RESERVE

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MONTANA ADMINISTRATIVE REGISTER

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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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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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SPECIAL NOTICE AND TABLE SECTION

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

In the matter of proposed adoption of new rules relating to medical review of members, discontinuance of disability retirement benefits, and procedures for requesting an administrative hearing; amendment of ARM 2.43.201, 2.43.202, 2.43.302, and 2.43.502 relating to model rules, definitions, and the disability application process; and repeal of ARM 2.43.507 relating to election of disability coverage	NOTICE OF PROPOSED ADOPTION, AMENDMENT AND REPEAL OF RULES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On June 23, 1994, the Public Employees' Retirement Board proposes to adopt the following proposed rules pertaining to medical review of members, discontinuance of disability retirement benefits, and procedures for requesting administrative hearings; amend ARM 2.43.201, 2.43.202, 2.43.302, and 2.43.502 relating to model rules, definitions, and the disability application process; and repeal ARM 2.43.507 relating to election of disability coverage.

2. The proposed new rules provide as follows:

RULE I PERIODIC MEDICAL REVIEW OF DISABILITY RETIREES

(1) The medical status of each member receiving a disability retirement benefit will be reviewed annually by the board to determine whether the member continues to be disabled, unless the board:

(a) determines reviews are unnecessary and may be discontinued, or

(b) determines more frequent reviews are warranted by the nature of the disability, or

(c) converts the disability retirement benefit to a service retirement benefit.

AUTH: 19-2-403, MCA

IMP: 19-3-1015, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

RULE II PERIODIC MEDICAL REVIEW OF DISABILITY RETIREES -- INITIAL NOTICE (1) The division will send written notification of medical review to a member receiving a disability retirement which is subject to review. The notice will be sent to the member at the most recent address provided and will inform the member of the division's determination of:

(a) the date by which medical information and records must be received, and

(b) any specific medical tests or diagnosis required for the review.

(2) The member will be required to have the results of a current medical examination, including any specifically required tests or diagnosis, submitted directly to the division by the examining medical authority(ies) within 60 calendar days of initial notification. The medical examination shall be performed by the member's treating physician or other competent medical authority. To be considered current, the date of a medical examination must be no earlier than six months prior to receipt by the division.

AUTH: 19-2-403, MCA
IMP: 19-3-1015, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

RULE III INITIAL AGENCY REVIEW OF MEDICAL EVIDENCE -- NOTICE OF ADDITIONAL EVIDENCE REQUIRED (1) The board's medical consultant and disability claims examiner will review all medical records previously submitted and those requested for the current period and submit interpretations and recommendations as to the current disability status of the member.

(2) If the division determines the records submitted by the member's treating physician in response to the initial notice of review are not current or are otherwise inadequate to complete a review, the division will send written notice to the member of the specific additional examinations or tests necessary for adequate review of the disabling condition. When appropriate, the type of medical authority to conduct the necessary tests or examination will be specified or a particular physician may be appointed to conduct the required examinations or tests.

(3) The member will be allowed 60 days from the date of notification to complete the required examinations or tests and have the results sent directly to the division by the examining physician.

(4) If the member chooses not to provide additional medical evidence administratively determined as necessary, the previous medical evidence submitted will be presented to the board along with staff recommendations regarding continuing disability of the member.

AUTH: 19-2-403, MCA
IMP: 19-3-1015, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

RULE IV FAILURE TO RESPOND -- SECOND NOTICE (1) A member who fails to submit all medical information as required in the notice will be sent a "second notice" by certified mail, return receipt requested. The second notice will inform the member of:

(a) any specific medical tests or diagnosis required by the board for the review, and

(b) the date on which disability benefits will be suspended if the member does not provide the medical evidence.

(2) The member may request an extension to accommodate scheduled appointments. The written request justifying the need for additional time must be received by the division at least 15 days prior to the end of the time period. Any requests for

extensions in excess of 30 days will not be approved.

AUTH: 19-2-403, MCA
IMP: 19-3-1015, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

RULE V SUSPENSION OF DISABILITY BENEFITS -- NOTICE (1) If the member fails to respond appropriately to the second notice, the division will notify the member, by certified mail, return receipt requested, that disability benefits have been suspended. The suspension notice will also inform the member that:

(a) the disability benefit will be cancelled if the previously noticed medical reports and information are not provided to the division within 30 days from the date of notice;

(b) deductions from benefits for insurance premiums paid to an employer-sponsored health insurance plan will continue to be paid on the member's behalf until such time as the board cancels the benefits; and

(c) disability benefits will not be restored until such time as the board determines the member has demonstrated continuous disability.

AUTH: 19-2-403, MCA
IMP: 19-3-1015, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

RULE VI CANCELLATION OF DISABILITY BENEFITS FOR REFUSAL TO COMPLY -- NOTICE (1) Failure to appropriately respond to the notice of suspension will be deemed refusal to submit to a medical review. Disability benefits will be cancelled and the member will be notified of the effective date of cancellation of benefits by certified mail, return receipt requested.

(2) The effective date of cancellation will be the first day of the month following the date of the cancellation notice.

(3) The notice of cancellation will inform the member of appeal rights under the board's rules for contested cases and any rights for service retirement benefits or for requesting termination of membership from the retirement system.

AUTH: 19-2-403, MCA
IMP: 19-3-1015, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

RULE VII CANCELLATION OF DISABILITY BENEFITS DUE TO CHANGE OF MEDICAL STATUS (1) If the board determines the medical information provided by the member does not demonstrate continuing disability, the monthly disability retirement benefit will be cancelled.

(2) The effective date of cancellation will be the first day of the second month following board action (e.g. board action to cancel disability retirement benefits on January 28, would result in cancellation of the March benefit).

(3) The member's former employer will be notified of the member's eligibility for reinstatement to service.

AUTH: 19-2-403, MCA
IMP: 19-3-1015, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

RULE VIII APPEAL OF CANCELLATION OF BENEFITS (1) A member may appeal the cancellation of benefits only by requesting an administrative hearing (contested case) in writing within 30 days after the effective date of the cancellation.

AUTH: 19-2-403, MCA
IMP: 19-3-1015, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

RULE IX REVIEW OF ADMINISTRATIVE DECISION (1) Those matters subject to contested case determination will be decided by the board initially on the basis of material properly submitted by the requesting party and such other information as the board deems appropriate. The board will notify the requesting party of its preliminary decision. If the decision is adverse, the board will include a general statement of adverse considerations, which need not be exhaustive. The requesting party will be given two options, which must be exercised within 30 days of the date of the notification:

(a) The party may submit a request in writing for reconsideration by the board. Such reconsideration will be based on facts and matters submitted by the party to the board, the testimony of the party, and the presentation of the party or their legal counsel before the board. Facts and matters may be submitted by the requesting party any time after the adverse decision is made until ten days prior to the second board meeting following the original administrative decision. The board will notify the party of the determination on reconsideration, which will become final and is not subject to administrative or judicial review unless the party exercises the right to request an administrative hearing within 30 days of the date of the notice of determination on reconsideration.

(b) The party may exercise the right to request an administrative hearing (contested case) within 30 days of the date of the notice of the initial determination or determination on reconsideration. Notice will be given orally to the party at the time the board reaches its determination. If neither the requesting party nor their counsel is present, written notice of the board's determination will be mailed.

(2) If the requesting party fails to exercise an available option within the time allowed by the board, the board's decision becomes final and is not subject to administrative or judicial review. Thereafter, a party may only appear before the board on the same matter based on new and different facts which are not cumulative or repetitive and for good cause shown.

(3) Time periods provided herein may be enlarged only in writing by the board or its authorized representative and only on requests made prior to the expiration of the time period.

AUTH: 19-2-403, MCA
IMP: 19-2-403, MCA

RULE X CONTESTED CASE PROCEDURES (1) Contested cases will be presided over and heard by a quorum of the board or a hearing examiner who may be any individual appointed by the board, including any board member. A party may seek to

disqualify a hearing examiner only on the basis of a pre-hearing motion and affidavit containing an affirmative showing of prejudicial personal bias or lack of independence. The hearing examiner will rule on the motion or voluntarily recuse (disqualify) himself or herself. Such ruling will not be reviewed by the board except as the personal bias or lack of independence is demonstrated by reference to the hearing examiner's final proposed ruling and order.

(a) The hearing examiner has general authority to regulate the course of contested cases and may exercise the power and authority provided or implied by law, including section 2-4-611, MCA.

(b) The hearing examiner may establish pre-hearing and hearing calendar and procedures, rule on procedural matters, make proposed orders, findings and conclusions, and otherwise regulate the conduct and adjudication of contested cases as provided by law.

(c) The hearing examiner shall enter proposed findings of fact, conclusions of law, and order, with any necessary explanation, for review and final determination by the board.

(d) The jurisdiction and authority of a hearing examiner terminates upon the entry of a proposed order unless the board delegates further authority.

(2) If a quorum of the board hears the contested case, the board may use a hearing examiner for procedural rulings and administrative purposes, and to assist in the drafting of a final order. A final order so adopted will be the final administrative decision of the board, subject only to judicial review.

(3) The division may assign an attorney for the presentation of a case or to appear in any contested case to represent the interests of the board.

(4) (a) A contested case hearing will be recorded electronically unless a party demands a stenographic record. If a party demands a stenographic record of any proceeding, it must be made known to the hearing officer not less than 20 days prior to the proceeding. The party requiring a stenographic record must arrange and pay for it. Any electronic or stenographic record shall be transcribed on the request of any party. The cost of the transcription shall be paid by the requesting party. A party who has a transcript prepared shall provide a copy to any other party requesting it in exchange for the proportional cost of an original and the necessary copies. The party(ies) filing exceptions to the hearing examiner's proposed findings of fact must file the original and a total of seven copies of the transcript with the division. The original of the transcript shall be included in the record of the contested case only if exceptions have been filed to the hearing examiner's proposed findings of fact.

(b) If an electronic recording of any hearing or proceeding is defective or cannot be transcribed, the hearing examiner may reconstruct the record or the parties may reconstruct the record by stipulation. The record so reconstructed will constitute the record for determination and

review of findings of fact.
AUTH: 19-2-403, MCA
IMP: 19-2-403, MCA

RULE XI REGULATIONS APPLICABLE TO CONTESTED CASES
(1) To the extent these rules do not provide for or specify procedures, or where necessary to supplement these rules, the provisions of the Montana Administrative Procedure Act and Attorney General's Model Rules apply. The Montana Rules of Civil Procedure, Montana Uniform District Court Rules or Montana Rules of Evidence may be utilized to the extent that they clarify fair procedures, expedite determinations, and assist in the adjudication of rights, duties or privileges of parties.
(2) A contested case hearing must be heard in Helena.
AUTH: 19-2-403, MCA
IMP: 19-2-403, MCA

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

2.43.201 MODEL PROCEDURAL RULE (1) To the extent applicable to the operations of the public employees' retirement board, the board has herein adopted and incorporated the attorney general's model procedural rules, one through 28, by reference to such rules as stated in ARM 1.3.101 through ARM ~~1.3.234~~ 1.3.233.
AUTH: 19-2-403, MCA
IMP: 2-4-201 and 19-2-403, MCA

2.43.202 APPLICABILITY OF RULES (1) All of the following rules may not be subject to the provisions of the Montana Administrative Procedure Act. To the extent that ~~they~~ procedural rules adopted herein are applicable, ~~procedural rules adopted herein~~ they will be applied. To the extent that they are not applicable, procedural rules adopted herein may be followed at the option of the board. In both cases, these rules shall have full force and effect upon the activities over which the ~~public employees' retirement~~ board has responsibility and/or authority.
AUTH: 19-2-403, MCA
IMP: 2-4-201 and 19-2-403, MCA

2.43.302 DEFINITIONS For the purposes of this chapter, the following definitions apply:
(1) and (2) remain the same

(3) "contested case" is a legal proceeding, as set forth in these rules, subsequent to initial administrative determination.

(3) through (18) remain the same and are renumbered (4) - (19).
AUTH: 19-2-403, MCA
IMP: Title 19, Chs. 2, 3, 5, 6, 7, 8, 9, and 13 MCA

2.43.502 DISABILITY RETIREMENT (1) (a) ~~A member eligible for disability retirement must file a claim within four (4) months after discontinuance from service, unless the member is continuously disabled from the last date of service to the date the application is filed.~~ Except as submitted by board members or division staff acting in those capacities, a request for the determination of disability benefit rights must be initiated in writing, utilizing appropriate forms, and must be accompanied by all relevant information available to the requesting party. The board or division may require the requesting party provide specific information prior to board determination. The requesting party may provide additional information for consideration until 10 days (20 days for medical information which must be reviewed by a medical doctor) prior to the next scheduled board meeting, or, if different, the board meeting at which the request will be considered.

(b) ~~Application~~ All forms necessary to apply for disability retirement may be ~~secured~~ obtained from the ~~public employees'~~ retirement division ~~office~~, and a completed application ~~will~~ must include the following forms:

(i) ~~employee's claim~~ application for disability retirement,

(ii) ~~employer statement, and~~ job duty questionnaire for disability retirement,

(iii) attending physician's statement, and

(iv) authorization to release information.

All forms must be completed and submitted to the division before the board will act on the application for disability retirement. ~~Any additional information pertinent to the claim may be submitted by the member and may be reviewed by a medical doctor and the board.~~

~~(c) Any claimant may request an informal meeting with the board before or after initial action on his claim by application for disability. The member must submitting written request to the division at least 1 full week before any scheduled meeting; provided, however, claimant will be given an opportunity to discuss his claim with the board no later than the second regularly scheduled meeting after submitting his request. Inability to attend any given meeting will not jeopardize a member's right to appear at future meetings.~~

(c) The employer of the applicant for disability retirement must define the essential elements of the member's position and show reasonable accommodation was attempted for the member's disabling condition(s) in compliance with the Americans with Disabilities Act (ADA), statutes and regulations.

~~(d) Any such request for, or attendance at, an informal meeting as described above in (c) shall in no way constitute a waiver of an individual's right to request a formal hearing under the Administrative Procedures Act. Any member requesting a formal hearing after an adverse determination by the board must file a request for hearing, in writing, no later than 30 days after notification of the board's original determination or no later than 30 days after notification of the board's adverse determination after an informal hearing.~~

(d) "Total inability" for purposes of determining disability means the member is unable to perform the essential elements of the member's job duties even with reasonable accommodation required by the ADA.

~~(c) Any retiree who has been previously retired under the disability provision of this act upon return to covered employment, is subject to immediate reinstatement to active membership and a discontinuance of his disability allowance.~~

(e) The factors the board will consider in determining total inability and the permanence of a disability will include, but are not limited to, availability and use of sick leave, vocational rehabilitation, and medical treatment; and whether employment has been terminated.

~~(f) All approved disability claims will be retroactive to the date on which the claimant ceased to be employed by a covered employer.~~

~~(2) Any member of the judges', highway patrol, game wardens', or sheriffs' retirement system, regardless of length of service, who is incapacitated for the performance of duty by a duty-related disability may apply for a duty-related disability retirement, subject to the rules stated above enumerated in (1) (a) through (f).~~

~~(a) Any member who is eligible for a duty-related disability, regardless of length of service, may elect to apply for the more general disability retirement described in (1) (a) through (f), above, if such an election would result in a higher monthly disability allowance because of service credits earned.~~

AUTH: 19-3-403, MCA
IMP: 19-2-406, MCA

4. Adoption of Rules I through VIII is necessary to specify the procedure which will be utilized to discontinue the disability retirement benefit of a member who fails to comply with the statutorily required medical review or whose medical condition no longer qualifies the member for disability retirement benefits. Adoption of Rules IX through XI is necessary to define the procedures for appealing administrative determinations.

Rule 2.43.201 and 2.43.202 are being amended with editorial changes to include recent changes to the retirement statutes and changes to the attorney general's model procedural rules.

Rule 2.43.302 is being amended by adding a definition of "contested case," to define the term as used in this section.

Rule 2.43.502 is being amended by deleting section (1) (a), (e), (f), and (2) as unnecessary because they repeat the statutes. Sections (1) (c) and (d) were deleted because the information will now be included in the procedures for adjudicating contested cases. A new section (1) (a) was added to provide introductory language which explains the purpose of the section. Section (1) (b) was amended and new sections (1) (c) and (d) were added to incorporate requirements of the

Americans with Disabilities Act. New section (1) (e) was added to delineate some of the factors the board will consider in determining total inability of the member and permanence of the disability. The remaining amendments consist of editorial changes to include uniform terms now used in statute and modifications to clarify the text.

5. The board proposes to repeal ARM 2.43.507 dealing with election for coverage under nondiscrimination PERS disability provisions because the deadline for making such election has passed. ARM 2.43.507 can be found at ARM page 2-3156.

AUTH: 19-2-403, MCA; IMP: 19-3-1002 and 19-3-1008, MCA

6. Interested persons may present their data, views, or arguments concerning the proposed adoptions, amendments, and repeal in writing no later than June 13, 1994 to:

Linda King, Administrator
Public Employees' Retirement Division
1719 Ninth Avenue
Helena, Montana 59620-0131

7. If a person who is directly affected by the proposed adoptions, amendments, or repeal, wishes to express data, views and arguments orally or in writing at a public hearing, the person must make written request for a hearing and submit this request along with any written comments to the above address. A written request for hearing must be received no later than June 13, 1994.

8. If the agency receives requests for a public hearing on the proposed adoptions, amendments, and repeal 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 4277 persons based on February 1994 payroll reports of active and retired members.

Terry Teichrow, President
Public Employees' Retirement Board

Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State May 2, 1994.

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

In the matter of the adoption of new rules regarding small employer carrier reinsurance program	))))	NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

1. On July 6, 1994, at 10:00 a.m., M.D.T., a public hearing will be held at Conference Room 102A of the Commissioner of Higher Education Building, 2500 Broadway Street, Helena, Montana. The hearing will be to consider the proposed adoption of new rules regarding the small employer carrier reinsurance program under the Small Employer Health Insurance Availability Act.

2. The proposed new rules provide as follows:

RULE I APPLICABILITY AND SCOPE (1) These rules constitute the administrative rule component of the plan of operation for the Montana small employer health reinsurance program developed by the board of directors of the program (board) and adopted by the commissioner pursuant to 33-22-1819, MCA.

(2) These rules apply to all members of the program.

AUTH: 33-1-313 and 33-22-1822, MCA
IMP: 33-22-1819, MCA

RULE II DEFINITIONS For the purposes of this subchapter, the terms defined in 33-1-202, 33-22-110, 33-22-903(a), 33-22-1803, 33-31-102, MCA, and ARM 6.6.4301 will have the same meaning in this subchapter, unless clearly designated otherwise. For the purposes of this subchapter, the following terms have the following meanings:

(1) "Administering carrier" means either a third party administrator, a carrier, or any other entity approved by the commissioner.

(2) "Covered claims" means only such amounts as are actually paid by the members for benefits provided for individuals reinsured by the program. The term does not include:

(a) Claim expenses or salaries paid to employees of the members who are not providers of health care services;

(b) Court costs, attorney's fees or other legal expenses;

(c) Any amount paid by the members for:

(i) punitive or exemplary damages; or

(ii) compensatory or other damages awarded to the insured, arising out of the conduct of a member in the investigation, trial, or settlement of any claim or failure to pay or delay in payment of any benefits under any policy; or

(iii) the operation of any managed care, cost containment, or related programs;

(d) Any statutory penalty imposed upon a member on account of any unfair trade practice or any unfair insurance practice.

(3) "Extra eligible employee" means a covered employee of a small group employer who is not an eligible employee because he or she works less than 30 hours per week.

(4) "Member" means any reinsuring carrier participating in the program.

(5) "Takeover provisions" means provisions of a health benefit plan offered by a carrier that is replacing the health benefit plan of another carrier. Such provisions apply to individuals who were insured under the replaced plan and address pre-existing conditions, deductible, carry forwards, and other items that minimize the inconvenience or loss of benefits or coverage that might occur during a replacement, in the absence of the takeover provisions.

(6) "Whole group" means all eligible employees, extra eligible employees, and dependents.

AUTH: 33-1-313 and 33-22-1822, MCA
IMP: 33-22-1819, MCA

RULE III BOARD OF DIRECTORS OF PROGRAM (1) The board of directors, which is established pursuant to 33-22-1818, MCA, to supervise and control the operation of the program, must be constituted and shall conduct its business in the following manner:

(a) Directors shall serve for terms of three years expiring on the first of June following their respective appointments. Directors shall serve out their terms even when the carriers they represent are no longer among five small employer carriers with the highest annual premium volume. Terms of initial directors are controlled by 33-22-1818, MCA.

(b) If one of the top five carriers vacates its seat, the seat must be offered to the next ranking carriers, in order, until the vacancy is filed. If one of the top carriers refuses a seat and later reconsiders, such carrier may be restored to a seat only when there is another vacancy.

(c) Carriers represented on the board may nominate successors to fill vacancies when their representatives no longer can represent them on the board.

(d) The commissioner shall appoint a chair and a vice-chair from among the directors of the board. The board may elect other officers as needed.

(e) When the chair and vice-chair are both absent from a meeting, the commissioner shall appoint an acting chair to

carry out the duties of the chair for the duration of the meeting.

(f) The chair may make motions and second motions and vote.

(g) Each director shall be entitled to one vote on any particular issue to be decided by the board, but no carrier may be represented by more than one vote.

(h) A majority of directors shall constitute a quorum for the transaction of business. Except for decisions to revise the program or recommend amendments to this act, decisions of a majority of a quorum shall be the decisions of the board.

(i) Directors shall disclose any potential conflict of interest prior to voting on a particular issue. A majority of the board present shall decide whether the director with the potential conflict may vote on the issue.

(j) A director who is not physically present, but who is in communication with the board during its meeting, may exercise his or her voting rights during the meeting.

(k) The annual meeting of the board must be held at the offices of the commissioner on the first Tuesday in February of each year, unless the board, upon at least 30 days notice, designates some other date or place.

(l) At each annual meeting the board shall:

(i) review and consider the performance of the program in achieving the purposes of the act;

(ii) review reports of the administering carrier, including audited financial reports, reports on outstanding contracts and obligations, and all other material matters;

(iii) review reports of the committees established by the board;

(iv) review the plan of operation and proposals for amendments to the program or to the act;

(v) review rates for reinsurance coverages, benefit plan design, and communication programs;

(vi) review net premiums, program administration expenses, and incurred losses for the year, taking into account investment income and other appropriate gains and losses;

(vii) determine whether, and to what extent, assessments are necessary for the proper administration of the program;

(viii) review and evaluate the contracts with, and services of, the administrating carrier, and determine whether to renew the contract. The contract may be renewed by favorable vote of at least five directors.

(ix) Review and act upon any other matters that the board deems necessary or appropriate, and within its jurisdiction and control.

(m) The board may hold other meetings upon the request of the chair or two or more directors. Other meetings may be at such times and with such frequency as deemed appropriate. Such meetings may be either corporal or by means of electronic

equipment. Notices of any such meetings and their purpose shall be provided to the directors and the public at least seven working days prior to the meeting. At meetings other than the annual meeting, the board may transact any business specified in subsection (1)(l) hereof.

(n) A written record of the proceedings of each board meeting must be made by the staff of the board and submitted to the board within 60 days of said meeting. Copies of approved minutes must be provided to the commissioner and to other interested persons upon request.

(o) Directors may be reimbursed from the monies of the program for actual and necessary expenses incurred by them in their activities as directors when such expenses are approved by the board, but directors shall not otherwise be compensated from the program for their services.

(p) Amendments to the plan of operation and suggestions of technical corrections to the act require the concurrence of a majority of the entire board and the approval of the commissioner.

AUTH: 33-1-313 and 33-22-1822, MCA
IMP: 33-22-1819, MCA

RULE IV SUPPORT COMMITTEES (1) Pursuant to authority of 33-22-1819, MCA, an actuarial committee, an operations committee, a legal committee, and an audit committee must be established to provide technical assistance in operation of the program, policy, and other contract design.

(2) The functions of the actuarial committee are as follows:

(a) To recommend assessment methodology and assessments;

(b) To recommend appropriate methodologies for determining reinsurance premium rates, rate schedules, rate adjustments, and rate classifications for individuals and groups reinsured with the program;

(c) To recommend reporting requirements of members and the administering carrier;

(d) To provide reports and other recommendations as directed by the board;

(e) To determine the incurred claim losses of the program, including amounts for incurred but unreported claims; and

(f) To assist the board as requested in regard to any other actuarial matters.

(3) The functions of the operations committee are as follows:

(a) To review periodically the plan of operation and to make recommendations for its enhancement;

(b) To provide administrative interpretation as to the intent of the plan of operation and to provide administrative direction on issues referred to it by the board, the administering carrier, or program members;

(c) To identify items for which administrative rules are needed and propose them for adoption by the board; and

(d) To assist the board as requested in regard to any other related matters.

(4) The functions of the legal committee are as follows:

(a) To interpret the act;

(b) To propose appropriate amendments to the act;

(c) To review the plan of operation and propose amendments thereto;

(d) To coordinate with counsel for the administering carrier and the commissioner, as needed, on routine legal matters related to program operations, including proposed contracts and operational practices;

(e) To prepare proposed contracts and legal documents for the program, as requested;

(f) To be familiar with all litigation involving the program or any part thereof and to provide assistance to the board concerning all such litigation and other disputes involving the program and its operations;

(g) To maintain a written record of all inquiries received and responses given, and provide copies of all such correspondence to the board; and

(h) To assist the board as requested with regard to any other legal-related matters.

(5) The functions of the audit committee are as follows:

(a) To propose a uniform audit program to be utilized by independent auditors in its review of items related to reinsurance with the program and its review of assessments;

(b) To propose standards of acceptability for the selection of independent auditors with regard to the audit program;

(c) To assist the board in the selection of an independent auditor for the annual audit of program operations;

(d) To assist the board in the review of the reports prepared by the independent auditors in conjunction with the audit program and in the review of the audit of program operations; and

(e) To assist the board as requested with regard to any other audit-related matters.

