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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

BEFORE THE TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of new rules, amending Rules 2.44.301A, 2.44.307, 2.44.409, 2.44.502, 2.44.509, 2.44.510, 2.44.518 and 2.44.524 for the purpose of clarification and complying with amendments adopted by the 1995 legislature and repeal of Rules 2.44.303, 2.44.405, 2.44.406, 2.44.520 and 2.44.521 relating to the Teachers' Retirement System	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULES, REPEAL AND AMENDMENT OF RULES RELATING TO THE TEACHERS' RETIREMENT SYSTEM

TO: All Interested Persons.

1. On July 13, 1995 at 10 A.M. a public hearing will be held in the office of the Teachers' Retirement System, at 1500 Sixth Avenue, Helena, Montana, to consider the adoption of new rules I though VII; and amendment of rules 2.44.301A, 2.44.307, 2.44.409, 2.44.502, 2.44.509, 2.44.510, 2.44.518 and 2.44.524; and repeal of rules 2.44.303, 2.44.405, 2.44.406, 2.44.520 and 2.44.521.

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

3. The proposed new rules are as follows:

RULE I. CREDITABLE SERVICE FOR MEMBERS AFTER JULY 1, 1989

(1) The actuarial cost to purchase creditable service by members who first became members on or after July 1, 1989, will vary by the member's compensation, age and years of service at the time they apply to purchase the additional service.

(a) The total compensation reported to the teachers' retirement system for the most recent fiscal year will be used to determine the actuarial cost.

(b) The members age at the time they make application to purchase service will be determined in compliance with [new rule II of this notice].

(c) The years of service will be determined by the total number of years of creditable service the member is eligible to receive on the date they apply to purchase service under this rule.

(2) Service will be credited to the member's account at the time they have completed payment in full. If the member terminates payments or advises the TRS that they will not make any further payments, the service purchased will be credited on a prorated basis.

Auth: Sec. 19-20-201 MCA; IMP, House Bill 316, of the 1995 Legislative Session, Chapter 136

RULE II. CALCULATION OF AGE (1) If a member applies for benefits which are based on the member's age, the whole age that the member is or will be closest to on the effective date of the benefit will be used. For example; if the member is age 55, 6 months, 1 day, age 56 will be used in the calculation of benefits. If the member is age 55, 6 months, 0 days, age 55 will be used in the calculation of benefits.
Auth: Sec. 19-20-201 MCA; IMP, Sec. 19-20-101 and 19-20-702 MCA

RULE III. INSTALLMENT PURCHASE (1) Additional service may be purchased in a lump sum payment, or the member may sign a contract with the board to purchase service through installment payments not to exceed 60 months. If a member reduces the monthly payment amount or terminates monthly payments before the terms of the contract are fulfilled, the member's account will be credited with the prorated portion of the service purchased to date.

(2) The cost to purchase the balance of the remaining service will be recalculated at the time the member reapplies to purchase the balance of the service. Interest will be included at the rate set by the board.
Auth: Sec. 19-20-201 MCA; IMP, Title 19, chapter 20, part 4 MCA

RULE IV. VALUE OF HOUSING (1) Effective March 10, 1995, the value of any housing included as part of a member's contract, that was not reported to TRS, must not be reported to the teachers' retirement system in the future. Members with the value of housing included in earned compensation reported during fiscal year 1995 must continue to report the value of housing for as long as they remain with their current employer.
Auth: Sec. 19-20-201 MCA; IMP, Sec. 19-20-101(8) MCA.

Rule V. DIRECT TRANSFER OR ROLLOVER (1) Members purchasing additional service and who have not withdrawn their account from another public retirement system qualified under section 401(a) of the Internal Revenue Code may apply for a direct transfer of the account balance. The amount transferred must not exceed the amount owed to purchase additional service.
Auth: Sec. 19-20-201 MCA; IMP, Title 19, chapter 20, part 4 MCA

Rationale: New rules I - V are proposed to implement the provision of HB 205, and HB 316, adopted during the 1995 regular legislative session. Legislation was adopted to; generally clarify the provisions of the teachers' retirement system, provide a guaranteed annual benefit adjustment for retirees, and enhance opportunities to purchase additional service for members hired after July 1, 1989.

RULE VI. REPORTING OF TERMINATION PAY (1) A completed and signed Termination Pay Form together with the employee and employer contributions due must be received by the teachers' retirement system by the 15th of the month, following the month in which the employee terminated employment.

