shall include those requirements set forth in [RULE VIII](5).

AUTH: 75-2-217, MCA; IMP: 75-2-217, MCA

RULE XVIII ADDITIONAL REQUIREMENTS FOR OPERATIONAL FLEXI-

BILITY AND AIR QUALITY OPERATING PERMIT CHANGES THAT DO NOT REQUIRE REVISIONS (1) A source holding an air quality operating permit is authorized to make changes within a permitted facility as described in (3) and (4) below, providing the following conditions are met:

(a) the proposed changes do not require the source or alteration to obtain an air quality preconstruction permit under subchapter 11 of this chapter;

(b) the proposed changes are not modifications under Title I of the FCAA, or as defined in subchapters 9, 17 or 18 of this chapter;

(c) the emissions resulting from the proposed changes do not exceed the emissions allowable under the permit, whether expressed as a rate of emissions, or in total emissions;

(d) the proposed changes do not alter permit terms that are necessary to enforce applicable emission limitations on emissions units covered by the permit;

(e) the facility provides the administrator and the department with written notification at least seven days prior to making the proposed changes.

(2) The source and department shall attach each notice provided pursuant to (1)(e), above, to their respective copies of the appropriate air quality operating permit.

(3) Pursuant to the conditions in (1) and (2) above, a source holding an air quality operating permit is authorized to make section 502(b)(10) changes, as defined in this subchapter, without a permit revision. For each such change, the written notification required under (1)(e) above, shall include a description of the change within the source, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(4) Pursuant to the conditions in (1) and (2) above, and upon the request of the permit applicant, the department shall issue an air quality operating permit that contains terms and conditions, including all terms required under [RULES VIII-XI and XIII] to determine compliance, allowing for the trading of emissions increases and decreases at the source solely for the purpose of complying with a federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements, providing the following conditions are met:

(a) the applicant must include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable;

(b) the emissions trades may not be applied to any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades;

(c) the permit must require compliance with all applicable requirements;

(d) emission trading may only be done within a pollutant, that is, emission decreases may only be traded for emission increases of the same pollutant; and

(e) the written notification required under (1)(e) above,

must state when the change will occur, and describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(5) A source holding an air quality operating permit may make a change not specifically addressed or prohibited by the permit terms and conditions without requiring a permit revision, provided that the following conditions are met:

(a) each proposed change does not weaken the enforceability of any existing permit condition;

(b) the department has not objected to such change;

(c) each proposed change meets all applicable requirements and does not violate any existing permit term or condition; and

(d) the source provides contemporaneous written notice to the department and the administrator of each change, except for changes that qualify as insignificant emission units under [RULE II](21) and [RULE VI](3), and the written notice describes each such change, including the requirement that would apply as a result of the change.

(6) The permit shield authorized by [RULE XII] shall not apply to changes made pursuant to (3) and (5) above, but is applicable to terms and conditions that allow for increases and decreases in emissions pursuant to (4) above.

(7) Notwithstanding any provisions of this rule, the following changes must be submitted as an air quality operating permit revision:

(a) any change that increases emissions above those allowed in the air quality operating permit;

(b) any change that increases emissions above those allowed in the air quality preconstruction permit;

(c) any change that is a modification as defined in subchapters 9, 17 or 18 of this chapter;

(d) any change that is a modification or reconstruction under sections 7410, 7411, or 7412 of the FCAA; or

(e) any change subject to the acid rain requirements under Title IV of the FCAA.

AUTH: 75-2-217, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE XIX ADDITIONAL REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT AMENDMENTS (1) An administrative permit amendment may be made by the department to an air quality operating permit, consistent with the following:

(a) The department shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes into the permit without providing notice to the public or affected states, provided that it designates any such permit revisions as having been made pursuant to this rule.

(b) The department shall submit a copy of the revised permit to the administrator.

(c) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

(2) If the administrative permit amendment involves a

change in ownership or operational control of a source, the applicant must include in its request to the department a written agreement containing a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee.

(3) Administrative permit amendments for purposes of the acid rain portion of the permit will be governed by regulations promulgated under Title IV of the FCAA.

AUTH: 75-2-217, MCA; IMP: 75-2-217, MCA

RULE XX ADDITIONAL REQUIREMENTS FOR MINOR AIR QUALITY OPERATING PERMIT MODIFICATIONS (1) Minor air quality operating permit modification procedures may be used only for those permit modifications that:

(a) do not violate any applicable requirement;

(b) do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements or other permit terms that are necessary to enforce applicable emission limitations on emissions units covered by the permit;

(c) do not require or change a case-by-case determination of an emission limitation or other standard, a source-specific determination of ambient impacts for temporary sources, or a visibility or increment analysis;

(d) are not modifications under any provision of Title I of the FCAA;

(e) do not require an air quality preconstruction permit;

(f) are not required by the department to be processed as a significant modification; and

(g) do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include a federally-enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I of the FCAA, and an alternative emissions limit approved pursuant to regulations promulgated under section 7412(i)(5) of the FCAA.

(2) Notwithstanding (1) and (7), minor air quality operating permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that such minor permit modification procedures are explicitly provided for in the Montana state implementation plan or in applicable requirements promulgated by the administrator.

(3) An application for a minor permit modification under this rule need only address in detail those portions of the permit application that require revision, updating, supplementation, or deletion, and may reference any required information that has been previously submitted.

(4) Within five working days of receipt of a complete permit modification application, the department shall meet its obligation under [RULE XXV] to notify the administrator and affected states of the requested permit modification. The department must promptly send any notice required under [RULE XXV] to the admin-

istrator.

(5) The department may not issue a final minor air quality operating permit modification until after the administrator's 45-day review period ends, or until the administrator has notified the department that the administrator will not object to issuance of the permit modification, whichever first occurs, although the department can approve the permit modification prior to that time. Within 90 days of the department's receipt of an application under minor modification procedures or 15 days after the end of the administrator's 45-day review period under [RULE XXV], whichever is later, and after the close of any public comment period, the department shall:

(a) issue the permit modification as proposed;

(b) deny the permit modification application;

(c) determine that the requested permit modification does not meet the minor modification criteria and should be reviewed under the significant modification procedures; or

(d) revise the draft permit modification and transmit to the administrator the new proposed permit modification as required by [RULE XXV].

(6) Unless the proposed change requires an air quality preconstruction permit, the source may make the change proposed in its minor modification application immediately after such application is filed with the department. After the source makes the proposed change, and until the department takes any of the actions specified in (5) above, the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the source need not comply with the existing permit terms and conditions that it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions that it seeks to modify may be enforced against it.

(7) Consistent with the requirements in this section and (8)-(10) below, the department may process groups of a source's applications for certain modifications eligible for minor modification processing. Group processing may be used only for those modifications:

(a) that meet the criteria for minor modification procedures under (1) above; and

(b) that collectively are below 10% of the emissions allowed by the existing air quality operating permit for the emissions unit at which the change is requested, 20% of the applicable definition of major source in [RULE II](22), or five tons per year, whichever is least.

(8) On a quarterly basis or within five business days of receipt of a permit modification application demonstrating that the aggregate of a source's pending minor permit modification application equals or exceeds the threshold level set under (7) above, whichever is earlier, the department must promptly meet its obligation under [RULE XXV] to notify the administrator and affected states of the requested permit modifications. The department shall send any notice required under [RULE XXV] to the administrator.

(9) The provisions of (5) above, shall apply to modifications eligible for group processing, except that the department shall take one of the actions specified in (5)(a)-(d) above, within 180 days of receipt of the application or 15 days after the end of the administrator's 45-day review period under [RULE XXV], whichever is later.

(10) The provisions of (6) above, shall apply to modifications eligible for group processing.

(11) The permit shield under [RULE XII] will not extend to any minor modifications processed pursuant to this rule.

(12) Consistent with [RULE XXIV], the department shall provide public notice of a change or changes proposed in a minor permit modification application pursuant to this rule, promptly on receipt of the application.

AUTH: 75-2-217, MCA; IMP: 75-2-217, MCA

RULE XXI ADDITIONAL REQUIREMENTS FOR SIGNIFICANT AIR QUALITY OPERATING PERMIT MODIFICATIONS (1) The modification procedures set forth in (3) below, must be used for any application requesting a significant modification of an air quality operating permit. Significant modifications include the following:

(a) any permit modification that does not qualify as either a minor modification or as an administrative permit amendment;

(b) every significant change in existing permit monitoring terms or conditions;

(c) every relaxation of permit reporting or recordkeeping terms or conditions; or

(d) any other change determined by the department to be significant.

(2) Nothing herein may be construed to preclude the permittee from making changes consistent with this chapter that would render existing permit compliance terms and conditions irrelevant.

(3) Significant modifications shall meet all requirements of this chapter, including those for applications, public participation, and review by affected states and the administrator, as they apply to permit issuance and renewal, except that an application for a significant modification permit need only address in detail those portions of the permit application that require revision, updating, supplementation, or deletion. The department shall conduct this process to complete review of the majority of significant modifications within nine months after receipt of a complete application.

(4) The permit shield provided for in [RULE XII] shall extend to significant modifications.

AUTH: 75-2-217, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE XXII ADDITIONAL REQUIREMENTS FOR AIR QUALITY OPERATING PERMIT REVOCATION, REOPENING AND REVISION FOR CAUSE (1) An air quality operating permit may be reopened and revised only under the following circumstances:

(a) Additional applicable requirements under the FCAA become applicable to a major source holding a permit with a remaining term of three or more years. Reopening and revision of the

permit shall be completed not later than 18 months after promulgation of the applicable requirement. No reopening is required under this subsection if the effective date of the applicable requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to [RULE XIV](12) or [RULE XV](2).

(b) Additional requirements (including excess emissions requirements) become applicable to an affected source under the acid rain program. Upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

(c) The department or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(d) The administrator or the department determines that the permit must be revised or revoked to assure compliance with the applicable requirements.

(2) Each permit issued under this subchapter shall specify that under the circumstances contained in (1)(a)-(d), above, the permit shall be reopened and revised.

(3) Proceedings to reopen and revise an air quality operating permit, including the opportunity for appeal and review by the board, shall follow the same procedures as apply to permit issuance, and shall affect only those parts of the permit for which cause exists for reopening and revision under (1) above. Reopening and revision shall be completed as expeditiously as practicable.

(4) The department shall provide a minimum of 90 days advance written notice to the holder of an air quality operating permit of the department's intent to reopen and revise the permit under (1) above. The department may, in the notice of intent, request such information as may be necessary to prepare the permit revision for inclusion in the permit after reopening. The notice of intent to reopen may not be appealed to the board. The department's final decision on reopening and revision becomes effective and may be appealed to the board as provided for in [RULE VIII](j). Nothing in this section shall limit the emergency powers of the department under the Montana Clean Air Act, Title 75, chapter 2, MCA.

AUTH: 75-2-217, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE XXIII NOTICE OF TERMINATION, MODIFICATION, OR REVOCATION AND REISSUANCE BY THE ADMINISTRATOR FOR CAUSE (1) If the administrator notifies the department and the permittee in writing that cause exists to terminate, modify, or revoke and reissue an air quality operating permit pursuant to the circumstances contained in [RULE XXII](1), the department shall, within 90 days after receipt of notification, forward to the administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The department may apply to the administrator for an extension of up to an additional 90 days if a new or revised permit application is necessary or the de-

partment must require the permittee to submit additional information.

(2) If the administrator objects in writing to the department's proposed determination pursuant to (1) above, the department shall have 90 days from receipt of the objection to resolve the issues raised by the administrator, and to terminate, modify, or revoke and reissue the permit in accordance with the administrator's objection.

AUTH: 75-2-217, MCA; IMP: 75-2-217, MCA

RULE XXIV PUBLIC PARTICIPATION (1) Except for permit changes not requiring revisions under [RULE XVIII], administrative permit amendments under [RULE XIX], and department review of activities to be conducted pursuant to general permits under [RULE XVI], all air quality operating permit proceedings, including initial permit issuance, minor and significant modifications, and renewals, shall provide adequate procedures for public notice, including an opportunity for both public comment and a hearing on the draft permit. These procedures shall include the following:

(a) The department shall give public notice by publication in a newspaper of general circulation in the area where the source is located, to persons on a mailing list developed by the department including those who request in writing to be on the list, and by other means if necessary to assure adequate notice to the affected public.

(b) The notice required under (a) above, shall identify the following:

(i) the affected facility;

(ii) the name and address of the permittee;

(iii) the name and address of the department;

(iv) the activity or activities involved in the permit action;

(v) the emissions change involved in any permit modification;

(vi) the name, address, and telephone number of a person from whom interested persons may obtain additional information, including copies of the draft permit, the application, all relevant supporting materials, including those set forth in compliance plans, compliance certification reports and monitoring reports, and all other materials available to the department that are relevant to the permit decision, with the exception of information that has been declared confidential;

(vii) a brief description of the comment and appeal procedures required by this chapter; and

(viii) the time and place of any hearing that may be held, including a statement of procedures to request a hearing (unless a hearing has already been scheduled).

(c) The department shall provide such notice and opportunity for participation by affected states as provided in [RULE XXV].

(d) The department shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing.

(2) The department shall keep a record of both the commenters and the issues raised during the public participation process so that the administrator may fulfill the obligation under section 7661d(b)(2) of the FCAA to determine whether a citizen petition may be granted, and such records shall be available to the public.

(3) All comments received during the public comment period shall be promptly forwarded to the source in order that the source may have an opportunity to respond to these comments.
AUTH: 75-2-217, MCA; IMP: 75-2-217, 75-2-218, MCA

RULE XXV PERMIT REVIEW BY THE ADMINISTRATOR AND AFFECTED STATES (1) The department shall provide to the administrator a copy of each proposed air quality operating permit and each final permit.

(2) An applicant shall provide a copy of each air quality operating permit application and each permit modification application (including the compliance plans) directly to the administrator. Upon agreement with the administrator, the applicant may submit to the administrator a permit application summary form and any relevant portion of the permit application and compliance plan, in place of the complete application and compliance plan. To the extent practicable, the information required under this subsection shall be provided in computer-readable format compatible with the administrator's national database management system.

(3) The department shall keep for five years such records and submit to the administrator such information as the administrator reasonably requires to ascertain whether the state program complies with the requirements of the FCAA and 40 CFR Part 70.

(4) The department shall give notice of each draft air quality operating permit to any affected state on or before the time that the department provides this notice to the public under [RULE XXIV], except to the extent [RULE XX](4) or (8) requires the timing of the notice to be different.

(5) The department shall, as part of the submittal of the proposed air quality operating permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under [RULE XX](4) or (8)) notify the administrator and any affected state in writing of any refusal by the department to accept all recommendations for the proposed permit submitted by the affected state during the public comment or affected state review period. The notice shall include the department's reasons for not accepting any such recommendation. The department is not required to accept recommendations that are not based on applicable requirements or the requirements of this subchapter. Those requirements designated as not being federally-enforceable may not serve as the basis for such recommendations.

(6) No air quality operating permit for which an application must be transmitted to the administrator under (2) above, shall be issued if the administrator objects in writing to its issuance within 45 days of receipt of the proposed permit and all necessary supporting information. Objections by the administra-

tor shall only be based on the grounds that the permit did not demonstrate or require compliance with applicable requirements or comply with the requirements of this subchapter. Those requirements designated as not being federally-enforceable may not serve as the basis for such objections.

(7) Any objection by the administrator under (6) above, shall include a statement of the administrator's reasons for objection and a description of the terms and conditions that the air quality operating permit must include to respond to the objection. The administrator shall provide to the permit applicant a copy of the objection.

(8) The failure of the department to do any of the following shall also constitute grounds for an objection by the administrator:

(a) comply with (1)-(5), above;

(b) submit any information necessary to adequately review the proposed permit; or

(c) process the permit under the procedures approved to meet [RULE XXIV], except for those actions by the department that are not subject to [RULE XXIV].

(9) If the administrator does not object in writing under (6) above, any person may petition the administrator within 60 days after the expiration of the administrator's 45-day review period to make such objection.

(10) Any petition filed with the administrator pursuant to (9) above shall be based only on objections to the air quality operating permit that were raised with reasonable specificity during the public comment period provided for in [RULE XXIV], unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period.

(11) If the administrator objects to the air quality operating permit as a result of a petition filed under (9) above, the department shall not issue the permit until the administrator's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to the administrator's objection. If the department has issued a permit prior to receipt of the administrator's objection under this section, and the administrator modifies, terminates, or revokes the permit consistent with the procedures in [RULE XXIII], the department may thereafter issue only a revised permit that satisfies the administrator's objection. In any case, the source will not be in violation of the requirement to have submitted a timely and complete application.

(12) Consistent with (6)-(11) above, the department may not issue an air quality operating permit (including a permit renewal or modification) until affected states and the administrator have had an opportunity to review the proposed permit as required under this subchapter. The administrator may waive the opportunity for such review by the administrator and affected states.

AUTH: 75-2-217, MCA; IMP: 75-2-217, MCA

4. The board is proposing these rules because they are necessary to implement the provisions of House Bill No. 318, passed by the 1993 legislature. Pursuant to Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended in 1990, states are required, no later than November 15, 1993, to adopt an operating permit program for certain stationary sources of air pollution, and to submit the program to the Environmental Protection Agency (EPA) for approval. Sections (9)-(11) of House Bill No. 318 provide the statutory authority both for the board to adopt the necessary implementing rules and for the department to administer the required program. These rules are proposed to implement the required Title V operating permit program, as authorized under HB 318. Failure of the states to timely submit an operating permit program to EPA triggers the imposition of sanctions by the federal government, including loss of highway funds, loss of federal funding of the state air program, and others.

5. Interested persons may submit their data, views, or arguments concerning the proposed rule, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yoli Fitzsimmons, Board of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than September 14, 1993.

RAYMOND W. GUSTAFSON, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

by _____
ROBERT J. ROBINSON, Director

Certified to the Secretary of State August 2, 1993 .

Reviewed by:

_____
Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption, amendment and repeal of Rules of the fire prevention and investigation bureau describing the revision of licensure requirements for persons selling, installing or servicing fire protection equipment and other provisions dealing with fire safety	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT AND REPEAL OF RULES PERTAINING TO REVISION OF LICENSURE REQUIREMENTS

TO: All Interested Persons:

1. On September 15, 1993, at 9:30 A.M. a public hearing will be held in the auditorium of the Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana, to consider the adoption of rules I through V, the amendment of ARM 23.7.105, 23.7.121, 23.7.122, 23.7.123, 23.7.124, 23.7.125, 23.7.131, 23.7.132, 23.7.133, 23.7.134, 23.7.135, 23.7.136, 23.7.141, 23.7.153, 23.7.154, 23.7.159, 23.7.160 and the repeal of ARM 23.7.142, 23.7.151, 23.7.152.

2. The department of justice proposes to adopt the following rules:

RULE I DEFINITIONS Unless the context requires otherwise, the following definitions apply to [rules 23.7.101 through 23.7.203]:

(1) "Apprentice" is a person new to the entity or position in a training capacity, for the service or installation of fire alarm systems, special agent fire suppression systems, or fire extinguishing systems and who is studying in accordance with an apprentice program approved by the department or who holds National Institute for Certification in Engineering Technologies (NICET) level I certification and is studying for level II certification.

(2) "Building code" means the latest edition of the Uniform Building Code adopted by the department of commerce. Whenever a provision of the Building Code is incorporated within the Uniform Fire Code by reference, such provision is hereby adopted for application to all buildings within the jurisdiction of the state fire prevention and investigation bureau, unless the bureau chief determines otherwise in accordance with UFC Section 2.301. Copies of the Uniform Building Code may be obtained from the Building Codes Bureau of the Department of Commerce, 1218 East Sixth Avenue, Helena, Montana 59620.

(3) "Building official" refers to the bureau chief of the building codes bureau of the department of commerce or, when made applicable by statute or rule, the building official of the local jurisdiction.

(4) "Chief," "fire chief," "fire marshal," and "fire prevention engineer" all are treated as referring to the chief of the fire prevention and investigation bureau of the department of justice or, when made applicable by statute or rule or the context thereof, to the chief official of the appropriate local fire protection agency.

(5) "City" is treated as referring to the state of Montana or, when made applicable by statute or rule or the context thereof, to the appropriate local jurisdiction.

(6) "Commercial General Liability Insurance" means insurance that covers bodily injury and property damage, personal and advertising injury and medical payments resulting from, but not limited to, premises/operations claims and products/completed operations claims.

(7) "Department" means the department of justice.

(8) "District", as used in section 50-61-114, MCA means a rural fire district established under Title 7, chapter 33, part 21, MCA.

(9) "Endorsement" means a document issued by the department to an individual who has met qualifications which authorizes the individual to service and install fire alarm systems, special agent fire suppression systems, or fire extinguishing systems.

(10) "Entity" means any business, partnership, sole propriety, organization, association, corporation, firm, governmental organization, fire agency or any other business association.

(11) "Fire alarm system" means a combination of approved compatible devices with the necessary electrical interconnection and energy to produce an alarm signaling the event of fire or system activation but does not include single station smoke or heat detectors.

(12) "Fire Department" and "bureau of fire prevention" are treated as referring to the fire prevention and investigation bureau of the department of justice or, when made applicable by statute or rule or the context thereof, to the appropriate local jurisdiction.

(13) "Fire extinguisher" means a portable device containing an extinguishing agent that can be expelled under pressure for the purpose of suppressing or extinguishing a fire.

(14) "Fire extinguishing system" means a fire sprinkler system that consists of an assembly of piping or conduits that conveys water, foam or air with or without other agents to dispersal openings or devices to extinguish, control or contain fire and to provide protection from exposure to fire or the products of combustion.

(15) "Fire protection equipment" means any fire alarm system, special agent fire suppression system, fire extinguishing system or related components.

(16) "Fire sprinkler system" means a fire extinguishing system.

(17) "Inspection" means a visual check that an extinguisher is available and will operate. It is intended to give reasonable assurance that the extinguisher is fully charged and

operable. This is done by seeing that it is in its designated place, that it has not been actuated or tampered with, and that there is no obvious physical damage or condition to prevent operation.

(18) "License" means the document issued by the department which authorizes a person or entity to engage in the business of servicing fire extinguishers or before engaging in the business of selling, servicing or installing fire alarm systems, special agent fire suppression systems or fire extinguishing systems.

(19) "Local authority" means a fire agency, law enforcement agency or other governmental agency having jurisdiction in a given location.

(20) "Mechanical code" means the latest edition of the Uniform Mechanical Code adopted by the department of commerce. Whenever a provision of the Mechanical Code is incorporated within the Uniform Fire Code by reference, such provision is hereby adopted for application to all buildings within the jurisdiction of the state fire prevention and investigation bureau, unless the bureau chief determines otherwise in accordance with UFC Section 2.301.

(21) "NICET" means National Institute for Certification in Engineering Technologies.

(22) "Ordinance" means state law, city or county ordinance, or rule adopted by the fire prevention and investigation bureau.

(23) "Service", when referring to portable fire extinguishers and fire extinguisher cylinders, means maintenance and includes breakdown for replacement of parts or agent, repair, recharging or hydrostatic testing.

(a) When referring to alarm systems, fire extinguishing systems and fire suppression systems, "service" means maintenance and testing required to keep the protective signaling, extinguishing and suppression system and its component parts in an operative condition at all times, together with replacement of the system or its component parts with listed or approved parts, when, for any reason they become undependable, defective or inoperative.

(b) "Service" does not include resetting manual alarm systems which may be reset by properly trained building owners or their designated representative.

(24) "Single family private house" means a dwelling unit as defined in the Uniform Fire Code, no part of which is rented to another person.