(6) Committee members must be appointed by and serve at the pleasure of the board.

(7) Each committee shall consist of five individuals representing carriers participating in the program, which individuals must be qualified by education and experience to serve on the committee.

(8) Each committee shall organize itself and, in the absence of direction from the board, establish its own agenda.

(9) Each committee shall maintain a record of its activities and provide copies as requested.

(10) Activities of committees must be in compliance with open meeting and public participation provisions of applicable statutes and with applicable constitutional provisions.

(11) Committees may request the commissioner to provide appropriate staff support as needed.

AUTH: 33-1-313 and 33-22-1822, MCA
IMP: 33-22-1819, MCA

RULE V SELECTION, POWERS, AND DUTIES OF ADMINISTERING CARRIER (1) In the process of selecting an administering carrier, the board shall develop a request for proposal that outlines the powers, duties, and responsibilities of the administering carrier. The selection of the administering carrier must be based upon written proposals submitted. Proposals must be in writing and provide at least a detailed explanation of the anticipated work to be performed, the capabilities of the applicant, and the anticipated costs of operation.

(2) The administering carrier shall serve until the selection of a successor administering carrier by the board, until its resignation is accepted, or until it is otherwise removed and replaced.

(a) At its annual meeting, the board shall decide whether to renew its contract with the administering carrier.

(b) The administering carrier shall give the board 180 days' notice of the administering carrier's decision to resign. The board shall give 45 days' notice of its decision to replace the administering carrier.

(3) The administering carrier shall perform the following functions at the direction of the board:

(a) It shall establish procedures, and install the systems needed, to properly administer the operations of the program in accordance with the act and this plan of operation.

(b) It shall establish, on behalf of the program, one or more bank accounts for the transaction of program business. All such bank accounts must be approved in advance by the board.

(c) It shall accept, on behalf of the program, risks that are ceded by members.

(d) It shall collect, on a timely basis, all reinsurance premiums for ceded risks and all other amounts due to the program.

(e) It shall deposit, on a timely basis, all cash collected on behalf of the program.

(f) It shall pay reinsurance reimbursement for claims paid on ceded risks.

(g) It shall issue checks or drafts on, and/or approve charges against, bank accounts of the program.

(h) It shall keep all accounting, administrative, and financial records of the program, in accordance with this plan and the proposals of the audit committee.

(i) It shall act as a communications resource for members in reviewing their administrative operation under the act and the plan of operation.

(j) It shall calculate assessments, in accordance with the methodology specified in the plan of operation, and collect appropriate amounts due.

(k) It shall invest available cash in marketable securities as specified in the plan of operation and as approved by the board.

(l) It shall prepare an annual estimate of operating costs for the administration of the program.

(m) It shall perform other functions as agreed between the board and the administering carrier.

(4) The administering carrier shall maintain all records of premiums claims, reimbursements, and administrative expenses on a calendar year basis for a period of seven years.

(5) The administering carrier must be reimbursed for its reasonable costs of administration in accordance with any contract with the board.

(6) The administering carrier may subcontract for services that cost in excess of $5,000 only with the prior approval of the board.

(7) In performing its duties, the administering carrier shall maintain the confidentiality of all information pertaining to insureds and members, in accordance with all applicable constitutional provisions, statutes, rules, and principles of common law pertaining to confidentiality and trade secrets including, without limitation, the Montana Insurance Information and Privacy Protection Act. Such information must be used only for the purposes necessary for the operation of the reinsurance program, and must be strictly segregated from other records, data, or operations of the administering carrier. Unless specifically required hereunder or under the act, no information which identifies specific insureds or program members may be retained or used by the administering carrier or disclosed to third parties.

AUTH: 33-1-313 and 33-22-1822, MCA
IMP: 33-22-1819, MCA

RULE VI REINSURANCE WITH THE PROGRAM (1) Carriers may obtain reinsurance for small employee health benefit plans with the program when the provisions of the act and these rules are met. Carriers may apply for reinsurance on a group basis or on an individual basis. Reinsurance under this rule is available only to small employers as defined in the act, and only for health benefit plans provided to such small employers.

(a) An employer shall qualify as a small employer under the act and these rules as of the effective date of the health benefit plan, or of the plan anniversary date coincident with

or immediately preceding the application for reinsurance with the plan.

(b) When an employer fails to qualify as a small employer on two consecutive plan anniversary dates, all reinsurance provided by the program will terminate as of the second anniversary date in which the employer fails to qualify as a small employer.

(c) At each initial application for reinsurance of a health benefit plan with the program, and as of any anniversary date of a plan that is reinsured, the member must obtain documentation from the employer that its firm is a small employer under the act and then certify in writing that such documentation has been obtained and agree to make it available to the administering carrier. A determination that a member has erroneously certified a firm to be a small employer must be treated as immediately nullifying any reinsurance issued or renewed as a result of the application and certification.

(2) In order to qualify their health benefit plans for reinsurance with the program, members must:

(a) satisfy uniform application of standards among small employers' criteria set forth in 33-22-1811, MCA;

(b) apply managed care and claims handling techniques required by 33-22-1819(5)(g), MCA; and

(c) charge premiums that meet the rating requirements of 33-22-1819(7), MCA.

(i) In order to qualify for reinsurance, health benefit plans must define the class of employees of the small employer that are covered, or may elect coverage, by the plan, in writing, on or before the effective date of coverage provided by the plan. Such classifications of employees must include all eligible employees and must be in terms relating to conditions of employment, including, but not limited to, job classification, number of hours of scheduled work, length of service. Such classifications must be available to other small employers with the same number of eligible employees, and must be consistently applied to all employees within the plan.

(ii) In order to qualify for reinsurance, applicable health benefit plans must:

(A) be in writing;

(B) must be made available on the same terms to all small employers with the same number of eligible employees;

(C) must be consistently applied to all individuals covered by the plans; and

(D) must address at least the following subjects:

(I) takeover provisions;

(II) pre-existing condition limitations;

(III) waiting periods;

(IV) coverage for late enrollees;

(V) definition of dependent; and

(VI) services covered and benefits payable under the plan.

(iii) Each member proposing to reinsure coverage provided under a small employer's plan for any group or individual is responsible for ascertaining, documenting, and certifying the following (documentation to be included in reporting reinsurance census data and reinsurance premiums to the administering carrier):

(A) that the plan is provided to a small employer;

(B) that the individuals proposed for reinsurance are covered by the health benefit plan;

(C) that the reinsurance premium rate level payable to the program for the reinsurance has been correctly determined in accordance with the plan of operation; and

(D) that the health benefit plan meets all other requirements of the act, these rules, and the plan of operation.

(3) Members must notify the administering carrier of their intent to cede all eligible employees, extra eligible employees, and/or dependents (whole group) for reinsurance of coverage under a plan covering eligible employees of a small employer within 60 days of the initial effective date of the small employer's plan with such member.

(a) Availability of whole group reinsurance is subject to the following criteria:

(i) Subject to payment of premium, all enrollees eligible to be reinsured must also be reinsured at the effective dates of their coverage;

(ii) If a member has previously withdrawn reinsurance of coverage for any group, that member cannot again reinsure the withdrawn group but may reinsure timely enrollees that are eligible to be reinsured on an individual basis described in (4) below;

(iii) An amendment rider or other change in the small employer plan must not constitute or cause a change in initial effective date; and

(iv) Only underwriting requirements taken at the time of application may be used by a member in determining whether to reinsure with the program. Group claim experience during the 60-day period shall not be used in determining whether to reinsure a risk with the program.

(4) Members must notify the administering carrier of their intent to cede individual reinsurance of coverage for a specific person covered under a small employer's plan as an eligible employee, extra eligible employee, or a dependent within 60 days of the initial effective date of that person's coverage.

(a) Availability of individual reinsurance is subject to the following criteria:

(i) Each person whose coverage is reinsured must be an employee or a dependent of an employee;

(ii) A member may reinsure coverage of an employee without reinsuring coverage of any specific dependent of that employee, or may reinsure coverage of a specific dependent without reinsuring coverage of the employee or dependents of an employee;

(iii) A member cannot reinsure a newborn child, unless the child's mother is already reinsured at the time of birth;

(iv) If a member has previously withdrawn reinsurance of coverage for any individual, the same member cannot again reinsure that individual; and

(v) Individual claim experience during the 60-day waiting period shall not be used in determining ceding to the program.

(5) Reinsurance coverage may remain in effect and may continue as long as there is coverage under the small employer health plan for the covered employee and dependents, but no longer than the second plan anniversary date after the small employer ceases to be a small employer.

(a) A member may withdraw a group or individual from the program under 33-22-1813(5), MCA, even though coverage continues to be in effect under the small employer's plan. Written notice must be provided by the carrier at least 30 days in advance of the withdrawal.

(b) Reinsurance of an individual's coverage under a small employer's plan ceases at the termination of the individual's status as a covered employee or dependent for reasons such as retirement or other termination of active employment, divorce of a spouse, a child's attainment of age 19, or termination of full-time student status after age 23. If a member provides coverage for an individual beyond termination of employment or dependent status, for contractual or other reasons, reinsurance may be continued for no more than 30 days after the termination date.

(c) Reinsurance must cease for any coverage of an individual under a small employer's plan, including an individual whose coverage under that plan has continued as required by law, at termination of the member's coverage of the group in which that individual was previously covered as an employee or dependent.

(6) Tables of reinsurance premium rates for members, as determined by the board, upon recommendation of the actuarial committee, and approved by the commissioner, will be distributed to members. Separate tables will be prepared and distributed for HMO plans and indemnity plans.

(a) For any reinsured individual, the member will calculate his or her reinsurance premium, based on the program's tables of reinsurance premium rates, as applied to the statutory reinsurance premium rate.

(b) For any reinsured group, the member shall calculate the reinsurance premium for each group reinsured, based on the program's table of reinsurance premium rates, as applied to the statutory allowable reinsurance premium rate.

(7) Each month members shall provide the administering carrier with a listing of the individuals reinsured, the premium for each individual, and such other information as may be required by the program. The administering carrier shall make any necessary corrections and send corrected billing statements to each member.

(a) Reinsurance premiums charged by the program for each individual must be based on the table of rates in effect on the later of the effective date of the small employer's plan with the member or the most recent plan anniversary date.

(b) Premiums must be determined as of the first of the month and be due by the 20th of the month.

(c) Reinsurance premium amounts must be paid based on whole month increments only. If reinsurance is effective between the 1st and the 15th of the month, the entire month is paid in full. When reinsurance becomes effective between the 16th and the last day of the month, no premiums may be chargeable until the first full month following the effective date of the reinsurance coverage.

(d) Job terminations effective between the first and the 15th of the month must be allowed refunds for the entire month, and terminations effective between the 16th and the last day of the month must not be allowed premium refunds.

(e) Reinsurance premiums are due monthly to the program regardless of the member's ability to charge back, or collect, the small employer's premiums.

(8) The program shall indemnify members for covered claims incurred with respect to employees and dependents whose coverage with a member is reinsured with the program, subject to the conditions in 33-22-1819(5), MCA. Regardless of limitations, all balances due must be paid at least as often as every 6 months.

(9) Members shall promptly adjudicate all claims on ceded risks.

(a) Members shall promptly investigate, settle, or defend all claims arising under the risks reinsured and promptly forward to the program copies of such reports of investigation as may be requested by the program.

(b) The program may, at its own expense, participate jointly with a member in the investigation, adjustment, or defense of any claim.

(c) Members must have claim management practices that are consistent for reinsured and non-reinsured risks.

(d) Members shall use their normal case management programs to control costs on reinsured business to the same extent that they would use such programs on their unreinsured business, including, but not limited to, utilization review, individual case management, and preferred provider provisions.

(e) The program may inspect the records of members in connection with the risks reinsured with the program. Members shall submit to the program any additional information the program may require in connection with claims submitted to the

program for reimbursement. Members shall secure necessary authorizations from insureds for this purpose.

(f) All information disclosed to the program by a member or to a member by the program, in connection with the plan of operation, must be treated as privileged information by both the member and the program.

(g) If any payment is made by the program and a member is reimbursed by third party for the same expenses, the member shall reimburse the program the amount of the program's payment. Members shall execute and deliver instruments and do whatever is necessary to preserve and secure such reimbursement rights.

(h) HMOs or other members that pay for certain provider services on a basis other than fee for service shall be reimbursed by the program for those costs on reinsured persons.

(i) Except as otherwise approved by the board, reinsurance will be provided only for covered claims submitted within two years from the date the expenses on which the claim is based were incurred.

(10) Within 20 days after the close of each quarter or month, all members shall furnish to the program the following information with respect to reinsured losses submitted to the program by the member during said month:

(a) the small employer's identification;

(b) the employee's name and social security number;

(c) the claimant's name and date of birth;

(d) the claim incurred date and paid date;

(e) the reinsurance claim amount; and

(f) the claim coding as required by the board, such as CPT and ICD9.

(11) Members shall notify the program as soon as reasonably possible of all claims or potential claims for a reinsured employee or dependent in which expected losses expected to be paid by the members will exceed $100,000 in the aggregate.

AUTH: 33-1-313 and 33-22-1822, MCA
IMP: 33-22-1819, MCA

RULE VII AUDIT FUNCTIONS (1) Each member of the program shall hire a certified public accountant (CPA), or other person approved by the board, to conduct audits of various accounts related to program reinsurance and assessments.

(a) All auditors must be independent of members and meet with standards established by the audit committee.

(b) All audits must be made in accordance with generally accepted auditing standards as adopted by the American Institute of Certified Public Accountants (AICPA).

(2) The frequency of audits must be determined by the audit committee, with the approval of the board.

(3) Costs of audits of members must be borne by the members.

(4) The audits must be conducted in accordance with a uniform audit program for members developed by the audit committee and approved by the board. Audits must clearly specify all items audited. They must include a certification statement form, completed by the auditor, verifying the completion of all prescribed audit procedures as required. Details regarding the number and types of records reviewed and any errors found must be submitted in the report which accompanies the certification statement. Copies of reports and certification statements must be submitted to the board by the auditors.

(5) The audit program must include, but not be limited to, detail testing of representative samples of the following items:

(a) reinsurance claims submitted to the program, in particular:

(i) eligibility of claimants and their small employers for reinsurance under the program, including consistent application of business conduct rules, and

(ii) proper determination of reinsurance claim amount by the member;

(b) reinsurance premiums submitted to the program, including:

(i) eligibility of those lives for whom premium is paid for reinsurance by the program, and

(ii) proper determination of reinsurance premium amounts paid; and

(c) data submitted to the program for use in the calculation of member assessments for net losses.

(6) Random audits of provider bills or other records may be conducted, as deemed necessary, by the audit committee to verify the accuracy and appropriateness of reinsurance claim submissions.

(7) The board and the commissioner may conduct such additional audits of members as deemed appropriate.

(8) All information disclosed during the course of an audit of a member must be treated as confidential information by the member, the auditing firm, and the program.

(9) The board shall have annual audits of the program and its operations conducted by independent CPAs. The board shall submit the annual audit and audit report to the commissioner for his review and evaluation.

(a) Annual audits of the program must address at least the following item topics:

(i) the handling and accounting of assets and money for the program;

(ii) the annual fiscal report of the program;

(iii) the application of the premium rates charged for reinsurance by the program;

(iv) the calculation and the collection of any assessments of members for net losses;

(v) reinsurance premiums due to the program; and

(vi) claim reimbursements made to the members.

AUTH: 33-1-313 and 33-22-1822, MCA
IMP: 33-22-1819, MCA

RULE VIII ASSESSMENTS (1) Each year, the program's net earnings must be calculated by the board by computing earned reinsurance premiums, investment income, and prior assessments in excess of need, less administrative and investment expenses, incurred claims, expense allowances paid, and taxes incurred, if any. If the program has operated at a loss, the loss must be recovered by assessments from the assessable carriers in accordance with 33-22-1819(8), MCA.

(2) If the board determines the assessments needed to fund the losses incurred by the program in the previous calendar year will exceed 5% of total premiums earned in the previous calendar year from health benefit plans delivered or issued for delivery to small employers in this state by small employer carriers, the board shall evaluate the operation of the program and report its findings, including any recommendations for changes to the plan of operation, to the commissioner within 90 days following the end of the calendar year in which the losses where incurred. The evaluation must include an estimate of future assessments and consideration of the administrative costs of the program, the appropriateness of the premiums charged, the level of member retention of risk under the program, and estimated costs of coverage for small employers. If the board fails to file a report with the commissioner within 90 days following the end of the applicable calendar year, the commissioner may independently evaluate the operations of the program and implement amendments to the plan of operation, which the commissioner determines necessary to reduce future losses and assessments.

(3) The commissioner may abate or defer, in whole or in part, the assessment of an assessable carrier, if the commissioner finds that payment of the assessment would endanger the assessable carrier's ability to fulfill its contractual obligations. In the event an assessment against an assessable carrier is abated or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other assessable carriers in a manner consistent with the formula for calculating assessments in 33-22-1819(8), MCA.

(a) The assessable carrier receiving the abatement or deferral remains liable to the program for the full amount of deficiency.

(b) A member receiving a deferment may not reinsure an individual or group until the assessment is paid.

(4) Any assessment between $10 and $100 must not be billed to an assessable carrier, but must accumulate as a deferred assessment until the cumulative amount deferred exceeds $100. Any assessment of less than $10 must be forgiven.

(5) Assessments must be paid when billed. If the assessment payment is not received by the administering carrier within 30 days of the billing date, the assessable carrier shall be charged interest on the unpaid balance of assessments from the billing date at the annual rate of prime plus 3%. The board may suspend reinsurance rights if payments are not made in accordance with this article.

(6) Appropriate adjustments must be made to those portions of an HMO's earned premiums obtained from health benefit plans sold to small employers in recognition of the Federal Health Maintenance Organization Act requirements, including, but not limited to:

(a) adjustments for a pre-existing condition exclusion; and

(b) adjustments for required HMO benefits in excess of the typical health care benefits offered to small employers.

(7) HMO adjustment formulas must be approved by the board for the interim assessments and must be annually reevaluated by the board.

AUTH: 33-1-313 and 33-22-1822, MCA
IMP: 33-22-1819, MCA

RULE IX REPORTS OF REINSURED RISKS (1) Unless specifically waived by the board, the following information must be timely, provided to the board by members and the administering carrier for all reinsured risks:

(a) identification of the member;

(b) name, date of birth, and the member identification number of each person being reinsured;

(c) designation of the reinsured as an employee, spouse, child, and/or dependent;

(d) if the insured is not an employee, employee name and social security number or other identification number;

(e) plan anniversary date;

(f) employer's name, address, zip code, and standard industrial classification (SIC) code;

(g) type of plan;

(h) effective date of small employer coverage;

(i) effective date of reinsurance;

(j) date of each applicable employee's initial employment;

(k) status code as required by the board; and

(l) other information required by the board.

(2) Whenever changes in reinsurance coverage occur, the following information must be timely provided to the board

by members and the administering carrier for each affected risk:

(a) the reinsured's name and identification number;

(b) if the insured is not an employee, the employee's name and social security number;

(c) the effective date of status change;

(d) the status code for the change as required by the board; and

(e) other information required by the board.

AUTH: 33-1-313 and 33-22-1822, MCA
IMP: 33-22-1819, MCA

RULE X FINANCIAL RECORD KEEPING AND ADMINISTRATION

(1) The administering carrier shall maintain the following books and records of the program, in the following manner, submit financial statements to satisfy the act, and provide copies thereto to the commissioner as requested:

(a) All receipts and disbursements of cash by the program must be recorded as they occur.

(b) All non-cash transactions must be recorded in accordance with generally-accepted accounting principles when the asset or the liability is realized by the program.

(c) Assets and liabilities of the program, other than cash, must be accounted for and described in itemized records in accordance with generally accepted accounting principles.

(d) Net balances due to and from the program must be calculated for each member and confirmed with program members as deemed appropriate by the board or when requested by a respective program member. Balances must be supported by a record of each individual member's financial transactions with the program. Supporting records include:

(i) assessments, if applicable, against the particular member;

(ii) allocated net earnings and losses of the program based upon assessments;

(iii) any adjustments to assessments;

(iv) amounts of reinsurance premium due to the program for risks ceded and accepted by the program;

(v) amounts of reimbursement due from the program for claims paid by the member for risks previously ceded and accepted by the program;

(vi) any adjustments to amounts due to and from program based upon corrections to member submissions;

(vii) interest charges due from the member for late payment of amounts due to the program; and

(viii) such other records as may be required by the board.

(2) The program shall maintain a general ledger, the balances of which are used to develop the program's financial statements. The ledger must be maintained in accordance with generally-accepted accounting principles. The balances in the

general ledger must agree with the corresponding balances in subsidiary ledgers or journals.

(3) Money and marketable securities must be kept in bank accounts and investment accounts. The administering carrier shall deposit receipts and make disbursements from these accounts.

(4) All bank accounts/checking accounts must be established in the name of the program, and must be approved by the board. Authorized check signers must be approved by the board.

(5) All lines of credit must be established in the name of the program and must be approved by the board. Lines of credit must be used to meet cash shortfalls.

(6) All cash must be invested in available investment vehicles deemed appropriate by the board as long as in compliance with investment standards in 33-2-802, MCA.

AUTH: 33-1-313 and 33-22-1822, MCA
IMP: 33-22-1819, MCA

RULE XI ERRORS, ADJUSTMENTS, PENALTIES, AND SUBMISSION OF DISPUTES (1) Errors related to the provision of reinsurance coverage must be addressed in the following manner:

(a) Reinsurance coverage for the individuals involved with ineligible small employers must be terminated as of the first date of ineligibility. Claims paid by the program in excess of premiums received must be returned to the program with interest. Premiums paid in excess of claims must be refunded without interest. An administrative charge established by the board may be assessed in cases involving excess premiums due the program.

(b) Reinsurance premiums for the persons involved in incorrect premium rates must be recalculated and immediate payment of any additional premiums must be made, together with interest and an administrative charge. Excess payments must be refunded without interest, subject to the limitation on premium refund provision contained in (i) below.

(c) In cases involving reinsurance of incorrect health benefit plans, premiums must be recalculated on the basis of the correct plan and all additional premiums due must be paid immediately, together with interest and an administrative charge. Excess premiums must be refunded without interest and subject to the limitation on premium refunds provision contained in (i) below.

(d) In cases involving submission and payment of incorrect claims, such claims must be recalculated and any amount due to the program must be repaid immediately, with interest. Adjustments of claim payments for amounts recovered by the member under coordination of benefit, subrogation, or similar provisions must not be considered errors for which interest or any administrative charge may be due.

(e) In all cases involving assessable carrier errors related to assessment, the carrier shall make immediate repayment of additional amounts due, plus interest calculated from the date such sum should have been paid, and an administrative charge.

(f) All additional sums due to the program as a result of errors made by members or assessable carriers other than those specified herein must be paid immediately, with interest and the applicable administrative charge.

(g) If the board determines that the nature or extent of the errors related to the use of the reinsurance program by a particular member is the result of gross negligence or intentional misconduct, the board may petition the commissioner to institute contested case procedures to terminate some or all current reinsurance for the member and/or suspend the eligibility of the member to use the reinsurance program for an appropriate period of time. In so doing, the board shall ensure, to the extent possible, that the suspension or termination of reinsurance for the member does not adversely affect individuals already insured by the member.

(h) All interest charges imposed under this rule must be calculated from the date the incorrect payment occurred or correct payment should have been made through the date of payment. The rate of interest under this rule is 10% per annum. The administrative charge under this rule is the actual cost incurred. The administrative charge may be waived by the board in appropriate hardship cases. Errors reported by members or assessable carriers within 90 days of their occurrence are not be subject to interest or administrative charges.

(i) All premium refunds due from the program under this rule must be limited to an amount covering a period of 12 months from the date the error was corrected, unless the limitation or some part thereof is expressly waived by the board.

(j) The administrating carrier shall attempt to resolve error disputes between a member or assessable carrier and the program, provided that members may request permission to appear before the board at any time in connection with any such disputes with the program.

AUTH: 33-1-313 and 33-22-1822, MCA
IMP: 33-22-1819, MCA

RULE XII PROPOSALS FOR AMENDMENTS TO PLAN

(1) Amendments to the plan may be suggested by any member and the board at any time. Suggested amendments to this plan must be adopted by the commissioner in order to become effective.

AUTH: 33-1-313 and 33-22-1822, MCA

IMP: 33-22-1819, MCA

RULE XIII STANDARDS FOR PRODUCER COMPENSATION LEVELS AND FAIR MARKETING OF PLANS (1) Each carrier shall provide all small employers in the same class of business with equal opportunity to obtain coverage under the standard and basic plans.

(a) If a carrier denies coverage other than the basic or standard health benefit plans to a small employer on the basis of claims experience of the small employer or the health status or claims experience of its employees or dependents, the carrier shall offer the small employer the opportunity to purchase a basic or standard health benefit plan.

(b) No carrier shall apply more stringent application or informational requirements for enrollment in the standard and basic plans than are applied for other health benefit plans offered by the carrier.

(2) Carriers may select those producers with whom they choose to contract, but carriers shall not terminate, fail to renew, or limit their contracts or agreements of representation with producers for any reason related to the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employers placed by the producer with the carrier.

(3) Carriers shall not price their basic and standard health benefit plans nor set commissions in such a way as to make the plans unattractive for a producer to market.

(4) Carriers shall not limit, discourage, or otherwise influence their producers in marketing their basic and standard plans.

(a) Carriers may not, directly or indirectly, enter into any contract, agreement, or arrangement with producers that provides for, or results in, the compensation paid to a producer for the sale of a health benefit plan to be altered because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employer.