(2) Interest will be assessed at the actuarially assumed

rate on employee and/or employer contributions received after the 15th.

(3) The member and their employer will be notified in writing when contributions due on termination pay are over 30 days past due.

(4) If contributions on termination pay are not received within 60 days of the effective date of retirement, monthly benefits calculated using termination pay will be recalculated and adjusted retroactive to the date of retirement.

(5) If the member submits the employee contributions due but the employer refuses or does not timely remit the employer contributions due, the member will be given an additional 30 days to work with the employer to remit contributions due before benefits will be recalculated.

Auth: Sec. 19-20-201 MCA; IMP, Sec. 19-20-101(5) MCA.

RULE VII. PAYMENT FOR SERVICE -- CALCULATION OF RETIREMENT BENEFITS (1) All payments for the purchase of service credits must be completed by the 15th of the month in which the member retires.

(2) If payment is over 30 days past due, the member and their employer will be notified in writing that contributions are due and payable and that benefits will be recalculated and adjusted retroactive to the date of retirement if payment is not received within 60 days of the effective date of retirement.

AUTH: 19-20-201 MCA IMP, Sec. 19-20-801, 901 and 1001 MCA

Rationale: New rules VI and VII are necessary to address nonpayment of contributions on termination pay and purchase of additional service. Each year there are a few members who retire and fail to make the necessary contributions due on termination pay or to purchase additional service. Timely payment of contributions due is required to actuarially fund benefits. These rules are necessary to establish procedures the board will follow if members do not pay the contributions due.

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

2.44.301A DEFINITIONS For the purpose of this chapter, the following definitions apply:

(1) remains the same.

(2) remains the same.

(3) remains the same.

(4) "School term or school year" means the fiscal year July 1 through June 30.

Auth: Sec. 19-20-201 MCA; IMP, Title 19, chapter 20 MCA

Rationale: The terms "school term" and "school year" are used interchangeable throughout the TRS statutes and administrative rules. This change is necessary to make sure readers of the administrative rules understand that the two terms have the same meaning.

2.44.307 MEMBERSHIP OF TEACHER'S AIDES AND PART-TIME INSTRUCTORS (1) Teacher's aides employed after September 1, 1989, are required to participate in the teachers' retirement system provided that they are:

(a) employed in an instructional services capacity for 50% or more of the academic day; and ~~;~~

(b) employed for the equivalent of 30 full-time days during the school year.

(2) A teacher's aide will be considered in an instructional services capacity if they are assisting a certified teacher in the education and instruction of students in the regular curriculum of the institution.

~~(3) Teacher's aides employed prior to July 1, 1989, may elect to be members of the teachers' retirement system provided they meet the requirements under (1) and (2) of this rule and:~~

~~(a) each school district must give written notice, no later than September 30, 1989, to all teacher's aides employed prior to July 1, 1989, of their right to elect membership in the teachers' retirement system and;~~

~~(b) each teacher's aide must file the notice of election with the school board and the teachers' retirement board by October 31, 1989.~~

~~(4) Teacher's aides electing membership under the teachers' retirement system may qualify their previous service provided:~~

~~(a) the employee and employer contributions that would have been made had the teacher's aide been a member of the TRS; and~~

~~(b) the interest that would have accrued on the contributions, are deposited with the retirement system.~~

(3) Part-time, post graduate instructors in the university system are not eligible for membership.

(4) A part-time employee, who has not been re-employed under 19-20-804, MCA will be considered an active member after completing the equivalent of 30 full-time days of membership service.

Auth: Sec. 19-20-201 MCA; IMP, Sec. 19-20-302 MCA

Rationale: The period of time for teachers aides to elect membership has expired and subsections 3 though 4 are no longer necessary. New subsections 3 and 4 are currently part of ARM 2.44.303, which will be repealed, and must be retained to clarify TRS membership for graduate instructors and part-time employees.

2.44.409 TRANSFER OF SERVICE CREDIT FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM (1) A member may at any time before retirement request that his or her public employees' retirement service credits earned prior to their latest TRS membership service be transferred in accordance with the provisions of ~~19-4-409~~ 19-20-409, MCA provided that the member:

(a) is an active contributing member of the teachers' retirement system; and ~~;~~

(b) is not eligible for membership under the public employees' retirement system.

(2) In no instance shall a member be able to qualify more service into the teachers' retirement system than they had in the public employees' retirement system.