(25) "Special agent fire suppression system" means an approved system and components which require individual engineering in accordance with manufacturer specifications and includes dry chemical, carbon dioxide, halogenated, gaseous agent, foam and wet chemical systems; includes pre-engineered system but does not include a fire extinguishing system.

(26) "Uniform Fire Code" means the latest edition of the Uniform Fire Code adopted by the state fire prevention and investigation bureau.

AUTH: 50-3-102, MCA, IMP: 50-3-102, MCA ,

RULE II INSPECTION OF APPLICANT FACILITY (1) Prior to the issuance of a license the department may inspect the

business facility to verify that the applicant is properly equipped and staffed to provide the sales or services to be licensed and endorsed.

(2) The department may reinspect the applicant facility annually or more often to assure the facility meets department standards. AUTH: 50-3-102, 50-3-107, MCA; IMP: 50-3-102, 50-3-107, MCA

RULE III PROOF OF INSURANCE (1) Prior to issuance of a license and annually thereafter the entity shall obtain, maintain in full force and file with the department a full term commercial general liability insurance policy from an insurance company authorized to do business in the state of Montana and except as provided in subsection (5), submit verification of workers' compensation insurance.

(2) An entity engaging in the business of servicing fire extinguishers shall submit a copy of commercial general liability insurance with a minimum limit per occurrence of $500,000 that includes premises/operations and products/completed operations coverage.

(3) An entity engaging in the business of selling, servicing or installing fire alarm systems, special agent fire suppression systems or fire extinguisher systems shall submit a copy of commercial general liability insurance with a minimum limit per occurrence of $1,000,000 that includes premises/operations and products/completed operations coverage.

(4) Failure to maintain liability insurance required under this chapter constitutes grounds for denial, suspension, or revocation of a license.

(5) Sole proprietors or working members of a partnership who are on file with the department of labor and industry as independent contractors, with no employees, need not submit workers' compensation but shall submit independent contractor exemption verification to the department.
AUTH: 50-3-102, MCA; IMP: 50-3-102, MCA

RULE IV CONTINUING EDUCATION (1) Continuing education is that education obtained which is in addition to the educational requirements for endorsement. Continuing education must be related to the practice of installing or servicing fire protection equipment.

(2) An endorsee shall obtain a minimum of 15 hours (50 to 60 minutes per hour) or 1.5 continuing education units annually and submit copies of continuing education certificates.

(3) The following continuing education programs may be approved by the department for continuing education credit:

(a) workshops, seminars and educational conferences sponsored by fire protection equipment manufacturers or trade associations; and

(b) accreditation and refresher courses in specialized programs approved by the department.

(4) Continuing education may be obtained by correspondence course work through NICET, fire protection equipment manufacturers or industry trade associations approved by the

department.

(5) Any continuing education which has been obtained in another state that meets the continuing education requirements of that state may be approved by the department.

AUTH: 50-3-102, MCA; IMP: 50-39-102, MCA

RULE V TRANSFER OF OWNERSHIP PROHIBITED A license or endorsement issued under this chapter is not transferable.

AUTH: 50-3-102, 50-3-107, MCA; IMP: 50-3-102, 50-3-107, MCA

RULE VI NICET LEVEL III PLANS APPROVAL AUTHORIZATION

(1) A registered professional electrical engineer, mechanical engineer, fire protection engineer or senior engineering technician having NICET level III certification in fire protection engineering technology may certify plans for fire alarm systems, special agent fire suppression systems or fire extinguishing systems.

(2) The person may be on staff at an entity licensed in accordance with these rules.

(3) A person holding NICET level II and who is studying in accordance with NICET level III may certify plans for fire alarm systems, special agent fire suppression systems or fire extinguishing systems for a maximum of one year. The person shall submit NICET level III certification to the department to continue plans certification.

AUTH: 50-3-102, 50-3-107, MCA; IMP: 50-3-102, 50-3-107, MCA

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

23.7.105 ADOPTION OF UNIFORM FIRE CODE AND DEFINITIONS

(1) The fire prevention and investigation bureau hereby adopts and incorporates by reference the Uniform Fire Code, International Conference of Building Officials, 1991 edition, and the 1991 edition of the UFC Standards. Copies of the Uniform Fire Code and related materials may be obtained from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601, or from the Building Codes Bureau of the State of Montana Department of Commerce, 1218 East Sixth Avenue, Helena, Montana 59620. Information is available upon request from the Fire Prevention and Investigation Bureau, Department of Justice, 303 North Roberts, Helena MT 59620.

(2) As used in these rules, all definitions except those found in Rule I contained within the Uniform Fire Code apply ~~with the following exceptions and additions:~~.

~~(a) "Apprentice" is a person in a training position, for a period of no more than 12 months, for the installation or service of fire protection equipment.~~

~~(b) "Building code" means the latest edition of the Uniform Building Code adopted by the department of commerce. Whenever a provision of the Building Code is incorporated within the Uniform Fire Code by reference, such provision is hereby adopted for application to all buildings within the jurisdiction of the state fire prevention and investigation bureau, unless~~

~~the bureau chief determines otherwise in accordance with UFC Section 2.301. Copies of the Uniform Building Code may be obtained from the Building Codes Bureau of the Department of Commerce, 1218 East Sixth Avenue, Helena, Montana 59620.~~

~~(c) "Building official" refers to the bureau chief of the building codes bureau of the department of commerce or, when made applicable by statute or rule, the building official of the local jurisdiction.~~

~~(d) "Chief," "fire chief," "fire marshal," and "fire prevention engineer" all are treated as referring to the chief of the fire prevention and investigation bureau of the department of justice or, when made applicable by statute or rule or the context thereof, to the chief official of the appropriate local fire protection agency.~~

~~(e) "City" is treated as referring to the state of Montana or, when made applicable by statute or rule or the context thereof, to the appropriate local jurisdiction.~~

~~(f) "District", as used in section 50-61-114, MCA means a rural fire district established under Title 7, chapter 33, part 21, MCA.~~

~~(g) "Fire department" and "bureau of fire prevention" are treated as referring to the fire prevention and investigation bureau of the department of justice or, when made applicable by statute or rule or the context thereof, to the appropriate local jurisdiction.~~

~~(h) "Fire protection equipment" means any listed and/or labeled fire alarm system, automatic fire alarm system, automatic fire extinguishing system or portable fire extinguisher.~~

~~(i) "Installation and service," when applicable to fire protection equipment, means such installation and servicing as required by the Uniform Fire Code and by nationally recognized standards referenced in the Uniform Fire Code. Required service for fire protection equipment is to be based on the purchase date.~~

~~(j) "Mechanical code" means the latest edition of the Uniform Mechanical Code adopted by the department of commerce. Whenever a provision of the Mechanical Code is incorporated within the Uniform Fire Code by reference, such provision is hereby adopted for application to all buildings within the jurisdiction of the state fire prevention and investigation bureau, unless the bureau chief determines otherwise in accordance with UFC Section 2.301.~~

~~(k) "Ordinance" means state law, city or county ordinance, or rule adopted by the fire prevention and investigation bureau.~~

~~(l) "Portable fire extinguisher" means a hand-portable or wheeled container filled with any approved fire extinguishing agent that can be used to extinguish small fires.~~

~~(m) "Registrant" means a person certified by the state fire marshal who performs the installation or service of fire protection equipment.~~

~~(n) "Single family private house" means a dwelling unit as defined in the Uniform Fire Code, no part of which is rented to another person.~~

~~(c) "Uniform Fire Code" means the latest edition of the Uniform Fire Code adopted by the state fire prevention and investigation bureau.~~

(3) The fire prevention and investigation bureau does not adopt Articles 4 and 78 of the Uniform Fire Code ~~and does not adopt the following appendices: II-C (Marinas), II-D (Rifle Ranges),~~

(4) The fire prevention and investigation bureau adopts all appendices of the Uniform Fire code in accordance with Section 1.102(c) except for II-C (marinas), and II-D (rifle Ranges). AUTH: 50-3-102, 50-61-102, MCA; IMP: 50-3-102, 50-61-102, MCA

23.7.121 APPLICATION FOR ~~PERMIT, LICENSE OR CERTIFICATE~~

(1) ~~"Applications for licenses, permits, or certificates shall be made on a form prescribed by the state fire marshal." Section 50-39-102(1) MCA.~~ Except as provided in subsection (5), a person or entity shall obtain a license from the department before engaging in the business of servicing fire extinguishers or selling, servicing, or installing fire alarm systems, special agent fire suppression systems, or fire extinguishing systems and shall be licensed before participating in contract bidding. Applications must also be accompanied by any required application fee.

(2) ~~The application form shall include:~~

~~(a) Applicant's name and address;~~

~~(b) Business address;~~

~~(c) Business name used;~~

~~(d) Type of work to be performed, or products to be sold; and~~

~~(e) Whether the applicant is employed by a fire protection agency of the state or of any local government unit;~~

~~(f) Whether the applicant is a member of the personnel of a non-profit fire department and, if so, for what purpose the certificate, license or permit is being obtained; and~~

~~(g) Other pertinent information required by the state fire marshal.~~ The application must follow procedures and be on forms provided by the department.

(3) Incomplete applications are retained for sixty days after applicant is notified. If the applicant does not submit completed documents within sixty days the applicant must reapply.

(~~3~~4) Copies of the application forms are available upon request from the ~~State Fire Marshal Bureau,~~ Department of Justice, Fire Prevention and Investigation Bureau ~~Room 371~~, Scott Hart Building, 303 North Roberts, P.O. Box 201417, Helena, Montana 59620-1417.

(5) The following persons or entities are exempt from the licensing requirements imposed by these rules:

(a) Persons or entities that engage only in the routine visual inspection of fire alarm systems, special agent fire suppression systems or fire extinguishing systems owned by the person or entity and installed on property under their control are exempt from obtaining a license or endorsement from the

department; however, these persons or entities are not exempt if they service or install fire protection equipment.

(b) A licensed electrical contractor who subcontracts to install fire protection equipment that includes smoke detection and fire alarm equipment pursuant to building specifications is exempt from obtaining a license or endorsement under this chapter, provided the installation is inspected and approved by a person endorsed to service or install the fire protection equipment.

(6) The applicant is responsible for having knowledge of these rules and laws pertaining to fire protection equipment.

AUTH: 50-3-102, 50-3-107, MCA; IMP: 50-39-101 through 105, MCA

23.7.122 SUSPENSION OR REVOCATION OF ~~PERMIT, LICENSE OR ENDORSEMENT CERTIFICATE~~ (1) The department~~state fire marshal shall~~ may suspend or revoke a ~~permit,~~ license~~,~~ or endorsement~~certificate of registration,~~ following notice and opportunity for hearing, if the holder has:

(~~1~~a) ~~O~~obtained or attempted to obtain a ~~permit,~~ license or endorsement~~ certificate of registration~~ by fraudulent misrepresentation;

(~~2~~b) ~~C~~committed malpractice or exhibited incompetency in the installation or servicing of any fire protection equipment;

(~~3~~c) Advertised or sold fire protection equipment by knowingly making false or deceptive statements;

(~~4~~d) ~~S~~sold or installed fire protection equipment not approved by the department under ARM 23.7.143;

(~~5~~e) ~~S~~serviced, and failed to notify the owner, the authority having jurisdiction and the department of any deficiencies found in the ~~correct any~~ fire protection equipment ~~that has been improperly installed~~;

(~~6~~f) ~~E~~employed a~~n individual~~person who~~, while employed by the holder of the license, permit, or certificate,~~ installs or services fire protection equipment improperly or who installs or services fire protection equipment without the required endorsement~~ certificate of registration~~;

(~~7~~g) ~~V~~violated any of the conditions, qualifications, or limitations set forth in the ~~permit,~~ license or endorsement~~, or certificate~~, or allowed the ~~permit,~~ license or endorsement~~, or certificate~~ to be used by anyone other than the person or entity~~firm~~ to whom the same was issued;

(~~8~~h) ~~V~~violated the provisions of section 2-2-121(2)(b) or 2-~~5~~2-125(2)(b), MCA;

(~~9~~i) ~~V~~violated any provisions of this chapter;

(j) failed to display or to carry copy of endorsement(s) as provided in 50-39-101(2) MCA.

(2) Unless a specific period of suspension or revocation is set out in any final order of the department, a suspension shall not exceed one year and a revocation shall be permanent.

(3) As a condition to the reinstatement of a suspended endorsement the department may require the applicant to take and pass a qualifying examination, or course, or both as determined by the department and demonstrate the reason for suspension has been corrected.

(4) As a condition to reinstatement of a suspended license the entity shall meet all original conditions of licensing and demonstrate the reason for suspension has been corrected.
AUTH: 50-3-102, 50-3-107, MCA; IMP: 50-3-102, 50-39-101 through 105, MCA

23.7.123 DUPLICATE ~~PERMITS, LICENSES, OR ENDORSEMENTCERTIFICATES~~

The department~~state fire marshal~~ may upon request replace any previously issued ~~permit, license or endorsement, or certificate of registration~~ that has been lost or destroyed. The request must include a written statement from the holder attesting to the loss or destruction of the~~his or her permit,~~ license or endorsement~~, or certificate~~. The request must also be accompanied by a fee of $~~2~~15.
AUTH: 50-3-102, MCA; IMP: 50-3-102, MCA

23.7.124 DENIAL OF ~~A CERTIFICATE, PERMIT OR~~ LICENSE OR ENDORSEMENT

(1) The department~~state fire marshal~~ may deny a ~~permit,~~ license or endorsement~~, or certificate~~ to an applicant if the granting of one would adversely affect public safety or welfare, or if the applicant fails to satisfy the applicable requirements of section 50-39-102, MCA, or these rules.
AUTH: 50-3-102, 50-3-107, MCA; IMP: 50-3-102, 50-39-101 through 105, MCA

23.7.125 INVESTIGATION AND/OR INSPECTION OF IMPROPER INSTALLATION OR SERVICE

(1) Upon ~~the~~ written request of a local authority or other agency~~person~~, the department~~state fire marshal~~ may conduct an inspection of the installation or service of fire protection equipment~~,~~.

(2) The department~~state fire marshal~~ may enjoin the use of all or a portion of a building where fire protection equipment has been improperly installed or serviced.
AUTH: 50-3-102, 50-3-107, MCA; IMP: 50-3-102, 50-39-101 through 105, MCA

23.7.131 WHO MUST OBTAIN AN ENDORSEMENT ~~CERTIFICATE OF REGISTRATION~~

(1) Except as provided in subsection (2), a ~~natural~~ person must obtain an endorsement ~~certificate of registration~~ from the department~~state fire marshal~~ prior to ~~installing or servicing fire protection equipment~~ selling, servicing, or installing fire alarm systems, special agent fire suppression systems or fire extinguishing systems.

(2) The following persons need not obtain a~~n certificate of registration~~endorsement~~:~~.

(a) ~~A~~a manufacturer filling or charging a ~~portable~~ fire extinguisher prior to its initial sale.

(b) ~~A~~an apprentice, so long as ~~he or she~~the person performs the installation or service of fire protection equipment under the immediate personal supervision of a person

holding an endorsement.

~~(c) An electrical contracting firm which has a contract to physically install and wire fire protection equipment according to drawings, provided that all final connections of the system are supervised by a qualified registrant.~~

(c~~d~~) ~~A~~an owner, manager, or maintenance personnel making monthly inspections on their own facilities ~~and/or annual maintenance checks~~ of ~~portable~~ fire extinguishers.

(3) An apprentice shall be registered with the department and in good standing in an apprentice program approved by the department and may serve in that capacity until a person completes the program but no longer than:

(a) four years for the service or installation of fire alarm systems;

(b) two years for the service or installation of special agent fire suppression systems;

(c) four years for the service or installation of fire extinguishing systems, or;

(d) be studying in accordance with NICET level II certification requirements that are applicable for the endorsement requirements.

(4) An apprentice will be issued a card that indicates the individual is in a training position and shall not install, inspect, recharge, repair, service or test fire protection equipment without the direct and immediate supervision of a person endorsed by the department.

(5) An apprentice shall obtain an endorsement within thirty days after completion of the apprentice program.

AUTH: 50-3-102, 50-3-107, MCA; IMP: 50-3-102, 50-39-101 through 105, MCA

23.7.132 LICENSE, ENDORSEMENT~~CERTIFICATE~~ AND PROCESSING FEE ~~(1) Except as provided in subsection (2):~~

~~(a)~~(1) Each entity~~registrant~~ shall pay an annual license~~a~~ fee of $200~~$5 for a certificate of registration~~.

(2) Each person employed by the licensee to perform services under the license shall obtain from the department an endorsement and pay:~~The state fire marshal shall examine and certify the following persons without a fee:~~

~~(a) The personnel of a non-profit fire department who intend to service portable fire extinguishers. To qualify under this subsection, the non-profit fire department must provide a public service and use any money generated to serve the public interest.~~

(a) $100 to sell, service, or install fire alarm systems;

(b) $100 to sell, service, or install special agent fire suppression systems; and

(c) $100 to sell, service, or install fire extinguishing systems.

(3) In the year of first application for a license, the applicant shall pay a processing fee in the amount of $100, or an amount sufficient to cover the travel and overhead costs incurred in conducting an inspection of the applicant's facilities, whichever is less.

AUTH: 50-3-102, MCA; IMP: 50-3-102, MCA

23.7.133 EXAMINATION FOR ENDORSEMENT~~CERTIFICATE~~ (1) ~~"The State Fire Marshal shall issue a certificate of registration to an fire extinguisher applicant who scores a passing grade on an examination devised by the state fire marshal and who pays the required fee." Section 50-39-102(3) MCA. The examination shall include a written examination and may include practical tests or demonstrations for the installation or service of fire protection equipment.~~ The department shall issue an endorsement for pre-engineered fire alarm systems, special fire agent suppression systems or fire extinguishing systems to an individual who submits satisfactory documentation that the applicant holds current certification approved by the department or who holds NICET level II certification, is knowledgeable of current laws and rules and who pays the required fee.

(2) The department shall issue an endorsement for non pre-engineered fire alarm systems, special fire agent suppression systems or fire extinguishing systems to an individual who currently holds NICET level II certification, has successfully completed an approved apprenticeship program, or is a licensed engineer, is knowledgeable of current laws and rules and who pays the required fee. ~~The written examination may include information from the latest edition of the Fire Protection Handbook, the latest editions of the Uniform Fire Code Standard No. 10.1, and the National Fire Protection Association (NFPA) Pamphlets Number 10, 13, 13A, 13D, 13R, 72A, 72B, 72C, 72D, 72E, and 74.~~

~~(3) An examination may be waived in the discretion of the state fire marshal if the applicant provides satisfactory documentation that he or she has received training that qualifies the applicant to install or service fire extinguishersprotection equipment.~~

~~(4) The examination may also include information concerning hydrostatic testing or Department of Transportation listed cylinders contained in the Compressed Gas Association Pamphlet C-1 (Methods for Hydrostatic Testing Compressed Gas Cylinders.)~~

~~(5) A passing grade for the written examination is a score of 70 or better. An applicant who fails may reapply after 30 days to take another examination. The examination may be taken no more than three times during a one-year period.~~

AUTH: 50-3-102, 50-3-107, MCA; IMP: 50-3-102, 50-39-101 through 105, MCA

23.7.134 ~~ENDORSEMENT OF QUALIFICATIONS~~ (1) A person shall be issued a certificate of endorsement and card that indicates the endorsement the individual holds. ~~The certificate of registration shall be endorsed with the type of qualifications of the holder, as determined by the types of work to be performed listed on the application, and by the examination.~~

~~(2) Possible endorsements are:~~

~~(a) Hydrostatic testing of wet chemical or non-department~~

~~of transportation listed cylinder;~~

~~(b) Hydrostatic testing of any department of transportation listed cylinder; or~~

~~(c) installation, servicing, charging, recharging, or inspecting:~~

~~(i) portable fire extinguishers;~~

~~(ii) automatic fire extinguishing systems;~~

~~(iii) fire alarms;~~

~~(iv) automatic fire alarm systems; or~~

~~(v) other fixed fire protection systems.~~

(2~~3~~) A person ~~registrant~~ may only perform the type of work indicated~~endorsed~~ on the endorsement~~his or her certificate of registration~~.

AUTH: 50-3-102, MCA; IMP: 50-3-102, MCA

23.7.135 DUTY TO REPORT NAME OR ADDRESS CHANGE (1) An entity licensed or person endorsed~~registrant~~ shall report a change of name or~~in his~~ address to the department~~state fire marshal~~ within 15 days of the change. The entity or person~~registrant~~ shall also record the new name or address on the reverse side of the license and endorsement~~certificate~~.

AUTH: 50-3-102, MCA; IMP: 50-3-102, MCA

23.7.136 HOLDER NOT ENTITLED TO RIGHT OF ENTRY (1) A ~~permit,~~ license~~,~~ or endorsement~~certificate~~ does not authorize any person to enter any property or building~~ or to enforce this chapter~~ without permission.

AUTH: 50-3-102, MCA; IMP: 50-3-102, MCA

23.7.141 WHO MUST OBTAIN A LICENSE~~PERMIT TO SELL~~ (1) A business entity or~~A~~ self-employed person~~, firm, corporation, or partnership~~ engaged in the business of servicing fire extinguishers, selling, ~~or~~ leasing, servicing or installing fire protection equipment must obtain a license~~permit to sell for each separate business location~~.

~~(2) A license is valid only so long as the holder is engaged in the installation of fire protection equipment.~~

AUTH: 50-3-102, MCA; IMP: 50-3-102, MCA

23.7.143 APPROVAL OF EQUIPMENT (1) ~~No~~ A licensed entity or endorsed person ~~or firm~~ may not sell, lease, install or service fire protection equipment or component parts that actuate or control fire protection equipment, unless the equipment has been labeled or listed by Underwriters Laboratories, Inc., Underwriters Laboratory of Canada, Factory Mutual Laboratories or other nationally recognized testing laboratories approved by the department~~state fire marshal. Household fire alarm systems when examined and performance tested according to the intent of this rule and, if found equivalent, may be approved.~~

(2) The minimum equipment on hand at each service location or in each mobile service vehicle for an entity engaged only in the business of servicing fire extinguishers must be in good working condition and must include:

(a) an adequate supply of extinguishing agents appropriate for the types of extinguishers the firm is requested to fill and facilities for proper storage of extinguishing agents set according to manufacturer specifications;

(b) commercial dry nitrogen supply (-60 degrees fahrenheit, 51.1 degrees centigrade dew point or less) and pressure regulator with supply and regulated pressure gauges suitable for properly pressurizing fire extinguishers;

(c) equipment for leak testing pressurized extinguishers and/or system cylinders;

(d) adapters, fittings, tools and equipment required for properly servicing all fire extinguishers the entity solicits or accepts for service set according to specifications of the fire extinguisher manufacturer;

(e) closed recovery system(s) and storage to remove and store chemicals from fire extinguisher during servicing;

(f) inventory of spare parts;

(g) a copy of the most recently adopted edition of the Uniform Fire Code Standards and applicable National Fire Protection Association standards, and;

(h) a supply of required service and test tags meeting the provisions of these rules.

AUTH: 50-3-102, MCA; IMP: 50-3-102, MCA

23.7.154 SERVICE TAGS (1) A service tag must be used to indicate when fire protection equipment is installed or when service is performed on fire protection equipment and the name of the ~~registrant~~endorsed person installing or servicing the equipment. ~~Building owners, managers or maintenance personnel performing monthly inspections or annual maintenance checks of portable fire extinguishers may not use a service tag but must maintain records.~~

(2) A service tag shall be of a size and of a durable material approved by the department~~state fire marshal~~ but not less than 4-1/2 inches by 2-1/2 inches. It must not be red.