(b) (4)(a) does not apply with respect to a compensation arrangement that provides compensation to a producer on the basis of the percentage of a premium, provided that the percentage may not be altered because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic area of the small employer.

(c) (4)(a) does not prohibit a carrier or a producer in the small employer market from providing a small employer with information about an established geographic service area or a restricted network provision of the health carrier.

(d) Carriers and producers shall not delay the quotation of a rate to a group in order to avoid enrolling a high risk group.

(5) Carriers shall provide reasonable compensation to producers for the sale of basic or standard plans.

(6) Carriers shall not set commission levels for the sale of basic and standard plans in each class of business at a level less than 75% of the producer compensation schedule for the sale of other small group products.

(7) Carriers and producers shall not directly or indirectly:

(a) encourage or direct small employers to refrain from filing applications for coverage with a carrier because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employer;

(b) encourage or direct small employers to seek coverage from another carrier because of the health status of the employers's employees or the claims experience, industry, occupation, or geographic location of the small employer; or

(c) encourage or direct an employee not to apply for coverage under small employer health plan in order to obtain a more favorable rate or benefit package for the employer.

(8) Notwithstanding (7) above, carriers shall not engage in any practice which is inconsistent with the purposes of this rule.

(9) If any provision of this Rule XIII is deemed to be in conflict with Rule XIX of rules regarding small employer health benefit plans, the latter shall take precedence.

AUTH: 33-1-313 and 33-22-1822, MCA
IMP: 33-22-1819, MCA

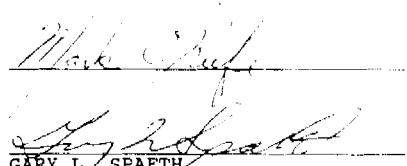
3. REASON: These rules are being proposed because they are mandated by 33-22-1819 and 33-22-1822, MCA.

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 Frank G. Coté, Deputy Commissioner of Insurance, P.O. Box 4009, Helena, Montana 59604, and must be received no later than June 27, 1994.

5. 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 do so by contacting the State Auditor's Office no later than 5:00 p.m., June 27, 1994, and advising the office of the nature of the accommodation needed. Please contact Frank G. Coté, Deputy Commissioner of Insurance, P.O. Box 4009, Helena, Montana 59604; telephone (406) 444-2997; toll-free dial 1 and then (800) 332-6148; fax (406) 444-3497.

6. Gary L. Spaeth, State Auditor's Office, 126 N. Sanders, P.O. Box 4009, Helena, Montana 59604-4009, has been designated to preside over and conduct the hearing.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By: 

GARY L. SPAETH
Rules Reviewer

Certified to the Secretary of State this 2nd day of May, 1994.

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

In the matter of the amendment of rules 16.45.1201-16.45.1227 and 16.45.1229-16.45.1240 dealing with underground storage tank installer and inspector licensing, tank permits, and tank inspections, and the repeal of rule 16.45.1228 concerning inspector licensing fees)	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES AND THE REPEAL OF RULE 16.45.1228

(Underground Storage Tanks)

To: All Interested Persons

1. On June 1, 1994, at 1:00 p.m., the department will hold a public hearing in Room C209, Side 1, of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above captioned rules and the repeal of 16.45.1228.

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

16.45.1201 PURPOSE (1) The purpose of ~~ARM 16.45.1201 to 16.45.1240~~ this subchapter is to implement 75-11-201 through 75-11-227, MCA. These rules shall be applied in conjunction with those statutes.
AUTH: 75-11-204, MCA; IMP: 75-11-202, 75-11-204, MCA

16.45.1202 DEFINITIONS ~~(1) The definitions in this section and in 75-11-203, MCA, apply to ARM 16.45.1201 to 16.45.1240 unless otherwise indicated.~~ For the purposes of this subchapter and unless otherwise provided, the following terms have the meanings given to them in this section and must be used in conjunction with the definitions in subchapter 1 of this chapter and those in 75-10-403 and 75-11-203, MCA:

~~(2)~~(1) Remains the same.

~~(3)(a) "Installation" or "to install" means the placement of an underground storage tank, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank that store or convey regulated substances. Installation also includes repair or modification of an underground storage tank through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems.~~

~~(b) The terms do not include:~~

~~(i) the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank;~~

~~(ii) the installation of a leak detection device that is external to and not attached to the underground storage tank; or~~

~~(iii) the installation and maintenance of a cathodic protection system. (This definition is quoted from section 75-11-203(4), MCA.)~~

(2) "External leak detection device" means a monitoring system which is located external to and not attached to an underground storage tank system and which is designed and installed to detect a release of the regulated substance stored in the underground storage tank system. Examples of external leak detection devices include, but are not limited to, soil vapor monitoring wells, observation wells, continuous monitoring equipment, if any, which is installed within the wells to detect a release, and a groundwater monitoring well when constructed by a person holding a monitoring well constructor license issued by the board of water well contractors and in accordance with the provisions of ARM Title 36, chapter 21, and ARM 16.45.404(6).

(3) "Groundwater monitoring well" means a monitoring well constructed by a licensed monitoring well contractor and in accordance with the requirements of ARM Title 36, chapter 21, and any associated sensing equipment which is located outside of the tank excavation and is designed and installed to be used to detect releases of regulated substances from underground storage tank systems.

~~(4) "Interim installer license" means a license issued to an individual by the department under 75-11-210, MCA, to conduct the installation, closure, or both, of underground storage tanks from April 1, 1990 through September 30, 1990.~~

~~(9)~~(4) "~~Regular installer~~ Installer license" means a license issued to an individual by the department under 75-11-210, MCA, to conduct the installation, closure, or both, of underground storage tank~~s~~ systems ~~after September 30, 1990~~.

(5) "Lining" means the addition of a plastic, fiberglass, or other shell of impervious material to the inside of an underground storage tank for the purpose of ensuring that the tank retains its ~~liquid~~ contents. The term includes all steps to be taken in preparation for the addition of the lining and includes re-lining.

~~(6) "Local governmental unit" means a city, town, county or fire district.~~

~~(7)~~(6) "Modification" means a significant change in the structure or ~~significant~~ components of an underground storage tank system, and includes but is not limited to lining ~~of~~ a tank, cutting ~~of~~ the ~~steel~~ walls of a tank, and the addition of internal leak detection devices.

(7) "Observation well" means, for purposes of this subchapter, a device and sensing equipment, if any, which consists of a cased penetration of an underground storage tank's backfill from which groundwater and/or soil vapors are monitored to detect whether a release of the regulated substance stored in an underground storage tank system has occurred, and which is located entirely within an underground storage tank system's

backfill and does not penetrate beyond the bottom of the tank system's backfill.

~~(8) "Repair" means a repair as defined in ARM 16.45.101A(54), and includes tank lining.~~

(8) "Small non-commercial farm and residential tank" means an underground storage tank system located at a farm or a residence, with a capacity of 1,100 gallons or less, and used either for storing motor fuel for non-commercial purposes or used for storing heating oil for consumption on the premises where stored.

AUTH: 75-11-204, MCA; IMP: 75-11-203, 75-11-204, MCA

16.45.1203 INSTALLER LICENSE REQUIREMENTS GENERALLY

(1) ~~An individual is "engaged in the business of" installation or closure of underground tanks, within the meaning of 75-11-203(5), MCA, and must therefore have a license under 75-11-210, MCA, if he or she installs or closes in any year in exchange for something of value, one or more underground storage tanks owned or operated by the same or another person.~~

(2) ~~An installer~~ Unless exempted under 75-11-217, MCA, no one may ~~not~~ install or close an underground storage tank system unless ~~the installer~~ that individual has a valid license issued by the department under 75-11-210, MCA, and ~~ARM 16.45.1201-1240~~ this subchapter.

~~(3)~~(2) The requirements of ~~ARM 16.45.1201 to 16.45.1240~~ this subchapter do not prohibit the employment by a licensed installer of any assistants, helpers, or apprentices~~,~~ who have not been issued ~~an~~ their own installer~~'s~~ license ~~under those rules, by an installer~~ to work at any installation or closure site so long as ~~a~~ the licensed installer is physically present at the installation or closure and personally exercises supervisory control over those unlicensed persons.

~~(4)~~(3) Installer licenses issued under ~~ARM 16.45.1201 to 16.45.1240~~ this subchapter are non-transferable.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-209, 75-11-210, MCA

16.45.1204 ELIGIBILITY FOR ~~REGULAR~~ INSTALLER LICENSE

(1) Except as provided in (2) of this rule, no ~~No~~ person may be granted an ~~regular~~ installer~~'s~~ license by the department unless that person:

(a) is ~~an individual~~ a natural person at least 18 years old;

(b) has ~~submits~~ submitted a completed license application to the department in accordance with ARM 16.45.1205;

(c) has ~~pays~~ paid the appropriate license and examination fees as provided in ARM 16.45.1211 to the department; and

(d) has successfully ~~completes~~ completed the licensing examination required by ARM 16.45.1206.~~; and~~

~~(e) meets the requirements of ARM 16.45.1201 to 16.45.1240 and 75-11-210, MCA, for an installer's license, as determined by the department.~~

(2) An applicant for an installer license need not comply with the examination requirements of ARM 16.45.1206, the refer-

ence requirements of ARM 16.45.1205, or the continuing education requirements of ARM 16.45.1208 if the applicant:

(a) holds a current monitoring well constructor's license which has been issued by the board of water well contractors pursuant to the requirements of ARM Title 36, chapter 21;

(b) requests that his or her installer license be restricted to the installation of external leak detection devices; and

(c) except for the examination requirement, meets the requirements for an installer license of this subchapter and 75-11-210, MCA.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-210, MCA

16.45.1205 ~~REGULAR~~ INSTALLER LICENSE APPLICATION

(1) Application for an ~~regular~~ installer's license must be made on a form provided by the department. On the form the applicant ~~will~~ must provide all the information required by the department.

(2) The application ~~shall~~ must be subscribed and ~~sworn to under oath~~ verified upon oath or affirmation before a notary public~~, stating~~ and must state that the information provided in the application is true.

(3) The application ~~shall~~ must be accompanied by at least three references from other persons attesting to the applicant's experience ~~and competency of the applicant~~ in the installation and closure of underground tanks systems. The references must be written on forms provided by the department, and must show that the applicant actively participated in at least ~~three~~ two underground storage tank system installations and one closure~~s, two of which must be installations~~ that were completed in accordance with applicable statutes and rules. ~~If an applicant requests to have his or her license conditioned to allow only tank lining or closures, or installation or closure or repair of underground piping associated with heating oil tanks, to be conducted under the license, the applicant shall so state on the application, and the references need only apply their statements toward the applicant's tank closure or lining, or installation or closure or repair of underground piping associated with heating oil tanks, as appropriate. References for applicants conducting only tank closures or lining, or installations or closures or repairs of underground piping associated with heating oil tanks, must show that the applicant participated in at least two closures, installations or closures or repairs of underground piping associated with heating oil tanks, or at least two tank linings in the last five years, as applicable.~~

(4) If an applicant requests to have his or her license restricted, the following application and reference requirements apply:

(a) If the request is to restrict the license to tank lining; cathodic protection system installation; external leak detection device installation; closure; or installation, closure, or repair of underground piping associated with heating oil tank systems; the applicant shall so state on the applica-

tion, and the references need only address the applicant's requested area of restricted professional work.

(b) References for applicants conducting only tank system closure; lining; or installations, closures, or repairs of underground piping associated with heating oil tanks systems must establish that the applicant participated in at least two closures, installations, or closures or repairs of underground piping associated with heating oil tank systems, or at least two tank linings in the last five years.

(c) References for applicants conducting only cathodic protection system installations must establish that the applicant participated in at least two cathodic protection system installations in the last five years.

(d) References for applicants conducting only external leak detection device installations, except as provided in ARM 16.45.1204(d), must establish that the applicant participated in at least two external release detection device installations in the past five years. Applicants holding a current monitoring well constructor's license shall provide a copy of it in lieu of the three references required for licenses restricted to external release detection device installations.

~~(4)~~(5) ~~Application~~ The department shall evaluate applications and attachments ~~shall be examined by the department~~ for conformity with this rule and the applicable statutes. Applications failing to provide all the information required for licensure may either be returned to the applicant with a ~~notice to the applicant~~ an explanation of the reasons for return or may be held by the department pending receipt of the omitted information.

~~(5)~~(6) ~~No~~ Except as provided in ARM 15.45.1204(2), no license ~~shall~~ may be granted unless the department determines, on the basis of the application and attachments and the examination given under ARM 16.45.1206, that the applicant possesses the ~~competency~~ necessary competence and experience. The applicant must be able to understand and comply with the rules governing the type of tank system installations or closures, or both, for which the applicant intends to be licensed, and must understands the techniques of those installations or closures~~,~~ ~~as~~ that will protect public health, welfare, safety and the environment.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-210, MCA

16.45.1206 ~~REGULAR~~ INSTALLER LICENSE EXAMINATION AND RE-EXAMINATION (1) ~~All~~ Except as provided in ARM 16.45.1204(2)(d) and (3) of this rule, applicants for an ~~regular~~ installer's license shall successfully complete a written examination, which ~~shall~~ must be offered a minimum of two times per year by the department at such time(s) and place(s) as the department determines. The department shall give public notice of the time and place of the examination by ~~advertisement in the public media~~ submitting a news release to all newspapers of general circulation within Montana.

(2) An applicant who does not hold an ~~interim or regular~~ installer license, and an applicant who intends to apply for a

~~regular~~ license with a different ~~condition than is applicable to his or her interim or regular license~~ or no restrictions, must register with the department for the examination at least 20 days before an examination is scheduled~~,~~ by providing a completed license application to the department and paying the license application and examination fee provided in ARM 16.45.1211.

(3) An applicant who holds an ~~interim or regular~~ installer license and does not intend to request a change in any ~~conditions~~ restrictions of the ~~interim or regular~~ license~~, must register with the department for the examination at least 20 days before an examination is scheduled, by signing a letter of intent on a form provided by the department, and paying the license application and examination fee provided in ARM 16.45.1211~~ will not be required to take an examination before the license is renewed if the applicant has satisfactorily met the continuing education requirements in ARM 16.45.1208(3).

(a) An applicant who holds an installer license and has not satisfactorily met the continuing education requirements provided in ARM 16.45.1208(3) must reapply for a license as if a new applicant.

(4) An applicant may ~~purchase~~ obtain an examination study guide from the department by paying the study guide fee as provided in ARM 16.45.1211. ~~Upon payment of the study guide fee, the department shall provide the applicant with a written study guide for the examination.~~ The study guide ~~shall~~ must contain such material as the department determines will assist individuals in preparing for the licensing examination.

(5) The examination given by the department ~~shall~~ must test the applicant on his or her knowledge of applicable statutes and rules governing the type of installation or closure~~, or both,~~ of underground storage tanks systems ~~and the disposal of tanks and tank contents,~~ for which a the license application is being made and for knowledge of the proper procedures for the disposal of tank system components and their contents. It ~~will~~ must also test the applicant's knowledge of current technology and industry recommended practices for the installation and closure of underground storage tanks systems.

(6) To prepare and administer an examination, the department may utilize a national certification examination or the services of organizations which have expertise and experience in the development and administration of licensing and code examinations. Such organizations must use nationally recognized educational standards and methods to develop and validate the examination used by the department.

~~(6)~~(7) A score of 80% or higher on the examination constitutes a passing grade. ~~All examinations will be graded, and the a~~Applicants will be notified of their examination score~~,~~ within 30 days of the date ~~of~~ when the department receives the ~~examination~~ score. An applicant who ~~requested~~ requests on a license application that his or her license be ~~conditioned for~~ restricted to conducting ~~only~~ tank system closures or lining~~,~~; ~~or the~~ installation~~,~~ ~~or~~ closure or repair of underground piping associated with heating oil tanks systems; installation of

cathodic protection systems; or the installation of external leak detection devices, need ~~only~~ obtain a passing grade only on the sections of the examination pertinent to ~~closure or lining, or the installation or closure or repair of underground piping associated with heating oil tanks, as applicable~~ the requested restriction.

~~(7)~~(8) ~~Any applicant who fails the examination may review his or her examination results in the department office.~~ An applicant who fails the examination may retake it at the next scheduled examination date by registering for the examination, in the same manner as for the original examination, and by paying the reexamination fee provided in ARM 16.20.1211.
AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-210, MCA

16.45.1207 INSTALLER LICENSE ISSUANCE, TERM, ~~CONDITIONS~~ **RESTRICTIONS** (1) The department shall issue a license upon the applicant's satisfaction of ~~ARM 16.45.1201 through 16.45.1240, as applicable,~~ the applicable provisions of this subchapter and any statutory prerequisites. The license ~~shall~~ must set forth the name of the licensed installer, a license identification number, and the dates of issuance and expiration of the license.

(2) Licenses for applicants who request that their licenses be ~~conditioned for~~ restricted to conducting ~~only~~ closures, ~~or~~ lining, ~~or~~ installation, ~~or~~ closure or repair of underground piping connected to heating oil tanks, ~~shall have the closure or lining, or installation or closure or repair of underground piping connected to heating oil tanks, condition clearly designated on the license~~ installation of cathodic protection systems, or installation of external leak detection devices, must specify the restriction(s).

(3) ~~Interim installer licenses expire September 30, 1990. Regular~~ An installer licenses will expire on the anniversary of ~~their~~ its issuance. ~~but may be renewed no more than twice by the licensee upon payment of the renewal fee provided in ARM 16.45.1211, within 30 days after expiration. A license for which an annual renewal fee is not paid is void.~~

(4) Licenses may be revoked, suspended, modified or ~~conditioned~~ restricted prior to expiration in accordance with 75-11-211, MCA, as applicable, ~~(4)~~ (5) of this rule, and ARM 16.45.1236 ~~to~~ through 16.45.1240, as applicable.

~~(4)~~(5) If the department determines that restrictions are necessary to protect the public's or licensee's health, safety or welfare, or to protect the environment, upon issuance or renewal of a license or at other times in accordance with ARM 16.45.1236, the ~~The~~ department may, ~~upon issuance or reissuance of a regular license, and at other times only~~ in ~~accordance with ARM 16.45.1236, add conditions to~~ restrict or condition a license limiting ~~or restricting~~ the licensee in the time, type, or manner of work to be performed pursuant to the license or impose any other conditions it deems appropriate if the department determines the restrictions or conditions are necessary to protect the public's or licensee's health, safety, or welfare, or the environment.

(5) Remains the same but is renumbered (6).
AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-210, 75-11-211, MCA

16.45.1208 INSTALLER LICENSE ~~REISSUANCE~~ RENEWAL (1) An installer license may be renewed twice by the licensee during each 3-year period since s/he was initially licensed by paying the renewal fee required by ARM 16.45.1211 at least 30 days prior to the license's expiration date. A license for which an annual renewal fee is not paid is void.

~~(1)~~(2) At the end of each third consecutive year s/he is licensed, a ~~A~~ licensed installer applying for ~~reissuance~~ renewal of a ~~regular installer~~ license ~~at the end of a three year license period, and an installer whose license has expired for non-payment of the renewal fee provided in ARM 16.45.1207, are subject to the same licensing requirements, including payment of the licensing application and examination fee and satisfactory completion of the written licensing examination, as provided in ARM 16.45.1201 through 16.45.1240~~ and not requesting a change in any restrictions or conditions of the license may be issued another license if s/he completes a new application form provided by the department, pays the license renewal application fee required by ARM 16.45.1211, and provides proof that the applicant has satisfactorily completed the continuing education requirements required by (4) of this rule.

~~(2)~~(3) A licensee must apply for ~~reissuance~~ renewal within 6 months before the expiration of his or her current ~~regular~~ license, and not later than 30 days prior to expiration.

~~(3)~~(4) At or before the time the licensee applies for ~~reissuance~~ renewal of a license, he or she must also provide, ~~evidence~~ on forms furnished by the department, documentation of his or her completion of at least two department-approved or sponsored continuing education courses for a total of 16 credit hours of continuing education, within each 3-year period for which the license is issued. Except for applicants who request that their licenses be restricted to conducting the installation of cathodic protection systems, the installation of external leak detection devices, or lining, 8 credit hours of the continuing education must be earned by successfully passing a department-approved refresher training course.

~~(4)~~(5) The department shall notify a licensee of the impending expiration of the person's license at least ~~30~~ 60 days prior to the ~~final date for making application for reissuance~~ expiration date of the license. Such notification ~~shall~~ will be considered complete when the notification is sent by certified mail to either the address given on the licensee's last application letter of intent to request renewal of ~~for~~ a license or to the licensee's latest indicated current address. The licensee shall keep the department informed of the licensee's current address for notification purposes.

(6) An installer whose license has expired for any reason is subject to the same licensing requirements as a new applicant, including payment of the license application and examination fees and the satisfactory completion of the written li-

censing examination.
AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-210, MCA

16.45.1209 APPROVAL OF CONTINUING EDUCATION COURSES (1) An entity offering a continuing education course intended to fulfill the requirements of ARM 16.45.1208~~(3)~~ (4), or an installer planning to take the course, must submit a detailed description of the course to the department for approval of the course at least 15 days before the beginning of the course.

(2) A course in continuing education submitted to the department for approval will not be approved unless the course:

(a) is relevant to the subject area of installation, management, inspection, regulation or closure of underground storage tanks~~,~~ systems; and

(b) offers instruction on current technology or methods for the subject(s) in (2)(a) above and that technology or those methods will satisfy applicable department rules~~governing, requiring or allowing the same~~.
AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-210, MCA

16.45.1210 INSTALLER DUPLICATE LICENSES (1) The department shall issue a duplicate license to replace a lost, damaged, or destroyed license upon receipt of evidence indicating the loss, damage or destruction and upon payment of the duplicate licensing fee provided in ARM 16.45.1211. The duplicate license ~~shall~~ must be designated as a duplicate~~,~~ and contain the same information and ~~conditions required of~~ restrictions as the original license. ~~and~~ A duplicate license is subject to the same rules and requirements as ~~the~~ an original license.
AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-210, MCA

16.45.1211 INSTALLER LICENSING FEES (1) Remains the same.

(2) ~~Applicable~~ Installer licensing fees are as follows:

(a) ~~regular~~ license application and examination fee ..... $ ~~50~~ 100

(b) annual license renewal fee ..... $ ~~25~~ 50

(c) actual cost of production and distribution of study guides ~~for installers (not including tank lining)~~ ..... $ ~~60~~

~~(d) study guide for tank liners ..... $ 40~~

~~(e) study guide for tank closers ..... $ 40~~

~~(f)~~(d) reexamination fee ..... $ 35

~~(g)~~(e) duplicate license fee ..... $ 10

(3) "Actual cost of production and distribution" includes reproduction costs, bindery charges, purchase and shipment of copyrighted material, and the cost of postage, packing and shipping guides to requesters. Every 6 months, the department will review and re-calculate the actual production and distribution costs for the various study guide materials. The most

recent data and calculations used will be available for public inspection at the UST program office.
AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-210, MCA

16.45.1212 LICENSED INSTALLER RECORD KEEPING (1) Within 30 days of completion of an underground storage tank system installation or closure, a licensed installer shall submit to the department and to the owner or operator:

(a) Remains the same.

(b) one copy of the installation or closure permit signed by the installer certifying that the work was completed according to the applicable state statutes, ~~and~~ rules, and any permit conditions.

(2) The owner or operator shall keep a copy of the documents required by (1) above at the location of the installation or closure, or at the owner or operator's place of business or residence if that place is different from the installation or closure location and the copies cannot safely be kept at the location of the installation or closure. The copies required by (1) above shall be kept as provided in this subsection for as long as ~~the~~ a tank~~s are~~ system is used to store a regulated substance at the storage site, or for at least three years after a closure is completed at that site.

(3) ~~Notwithstanding~~ In addition to the provisions of ARM 16.45.1001(5), no person ~~shall~~ may allow a regulated substance to be deposited into an underground storage tank system during the calendar year in which the tank system was installed unless the department has received the checklist and signed permit and approved the same to the owner or operator, with the exception that a regulated substance may be deposited into the system for testing purposes so long as the department has given prior written permission.
AUTH: 75-11-204, MCA; IMP: 75-11-204, MCA

16.45.1213 PROHIBITION OF UNPROFESSIONAL INSTALLER CONDUCT

(1) Any of the following acts of an licensed installer ~~licensee~~ constitute unprofessional conduct and are prohibited:

(a) Remains the same.

(b) Misrepresentation or fraud in any aspect of the installation, closure, modification or repair of an underground storage tank system, ~~which creates an unreasonable risk of physical harm to the installer, his or her employee(s), the public, or to the environment~~;

(c) ~~Violation of any state or federal statute or administrative rule regulating the installation or closure of an underground storage tank, which violation creates an unreasonable risk of physical harm to the installer, his or her employee(s), the public, or to the environment~~ Participation in any unlawful unpermitted underground storage tank system installation or removal;

(d) ~~Failing~~ Failure to cooperate with the department by:

(i) not furnishing ~~in writing~~ to the department upon its request a full and complete written explanation covering the

matter contained in any complaint filed with the department; ~~or~~

(ii) not responding to a subpoena issued by the department or any court, whether or not the recipient of the subpoena is the respondent named in any proceeding; or

(iii) Remains the same.