(3) No more than 1 year's creditable service shall be awarded for service during the same fiscal year.

Auth: Sec. 19-20-201 MCA; IMP, Sec. 19-20-409 MCA

Rationale: This change is necessary to clarify that only PERS service earned prior to the members TRS service may be transferred.

2.44.502 ELIGIBILITY UNDER MID-TERM RETIREMENTS (1) If a member ceased teaching before the end of the school term, and is otherwise eligible, ~~he~~ the member will be first eligible for retirement benefits on the first of the month following the month in which ~~he last taught~~ the member terminated employment. The date the member received payment of unused sick and/or annual leave may be accepted as prima facie evidence of the member's termination date.

Auth: Sec. 19-20-201 MCA; IMP, Sec. 19-20-801 through 19-20-804 MCA

Rationale: This change is necessary to clarify that members on a leave of absence without pay must terminate their employment before they are eligible for retirement benefits and when benefits will be effective.

2.44.509 COMPUTATION OF ~~SALARY~~ AVERAGE FINAL COMPENSATION ~~EARNED~~ (1) The average final compensation of a member who retires or dies ~~during a~~ before they receive full service credit for the ~~school or~~ fiscal year, shall be determined by using the greater of:

(a) the equivalent of 3 full consecutive years' earned compensation reported ~~contracts~~ immediately preceding retirement will be prorated on the same basis as service is credited through the final fiscal year. For example: if a member retires effective January 1, and has received service credit of 0.50 in their final fiscal year, then the compensation reported in the final fiscal year, plus 100% of the compensation reported in the 2 preceding fiscal years, plus 50% of the 3rd fiscal year's compensation preceding the date of termination, must be used to calculate average final compensation; or;

(b) the 3 full consecutive fiscal years compensation which yield the highest average.

(2) Only salaries earned under contract on which contributions have been made can be used to determine the average final compensation.

Auth: Sec. 19-20-201 MCA; IMP, Sec. 19-20-801 through 19-20-804 MCA

Rationale: This rule is necessary to clarify the calculation of average final compensation for members retiring during the fiscal year.

2.44.510 ADJUSTMENT OF BENEFITS

(1) remains the same.

(2) remains the same.

(3) Effective July 1, 1995, the period for determining the amount that a retiree may earn while receiving retirement benefits shall be the fiscal year, July 1, through June 30, irrespective of the month in which they retired. The amount a retiree may earn following a mid-year retirement must be prorated based on the ratio of the number of months remaining in the fiscal year divided by 12.

Auth: Sec. 19-20-201 MCA; IMP, Sec. 19-20-804 MCA

Rationale: Standardize the period for measuring post retirement earnings as the fiscal year, July through June. Currently the period used to measure the amount a retiree is allowed to earn after retirement is the 12 month period following the month in which the retiree begins retirement, requiring that each retiree's earnings be accounted for differently. A standard period will allow for automation of administration and eliminate the manual tracking process.

2.44.518 LIMIT ON EARNED COMPENSATION (1) The ~~amount of earnings that may be~~ earned compensation for each year used in calculating a member's average final compensation may not exceed either the member's actual earned compensation or earnings adjusted by this rule for the preceding year, by more than 10% except for increases that:

(a) result from collective bargaining agreements;

(b) have been granted by the employer to all other similarly situated employees. The employer must certify the similarly situated group of employees, the increase received by each employee and the methodology for determining the increases;

(c) result from compensation received for summer employment, not to exceed one-ninth of the academic year contract for each month employed during the summer;

(d) have resulted from change of employer; or~~.~~

(e) have resulted from re-employment for a period of not less than one year following a break in service.

(2) The member must provide adequate documentation to permit the board to make an informed decision concerning exceptions to the 10% limitation. Adequate documentation includes but is not limited to the following:

(a) employment contracts;

(b) official minutes of board meetings.

(3) The assignment of additional duties of a one time or temporary nature shall not be exempt from the 10% limitation.

(4) the 10% cap shall be calculated as per the following example and applied consistently to all members:

YEAR	0	1	2	3	TOTAL EXCESS
AY COMP:	45,000	50,000	54,000	60,000	
SUMMER COMP (1/9 Per mo)	1,000	10,000	0		
EXTRA COMP	0	0	1,500	0	
THE CAP	NONE	49,500	54,450	59,400	
EXCESS		500	1,050	600	2,150
FINAL COMP:		59,500	54,450	59,400	

Auth: 19-20-201 MCA; IMP, Sec. 19-20-101(5) MCA

Rationale: Changes are necessary to comply with the provisions of HB 205 to clarify the calculation of average final compensation and the 10% cap.