(3) A service tag must bear the following information:

(a) imprinted ~~N~~name, address, telephone and license number of licensed entity~~firm~~;

(b) ~~T~~type of service performed;

(c) ~~M~~month and year of service; ~~and~~

(d) ~~N~~name and endorsement~~registration~~ number of registrant performing service. The~~A~~ registrant shall indicate the type of service performed and date of servic~~ing~~ by punching the appropriate section of the~~a~~ tag. The~~A~~ tag must bear dates for 1 to ~~3~~5 years~~.~~; and

(e) "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL" in capital letters, at least 10-point boldface type.

(4) The~~A~~ registrant shall~~must~~ attach the service tag in a position so ~~that~~ it can be conveniently inspected by an inspecting authority but ~~so that it~~ does not hamper the operation of fire protection equipment.

(5) No person may remove a service tag except when further service is performed and a new tag is attached. No person may alter or deface a service tag attached to or required to be

attached to fire protection equipment.

(6) Stored pressure extinguisher tags must follow the guidelines listed in the Uniform Fire Code Standard 10-1 and include the information listed in (3) of this rule.

(7) A blank tag shall be submitted for approval to the department at the time of application.

AUTH: 50-3-102, MCA; IMP: 50-3-102, MCA

23.7.159 RENEWAL OF ~~PERMIT,~~ LICENSE, OR ENDORSEMENT~~CERTIFICATE~~

(1) Each entity or person ~~or firm~~ who receives a ~~permit,~~ license or endorsement~~certificate of registration~~ from the department~~state fire prevention and investigation bureau~~ in accordance with these rules ~~must~~shall submit an application for renewal annually~~every two years~~.

(2) The application for renewal ~~shall~~ must follow procedures and be on a form provided by the department. ~~contain the following information:~~

~~(a) applicant's name and address;~~

~~(b) business address;~~

~~(c) business name used;~~

~~(d) type of work to be performed, or products to be sold;~~

~~(e) whether the applicant is employed by a fire protection agency of the state or of any local government unit;~~

~~(f) whether the applicant is a member of the personnel of a non-profit fire department;~~

~~(g) whether any of the above information has changed since the date of first issuance of the license, permit, or certificate, or since the date of last renewal;~~

~~(h) whether the applicant has been continuously engaged in installation, sale, or service of fire protection equipment since the date of first issuance of the license, permit, or certificate, or since the date of last renewal.~~

(3) Upon receipt of the application, the department~~state fire marshal~~ shall grant a renewal of the ~~permit,~~ license or endorsement~~certificate~~ if it appears that the applicant meets all of the requirements under ARM 23.7.121, has committed no act which would constitute ground for suspension or revocation under ARM 23.7.122, and remains properly equipped and staffed to provide the services intended to be performed. The department~~fire marshal~~ may require retesting if the applicant fails to meet any of the requirements of this section or if the applicant has not, for a period of one~~two~~ years, engaged in the business for which the original ~~permit,~~ license or endorsement~~certificate~~ was issued.

(4) Each application for renewal ~~shall~~must be accompanied by the~~a~~ fee(s) specified under rule 23.7.132 ~~of $5~~.

AUTH: 50-3-102, MCA; IMP: 50-39-101 through 105, MCA

23.7.160 RULES RELATING TO THE BUILDING CODE (1) A notice of adoption or amendment by the department~~state fire marshal~~ of a rule relating to building and equipment standards covered by the state or a municipal building code must be signed by the director of the department of commerce. Such rules "are

effective upon approval of the department of commerce and filing with the secretary of state." Section 50-3-103(2) MCA. AUTH: 2-4-201, 52-4-201, MCA; IMP: 50-3-107, MCA

4. The rules proposed to be repealed are as follows: ARM 23.7.142; 23.7.151; and 23.7.152. These rules may be found on page 23-361.12 of the Administrative Rules of Montana.

AUTH: 50-3-102, MCA IMP: 50-3-102, MCA

5. The adoption of these rules is necessary to implement Chapter 396, Laws of 1993, which revises licensing requirements for persons and entities engaging in the business of selling, servicing, or installing certain fire protection equipment. The rules clarify and refine licensing requirements in accordance with the law and will carry into effect the purpose of the new law to protect life and property from uncontrolled fire due to deficient fire protection systems.

6. 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 Anita L. Varone, Administrative Officer, P.O. Box 201417, Helena, Montana, 59620 no later than September 24, 1993.

7. Elizabeth Griffing, Office of the Attorney General, 215 N. Sanders, Helena, Montana 59620 has been designated to preside over and conduct the hearing.

BY: Chris D. Tweeten Chief Deputy Chris D. Tweeten
for JOE MAZUREK, Attorney General Rule Reviewer

Certified to the Secretary of State August 2, 1993

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

In the matter of the proposed amendment of rules related to liability of workers for medical expenses for workers' compensation purposes	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 24.29.1402, PAYMENT OF MEDICAL CLAIMS

TO ALL INTERESTED PERSONS:

1. On September 3, 1993, at 10:00 a.m., a public hearing will be held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey Street, Helena, Montana, to consider the amendment of the rule related to the liability of workers for medical expenses for workers' compensation purposes.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m, August 30, 1993, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Kara Christianson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-1389; TDD (406) 444-5549; fax (406) 444-4140.

2. The Department of Labor and Industry proposes to amend its rule as follows: (new matter underlined, deleted matter interlined)

24.29.1402 PAYMENT OF MEDICAL CLAIMS (1) Payment of medical claims shall be made in accordance with the schedule of nonhospital medical fees and the hospital rates adopted by the department.

(2) ~~No fee or charge shall be payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.~~ The insurer shall make timely payments of all medical claims for which liability is accepted.

(3) Payment of private room charges shall be made only if ordered by the treating physician.

(4) Special nurses shall be paid only if ordered by the treating physician.

(5) For claims arising before July 1, 1993, no fee or charge shall be payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.

(6) For claims arising on or after July 1, 1993, no fee or charge other than the co-payment provided by 39-71-704, MCA (1993) shall be payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer. The decision whether to require a co-payment rests with the insurer, not the medical provider. If the insurer does not require a co-payment by the worker, the provider may not charge or bill the

worker any fee. The insurer must give enough notice to medical providers that it will require co-payments from a worker so that the provider can make arrangements with the worker to collect the co-payment.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-704, MCA

REASON: This rule is being amended to reflect changes enacted by the 1993 Legislature (Ch. 628, L. 1993) relating to co-payment of medical expenses by claimants. Because the co-payment provisions apply only to claims arising on or after July 1, 1993, the rule will differentiate between claims arising before and after that date. The amendments also specify that it is the insurer, not the medical provider, that decides whether co-payments will be required from the claimant, and provides for notification by the insurer to the provider that co-payments are required.

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:

Dennis Zeiler, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., September 10, 1993.

4. The Hearing Unit of the Legal Services Division of the Department has been designated to preside over and conduct the hearing.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: August 2, 1993.

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

In the matter of the proposed amendment of rules related to travel expense reimbursements for workers' compensation purposes	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 24.29.1409, TRAVEL EXPENSE REIMBURSEMENTS

TO ALL INTERESTED PERSONS:

1. On September 3, 1993, at 11:00 a.m., a public hearing will be held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey Street, Helena, Montana, to consider the amendment of the rule related to travel expense reimbursements for workers' compensation purposes.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m, August 30, 1993, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Kara Christianson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-1389; TDD (406) 444-5549; fax (406) 444-4140.

2. The Department of Labor and Industry proposes to amend the rules as follows: (new matter underlined, deleted matter interlined)

Rule 24.29.1409 TRAVEL EXPENSE REIMBURSEMENT (1) For claims arising before July 1, 1989, ~~Reimbursement~~ reimbursement for travel expenses shall be determined as follows:

(a) Personal automobile and private airplane mileage expenses shall be reimbursed at the current rates specified for state employees. Prior authorization from the insurer is required for the use of a private airplane. Total reimbursable automobile miles shall be determined according to the most direct highway route between the injured worker's residence and the provider.

(b) Expenses for eligible meals shall be reimbursed at the meal rates established for state employees.

(c) Actual out-of-pocket receipted lodging expenses incurred by injured workers shall be reimbursed up to the maximum amounts established for state employees. Lodging in those areas specifically designated as high cost cities shall be reimbursed at actual cost. Any claim for receipted or high cost lodging reimbursement must be accompanied by an original receipt from a licensed lodging facility. If the injured worker stays in a non-receiptable facility, or fails to obtain a receipt, the reimbursement is the amount set for state employees for non-receipted lodging.

(d) Miscellaneous transportation expenses, such as taxi fares or parking fees, are reimbursable and must be supported by paid receipts.

(e) Requests for travel reimbursement must be made within a reasonable time following the date(s) the travel was incurred.

(2) For claims arising during the period July 1, 1989, through June 30, 1993, reimbursement for travel expenses shall be determined as follows:

(a) Personal automobile and private airplane mileage expenses shall be reimbursed at the current rates specified for state employees. Prior authorization from the insurer is required for the use of a private airplane. Total reimbursable automobile miles shall be determined according to the most direct highway route between the injured worker's residence and the provider. When the travel coincides in whole or in part with the injured worker's regular travel to or from ~~his~~ the worker's employment, the coincident mileage may be subtracted from the reimbursable mileage. For each calendar month, the first fifty (50) miles of automobile mileage is not reimbursable.

(b) Expenses for eligible meals shall be reimbursed at the meal rates established for state employees.

(c) Actual out-of-pocket receipted lodging expenses incurred by injured workers shall be reimbursed up to the maximum amounts established for state employees. Lodging in those areas specifically designated as high cost cities shall be reimbursed at actual cost. Any claim for receipted or high cost lodging reimbursement must be accompanied by an original receipt from a licensed lodging facility. If the injured worker stays in a non-receiptable facility, or fails to obtain a receipt, the reimbursement is the amount set for state employees for non-receipted lodging.

(d) Miscellaneous transportation expenses, such as taxi fares or parking fees, are reimbursable and must be supported by paid receipts.

(e) Claims for reimbursement of travel expenses must be submitted within 90 days of the date the expenses are incurred, on a form furnished by the insurer.

(3) For claims arising on or after July 1, 1993, travel expenses are not reimbursed unless the travel is at the request of the insurer. Travel is "at the request of the insurer" when the insurer directs the claimant to change treating physician, to attend an independent medical examination, to use a preferred provider, or to be treated by a managed care organization. If travel expenses are to be reimbursed, then reimbursement shall be determined as follows:

(a) Personal automobile and private airplane mileage expenses shall be reimbursed at the current rates specified for state employees. Prior authorization from the insurer is required for the use of a private airplane. Total reimbursable automobile miles shall be determined according to the most direct highway route between the injured worker's residence and the provider. For each calendar month, the first fifty (50) miles of automobile mileage is not reimbursable. In addition,

travel within the community in which the worker resides shall not be reimbursed. For the purposes of this rule, the community in which the worker resides is the town or city served by the post office which serves the worker's residence, regardless of where the worker receives mail.

(b) Expenses for eligible meals shall be reimbursed at the meal rates established for state employees.

(c) Actual out-of-pocket receipted lodging expenses incurred by injured workers shall be reimbursed up to the maximum amounts established for state employees. Lodging in those areas specifically designated as high cost cities shall be reimbursed at actual cost. Any claim for receipted or high cost lodging reimbursement must be accompanied by an original receipt from a licensed lodging facility. If the injured worker stays in a non-receiptable facility, or fails to obtain a receipt, the reimbursement is the amount set for state employees for non-receipted lodging.

(d) Miscellaneous transportation expenses, such as taxi fares or parking fees, are reimbursable and must be supported by paid receipts.

(e) Claims for reimbursement of travel expenses must be submitted within 90 days of the date the expenses are incurred, on a form furnished by the insurer.

~~(2)~~(4)(a) Preauthorized expenses incurred for direct commercial transportation by air or ground, including rental vehicles, shall be reimbursed when no other less costly form of travel is available to the injured worker, or when less costly forms of travel are not suitable to the injured worker's medical condition.

(b) If an injured worker chooses to use commercial transportation when a less costly form of travel suitable to his medical condition is available, reimbursement shall be made according to the rates associated with the least costly form of travel.

~~(3) Claims for reimbursement of travel expenses must be submitted within 90 days of the date the expenses are incurred, on a form furnished by the insurer.~~

~~(4)~~(5) The department shall make available to interested parties the specific information referenced in this rule concerning rates for transportation, meals, and lodging; meal time ranges; and designations of high cost cities. The department shall inform interested parties in a timely manner of all applicable updates to this information.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-704, MCA

REASON: This rule is being amended to reflect changes enacted by the 1993 Legislature (Ch. 628, L. 1993) which amended 39-71-704, MCA to provide for travel reimbursement only when travel is at the request of the insurer. The rule is also amended to make technical corrections, to reflect 1989 legislative authority to make rules regarding travel reimbursements, and to clarify that the "50 mile deductible" provision is not to be applied to claims arising before July 1, 1989. See Lovell v. State Fund, WCC No. 9204-6432 (decided December 31, 1992).

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:

Dennis Zeiler, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., September 10, 1993.

4. The Hearing Unit of the Legal Services Division of the Department has been designated to preside over and conduct the hearing.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: August 2, 1993.

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

In the matter of the proposed amendment of rules related to applicability of rules and statutes in workers' compensation matters	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 24.29.1416, APPLICABILITY OF DATE OF INJURY, DATE OF SERVICE

TO ALL INTERESTED PERSONS:

1. On September 3, 1993, at 1:30 p.m., a public hearing will be held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey Street, Helena, Montana, to consider the amendment of the rule related to the applicability of the date of injury and date of service to rules and statutes for workers' compensation purposes.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m, August 30, 1993, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Kara Christianson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-1389; TDD (406) 444-5549; fax (406) 444-4140.

2. The Department of Labor and Industry proposes to amend the rules as follows: (new matter underlined, deleted matter interlined)

Rule 24.29.1416 APPLICABILITY OF DATE OF INJURY, DATE OF SERVICE (1) Sections of the Workers' Compensation and Occupational Disease Acts and the Administrative Rules of Montana relating to medical payments or medical benefits, including section 39-71-704(1)(c), MCA, and ARM 24.29.1409, apply only to claims for which the date of injury is on or after the effective date of the section in question, except that for all pharmacy services rendered on or after July 1, 199~~1~~3, an insurer is liable only for the purchase of generic-name drugs according to the provisions of section 39-71-~~704(1)~~ 727, MCA, regardless of the date of injury.

(2) The amounts of the following types of payments are determined according to the specific department rates in effect on the date the medical service is provided, regardless of the date of injury: medical fees; hospital charges; and travel reimbursements for mileage, meals, and lodging~~, generic name drugs~~. The rate for a specific generic-name drug is the price customarily charged by the pharmacist for that drug. Department rates (fee schedules) do not apply to preferred providers or managed care organizations to the extent that they are rendering services or providing goods to workers who are covered by insurers with which they have a contract.

AUTH: Sec. 39-71-203 MCA IMP: Secs. 39-71-704, 39-71-727, and 39-71-1102, MCA

REASON: This rule is being amended to correct a statutory citation in subpart (1) of the rule, and to clarify that there is not a separate fee schedule for the cost of prescription drugs. Recent enactments by the 1993 Legislature (Ch. 628, L. 1993) provide the fee schedules do not apply to preferred providers or to managed care organizations, and the rule is also being amended to reflect that change.

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:

Dennis Zeiler, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., September 10, 1993.

4. The Hearing Unit of the Legal Services Division of the Department has been designated to preside over and conduct the hearing.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: August 2, 1993.

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

In the matter of the proposed amendment of rules related to selection of treating physician for workers' compensation purposes	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 24.29.1504, DEFINITIONS; 24.29.1511, SELECTION OF PHYSICIAN; AND ADOPTION OF NEW RULE I

TO ALL INTERESTED PERSONS:

1. On September 3, 1993, at 2:30 p.m., a public hearing will be held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey Street, Helena, Montana, to consider the amendment of rules related to selection of the treating physician for workers' compensation purposes.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m, August 30, 1993, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Kara Christianson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-1389; TDD (406) 444-5549; fax (406) 444-4140.

2. The Department of Labor and Industry proposes to amend the rules as follows: (new matter underlined, deleted matter interlined)

Rule 24.29.1504 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) through (7) remain the same.

(8) "Treating physician" ~~means the physician selected in accordance with~~ has the meaning provided by ARM 24.29.1511 for claims arising before July 1, 1993, and the meaning provided by 39-71-116(30), MCA (1993) for claims arising on or after July 1, 1993.

(9) remains the same.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-704, MCA

REASON: This rule is being amended to reflect enactment of Ch. 628, L. 1993, which defines the term "treating physician" and provides a statutory process for selection and changes of the initial treating physician for claims arising on or after July 1, 1993. The amendment is needed to accommodate the different substantive rights concerning the worker's choice of treating physician based upon the date on which the claim arose.

Rule 24.29.1511 SELECTION OF PHYSICIAN FOR CLAIMS ARISING BEFORE JULY 1, 1993 (1) Although section 33-22-111, MCA, provides freedom of choice in selection of a physician, workers' compensation and occupational disease case law also recognizes that a worker must select a single physician who is responsible for the overall medical management of the workers' condition. That physician is known as the treating physician. For claims arising before July 1, 1993, the worker may select any person who is defined as a physician by 33-22-111, MCA as that worker's initial "treating physician".

(2) and (3) remain the same.

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-704, MCA

REASON: This rule is being amended to reflect that it applies only to claims arising on or before July 1, 1993, in response to substantive 1993 legislative changes in the rights of workers to select a treating physician (Ch. 628, L. 1993). NEW RULE I is being proposed for claims arising on or after July 1, 1993, which are subject to the provisions of Chapter 628.

3. The Department proposes to adopt a new rule as follows:

NEW RULE I SELECTION OF PHYSICIAN FOR CLAIMS ARISING ON OR AFTER JULY 1, 1993 (1) For claims arising on or after July 1, 1993, "treating physician" has the meaning provided by 39-71-116(30), MCA (1993).

(2) The worker has a duty to select a treating physician. Initial treatment in an emergency room or urgent care facility is not selection of a treating physician. The selection of a treating physician must be made as soon as practicable. A worker may not avoid selection of a treating physician by repeatedly seeking care in an emergency room or urgent care facility. The worker should select a treating physician with due consideration for the type of injury or occupational disease suffered, as well as practical considerations such as the proximity and the availability of the physician to the worker.

(3) Selection of the treating physician, referrals made by the treating physician, and changes of treating physician must all be made in accordance with the provisions of 39-71-1101, MCA (1993).

AUTH: Sec. 39-71-203, MCA IMP: Sec. 39-71-1101, MCA

REASON: This rule is being proposed to reflect enactment of Ch. 628, L. 1993, which defines the term "treating physician" and provides a statutory process for selection and change of the initial treating physician. This new rule is needed to distinguish the procedure which applies to claims arising on or after July 1, 1993, from the procedure which applies to claims arising before July 1, 1993, and is described in ARM 24.29.1511. ARM 24.29.1511 is also being amended to specify that it applies only to claims arising before July 1, 1993.

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

Dennis Zeiler, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., September 10, 1993.

5. The Hearing Unit of the Legal Services Division of the Department has been designated to preside over and conduct the hearing.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: August 2, 1993.

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

In the matter of the adoption of a new rule pertaining to the assessment of fire protection fees for private lands under direct state fire protection.	)))))	NOTICE OF PUBLIC HEARINGS

TO: All Interested Persons

1. On September 13, 15 and 16, 1993, the Department of State Lands and Board of Land Commissioners will hold hearings to consider adoption of a new rule regulating the assessment of fire protection fees on owners of classified forest land, or of the timber located on such land, for which the Department of State Lands has wildland fire protection responsibility. The hearings will be held at the following locations, on the following dates, and at the following times:

- Missoula at the Missoula Rural Fire Station No. 1, 2521 South Avenue West, Missoula, on September 13, 1993, at 7:00 p.m.

- Helena at the West Helena Valley Main Fire Station, 5460 North Montana Ave., Helena, on September 15, 1993, at 7:00 p.m.

- Bozeman at the City Center Motor Inn, Hyalite Room, 507 West Main, Bozeman, on September 16, 1993, at 7:00 p.m.

2. The proposed new rule provides as follows:

RULE I FORMULA TO SET LANDOWNER ASSESSMENTS FOR FIRE PROTECTION

(1) On or before August 1, 1994, the Department shall, pursuant to 76-13-207, MCA, set the annual fire assessment fee due from landowners pursuant to Title 76, Chapter 13, parts 1 and 2, MCA. The total of all statewide landowner assessments must be as equal as administratively possible to but no greater than one-third of the amount appropriated by the legislature to fund the protection costs.

(2) The individual assessments must be established using the following criteria:

(a) Each person who is responsible for fire protection pursuant to 76-13-108 and 76-13-201, MCA, and for whom the Department provides fire protection, must be assessed a per capita landowner fee. The total per capita landowner assessments statewide from persons who own 20 acres or less of land for which the Department provides protection must be as close as administratively possible to 50% of the total private landowner assessments.

(b) A person who owns more than 20 acres of land for which the Department provides protection shall, in addition to the fee assessed pursuant to (a), pay a per acre fee for each whole acre that the person owns in excess of 20 acres. The total of all acreage assessments statewide from persons who own more than 20 acres must be as close as administratively

possible to 50% of the total statewide assessment.

(3)(a) Except as provided in (3)(b), the per capita and per acre fees set for 1994 must remain in effect for subsequent years.

(b) The Department shall reset the per capita and per acre fees whenever:

(i) it is necessary to reset fees to obtain the amount appropriated by the legislature; or

(ii) the fees assessed statewide pursuant to (2)(a) on persons who own 20 acres or less of land for which the Department provides protection obtain more than 55% or less than 45% of the total amount appropriated by the legislature.

(c) Whenever the Department resets the fees pursuant to (3)(b), it shall do so in accordance with (2) and the fees must remain in effect until either of the conditions in (3)(b) is met. AUTH: 76-13-109, MCA, IMP: 76-13-105, 76-13-201, 76-13-207, MCA.

3. The proposed rule is necessary to allow the Department of State Lands to apportion fire assessments between the per acre and the per landowner assessments. Assessments are necessary to fund a portion of the Department's wildland fire pre-suppression program, are required by 76-13-201 and 76-13-207, MCA, and are authorized by 76-13-705, MCA.

4. Interested persons may present their data, views, or arguments either orally or in writing at the hearings. Written data, views, or arguments may also be submitted to Jeff Jahnke, Department of State Lands, Forestry Division, 2705 Spurgin Road, Missoula, Montana 59801, no later than September 21, 1993. To guarantee consideration, written data, views, or arguments must be postmarked by September 21, 1993.

5. The following Department of State Lands personnel have been designated to preside over and conduct the hearings:

- Jeff Jahnke, Deputy Administrator, Forestry Division
- Paul Klug, Chief, Service Forestry Bureau

Reviewed by:

John F. North
Chief Legal Counsel

Arthur R. Clinch
Commissioner

Certified to the Secretary of State August 2, 1993.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the Matter of the Proposed Adoption of New Rules Regarding Commissioning of Notary Publics	)))	NOTICE OF PUBLIC HEARING

To All Interested Persons.

1. On September 1, 1993 a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room at room 225 of the Capitol Building at Helena, Montana, to consider the adoption of new rules regarding the commissioning of Notary Publics.

2. The proposed new rules provide as follows:

RULE I APPLICATION FOR A COMMISSION AS A NOTARY PUBLIC (1) A person seeking a commission as a notary public shall make an application on a form prescribed by the secretary of state which contains the following information:

(a) Name of the applicant;
(b) Applicant's address and phone number;
(c) Name of employer;
(d) Employer's address and phone number;
(e) Applicant's social security number;
(f) Date of birth;
(g) The date of expiration of the applicant's current notary commission (if applicable); and
(h) Name under which previous commission was issued if different than the name used on the application.