(e) ~~Interfering~~ Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts to the department or its authorized representative, or by the use of threats or harassment against any person to prevent the person from providing evidence in ~~a disciplinary~~ any agency proceeding or ~~other~~ legal action relating to underground storage tanks systems;

(f) ~~Failing~~ Failure to make available, upon request of a client using the licensee's services, or upon request of the client's designee, copies of documents in the possession and under the control of the licensee, when those documents have been prepared by the licensee relating to the licensee's services performed for the client;

(g) ~~Failing~~ Failure to comply with an order issued by any court or by the department, with a permit condition, or with a consent order or stipulation entered into with the department;

(h) ~~Failing~~ Failure to adequately supervise the licensee's employee(s)' compliance with statutes and rules relating to underground storage tank systems ~~to the extent that the installer, his or her employee(s), the public, or the environment are endangered~~;

(i) Aiding or abetting an unlicensed person to install or close an underground storage tank system;

(j) ~~Willfully or repeatedly violating any ordinance of a political subdivision or any state statute or rule relating to the installation or closure of an underground storage tank~~ Violation of any state or federal statute or administrative rule, or any ordinance of a political subdivision relating to the installation or closure of an underground storage tank system;

(k) ~~Failing~~ Failure to display his or her license upon request of any client, prospective client or any department or local inspector;

(l) Remains the same.

(m) Offering, giving, soliciting, or receiving, directly or indirectly, any commission, gift, or other valuable consideration in ~~order to obtain~~ exchange for the grant of a license from the department or to obtain a license for another.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-211, MCA

16.45.1214 INSTALLATION AND CLOSURE PERMIT REQUIREMENT--APPLICATION (1) No ~~owner or operator~~ person may install or close an underground storage tank system without a permit to do so issued by the department.

(2) ~~A~~ Except as provided in (5) of this rule, a completed application for a permit ~~shall~~ must be filed by the permit applicant on a form provided by the department, ~~except as provided in subsection (5),~~ at least 30 days prior to the proposed date of installation or closure. The department may return to

the applicant any application form that is incomplete or otherwise does not contain sufficient information for issuance of the permit. ~~Applications that are resubmitted to the department~~ Completed applications must be resubmitted at least 30 days prior to the proposed date of installation or closure.

(3) The applicant ~~shall~~ must provide ~~the~~ any information required by the department before the application will be considered complete.

(4) The application must be accompanied by the ~~appropriate~~ permit application review fee ~~provided in~~ required by ARM 16.45.~~1206~~ 1219 and any applicable inspection fee ~~provided in~~ required by ARM 16.45.1220.

(5) The department, in its discretion, may ~~issue a permit for repair, modification or closure of a tank in less than 30 days after application is made if the application could not have been submitted in the time provided in subsection (2) because of~~ waive the 30-day requirement in (2) above if the applicant makes a sufficient showing of unforeseen and unforeseeable circumstances and if the applicant does not qualify for an emergency permit under ARM 16.45.1217.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-209, 75-11-212, MCA

16.45.1215 INSPECTION IN LIEU OF LICENSED INSTALLER

(1) If an ~~local~~ inspector licensed under ARM 16.45.1225 exists within the local governmental unit where the installation or closure will occur, the owner or operator may arrange for an inspection by the local inspector, in lieu of ~~the~~ a department inspection. The owner or operator must state on the permit application submitted to the department that the licensed local inspector will conduct the inspection. The inspection services scheduled by the local inspector ~~shall be arranged and the schedule may be modified~~ must be requested and scheduled in a manner similar to department inspection services under (2) below.

(2) An owner or operator intending to have an underground storage tank system installation or closure inspected by the department in lieu of obtaining the services of a licensed installer~~, as provided in 75-11-213, MCA,~~ shall so state on the permit application submitted to the department. ~~After~~ As soon as practicable after a permit is approved for issuance by the department, the department ~~shall as soon as practicable attempt to~~ must either schedule an inspection for one of the date(s) indicated on the permit application ~~by the owner or operator, and shall notify the owner or operator whether inspection services will be available on those date(s). If the department is unable to schedule inspection services for those date(s) the inspection date shall be rescheduled for such other~~ or schedule the inspection for another date mutually agreeable ~~by~~ to both the department and the ~~owner or operator~~ applicant and then notify the applicant of the inspection date.

(3) A department or licensed tank system inspector need not be present when concrete or pavement is being removed from over an underground storage tank system in preparation for a

closure or repair so long as the tank and its associated piping are not disturbed by the activity.
AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-213, MCA

16.45.1216 PERMIT ISSUANCE, TERMS, CONDITIONS (1) Upon receipt of a completed permit application and the fees required by ARM 16.45.1219 or 16.45.1220, ~~the appropriate permit application fee provided in ARM 16.45.1219 and any applicable inspection fee required by ARM 16.45.1220~~ for the installation or closure of an underground storage tank system, the department shall review the application and determine whether the proposed installation or closure meets the criteria for approval in (2) of this rule.

(2) A permit ~~shall~~ must be issued by the department upon its determination that the proposed installation or closure will:

(a) ~~satisfy the requirements of the~~ comply with applicable statutes and rules of the department, ~~and~~ the state fire ~~marshal~~ prevention and investigation bureau, and any local fire prevention authority which has adopted the uniform fire code;

(b) ~~satisfy the requirements of any~~ comply with state law ~~or~~ and rules governing disposal of the tanks system components and tank contents; and

(c) ~~will~~ be conducted in such a place and manner as to protect the environment, and the public's health, welfare and safety ~~and the environment~~.

(3) A permit issued to an applicant under this rule shall state on its face:

(a)-(c) Remains the same.

(d) whether the installation or closure will be conducted by a licensed installer, and, if so, the name and license number of the installer; ~~and~~

(e) whether the installation or closure will be inspected by the department or a local inspector and, if so, the name of the inspector; and

(f) any special conditions for the installation or closure ~~as provided for in subsection (7)~~.

(4) ~~The permit shall include a~~ A copy of the permit must be returned to the department with the signature ~~line for~~ of the licensed installer, licensed local inspector or department inspector ~~to sign~~, certifying that the installation or closure was conducted in accordance with applicable statutes and rules and any conditions of the permit.

(5) Remains the same.

(6) A permit issued by the department under this rule or under ARM 16.45.1217 is issued subject to the accuracy of the information provided by the applicant in the permit application, ~~subject to~~ the information stated or referenced on the permit pursuant to (3) of this rule, ~~subject to~~ compliance with all applicable statutes and rules and ~~subject to~~ any conditions applied ~~pursuant to this rule or ARM 16.45.1218~~ by the department. ~~If the~~ Any installation or closure ~~is~~ not conducted in accordance with any information, condition(s), statute or rule ~~as provided in this subsection, the permit is void and of no~~

~~effect and the installation or closure is~~ will be considered to be conducted without a permit, and in violation of the law.

(7) The department may also ~~issue upon the permit,~~ impose any other condition necessary to insure compliance with (2) of this rule. Any such conditions ~~shall~~ must be ~~stated~~ written or referenced upon the permit.

(8) Remains the same.

(9) ~~Permits~~ Unless extended in writing by the department, permits are valid for 6 months from the date of issuance. In no event will a permit be valid for longer than seven months except that, when the department determines an extension is necessary to facilitate a department-approved corrective action, the permit may be extended further.

(10) Permits issued under ~~ARM 16.45.1201 to 16.45.1240~~ this subchapter are non-transferable.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-212, MCA

16.45.1217 EMERGENCY PERMIT APPLICATION AND ISSUANCE (1) In the event of an emergency requiring immediate installation or closure of an underground storage tank system, the applicant ~~shall~~ may contact the department, ~~orally~~ provide the information required by ARM 16.45.1214 and explain the nature of the emergency and the consequences of non-issuance. An emergency permit may be issued orally by the department and it will be valid for a maximum of 10 days. If an emergency permit is approved, the applicant shall pay the appropriate fees as provided in ARM 16.45.1219, and submit a completed permit application form to the department within 10 days of issuance of the emergency permit.

(2) If the department determines that an emergency exists under (1) and (3) of this rule and that the requirements of ARM 16.45.1214(2) have been satisfied, it ~~shall~~ must issue the permit in the manner provided by this rule and subject to any conditions imposed pursuant to ~~ARM 16.45.1201 to 16.45.1240~~ this subchapter.

(3) Remains the same.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-212, MCA

16.45.1218 PERMIT CONDITIONING, MODIFICATION, SUSPENSION, REVOCATION (1) The department may condition, modify, suspend or revoke any permit previously issued under ARM 16.45.1216 or 16.45.1217 upon its determination that ~~the permittee~~:

(a) the permittee failed to meet the standards for issuance of a permit under ARM 16.45.1214 or 16.45.1217, as appropriate;

(b) the permittee committed fraud or deceit in applying for a permit;

(c) the permittee violated any statute or rule governing the installation or closure of an underground storage tank system of the department, the United States or the state fire ~~marshal governing the installation or closure of an underground storage tank~~ prevention and investigation bureau or a local fire prevention authority which has adopted the uniform fire code;

(d) the permittee violated the terms of any permit or order issued by the department relating to the installation or closure of an underground storage tank system;

(e) the permittee lacks the education, training or experience necessary to conduct any installation or closure for which a permit was previously issued; ~~or that~~

(f) a change in the facts or circumstances of installation or closure necessitates a change in the permit; ~~and~~ or that

(g) Remains the same.

(2) Action by the department under this rule ~~shall~~ must be accompanied by a written statement of the reason(s) for the department action. Upon written demand ~~of~~ by the department, the permittee shall surrender his or her permit to the department, whereupon the department shall retain a the revoked permit ~~in accordance with subsection (4),~~ or issue a modified or conditional permit in accordance with (3) of this rule.

(3) Remains the same.

(4) Whether or not a permit is surrendered, the department may revoke a permit effective upon mailing notice to the permittee ~~in accordance with this rule~~. When a permit is revoked in accordance with this rule, the owner or operator may not install or close the tank system for which the permit was originally issued without again applying for and receiving a new permit ~~for that installation or closure~~.

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

16.45.1219 PERMIT APPLICATION REVIEW FEES (1) Persons applying for an underground storage tank installation or closure permit or both shall pay to the department the applicable permit application review fee(s) provided in (2)-(6) of this rule, and, if a licensed installer is not used to conduct the installation or closure, the applicable inspection fee(s) provided in ARM 16.45.1220 ~~if a licensed installer is not used to conduct the installation or closure~~.

(2) Remains the same.

(3) For the installation or closure of an underground storage tank system, the permit applicant shall pay the following permit application review fees:

(a) farm and residential tanks systems used for storing motor fuel for non-commercial purposes and heating oil tanks systems with a capacity of 1,100 gallons or less..... $35/permit

(b) all other underground storage tanks systems.....$50/permit plus $.005 per gallon of tank capacity

(c)-(d) Remain the same.

(4) The permit application review fee shall be calculated using only the fee structure provided in (3)(b) of this rule, whenever the permit covers tanks systems identified in both (3)(a) and (b) of this ~~subsection~~ rule.

(5)-(6) Remain the same.

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

16.45.1220 INSTRUCTION FEES (1) Remains the same.

(2) Closures of small tanks~~,~~ systems are subject to the following fees:

(a) Owners of underground storage tanks systems identified in (b) of this subsection shall pay an ~~total~~ inspection fee of ~~$65~~ $125 per permit for closures of such tanks systems whenever the closures are conducted without a licensed installer. An additional fee may be required if an inspection exceeds four hours. The fee provided by this subsection covers inspections of all closures covered by a permit provided that:

(i) the ~~$65~~ $125 inspection fee ~~must be~~ is submitted with the permit application ~~in accordance with ARM 16.45.1214, 16.45.1216 to 1217, and 16.45.1219 and must be~~ and is paid in the form of a check or money order made payable to the Montana department of health and environmental sciences; and

(ii) the permit does not cover any other tank handling operation or include underground storage tanks systems of any other category.

(b) The ~~$65~~ $125 fee provided by this subsection applies only to underground storage tanks systems that are:

(i) farm and residential underground storage tanks systems with a capacity of 1,100 gallons or less used for the storage of motor fuel for non-commercial purposes; or

(ii) underground storage tanks systems with a capacity of 1,100 gallons or less used for storing heating oil for consumption on the premises where stored.

(3) Closures of underground piping attached to aboveground tanks~~,~~ are subject to the following fees:

(a) Owners of underground piping attached to aboveground tanks identified in (b) of this subsection shall pay a total inspection fee of ~~$35~~ $62.50 per permit for closures of underground piping attached to such tanks whenever the closures are conducted without a licensed installer. The fee provided by this subsection covers inspections of all closures of underground piping covered by a single permit provided that:

(i) the ~~$35~~ $62.50 inspection fee ~~must be~~ is submitted with the permit application ~~in accordance with ARM 16.45.1214, 16.45.1216 to 1217, and 16.45.1219 and must be~~ and is paid in the form of a check or money order made payable to the Montana department of health and environmental sciences; and

(ii) the permit does not cover other tank handling operations or include underground storage tanks systems or aboveground tanks of any other category.

(b) The ~~$35~~ $62.50 fee provided by this subsection applies only to aboveground tanks that are:

(i)-(ii) Remain the same.

(4) Remains the same.

(5) ~~Within~~ Except for inspections of small tank systems and piping pursuant to (2) and (3) of this rule, within five days after completion of the inspection, ~~except for those inspections for which an inspection fee has been established in subsections (2) and (3) of this rule,~~ the inspector shall send to the department a report on a form provided by the department. The inspector's report must state of the total time

required for the inspection, including the inspector's travel time to and from the inspection site. ~~The time shall be~~, reported to the nearest one-half hour. Upon receipt of the report, the department shall calculate the total inspection fee ~~due~~ owing to the department based upon the following formula for closures and installation inspections:

Type of Fee	Local Inspector	Department Inspector
Minimum fee (fee deposit)	$ ~~65~~ 62.50	$ ~~80~~ 70
Per Hour fee for each hour over 4 2 hours	$ ~~32~~ 31.25	$ 40 35

(6) Except for inspections ~~for which an inspection fee has been established in~~ of small tank systems and piping pursuant to (2) and (3) of this rule, the total inspection fee ~~shall~~ must be calculated by multiplying the actual inspection and travel time that is greater than two hours, calculated to the nearest one-half hour, times the hourly fee provided in (5) above. Any amount calculated greater than the deposit paid to the department ~~shall~~ must be billed by state invoice to the permittee and ~~shall~~ must be paid by the permittee within 30 days of receipt of the state's invoice. ~~Notwithstanding~~ In addition to the provisions of ARM 16.45.1001(5), no person ~~shall~~ may allow a regulated substance to be deposited into an underground storage tank system unless the total inspection fee has been paid to the department, with the exception that a regulated substance may be deposited into the system for testing purposes before the entire fee has been paid, so long as the department has given prior written permission.
AUTH: 75-11-204; IMP: 75-11-204, 75-11-213, MCA

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

(2) When the department deems it necessary to protect public health or the environment, the department may require any installation to be inspected by a department inspector or a local licensed inspector, in which case, the fee must be paid by either the owner, the operator, the installer, or any other person who made the inspection necessary.
AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-213, MCA

16.45.1222 ELIGIBILITY FOR INSPECTOR LICENSING (1) No person may be granted an ~~interim~~ inspector's license unless that person:

(a)-(c) Remain the same.

(d) is an employee or independent contractor of a local governmental unit designated for the purpose of ~~ARM 16.45.1201 to 16.45.1240~~ this subchapter as an implementing agency in the manner provided in ARM 16.45.1230, unless otherwise approved by the department; and

(e) successfully completes the licensing examination required by ARM 16.45.1224~~; and~~ .

~~(f) the department determines that the applicant meets the requirements of this rule.~~

(2) Inspector licenses issued under ~~ARM 16.45.1201 to 16.45.1240~~ this subchapter are non-transferable.

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

16.45.1223 INSPECTOR LICENSE APPLICATION (1) Application for an inspector's license ~~will~~ must be made in the same manner as set forth in ARM 16.45.1205 for installer licenses except that ARM 16.45.1205~~(1)(e) and 16.45.1205~~(3) and (4) do not apply to applications for inspector licensure, and inspectors are subject to the examination ~~provided~~ required in ARM 16.45.1224.

(2) If an applicant requests to have his or her license ~~conditioned~~ restricted to allow the applicant to inspect closures only, the applicant shall so state on the application form.

(3) No licensed inspector may inspect the installation or closure of any underground storage tank system owned or operated by any person who has a continuous and ongoing employment relationship with that inspector, except that licensed inspectors for federal, state, and local governmental units may, upon approval by the department, inspect work conducted by an ~~unrelated~~ division, department, or bureau within their government ~~entity~~ unit that is unrelated to the division, department, or bureau employing or contracting with the inspector.

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

16.45.1224 INSPECTOR LICENSE EXAMINATION ~~AND RE-EXAMINATION~~

(1) All applicants for an inspector's license must successfully complete a written examination which ~~shall~~ will be offered by the department at such time(s) and place(s) as the department determines. ~~The department shall give public notice of the time and place of the examination by advertisement in the public media.~~

(2) An applicant who does not hold an inspector license, and an applicant who intends to apply for a license with a different ~~condition than is applicable to his or her license~~ restriction status, must register with the department for examination at least 20 days before the examination is scheduled by submitting a completed application to the department and paying the examination fee provided in ARM 16.45.1228, unless exempt from the fee in accordance with ARM 16.45.1228(1).

(3) An applicant who holds an inspector's license and does not intend to request a change in any ~~conditions~~ restrictions of the ~~interim or regular~~ license, ~~must register with the department for the examination at least 20 days before an examination is scheduled, by signing a letter of intent on a form provided by the department, and paying the license application and examination fee provided in ARM 16.45.1228, unless exempt from payment of the fee pursuant to ARM 16.45.1228(1) will not~~

be required to take an examination before renewal of a license if the applicant is in good standing with the department and has satisfactorily met the continuing education requirements provided in ARM 16.45.1226(3).

(a) An applicant who holds an inspector's license and has not satisfactorily met the continuing education requirements provided in ARM 16.45.1226(3) must re-apply for an inspector's license as if a new applicant.

(4) The examination given by the department ~~shall~~ must test the applicant on his or her knowledge of applicable statutes and rules governing the installation and closure of underground storage ~~tanks~~ systems and the disposal of tanks and tank contents. It ~~will~~ must also test the applicant's knowledge of current technology and industry recommended practices for the installation and closure of underground storage tanks, and of proper inspection techniques and documentation.

(a) To implement the requirements of this section, the department may utilize a national certification examination or the services of organizations which have expertise and experience in the development and administration of licensing and code examinations to develop and administer examinations. Any such organization must use nationally recognized educational standards and methods to develop and validate the examination.

(5) A score of 80% or higher on the examination constitutes a passing grade. All examinations will be graded, and the applicants will be notified of their score on the examination~~,~~ within 30 days of the date of the examination. An applicant who requests that his or her license be ~~conditioned~~ restricted to ~~allow the applicant to~~ conducting closures ~~only,~~ need ~~only~~ obtain a passing grade only on the sections of the examination pertinent to closures as determined by the department.

(6) ~~Any applicant who fails the examination may review his or her examination results in the department offices.~~ An applicant who fails the examination may retake it at the next scheduled examination date by registering for the examination in the same manner as for the original examination and by paying the ~~reexamination~~ renewal fee provided in ARM 16.45.1228.

(7) An applicant may ~~request~~ obtain an examination study guide from the department. ~~Upon payment of the study guide fee, the department shall provide the applicant with the study guide.~~ The study guide ~~shall~~ must contain such material as the department determines will assist individuals in preparing for the licensing examination.

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

16.45.1225 INSPECTOR LICENSE ISSUANCE, TERM, **RESTRICTIONS,** CONDITIONS (1) The department shall issue a license upon the applicant's satisfaction of ARM 16.45.1221 through 16.45.1229, as applicable. The license ~~shall~~ must set forth the name of the licensed inspector, a license identification number and the dates of issuance and expiration of the license.

(2) Licenses for applicants who request that their license be ~~conditioned for~~ restricted to closure ~~only~~, and li-

censes ~~conditioned~~ restricted by the department as provided in (4) of this rule, ~~shall~~ must have ~~the conditions~~ any restrictions clearly designated on the license.

(3) Inspector licenses expire on the anniversary of their issuance ~~but may be renewed no more than twice by the licensee upon payment of the renewal fee provided in ARM 16.45.1228, within 30 days after expiration. A license for which an annual renewal fee is not paid is void~~. Licenses may be revoked, suspended, modified, restricted or conditioned prior to expiration in accordance with (4) below and ARM 16.45.1236 through 16.45.1240.

(4) ~~The department may, upon~~ Upon issuance or reissuance of a license, and at other times ~~only~~ in accordance with ARM 16.45.1236, the department may add restrictions or conditions to a license limiting or restricting the licensee in the time, type, or manner of work performed pursuant to the license if the department determines the restrictions or conditions are necessary to protect the public's health, safety, or welfare, or the environment.

(5) Inspector licenses issued under ~~ARM 16.45.1201 to 16.45.1240~~ this subchapter are non-transferable.

AUTH: 75-11-204, MCA; IMP: ~~75-11-210~~, 75-11-204, 75-11-213, MCA

16.45.1226 INSPECTOR LICENSE ~~REISSUANCE~~ RENEWAL (1) A licensed inspector applying for ~~reissuance~~ renewal of a license at the end of ~~a three~~ each one-year license period ~~and an inspector whose license has expired for nonpayment of a renewal fee, must comply with the same licensing requirements, including satisfactory completion of a written examination, as provided in ARM 16.45.1201 through 16.45.1240~~ will be issued a license upon completion of an application on a form provided by the department and the provision of proof that the applicant:

(a) has satisfactorily completed any continuing education requirements of (3) of this rule;

(b) has been an active inspector within the preceding year; and

(c) continues to meet the eligibility requirements contained in ARM 16.11.1222.

(2) A licensee must apply for ~~reissuance~~ renewal within 6 months before the expiration of his or her current ~~regular~~ license. The department ~~shall~~ must provide the licensee adequate notification of the annual expiration date. The licensee shall keep the department informed of the licensee's current address for notification purposes.

(3) At the end of each 3-year period since s/he was originally licensed, at or before the time a licensee applies for ~~reissuance~~ renewal of ~~a~~ his or her license, ~~he or she~~ the licensee must also provide evidence, on forms furnished by the department, of his or her completion of at least two department approved or sponsored continuing education courses, totalling at least 16 credit hours of continuing education, within ~~each~~ the 3-year period for which the licensee ~~is licensed~~ just ended.

(4) Approval of continuing education requirements ~~shall~~ must be conducted in the manner provided in ARM 16.45.1209.
AUTH: 75-11-204, MCA; IMP: 75-11-204, MCA

16.45.1227 INSPECTOR DUPLICATE LICENSES (1) The department ~~shall~~ must issue a duplicate inspector's license to replace a lost, damaged, or destroyed license upon receipt of sufficient evidence indicating the loss, damage or destruction ~~and upon payment of the duplicate licensing fee specified in ARM 16.45.1228~~. The duplicate license ~~shall~~ must be designated as a duplicate, contain the information required in on the original license and is subject to the same rules, restrictions, and any conditions as the original license.
AUTH: 75-11-204, MCA; IMP: 75-11-204, MCA

16.45.1229 PROHIBITION OF UNPROFESSIONAL INSPECTOR CONDUCT

(1) Any of the following acts of an licensed inspector ~~licensee~~ constitute unprofessional conduct and are prohibited:

(a) Remains the same.

(b) Misrepresentation or fraud in any aspect of the inspection of any installation, closure, modification or repair of an underground storage tank system ~~which creates an unreasonable risk of physical harm to the installer, his or her employee(s), the public, or the environment~~;

(c) Violation of any administrative rule regulating the inspection, installation or closure of an underground storage tank system, ~~which violation creates an unreasonable risk of physical harm to the installer, his or her employee(s), the public, or to the environment~~ including, but not limited to, participating in or not reporting to the department a suspected unlawful unpermitted installation or removal of an underground storage tank system;

(d) Failing to cooperate with the department by:

(i) not furnishing in writing to the department upon request a full and complete written or oral explanation covering the matter contained in any complaint filed with the department; ~~or~~

(ii) not responding to a subpoena issued by the department or any court, whether or not the recipient of the subpoena is the respondent named in the proceeding; or

(iii) Remains the same.

(e) Interfering with an investigation or ~~disciplinary~~ any agency proceeding by willful misrepresentation of facts to the department or its authorized representative, or by the use of threats or harassment against any person to prevent the person from providing evidence in a disciplinary proceeding or other legal action relating to the inspection of underground storage tanks systems;

(f) Remains the same.

(g) Failing to comply with an order issued by the department or any court, or with a permit condition, or with a consent order or stipulation entered into with the department;

(h) Failing to adequately inspect an installation or clo-

sure ~~to the extent that the installer, his or her employee(s), the public or the environment are endangered~~;

(i) Aiding or abetting an unlicensed person to install, close, modify or repair an underground storage tank system;~~,~~

(j) Willfully or repeatedly violating any ordinance of a political subdivision or state statute or rule relating to the installation, closure or inspection of an underground storage tank system;

(k)-(l) Remains the same.

(m) Offering, giving, soliciting, or receiving, directly or indirectly, any commission, gift, or other valuable consideration in ~~order to obtain~~ exchange for the grant of a license from the department or to obtain a license for another; or

(n) Inspection of a tank~~s~~ system owned or operated by an ~~employee's~~ inspector's employer~~. Inspectors who work for federal, state, or local governments are exempt from this subsection for the purposes of tanks owned by those governments, in accordance with ARM 16.45.1223(3)~~, with the exception of an inspection that has been approved by the department pursuant to ARM 16.45.1223(3) because it is an inspection of work conducted by a division, department, or bureau within a government entity that is unrelated to the division, department, or bureau employing or contracting with the inspector.

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

16.45.1230 DESIGNATION OF IMPLEMENTING AGENCIES (1) A local governmental unit employing or contracting with a licensed inspector may apply for and receive designation as an implementing agency for the purposes of ~~ARM 16.45.1201 to 16.45.1240~~ this subchapter in the manner provided in ARM 16.45.1003.