2.44.524 ADJUSTMENT OF DISABILITY ALLOWANCE FOR OUTSIDE EARNINGS (1) ~~A member's disability allowance consists of an annuity plus a pension. The annuity is a monthly benefit provided by the member's contributions with interest. The pension is equal to the total allowance provided by 19-20-902, MCA, less the annuity. If a disabled member is gainfully employed his pension will be reduced so that his outside earnings, plus his annuity, plus his pension do not exceed the maximum allowed under 19-20-604, MCA.~~

~~(2)~~ Disabled members who are gainfully employed must notify the Teachers' Retirement system within thirty days of being employed. Notification must include:

(a) Name and address of Employer,

(b) Salary or hourly rate of pay and estimated yearly earnings, and

(c) Description of their duties and responsibilities and if the position is full-time or part-time.

~~(3)~~ (2) The disabled member must report to the Teachers' Retirement System, no less than annually, the total amount earned each year. Members are encouraged to report earnings each month so that the TRS can advise the member when they will earn more than allowed and adjust their benefit if necessary. Auth: 19-20-201 MCA; IMP, Sec. 19-20-907 MCA

Rationale: Changes are necessary to comply with the provisions of HB 205 to clarify how much a member receiving disability retirement benefits may earn, and how any reduction in benefits will be calculated if they exceed the maximum allowed.

5. The following rules are to be repealed:

2.44.303 MEMBERSHIP OF PART-TIME AND FEDERALLY PAID EMPLOYEES Can be found on page 2-3243 of the Administrative Rules of Montana. AUTH: 19-20-201 MCA; IMP, Sec. 19-20-205 MCA

2.44.405 INTEREST ON NON-PAYMENT FOR ADDITIONAL CREDITS Can be found on page 2-3254 of the Administrative Rules of Montana. AUTH: 19-20-201 MCA; IMP, Sec. 19-20-401 MCA

2.44.406 PURCHASE OF CREDIT DURING EXEMPT PERIOD Can be found on page 2-3254 of the Administrative Rules of Montana.
AUTH: 19-20-201 MCA; IMP, Sec. 19-20-401 MCA

2.44.520 CALCULATION OF ANNUAL BENEFIT ADJUSTMENT Can be found on page 2-3269 of the Administrative Rules of Montana.
AUTH: 19-20-201 MCA; IMP, Sec. 19-15-102 MCA

2.44.521 ELIGIBILITY FOR ANNUAL BENEFIT ADJUSTMENT Can be found on page 2-3269 of the Administrative Rules of Montana.
AUTH: 19-20-201 MCA; IMP, Sec. 19-15-102 MCA
Rationale: These rules are proposed to be repealed because of statutory amendments adopted in HB 205 and HB 316.

6. Interested parties may submit their data, views, or arguments, either orally or in writing, at the public hearing. Written views, comments or data may also be submitted to David L. Senn, Administrator, Teachers' Retirement System, 1500 Sixth Avenue, PO Box 200139, Helena, MT 59620-0139, no later than July 13, 1995.

7. Patty Dumas has been designated to preside over and conduct the hearing.

8. The authority of the Board to make the proposed rules is based on section 19-20-201, MCA and the rules implement Title 19, Chapter 20, MCA.

By:

Dal Smilie, Chief Legal Counsel
Rule Reviewer

David L. Senn, Administrator
Teachers' Retirement System

Certified to the Secretary of State June 5, 1995.

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

In the matter of the proposed amendments of rules 6.6.8001 through 6.6.8301 and adoption of new rule I	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Interested Persons

1. On July 6, 1995, at 9:00 o'clock a.m., MDT, at the Clarks Room at the Colonial Inn, Helena, Montana, the Montana Classification and Rating Committee proposes to adopt new rule I informal advisory hearing procedure and amendments to rules 6.6.8001 agency organization, 6.6.8101 adoption of model rules, 6.6.8201 definitions, 6.6.8202 administrative appeal of classification decision, 6.6.8203 general hearing procedure, and 6.6.8301 updating references to the NCCI Basic Manual for Workers' Compensation and Employers' Liability Insurance, 1980 ed.