(2) The application must state if the applicant:

(a) has been a resident of the state of Montana for over one year;
(b) is a citizen of the United States;
(c) is at least 18 years old;
(d) has been convicted of a felony; and
(e) has had a notary commission or bond denied, revoked or restricted in any state.

(3) The applicant must affirm under oath that the information on the application is true and correct.

AUTH: 2-4-201, MCA. IMP: 1-5-405, MCA.

RULE II APPLICATION FEE (1) The applicant shall submit a $20 non-refundable application fee.

AUTH: 1-5-408, MCA. IMP: 1-5-408, MCA.

RULE III NOTARY BOND (1) The applicant shall submit with the application and fee, a bond from an approved bonding company in the amount of $5000 for the duration of the period of the notary commission. The bonding company shall notify the secretary of state's office if the bond is canceled or otherwise not honored.

AUTH: 2-4-201, MCA. IMP: 1-5-405, MCA

RULE IV CANCELLATION OF COMMISSION (1) If the secretary of state receives information or has reason to believe a notary public has engaged in activities that constitute just cause to revoke a commission of a notarial officer, then the secretary of state may revoke the commission of a notary public following the procedures for contested cases found in the Montana Administrative Procedure Act.

(2) If the secretary of state receives official notice of the revocation of a notary bond, conviction of a felony or a change of residence to outside the state of Montana of a notary public, then the office shall cancel the commission upon giving the notary public 10 days notice.

AUTH: 21-4-201, MCA. IMP: 1-5-404, MCA.

3. These rules are being adopted to implement SB 84, passed by the 53rd Legislative Session. Rule I is necessary to identify the information on the application form submitted to the Secretary of State's office. Rule II identifies the amount of the application fee. Rule III identifies that the bond must be submitted with the application and the bonding company must notify the Secretary of State's office if the bond is canceled. Rule IV identifies the procedure for cancellation of a notary public commission.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Joe Kerwin, Election Bureau, Secretary of State's office, State Capitol, Room 225, Helena, Montana 59620, and must be received no later than September 9, 1993.

5. Joe Kerwin, address given in paragraph 4 above, has been designated to preside over and conduct the hearing.

MIKE COONEY
Secretary of State

Garth Jackson, Rule Reviewer

Certified August 2, 1993

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the Matter of the Proposed Adoption of New Rules Regarding Fees for Limited Liability Companies and amending the fees Charged for Priority Handling of Documents.	))))))	NOTICE OF PUBLIC HEARING

To All Interested Persons.

1. On September 1, 1993 a public hearing will be held at 11:00 a.m. in the Secretary of State's Office Conference Room at room 225 of the Capitol Building at Helena, Montana, to consider the adoption of new rules regarding the fees for limited liability companies and amendments for priority and fax filing fees.

2. The proposed new rules provide as follows:

NEW RULE I. FEES FOR FILING DOCUMENTS - LIMITED LIABILITY COMPANIES The secretary of state shall charge and collect for:

(1) filing articles of organization, $20.00.

(2) filing articles of correction of an original document, $15.00;

(3) filing articles of amendment, $15.00;

(4) filing restated articles of organization, $15.00;

(5) filing articles of merger, $20.00;

(6) filing an application to reserve a limited liability company name, $10.00;

(7) filing a notice of transfer of a reserved limited liability company name, $5.00;

(8) filing a statement of change of address of registered office or change of registered agent, or both, $5.00;

(9) filing articles of revocation of voluntary dissolution proceedings, $20.00;

(10) filing articles of dissolution, $15.00;

(11) filing an application of a foreign limited liability company for a certificate of authority to transact business in this state and issuing a certificate of authority, $20.00;

(12) filing an application of a foreign limited liability company for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, $15.00;

(13) filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, $20.00;

(14) filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, $15.00;

(15) filing an annual report within allotted time, $10.00;

(16) filing an annual report after the April 15 statutory deadline but within 140 days after April 15, $20.00;

(17) filing an annual report after 140 days after statutory deadline, $30.00;

(18) filing any other statement or report except an annual report, of a domestic or foreign limited liability company $15.00;

(19) filing a statement of change, changing only the business address of the registered agent, $5.00 each limited liability company;

(20) issuing a certificate of existence for a domestic limited liability company or certificate of authorization for foreign limited liability company $5.00;

(21) issuing a certificate of fact, $15.00.

(22) for furnishing a computerized printout of business information, $1.00.

(23) Filing an application for reinstatement of a involuntary dissolved limited liability company, $35.00 plus $30.00 for every year of delinquent annual reports.

Auth. 35-8-211, IMP. 35-8-104, 35-8-105, 35-8-202, 35-8-205, 35-8-208, 35-8-211, 35-8-906, 35-8-907, 35-8-1003, 35-8-1005, 35-8-1006, 35-8-1010, 35-8-1201, MCA

44.5.104 MISCELLANEOUS CHARGES - PROFIT AND NONPROFIT CORPORATIONS AND LIMITED LIABILITY COMPANIES The secretary of state shall charge and collect:

(1) for furnishing a certified copy of any document, instrument or paper relating to a limited liability companies profit or nonprofit corporation, 50 cents per page and $2.00 for the certification;

(2) and (3) remain the same;

(4) filing a document transmitted by facsimile machine, or submitted for priority handling, ~~$10.00~~ $20.00;

~~(5) priority handling for filing foreign or domestic profit or nonprofit corporations, $10.00;~~

~~(6) priority handling for all other documents, $5.00.~~

(Auth: Sec. 35-1-1307, 35-2-1107, 38-8-211 MCA; IMP Sec. 35-1-1206, 35-2-1003, 35-8-207, 35-8-211 MCA.)

3. These rules are being adopted to implement SB 146, passed by the 53rd Legislative Session. The fees reflect costs of filing and handling documents related to limited liability companies. Rule 44.5.104, ARM is being amended to reflect the cost of priority handling of LLC documents. It is also being amended to reflect higher costs of filing priority documents.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Garth Jacobson Secretary of State's office, State Capitol, Room 225, Helena, Montana 59620, and must be received no later than September 9, 1993.

5. Garth Jacobson at the address given in paragraph 4 above, has been designated to preside over and conduct the hearing.

5. Garth Jacobson at the address given in paragraph 4 above, has been designated to preside over and conduct the hearing.

MIKE COONEY
Secretary of State

Garth Jacobson, Rule Reviewer

Certified August 2, 1993.

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

In the matter of the amendment of 46.12.602, 46.12.605 and 46.12.606 pertaining to medicaid dental services	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.602, 46.12.605 AND 46.12.606 PERTAINING TO MEDICAID DENTAL SERVICES

TO: All Interested Persons

1. On September 1, 1993, at 11:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.602, 46.12.605 and 46.12.606 pertaining to medicaid dental records.

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

46.12.602 DENTAL SERVICES, REQUIREMENTS Subsection (1) remains the same.

(2) Medicaid reimbursement for dental care is limited to services ~~specified~~ as provided in ARM 46.12.606 ~~or as otherwise provided for under ARM 46.12.605(13)(r)~~.

Subsection (3) and (3)(a) remain the same.

(b) ~~must be listed~~ a covered service as provided in ARM 46.12.606 ~~or as otherwise provided for under ARM 46.12.605(13)(r)~~.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.605 DENTAL SERVICES, REIMBURSEMENT (1) The department will pay the lowest of the following for dental, denturist and orthodontic services covered by the medicaid program:

Subsection (1)(a) remains the same.

(b) the amount allowable for the same service under medicare as stated by a medicare explanation of benefits; or

(c) the department's fee schedules contained in ~~this rule, or~~ sections G and H dated July 1993, of the department's dental services provider manual and in section F, dated July 1993, of the department's denturist services provider manual published by the department.

(2) For the purpose of specifying fees for reimbursement of covered dental and orthodontic services, the department incorporates by reference sections G and H, dated July 1993, of the department's dental service provider manual published by the department.

(a) dental and orthodontic services that are designated in the manual as being reimbursed through the report method, "BR", or are listed in the manual under the fee column are reimbursed by the medicaid program at 65.2% of the billed charge.

(~~d~~3) Dental and orthodontic services not listed in ~~ARM 46.12.606~~ sections G and H of the dental services provider manual that are determined to be medically necessary by the department's designated review organization after an EPSDT screen will be reimbursed through the "by report" method which is 65.2% of the billed charges~~.~~;

~~(2) Effective July 1, 1990, the reimbursement rates listed will be increased by four percent (4%). All items paid by report will remain at the rate indicated.~~

~~(3) Preventive and diagnostic services include:~~

~~(a) 00120 - examination and execution of forms - 10.30;~~

~~(b) 00210 - complete intra-oral radiograms, minimum 14 films - 28.60;~~

~~(c) 00220 - single periapical radiograms, first film - 5.72;~~

~~(d) 00230 - each additional film, periapical - 2.86;~~

~~(e) 00272 - bite-wing radiograms, 2 films - 10.30;~~

~~(f) 00240 - intra-oral occlusal maxillary or mandibular - 7.15;~~

~~(g) 00340 - cephalometric radiograms or panorex, diagnostic only - 28.60;~~

~~(h) 00250 - extra oral radiograms, maxillary or mandibular lateral film - 21.45;~~

~~(i) allowable charges for x-rays in a single visit shall not exceed the allowable charges for a full mouth x-ray;~~

~~(j) 09310 - consultation fee (necessity to be shown) per session - 14.30;~~

~~(k) 09420 - hospital calls - 21.45;~~

~~(l) 09410 - house calls and nursing home calls - 10.01;~~

~~(m) 00460 - vitality tests one tooth or per quadrant - 8.54;~~

~~(n) 09110 - palliative (emergency treatment of dental pain; includes only minor procedures, i.e., temporary fillings, incision and drainage, topical medicaments, irrigation, pericoronitis, etc.) - 8.54;~~

~~(o) 01202 - stannus flouride 8%, one treatment, including prophylaxis - 24.31;~~

~~(p) prophylaxis, including routine scaling and polishing/adults (code 01110) and children (code 01120) - 18.59;~~

~~(4) Amalgam restorations include:~~

~~(a) 02110 - deciduous, one surface - 16.26;~~

~~(b) 02120 - deciduous, two surface - 26.61;~~

~~(c) 02130 - deciduous, three surface - 37.17;~~

~~(d) 02131 - each additional surface, deciduous - 3.63;~~

~~(e) 02140 - one surface, permanent - 16.26;~~

~~(f) 02150 - two surface, permanent - 26.61;~~

~~(g) 02160 - three surface, permanent - 37.17;~~

~~(h) 0634 - each additional surface (includes cusp restoration, veneer, groove extension, etc.) permanent - 6.34;~~

~~(i) 02190 - pins for retention (maximum 2) each pin - 4.29;~~

~~(j) D1351 - sealants, per tooth - through the by report method which is 65.2% of the billed charges.~~

~~(5) Silicates and fiberglass restorations include:~~

~~(a) 02210 - silicate - 14.30 per surface;~~

~~(b) 02330 - composite resin (addent, dakor, adaptic, concise, prestige, etc.) - 25.34 per surface;~~

~~(c) composite fillings for posterior teeth will be paid at the rate of a similar amalgam restoration except for buccal surfaces.~~

~~(6) Additional operative procedures include:~~

~~(a) Z0060 - immediate treatment for fractured anterior permanent tooth including pulp testing, pulp capping and use of metal band or crown form with sedative filling - 22.88;~~

~~(b) 02940 - treatment filling (emergency) - 7.15;~~

~~(c) 02910 - recement inlay - 7.15;~~

~~(d) 03220 - pulpotomy including pulp capping - when authorized - 25.34;~~

~~(e) No extra fee for pulp capping or bases.~~

~~(7) Crowns and bridges include:~~

~~(a) 02710 - polycarbonate (ion type) with polycubonate acrylic liner - 52.80.~~

~~(8) Pedodontics, certain crowns, and amalgam restorations which are paid the same as permanent teeth. The covered services are:~~

~~(a) 02930 - chrome crown - 52.80;~~

~~(b) Z0091 - immediate treatment of fractured anterior permanent tooth, includes pulp testing, pulp capping and use of metal band or crown form with sedative filling - 22.88;~~

~~(c) 01510 - chrome crown and loop spacer or other types (space maintainer) - 57.20;~~

~~(d) 01515 - bilateral space maintainer or lingual arch - 90.75;~~

~~(e) Z0092 - acrylic denture, without clasps, supplying 1 to 4 anterior teeth (flipper) - 71.50;~~

~~(f) Z2093 - each additional tooth, permanent on acrylic denture (flipper) - 7.15;~~

~~(g) Z0095 - stainless steel band - 13.20.~~

~~(9) Prosthodontics include:~~

~~(a) complete maxillary denture, acrylic, plus necessary adjustment - 369.60 when provided by a dentist (code 05110) or 184.80 when provided by a denturist (code Z0110);~~

~~(b) complete mandibular denture, acrylic, plus necessary adjustment - 369.60 when provided by a dentist (code 05120) or 184.80 when provided by a denturist (code Z0111);~~

~~(c) acrylic maxillary partial denture with cast chrome clasps and rests replacing at least 4 posterior teeth plus~~

~~adjustments -- 286.00 when provided by a dentist (code 05211) or 146.00 when provided by a denturist (code Z0012);~~

~~(d) acrylic mandibular partial denture with cast chrome clasps and rests replacing at least 4 posterior teeth plus adjustments -- 286.00 when provided by a dentist (code 05212) or 146.00 when provided by a denturist (code Z0013);~~

~~(e) maxillary cast chrome partial denture, acrylic saddles, clasps and rests, replacing at least one anterior tooth and any number of posterior teeth, plus adjustments -- 357.50 when provided by a dentist (code 05213) or 178.75 when provided by a denturist (code Z0114);~~

~~(f) mandibular cast chrome partial denture, acrylic saddles, clasps and rests replacing at least one anterior tooth and any number of posterior teeth plus adjustments -- 357.50 when provided by a dentist (code 05214) or 178.75 when provided by a denturist (code Z0115);~~

~~(g) replacement for maxillary dentures of between 5 and 10 years old -- 121.55 when provided by a dentist (code 05710) or 60.78 when provided by a denturist (code Z0125);~~

~~(h) replacement for mandibular dentures of between 5 and 10 years old -- 121.55 when provided by a dentist (code 05711) or 60.78 when provided by a denturist (code Z0126).~~

~~(10) Relines and repairs include:~~

~~(a) cured resin reline, lower -- 95.10 when provided by a dentist (code 05751) or 47.55 when provided by a denturist (code Z0116);~~

~~(b) cured resin reline, upper -- 95.10 when provided by a dentist (code 05760) or 47.55 when provided by a denturist (code Z0117);~~

~~(c) broken denture repair, no teeth, metal involved -- 42.24 when provided by a dentist (code 05610) or 21.12 when provided by a denturist (code Z0118);~~

~~(d) denture adjustment -- only where dentist or denturist did not make denture -- 8.58 when provided by a dentist (code 05410) or 4.29 when provided by a denturist (code Z0119);~~

~~(e) replacing broken tooth on denture, first tooth -- 26.40 when provided by a dentist (code 05520) or 13.20 when provided by a denturist (code Z0120);~~

~~(f) each additional tooth after procedure (e) and (g) -- 7.15 when provided by a dentist (code 05640) or 3.58 when provided by a denturist (code Z0121);~~

~~(g) adding tooth to partial to replace extracted natural teeth, first tooth -- 35.75 when provided by a dentist (code 05650) or 17.88 when provided by a denturist (code Z0122);~~

~~(h) replacing clasp, new clasp (dentists -- code 05680; denturists -- code Z0123) -- 50.05;~~

~~(i) repairing (welding or soldering) palatal bars, lingual bars, metal connectors, etc. on chrome partials -- 92.95 when provided by a dentist (code 05620) or 46.48 when provided by a denturist (code Z0124);~~

~~(j) jumping of maxillary denture - 121.55 when provided by a dentist (code 05710) or 60.78 when provided by a denturist (code Z0125);~~

~~(k) jumping of mandibular denture - 121.55 when provided by a dentist (code 05711) or 60.78 when provided by a denturist (code Z0126);~~

~~(l) placing name on new, full or partial dentures - 11.00 when provided by a dentist (code Z0096) or 5.50 when provided by a denturist (code Z0127).~~

~~(11) Pontics and abutment teeth include:~~

~~(a) (code 06210) - steele's facing type - 357.50 for complete bridge and abutment teeth;~~

~~(b) (code 06240) - ceramic, pontic and abutment teeth - 357.50 for complete bridge and abutment teeth;~~

~~(c) (code 06250) - cured acrylic, laboratory processed, veneer, pontic and crowned abutment teeth (complete bridge) - 357.50 for complete bridge and abutment teeth.~~

~~(12) Repairs include:~~

~~(a) 06930 - recement bridge - 14.30;~~

~~(b) 02920 - recement crown - 7.15;~~

~~(c) 06890 - porcelain facing - 28.60;~~

~~(d) Z0070 - replace broken steele's facing, post intact - 24.20;~~

~~(e) 029560 - steel post or dowel with amalgum buildup - 28.60;~~

~~(f) Z0072 - replace broken steele's facing, post broken - 35.75.~~

~~(13) Oral surgery includes:~~

~~(a) 07520 - I and D of abcess extra oral - 55.00;~~

~~(b) 07110 - removal of tooth (includes shaping of ridge bone) - 17.40;~~

~~(c) 07220 - surgical removal of tooth, soft tissue impaction - 35.75;~~

~~(d) 07230 - surgical removal of tooth, partial bone impaction - 64.35;~~

~~(e) 07240 - surgical removal of tooth, complete bone impaction - 107.25;~~

~~(f) 07320 - alveolectomy, not in conjection with extractions, per quadrant - 35.75;~~

~~(g) 07970 - excision of hyperplastic tissue/each quad - 35.75;~~

~~(h) 07250 - removal of retained, residual roots, foreign bodies - in bony tissue - 35.75;~~

~~(i) 07451 - removal of cyst - 55.00;~~

~~(j) 07260 - removal of retained, residual roots, foreign bodies in maxillary sinus - 107.25;~~

~~(k) 07960 - frenectomy - 50.05;~~

~~(l) 07470 - removal of exostosis torus, maxillary or mandibular - 71.50;~~

~~(m) 07285 - biopsy, including pathology lab charges - 28.60;~~

~~(n) 07610 - maxilla, open reduction - 350.93;~~
~~(o) 07620 - fracture, simple, maxilla, treatment and care - 278.85;~~
~~(p) 07630 - mandible, open reduction - 480.48;~~
~~(q) 07640 - fracture, simple, mandible, treatment and care - 278.85;~~
~~(r) emergency oral surgery procedures not listed in this rule will be reimbursed in accordance with ARM 46.12.2008, when authorized by the designated review organization.~~
~~(14) Endodontics include:~~
~~(a) 03310 - root canal chemotherapy and mechanical preparation, sealing and filing - 123.20;~~
~~(b) 03320 - root canal, each additional root up to two - 33.00;~~
~~(c) 20097 - root canal and apicoectomy combined operation - 128.70;~~
~~(d) 03410 - apicoectomy not in conjunction with root canal - 64.35.~~
~~(15) Periodontal services includes:~~
~~(a) 04910 - periodontal prophylaxis per hour - 18.59;~~
~~(b) 04210 - gingival resection - 35.75 per quadrant;~~

(4) For the purpose of specifying fees for reimbursement of covered denturist services, the department incorporates by reference section F, dated July 1993, of the department's denturist service provider manual.

(5) No extra fee for pulp capping or bases.

(6) Payment for denture adjustment will be made only to a dentist or denturist who did not make the dentures.

(7) Medical procedures which are within the scope of practice for licensed dentists, but which are not listed in sections G and H of the dental services provider manual will be reimbursed in accordance with ARM 46.12.2003.

(~~16~~8) A ~~D~~dentist examining more than one medicaid recipient in a long-term care facility on the same day shall be allowed payment for one nursing home call in addition to ~~over~~ the examination fees. Examination is considered a recorded evaluation.

(9) The denturist service provider manual and the dental services provider manual are available from the Department of Social and Rehabilitation Services, Medicaid Services Division, P.O. Box 4210, Helena, MT 59604-4210.

~~(17) Reimbursement for orthodontia shall be made in accordance with the fees in effect on February 28, 1990 plus two percent.~~

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.606 DENTAL SERVICES, COVERED PROCEDURES ~~(1) The following dental services are covered by the program:~~
~~(a) Diagnostic and prevention:~~
~~(i) covered services:~~
~~(A) simple extractions;~~
~~(B) full mouth x-rays, or panorex, or cephalometric radiograms, the foregoing allowed at three year intervals;~~

~~(C) annual bite-wing x-rays;~~

~~(D) single periapical x-rays when required to diagnose a condition other than dental caries. The need for x-rays must be indicated on the claim;~~

~~(E) intra-oral occlusal maxillary or mandibular x-rays when required to diagnose a condition other than dental caries. The need for x-rays must be indicated on the claim;~~

~~(F) extra-oral, panoramic type maxillary or mandibular lateral x-rays when required to diagnose a condition other than dental caries. The need for x-rays must be indicated on the claim;~~

~~(G) examinations at twelve month intervals;~~

~~(H) prophylaxis and fluoride treatments at six month intervals;~~

~~(I) full mouth x-rays on edentulous patients prior authorized by the designated peer review organization;~~

~~(J) house calls;~~

~~(K) vitality tests;~~

~~(L) consultation, written justification for consultation must be provided;~~

~~(M) hospital and nursing home calls; and~~

~~(N) palliative emergency treatment of dental pain, including minor procedures, temporary fillings, incisions and drainage, topical medicaments, irrigation for pericoronitis.~~

~~(b) restoration of carious and fractural teeth:~~

~~(i) covered services:~~

~~(A) amalgam restorations on deciduous and permanent teeth;~~

~~(B) retention pins, up to 2 per tooth;~~

~~(C) silicate restorations;~~

~~(D) composite and resin restorations;~~

~~(E) acrylic jacket for immediate treatment of fractured anterior permanent tooth, including pulp testing, pulp capping, and use of metal band or crown form with sedative filling authorized by the designated review organization;~~

~~(F) treatment fillings;~~

~~(G) recementing of inlays;~~

~~(H) pulpotomys prior authorized by the designated review organization; and~~

~~(I) sealants.~~

~~(c) oral surgery:~~

~~(i) covered services:~~

~~(A) extensive oral surgery prior authorized by the designated review organization:~~

~~(B) hospital dental treatment prior authorized by the designated review organization;~~

~~(C) I and D of extra-oral abscess;~~

~~(D) removal of tooth including shaping of ridge bone;~~

~~(E) surgical removal of tooth, soft tissue impaction;~~

~~(F) surgical removal of tooth, partial bone impaction;~~

~~(G) surgical removal of tooth, complete bone impaction;~~

~~(H) alveolectomy, not in conjunction with extractions;~~

~~(I) excision of hyperplastic tissue necessary due to medication reaction;~~

~~(J) removal of retained or residual roots and foreign bodies in bony tissue;~~

~~(K) removal of cyst;~~

~~(L) removal of retained or residual roots and foreign bodies in maxillary sinus;~~

~~(M) frenectomy;~~

~~(N) removal of exostosis, torus, maxillary or mandibular;~~

~~(O) biopsy;~~

~~(P) maxilla, open reduction;~~

~~(Q) fracture, simple, maxilla, treatment and care;~~

~~(R) mandible, open reduction;~~

~~(S) fracture, simple, mandible, treatment and care; and~~

~~(T) oral surgery procedures not listed in this rule if they are:~~

~~(I) listed in ARM 46.12.2003;~~

~~(II) performed by a dentist;~~

~~(III) provided in a medical emergency arising out of trauma; and~~

~~(IV) authorized by the designated review organization.~~

~~(d) endodontic services:~~

~~(i) general requirements:~~

~~(A) nonemergency endodontics must be prior authorized by the designated review organization.~~