(2) Upon designation, an implementing agency may apply for and receive ~~up to~~ 80% of the inspection fees collected, in accordance with ARM 16.45.1232.

(3) Upon designation, an implementing agency may administer and enforce those rules and statutes which it is authorized or required by rule, statute or its letter of designation to administer or enforce~~,~~ in the same manner in which the department is authorized to enforce those statutes or rules and may apply to the department in the manner authorized by ARM 16.45.1004 for reimbursement for any such services.

(4) Remains the same.

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

16.45.1231 ~~METHOD OF~~ INSTALLATION AND CLOSURE INSPECTION **REQUIREMENTS**--REPORTS (1) Each local inspector licensed by the department to conduct inspections of installations or closures or both of underground storage tanks~~,~~ shall conduct ~~both~~ those inspections for which application is made by the owner or operator or other person pursuant to ARM 16.45.1215 and also such other short notice or compliance inspections as are requested by the department. Each inspection by any inspector licensed under ~~ARM 16.45.1201 to 16.45.1240~~ this subchapter ~~shall~~ must be conducted in the manner required by applicable

statutes and rules and any conditions contained in the inspector's license and in any letter of designation. At the conclusion of each stage of an inspection, the inspector shall complete a written check list prescribed by the department indicating that the applicable stage of the inspection has been conducted.

(2) When a licensed inspector is required under ARM 16.45.1215, the inspector must be present at a tank system installation, repair, modification, or closure project for the entire time during the performance of the following:

(a) for tank system installations, repairs and modifications:

(i) preparation of the excavation immediately prior to receiving backfill and the placement of the tank into the excavation;

(ii) any movement of the tank, including but not limited to transferring the tank from the vehicle used to transport it to the project site;

(iii) setting of the tank and its associated piping into the excavation, including the placement of anchoring devices, backfilling to the level of the tank, and any strapping;

(iv) placement and connection of the piping system to the tank;

(v) installation and repair of cathodic protection equipment;

(vi) pressure testing of the underground storage tank system, including associated piping, performed during an installation, repair or modification;

(vii) completion of the backfilling and filling of the excavation;

(viii) preparation for and completion of the installation of secondary barriers and excavation lining systems;

(ix) preparing for and installing internal tank lining; and

(x) installation of in-tank and external leak detection devices.

(b) for tank closures or closures-in-place:

(i) tank system excavation;

(ii) removal and capping of vent and product piping;

(iii) removal of the tank contents and cleaning of the tank system;

(iv) tank purging or inerting;

(v) any movement of the tank, including but not limited to transferring the tank to the vehicle used to transport the tank from the project site; and

(vi) collection and preparation of soil, water and media samples during the closure.

(3) Prior to the scheduled inspection time for small noncommercial farm and residential tank systems, owners or operators must complete the following tasks:

(a) Empty and clean the tank system by removing all liquid, accumulated sludge and all combustible and flammable vapors;

(b) inert or purge the tank of explosive vapors;

(c) have utility lines and piping located and marked; and

(d) arrange for excavation equipment to be on site at the time scheduled for the inspection.

(4) The closure inspection for non-commercial farm or residential tanks must consist of the following tasks, which must be performed by a department or local licensed inspector:

(a) confirm that all the regulated substance, sludge, and residual has been removed from the tank system;

(b) check the tank for explosive vapors;

(c) observe the excavation and removal of tanks and piping;

(d) observe the collection of soil and water samples; and

(e) complete sampling and closure documentation.

(5) Payment of the inspection fee for the closure of small non-commercial farm and residential tank systems will cover up to a total of four hours of inspector's time, including the time required for the inspector to travel to and from the closure site. If the inspection cannot be completed within the allotted four hours, or if the inspector has to return to the closure site because one or more of the pre-inspection requirements in (2) of this rule have not been completed when the inspector arrives at the closure location or because there is a delay in the removal procedure, the owner or operator must arrange for a follow-up inspection and pay an additional inspection fee.

~~(2)~~(6) If during an inspection, the inspector discovers or is provided with information indicating a violation of any state statute~~(s)~~ or rule~~(s)~~ or permit term or condition governing the installation or closure of the tank, the inspector shall direct that the installation or closure be, and it ~~shall~~ must be, stopped and the inspector shall conduct as thorough and complete an inspection of the indicated violation as time and circumstances permit. The inspector shall direct compliance ~~with~~, and the owner, operator, installer, permittee or other person shall comply~~,~~ with~~,~~ all state statutes and rules and all permit terms or conditions regulating the installation or closure of the underground storage tank system.

~~(3)~~(7) Immediately upon completion of an inspection of an installation or closure conducted by a licensed installer, the inspector must sign the permit certifying that the work the inspector witnessed was completed according to the requirements of state statutes and rules and any requirements of the permit, if the work was so completed.

~~(4)~~(8) Immediately upon completion of an inspection of an installation or closure not conducted by a licensed installer, the inspector must sign the permit certifying that the work was completed according to the requirements of state statutes and rules and any requirements of the permit, if the work was so completed.

~~(5)~~(9) Upon completion of an inspection of an installation or closure not conducted by a licensed installer, the inspector shall submit a copy of the signed permit and the inspection checklist to the department within 10 days after completing the inspection.

~~(6)~~(10) Upon completion of an inspection of an installation or closure not conducted by a licensed installer, the inspector shall give a copy of the signed permit and checklist to the owner or operator of the tank system installation or closure that was inspected.

~~(7)~~(11) The owner or operator shall keep a copy of the permit and checklist signed by the inspector at the place where the inspected installation or closure is located or at the owner or operator's place of business if that place is different from the installation or closure location and copies cannot safely be kept at the location of the installation or closure. The copy of the permit and checklist ~~shall~~ must be kept as provided in this subsection for as long as the tanks ~~are~~ system is used to store a regulated substance in the same location at which the inspection took place, or for at least three years after a closure is completed at that site.

~~(8)~~(12) Upon request of the department, an inspector ~~shall~~ must provide to the department any records, notes or other documents in the inspector's possession relating to an inspection.

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

16.45.1232 INSPECTION REIMBURSEMENT (1) ~~In accordance with section 75-11-213, MCA, within~~ Within 30 days of receipt of a statement for services from a designated implementing agency, the department shall reimburse the agency 80% of any inspection fee submitted for the inspection of an installation or closure conducted by that inspector. Inspections eligible for reimbursement under this rule are those scheduled in accordance with ARM 16.45.1215 and those short notice or compliance inspections conducted by a designated local inspector upon request of the department.

(2) Remains the same.

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

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

16.45.1233 NOTICE OF VIOLATION--WRITTEN ORDER TO TAKE CORRECTIVE ACTION (1) If an owner, operator, permittee, installer or other person refuses to comply with a direction given by a licensed inspector ~~pursuant to ARM 16.45.1231~~ to comply with state statutes or rules or any permit condition, the inspector may complete a written notice of violation and serve it on the person by personal delivery ~~by the inspector~~ or by mail. The notice may include any of those matters specified in 75-11-218, MCA. The notice ~~shall~~ must be signed and dated by the inspector. Any order requiring corrective action or requiring information to be provided ~~contained in the notice shall~~ must be addressed to the person committing the violation, or to ~~the supervisor or employer~~ such other person determined by the inspector to be responsible for the commission of the violation ~~or the person committing the violation~~, and shall

must contain:

(a)-(c) Remains the same.

(d) the time within which compliance is required; and

(e) a plain statement of the effect of the order and the rights of the person to whom the order is addressed, including the right ~~of~~ to appeal and to a hearing before the board.

(2) Remains the same.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-218, MCA

16.45.1234 THIRD PARTY COMPLAINTS--INVESTIGATIONS

(1) Remains the same.

(2) All complaint affidavit forms completed under (1) of this rule and filed with the department must be ~~sworn to~~ verified upon oath or affirmation before a notary public by the complainant. A complaint affidavit form submitted to the department failing to give required information or not otherwise completed in accordance with this rule will not be accepted for filing by the department and no investigative or enforcement action will be taken thereon by the department.

(3) If the complaint affidavit form required by (1) and (2) of this rule is not completed and returned to the department within 90 days of its submission to the complainant, the department shall dismiss ~~any~~ the complaint then pending ~~and any correspondence alleging the acts complained of shall be removed from department files~~. Receipt of the completed affidavit ~~will~~ must be acknowledged by the department.

(4) Upon receipt of the completed complaint affidavit, the department will investigate the facts alleged to determine whether a violation of ~~statues~~ statutes or rules has occurred.

(5) Remains the same.

(6) ~~Actions~~ If the department determines it appropriate, actions alleged in a complaint affidavit may~~, if appropriate, as determined by the department,~~ be resolved informally by correspondence, telephone communication, or otherwise between the department, the complainant, and the licensee, without the ~~filing~~ issuance of an administrative order or the filing of a judicial complaint by the department.

(7)-(8) Remain the same.

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

16.45.1235 DISCIPLINARY AND OTHER LICENSING ACTION GENERALLY (1) The department may restrict, condition, modify, suspend, revoke or refuse to renew any license, previously issued under ~~ARM 16.45.1201 to 16.45.1240, under~~ this ~~rule~~ subchapter upon its finding that there is substantial evidence that the licensee has committed any of the following ~~acts~~:

(a) ~~failed~~ failure to meet the standards for issuance of an original license, as provided in 75-11-210 and 75-11-211, MCA, and ~~ARM 16.45.1201 to 16.45.1240~~ this subchapter;

(b) ~~committed~~ fraud or deceit in applying for a license or permit;

(c) ~~violated~~ a violation of any statutes or rule governing the installation, closure or inspection of an underground storage tank system of the department, the United States, any

other state or U.S. territory, or the state fire ~~marshal governing the installation, closure or inspection of an underground storage tank~~ prevention and investigation bureau, or any local fire prevention authority which has adopted the uniform fire code;

(d) ~~violated~~ a violation of any statute or rule of the department governing the licensing of underground tank system installers or inspectors including any of the rules of professional conduct provided in ~~ARM 16.45.1213 or 16.45.1229~~ this subchapter; ~~or~~

(e) ~~violated~~ a violation of the terms of any license, permit, order or stipulation issued or agreed to by the department relating to the installation, closure or inspection of an underground storage tank system or installer's or inspector's license; or

(f) had a similar license suspended or revoked in another state or U.S. territory.

(2) The department may also restrict, condition or modify any license, previously granted under ~~ARM 16.45.1201 to 16.45.1240, under~~ this ~~rule~~ subchapter upon its finding that there is substantial evidence that:

(a) Remains the same.

(b) ~~that~~ the condition or modification is necessary to protect the environment or the health, welfare or safety of the licensee, the licensee's employee(s) or the public~~, or necessary to protect the environment~~.

(3) In determining whether to restrict, condition, modify, suspend, revoke or refuse to renew a license under this rule, the department shall consider:

(a)-(c) Remain the same.

(4) The department shall restrict, condition, modify, suspend, revoke or refuse to renew any license under this rule in the manner provided by this rule and ARM 16.45.1236 to 16.45.1240.

(5) An order issued by the department under this rule ~~shall~~ must be sent to the licensee and ~~shall~~ must be accompanied by a written statement of the reasons for and term(s) and condition(s) of the department's action and a written statement of the rights of the licensee, including the right of to appeal to the board ~~under~~ in accordance with ARM 16.45.1240.

(6) Action taken by the department under this ~~rule~~ subchapter is effective pending appeal to the board.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-211, MCA

16.45.1236 **RESTRICTING OR** CONDITIONING OF LICENSE

(1) Upon making the finding required by ARM 16.45.1235, the department may restrict or condition a previously issued license.

(2) Upon a written demand ~~of~~ by the department ~~in writing~~, a licensee shall surrender his or her license to the department, whereupon the department ~~shall~~ may issue a new license with the restrictions or conditions imposed by the department stated or referenced on the license. Whether or not a license is surrendered, the department may issue a restricted

or conditional license in accordance with ~~ARM 16.45.1235 and~~ this ~~rule~~ subchapter and the licensee shall comply with the restrictions or conditions stated or referenced thereon. The department shall inform the licensee in writing of the reasons for and term(s) ~~and the~~ of any restrictions or condition(s).

(3) ~~The department may add, as~~ As a condition of any license, the department may add any term, requirement, restriction or condition, not prohibited by law which, in the judgment of the department, will protect the environment or the health of the licensee, the licensee's employee(s), or the public safety or welfare~~, or protect the environment~~.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-211, MCA

16.45.1237 MODIFICATION OF LICENSE (1) Upon making the finding required by ARM 16.45.1235, the department may modify the terms, restrictions, or conditions of any previously issued license.

(2) Upon written demand ~~of~~ by the department ~~in writing~~, a licensee shall surrender his or her license to the department, whereupon the department ~~shall~~ may issue a new license with any modification imposed by the department. Whether or not a license is surrendered, the department may issue a modified license in accordance with ~~ARM 16.45.1235 and~~ this ~~rule~~ subchapter and the licensee shall comply with the terms of the modified license. The department shall inform the licensee in writing of the reasons for and term(s) ~~and~~ of the modification(s).

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-211, MCA

16.45.1238 SUSPENSION OF LICENSE (1) Remains the same.

(2) Upon suspending a license, the department shall inform the licensee in writing of the reason for and term(s) of the suspension. The department shall demand and upon demand the licensee shall surrender his or her license to the department. Whether or not a license is surrendered, the suspension is effective, upon notice to the licensee, for the term determined by the department.

(3) A licensee ~~shall~~ may not practice or undertake the acts for which he or she was licensed during the term of the license suspension. The department may determine to issue a modified, restricted or conditional license, during the term of the suspension, upon consideration of the factors provided in and in accordance with ARM 16.45.1235.

(4) Upon expiration of the term of suspension, the department shall return the license to the licensee and inform him or her in writing of the reinstatement of the license. The reinstated license may contain such restrictions, conditions, or modifications ~~stated or referenced on the license or modifications~~, as the department may impose in accordance with ARM 16.45.1236 and 16.45.1237.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-211, MCA

16.45.1239 LICENSE REVOCATION (1) Remains the same.

(2) Upon revoking a license, the department shall inform

the licensee in writing of the reason(s) for and fact of the revocation. The department shall demand and upon demand the licensee shall surrender his or her license to the department. Whether or not a license is surrendered, the revocation is effective upon notice to the licensee ~~in accordance with this subsection~~.

(3)-(4) Remain the same.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-211, MCA

16.45.1240 REQUEST FOR HEARING (1) ~~A~~ If a licensee or former licensee ~~who~~ desires a hearing before the board on any disciplinary action taken by the department pursuant to ARM 16.45.1235 ~~to 16.45.1240~~ through 16.45.1239, ~~shall request in writing a hearing before~~ a written request must be sent to the board.

(2) Requests for a hearing ~~shall~~ must be ~~postmarked~~ mailed to the ~~department~~ board and postmarked no later than 30 days after ~~mailing~~ receipt of the notice required by ARM 16.45.1235(5). Requests for a hearing ~~shall~~ must contain a statement of any facts disputed by the licensee or former licensee.

(3) The department or the board shall return to the licensee or former licensee any request for hearing which does not comply with this rule.

(4) The ~~department~~ board shall forward to the ~~board~~ department ~~for its determination~~ a copy of any request for hearing which complies with this rule.

AUTH: 75-11-204, MCA; IMP: 75-11-204, 75-11-211, MCA

3. The 53rd Legislature passed Senate Bill 284, "An Act Extending Permit Authority of the Department of Health and Environmental Sciences to Any Person who Installs, Repairs, Modifies or Closes an Underground Storage Tank System; Extending the Permit Obligation to the Installation, Repair, or Modification of External Leak Detection Devices and Cathodic Protection Systems; Clarifying the Applicability of Underground Storage Tank Law to All Parts of Underground Storage Tank Systems..."

The proposed rules amendments are necessary to implement this legislation and make certain clarifying changes in the existing language of Sub-Chapter 12 of ARM Title 16, Chapter 45, in accordance with the authority provided by the legislature in Title 75, Chapter 11, Part 2, MCA. These additions made to existing rules clarify the duties of licensed UST installers/removers, and adjust the fees paid to the department for various services. Other changes, such as refinements in the renewal process for UST installer/remover and inspector licenses, provide for appropriate and progressive continuing education and make improvements on the installation, closure and inspection process to carry out the intent of the Legislature as expressed in SB 284.

4. Rule 16.45.1228 setting inspector licensing fees, which can be found on page 16-4743 of the Administrative Rules of Montana, is proposed to be repealed because the licensed

inspectors are agents of local government entities that are already, by and large, short on funding, and the department does not want to impose a fee burden on them.
AUTH: 75-11-204, MCA; IMP: 75-11-204, MCA

5. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to John Geach, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than June 9, 1994.

6. Cassandra Noble has been designated to preside over and conduct the hearing.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State May 2, 1994.

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 16.30.801-16.30.804 and the repeal of rule 16.30.805 concerning reporting of exposure to infectious diseases	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.30.801-804 AND THE REPEAL OF ARM 16.30.805

(Emergency Medical) Services)

To: All Interested Persons

1. On June 2, 1994, at 1:30 p.m., the department will hold a public hearing in Room C209, Side 1, of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rules.

2. The text of the proposed amendments is as follows (new material is underlined; material to be deleted is interlined):

16.30.801 TRANSMITTABLE INFECTIOUS DISEASES (1) The following infectious diseases are designated as having the potential of being transmitted to emergency services providers through an ~~unprotected~~ exposure described in ARM 16.30.802:

(a) human immunodeficiency virus infection (AIDS or HIV infection);

(b) hepatitis B;

(c) hepatitis~~, non-A non-B~~ C;

(d) hepatitis D;

~~(d)~~(e) communicable pulmonary tuberculosis;

~~(e)~~(f) meningococcal meningitis;

(g) diphtheria;

(h) plague;

(i) hemorrhagic fevers (Lassa, Marburg, Ebola, Crimean-Congo, and other viruses yet to be identified); and

(j) rabies.

(2) For purposes of the reporting requirements of 50-16-702(2), MCA, communicable pulmonary tuberculosis and meningococcal meningitis are considered airborne infectious diseases.

AUTH: 50-16-705, MCA; IMP: 50-16-701, 50-16-705, MCA

16.30.802 REPORTABLE ~~UNPROTECTED~~ EXPOSURE (1) The types of exposures ~~to the infectious diseases specified in ARM 16.30.801~~ that ~~may be reported~~ a designated officer shall report to a health care facility ~~by~~ upon the request of an emergency services provider are:

(a)-(d) Remain the same.

AUTH: 50-16-705, MCA; IMP: 50-16-701, 50-16-705, MCA

16.30.803 ~~UNPROTECTED~~ REPORT OF EXPOSURE; FORM (1) A report of ~~unprotected~~ exposure must be filed with the health care facility by the designated officer on a form developed and approved by the department, entitled "Report of ~~Unprotected~~ Exposure"~~, and containing~~ .

(2) The report form will require the following, at a minimum:

(a) name, address, and phone number(s) of the emergency services provider who sustained an ~~unprotected~~ exposure;

(b) date and time of the ~~unprotected~~ exposure;

(c) a narrative description of ~~the events surrounding~~ the ~~unprotected~~ type of exposure that occurred, ~~and~~ a detailed description of how the exposure took place, and a description of any precautions taken.

(d) the name and, if available, the date of birth of the patient;

(e) the name of the ~~hospital~~ health care facility receiving the patient and the health care facility's infectious disease control officer;

(f) the name of the emergency services organization with which the ~~individual filing the report~~ is affiliated health care provider was officially responding;

(g) the names and phone numbers of the designated officer and the alternate;

(h) the address of the designated officer to which the written notification required by 50-16-702(2)(c), MCA, is to be sent; and

~~(g)~~(i) the signature of the ~~emergency services provider~~ designated officer filing the report.

~~(2)~~(3) A copy of the required form is available from the department's Emergency Medical Services bureau, Cogswell Building, Capitol Station, Helena, Montana 59620 [phone: 406-444-3895].

(4) An emergency service provider should, but is not required to, notify his/her designated officer within 72 hours after the exposure if s/he wishes a report of exposure to be filed.

(5) It is the department's interpretation that the information that 50-16-702(c), MCA, requires a health care facility to provide to a designated officer in response to the filing with the facility of a report of exposure is limited to information related to the health care facility stay directly resulting from the incident that generated the exposure, and not to any subsequent emergency transport to that facility involving the same patient and the same emergency medical service. This interpretation is advisory only and not binding upon anyone.

AUTH: 50-16-705, MCA; IMP: 50-16-702, 50-16-705, MCA; Subsection (5) of this rule is advisory only but may be a correct interpretation of the law.

16.30.804 RECOMMENDED MEDICAL PRECAUTIONS AND TREATMENT (1) At a minimum, a health care facility that notifies a ~~person who has filed a report of unprotected exposure that~~

~~he/she in fact has been exposed to~~ the designated officer of the emergency services provider who attended a patient prior to or during transport or who transported a patient who has been diagnosed as having one of the infectious diseases listed in ARM 16.30.801 ~~should~~ must recommend ~~to that person~~ that the exposed emergency services provider take the medical precautions and treatment:

(a) specified in Control of Communicable Diseases in Man, An Official Report of the American Public Health Association, ~~14th~~ 15th Edition, ~~1985~~ 90; and

(b) other additional medical precautions and treatment ~~provided to~~ recommended by the health care facility ~~by the department, if any~~.

(2) ~~Whenever changes in the standards cited in (1) above become nationally acceptable and recommended, the department will provide health care facilities with those changes, and those facilities should in turn recommend the updated precautions and treatment to persons filing reports of unprotected exposure~~ The designated officer must then forward these recommendations to the emergency medical services provider(s) who was/were exposed.

(3) The department hereby adopts and incorporates by reference "Control of Communicable Diseases in Man, An Official Report of the American Public Health Association", ~~14th~~ 15th edition, ~~1985~~ 90, which lists and specifies control measures for communicable diseases. A copy of "Control of Communicable Diseases in Man" may be obtained from the American Public Health Association, 1015 15th Street NW, Washington, DC 20005. AUTH: 50-16-705, MCA; IMP: 50-16-703, 50-16-705, MCA

4. Amendment of rules 16.30.801-16.30.804 is necessary in order to incorporate changes made by Chapter 476, Laws of 1993, to Title 50, Chapter 16, part 7, MCA, concerning exposure of emergency medical providers to certain specified communicable diseases. Also, the addition of diseases to those already listed in ARM 16.30.801 is necessary in order to incorporate all of the infectious diseases specified in rules [59 FR 13424] implementing the federal Ryan White CARE Act (P.L. 101-381), thereby allowing the Governor to certify that Montana is substantially in compliance with that Act and avoiding application of the federal law and rules within Montana.

5. Rule 16.30.805, which can be found on page 16-1378 of the Administrative Rules of Montana, is proposed to be repealed because its requirements are currently outside of the department's statutory rulemaking authority.

AUTH: 50-16-703 and 705, MCA; IMP: 50-16-702 and 703, MCA

6. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Drew Dawson, Chief, Emergency Medical Services Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, and must be received no later than 5 p.m., June 10, 1994.

7. Ellie Parker has been designated to preside over and

conduct the hearing.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State May 2, 1994.

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the repeal of rules 16.32.356 and 16.32.357 and new rules I-XI dealing with licensure of adult day-care centers)	NOTICE OF PUBLIC HEARING FOR PROPOSED REPEAL OF RULES AND ADOPTION OF NEW RULES

(Adult Day Care)

To: All Interested Persons

1. On June 3, 1994, at 1:00 p.m., the department will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the repeal and adoption of the above-captioned rules.

2. The rules, as proposed to be adopted, appear as follows:

RULE I GENERAL SERVICES, ADMINISTRATION AND STAFFING

(1) An adult day-care center shall provide the staff assistance to clients that each requires for activities of daily living, including but not limited to eating, walking, and grooming.

(2) If an adult day-care center is operated on the premises of another licensed health care facility:

(a) the center may provide to day-care clients any of the services for which the other facility is licensed, subject to the limitation that overnight service to a client may be provided for no more than 7 successive nights;

(b) adequate facilities and staff must be provided to prevent overcrowding or diminished services to the residents or inpatients of the latter facility; and

(c) the center must identify, in writing, those personnel responsible for operating its programs.

(3) An adult day-care center that is not operated on the premises of another licensed health care facility may not provide overnight service.

(4) The center must provide recreational and social activities for clients, post a calendar of those activities where clients can see it, and retain a copy of each calendar for at least 1 year after the date of the last event recorded on it.

(5) An adult day-care center must set aside one room for resting for every five clients, must furnish each such room with at least one bed or lounge chair, and must provide blankets and pillows for the resting room. If the center has a bed or beds in the resting room, it must:

(a) keep each bed dressed in clean bed linen in good condition;

(b) keep on hand a supply of clean bed linen sufficient

to change beds often enough to keep them clean, dry, and free from odors; and

(c) provide each bed with a moisture-proof mattress or a moisture-proof mattress cover and mattress pad.

(6) There must be a written agreement between the center and each client or other person responsible for the client pertaining to cost of care, type of care, services to be provided, and the manner by which the responsible party will be notified of significant changes in the client's condition and the need to seek emergency care for the client.

(7) The family member or other person responsible for a client must be notified promptly if the client is removed from the center. A notation of the date of the contact and the person contacted must be made in the client's record.

(8) Each client must have access to a telephone at a convenient location within the center.

(9) The center shall make adequate provisions for identification of client's personal property and for safe-keeping of valuables, including keeping an accounting of any personal funds handled for the client by the center.

(10) A client who is ambulatory only with mechanical assistance may not be kept above the ground floor of the center.