~~(ii) covered services:~~

~~(A) root canal treatment on upper or lower six anterior teeth including chemotherapy and mechanical preparation, and filling;~~

~~(B) root canal treatment on posterior teeth except third molars including chemotherapy and mechanical preparation, and filling, maximum of three roots per tooth;~~

~~(C) emergency root canals and apicoectomies justified by means of finished x-ray's attached to claims;~~

~~(D) root canal and apicoectomy combined operation; and~~

~~(E) apicoectomy not in conjunction with root canal.~~

~~(e) dentures or the relining or jumping of dentures:~~

~~(i) general requirements:~~

~~(A) services described in subsections (1)(e)(ii)(A) through (F), (J), (K), (M), (N), (1)(e)(iii)(A), (D) and (G) must be prior authorized by the designated review organization;~~

~~(B) services must be provided by a dentist or prescribed by a dentist and provided by a licensed denturist;~~

~~(C) requests for full prosthesis must show the approximate date of the most recent extractions, and/or the age and type of the present prosthesis.~~

~~(ii) covered services:~~

~~(A) replacement of lost dentures if the loss is documented by a caseworker, the treating dentist or the denturist providing the dentures;~~

~~(B) cured and resin relines, upper and lower, on immediate dentures no earlier than three months after placement of denture;~~

~~(C) cured and resin relines, upper and lower, at three year intervals;~~

~~(D) duplicate (jump) upper and/or lower complete denture or partial dentures prior authorized by the peer review organization;~~

~~(E) complete maxillary denture, acrylic, plus necessary adjustment;~~

~~(F) complete mandibular denture, acrylic, plus necessary adjustment;~~

~~(G) broken denture repair, no teeth or metal involved;~~

~~(H) denture adjustment as a separate service when dentist or denturist did not make dentures;~~

~~(I) replacing broken teeth on denture;~~

~~(J) jumps or replacement for dentures that are between five (5) and ten (10) years old;~~

~~(K) replacement of dentures over ten years old when the treating dentist documents the need for replacement;~~

~~(L) replacement of partial dentures that are over five (5) years old with full dentures; and~~

~~(M) placing name on a new, full or partial dentures and existing dentures for a nursing home resident.~~

~~(iii) the limits on coverage of denture services may be exceeded when the designated review organization determines that the existing dentures are causing the recipient serious physical health problems.~~

~~(f) partial dentures:~~

~~(i) general requirements:~~

~~(A) services must be prior authorized by the designated review organization; and~~

~~(B) services must be provided by a dentist or prescribed by a dentist and provided by a licensed denturist.~~

~~(ii) covered services:~~

~~(A) acrylic upper or lower partial denture with two chrome or gold clasps and reste and adjustments, to replace a minimum of 4 posterior teeth or any number of anterior teeth;~~

~~(B) maxillary or mandibular cast chrome partial denture replacing any number of posterior teeth but must include one or more anterior teeth and adjustments;~~

~~(C) acrylic denture, without clasps, supplying 1 to 4 anterior teeth (flipper);~~

~~(D) additional teeth, permanent on acrylic denture (flipper);~~

~~(E) adding teeth to partial to replace extracted natural teeth;~~

~~(F) replacing clasp, new clasp; and~~

~~(G) repairing (welding or soldering) palatal bars, lingual bars, metal connectors, etc. on chrome partials.~~

~~(g) periodontal services:~~

~~(i) general requirements:~~

~~(A) services must be prior authorized by the designated review organization.~~

~~(ii) covered services:~~

~~(A) deep scaling and curettage up to four one hour sessions for disabled and up to two one hour sessions for non-disabled; and~~

~~(B) gingival resection for the treatment of gingival hyperplasia due to medication reactions. Treatment shall cover posterior and anterior teeth on uppers and lowers (sextants).~~

~~(h) crowns and fixed bridges:~~

~~(i) general requirements:~~

~~(A) services must be prior authorized by the designated review organization.~~

~~(ii) covered services:~~

~~(A) polycarbonate (ion type) with acrylic liner crowns for the upper and lower 6 anterior teeth;~~

~~(B) chrome crowns on posterior teeth not restorable by conventional filling material;~~

~~(C) fixed bridges on anterior teeth only;~~

~~(D) ceramic bridges replacing no more than 2 teeth;~~

~~(E) ceramic pontics;~~

~~(F) steele's facing type pontics; and~~

~~(G) cured acrylic, laboratory processed, veneer pontics.~~

~~(i) pedodontic services:~~

~~(i) covered services:~~

~~(A) spacers and crowns;~~

~~(B) amalgam restorations;~~

~~(C) chrome crown prior authorized by the designated peer review organization;~~

~~(D) immediate treatment of fractured anterior permanent tooth, including pulp testing, pulp capping and use of metal band or crown form with sedative filling;~~

~~(E) chrome crown and loop spacer or other types of space maintainers prior authorized by the designated review organization;~~

~~(F) bilateral space maintainer or lingual arch, prior authorized by the designated peer review organization, at least one tooth must be missing on each side of the mouth; and~~

~~(G) stainless steel band.~~

~~(j) orthodontia for recipients age twenty-one and older who have maxillofacial anomalies that must be corrected surgically and for which the orthodontia is a necessary adjunct to the surgery.~~

~~(2) X-rays are required with requests for the following dental services:~~

~~(A) all crowns;~~

~~(B) endodontic cases;~~

~~(C) all extractions except simple extractions;~~

~~(D) any case where pulp chamber is involved; and~~

~~(E) removal of impacted teeth.~~

~~(3) Cosmetic dentistry is not a benefit of the medicaid program.~~

(1) For purposes of specifying dental and orthodontic services covered by the medicaid program and the limitations on the coverage of those services, the department incorporates by reference sections G and H, dated July 1993, of the dental services provider manual published by the department.

(2) For purposes of specifying denturist services, covered by the medicaid program and the limitations on the coverage of those services, the department incorporates by reference section F, dated July 1993, of the denturist services provider manual published by the department:

(a) all services provided by a denturist must be prescribed by a licensed dentist.

(3) Licensed dentists may bill medical "CPT" procedure codes as provided in 46.12.2001 for any medicaid covered medical procedure which they are allowed to provide under the dental practice act. These procedures must be billed in accordance with the administrative rules governing physician services at 46.12.2001 et seq.

(4) All services which require prior authorization from the designated review organization are designated by a "yes" in the column titled "AUTH REQ." in sections G and H of the dental services provider manual. Reimbursement will not be provided for such services unless prior authorization has been given by the designated review organization.

(5) Coverage of denture services are subject to the following requirements and limitations:

(a) all denture services must be provided by a dentist or prescribed by a dentist and provided by a licensed denturist;

(b) requests for full prosthesis must show the approximate date of the most recent extractions, and/or the age and type of the present prosthesis;

(c) replacement of lost dentures is a covered service; and

(i) the dentist or denturist must indicate "lost dentures" on the request for prior authorization for replacement;

(d) denture replacement is subject to prior authorization requirements and the following limits:

(i) full dentures which are over ten (10) years old may be replaced when the treating dentist documents the need for replacement;

(ii) partial dentures which are over five (5) years old may be replaced with full dentures;

(iii) dentures which are between 5 and 10 years old may be replaced when the treating dentist documents the need for replacement, but reimbursement will be at the rate for duplicating (or jumping) the dentures; and

(iv) the limits on coverage of denture replacement may be exceeded when the designated review organization determines that the existing dentures are causing the recipient serious physical health problems.

(6) Orthodontia for recipients age twenty-one and older who have maxillofacial anomalies that must be corrected surgically and for which the orthodontia is a necessary adjunct to the surgery is a covered service.

(7) Cosmetic dentistry is not a covered service of the medicaid program.

(8) The denturist service provider manual and the dental services provider manual are available from the Department of Social and Rehabilitation Services, Medicaid Services Division, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

3. The proposed amendments to the rules governing the provision of dental, orthodontics, and denturist services through the medicaid program are necessary to revise certain reimbursement rates and to provide for certain procedure codes. The proposed amendments are also necessary to reduce rule text, to reduce the extent of textual amendment in the adoption by rule of future changes to coverage and reimbursement rates, and to provide the specifics of coverage and reimbursement in a context that is convenient and accessible to providers of those services.

The Department, with the advice of providers of dental, orthodontic, and denturist services, is proposing the adoption of the procedure codes of the American Dental Association. The Department is also proposing to revise certain reimbursement rates for those services and to provide codes and reimbursement for certain services not previously covered by the program. These amendments are necessary to update basic service coverage and to provide revisions to existing and new procedures that is more appropriate.

In addition, the Department has provided a new comprehensive provider manual that lists the reimbursement rates and procedure codes. The presentation of reimbursement rates and covered services in department published provider manuals is a preferred manner for communicating these matters to providers. The incorporation of provider manuals with reimbursement rates and covered services by rule or the presentation of formulas for reimbursement rates by rule are the two principle ways that the medicaid program adopts reimbursement rates and covered services.

The proposed amendments for ARM 46.12.602, "Requirements", are necessary to conform the citations with the amendments to the rules cited.

The proposed amendments for ARM 46.12.605, "Reimbursement", and ARM 46.12.606, "Covered Procedures", are necessary to provide the reimbursement rates and covered procedures to govern the provision of dental, orthodontics, and denturist services by the medicaid program through a comprehensive and comprehensible

presentation in a provider manual that is incorporated by reference. The presentation and adoption of reimbursement rates and covered procedures in a manual will also reduce rule text and the reduce the text of future rule amendments.

The provider manual will be republished on a regular basis and the appropriate rules will be amended to incorporate the relevant text of the republished manual. The provider manual will be available from the Medicaid Services Division of the Department of Social and Rehabilitation Services at P.O. Box 4210, Helena, MT 59604-4210.

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 Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than September 9, 1993.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State August 2, 1993.

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

In the matter of the amendment of rules 46.12.1930, 46.12.1945 through 46.12.1947, 46.12.1950 and 46.12.1951 pertaining to targeted case management for adults with severe and disabling mental illness and youth with severe emotional disturbance	))))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.1930, 46.12.1945 THROUGH 46.12.1947, 46.12.1950 AND 46.12.1951 PERTAINING TO TARGETED CASE MANAGEMENT FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS AND YOUTH WITH SEVERE EMOTIONAL DISTURBANCE

TO: All Interested Persons

1. On September 1, 1993, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.1930, 46.12.1945 through 46.12.1947, 46.12.1950 and 46.12.1951 pertaining to targeted case management for adults with severe and disabling mental illness and youth with severe emotional disturbance.

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

46.12.1930 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS, REIMBURSEMENT

Subsections (1) through (3) remains the same.

(a) for individual case management services:

Each 15 minute unit..... ~~9.54~~

Region I	Region II	Region III	Region IV	Region V
$11.67	$10.03	$10.02	$ 9.23	$10.40

(b) for group case management services:

Each 15 minute unit..... ~~3.18~~

Region I	Region II	Region III	Region IV	Region V
$ 3.89	$ 3.34	$ 3.34	$ 3.08	$ 3.47

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

46.12.1945 CASE MANAGEMENT SERVICES FOR YOUTH WITH SEVERE EMOTIONAL DISTURBANCE, DEFINITIONS ~~(1) "Advocacy" means the act of enhancing parent or surrogate parent involvement in the planning and delivery of services for a client, and of empowering the client to speak or act on behalf of self whenever possible. The case manager speaks or acts on the client's behalf when the client or the parent is unable to carry out this role.~~

Subsection (2) remains the same but is renumbered (1).

(2) "Assistance in daily living" means the ongoing monitoring of how a client is coping with life on a day-to-day basis and the provision of assistance by a case manager which supports a client in daily life. Assistance with daily living skills includes but is not limited to:

(a) assistance with shopping and budgeting;

(b) teaching use of public transportation and other resources;

(c) monitoring and tutoring with regard to health maintenance; and

(d) monitoring contact with family members.

(3) "Case planning" means the development of a written individualized case management plan for the client which is arrived at by the case manager with the participation of:

(a) the parent, legal guardian, or the surrogate parent~~,~~;

(b) the client advocate ~~and~~;

(c) the client~~.~~; and

(d) the client's service providers.

(4) "Crisis ~~assistance and~~ intervention and stabilization" means ~~the act of assessing the nature and severity of the client's crisis, identifying appropriate resources to provide the support service which will alleviate the crisis, and arranging for delivery of services in a timely manner. Crisis assistance and intervention does not include direct provision of service to eliminate the crisis or stabilize the circumstances of the client, the parent or the surrogate parent.~~ the immediate action by a case manager for the purpose of supporting or assisting a client or other person in response to a client's mental health crisis. Crisis intervention and stabilization should be consistent with the concept of least restrictive alternative. Crisis intervention and stabilization may include contact with a client's family members if necessary and appropriate.

~~(5) "Monitoring" means the ongoing act of:~~

~~(a) assessing the impact of services being provided to a client according to the established case plan;~~

~~(b) identifying services included in the plan but not currently provided, and the reasons for services not being provided; and~~

~~(c) ensuring that the services are provided. Monitoring includes identifying needed changes and the provision of reports~~

~~or feedback to the providers, the client and the parent or surrogate parent.~~

(5) "Care coordination, referral and advocacy" means providing access to and mobilizing resources to meet the needs of the client. This may include but is not limited to:

(a) monitoring and assessing the impact of services being provided;

(b) identifying services included in the case plan that are not currently being provided, and the reasons the services are not being provided;

(c) ensuring that services identified in the case plan are provided;

(d) making appropriate referrals, including to advocacy organizations and service providers;

(e) enhancing parent or surrogate parent involvement in the planning and delivery of services for a client;

(f) empowering the client to speak or act on the client's own behalf when possible; and

(g) speaking or acting on the client's behalf when the client or others are unable to carry out this role.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

46.12.1946 CASE MANAGEMENT SERVICES FOR YOUTH WITH SEVERE EMOTIONAL DISTURBANCE, ELIGIBILITY Subsection (1) remains the same.

(a) is receiving medicaid; and

(b) ~~has not reached 18 years of age; and~~ has been determined by the regional managed care entity or its designee to be in need of case management for youth with severe emotional disturbance.

~~(c) has been determined to be a person with severe emotional disturbance.~~

(2) A person with severe emotional disturbance is a person who meets one of the following definitions:

(a) the person is under 18 years of age and presents a danger of suicide;

(b) the person is under 21 years of age, is emotionally disturbed as defined by 20-7-401(8), MCA and is being served by an education agency;

(c) the person is under 22 years of age, is emotionally disturbed as defined by 20-7-401(8), MCA, is being served by an education agency, and is completing a school year which began before the person turned age 21; or

(~~a~~d) the person is under 18 years of age, demonstrates a need for specialized services from two or more human service ~~programs due to~~ systems because of emotional disturbance; and :

~~(b) the person meets one of the two following conditions:~~

~~(i) the person has a DSM-III-R diagnoses mental disorder included in subsection (3) diagnosed by a certified or licensed mental health professional, and the person consistently and persistently demonstrates one of the following characteristics:~~

~~(A) the person has failed to establish or maintain interpersonal relationships appropriate to the person's developmental stage and cultural environment;~~

~~(B) the person displays behavior inappropriate to the person's developmental stage and cultural environment;~~

~~(C) the person fails to demonstrate a range or appropriateness of emotion or mood appropriate to the person's developmental stage and cultural environment;~~

~~(D) the person displays disruptive behavior which leads to isolation in or from school, home, therapeutic or recreation settings; or~~

~~(E) the person displays behavior sufficiently intense or severe to be considered seriously detrimental to:~~

~~(I) the person's growth, development or welfare; or~~

~~(II) the safety or welfare of others.~~

~~(ii) the person has no DSM-III-R diagnosis but exhibits severe emotional and/or organic impairment which:~~

~~(A) manifests as emotional or behavioral symptoms or disturbance;~~

~~(B) the symptoms or disturbance have been present for at least six months or are expected to continue for a period over six months; and~~

~~(C) the symptoms or disturbance are consistently and persistently demonstrated by one of the characteristics set forth in subsections (i)(A) through (E).~~

(i) has a mental disorder diagnosed under DSM-III-R or revision thereof by a certified or licensed mental health professional; and

(ii) consistently and persistently demonstrates for a period of at least six months or is expected to continue for a period over six months one of the following characteristics:

(A) failure to establish or maintain interpersonal relationships relevant to his appropriate developmental stage(s) and cultural environment;

(B) displays inappropriate behavior relevant to his developmental stage and culture;

(C) failure to demonstrate a range or appropriateness of emotion or mood relevant to his developmental stage and culture;

(D) displays behavior sufficiently disruptive to lead to isolation in or from school, home, therapeutic or recreational settings; or

(E) displays behavior sufficiently intense or severe to be considered seriously detrimental to his growth, development or welfare, or to the safety or welfare of others.

(3) DSM-III-R diagnoses necessary for categorization ~~as seriously emotionally disturbed~~ of severe emotional disturbance include:

Subsections(3)(a) through (e) remain the same.

(f) sexual disorders (302.20, 302.3, 302.84, 302.89);

Subsections (3)(g) through (r) remain the same.

~~(4) A person who has not reached 21 years of age is eligible for case management for youth with severe emotional disturbance if that person:~~

~~(a) is "emotionally disturbed" as defined by 20-7-401(5), MCA;~~

~~(b) is being served by an education agency; and~~

~~(c) is receiving medicaid.~~

(4) Human service systems are the following:

(a) mental health services including outpatient therapy home-based therapy, school-based therapy, day treatment, and intensive case management;

(b) specialized residential services including residential treatment, therapeutic group home, or therapeutic foster care;

(c) child protective services;

(d) specialized education supports including special education placement, services by school counselor, or other support services provided by the school; and

(e) juvenile corrections or probation.

~~(5) A person with primary problems of developmental disability, substance abuse or chemical dependency does not have severe emotional disturbance unless the person additionally exhibits behavior resulting from emotional disturbance.~~

(5) Unless behavior results from emotional disturbance or a youth is dually diagnosed, a youth does not meet the definition of severe emotional disturbance if the youth has a primary problem of:

(a) developmental disability;

(b) substance abuse or chemical dependency;

(c) sexual or physical abuse victimization; or

(d) character and personality disorders characterized by lifelong and deeply ingrained anti-social behavior patterns including sexual behaviors which are abnormal and prohibited by statute.

~~(6) A person who is a victim of sexual or physical abuse has severe emotional disturbance when the abuse results in emotional disturbance manifested by the characteristics described in subsection (2).~~

~~(7) A person with a character and personality disorder including sexual behaviors which is abnormal and prohibited by statute does not have severe emotional disturbance unless the behavior results from emotional disturbance.~~

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

46.12.1947 CASE MANAGEMENT SERVICES FOR YOUTH WITH SEVERE EMOTIONAL DISTURBANCE, SERVICE COVERAGE Subsections (1) through (1)(b) remain the same.

(c) crisis ~~assistance and~~ intervention and stabilization;

(d) ~~monitoring;~~ assistance in daily living; and

~~(e) record maintenance;~~

(~~f~~e) care coordination, referral and advocacy~~; and~~.

~~(g) resource development.~~

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

46.12.1950 CASE MANAGEMENT SERVICES FOR YOUTH WITH SEVERE EMOTIONAL DISTURBANCE, GEOGRAPHICAL COVERAGE (1) Case management services for youth with severe emotional disturbance are available ~~only for residents of the geographic areas beginning on the effective dates specified as follows:~~ on a statewide basis.

~~(a) Missoula county - June 15, 1992; and~~

~~(b) Helena and Helena valley of Lewis and Clark county - June 15, 1992.~~

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

46.12.1951 CASE MANAGEMENT SERVICES FOR YOUTH WITH SEVERE EMOTIONAL DISTURBANCE, REIMBURSEMENT Subsections (1) through (3) remain the same.

(a) for individual case management services:

each 15 minute unit . . . . . ~~$9.54~~

Region I	Region II	Region III	Region IV	Region V
$11.67	$10.03	$10.02	$ 9.23	$10.40

(b) for group case management services:

each 15 minute unit . . . . . ~~$3.18~~

Region I	Region II	Region III	Region IV	Region V
$ 3.89	$ 3.34	$ 3.34	$ 3.08	$ 3.47

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-101 MCA

3. ARM 46.12.1930 and ARM 46.12.1951 are proposed for amendment to revise the reimbursement rates for the provision of case management services to adults with severe and disabling mental illness and to youth with severe emotional disturbance. The proposed rate structure is predicated in part on cost information for the administration and direct delivery of case management services reported by the regional mental health centers during the first fiscal year of service provision. The proposed rates are necessary to provide more appropriate compensation for case management services based on regional variations in costs.

The proposed amendments to ARM 46.12.1945 definitions for case management for youth with severe emotional disturbance, are necessary in order to generally conform those definitions with the definitions in the rules governing case management for adults with severe and disabling mental illness. Conforming these rules is necessary to avoid current confusion in the administration of the two programs resulting from dissimilar provisions and language. The two sets of services are provided

by the same contractors and case managers and the two sets of services are intended to be similar.

The proposed inclusion in ARM 46.12.1945 and in ARM 46.12.1947, of: "assistance in daily living" and "care coordination, referral and advocacy" and the revision of the term, "crisis assistance and intervention" to "crisis intervention and stabilization" are necessary to bring the reimbursable services for case management for youth with severe emotional disturbance into conformity with those for adults with severe and disabling mental illness.

The definition section is intended to provide definitions for those terms that are used for reimbursable services. The proposed deletion of the definition of "record maintenance" is necessary because there is no reimbursement per se for record maintenance and a definition is unnecessary for other purposes.

The proposed deletions of the definitions of the terms, "advocacy" and "service coordination", are necessary because they will be subsumed in the new term, "care coordination, referral and advocacy", which is a proposed definition. The proposed deletion of the definition of the term, "monitoring", is necessary because it will be subsumed in the new term "assistance in daily living", which is a proposed definition.

The proposed definition of the term, "care coordination, referral and advocacy", and the proposed amended definition of "case planning" contain definitional elements that do not appear in the definitions of the terms for case management of adults with severe and disabling mental illness. The inclusion of these additional elements is necessary because they are specific to the provision of services to youth.

The proposed amendments to ARM 46.12.1946 are necessary to revise the eligibility criteria and definitions to allow intensive case management to become a component of the State's new system of managed care for overseeing the provision of mental health services to youth with severe emotional disturbance. This system is being developed at the direction of the 1993 Legislature. The case management services are an essential aspect of the implementation and development of managed care for emotionally disturbed youth. The new managed care system of services is necessary to address the critical problems in the delivery of services to emotionally disturbed youth on an effective programmatic basis, in a cost-effective manner, and in a unified and consistent manner. The proposed amendments provide a more inclusive eligibility necessary for the purposes of the managed care system and provide more detail necessary to certain aspects of eligibility.

The proposed amendment to ARM 46.12.1950, expanding coverage to the entire state, is necessary to provide implementation of the

State's new case management system of managed care for youth with severe emotional disturbance on a statewide basis.

4. The proposed amendments, except for the rates of reimbursement provided in ARM 46.12.1930(a) and (b) and ARM 46.12.1951(a) and (b) for Region IV, are to be retroactively adopted beginning with July 1, 1993. Region IV is the only region that would be adversely impacted by the retroactive implementation of the proposed rates of reimbursement and therefore, the Department proposes that the rates currently in effect for Region IV would continue until October 1, 1993. The prospective adoption of rates for Region IV is necessary in that it would avoid an unanticipated adverse financial impact for which that Region has had no notice.

The retroactive application of the amendments to July 1, 1993 is necessary to implement the state's new system of managed care for youth with severe emotional disturbance in accord with the budgetary mandates of the 1993 Legislature as presented in HB 2, Chapter No. 2 and with the language at pp D-6 and D-7 of HB 2.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than September 9, 1993.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State August 2, 1993.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to applications, trust accounts, continuing education, and unprofessional conduct, and the adoption of new rules pertaining to property management	))))))	NOTICE OF AMENDMENT OF RULES PERTAINING TO THE PRACTICE OF REAL ESTATE AND THE ADOPTION OF NEW RULES PERTAINING TO PROPERTY MANAGEMENT

TO: All Interested Persons:

1. On May 27, 1993, the Board of Realty Regulation published a notice of public hearing at page 1063, 1993 Montana Administrative Register, issue number 10. The hearing was held on June 25, 1993, in the conference room of the Professional and Occupational Licensing Bureau, Helena, Montana.

2. The Board has amended ARM 8.58.406A, 8.58.406C, and 8.58.415C and adopted new rules I through XIV (8.58.701 through 8.58.714) exactly as proposed. The Board is not adopting the proposed amendments to ARM 8.58.415A at this time. The Board will deliberate on this rule at its next scheduled meeting and plans to adopt the rule at a later date. The Board has amended ARM 8.58.414, 8.58.415B, 8.58.419 as proposed but with the following changes:

"8.58.414 TRUST ACCOUNT REQUIREMENTS (1) through (16) will remain the same as proposed.

(17) EXISTING CHECKS, DOCUMENTS AND FORMS BEARING THE NAME "DEPOSITORY ACCOUNT" MAY BE USED UNTIL CURRENT SUPPLIES ARE DEPLETED."

Auth: Sec. 37-1-131, 37-51-203, MCA; IMP, Sec. 37-51-202, 37-51-203, 37-51-321, MCA

"8.58.415B CONTINUING REAL ESTATE EDUCATION -- COURSE APPROVAL (1) through (3) will remain the same as proposed.

(4) No credit for continuing education correspondence or video courses will be allowed EXCEPT THAT THE USE OF VIDEOS IN A MONITORED, APPROVED INSTRUCTION PROGRAM WILL BE PERMITTED.

(5) will remain the same as proposed."

Auth: Sec. 37-1-131, 37-51-202, 37-51-203, 37-51-204, MCA; IMP, Sec. 37-51-202, 37-51-204, MCA

"8.58.419 GROUNDS FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT (1) through (3)(a) will remain the same as proposed.

(b) Licensees shall disclose in writing to ~~all~~ parties TO THE TRANSACTION the existence and nature of the existing agency relationship no later than when an offer is prepared in a transaction.

(c) through (5) will remain the same as proposed."

Auth: Sec. 37-1-131, 37-1-136, 37-51-203, 37-51-321, MCA; IMP, Sec. 37-51-201, 37-51-202, 37-51-321, MCA

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

ARM 8.58.414

COMMENT: Opponents stated that a real estate depository account did not fit the legal definition of a trust and could subject a licensee to statutory provisions that were never intended to deal with a real estate account. There was also concern expressed regarding the cost of implementing this rule because of the account name requirement on checks and forms. The opponents also stated that brokers were not confused by the designation of the account as a "depository account."

RESPONSE: The Board determined that a majority of the licensees, other jurisdictions and the industry refer to this account as a "trust account" and that calling the account by another name was creating misunderstanding. The Board felt it was obvious from the requirements for the account that it was intended that brokers would hold money deposited in such accounts as trust money.

COMMENT: The staff of the Administrative Code Committee suggested section 37-51-321 be substituted as the implementing section.

RESPONSE: The Board concurs and section 37-51-321 has been added as an implementing section.

ARM 8.58.415B

COMMENT: Concern was expressed regarding the elimination of correspondence and video courses for credit. It was stated that some sort of completion requirement should be established for such courses. Some live courses contained videos which should also be approved. It was pointed out that the Board was sponsoring education that was being transferred by fiberoptics. This could be considered video since no clear definition has been established. There was also opposition to the elimination of other courses of continuing education which would leave the board the sole provider of such education. Other opponents complained that the Board had not provided adequate rationale for doing away with video courses.

RESPONSE: The Board addressed these comments by noting that statutes prohibit any kind of examination at the end of an approved continuing education course. There is no way to require verification of completion of such a course. The Board did concede that videos as an integral portion of a live course would be counted as credit. It stated that fiberoptic courses were appropriate because they are monitored and do have live contact with the instructor and do not involve video tape. The Board did amend the rule, as shown above, to indicate that the use of videos in a monitored, approved instruction program will be permitted. However, the Board clarified that it was deleting permission for other use of the video tapes since there was no manner to examine those individuals claiming to have viewed a particular tape.

ARM 8.58.415C

COMMENT: It was noted that an error had inadvertently occurred in the original proposed notice. The notice should have read "subsection (3)(b) through (4) will remain the same."

RESPONSE: The Board noted the error and moved to adopt the rule with the corrected language.

COMMENT: Comments received on this rule amendment stemmed from the misunderstanding caused by the above error. The licensees were opposed to the elimination of alternative means to qualify as an approved instructor.

RESPONSE: The Board reviewed the comments and determined that the rule as notice simply clarified one means of instructor qualification and did not eliminate any other means.

COMMENT: The staff of the Administrative Code Committee suggested section 37-51-203 be substituted for 37-51-202 as the authorizing section.

RESPONSE: The Board concurs and will make the change when the replacement pages are completed.

ARM 8.58.419

COMMENT: Clarification was sought regarding this proposed rule amendment. Individual observers wanted to know what parties were to be notified and whether the appraiser, title company, etc. were considered parties.

RESPONSE: The Board stated that it was not its intention that entities such as lending institutions, title insurers, or appraisers need be provided the disclaimer on agency and amended the rule as shown above.

ARM 8.58.712 (NEW RULE XII)

COMMENT: Staff of the Administrative Code Committee suggested that section 37-51-202 be deleted as an authority section from new rule XII (8.58.712), and section 37-51-203 be deleted as an implementing section. Section 37-51-321 was suggested as an implementing section.

RESPONSE: The Board concurs with the above suggestions and the changes will be made when replacement pages are completed.

COMMENT: Counsel for the Association of Realtors objected to new rule XII's (8.58.712) designation of the account as a trust account, suggesting instead that it be labeled as a depository account to avoid confusion with statutory liabilities and duties imposed on trusts.

RESPONSE: The Board stated that money held in such an account is money held for others and as such represents a trust held by the property manager. The Board therefore stated it was not improper to designate the account a trust account.

COMMENT: Certain individuals complained that they had not received a complete set of the Rule notice and had not received notice of the proposed rules on Property Management. The individuals stated they received their copy from the Montana Association of Realtors not the Board.

RESPONSE: The Board noted this rule had been properly filed with the Secretary of State's office, thus putting all individuals on constructive notice. The Board stated that anybody wishing a complete set of rules may request one from the Board office. The Board advised individuals to feel free to approach it with suggested amendments to these rules.

BOARD OF REALTY REGULATION
JACK MOORE, CHAIRMAN

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

Anne M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 2, 1993.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the repeal, amendment and adoption of rules pertaining to special education	)))	NOTICE OF REPEAL, AMENDMENT AND ADOPTION OF RULES RELATING TO SPECIAL EDUCATION

To: All interested persons

1. On May 13, 1993, the Superintendent of Public Instruction (OPI) published notice of public hearing on the proposed repeal, amendment and adoption of the rules referenced above at page 757 of the 1993 Montana Administrative Register, issue number 9.

2. A public hearing was held on June 3, 1992, and was attended by nine persons. The hearing was recorded and the tape is included in the file on this matter. In addition, written comments were received at the hearing and prior to the closing of the comment period.

3. After consideration of the comments received, the following rules are being repealed as proposed: 10.16.901, 10.16.902, 10.16.903, 10.16.904, 10.16.1002, 10.16.1003, 10.16.1107, 10.16.1111, 10.16.1202, 10.16.1203, 10.16.1205, 10.16.1206, 10.16.1208, 10.16.1209, 10.16.1211, 10.16.1309, 10.16.1311, 10.16.1701, 10.16.1702, 10.16.1703, 10.16.1704, 10.16.1705, 10.16.1706, 10.16.1707, 10.16.1708, 10.16.1709, 10.16.1710, 10.16.1711, and 10.16.1712, ARM.

COMMENT: The Administrative Code Committee (ACC) commented that 20-7-403, MCA, authorizes OPI to only administer policies adopted by the board of public education, while 20-7-401, 20-7-422 and 20-7-423, MCA, do not provide any rulemaking authority.

RESPONSE: OPI cites § 20-7-402, MCA, as authority for adopting these rules.

COMMENT: The ACC commented that OPI cited "state law" as a reason for the changes, but did not cite which state law made the rule changes necessary.

RESPONSE: OPI deletes "state law" from its statement of reasonable necessity.

NOTE: OPI inadvertently proposed ARM 10.16.1204 as both a repealed and amended rule. The rule should have been proposed as amended only.

4. After consideration of the comments received, the following rules are being amended as proposed: 10.16.1001, 10.16.1108, 10.16.1204, 10.16.1207, 10.16.1305, 10.16.1308, 10.16.1902, 10.16.2401, 10.16.2405, 10.16.2406, 10.16.2408,

10.16.2416, and 10.16.2417, ARM.

COMMENT: 10.16.1108. Montana Advocacy Program (MAP) raised the question of whether or not inadequate notice can be kept from being raised in a due process hearing.

RESPONSE: No.

COMMENT: 10.16.1902. The term "residing" and "living" in are used interchangeably in the proposed rules. Use of one term was recommended by MAP.

RESPONSE: OPI will use the federal term "residing in."

COMMENT: 10.16.2417. MAP requested changes in ARM 10.16.2403 and 10.16.2417. MAP requested that findings be sent to them. Under 10.16.2403, MAP requested 1) a timeline in which OPI must mail a list of potential hearing officers, 2) a statement that the superintendent will make the appointment, and 3) elimination of subsection (1)(c)(C).

RESPONSE: The due process rules will be reviewed for consistency of language. OPI's current due process hearing procedure was approved as part of Office of Special Education Programs (OSEP)'s monitoring and acceptance of the state plan. The only changes proposed in these rules were those required for final approval of the state plan. Additional concerns will be noted for the next administrative rule changes to coincide with FY 96-98 state plan application.

COMMENT: OPI staff discovered that both "ensure" and "insure" are being used throughout these rules to describe making sure or certain.

RESPONSE: The word "insure" will be changed to "ensure" in the following rules: 10.16.1305, 10.16.1902, and 10.16.2406, ARM.

5. After consideration of the comments received, the following rules are being adopted as proposed and codified as follows: RULE II (10.16.104), RULE III (10.16.105), RULE V (10.16.107), RULE VI (10.16.108), RULE VII (10.16.109), RULE VIII (10.16.110), RULE IX (10.16.111), RULE X (10.16.112), RULE XI (10.16.113), RULE XII (10.16.114), RULE XIII (10.16.115), RULE XIV (10.16.116), RULE XV (10.16.117), RULE XVII (10.16.2702), RULE XIX (10.16.2704), RULE XX (10.16.2705), RULE XXI (10.16.2706), RULE XXII (10.16.2707), RULE XXIV (10.16.2709), RULE XXVII (10.16.1004), RULE XXVIII (10.16.1005), RULE XXX (10.16.1113), RULE XXXIII (10.16.1115), RULE XXXIV (10.16.1116), RULE XXXV (10.16.1117), RULE XXXVI (10.16.1118), RULE XXXIX (10.16.1120), RULE XL (10.16.1121), RULE XLII (10.16.1122), RULE XLIII (10.16.1123), RULE XLV (10.16.1124), RULE XLVI (10.16.2712), RULE IL (10.16.2715), RULE L (10.16.2716), RULE LI (10.16.2717), RULE LII (10.16.2718), RULE LIV (10.16.2719), RULE LV (10.16.1713), and RULE LVI

(10.16.2720).

COMMENT: RULE III (10.16.105). Parents Let's Unite for Kids (PLUK) and MAP requested a change in rule to require that copies of all monitoring reports be sent to them.

RESPONSE: Monitoring reports are public documents which may be obtained from the local educational agency. No change in the rule is proposed.

COMMENT: RULE XV (10.16.118). MAP requested a change to ensure representation by advocates of students with disabilities and that the annual report be sent to MAP.

RESPONSE: The state superintendent must ensure that an appropriate balance between professional groups and consumers and advocates exists on the advisory panel. The panel operates under the state's open meeting laws and annual reports are available upon request.

COMMENT: RULE XXVII (10.16.2712). MAP believes this rule is inconsistent with federal law and requested clarification of the need for this rule.

RESPONSE: This rule complies with requirements of the General Education Provisions Act (GEPA), chapter 31, part IV, Family educational and privacy rights, 20 USC 1232g (4)(B)(i), and Family Educational Rights and Privacy Act, 34 CFR 99.3(2)(b).

COMMENT: RULE XLVI (10.16.2816). MAP believes specific timelines, specifically 5 days, would be more helpful for school districts to know how much time they have to develop an IEP when a student transfers.

RESPONSE: The issue was discussed at the task force meetings. Due to the variety of circumstances encountered in Montana when transferring from one school to another, the timeline was determined to be "within a short period of time." The IEP manual states that is usually 5 days. No rule change will be made.

COMMENT: RULE LV (10.16.1714). PLUK and MAP expressed concern about the lack of qualifications of principals in supervising special education personnel and requested additional language to ensure that information was current and that principals were adequately trained.

RESPONSE: No change. The board of public education sets standards for teacher and administrator certification including requirements for recency of certification units. Since information changes regularly, a principal, in order to be effective in meeting the needs of students with disabilities, would need to annually update his or her skills or information.

COMMENT: OPI staff discovered that both "ensure" and "insure" are being used throughout these rules to describe making sure or certain.

RESPONSE: The word "insure" will be changed to "ensure" in the following rules: RULE II (10.16.105), RULE XXII (10.16.2707), RULE XXIV (10.16.2709), RULE XXX (10.16.1113), RULE XLVI (10.16.1316), and RULE L (10.16.1320).

6. After consideration of the comments received, the following rules are being amended as proposed with those changes given below, new material underlined, deleted material interlined.

10.16.1101 PROTECTION IN EVALUATION PROCEDURES (1) Each local educational agency shall establish and implement procedures to ~~i~~ensure that testing and evaluation materials and procedures used for evaluation and placement of students with disabilities are selected and administered so as not to be racially or culturally discriminatory.

(2) Local educational agencies shall ~~i~~ensure, at a minimum, that tests and other evaluation materials:

(a) - (e) remains the same.

(3) The local educational agency shall ~~i~~ensure that no single procedure is used as the sole criterion for determining eligibility for services and an appropriate educational program for a student.

(4) remains the same.

(a) remains the same, renumbered (5).

(i) - (vi) remains the same, renumbered (a) - (f).

(5) - (6) remains the same, renumbered (6) - (7).

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

COMMENT: MAP suggested that this section be renumbered and clarified to ensure that "in an individual case, the written summary statement required under subsection (4)(a) may be insufficient and a supplementary written report may be required."

RESPONSE: Subsection (5) with its list of required supplementary reports was intended to ensure that adequate documentation is collected to support a comprehensive evaluation. In combination with subsection (6), which requires persons who give individualized assessments to summarize in writing their evaluation, adequate data should be collected to ensure a comprehensive evaluation.

A numbering change will be made in this rule. Further, the only language change in this rule is "insure" to "ensure."

10.16.1102 INDEPENDENT EDUCATIONAL EVALUATION (1) In accordance with 34 CFR 300.503, incorporated by reference, which can be obtained from the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, ~~P~~parents shall have the right to an independent educational evaluation of their child at public expense if the parents disagree with the local educational agency's or public agency's educational evaluation. ~~The~~

~~local educational agency or public agency may initiate a hearing under ARM 10.16.2401 through 10.16.2417 to show that its evaluation is appropriate. If the decision of the hearing officer is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.~~

~~(2) Whenever an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner(s), must be the same as the criteria which the public agency uses when it initiates an evaluation.~~

~~(a) The local educational agency or public agency shall identify the criteria it uses when it initiates an evaluation and when it determines the qualifications of the examiner and, upon request of the parent, provide information as to where an independent educational evaluation which meets these criteria may be obtained.~~

~~(b) The local educational agency or public agency must ensure that the independent educational evaluation is conducted by a qualified examiner who is not employed by the local educational agency or public agency responsible for the child's education and is otherwise provided at no cost to the parent in accordance with IDEA. The local educational agency may establish criteria to ensure that the cost of a publicly funded independent educational evaluation is reasonable.~~

~~(3) The parent must direct a request for an independent educational evaluation to the local educational agency principal or administrative designee who has authority to provide or supervise the provision of special education services.~~
~~The parent(s) must state that a disagreement with the current educational evaluation exists.~~

~~(a) the parent(s) must allow the local school district to complete a current evaluation (assessment during the school year) before requesting an independent evaluation;~~

~~(b) the parent(s) must sign a consent for evaluation to be conducted by the independent evaluator(s).~~

~~(3) - (4) remains the same, renumbered (4) - (5).~~
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

COMMENT: As proposed by OPI at the public hearing, adoption of the federal rule by reference is preferred to eliminate any variabilities.

RESPONSE: The rule is changed based on the comment.

10.16.1104 SURROGATE PARENTS (1) The local educational agency or public agency ~~in which the student lives~~ shall ensure that the rights of a child are protected when the parents of the child cannot be identified, or the whereabouts of the parents cannot be discovered or the child is a ward of the state.

(2) - (5)(b) remains the same.

(6) The local educational agency ~~may~~ shall petition a court of competent jurisdiction for termination of the surrogate

parent appointment when ~~the child becomes an emancipated adult,~~ the child's parents are identified, the whereabouts of the parents are discovered, the child is no longer a ward of the state or the surrogate parent wishes to discontinue her or his appointment.
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

COMMENT: Both Parents Let's Unite for Kids (PLUK) and MAP requested the term "emancipated adult" be removed from this rule. PLUK further expressed a concern that "the existence of independent rights of adult students to consent or not consent to a proposed IEP does not eliminate the parent or surrogate parent's right to participate in the IEP process as well." MAP stated that "while . . . an adult with disabilities be accorded all the rights of non-disabled adults, this does not preclude a surrogate parent from continuing to provide advocacy assistance to the student in his/her role as a formally appointed surrogate parent."

MAP also requested that if the line regarding emancipated adult is removed, then "may" should be changed to "shall" since a surrogate parent appointment is no longer needed under IDEA in the remaining circumstances.

RESPONSE: The rule is being changed to reflect the comment.

10.16.1106 PROTECTION FROM ~~LABELING PROCESS~~ USE OF DIAGNOSTIC CATEGORY FOR PLACEMENT PURPOSES (1) The child study team shall identify a disability category for each student with a disability following comprehensive evaluation. The disability category shall relate to various disabilities defined in section 20-7-401, MCA. The disability category is to be used for reports required by the office of public instruction. A local educational agency or public agency should not refer to students, teachers or rooms by category of disability as such practices do not facilitate education and are often harmful to the student with a disability. Parents shall be informed of the disability category as it relates to their ~~student~~ child.
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

COMMENT: MAP suggested change in use of the word "student" in the last sentence.

RESPONSE: The term "student" is being changed to "child." Further, the term "labeling process" has been changed in the catchphrase.

10.16.1110 STATE COMPLAINT PROCEDURES (1) - (4) remains the same.

(a) If the complaint addresses matters listed in ARM 10.16.1108, the complainant shall be informed of the right to secure a hearing under the provisions of special education due process procedural rules under ARM 10.16.2401, et seq.. The complainant will be notified that unless s/he requests that

their names not be released to the local educational agency, the ~~district~~ local educational agency will be notified of the name of the person(s) filing the complaint.

(b) - (b)(i) remains the same.

(ii) The local educational or public agency may request a 10 day extension of the 15 day period. The compliance officer may grant an extension of 10 days if the ~~district~~ local educational or public agency has shown good cause exists.

(iii) - (h) remains the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

COMMENT: OPI inadvertently used "district" in place of "local educational agency."

RESPONSE: Language in the rule is changed to reflect the comment.

COMMENT: MAP and PLUK requested a change in the amount of time for the local educational agency to achieve compliance. Both MAP and PLUK believe "60 days from the date of the final report is far too lengthy a period for implementation of the corrective action before the compliance officer is authorized to impose sanctions.

MAP requested additional change in the remedies set forth in the procedures. The remedies should include reference to the rule regarding failure of LEA to provide FAPE.

RESPONSE: OPI reads this rule to state that if compliance is not achieved 60 days from the date of the final report, then OPI will invoke sanctions. This does not preclude compliance from occurring prior to that timeline or within shorter timelines as specified in the corrective action.

Rule on OPI responsibility to ensure FAPE requires OPI to take immediate steps to ensure FAPE is made available upon determination that the local educational agency fails to provide FAPE. The rule does not identify any particular circumstances. Even through a complaint process, if an LEA fails to provide FAPE, the OPI must take immediate steps. Additional language in this rule is not needed.

10.16.1201 LOCAL EDUCATIONAL AGENCY CHILD FIND RESPONSIBILITIES (1) - (1)(b)(i) remains the same.

(ii) describe student identification activities including audiological, health, speech/language and visual screening, and review of ~~screening processes~~ data or records for children who have been or are being considered for retention, delayed admittance, long term suspension or expulsion, or waiver of learner outcomes (accreditation standards); and

(iii)- (3) remains the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

COMMENT: Is OPI requiring a method or the development of

criteria for further assessment? Is the intent to have procedures which describe student identification and not "review of screening processes?"

RESPONSE: The intent in this section is to require local educational agencies under ARM 10.55.805 to not only have a method for screening but to develop criteria for determining at what point should a child be referred for comprehensive evaluation. This reference to review of screening processes is somewhat confusing. It is intended to ensure that Child Find procedures include a look at those students who are being considered for retention or who have disciplinary records.

10.16.1213 PARENTAL INVOLVEMENT (1) - (2) remains the same.

(3) No parent of a child ~~placed in~~ receiving special education and related services will be required to perform duties not required of any other parent whose child is enrolled in the local educational agency.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

COMMENT: The word "placed" should be changed to "receiving."

RESPONSE: Language changed reflecting the comment.

10.16.1301 LEAST RESTRICTIVE ENVIRONMENT (1) Each local educational agency shall ~~i~~ensure:

(a) - (b) remains the same.

(2) Each local educational agency shall ~~i~~ensure that:

(a) - (d) remains the same.

(e) in providing or arranging for the provision of nonacademic and extra-curricular services and activities, including meals, recess periods, and the services and activities set forth in ARM 10.16.1310, ~~and~~ each student with disabilities participates with children without disabilities in those services and activities to the maximum extent appropriate to the needs of that student.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

COMMENT: Subsection (2)(e) has a statement which is confusing because it is lined with the word "and."

RESPONSE: Language changed to reflect the comment, deleting the word "and." Further, "insure" is being changed to "ensure" so use of the term is consistent throughout these rules.

10.16.1310 PLACEMENT BY THE LOCAL EDUCATIONAL AGENCY (1) - (2)(a)(iv) remains the same.

(b) A local educational agency must first make a reasonable attempt to secure and utilize in-state residential schools or facilities, if appropriate, before making an out-of-state placement in a residential school or facility.

(3) - (4)(c) remains the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

COMMENT: PLUK and MAP suggested a language change which would ensure that out-of-state facilities may be used when in-state facilities are not appropriate to the student's needs.

RESPONSE: Since all local educational agencies must follow the requirements for development of the IEP and placement in the LRE, this rule does not require schools to place students in inappropriate in-state facilities before considering an out-of-state placement. However, for clarification, the words "if appropriate" will be added.