(11) Each adult day-care center must employ a manager who must be in good physical and mental health, be of reputable and responsible moral character, and exhibit concern for the safety and well-being of clients, and who:

(a) is at all times responsible for the center and ensures appropriate supervision of the clients;

(b) is at least 21 years of age;

(c) has completed high school or has a general education development (GED) certificate;

(d) has knowledge of and the ability to conform to the applicable laws and rules governing adult day-care centers; and

(e) has not been convicted of a crime involving violence, fraud, deceit, theft, or other deception for which s/he is still under state supervision.

(12) The owner of an adult day-care center who meets the qualifications listed in (11) above may serve as the manager.

(13) The manager must:

(a) oversee the day to day operation of the center, including, but not limited to:

(i) services to clients;

(ii) record keeping; and

(iii) employing, training and/or supervising employees.

(b) protect the safety of clients;

(c) be familiar with and assure compliance with the department's standards and rules relating to adult day care;

(d) post the current license at all times at a place in the center that is conspicuous to the public;

(e) provide documented orientation to all employees that includes information on the following:

(i) an overview of the center's policies and procedures manual and a presentation regarding how the policies and procedures are to be used and implemented;

(ii) a review of the employee's job description;

(iii) services provided by the facility;

(iv) simulated fire prevention, evacuation, and disaster drills;

(v) basic techniques of identifying and correcting potential safety hazards in the facility; and

(vi) emergency procedures, such as basic first aid.

(f) review every accident and/or incident causing injury to a client or employee, take appropriate corrective action, and ensure that a record of all accidents and/or incidents and the corrective measures taken is maintained;

(g) notify the nearest peace officer, law enforcement agency, or protective services agency whenever there is reason to believe that a client has been subjected to abuse, neglect, or exploitation; require and encourage the center staff to report observations or evidence of abuse; and investigate and take corrective action as indicated;

(h) ensure that the center has a policies and procedures manual that governs the operations of the center, that is available to and followed by all employees, and that is available to clients upon request;

(i) maintain a personnel record for each employee, including for substitute personnel, that meets the requirements of [Rule III(3)], and retain it for at least 1 year after the employee terminates employment;

(j) maintain a list of the names, addresses, and telephone numbers of all employees, including substitute personnel, and ensure that all such lists for the prior 12 months are retained on the premises; and

(k) maintain an ongoing census of clients, documenting their attendance, and retain census data covering at least the past 12 months.

(14) Any employee having responsibility for clients must be at least 18 years of age.

(15) At least one employee must be present at the center at all times in which a client is present at the center.

(16) Written daily work schedules for employees showing the personnel on duty at any given time must be kept at least 1 year.

(17) The individual in charge of each work shift shall have keys to all doors in his/her possession.

(18) The center must at all times employ sufficient staff to provide the services required by the number and characteristics of its clients.

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

RULE II FOOD SERVICE (1) An adult day-care center must provide:

(a) at least one meal a day to clients who stay at the center up to 10 hours;

(b) two meals per day to clients who stay at the center

over 10 hours;

(c) three meals per 24-hour period to overnight clients.

(2) Snacks must be offered between meals.

(3) The center must establish and maintain standards relative to food sources; refrigeration; refuse handling; pest control; storage, preparation, procuring, serving, and handling food; and dishwashing procedures that are sufficient to prevent food spoilage and the transmission of infectious disease, including the following:

(a) Food must be obtained solely from sources that comply with all laws and rules relating to food and food labeling;

(b) The use of home-canned foods is prohibited;

(c) If food subject to spoilage is removed from its original container, it must be kept sealed and labeled; and

(d) Food subject to spoilage must be dated.

(4) Foods must be served in amounts and a variety to meet the nutritional needs of each client.

(5) Foods must be cut, chopped, and ground to meet individual needs.

(6) Potentially hazardous food, such as meat and milk products, must be stored at 45°F or below. Hot food must be kept at 140°F or above during preparation and serving.

(7) Freezers must be kept at a temperature of 0°F or below and refrigerators must be kept at a temperature of 45°F or below. Thermometers must be placed in the warmest area of the refrigerator and freezer to assure proper temperature.

(8) Produce, food, and containers of food must be stored a minimum of 6 inches above the floor in a manner that protects the food from splash and other contamination.

(9) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practice during all working periods in food service.

(10) No food service employee who is either infected with a disease in a communicable form that can be transmitted by foods, a carrier of organisms that cause such a disease, or afflicted with a boil, an infected wound, or an acute respiratory infection, may work in the food service area in any capacity in which there is a likelihood of that person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

(11) Tobacco products may not be used in the food preparation and service areas.

(12) If an adult day-care center contracts with another establishment to prepare food for the clients, a record of each such contract must be maintained for at least 1 year.

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

RULE III CLIENT AND PERSONNEL RECORDS (1) An adult day-care center shall prepare a record for each client composed of at least the following information: name; address; sex; social security number; date of birth; marital status; insurance or financial responsibility information; religious

affiliation; next of kin; the first day of service and the last day of service; the client's physician's name, address, and telephone number, if appropriate; required medications, if applicable; the date and time of visit to or by his/her physician; and a record of medications taken by the client as required in [RULE IV(3)].

(2) The center shall retain all client records for no less than 5 years following the last day of service to the client or the client's death, whichever date is earlier.

(3) The center must maintain a personnel record for each employee, including for substitute personnel, that includes at least the following:

(a) employment application;
(b) employment contract;
(c) TB test records;
(d) references;
(e) performance appraisals; and
(f) a description of any significant incident involving both the employee and a client and its consequences.

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

RULE IV MEDICATIONS (1) If a client is required to take medication while at the center, the client must be capable of taking his/her own medications, with the following assistance from staff:

(a) reminding the client to take the medication at the proper time;
(b) removing medication containers from storage;
(c) assisting with removal of a cap;
(d) guiding the hand of the client; and
(e) observing the client take the medication.

(2) All medications must remain in locked storage until the client is discharged.

(3) The center must maintain for each client a medication administration record listing all medications used and all doses taken or not taken by the client.

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

RULE V POLICIES AND PROCEDURES (1) The center shall have a written policies and procedures manual that must:

(a) be available to and followed by all personnel;
(b) be available to clients upon request;
(c) include the following:

(i) a description of all services provided to clients;

(ii) policies and procedures ensuring the confidentiality of client records and safeguarding against loss, destruction, or unauthorized use of those records;

(iii) infection control policies and procedures meeting the requirements of [Rule VI]; and

(iv) a disaster and fire plan meeting the requirements of [Rule IX].

(2) If an adult day-care center is operated on the premises of another licensed health care facility, the cen-

ter's manual may refer to the policies and procedures of the other licensed health care facility, as appropriate. The center manual must also include policies and procedures which are applicable to the center itself and which reflect how services between the two facilities are integrated.
AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE VI INFECTION CONTROL (1) An adult day-care center must ensure that each of its employees provides the center, prior to the time of employment, with documentation from a physician stating that the employee is free from communicable tuberculosis, and with the same documentation annually thereafter.

(2) The center must ensure that, on the first day of service and annually thereafter, each client in that center provides documentation from a physician showing that the client is free from communicable tuberculosis.

(3) The adult day-care center must establish and maintain infection control policies and procedures sufficient to provide a safe environment and to prevent the transmission of disease. Such policies and procedures must include, at a minimum, the following guidelines:

(a) Any employee contracting a communicable disease that is transmissible to clients through food handling or personal care may not appear at work until the infectious disease can no longer be transmitted. The decision to return to work must be made by the manager in accordance with the policies and procedures instituted by the center; and

(b) If, after admission, a client is suspected of having a communicable disease that would endanger the health and welfare of other clients, the manager shall contact the client's physician and shall ensure that appropriate safety measures are taken on behalf of that client and the other clients.
AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

RULE VII MAINTENANCE AND HOUSEKEEPING (1) Each adult day-care center shall have a written maintenance program describing the procedures that must be utilized by maintenance personnel to keep the building and equipment in repair and free from hazards.

(2) All electrical, mechanical, plumbing, fire protection, heating, and sewage disposal systems must be kept in operational condition.

(3) The temperature of hot water supplied to handwashing and bathing facilities must not exceed 120°F.

(4) An adult day-care center shall provide housekeeping services on a daily basis or as needed.

(5) Cleaners used in cleaning bathtubs, showers, sinks, urinals, toilet bowls, toilet seats, and floors must contain fungicides or germicides with current EPA registration for that purpose.

(6) Floors must be covered with an easily cleanable covering.

(7) Carpets are prohibited in bathrooms, kitchens, laundries, or janitor closets.

(8) Walls and ceilings must be kept in good repair and be of a finish that can be easily cleaned.

(9) An adult day-care center must be kept clean and free of odors. Deodorants may not be used for odor control in lieu of proper ventilation.

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

RULE VIII ENVIRONMENTAL CONTROL (1) An adult day-care center must be constructed and maintained so as to prevent entrance and harborage of rats, mice, insects, flies, or other vermin.

(2) Hand cleansing soap or detergent and individual towels must be available at each sink in the center. A waste receptacle must be located near each sink.

(3) A minimum of 10 foot-candles of light must be available in all rooms and hallways, with the following exceptions:

(a) All reading lamps must have a capacity to provide a minimum of 30 foot-candles of light;

(b) All toilet and bathing areas must be provided with a minimum of 30 foot-candles of light;

(c) General lighting in food preparation areas must be a minimum of 50 foot-candles of light;

(d) Hallways must be illuminated at all times by at least a minimum of 5 foot-candles of light at the floor.

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

RULE IX DISASTER AND FIRE PLAN (1) An adult day-care center shall develop a disaster and fire plan in conjunction with other emergency services in the community that includes a procedure that will be followed in the event of a natural or human-caused disaster. This plan must be included in the center's policies and procedures manual.

(2) An adult day-care center shall conduct a drill of such procedure at least once a year. After a drill, the center shall prepare and retain on file a written report including, but not limited to, the following:

(a) date and time of the drill;

(b) the names of staff involved in the drill;

(c) the names of other health care facilities, if any, that were involved in the drill;

(d) the names of other persons involved in the drill;

(e) a description of all phases of the drill procedure and suggestions for improvement; and

(f) the signature of the person conducting the drill.

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

RULE X LAUNDRY (1) If an adult day-care center that is not located on the premises of another licensed health care facility elects to process its laundry on the center site, it must:

(a) set aside and utilize an area solely for laundry

purposes;

(b) equip the laundry room with a mechanical washer and a dryer vented to the outside, handwashing facilities, a fresh air supply, and a hot water supply system that supplies the washer with water of at least 110°F during each use;

(c) have a separate area or room designed for use as a laundry, including an area for sorting soiled and clean linen and clothing. No laundry may be done in a food preparation or dishwashing area;

(d) provide well-maintained containers to store and transport laundry that are impervious to moisture , keeping those used for soiled laundry separate from those used for clean laundry;

(e) dry all bed linen, towels, and wash cloths in the dryer;

(f) protect clean laundry from sources of contamination; and

(g) ensure that center staff handling laundry cover their clothes while working with soiled laundry, use separate clean covering for their clothes while handling clean laundry, and wash their hands both after working with soiled laundry and before they handle clean laundry.

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

RULE XI CONSTRUCTION (1) Any construction of or alteration, addition, or renovation to an adult day-care center must meet all applicable local building and fire codes and be approved by the officer having jurisdiction to determine if the building codes are met by the facility and by the state fire marshal or his/her designee.

(2) An adult day-care center must have an annual fire inspection conducted by the appropriate local authorities and maintain a record of such inspection for at least 1 year following the date of the inspection.

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

3. The department is proposing these new rules because they are needed to update the current standards governing adult day-care centers. In addition, because the current rules cross-reference to a number of personal care rules that will soon be proposed to be repealed, the adult day-care rules are being revised to eliminate those cross-referencess.

4. Rules 16.32.356 and 16.32.357, which may be found on pages 16-1496 and 16-1497, respectively, of the Administrative Rules of Montana, are proposed to be repealed because all of the adult day-care standards are to be moved to a separate sub-chapter, a measure that necessitates moving the above two rules from Title 16, chapter 32, sub-chapter 3, to the new subchapter. The mechanism for doing so is to repeal the existing rules and reincarnate them as new rules. Therefore, rule 16.32.356 is, with amendments, new Rule I in this notice, and rule 16.32.357 is Rule II, also with amendments. The authority for the repeal is 50-5-103 and the rules to be repealed implement 50-5-103, 201 and 204, MCA.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendments and new rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Denzel Davis, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, and must be received no later than June 9, 1994.

6. Cynthia Brooks has been designated to preside over and conduct the hearing.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State May 2, 1994.

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the amendment of rule 46.10.403 pertaining to AFDC standards and payment amounts concerning shared living arrangements	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.10.403 PERTAINING TO AFDC STANDARDS AND PAYMENT AMOUNTS CONCERNING SHARED LIVING ARRANGEMENTS

TO: All Interested Persons

1. On June 2, 1994, at 9:30 a.m, a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rule 46.10.403 pertaining to AFDC standards and payment amounts concerning shared living arrangements.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on May 24, 1994, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.10.403 TABLE OF ASSISTANCE STANDARDS (1) The tables of assistance standards contain the income and grant limits for assistance units according to the number of persons ~~and~~ in the assistance unit, whether ~~or not~~ the assistance unit has a shelter obligation, and whether the assistance unit shares its place of residence with persons who are not members of the assistance unit and whose income and resources are not considered in determining the assistance unit's grant.

(a) An assistance unit is considered to have a shelter obligation if a member of the assistance unit is obligated to meet any portion of the shelter expenses of the assistance unit's place of residence, such as rent, a house payment, mortgage payment, real property taxes or home owner's insurance, mobile home lot rent, or utilities such as heating fuel, water or lights. An assistance unit receiving a government rent or housing subsidy is considered to have a shelter obligation even if the assistance unit's share of the rent or housing payment is zero.

(2) The gross monthly income standards, net monthly income standards, and maximum payment amounts used to determine the assistance unit's eligibility and grant amount are as follows:

(a) The standards and payment amounts designated "with shelter obligation" are used if the assistance unit has a shelter obligation as defined in subsection (1)(a) but does not share its place of residence with persons who are not members of the assistance unit and whose income and resources are not considered in determining the assistance unit's grant.

(b) The standards and payment amounts designated "in shared shelter" are used if the assistance unit has a shelter obligation as defined in subsection (1)(a) and shares its place of residence with persons who are not members of the assistance unit and whose income and resources are not considered in determining the assistance unit's grant, except in the following cases:

(i) any of the persons with whom the assistance unit shares a place of residence receives supplemental security income (SSI);

(ii) the assistance unit receives a government rent or housing subsidy;

(iii) any of the other persons with whom the assistance unit shares a place of residence also receives AFDC;

(iv) there is a bona fide landlord-tenant relationship between the assistance unit and the person or persons with whom it shares a place of residence. A bona fide landlord-tenant relationship means there is a written agreement between a landlord who owns the property and a tenant in which the landlord gives the tenant temporary possession and use of real property for a specified sum of money;

(v) a member of the assistance unit provides necessary in-home medical care to a relative who is 60 years of age or older;

(vi) a member of the household who is not included in the assistance unit provides child care which enables a member of the assistance unit to attend school or job training or maintain gainful employment; or

(vii) any of the persons with whom the assistance unit shares a place of residence receives food stamps as a separate household.

(c) The standards and payment amounts designated "with shelter obligation" are used if the assistance unit has a shelter obligation as defined in subsection (1)(a) and shares its place of residence with persons who are not members of the assistance unit and whose income and resources are not considered in determining the assistance unit's grant, and any of the conditions specified in subsections (2)(b)(i) through (2)(b)(vii) applies.

(~~2~~3) Monthly gross income as defined in ARM 46.10.505 is compared to the gross monthly income (GMI) standard and, after specified disregards, to the net monthly income (NMI) standard. If the assistance unit's gross income exceeds the GMI standard or their net income exceeds the NMI standard, the assistance unit is ineligible for assistance. At application, income is

compared to the standards prospectively using income reasonably expected to be received in the first two benefit months. After the initial two benefit months, subsequent payments are computed retrospectively based on income actually received in the budget month. If income is reported or discovered after benefits have been issued, this income is compared to the standards retrospectively in the budget month. Monthly income is compared to the full standard even though the payment may only cover part of the month. If monthly income exceeds either the GMI or NMI standards, the assistance unit is not eligible for any part of the benefit month. The assistance unit may also be ineligible as provided in subsection ~~(3)~~(4) of this rule.

(a) Gross monthly income standards to be used when adults are included in the assistance unit are compared with the assistance unit's gross monthly income as defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	In Shared Shelter Per Month	Without Shelter Obligation Per Month
1	$ 553	$ 535	$ 202
2	749	733	326
3	945	931	446
4	1,140	1,127	564
5	1,336	1,325	675
6	1,532	1,523	779
7	1,726	1,719	884
8	1,922	1,917	991
9	2,015	2,015	1,073
10	2,103	2,107	1,162
11	2,181	2,190	1,240
12	2,261	2,274	1,319
13	2,329	2,346	1,388
14	2,396	2,416	1,454
15	2,461	2,485	1,519
16	2,516	2,544	1,574

Subsection (2)(b) remains the same in text but is renumbered (3)(b).

(c) Net monthly income standards to be used when adults are included in the assistance unit are compared with the assistance unit's net monthly income as defined in ARM 46.10.505.

NET MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of Persons in Household	With Shelter Obligation Per Month	In Shared Shelter Per Month	Without Shelter Obligation Per Month
1	$ 299	$ 266	$ 109
2	405	373	176
3	511	480	241
4	616	586	305
5	722	693	365
6	828	800	421
7	933	906	478
8	1,039	1,013	530
9	1,089	1,066	580
10	1,137	1,116	628
11	1,179	1,161	670
12	1,222	1,206	713
13	1,259	1,245	750
14	1,295	1,283	786
15	1,330	1,320	821
16	1,360	1,352	851

Subsections (2)(d) through (4) remain the same in text but are renumbered (3)(d) through (5).

(a) Maximum payment amounts to be used when adults are included in the assistance unit are compared to the difference between the assistance unit's net monthly income and the net monthly income standard defined in ARM 46.10.505.

No. Of Persons in Household	With Shelter Obligation Per Month	With Shelter Obligation Per Day	Without Shelter Obligation Per Month	Without Shelter Obligation Per Day	In Shared Shelter Per Month
1	$ 235	$ 7.83	$ 86	$ 2.87	$ 198
2	318	10.60	138	4.60	282
3	401	13.37	189	6.30	366
4	484	16.13	239	7.97	449
5	567	18.90	287	9.57	533
6	650	21.67	330	11.00	617
7	732	24.40	375	12.50	700
8	816	27.20	416	13.87	784
9	855	28.50	455	15.17	826
10	893	29.77	493	16.43	865
11	926	30.87	526	17.53	901
12	959	31.97	560	18.67	936
13	988	32.93	589	19.63	967
14	1,017	33.90	617	20.57	996
15	1,044	34.80	644	21.47	1,025
16	1,068	35.60	668	22.27	1,051

Subsection (4)(b) remains the same in text but is renumbered (5)(b).

AUTH: Sec. 53-4-212 and 53-4-241 MCA
IMP: Sec. 53-4-211 and 53-4-241 MCA

3. The November Special Session of the 53rd Montana Legislature directed the department in House Bill 2, Section 15, to reduce by $50 per month the assistance grants of Aid to Families with Dependent Children (AFDC) recipients who share living arrangements with anyone who is not in the assistance unit or whose income and resources are not considered in determining the assistance unit's grant. The legislature adopted the policy of reducing grants for recipients with shared living arrangements because recipients who share shelter expenses with other individuals spend less on shelter expenses and therefore need less assistance to provide basic necessities for their families.

House Bill 2 provides for exceptions when AFDC recipients share living quarters with a household receiving Supplemental Security Income (SSI), where AFDC recipients live in government-subsidized housing, and where two or more AFDC assistance units share living quarters. It also directs the department to apply for federal approval of hardship exceptions to this policy in addition to the exceptions required by House Bill 2.

Federal regulations governing the AFDC program at 45 C.F.R. 233.20(a)(5) give states the option of prorating allowances in the AFDC need and payment standards for shelter and utilities when the AFDC assistance unit lives together with other individuals as a household. Section 233.20(a)(5) provides that a state choosing this option must prorate the need standards as well as the payment standards.

Section 233.20(a)(5) also provides that a state choosing to reduce payments to households who live with other individuals must make an exception when a bona fide landlord-tenant relationship exists or where the living quarters are being shared with a household receiving SSI.

The amendment of ARM 46.10.403 is necessary to implement the policy mandated by the Legislature in House Bill 2. Because the federal regulations require the proration of the need standards as well as the payment standard for AFDC recipients sharing a residence, the gross monthly income standards and net monthly income standards must be adjusted for recipients sharing a residence as well as the maximum payment amounts in ARM 46.10.403.

ARM 46.10.403 as amended will define in what circumstances an AFDC assistance unit's grant will be reduced and the exceptions to the policy of reducing the grant due to a shared living arrangement. In addition to the exceptions specifically required by the federal regulation, the rule will also provide for hardship exceptions. The Legislature in H.B. 2 directed the department to make exceptions in case of hardship without specifying what circumstances would constitute a hardship. The department has determined that an exception should be in situations where the assistance unit is providing in-home medical care to an elderly relative, where the individual sharing a residence with the assistance unit is providing necessary child care, and where the individuals sharing the residence with the assistance unit receive food stamps as a separate household.

ARM 46.10.403 currently contains different gross and net income standards and payment amounts depending on whether the household has a shelter obligation. However, the rule currently does not define what constitutes a shelter obligation. The department is now taking this opportunity to state what constitutes a shelter obligation.

This notice replaces the Notice of Public Hearing on the Proposed Amendment of Rule 46.10.403 pertaining to AFDC Income Standards and Payment Amounts published on February 10, 1994 at page 278 of the 1994 Montana Administrative Register, issue number 3. Following the publication of that notice, several comments were received that the policy expressed in the proposed rule would be difficult to administer and hence would be error prone. It was further noted that the policy outlined in the proposed rule contained too many loopholes whereby recipients in shared living arrangements could avoid the $50 grant reduction mandated by the legislature. To correct these deficiencies the department is replacing the previous rule notice with this new rule notice.

It should also be noted that the changes proposed on this notice are unrelated to other changes to the AFDC standards and payment amounts proposed in the rule notice published on April 28, 1994 at page 1090 of the 1994 Montana Administrative Register, issue number 8, which proposed increases in all the standards and payment amounts due to increases in the federal poverty levels on which the standards and payments are based. This rule notice, on the other hand, proposes to create new standards and payment amounts applicable to recipients with a shelter obligation who share their residence with persons not included in the assistance unit.

4. These rule amendments will take effect on July 1, 1994.

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 June 9, 1994.

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 May 2, 1994.

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

In the matter of the adoption of Rule I and the amendment of rules 46.10.108, 46.10.207, 46.10.403, 46.10.505, 46.11.120 and 46.11.125 pertaining to AFDC and food stamp monthly reporting requirements	)))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULE I AND THE AMENDMENT OF RULES 46.10.108, 46.10.207, 46.10.403, 46.10.505, 46.11.120 AND 46.11.125 PERTAINING TO AFDC AND FOOD STAMP MONTHLY REPORTING REQUIREMENTS

TO: All Interested Persons

1. On June 2, 1994, at 9:15 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rule I and the amendment of rules 46.10.108, 46.10.207, 46.10.403, 46.10.505, 46.11.120 and 46.11.125 pertaining to AFDC and food stamp monthly reporting requirements.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on May 24, 1994, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

[RULE I] REPORTING REQUIREMENTS (1) All applicants for or recipients of AFDC assistance must report any change of address and any change in income, resources, household composition, or other circumstances affecting eligibility or benefit amount within 10 days of the date the change occurs.

(2) All AFDC assistance units with earned income expected to last at least 3 consecutive months or who live with persons with earned income whose income is deemed to the assistance unit must also submit a monthly report as provided in subsection (3).

(3) The recipient must return the completed monthly report by the eighth day of the month after the month for which the report is being made. However, if the eighth day of the month falls on a day on which the county office is closed, the recipient has until 5:00 p.m. on the first day after the eighth day on which the county office is open. A completed monthly report is one which is signed, has all sections on income,

resources, family composition and other relevant information affecting eligibility filled out, and provides necessary verification.

(4) Failure to file a timely completed report shall be excused if there was good cause for the failure as determined by the county director or designee. Good cause means the failure was caused by circumstances beyond the recipient's control, including but not limited to the following:

(a) illness or incapacity of recipient;

(b) family emergency; or

(c) inclement weather which interferes with mail delivery.

(5) When an assistance unit required to report fails without good cause to file a timely completed monthly report, the assistance unit shall not be entitled to the earned income disregards provided in ARM 46.10.512 for any wage earner in the assistance unit. If a timely report is received but adequate verification of all reported earned income is not received, earned income disregards provided in ARM 46.10.512 will be applied to the verified portion of the earned income only.

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-211 MCA

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

46.10.108 OVERPAYMENTS AND UNDERPAYMENTS Subsections (1) through (2) remain the same.

(3) Cases where the recipient willfully withheld information causing overpayment are to be referred to the ~~program integrity~~ audit and compliance bureau for the determination of the possibility of fraud.

Subsections (3)(a) and (3)(a)(i) remain the same.

(ii) willful failure by the applicant or recipient to report changes in income, ~~and~~ resources, household composition, or other circumstances affecting eligibility or benefit amount within 10 days of the date the change occurs or on a monthly report when required; and

Subsections (3)(a)(iii) through (3)(c) remain the same.