10.16.2402 INITIATING SPECIAL EDUCATION DUE PROCESS ~~PROCEDURE PROCESS~~ (1) - (2) remains the same.

(3) A request for an impartial due process hearing involving the education or possible identification of a ~~handicapped child~~ student with disabilities shall be made in writing to the State Superintendent of Public Instruction, State Capitol, Helena, Montana 59620, and include a short, plain statement of matters asserted.

(AUTH: 20-7-402, MCA; IMP: 20-7-402, MCA)

COMMENT: OPI inadvertently did not change "handicapped child" to "student with disabilities" in subsection (3).

RESPONSE: Language changed to reflect the comment.

7. After consideration of the comments received, the following rules are being adopted as proposed with those changes given below, new material underlined, deleted material interlined.

RULE I (10.16.214) SPECIAL EDUCATION DEFINITIONS (1) remains the same.

(a) Consent: incorporate by reference 34 Code of Federal Regulations (CFR) 300.500(a).

(b) Evaluation: incorporate by reference 34 CFR 300.500(b).

(c) Personally identifiable: incorporate by reference 34 CFR 300.500(c).

(b) - (e) remains the same, renumbered (d) - (g).

(~~f~~h) Parent: means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with 34 CFR 300.514. The term does not include the state if the child is a ward of the state. The term parent is defined to include persons acting in the place of a parent, such as a grandmother or stepparent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

(g) - (m) remains the same, renumbered (i) - (o).

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

COMMENT: MAP suggested including the definition of "personally identifiable" and "evaluation" in this rule.

RESPONSE: The above definitions are being added to the rule. Further, language has been added to clarify the definition of "parent."

NOTE: Volume 34 of the Code of Federal Regulations can be found at the State Law Library, Justice/State Library Building, 215 North Sanders, Helena, Montana 59620-3004.

RULE IV (10.16.106) INTERAGENCY AGREEMENTS (1) remains the same.

(2) The interagency agreement shall define the financial responsibility of each agency for providing a free appropriate public education and establish procedures for resolving interagency disputes among parties to the agreement; and establish procedures under which ~~school districts~~ local educational agencies may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreements or otherwise implement the provisions of the agreements.

(3) remains the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

COMMENT: OPI inadvertently used "school districts" in place of "local educational agencies."

RESPONSE: Language in the rule is changed to reflect the comment.

RULE XVI (10.16.2701) LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR STUDENTS WITH DISABILITIES (1) The local educational agency (LEA) in which the student with disabilities ~~lives~~ resides is responsible for ensuring that the student has available a free, appropriate public education.

(2) remains the same.

(a) ~~The~~ Each LEA shall ~~ensure the provision of~~ provide special education and related services designed to meet the needs of private school students with disabilities ~~living within the legal boundaries of the local educational agency~~ residing in the jurisdiction of the agency.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

COMMENT: Helena School District contends language "lives" or "living within" conflicts with Montana law.

RESPONSE: Language in the rule will be changed to conform to federal language.

RULE XVIII (10.16.2703) LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR PROMOTION OF STUDENTS WITH DISABILITIES

(1) - (2) remains the same.

(3) A student with disabilities shall be promoted or retained according to local educational agency criteria unless specific learner outcomes are waived in the student's IEP.

(4) A student with disabilities who has completed a prescribed course of studies shall be eligible for graduation

from high school.

(a) A student who has successfully completed the goals on the IEP shall have completed a prescribed course of study.

(b) Documentation of completion of the annual goals shall be included in the periodic review of the IEP.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

COMMENT: OPI staff determined that RULE XVIII and RULE LIII could be combined into one rule.

RESPONSE: The language of RULE LIII has been used to modify RULE XVIII in subsections (3) and (4) above. Accordingly, RULE LIII is withdrawn. Further, this rule is intended to replace ARM 10.16.1212 and OPI will repeal ARM 10.16.1212 at a later time.

RULE XXIII (10.16.2708) PARENTAL CONSENT (1) - (1)(b) remains the same.

(2) Written parental consent for initial and annual placement of a student with disabilities in special education and related services ~~must~~ shall be obtained by the local educational agency or public agency prior to the placement except as provided in subsection (3).

(a) The local educational agency shall maintain written documentation of the date of parental consent for initial or annual placement.

(b) If the parents and local educational agency cannot agree on the IEP but can agree on certain IEP services or interim placement, the student's new IEP would be implemented in the areas of agreement and the student's last agreed-upon IEP would remain in effect in the areas of disagreement until the disagreement is resolved.

(3) - (3)(a)(i) remains the same.

(b) When parental consent for annual placement ~~is withheld but~~ has not been obtained after following procedures in ARM 10.16.1213 and Rule XXIV (10.16.2709) and has not ~~been~~ specifically refused or revoked, the local educational agency or public agency shall informally attempt to obtain consent from the ~~parent~~.

(i) If parental consent cannot be obtained within a reasonable time, the local educational agency or public agency shall send written notice to the parent requesting approval and stating that the student with disabilities shall be ~~placed in the~~ provided special education and related services according to the student's individualized education program (IEP) as developed by the local educational agency 15 days from the date of the notice.

(ii) If no response from the parent is obtained, the local educational agency or public agency shall ~~place~~ provide the student ~~in~~ special education and related services according to the student's IEP without parent consent subject to the parent's right to an impartial due process hearing under ARM 10.16.2401 through 10.16.2417.

(c) - (d) remains the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

COMMENT: MAP and PLUK and Montana Council of Administrators of Special Education (MCASE), in oral testimony, expressed concerns about the clarity of this rule. The rule needs to clearly identify that portions of the IEP to which parents have given consent may be implemented even though disagreement exists over other portions of the IEP. PLUK wants a revision to ensure that parents have the opportunity to participate and that if they choose not to participate there is good documentation of the opportunity. MAP also requests revision of subsection (3)(b) to make it clear that the IEP to be implemented is the one proposed by the school and unsigned by the parent. The suggested language is "When a local educational agency has been unable to obtain parental consent after following required procedures for parental involvement and when parental consent has not been refused or revoked, the LEA or public agency shall informally attempt to obtain consent from the parent."

RESPONSE: The issue raised is one of ensuring adequate parental participation in the development of the IEP. Coupled with the rules on parent participation in the IEP and parental involvement, OPI believes the rules adequately protect the parent's rights. Further, clarification from Appendix C, question 35 will be made in the rule.

RULE XXV (10.16.2710) STUDENT'S STATUS DURING PROCEEDINGS (1) During the pendency of any ~~complaint, due process hearing~~ administrative or judicial proceeding regarding a complaint, unless the ~~local educational~~ public agency and the parents of the ~~student~~ child agree otherwise, the ~~student~~ child ~~with disabilities shall~~ involved in the complaint must remain in ~~the student's~~ his or her present educational placement.

(a) If the complaint ~~or due process hearing~~ involves an application for initial ~~enrollment~~ admission to public school, the ~~student~~ child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

~~(b) If the complaint or due process hearing involves a student age 3-5 who is not eligible for regular enrollment in public school, the student is not eligible for placement in the public school until the student reaches the age of eligibility for enrollment.~~

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

COMMENT: OSEP, U.S. Department of Education, questioned the application of subsection (1)(b) as in conflict with federal regulations.

RESPONSE: OPI will adopt the language of 34 CFR 300.513.

RULE XXVI (10.16.2711) STUDENT'S STATUS DURING EXCLUSION FROM SCHOOL (1) The local educational agency may suspend a student with disabilities provided that the ~~child study team has~~

~~determined:~~ length of the suspension is no more than 10 consecutive days or a series of suspensions which does not constitute a significant change in placement, the local educational agency shall consider the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the student is excluded from school.

(a) ~~the behavior which results in the suspension that is a direct manifestation of the student's disability; and~~ Exclusion from school which constitutes a significant change in placement as defined in subsection (1) may occur only if the local educational agency and parent agree to the change in placement or a court of competent jurisdiction grants appropriate relief.

(b) ~~the length of the suspension is no more than 10 consecutive days or a series of suspensions does not amount to a significant change in placement. In determining significant change in placement, the local educational agency shall consider the length of each suspension, the proximity of the suspensions to one another, and the total amount of time the student is excluded from school.~~ If the student is excluded from school under subsection (a) above for more than 10 consecutive days, the local educational agency must ensure that the student with disabilities receives special education and related services in accordance with the individualized education program.

~~(2) If the behavior of the student with disabilities poses an immediate threat to the student's safety or the safety of others, the local educational agency may suspend him or her for no more than 10 days.~~

~~(a) Exclusion from school which constitutes a significant change in placement as defined in subsection (1)(b) above, may occur only if the local educational agency and parent agree to the change in placement or a court of jurisdiction grants appropriate relief.~~

~~(b) If the student is removed from his/her educational placement for more than 10 days by court order, the local educational agency must ensure that the student with disabilities receives special education and related services.~~
(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

COMMENT: PLUK raises the question that students with disabilities cannot be suspended for behavior that is a direct manifestation of the student's disability.

RESPONSE: A rule clarification was submitted at the public hearing on June 3, 1993. While the rule does not speak specifically to manifestation of disability, suspension of less than 10 days is one of a number of factors that may trigger a review of the appropriateness of the student's IEP and may meet the requirements for change in placement as defined in the rule. A suspension of 10 days or less is not a change in placement. Therefore, there need not be a manifestation determination prior to suspension.

RULE XXIX (10.16.1112) REFERRAL (1) A ~~school district~~

local educational agency shall establish a referral process which includes a method for collecting information to determine whether comprehensive educational evaluation is necessary and the types of evaluations warranted.

(a) The referral must include a statement of the reasons for referral, a description of any options the ~~school district~~ local educational agency considered including documentation of regular education interventions and the reasons why those options were rejected, and the signature of the person making the referral.

(b) remains the same.

(c) If a comprehensive educational evaluation is warranted, the ~~school district~~ local educational agency shall obtain consent of the parent before conducting a comprehensive educational evaluation.

(2) If, after receiving a referral, a child study team determines that a comprehensive evaluation is not necessary, the ~~district~~ local educational agency shall notify the parent in writing of its decision, including a description of any options the ~~school district~~ local educational agency considered and the reasons why those options were rejected and a full explanation of all of the procedural safeguards available under subpart E of IDEA.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

COMMENT: OPI inadvertently used "school district" in place of "local educational agency."

RESPONSE: Language in the rule is changed to reflect the comment.

RULE XXXI (10.16.1114) COMPOSITION OF A CHILD STUDY TEAM (1) - (1)(g)(iv) remains the same.

(2) The local educational agency ~~may~~ shall invite other specialists when such specialists are needed to complete a comprehensive evaluation.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

COMMENT: MAP requested addition of language regarding independent educational evaluation in subsection (2) of RULE XXIX (10.16.1112). In RULE XXX (10.16.1113), MAP suggested a cross-reference notation would be helpful. In the above rule, MAP proposes a change in the language from "may" to "shall".

RESPONSE: RULE XXIX references a full explanation of parental rights, therefore, no additional language is necessary. In RULE XXX, the cross-reference notation to ARM 10.16.1101 had been made in the proposed rule so no change is necessary. The language change in RULE XXXI will be made as commented.

RULE XXXVIII (10.16.1119) CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING A HEARING IMPAIRMENT (1) remains the same.

(2) Each ~~school district~~ local educational agency shall ensure that auditory trainers or hearing aids worn in school by

students with hearing impairments are functioning properly. (AUTH: 20-7-402, MCA, IMP: 20-7-401, 20-7-403, MCA)

COMMENT: OPI inadvertently used "school district" in place of "local educational agency."

RESPONSE: Language in the rule is changed to reflect the comment.

RULE XLVII (10.16.2713) COMPOSITION OF INDIVIDUALIZED EDUCATION PROGRAM TEAM (1) remains the same.

(a) principal or administrative designee or representative of the local educational agency, other than the student's special education teacher who is qualified to provide, or supervise the provision of, special education~~; and~~,

(i) if the local educational agency does not employ a principal, the county superintendent or special education cooperative director; and

(b) remains the same.

(i) - (d) remains the same.

(2) For a student with disabilities who has been evaluated for the first time, the local educational agency shall ~~i~~ensure that a member of the evaluation team or a representative of the local educational agency who is knowledgeable about the evaluation procedures used with the student and is familiar with the results of the evaluation.

(3) For a student with disabilities who is enrolled in a private school and receives special education and related services from the local educational agency, the local educational agency shall ~~i~~ensure that a representative of the private school attends each meeting.

(a) If the representative cannot attend, the agency shall use other methods to ~~i~~ensure participation by the private school, including individual or conference telephone calls.

(b) If the representative does not attend the meeting, the local educational agency shall keep documentation of its attempts to ~~i~~ensure participation by the private school.

(4) If the purpose of the meeting is the consideration of transition services for a student with disabilities, the local educational agency shall ~~i~~ensure that the student with disabilities and a representative of any other agency that is likely to be responsible for providing or paying for transition services participates in the meeting.

(a) - (b) remains the same.

(5) In interpreting evaluation data and in making placement decisions, the local educational agency shall ~~i~~ensure that the placement decision is made by persons knowledgeable about the student, the meaning of the evaluation data, and the placement options.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

COMMENT: MAP suggested inserting the same language as found in the CST team composition for IEP team composition. MAP also wanted to ensure that a regular education teacher attends the

IEP meeting.

RESPONSE: The rule is written with an "and" after each category of participant. With the exception of the preschool child, a regular education teacher is required to attend the IEP. The rule is being changed based on the comment. Further, "insure" is being changed to "ensure" so use of the term is consistent throughout these rules.

RULE XLVIII (10.16.2714) RELATED SERVICES (1) A student shall ~~be considered eligible to~~ receive related services only when the related services ~~is necessary for~~ are required to assist the student with a disability to benefit from the student's special education ~~and the student has an IEP developed in accordance with IDEA and the related service is:~~.

~~(a) necessary to support achievement of one or more of the goals or short-term objectives on the student's IEP; and~~

~~(b) needed during school hours or during prescribed educational activity.~~

(2) - (3) remains the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, 20-7-414, MCA)

COMMENT: MAP and PLUK requested a change in the language in this rule to more clearly reflect federal rule. This language was regarded as too restrictive.

RESPONSE: The rule is being changed to reflect the comment.

RULE LVII (10.16.2721) VOLUNTARY ENROLLMENT IN NONPUBLIC SCHOOLS BY PARENTS

~~(1) If the local educational agency where the student lives has made available a free appropriate public education to a student with disabilities and the student is voluntarily enrolled in a private school by the student's parent, the local educational agency in which the private school is located is responsible for services under 34 CFR 300.450.~~

(~~2~~1) If a student with ~~disabilities is voluntarily enrolled by the student's parent in a private school outside of the local educational agency where the student lives, the local educational agency where the student lives shall make available a free appropriate public education~~ a disability has FAPE available and the parents choose to place the student in a private school or facility, the public agency is not required by 34 CFR part 300, subpart D to pay for the student's education at the private school or facility. However, the public agency shall make services available to the student as provided under 34 CFR 300.450 through 300.452.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

COMMENT: OPI staff testified at the public hearing that the proposed rule created confusion about local educational responsibilities.

RESPONSE: To clear up any confusion, OPI will adopt federal

language of 34 CFR 300.403(a).

RULE LVIII (10.16.2722) SPECIAL EDUCATION AND RELATED SERVICES WHEN STUDENT IS RESIDENT OF ANOTHER LOCAL EDUCATIONAL AGENCY

(1) If a student with disabilities attends a local educational agency outside of the district of residence of the student because of the actions of another public agency such as departments of family services or social and rehabilitation services or corrections and human services, the local educational agency ~~in~~ which serves the student ~~lives~~ shall initiate meetings to develop, review or revise the student's individualized education program.

(a) - (2) remains the same.

(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

COMMENT: LEA serving student initiates action and notifies resident LEA.

RESPONSE: Rule is being modified to reflect comment.

RULE LVIX (10.16.2723) RESIDENTIAL PLACEMENT BY PUBLIC AGENCY OTHER THAN LOCAL EDUCATIONAL AGENCY (1) If a student with disabilities ~~is~~ has been placed ~~by a public agency, such as departments of family services or social and rehabilitation services or corrections and human services,~~ in a residential treatment facility or children's psychiatric hospital according to section 20-7-435, MCA, the residential treatment facility or hospital shall initiate ~~meetings~~ action to develop, review or revise the student's individualized education program and, if necessary, to evaluate and identify a student with a disability in accordance with the requirements of IDEA.

(~~a~~2) The ~~residential treatment~~ facility or ~~children's psychiatric~~ hospital shall ~~ensure participation in the IEP meeting by~~ notify a representative of the student's resident local educational agency of the student's placement ~~in which the~~ at the facility ~~is located~~ or hospital and request the participation of the resident LEA in meetings as required by IDEA. If the representative of the resident LEA cannot attend the meetings, the ~~residential treatment facility or hospital~~ representative shall use other methods to ensure participation by ~~local educational agency in which the facility is located~~ the resident LEA.

(b3) The ~~local educational agency in which the~~ facility or hospital ~~is located~~ shall ~~ensure that~~ notify the parents ~~and the district of residence representative are involved~~ of their right to participate in any decision about the student's individualized education~~al~~ program and agree to any proposed changes in the program before those changes are implemented.

(c4) The student's resident local educational agency ~~in which the facility is located and the office of public instruction are~~ is responsible for ensuring ~~compliance with IDEA~~ that a student placed in a residential treatment facility or children's psychiatric hospital receives FAPE under IDEA. The

office of public instruction is responsible for ensuring compliance with IDEA.
(AUTH: 20-7-402, MCA; IMP: 20-7-403, MCA)

COMMENT: OPI staff testified at the public hearing that the local educational agency where the student lives regardless of how the student arrived in that agency's boundaries is responsible for ensuring that a free appropriate public education is provided.

COMMENT: Intermountain Children's Home contends that federal law places the duty for FAPE for a student in a residential treatment facility or children's psychiatric hospital with the OPI.

COMMENT: Helena School District contends that under Montana law, the duty to ensure a student with disabilities receives FAPE rests with the student's resident LEA regardless of where the student receives the educational services.

RESPONSE: The rule has been modified to reflect Montana law, which places the duty for FAPE for a student with the resident LEA. A private residential treatment facility or children's psychiatric hospital under contract with OPI has a contractual duty to initiate action to ensure that a student with disabilities receives FAPE during the student's stay in the facility or hospital. This duty includes notifying the resident LEA of the need for its participation in IDEA procedures. OPI has the duty to ensure compliance with IDEA.

8. OPI has determined that further study is needed on four proposed new rules. Therefore, RULE XXXII, RULE XXXVII, RULE XLI and RULE XLIV are withdrawn at this time to permit further review and opportunity to comment.

9. Based on the foregoing, the Superintendent of Public Instruction hereby repeals, amends and adopts the rules as proposed.

Kathleen F. Holden
Rule Reviewer
Office of Public Instruction

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State August 2, 1993

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

In the matter of the amendment of ARM 16.14.406 dealing with disposal) fees for solid waste.)	NOTICE OF AMENDMENT OF ARM 16.14.406 (Solid & Hazardous Waste)

To: All Interested Persons

1. On June 24, 1993, the department published notice of the proposed amendment of rule 16.14.406, at page 1318 of the 1993 Montana Administrative Register, issue number 12.

2. The department has amended the rule as proposed with the following change (new material is underlined; material to be deleted is interlined):

16.14.406 VOLUME-BASED DISPOSAL FEE (1)-(2) Same as proposed.

(3) In addition to the volume based fee specified in (1) of this rule, any person licensed to dispose of or incinerate solid waste shall submit to the department a quarterly fee of ~~$0.13~~ $0.27 per ton of solid waste generated outside Montana and disposed of or incinerated within Montana. All facilities that accept wastes from outside Montana for the purpose of incineration or disposal must weigh the wastes accepted at that facility to accurately determine the volume accepted.

(4) Same as proposed.

3. One person, Mr. Jon Dilliard, Solid Waste Program Manager, provided comments during the public meeting held on July 21, 1993 at 9:00 a.m. in Room 209 of the Cogswell Building, 1800 Broadway Avenue, Helena, MT. In addition to this testimony, two written comments were received during the 30 day public comment period. Summaries of the comments and the department's response to them follow.

Comment 1: The department presented testimony at the hearing to explain that there had been an error in calculation of the fee. The error was discovered just prior to the publishing date in the MAR. Therefore, it was published in the MAR at the incorrect amount of $0.13 per ton. It should have been $0.27 per ton. However, the regulated community that will be impacted by this amended rule and other interested parties that received the Department's notice were notified of the correct fee amount.

Response: The department accepts this comment and has made the change.

Comment 2: One commenter requested that the department either provide an equivalency formula for volume to weight calculations (enabling a landfill to measure volumes instead of weighing incoming waste) or allow the use of weight tickets from public

scales or point of origin scales in order to avoid the cost of installing scales at the landfill.

Response: The department does not wish to cause undue financial burdens on the landfill operators of Montana. At the same time the department has no control over operations at out-of-state solid facilities. Imported wastes may not be typical mixed municipal solid waste and, therefore, of unknown density. Compaction machinery employed at these sites will tend to optimize volumetric reduction in order to provide greater transportation efficiencies. The final density achieved may vary greatly, in a manner unknown to the department. The department therefore requires that some form of weighing take place in order to accurately track the tonnages received.

The department concurs with that part of the comment that requests the option to present weight tickets from scales not located at the Montana disposal facility and feels that this option is already addressed by the language of the proposed regulation.

Comment 3: One comment stated that the proposed fee was fair but should not be set above $0.27 per ton.

Response: The department accepts this comment but reserves the right to increase the fee through the rulemaking process if needed in the future.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State August 2, 1993.

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the amendment of ARM 16.24.104 concerning eligibility requirements for the children's special health services program	NOTICE OF AMENDMENT OF ARM 16.24.104 (Children's Special Health Services)

To: All Interested Persons

1. On June 24, 1993, the department published notice of the proposed amendment of rule 16.24.104, at page 1262 of the 1993 Montana Administrative Register, issue number 12.
2. The department has amended rule 16.24.104 as proposed.
3. No comments or testimony were received.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State August 2, 1993.

Reviewed by:

Eleanor Parker, DHES Attorney

VOLUME NO. 45 OPINION NO. 9

ARREST - Authority of police officers;
CITIES AND TOWNS - Authority to adopt ordinances prohibiting breaches of peace;
COUNTY OFFICERS AND EMPLOYEES - Sheriffs, their duties, number of deputies;
PEACE OFFICERS - Duties and authority of police officers and sheriffs;
POLICE - Arrest authority;
POLICE - Minimum number of officers in department;
POLICE DEPARTMENTS - Minimum number of officers;
SHERIFFS - Duties and authority;
SHERIFFS - Minimum number of officers in department;
MONTANA CODE ANNOTATED - Sections 7-32-2102, 7-32-2121, 7-32-4101, 7-32-4105, 7-32-4106, 7-32-4302, 45-2-101(48), 46-1-202(17), 46-6-210, 46-6-311;
MONTANA CONSTITUTION - Article XI, section 2;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 8 (1987).

HELD: 1. Montana Code Annotated § 7-32-4302 authorizes, but does not require, a city or town to enact ordinances to prevent acts or conduct calculated to disturb the public peace.

2. A city or town police officer acting within the officer's territorial jurisdiction may arrest a person for a violation of state law prohibiting offenses against public order regardless of whether the city or town has exercised its power to adopt an ordinance prohibiting breaches of the peace.

3. Each city or town must have a chief of police; no further police officers are required. Each county sheriff, except those in counties of the seventh class, must appoint an undersheriff. No other deputy sheriffs are required by law.

4. The sheriff has the primary duty to enforce county and state laws throughout the county. If local enforcement is lacking, the sheriff must undertake such enforcement.

July 21, 1993

Ms. Vicki Knudsen
Musselshell County Attorney
One Main Street
Roundup, MT 59072

Dear Ms. Knudsen:

You have requested my opinion on four questions I have rephrased as follows:

1. Does MCA § 7-32-4302 require that a city or town council adopt an ordinance or ordinances regulating breaches of the peace?

2. Do city or town police officers have any authority to arrest persons for breach of the peace if the city or town has not adopted an ordinance or ordinances regulating breaches of the peace?

3. Is there a statutory minimum number of officers that must be maintained in either a police or sheriff's department?

4. Is the sheriff required to enforce all county and state laws everywhere within the county, without regard to city or town boundaries?

Montana Code Annotated § 7-32-4302 provides:

> Within the city or town and within 3 miles of the limits thereof, the city or town council has power to prevent and punish ... fights, riots, loud noises, disorderly conduct, obscenity, and acts or conduct calculated to disturb the public peace or which are offensive to public morals.

By its plain language, MCA § 7-32-4302 gives a city or town the authority to enact ordinances to prevent acts or conduct calculated to disturb the public peace. Accord State ex rel. Moreland v. Police Court of City of Hardin, 87 Mont. 17, 22, 285 P. 178, 180 (1930). See also 42 Op. Att'y Gen. No. 8 at 22, 26 (1987). However, there is no requirement in the statute that the city or town exercise this express grant of power.

In situations where a city or town has not exercised its authority to prevent and punish such acts or conduct by enacting an ordinance pursuant to MCA § 7-32-4302, you question whether a city or town police officer has authority to arrest an individual for breach of the peace. It is my opinion that a city or town police officer acting within the officer's territorial jurisdiction may arrest a person for a violation of state law prohibiting offenses against public order regardless of whether the city or town has exercised its power to prohibit breaches of the peace by ordinance.

Montana Code Annotated § 7-32-4105 includes within the duties of the chief of police the duty "to arrest all persons guilty of a breach of the peace or for the violation of any city or town ordinance and bring them before the city judge for trial."

MCA § 7-32-4105(1)(b) (1991). The language of the statute mandating that the chief arrest persons guilty of a breach of the peace or for violation of an ordinance would be redundant if his duties encompassed only arrests for breaches of the peace prohibited by city ordinance.

Additionally, it is clear that a city or town police officer is a peace officer under Montana law. MCA §§ 45-2-101(48), 46-1-202(17) (1991) ("Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the person's authority"). See also Maney v. State, 49 St. Rep. 980, 842 P.2d 704 (1992) (recognizing Chinook city police officer is a peace officer).

Pursuant to MCA § 46-6-311(1):

> A peace officer may arrest a person when no warrant has been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

This statute does not restrict the arrest authority of a city or town peace officer to arrests for the violation of a city ordinance. In State v. McDole, 226 Mont. 169, 734 P.2d 683, 685 (1987), a Eureka city police officer arrested McDole for driving under the influence of alcohol in violation of a state law, MCA § 61-8-401. McDole argued on appeal that his arrest was illegal because it was made outside the Eureka city limits and without an arrest warrant. He argued that because the City of Eureka could not produce an ordinance authorizing its police officers to make arrests within five miles of the city limits in accordance with MCA § 7-32-4301, the police officer was without authority to arrest him. The Court held that McDole's arrest was proper because the officer had authority to make a warrantless arrest outside his jurisdiction in his capacity as a private citizen. In the McDole opinion, the Court noted, in dicta:

> There is no question that Mr. McDole's arrest would have been legal under § 46-6-401(1)(d), MCA, [now MCA § 46-6-311(1)] if that arrest had been made within the Eureka city limits. Section 46-6-401(1)(d), MCA, provides:
>
> "A peace officer may arrest a person when: ... (d) he believes on reasonable gounds that the person is committing an offense or that the person has committed an offense and the existing circumstances require his immediate arrest."

> The hit and run accident in particular, as well as the reported erratic driving, clearly required Mr. McDole's immediate arrest in order to prevent his getting in additional accidents and possibly seriously injuring someone. In addition, the preservation of Mr. McDole's blood alcohol content required his immediate arrest.

(Citation omitted.) The reasoning of the Court supports my conclusion that, similarly, a city or town police officer has the authority to arrest an individual who violates state laws prohibiting breach of the peace if the arrest is made within the territorial jurisdiction of the officer and the existing circumstances require the individual's immediate arrest. MCA § 46-6-311. See also MCA § 46-6-210 (a peace officer may arrest a person when the officer has a warrant commanding that the person be arrested or when he believes on reasonable grounds that a warrant for the person's arrest has been issued).

Your second question concerns whether there is a statutory minimum number of officers that must be maintained in either a police or sheriff's department. Montana Code Annotated § 7-32-4101 requires that "[t]here shall be in every city and town of this state a police department which shall be organized, managed, and controlled as provided in this part." The statutes regarding the municipal police force also specifically refer to the chief of police, and include among the chief's duties the duty "to have charge and control of all policemen, subject to such rules as may be prescribed by ordinance." MCA § 7-32-4105 (1991). MCA § 7-32-4106(1) expressly gives the city council power to set the number of members of a police force, stating:

> The city council shall have absolute and exclusive power to determine and limit the number of police officers and members to comprise the police force of any city, to reduce the number of the police force at any time, and to divide the police membership into two lists:
>
> (a) one an active list, who are to be actually employed and receive pay while so employed; and
>
> (b) one an eligible list, who shall not receive pay while not actually employed as an officer or member.

Reading and construing these statutes as a whole, as I must, Crist v. Segna, 191 Mont. 210, 212, 622 P.2d 1028, 1029 (1981), I reach the same conclusion reached years ago when the Montana Supreme Court analyzed substantially similar statutes:

> The office of chief of police is required to be maintained. The subordinate offices need not be. They are created to meet the needs of the city; and if out of the necessities of any given case a

> reduction in the number of members of the force becomes imperative, patrolmen may be relegated to the eligible list[.]

State ex rel. Dwyer v. Duncan, 49 Mont. 54, 59, 140 P. 95, 97 (1914). Each city or town must have a chief of police; no further police officers are required.

My conclusion is similar with regard to a minimum number of members required in a sheriff's department. The constitution and statutes clearly contemplate the election of a county sheriff. Mont. Const. art. XI, § 2; MCA §§ 7-4-2203, 7-4-3001, 7-32-2101 to -2145. Additionally, "[t]he sheriff, as soon as possible after he enters upon the duties of his office, must, except in counties of the seventh class, appoint some person undersheriff to hold during the pleasure of the sheriff. Such undersheriff has the same powers and duties as a deputy sheriff." MCA § 7-32-2102(1) (1991). None of the other statutes regarding the power and authority of the sheriff to organize the department require the appointment of further officers. See MCA §§ 7-32-2104 to -2145 (1991). I therefore conclude that each county sheriff, except those in counties of the seventh class, must appoint an undersheriff. No other deputy sheriffs are required by law.

Finally, you have requested my opinion on the issue of whether the sheriff is required to enforce all county and state laws everywhere within the county, without regard to city or town boundaries. The duties of the sheriff include the duties to preserve the peace, arrest all persons who have committed a public offense, and prevent and suppress all breaches of the peace. MCA § 7-32-2121(1), (2), and (3) (1991). The sheriff is a county officer and his authority extends over the entire county, and includes all municipalities and townships within the county. State v. Williams, 144 S.W.2d 98, 104 (Mo. 1940) (en banc); 80 C.J.S. Sheriffs and Constables § 36, at 205. Nonetheless, it is often customary for a sheriff to leave local policing to local enforcement officers. While the sheriff may, in the absence of information to the contrary, assume that a local police department will do its duty in enforcing the law, the primary duty of such enforcement is the sheriff's and cannot be altered by custom. Id.

> If the sheriff has reason to believe that the police force is neglecting its duty it is his duty to inform himself. And if he knows that the police are ignoring or permitting offenses his duty to prevent and suppress such offenses is the same as it would be if there was no municipality and no police force.

Williams, 144 S.W.2d at 105. I therefore conclude that the sheriff has the primary duty to enforce county and state laws throughout the county. If local enforcement is lacking, the sheriff must undertake such enforcement.

THEREFORE, IT IS MY OPINION:

1. Montana Code Annotated § 7-32-4302 authorizes, but does not require, a city or town to enact ordinances to prevent acts or conduct calculated to disturb the public peace.

2. A city or town police officer acting within the officer's territorial jurisdiction may arrest a person for a violation of state law prohibiting offenses against public order regardless of whether the city or town has exercised its power to adopt an ordinance prohibiting breaches of the peace.

3. Each city or town must have a chief of police; no further police officers are required. Each county sheriff, except those in counties of the seventh class, must appoint an undersheriff. No other deputy sheriffs are required by law.

4. The sheriff has the primary duty to enforce county and state laws throughout the county. If local enforcement is lacking, the sheriff must undertake such enforcement.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/kcs/brf

VOLUME NO. 45 OPINION NO. 10

CONFLICT OF INTEREST - Exercise of separation option in collective bargaining agreement by public official;
CONFLICT OF INTEREST - What constitutes "substantial financial interest" under code of ethics for public officers and employees;
CONFLICT OF INTEREST - What constitutes "substantial financial transaction" under code of ethics for public officers and employees;
PUBLIC OFFICERS - Exercise of separation option in collective bargaining agreement by public official;
PUBLIC SERVICE COMMISSION - Exercise of separation option in collective bargaining agreement by commissioner;
MONTANA CODE ANNOTATED - Title 69, chapter 14; sections 2-2-101 to -132, 2-2-104, 2-2-121(2), 2-16-501;
MONTANA CONSTITUTION - Article XIII, section 4;
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 28 (1983), 38 Op. Att'y Gen. No. 55 (1979), 37 Op. Att'y Gen. No. 179 (1978), 37 Op. Att'y Gen. No. 104 (1978).

HELD: A Public Service Commissioner does not violate the code of ethics for public officials and employees by temporarily reactivating and then terminating his employment with a railroad company in order to become eligible to receive a severance payment negotiated between the railroad and the collective bargaining unit to which the commissioner belongs.

July 26, 1993

Mr. Danny Oberg
Commissioner
Public Service Commission
P.O. Box 202601
Helena, MT 59620-2601

Dear Commissioner Oberg:

You have requested an Attorney General's Opinion concerning the propriety of a Public Service Commissioner temporarily reactivating his employment with a railroad company in order to become eligible for a severance payment negotiated between the railroad and the union to which the commissioner belongs. Your question is whether, if the commissioner chooses to accept the railroad's severance offer, he becomes ineligible to retain his public office.

For purposes of this response, I assume the following facts, stated in your letter of inquiry: The Burlington Northern Railroad [BN] and the United Transportation Union [UTU] recently entered into a collective bargaining agreement under the terms

of which BN will reduce its train crew sizes in exchange for granting severance payment to those employees who agree to terminate their employment with the railroad (referred to in the agreement as "voluntary separation"). Since assuming office in 1983, you have been on leave of absence from your employment with BN but retain your seniority as a railroad brakeman/conductor. As a member of the UTU bargaining unit, you are eligible to receive this severance payment by temporarily reactivating your employment with BN for one eight-hour work shift. It is my understanding that these conditions for payment have now been met and, upon execution of a voluntary separation release agreement, your employment with the railroad has been terminated.

The Montana Public Service Commission [Commission] has general supervision of all railroads engaged in the transportation of passengers or property in the state. MCA §§ 69-14-102 and -111. In that capacity, the Commission is authorized to investigate:

-- alleged neglect or violation of the laws by any railroad or its officers or agents;

-- railroad accidents resulting in injury, death, or destruction of property greater in value than $2000; and

-- rates, classifications or rules for transportation of freight by any railroad within the state.

MCA §§ 69-14-112 and -114. Under state law, the Commission also has some authority concerning railroad safety, MCA § 69-14-115; rates, MCA §§ 69-14-301 to -322; highway crossings, MCA §§ 69-14-606 and -607; loading platforms and spurs, MCA §§ 69-14-801 to -814; and other duties relating to the operation of railroads in the state of Montana. Despite these seemingly broad powers, the Commission has limited oversight of the day-to-day operations of railroads in Montana; federal law governs most significant matters related to interstate railroad operations and has preempted much of the state's law in the area.[1]

Your question requires an examination of the relationship between your duties as a public service commissioner and your rights as a BN employee and member of the UTU-represented bargaining unit.

It has long been recognized in Montana that a public office is "created in the interest and for the benefit of the public." State ex rel. Bell v. McCullough, 85 Mont. 435, 438, 279 P. 246 (1929). Thus:

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[1]See, e.g., Burlington Northern R.R. v. State of Montana, 815 F. Supp. 1522 (D. Mont. 1992); Burlington Northern v. State of Montana, 880 F.2d 1104 (9th Cir. 1989).

> "An incumbent of a public office is invested with certain powers and charged with certain duties pertinent to sovereignty. The powers so delegated to the officer are held in trust for the people and are to be exercised in behalf of the government or of all citizens who may need the intervention of the officer. ... Public officers, in other words, are but the servants of the people, and not their rulers. They are amenable to the rule which forbids an agent or trustee to place himself in such an attitude toward his principal or cestui que trust as to have his interest conflict with his duty."

State ex rel. Grant v. Eaton, 114 Mont. 199, 206, 133 P.2d 588, 591 (1943) (citation omitted). Stated generally, "An officer cannot lawfully act as the agent of one person where the private agency would come in conflict with his official duties." State ex rel. Bell, 85 Mont. at 438, 279 P. at 247. See also State ex rel. Hollibaugh v. State Fish & Game Comm'n, 139 Mont. 384, 394, 365 P.2d 942, 948 (1961); State ex rel. Bonner v. District Court of 1st Jud. Dist., 122 Mont. 464, 470, 206 P.2d 166, 169 (1949).

These authorities correspond with the "long-standing common law doctrine that the faithful performance of official duties is best secured if a governmental officer, like any other person holding a fiduciary position, is not called upon to make decisions that may advance or injure his individual interest." Brown v. Kirk, 355 N.E.2d 12, 15 (Ill. 1976). The doctrine has its genesis in the principle that no one may serve two masters, "a maxim which is especially pertinent if one of the masters happens to be economic self-interest." United States v. Mississippi Valley Generating Co., 364 U.S. 520, 549 (1961).

To codify this principle, article XIII, section 4 of the Montana Constitution directs the Legislature to "provide a code of ethics prohibiting conflict between public duty and private interest" for public officers and employees.[2] In response to this mandate, the 1977 Legislature enacted a set of standards governing the conduct of all public officials. MCA §§ 2-2-101 to -132. Based on the concept that "[t]he holding of public

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[2]There is no constitutional provision specifically concerning the receipt of private compensation while holding public office. Article VI, section 5(2) of the Montana Constitution speaks only to the prohibition against holding dual offices or receiving compensation from more than one governmental agency. See 43 Op. Att'y Gen. No. 32 at 93 (1989). The Constitutional Convention transcripts indicate that the framers intended, through art. XIII, § 5, to entrust the Legislature with the task of delineating the circumstances under which receipt of private compensation would be prohibited. See IV Mont. Const. Conv. 796 (1972).

office or employment is a public trust," MCA § 2-2-103(1), the code of ethics recognizes "that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances," MCA § 2-2-101. Thus, "it is necessary to look at each particular transaction or relationship in conjunction with the surrounding circumstances before a determination can be made as to whether or not a breach has occurred." 37 Op. Att'y Gen. No. 104 at 431, 434 (1978).

Montana Code Annotated § 2-2-104(1) enumerates certain actions which constitute a breach of fiduciary duty if performed by any public officer. It provides in part:

> A public officer, legislator, or employee may not:
>
> ...
>
> (b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:
>
> (i) which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties; or
>
> (ii) which he knows or which a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.

Although the term "gift" is not defined by statute, an "economic benefit tantamount to a gift" includes "compensation received for private services rendered at a rate substantially exceeding the fair market value of such services." MCA § 2-2-104(2). Severance pay is not an uncommon feature of union contracts and in this case has been offered to a large class of BN employees of which you are a member. Rather than compensation for services, severance pay connotes payment "beyond [an employee's] wages on termination of his employment." Black's Law Dictionary 1232 (5th ed. 1979). Since the severance payment is part of a negotiated agreement and supported by consideration--here the surrender of accrued seniority and entitlement to reemployment--it does not appear to constitute a "gift" within the meaning of MCA § 2-2-104.[3]

Under MCA § 2-2-121(2), a state officer or employee may not:

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[3]For the same reason, I conclude that, under the circumstances presented, your conduct does not violate MCA § 69-1-112, prohibiting acceptance by public service commissioners of gifts or favors from railroads.

(b) engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties;

...

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom he regulates in the course of his official duties without first giving written notification to his supervisor and department director.

As a preliminary matter, it must be determined whether your termination of employment and acceptance of a severance payment constitute a "substantial financial transaction" for your "private business purposes" within the meaning of section 2-2-121(2)(b). I am of the opinion that you have not engaged in a financial transaction with BN as contemplated by the ethics code.

The collective bargaining agreement was negotiated between BN and UTU. As a member of the affected bargaining unit, you are represented by the union and therefore bound by the agreement. Under the Railway Labor Act, 45 U.S.C. §§ 151 to 188, a representative chosen to act on behalf of the railroad employees is the exclusive agent for collective bargaining purposes; as a member of the employee unit, you are precluded from bargaining individually on behalf of yourself as to matters which are properly the subject of collective bargaining. Steele v. Louisville & N. R.R., 323 U.S. 192, 200 (1944); see also Del Costello v. International Broth. of Teamsters, 462 U.S. 151, 164 n.14 (1983). "'The very purpose of providing by statute for the collective agreement is to supersede the terms of separate agreements of employees with terms which reflect the strength and bargaining power and serve the welfare of the group. Its benefits and advantages are open to every employee of the represented unit.'" Steele, 323 U.S. at 200 (quoting J.I. Case Co. v. National Labor Relations Bd., 321 U.S. 332, 338 (1944)). Neither you nor any other employee was entitled to individual dealings or discussions with BN during the negotiation process. As the agreement is the product of the negotiations conducted by his representative, no employee is at liberty to modify its terms. The "transaction," within the meaning of the statute, is the transaction between UTU and BN.

In short, by accepting the offered severance payment, you have not engaged in a financial transaction with the railroad within the contemplation of the code of ethics. The substantive transaction occurred between UTU and BN. By exercising your right as a member of the represented unit to receive severance pay in return for surrender of your accrued seniority, you have not engaged in a distinct "financial transaction for ... private business purposes" with the railroad; instead you have merely exercised an entitlement which is contained in a labor agreement negotiated by a collective bargaining representative for the benefit of a substantial group of employees. The conflict of interest against which MCA § 2-2-121(2)(b) protects does not exist since there is no direct or indirect dealing over the involved compensation between the public official as an individual and the supervised entity.

Likewise, I am of the opinion that you do not have a "substantial financial interest" in the railroad company, within the meaning of MCA § 2-2-121(2)(e), by virtue of your severance payment. "Financial interest" is defined to include:

(a) an ownership interest in a business;
(b) a creditor interest in an insolvent business;
(c) an employment or prospective employment for which negotiations have begun;
(d) an ownership interest in real or personal property;
(e) a loan or other debtor interest; or
(f) a directorship or officership in a business.

Although you have had an employment interest with BN, that relationship has been severed, and there is no ongoing financial relationship between you and the railroad. Moreover, subsection (e) is tailored to the prohibition of particular official actions and may be applied only on a case-by-case basis. It does not apply as a general prohibition against holding public office, but serves to prohibit an official from taking action on a matter in which he has a substantial personal interest. See 40 Op. Att'y Gen. No. 28 at 108 (1983), 38 Op. Att'y Gen. No. 55 at 190 (1979), 37 Op. Att'y Gen. No. 179 at 752 (1978).[4]

Finally, it is my opinion that the circumstances you have described do not violate MCA § 2-2-121(2)(f) since, even if your actions constitute the acceptance of employment, the statute

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[4]Voluntary disclosure of a substantial financial interest will excuse a potential violation of the ethics code only as provided in MCA § 2-2-121(3), where the official is a member of a quasi-judicial or rulemaking board (which would include the Commission) and his participation is necessary to obtain a quorum or to enable the body to act. 40 Op. Att'y Gen. No. 28 at 114 (1983).

only requires written notification to your "supervisor and department director." Since the Commission is the director of the Department of Public Service Regulation, MCA § 2-15-2601, notice to your fellow commissioners was adequate to comply with the terms of section 2-2-121(2)(f).

In sum, the circumstances described in your inquiry do not present a situation in which you, as a public official, are at risk of advancing your own interests at the expense of the public welfare. Conflict of interest laws are designed "to prevent honest government agents from succumbing to temptation by making it illegal for them to enter into relationships which are fraught with temptation." United States v. Mississippi Valley Generating Co., supra, 364 U.S. at 550. The termination of your employment with the railroad and acceptance of a severance payment negotiated by the union on behalf of an entire class of employees do not constitute the kind of private relationship contemplated by the code of ethics which would threaten the integrity of your position. The situation simply presents no opportunity for you to use the influence you exert in your official position to further your own personal gain.[5]

Aside from issues concerning conflict of interest, I have also considered whether your temporary reactivation of employment and acceptance of severance pay constitute a vacancy in your office and conclude they do not. Generally speaking, a public officer is not prohibited from engaging in another occupation during his term of office, unless expressly prohibited by law from doing so. 67 C.J.S. Officers and Employees § 203, at 665 (1978). Although a public service commissioner may be removed from office for failing to perform his duties, MCA § 69-1-113, there is no statute prohibiting him from engaging in any other employment. Like other state offices, the office becomes vacant "on the happening of any one of the following events before the expiration of the term of the incumbent:"

(1) the death of the incumbent;
(2) a determination pursuant to Title 53, chapter 21, part 1, that he is seriously mentally ill;
(3) his resignation;
(4) his removal from office;
(5) his ceasing to be a resident of the state or, if the office be local, of the district, city, county, town, or township for which he was chosen or appointed or within which the duties of his office are required to be discharged;

[5]I am not asked to, and do not, express any opinion concerning the propriety of your taking a leave of absence from employment with BN when you assumed office, particularly since that employment relationship has now been terminated.

(6) his absence from the state, without the permission of the legislature, beyond the period allowed by law;
(7) his ceasing to discharge the duty of his office for the period of 3 consecutive months, except when prevented by sickness or when absent from the state by permission of the legislature;
(8) his conviction of a felony or of any offense involving moral turpitude or a violation of his official duties;
(9) his refusal or neglect to file his official oath or bond within the time prescribed;
(10) the decision of a competent tribunal declaring void his election or appointment.

MCA § 2-16-501. None of these events has occurred in this case, and I conclude therefore that your actions have not resulted in a vacancy within the Public Service Commission.

Since the attorney general's authority to issue opinions is limited solely to questions of law, MCA § 2-15-501(6), I do not resolve any issues raised by your request that require a factual determination.

In conclusion, it is my opinion that your actions in qualifying for receipt of a severance payment under the terms of a collective bargaining agreement do not constitute a breach of your fiduciary duty or effect a vacancy in your office. Obviously, this determination does not affect the ability of a party to an administrative proceeding to raise an issue of disqualification, if otherwise appropriate, under MCA § 2-4-611(4).

THEREFORE, IT IS MY OPINION:

A Public Service Commissioner does not violate the code of ethics for public officials and employees by temporarily reactivating and then terminating his employment with a railroad company in order to become eligible to receive a severance payment negotiated between the railroad and the collective bargaining unit to which the commissioner belongs.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/esb/dlh

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1993. This table includes those rules adopted during the period April 1, 1993 through June 30, 1993 and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1993, this table and the table of contents of this issue of the MAR.

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