~~(4) The department will notify recipients every month of their responsibility for reporting their income as defined in ARM 46.10.505 and resources as defined in ARM 46.10.406.~~

~~(a) Recipients must report all available income and resources (including disregarded, set aside, or reserved items), as well as current assistance payments.~~

~~(b) The department shall furnish a form on which recipients must acknowledge every month that the reporting obligations have been brought to their attention and such obligations are understood by them.~~

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-211 and 53-4-231 MCA

46.10.207 NOTICE OF ADVERSE ACTION Subsections (1) through (1)(j) remain the same.

(k) a monthly report was not received from a recipient required to submit one as provided in [RULE I] by the ~~8th~~ eighth day of the month or was incomplete when it was received, and assistance is reduced or terminated on this basis.

(2) A recipient shall be notified of a grant change ~~five~~ 5 days before the effective date of the action where the agency obtains facts indicating that a probable fraud had taken place and a referral of the fraud will be made to the ~~program~~ audit and compliance integrity bureau.

(3) Recipients are to be informed at the time of application and reminded at the time of redetermination to report to the county welfare department/office of human services within ~~ten~~ 10 days any changes in employment, income, resources, and/or any other changes in ~~economic~~ living or marital circumstances. ~~Living or marital circumstances are considered to affect income and any changes in these or the individual's general economic situation are to be reported to the county welfare office.~~

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-211 MCA

46.10.403 TABLE OF ASSISTANCE STANDARDS; METHODS OF COMPUTING PAYMENTS Subsection (1) remains the same.

(2) Monthly gross income as defined in ARM 46.10.505 is compared to the gross monthly income (GMI) standard and, after specified disregards, to the net monthly income (NMI) standard. If the assistance unit's gross income exceeds the GMI standard or their net income exceeds the NMI standard, the assistance unit is ineligible for assistance. At application, to determine eligibility and benefit amount for the first 2 months of assistance, income is compared to the standards ~~prospectively~~ using prospective budgeting. ~~income reasonably expected to be received in the first two benefit months. After the initial two benefit months, subsequent payments are computed retrospectively based on income actually received in the budget month. If income is reported or discovered after benefits have been issued, this income is compared to the standards retrospectively in the budget month.~~ After the initial 2 consecutive months of assistance, eligibility is determined using prospective budgeting for all recipients, and benefit amount is computed using retrospective budgeting for all recipients required to report monthly and using prospective budgeting for all other recipients. Monthly income is compared to the full standard even though the payment may only cover part of the month. If monthly income exceeds either the GMI or NMI standards, the assistance unit is not eligible for any part of the benefit

month. The assistance unit may also be ineligible as provided in subsection (3) of this rule.

(a) For purposes of this rule, "prospective budgeting" means that eligibility and/or benefit amount for a particular month is based on the department's best estimate of income and circumstances which will exist in that month.

(b) For purposes of this rule, "retrospective budgeting" means that the benefit amount for a particular month is based on actual income and circumstances which existed in the second month before the month for which the benefit amount is being computed. For example, actual income and circumstances in the month of January would be used to compute the benefit amount for March.

Subsections (2)(a) through (2)(d) remain the same in text but are renumbered (2)(c) through (2)(f). Subsections (3) through (4)(b) remain the same.

AUTH: Sec. 53-4-212 and 53-4-241 MCA
IMP: Sec. 53-4-211 and 53-4-241 MCA

46.10.505 DEFINITIONS Subsections (1) through (5) remain the same.

(a) When applying net monthly income to the net monthly income standard as defined in ARM 46.10.403, the budget month is the same as the benefit month for the first ~~two~~ 2 months of eligibility~~, and~~. ~~f~~For the third and subsequent months of eligibility, the budget month is ~~two~~ 2 months prior to the benefit month~~.~~ for recipients required to file a monthly report, and the budget month is the same as the benefit month for all other recipients.

Subsections (6) and (7) remain the same.

AUTH: Sec. 53-4-212 and 53-4-241 MCA
IMP: Sec. 53-4-211, 53-4-231, 53-4-241 and 53-4-242 MCA

46.11.120 FOOD STAMPS, MONTHLY REPORTING REQUIREMENTS (1) ~~Households shall be subject to monthly reporting requirements except:~~ All households which have countable continuous earned income are required to report monthly as provided in subsection (3), subject to the exceptions stated in subsection (2). Countable continuous earned income means earned income which is not excluded and which is expected to be received for at least 3 consecutive months.

(2) The following households are not required to report monthly:

Subsection (1)(a) remains the same in text but is renumbered (2)(a).

~~(b) households in which all the members are without earned income and in which all the adult members are at least sixty years of age or receive social security or supplemental security income benefits for disability or blindness;~~

Subsections (1)(c) and (1)(d) remain the same in text but are renumbered (2)(b) and (2)(c).

~~(2) Households subject to monthly reporting shall be given a monthly report form at the time they normally receive their authorization to participate (ATP) card.~~

Subsections (3) and (4) remain the same.

(5) Households which fail to file a complete monthly report by ~~their~~ extended filing date provided in subsection (4) shall have their case closed immediately without further notice.

Subsections (6) and (7) remain the same.

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-201 and 53-2-306 MCA

46.11.125 FOOD STAMPS, DETERMINING ELIGIBILITY AND BENEFITS ~~(1) Except as provided in paragraph (2) below, household benefits shall be determined retrospectively on the basis of the households' circumstances reported in their monthly report.~~

~~(2) Household benefits shall be determined prospectively in the following situations:~~

~~(a) in cases which involve migrant farmworkers who are pursuing migrant farmwork outside of their home area;~~

~~(b) in the first two months of eligibility following an initial application;~~

~~(c) in the first two months of eligibility when a participating household moves into Montana from another state;~~

~~(d) when a new member who is not already certified to receive food stamps in another household begins to live with a household which is currently on retrospective budgeting, the income and resources of the new member shall be treated prospectively in the first two months of the new member's eligibility;~~

~~(e) when an individual moves from one participating household into another participating household, he cannot receive benefits twice in the same month. However, that individual can receive benefits in his new household when, before benefits are issued to his former household, the former household agrees in writing to have their benefits reduced by the portion allotted to the departing individual and waives their right to an advance notice of adverse action.~~

(1) All households shall have their eligibility determined using prospective budgeting.

(2) The amount of benefits a household is entitled to shall be determined using prospective budgeting except as provided in subsection (3).

(3) For households with continuous countable earned income as defined in ARM 46.11.120, the amount of benefits is determined using prospective budgeting for the first 2 months of eligibility and using retrospective budgeting for the third

month of eligibility and each subsequent month as long as the household continues to receive earned income.

(a) When a household which has continuous countable earned income ceases receiving the earned income, prospective budgeting to determine benefits will commence the month following the month of last receipt of earned income or the month following the month in which last receipt of earned income is reported, whichever is later.

(4) Prospective budgeting means using the best estimate of income and other circumstances which will occur in a particular month to determine eligibility for that month and/or the amount of benefits for that month.

(5) Retrospective budgeting means using actual income received and other circumstances which existed 2 months prior to the month for which the amount of benefits is being determined. For example, the amount of benefits for April is based on actual income and circumstances in the month of February.

Subsections (3) through (4) remain the same in text but are renumbered (6) through (7).

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-201 and 53-2-306 MCA

4. In both the Aid to Families with Dependent Children (AFDC) and Food Stamp programs, eligibility and amount of assistance are based on the applicant or recipient's circumstances in a particular month. In both programs, some recipients are required to file monthly reports which provide information about income and other circumstances during a particular month from which the department can determine whether the recipient is still eligible and if so what the amount of the payments should be.

Also, both programs utilize two different methods to compute the amount of assistance, namely prospective budgeting and retrospective budgeting. In retrospective budgeting the household's income and other circumstances in a prior month are used to determine the amount of assistance in a subsequent month. In prospective budgeting, the amount of assistance is based on an estimate of income that will be received in a particular month.

The department is now proposing to make changes in its policies regarding budgeting methods and monthly reporting requirements in the AFDC and Food Stamp programs. One purpose of these changes is to make the policies in these two programs more consistent, since most AFDC recipients also receive food stamp benefits. The changes will also save staff time and reduce errors in determining benefits. The amendment of ARM 46.10.108, 46.10.207, 46.10.403, 46.10.505, 46.11.120, and 46.11.125 and the adoption of a new AFDC rule are necessary in order to accomplish these purposes.

Prior to 1984, federal law mandated that all recipients of AFDC submit monthly reports to the state agency administering AFDC. Section 2628 of the Deficit Reduction Act of 1984 (DEFRA) limited the categories of AFDC recipients subject to mandatory monthly reporting. However, after DEFRA, states also had the option of requiring all AFDC recipients to report monthly. Until now, the department has chosen to require all recipients to report monthly.

DEFRA also eliminated the requirement that retrospective budgeting be used for all AFDC recipients. Under DEFRA, states had the option of computing payments either retrospectively or prospectively for AFDC recipients who are not required to file a monthly report, although retrospective budgeting is mandatory for recipients who report monthly. However, the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) eliminated the option of using retrospective budgeting for recipients who are not monthly reporters.

Prior to OBRA '90, the department chose to use retrospective budgeting for all AFDC recipients, as stated in ARM 46.10.403(2) and 46.10.505(5)(a). Now, however, the department may no longer use retrospective budgeting for non-monthly reporters. The amendment of ARM 46.10.403(2) and 46.10.505(5)(a) is therefore necessary to provide that retrospective budgeting will be used only for recipients required to report monthly.

A new rule is also being adopted to address AFDC reporting requirements in general and monthly reporting requirements specifically. Rule I provides that only AFDC recipients mandated by federal law to report monthly will be required by the department to do so, namely recipients with earned income expected to last at least 3 months or recipients who have income deemed to them from a person who has earned income.

Federal regulations governing the Food Stamp program at 7 C.F.R. 273.21(b) allow the states to decide which types of household shall be required to file monthly reports. Benefit amounts for households required to report monthly must be computed using retrospective budgeting, but the states may decide whether to use prospective or retrospective budgeting for households not required to monthly report. The department's rules at ARM 46.11.120 and 46.11.125 currently provide that all recipients, with a few narrow exceptions, must monthly report and have their benefits computed using retrospective budgeting.

Now, however, the department is amending ARM 46.11.120 to limit monthly reporting to households which have continuous earned income, that is, earned income which is expected to last at least 3 months. ARM 46.11.125 is being amended to provide that

retrospective budgeting will be used only for households required to report monthly.

The department has adopted the policy of requiring fewer households to file monthly reports because it has determined that the large amounts of time and labor expended by departmental staff in processing monthly reports is not cost-effective, since most recipients who do not belong to the categories of recipients required to report monthly do not experience significant changes in income from month to month which are picked up by monthly reports. All recipients are still required to report changes in income and other factors affecting eligibility within 10 days of the change. Many changes come to the department's attention in this manner as well as by means of periodic reviews of eligibility and computerized income verification procedures.

Since all AFDC recipients are no longer required to file a monthly report, ARM 46.10.207(1)(k) is being amended to provide that the department can reduce or terminate a recipient's benefit without ten days' advance notice due to failure to file a monthly report only if the recipient is required to file such a report.

The name of the bureau which investigates public assistance overpayments has been changed from the program integrity bureau to the audit and compliance bureau. ARM 46.10.108(3) and 46.10.207(2) have been amended to reflect this change.

Subsection (3)(a)(ii) of ARM 46.10.108 is now being amended to specify that willful failure to report a change in household size or any other circumstance affecting eligibility or benefit amount, as well as in income or resources, constitutes willful withholding of information which will trigger a referral to the Audit and Compliance Bureau for investigation of fraud. This amendment represents a clarification rather than a change in policy.

5. These rule amendments will take effect on July 1, 1994.

6. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to 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 June 9, 1994.

7. 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 May 2, 1994.

DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the adoption of new rules I through VIII pertaining to Pesticide Disposal Program Rules	) NOTICE OF ADOPTION OF) NEW RULES I (4.10.1801)) THROUGH VIII (4.10.1808)

TO: All Interested Persons

1. On March 31, 1994 the Department of Agriculture published a notice of proposed adoption of the above-stated rule at page 600 of the 1994 Montana Administrative Register, issue no. 6.

2. The department has adopted the rules as proposed with the following changes:

RULE I (ARM 4.10.1801) GENERAL Same as proposed
AUTH: 80-8-105(2), MCA IMP: 80-8-111, 112, MCA

RULE II (ARM 4.10.1802) DEFINITIONS (1) through (4) remain the same.

(5) "Recyclable" pesticide container" means a pesticide container rinsed according to label directions as addressed in the code of federal regulations (40CFR 156.10).

(6) and (7) remain the same.

AUTH: 80-8-105(2), MCA IMP: 80-8-111, 112, MCA

RULE III (ARM 4.10.1803) STANDARDS FOR DISPOSAL PROGRAM OPERATION (1) and (2) remain the same.

(3) (a) registered as a hazardous waste generator with the Montana department of health and environmental sciences (DHES) in accordance with ARM Title 16, chapter 44 and possess a hazardous waste identification number issued by the United States environmental protection agency (EPA). DHES registration and an EPA hazardous waste identification number shall not be required for a contractor involved solely with recyclable pesticide containers and exchangeable pesticides;

(b) and (c) remain the same

(4) (a) through (c) remain the same

(d) Written documentation provided to the department before collection that the acceptable pesticides collected under the disposal program will be accepted by ~~an EPA~~ a hazardous waste facility which has received a permit from the environmental protection agency (EPA) or a state authorized by the EPA for ~~permitted disposal facility for~~ incineration.

AUTH: 80-8-105(2), MCA IMP: 80-8-111, 112, MCA

REASON: After further review by the Department, changes in rules II and III are for clarification purposes only.

RULE IV (ARM 4.10.1804) DISPOSAL PROGRAM OPERATION Same as proposed.

AUTH: 80-8-105(2), MCA IMP: 80-8-111, 112, MCA

RULE V (ARM 4.10.1805) DISPOSAL PROGRAM COLLECTION PRIORITIES Same as proposed.
AUTH: 80-8-105(2), MCA IMP: 80-8-111, 112, MCA

RULE VI (ARM 4.10.1806) FEES (1) through (3) remain the same.

(4) Participants who submit recyclable pesticide containers to the program must pay a fee of ~~$2.00 per container.~~ $1.00 per pound of container(s).

RULE VII (ARM 4.10.1807) LIABILITY Same as proposed.
AUTH: 80-8-105(2), MCA IMP: 80-8-111, 112, MCA

RULE VIII (ARM 4.10.1808) TERMINATION OF RULES Same as proposed.
AUTH: 80-8-105(2), MCA IMP: 80-8-111, 112, MCA

3. Comments received are as follows:

COMMENT: It was suggested that the fee charged to participants for recycling of pesticide containers in rule VI subsection (4), should be amended to relate to the size of the container submitted for recycling.

RESPONSE: The Department agrees with the comment and has amended subsection (4) of rule VI accordingly.

MONTANA DEPARTMENT OF AGRICULTURE

RALPH PECK, ADMINISTRATOR
DEPARTMENT OF AGRICULTURE

TIMOTHY J. MELOY
RULE REVIEWER

5/2/94

Certified to the Secretary of State May 2, 1994.

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

In the matter of the amendment of rules pertaining to definitions, licenses, fees, clerk of scales, general provisions, grooms, jockeys, owners, declarations and scratches, claiming, paddock to post and permissible medication	NOTICE OF AMENDMENT OF RULES PERTAINING TO THE HORSE RACING INDUSTRY

TO: All Interested Persons:

1. On March 17, 1994, the Board of Horse Racing published a notice of proposed amendment of rules pertaining to the horse racing industry at page 547, 1994 Montana Administrative Register, issue number 5.

2. The Board has amended ARM 8.22.502, 8.22.503, 8.22.602, 8.22.704, 8.22.705, 8.22.707, 8.22.803, 8.22.804, 8.22.806, 8.22.1402 and 8.22.1501 exactly as proposed. The Board has amended ARM 8.22.501 and 8.22.701 as proposed, but with the following changes:

"8.22.501 DEFINITIONS (1) through (7) will remain the same as proposed.

(8) Bred - means ~~a horse that is considered bred at its place of birth, see ARM 8.22.502~~ THE STATE IN WHICH A HORSE WAS FOALED. IN THE CASE OF FOREIGN HORSES, THE COUNTRY IN WHICH IT WAS FOALED.

(9) through (52) will remain the same as proposed."

Auth: Sec. 23-4-104, 23-4-402, MCA; IMP, Sec. 23-4-101, 23-4-104, 23-4-402, MCA

"8.22.701 GENERAL PROVISIONS (1) will remain the same as proposed.

(2) Each applicant for owner's, trainer's, ~~and~~ owner-trainer's, TEMPORARY OWNER'S, CORPORATE OWNER'S OR LESSOR'S license must provide evidence of workers' compensation insurance or its equivalent as determined by the state compensation insurance fund (state fund) for the protection of the applicant's employees, prior to being issued a license. All applicants shall pay the appropriate workers' compensation fees as determined by the board for each race season~~'s on-track workers' compensation coverage~~.

(3) through (15) will remain the same as proposed."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, 23-4-201, MCA

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

ARM 8.22.501 DEFINITIONS

COMMENT NO. 1: One comment was received stating (8) should not add the word "means" to the definition, as it is redundant. The word should instead be deleted wherever it appears. Also, the wording of the definition is a poor description, and should instead read "A horse is considered bred in the state in which it was foaled. In the case of foreign horses, the country in which it was foaled."

RESPONSE: The Board reiterated that the Secretary of State's Office is requiring the removal of all hyphens from the definitional rule, so that it conforms to the style required of all rules. The reason given in the proposed rule notice had previously explained this. The hyphens will be removed, which necessitated the addition of certain words such as "means" in some subsections so that the definition would make sense without a hyphen.

The Board concurs with the comment on the language of (8) and will amend the rule as shown above.

COMMENT NO. 2: One comment was received stating (33) should capitalize American Quarter Horse Association.

RESPONSE: The Secretary of State's Office designates the style and form for all rules, and has determined that no capitalization will be allowed for association names such as appears in (33).

COMMENT NO. 3: One comment was received stating (34) should add the sentence "'Race' also includes contests between horses or mules, run off the card, with or without parimutuel wagering, with approved officials present and officiating, contested in order to qualify, either by time or by order of finish, for a place in the finals of a stakes race." The addition of the last sentence will include races run off the card, to qualify, and whether or not a purse is awarded. This wording would eliminate arguments as per suggestions in the past.

RESPONSE: The current language of (34) already allows for races run off the card because it covers any race in which an entry fee has been paid. Stakes trials would also be covered, because the entries have already paid in. The Board noted the proposed amendment originally intended to make the simple change of adding the phrase "or mules" to the definition, and fixing the hyphen problem, and no clarification of the definition itself was contemplated, such as the comment suggested.

COMMENT NO. 4: One comment was received stating (35) should use the phrase "begins at the time..." and end with the phrase "race day," to make the definition clearer, and use better English.

RESPONSE: The Board stated that the current wording is sufficient, and the suggested change was not necessary. This subsection was also included simply to make the required change for removal of the hyphen, and no clarification of the definition itself was contemplated.

COMMENT NO. 5: One comment was received stating (36) should use the phrase "races - defined as," or "races types of," as the present wording is awkward.

RESPONSE: The Board again noted that the Secretary of State's Office dictates style for all rules, including the removal of hyphens and resulting necessity to add words to make the definition read properly.

COMMENT NO. 6: One comment was received stating (36) a. should use the word "as" rather than "is."

RESPONSE: The Board concurs with the comment, but noted that (36) (a) was not proposed for change, and cannot therefore be changed in this adoption notice. The error could be corrected on a future proposed rule notice.

COMMENT NO. 7: One comment was received stating (36) g. should use the language "means a race in which the contenders are horses foaled in Montana."

RESPONSE: The Board noted that (36) (g) was not proposed for change, and cannot be changed in this adoption notice. The Board also stated that the suggested language of the comment would not change or clarify the meaning, and was not therefore necessary for a future proposed rule notice.

COMMENT NO. 8: One comment was received stating (36) s. should not be included under subsection 36, as it is in regards to recognized meets, and not races. The definition should also include unrecognized meets, as they are conducted under the jurisdiction of a legally constituted Board or commission affiliated with the National Association of State Racing Commissioners, as stated in the rule.

RESPONSE: The Board noted that (36) (s) was not proposed for change, and cannot therefore be changed in this adoption notice.

COMMENT NO. 9: One comment was received stating (38) should include the phrase "license has been suspended or revoked."

RESPONSE: The Board noted that (38) was not proposed for change, and cannot therefore be changed in this adoption notice. The Board also stated the suggested comment language would not add to or clarify the present wording of the rule, and would not be necessary for a future rule change either.

COMMENT NO. 10: One comment was received stating the new (47) should include the phrase "at the time of entry" instead of

"at the time of starting." The rule should also add the phrase "except that a horse winning a maiden race with the value of the purse $300 or less to the winner, shall remain a maiden, in the state of Montana."

RESPONSE: The Board stated the phrase "time of entry" would not be appropriate in this rule. A horse could win a race, and therefore not be eligible as a maiden when it is starting later in the meet, if it has been entered for more than one race. In addition, the $300.00 figure for the purse is already in the rules under the definition of "maiden" at ARM 8.22.501(23). Finally, this subsection was only proposed for change to delete the hyphen as required, and not for any substantive change.

ARM 8.22.502 LICENSES ISSUED ...

COMMENT NO. 11: One comment was received stating (2) should use the word "licensee" rather than "applicant," as this revision would state just what is meant, not what is inferred. The comment stated each applicant would surely not be required to pay a fee.

RESPONSE: The Board stated the current wording is sufficient for the purposes of the rule, and is not misleading or difficult to interpret in any way.

COMMENT NO. 12: One comment was received questioning whether (11) a., b., and c. had been deleted.

RESPONSE: The Board noted that subsections (11) (a), (b), and (c) had been deleted and the rule reworded on a previous rule notice.

COMMENT NO. 13: One comment was received stating (30) should delete the phrase "for racing horses," so that it is mandatory that ambulance services be provided during training hours, when accidents are more likely to happen. Also, insert the sentence "Ambulance is to be in place 30 minutes before first post on race days and until completion of the last race."

RESPONSE: The Board noted that (30) was not proposed for change, and cannot therefore be changed in this adoption notice. The Board also stated it was not appropriate to require the tracks to have ambulances available at the track 24 hours a day, thus creating great additional costs, when ambulance service is always immediately available city-wide.

ARM 8.22.503 ANNUAL LICENSE FEES

COMMENT NO. 14: One comment was received stating (1) s and (17) should be changed. The comment stated spouses or children should be required to have an identification card that should not cost $20.00, but $2.00, as this is adequate to cover supplies. The comment stated owners and trainers have

already paid many fees beside spouse licenses; the ID should be a card to allow access to the grounds only; the ID should not allow spouses to attend horses in the barn area or paddock.

RESPONSE: The Board noted that the $20.00 fee is commensurate with the costs of issuing and administering the spouse license, which is the criteria the Board is required by statute to follow in setting fees. The fee will be adequate to cover all expenses. Additionally, the creation of this new license category will not change the activities which are allowed to be conducted under the license, and were previously available through a more general category of licensure.

ARM 8.22.701 GENERAL PROVISIONS

COMMENT NO. 15: One comment was received stating (2) and the reason given for the proposed amendment are not accurate. The comment states all employers involved in horse racing must provide workers' compensation insurance for their employees at all times. The comment stated persons involved in horse racing might infer that coverage is required only for the 1994 race season, as opposed to year-round, and in future years.

The comment suggested inclusion of the sentence "If the applicant has employees engaged in off-track operations, the applicant must also provide worker's compensation coverage for those workers."

RESPONSE: The Board noted that its jurisdiction extends to on-track activities only, and it cannot police off-track, off season activities. It is not therefore appropriate to add a sentence purporting to make off-track coverage a Board requirement, as this is within the jurisdiction of the Department of Labor, and the requirement of workers' compensation coverage for employees is already contained in state statute.

COMMENT NO. 16: Two comments were received stating (2) language on acceptance of the "equivalent" of workers' compensation insurance is inappropriate, because Montana law does not allow other types of insurance to be used in lieu of workers' compensation insurance. The comments also stated State Fund is unaware of any particular insurance that would be equivalent, and State Fund should not be determining what is "equivalent," as it is not the regulator of workers' compensation insurance coverage.

The comment suggested the deletion of the phrase "or its equivalent as determined by the state compensation insurance fund (state fund)."

RESPONSE: The Board stated it will leave the phrase "or its equivalent" in the rule, as this refers to workers' compensation insurance coverage equivalent to that issued under the State Fund policy with the Board, to allow outside carriers rather than State Fund for worker's compensation insurance. The phrase does not mean some other type of

insurance that would be equivalent to workers' compensation insurance. The outside carriers of workers' compensation insurance in this state must already be approved by State Fund. Finally, the Board noted that this language was contained in the previous 1992 Board rule on workers' compensation insurance requirements, with no previous objection from State Fund or Department of Labor.

COMMENT NO. 17: One comment was received stating the language of the rule be expanded to include applicants for temporary owners, corporations, or lessor licensees, as well as owners, trainers, or owner/trainers. The comment stated this would be broad enough to include all Board of Horse Racing licenses that are included in the 1994 funding plan.

RESPONSE: The Board concurs with the comment, and will amend the rule as shown above to add the licensing categories listed.

COMMENT NO. 18: One comment was received stating the rule provides for proof of on-track coverage only, which is too narrow. The comment stated there is no such limitation by statute or otherwise at this point. The comment suggested deleting the phrase "each race season's on-track...."

RESPONSE: The Board concurs with the comment, and will amend the rule as shown above to delete the phrase "on track workers' compensation coverage."

ARM 8.22.705 JOCKEYS

COMMENT NO. 19: One comment was received stating (15) should be revised to include exercise riders in this requirement. The comment stated this requirement would reduce injuries and liability insurance, since more accidents happen during training hours than at any other time. The comment stated that since protective helmets and boots with heels are required for exercise riders, safety vests should also be required.

RESPONSE: The Board noted that it was just starting this safety requirement this season with the jockeys riding in an actual race, and the safety requirement needs to be added to the Board requirements gradually. In general, exercise rider injuries are not the type which would be helped by the use of safety vests. There is currently an additional problem with unavailability of the proper size vests for the typical exercise rider. Finally, the Board cannot police all tracks at all times for compliance with a new requirement for exercise riders during training and non-race meet periods. The requirement will not therefore be added for exercise riders at this time.

ARM 8.22.707 OWNERS

COMMENT NO. 20: One comment was received stating the reason given for the proposed amendment is inaccurate, since within the context of workers' compensation, jockeys have been covered as "employees" of owners.

RESPONSE: The Board stated it did not agree with this comment, as jockeys have previously been considered employees of trainers for workers' compensation coverage purposes, but not employees of the owners in this workers' compensation context.

ARM 8.22.801 GENERAL REQUIREMENTS

COMMENT NO. 21: One comment was received stating (12) b. on allowances for produce of untried horses should be deleted, since the definition for untried horses has already been deleted.

RESPONSE: The Board noted that ARM 8.22.801 in general, including (12) (b) was not proposed for change, and cannot therefore be changed in this adoption notice.

COMMENT NO. 22: One comment was received stating (14) on entries made in writing should also delete the phrase "some person deputized," as amended in other rules in this notice.

RESPONSE: See response to Comment 21 above.

ARM 8.22.804 CLAIMING

COMMENT NO. 23: One comment was received stating the amendment to (1) and the reason stated for the amendment do not make it clear whether the owner must have started a horse at that meet, or whether he must have entered for a later date, or just have papers in the race office.

RESPONSE: The Board stated the present language as proposed already clarifies that the papers must have been entered in the race office, to avoid previous confusion over whether the horse must have actually started. This procedure will indicate an intention to race at that meet, under the new definition. No change to the proposed language is needed.

ARM 8.22.1402 PERMISSIBLE MEDICATION

COMMENT NO. 24: One comment was received stating (8) should delete the phrase "receiving barn," as there are none in Montana. The comment also stated the subsection appears to require the state veterinarian to seek Board approval before a horse is removed from the bleeder's list. The comment states this has not happened in the past, and the rule should instead say the state vet should certify to the Board that the horse was removed from the list, but without seeking permission from the Board.

RESPONSE: The Board noted this subsection was proposed for change to amend the state veterinarian title only, and not for any substantive changes. The present language does not need further changes, as the state veterinarians are already clear on what the procedure is, and the Board does not disapprove the state veterinarian "recommendations" anyway.

COMMENT NO. 25: One comment was received stating (10) should delete the first sentence on bleeders from another jurisdiction conforming to Montana rules. The comment stated that Montana rules call for a horse to have shown proof of bleeding either by endoscopic or visual examination, before being placed on the list. The comment stated horses who have a current certificate of bleeding from another jurisdiction should be placed on the list after examination of the certificate by the state vet.

RESPONSE: The Board again noted this subsection was proposed for change to amend the state veterinarian title only, and not for any substantive changes. The present language is sufficient on procedures, and does not need change at this time.

ARM 8.22.1501 GENERAL PROVISIONS

COMMENT NO. 26: One comment was received stating (14) on fines imposed by the stewards, and racing officials recommending disciplinary actions to the stewards should be rewritten in its entirety.

RESPONSE: The Board noted that (14) was not proposed for change, and cannot therefore be changed in this adoption notice.

BOARD OF HORSE RACING
MALCOLM ADAMS, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, May 2, 1994.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 11.5.602 and 11.5.609 pertaining to case records of abuse and neglect.	NOTICE OF AMENDMENT OF RULES 11.5.602 AND 11.5.609 PERTAINING TO CASE RECORDS OF ABUSE AND NEGLECT

TO: All Interested Persons.

1. On February 10, 1994, the Department of Family Services published notice of public hearing on the amendment of Rules 11.5.602 and 11.5.609 pertaining to case records of abuse or neglect at page 238 of the 1994 Montana Administrative Register, issue number 3.

2. On March 4, 1994 a public hearing was held in the second floor conference room of the Department of Family Services, 48 North Last Chance Gulch, Helena, Montana, to consider the amendment of the Rules. No verbal or written comment was received at the hearing.

3. The department has amended ARM 11.5.602 and ARM 11.5.609 as proposed with the following changes:

11.5.602 DEFINITIONS (1) For purposes of this part, the following definitions shall apply:

(a) "Case records containing reports of ~~child~~ abuse, ~~or~~ neglect, or exploitation" means any records generated and maintained by the department alleging ~~child~~ abuse, ~~or~~ neglect, or exploitation ~~as defined in 41-3-201, MCA~~. Photographs, video and audio tapes may also be included as part of the case record. The term does not include:

(i) confidential reports or evaluations, such as psychological evaluations, provided to the department by other professionals; or

(ii) licensing or registration files of providers licensed or registered by the department.

(b) "Confidential information" means information that is subject to being withheld from disclosure.

(c) "Disclosure" means to release for inspection or copying or to make known or reveal in any manner any information contained in case records containing reports of ~~child~~ abuse, ~~or~~ neglect or exploitation.

(d) "Person responsible for a child's welfare" means those persons specified in 41-3-102~~(11)~~, MCA, and includes the child's parent, guardian, foster parent, staff at a day care facility and an employee of a residential facility.

(e) "Reports of ~~child~~ abuse, ~~or~~ neglect, or exploitation" means a referral ~~made pursuant to section 41-3-201, MCA~~ alleging that a person ~~child~~ may be ~~an~~ abused, ~~or~~ neglected, or exploited ~~child as defined by 41-3-102, MCA~~.

(f) "Subject" means the ~~child~~ person alleged to have been

abused, dependent, ~~or~~ neglected, or exploited or if the person is a child alleged to be abused, dependent, or neglected, ~~his~~ the parents, guardian or other person who was responsible for the child's welfare in connection with the alleged abuse, dependecy or neglect, or, in the case of an adult alleged to be abused, neglected, or exploited, the alleged perpetrator of the abuse, neglect, or exploitation.

(g) "Substantiated report" means that, upon investigation, the investigating worker has determined there is reasonable cause to suspect, based upon credible information or facts that ~~child~~ abuse, ~~or~~ neglect~~, as defined in 41-3-102(5)~~ or exploitation caused or is causing harm or threatened harm to the person alleged to be abused, neglected or exploited ~~child's health or welfare as defined in 41-3-102(8) and (15), MCA~~.

(h) "Unfounded report" means that, upon investigation, the investigating worker has determined the reported ~~child~~ abuse, ~~or~~ neglect or exploitation has not occurred.

(i) "Unsubstantiated report" means that, upon investigation, the investigating worker was unable to determine whether any abuse, ~~or~~ neglect, or exploitation occurred.

AUTH: 41-3-208; 52-3-205; 2-4-201, MCA. IMP: 41-3-205; 52-3-204; 2-4-201, MCA.

11.5.609 REQUEST FOR REVIEW AND AMENDMENT OF THE RECORD (1) The subject of a case record containing a substantiated report of ~~child~~ abuse, ~~or~~ neglect, or exploitation has the right to request that the department amend or make additions to the case record on the grounds that the information is incomplete or incorrect.

(a) The subject must request, in writing, a departmental review of their records within 30 days of the date of the notice of substantiated abuse, ~~or~~ neglect or exploitation. The subject must specifically identify in writing the portions of the record ~~he~~ the subject believes to be in error and must state the specific reasons why ~~he~~ the subject believes the record to be in error. All requests for amendment to a record should be sent or forwarded to the regional administrator of the department's region from which the records originated.

(b) The regional administrator, or his/her designee(s) will review the subject's request for amendment and notify the subject in writing of the decision regarding the request for amendment.

(i) If the regional administrator, or his/her designee(s) determines the information contained in the case record is correct, the request for amendment will be denied, but the subject's statement of the reasons why ~~he~~ the subject believes the records to be in error will be made a part of the permanent record.

(ii) If the regional administrator, or his/her designee(s) determines the information contained in the case record is in error, the information will be amended in the case record and a copy of the amended record shall be sent to the subject and to each person or agency to whom the incorrect information was disclosed.

(c) The regional administrator or his/her designee(s) may

base determinations under this rule on findings of the district court, or upon previous determination made pursuant to a request for amendment or addition to the record at issue.

~~(c)~~(d) If the subject is dissatisfied with the decision of the regional administrator or his/her designee(s), ~~he~~ the subject may request review of the decision by the director. The request for review by the director must be made in writing within (15) days from the date of the decision of the regional administrator or his/her designee(s).

~~(d)~~(e) In making a determination regarding a request for an amendment to the record, the director will not conduct an independent investigation of the report, but may review any records or documentation relevant to the case or consult with individuals with relevant information to decide whether the actions of department staff were consistent with applicable policy, rules, and law.

Subsections (2) and (3) are deleted, as proposed.

AUTH: 41-3-208; 52-3-205; 2-4-201, MCA. IMP: 41-3-205; 52-3-204; 2-4-201, MCA.

4. The department has thoroughly considered all comments:

COMMENT: The rule should require regional administrators to make a decision within 45 days. The subject's job security or employment may be compromised while waiting for a review decision.

RESPONSE: The time limits for reviewing determinations should be set on a case by case basis. Therefore, the rule is not amended to require a determination within 45 days. Where job security or employment may be compromised, the subject may request a fair hearing. See, e.g., ARM 11.14.104 (effective April 15, 1994, MAR # 11-62).

COMMENT: The rule should allow regional administrators to base their decision on district court findings. For example, if the district court has found that evidence from an investigation is sufficient for granting the department temporary investigative authority, the regional administrator should be allowed to refuse amendment based on the finding. Similarly, because more than one "subject" may request amendment of a particular record, previous decisions may have already resulted in review of the record at issue. For example, assume that a mother requests amendment of a record substantiating neglect of her child, and the request is denied. If, at some later date, the father, who was also connected to the alleged neglect, makes a request for amendment of the finding, the regional administrator should be allowed to deny the request based on a review of the previous denial.

RESPONSE: The department agrees and has amended the rule to allow for decisions by the regional administrators based on district court findings or upon previous findings.

COMMENT: The rule should indicate that the regional administrator may designate several persons to jointly review the complaint and make a decision on behalf of the regional administrator. This has worked well in the past, and the concept should be incorporated into the rule.

RESPONSE: The department agrees and has amended the rule to indicate that the regional administrator may delegate the decision to a "designee" or "designees".

COMMENT: The rules should apply to records of abuse and neglect of adults.

RESPONSE: The department agrees and has amended the rule to include records of abuse, neglect, and exploitation of adults. Additional authorizing and implementing authority is added in this notice for the changes allowing application of the rules for adult protective service records.

DEPARTMENT OF FAMILY SERVICES

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, May 2, 1994.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 11.7.901 pertaining to adoption and incorporation of the regulations of the association of administrators of the interstate compact on the placement of children.	NOTICE OF AMENDMENT OF RULE 11.7.901 PERTAINING TO ADOPTION AND INCORPORATION OF THE REGULATIONS OF THE ASSOCIATION OF ADMINISTRATORS OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

TO: All Interested Persons

1. On March 31, 1994, the Department of Family Services published notice of the proposed amendment of ARM 11.7.901 pertaining to adoption and incorporation of the regulations of the association of administrators of the interstate compact on the placement of children, at page 621, of the 1994 Montana Administrative Register, issue no. 6.

2. The department has amended the rule as proposed except that the authorizing and implementing citations for the rule making are amended as follows:

AUTH: Sec. 52-2-111~~;~~ 41-3-1103, MCA. IMP: Sec. 41-4-101, Art. VII~~;~~ 41-3-1101, MCA.

3. The department received one comment. An attorney for the administrative code committee commented that it was questionable whether the authorizing and implementing authority cited in the notice of proposed amendment provided sufficient statutory support for the rule-making. The department has responded in this notice by adding 41-3-1103, MCA as an authorizing statute, and 41-3-1101, MCA as an implementing statute.

41-3-1103 provides authority to draft rules to carry out the purposes of part 11. 41-3-1101 requires establishment of substitute care for youth. The rule amended covers procedures for providing substitute care for youth coming into, or going out of Montana. Therefore, this rule-making aids in implementing substitute care for such youth under 41-3-1101.

DEPARTMENT OF FAMILY SERVICES

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, May 2, 1994.

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

In the matter of the amendment of rules 16.28.202, 203, 305-307, 606B & 606C, 638B, and the adoption of new rules I & II dealing with reportable diseases.	NOTICE OF AMENDMENT OF RULES AND ADOPTION OF NEW RULES I & II

(Communicable Disease)

To: All Interested Persons

1. On March 31, 1994, the department published notice at page 623 of the 1994 Montana Administrative Register, issue no. 6, to consider the amendment and adoption of the above-captioned rules.

2. The department amended and adopted the rules as proposed with no changes.

RULE I (16.28.607A) ESCHERICHIA COLI 0157:H7 ENTERITIS

RULE II (16.28.610D) HANTAVIRUS PULMONARY SYNDROME

3. No comments were received on the proposed rules.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State May 2, 1994.

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 rule 16.32.110 concerning certificate of need required findings and criteria.	))))	NOTICE OF AMENDMENT OF ARM 16.32.110 (Health Planning)

To: All Interested Persons

1. On March 31, 1994, the department published notice of the proposed amendment of ARM 16.32.110, concerning certificate of need required findings and criteria, at page 639 of the 1994 Montana Administrative Register, issue number 6.

2. The department has amended the rule as proposed.

3. No comments were received.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State May 2, 1994.

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the amendment of 36.16.101 - 36.16.103, 36.16.105B - 36.16.107B, 36.16.110, 36.16.112, 36.16.114 36.16.117, 36.16.118, the repeal of 36.16.108 and 36.16.116 and adoption of new Rules I, II, III and IV pertaining to water reservations under the Water Use Act	NOTICE OF AMENDMENT OF ARM 36.16.101 - 36.16.103, 36.16.105B - 36.16.107B, 36.16.110, 36.16.112, 36.16.114, 36.16.117, 36.16.118, THE REPEAL OF 36.16.108 AND 36.16.116 AND ADOPTION OF NEW RULES I, II, III, AND IV PERTAINING TO WATER RESERVATIONS UNDER THE WATER USE ACT

TO: All Interested Persons.

1. On February 10, 1994, the Board of Natural Resources and Conservation published a notice of public hearing on the proposed amendment of certain rules, the repeal of certain rules, and the adoption of four new rules pertaining to water reservations under the Water Use Act at pages 262 through 274, 1994 Montana Administrative Register, Issue number 3.

2. On March 8, 1994, at 1:00 p.m., a public hearing was held at the Director's Conference Room of the Lee Metcalf Building, the Department of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, Montana. One comment was received at the public hearing. Written comments were received from seven parties. The comments are summarized below.

3. The Board has amended rules 36.16.103, 36.16.105B, 36.16.106, 36.16.107, 36.16.107A, 36.16.107B, 36.16.112, 36.16.114, 36.16.117, 36.16.118, repealed 36.16.108 and 36.16.116, and adopted new rules I (36.16.119), III (36.16.121), and IV (36.16.122) as proposed.

4. The Board has amended rule 36.16.101, 36.16.102, 36.16.110 and adopted new rule II (36.16.120) with the following changes (deleted material interlined, additional material underlined):

36.16.101 POLICY AND PURPOSE OF RULES

Subsections (1) through (3) remain the same.

(4) The water reservations are intended to be administered in accordance with the above policy and as provided in section 85-2-316, MCA. These rules are intended to be implemented so as to provide reservants reasonable time for compliance with board orders. Auth: 85-2-113, MCA; IMP: 85-2-101, 316, 331 and 605, MCA

36.16.102 DEFINITIONS

Subsection (1) remains as proposed.

(2) "Applicant" means an entity that has submitted an application to reserve water ~~the state or any political~~

~~subdivision or agency thereof or the United States or any agency thereof that is qualified to reserve water~~ pursuant to 85-2-316 and 85-2-331, MCA.

Subsections(3) through (40) remain as proposed.

36.16.110 WATER USE UNDER A RESERVATION - RESERVANT RESPONSIBILITIES Subsections (1) through (4) remain as proposed.

(5) A reservant shall adhere to all filing requirements in Rule II (36.16.120).

RULE II (36.16.120) BOARD PERIODIC REVIEW OF RESERVATION OBJECTIVES Subsections (1) through (4) remain as proposed.

(5) If a diversionary reservation ~~is not in compliance with the development schedule identified in the application, general development plan or management plan under ARM 36.16.106~~ has not reached the development level projected, what factors have deterred the progress towards perfecting the water reservation and what actions will the reservant take to insure perfection of the reservation.

Subsections (6) and (7) remain as proposed.

(8) Reasonable diligence is demonstrated by actions of the reservant in investment of time and money in the perfection of the reservation, including, but not limited to:

(a) partial development of water reservation,

(b) completion of additional studies, ~~economic analyses~~, project design plans, promotional efforts, or environmental assessments.

Subsections (9) through (13) remain as proposed.

5. The Board has thoroughly considered all comments received:

COMMENT: The definitions for "Applicant" and "Entity" are identical. I suggest that 36.16.102 (2) be rewritten as follows: "Applicant means an entity that has submitted an application to reserve water pursuant to 85-2-316 and 85-2-331, MCA."

RESPONSE: The Board agrees and has amended 36.16.102(2).

COMMENT: Anytime the Board requires a reservant to submit information or data, the amount of time allowed to collect it must be proportional to the complexity and magnitude of the information. For example, if the Board orders a show cause hearing for possible modification of a reservation or it receives a petition for reallocation of an instream reservation, the information a reservant may have to gather or prepare could be extensive and require six months to a year to obtain.

RESPONSE: The Board agrees and has amended 36.16.101 Policy and Purpose of Rules to take this concern into account.

COMMENT: In 36.16.107A, proposed parts 4 though 7 which pertain to subordinating a water reservation to a permit

should be included in a separate section like the rule on changes and transfers.

RESPONSE: The subordination process will be a one-time procedure unlike changes and transfers which may continually occur throughout the history of the water reservation. When the Board makes a decision on subordination the subsections on subordination will be amended out of the rule. It is not necessary to create a new rule for the subordination process.

COMMENT: In 36.16.110, there should be a reference to proposed new Rule II for periodic reviews.

RESPONSE: The Board agrees and has amended 36.16.110.

COMMENT: 36.16.114, 36.16.118 and new Rule II (11) should be amended to require the Board of Natural Resources and Conservation to pay all publication and noticing costs.

RESPONSE: The applicant or reservant initiating the action requiring publication and noticing is responsible for the costs. When an application for change or transfer is filed (36.16.118), the action is initiated by the reservant. When the Board determines the objectives of a reservation are not being met and requires a show cause hearing (new Rule II (9)), it is because the reservant failed to meet the objective of its reservation thereby initiating the Board's action. The cost must be borne by the reservant as set forth in new Rule II (11).

COMMENT: In 36.16.117, the general discussion in (3) through (7) pertaining to subordination should be in a separate section and (3) should only include the pertinent date information.

RESPONSE: Upon conclusion of the proceedings in the Missouri and Little Missouri River basins, this rule will be repealed in its entirety. It is not necessary to create a new rule to separate out the subordination process in these basins or to reword subsections to remove past dates.

COMMENT: New Rule II (1) states the Board shall review water reservations at least every 10 years to determine if the objectives of the reservation are being met. The suggestion is to limit such review to no oftener than every five years.

RESPONSE: Mont. Code Ann. § 85-2-316(10) gives the Board discretion with a maximum of every 10 years, in which to review existing reservations to ensure that the objectives of the reservations are being met. A rule limiting the Board's review to not more than once every five years would remove the Board's discretionary authority.

COMMENT: New Rule II (5) states, "If a diversionary reservation is not in compliance ... ." This wording sounds as though the development schedule were a rule or policy which the conservation districts were required to follow when, in reality, the development schedule is a guideline the conservation districts strive to attain. The suggested wording is,

"If a diversionary reservation has not reached the development level projected ... ."

RESPONSE: The Board agrees the wording in this portion of new Rule II does have the connotation that the development schedule is a rule or policy and should be changed as suggested.

COMMENT: New Rule II (7) should have another item, "(c) whether any other party or entity has indicated a greater need for the reserved water."

RESPONSE: New Rule II (7) identifies the criteria the Board should consider when determining whether the objectives are being met. The determination is to be made on each reservation and the reservant's progress in reaching the objectives for that reservation. It has nothing to do with whether another party or entity has or has not expressed a need for the water.

COMMENT: New Rule II (8) should not limit actions which demonstrate reasonable diligence to only economic analyses. There are other types of studies, activities, or analyses that a reservant could develop or conduct which would also evidence reasonable diligence.

RESPONSE: The Board agrees and has amended this portion of new Rule II to more generally describe examples of reasonable diligence.

COMMENT: New Rule II (8) should have an added item (c) stating, "consideration of others' needs, and compatibility with local and regional planning efforts."

RESPONSE: This comment appears to more appropriately pertain to new Rule II (7). This subsection lists the information which the Board shall consider when determining if the objectives of the reservation are being met. "Consideration of others needs" is answered above in the response to the comment on new Rule II (7). Consideration of a reservants' "compatibility with local and regional planning efforts" is already included in (7)(d) other considerations set out in the Board Order.

COMMENT: New Rule II (12) allows the Board to either modify or revoke a reservation for "(c) failure of the reservant to comply with the Board's order granting the reservation." If a reservant inadvertently fails to comply with a minor part of the Board's order, then modification or revocation could result because of the criteria set in this rule. Surely that would be too harsh of a result. We suggest more reasonable guidelines for modification or revocation, such as "purposely or knowingly failing to comply with the Board's order granting the reservation, after the Board (or Department) has notified the reservant of the noncompliance and has given the reservant a reasonable time to comply." Because a water reservation is subject to protection under the act and is an appropriative water right protected by law, the reser-

vants need to be given adequate notice of what grounds could result in their right being modified or revoked.

RESPONSE: New Rule II (12) does not state specifically that the Board will modify or revoke a reservation for failure to comply with the Board's order granting the reservation. It states it may modify or revoke a reservation for that reason. However, one cannot take subsection (12) alone to determine the Board's intent. One must read new Rule II in its entirety. Once every 10 years the Board must review the water reservations. Each reservant knows this will happen and has the opportunity to prepare for that review. If a diversionary reservation is not in compliance, the reservant will have an opportunity to show what factors have deterred progress toward perfecting the reservation and what actions the reservant will take to insure perfection of the reservation. If the reservant inadvertently or unknowingly fails to comply with the Board's order it will be given notice and opportunity through a show cause hearing to present its case.

COMMENT: New Rule II (13) should include the underlined phrase. "A reservation term may be extended for a reasonable period of time to develop the reservation and to enable the reservant to meet the objectives of the reservation.

RESPONSE: The objectives of the reservation are to develop the reservation. To add the underlined phrase would be redundant.

COMMENT: New Rule II (13) should have the phrase "to enable the reservant to meet the objectives of the reservation" deleted and have the sentence end at the word "time." The current wording implies that a reservant is not meeting the objectives of the reservation if an extension is requested or necessary which makes the reservation subject to revocation.

RESPONSE: If a reservant requires an extension, it is not meeting the objectives of the reservation. That is precisely why there is an extension provision in statute where a reservant has an opportunity to show it has applied reasonable diligence even though it may not be meeting its objective.

COMMENT: New Rule II (13) should have the phrase "to enable the reservant to meet the objectives of the reservation" deleted and replace it with "up to 100 years to develop the water reservation."

RESPONSE: The statute gives the Board discretionary authority to extend a reservation for a reasonable period of time. To specify a period of time, especially an unreasonable period of time, in a rule would limit this authority.

COMMENT: New Rule III should have an added item (8) stating, "The Board may only approve a permit for the same purpose as the purpose of the reservation." This would assure that water reserved for agriculture would be used for that purpose.

If permit for reserved water authorizes the permittee to appropriate that water until the reservant requires the water, doesn't that make the permit rather tenuous?

Can the Department entertain such an application for water without the knowledge of the reservant? Nothing in new Rule III states that the reservant be informed that such an application has been received by the Department. Would it not be better for the Department to so inform the reservant? Possibly the reservant would be willing to voluntarily relinquish a portion of the unperfected reserved water, thus making that permit holder a better and more certain deal. This rule should be amended so that the reservant is kept informed, that the permit applicant is better protected, and so that the Department and the Board do not appear to be acting capriciously.

RESPONSE: A person seeking to use water for agricultural purposes would most likely apply to the conservation district to use part of its reserved water. There would be no need for that person to seek a permit for agricultural use. Only those persons seeking to use unperfected reserved water for other than agricultural uses would seek such a permit. If a permit were granted for the use of unperfected reserved waters, it would be a temporary permit and the permittee would be fully aware that the reservant could require that water at any time.

The Department cannot entertain such an application without the knowledge of the reservant. New Rule III (3) requires such an application be submitted to the Department and processed according the Mont. Code Ann. §§ 85-2-307 through 85-2-314. Mont. Code Ann. § 85-2-307 requires the Department to publish pertinent facts of an application in a newspaper of general circulation in the area of the source as well as serving a notice on water users who may be affected by the appropriation, including any public agency that has reserved waters in the source of supply.

If the reservant were to relinquish a portion of its unperfected reserved water, that water would no longer be reserved water; it would be unappropriated water available for appropriation by any entity for any purpose.

BOARD OF NATURAL RESOURCES
AND CONSERVATION

By: Jack E. Galt, Chairman

Donald D. MacIntyre,
Rule Reviewer

Certified to the Secretary of State on May 2, 1994.

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, 1994. This table includes those rules adopted during the period April 1, 1994 through June 30, 1994 and any proposed rule action that was 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, 1994, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1994 Montana Administrative Register.

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