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

6.6.8001 AGENCY ORGANIZATION (1) History. The classification and rating committee is created by statute. The district court held in Cause No. BDV-91-1585, state of Montana, first judicial district, entitled State Compensation Mutual Insurance Fund v. R/E. Developers, Inc., decided August 14, 1992, that the classification ~~and rating~~review committee is a state agency defined by 2-4-102, MCA. As a state agency, the classification ~~and rating~~review committee is required to promulgate procedural rules pursuant to the Montana Administrative Procedure Act. In 1993, the legislature amended 33-16-1012, MCA, to give the committee express rulemaking authority.

(2) Nature of committee. The classification ~~and rating~~review committee is a state agency as defined by 2-4-102, MCA. Documents and other information concerning the classification ~~and rating~~review committee's actions are made available for public review at the office of the commissioner of insurance. The classification ~~and rating~~review committee consists of five members, of whom four are appointed by the commissioner of insurance and one is appointed by the executive director of the state fund, as provided in 33-16-1011, MCA. The classification ~~and rating~~review committee is staffed as determined necessary by the National Council on

Compensation Insurance or each other workers' compensation rating organization as the classification ~~and rating~~review committee may designate.

(3) Inquiries and submissions. Unless otherwise provided in these rules or by special notice, all inquiries and submissions to the classification ~~and rating~~review committee should be made to the Montana Classification ~~and Rating~~Review Committee in care of the National Council on Compensation Insurance, ~~Two Tamarac Sq., Ste. 613,~~ 7535 E. Hampden Ave., Suite 607 Denver, CO 80231; telephone (303) 695-88~~91, etc. 2188~~, ext. 25; fax (303) 755-6498.

AUTH: House Bill 414
IMP: Sec. 2-4-201, 33-16-1011, and 33-16-1012 MCA

6.6.8101 ADOPTION OF MODEL RULES (1) The classification ~~and rating~~review committee adopts and incorporates by reference the following of the attorney general's Model Procedural Rules:

(a) 1.3.102;

(b) 1.3.203 through 1.3.211;

(c) 1.3.216;

(d) 1.3.222 through 1.3.233.

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

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

AUTH: House Bill 414
IMP: Sec. 33-16-1012, 2-4-201, 2-4-201 MCA

6.6.8201 DEFINITIONS The following definitions apply to this subchapter, unless context or the particular rule requires otherwise:

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

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

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

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

(5) "Insurer" means an authorized insurer writing workers' compensation coverage in this state, including the state compensation insurance fund. For purposes of these rules, "insurer" does not include employers electing to be bound by compensation plan No. 1 of the Montana Workers' Compensation Act. AUTH: House Bill 414
IMP: Section 33-16-1011, 33-16-1012, MCA

6.6.8202 ADMINISTRATIVE APPEAL OF CLASSIFICATION DECISION

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

(2) The notice of administrative appeal must be filed with the classification ~~and ratingreview~~ committee.

(3) The initial hearing conducted by the committee must be informal and non-binding upon the parties and must be conducted pursuant to the rules of procedure set forth in 6.6.8203.

(4) A party who is aggrieved by the informal and non-binding decision of the committee, or by the refusal of a party to be bound by the advisory decision as provided in new rule I may initiate an informal contested case proceeding pursuant to 2-4-604 before the committee pursuant to the rules of procedure set forth in 6.6.8203-8206.
AUTH: House Bill 414 IMP: Sec. 33-16-1011, 1012, 2-4-201, MCA

(NEW RULE I) INFORMAL ADVISORY HEARING PROCEDURE (1) The initial hearing conducted by the committee concerning objections filed by an employer or insurer in relation to classifications assigned to an employer shall be conducted informally, and in such manner as to ascertain the substantial rights of the parties. All issues relevant to an appeal shall be considered. The employer and the insurer, and such witness or witnesses as either may call, may present such evidence as may be pertinent, subject to examination by any member of the committee.

(2) The parties may stipulate the facts involved orally or in writing.

(3) During the informal hearing the committee may receive and consider evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs but may not receive or consider evidence which is irrelevant, immaterial or unduly repetitious. Hearsay evidence may be

received and considered to supplement or explain other evidence.

(4) Telephonic hearings may be conducted during the course of informal proceedings.

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

(6) The committee shall issue a written advisory decision within thirty days of the conclusion of the hearing which shall not be binding on the parties. The committee shall send a written copy of its advisory decision by first class mail, postage pre-paid to each party. Each party to the informal hearing shall notify the committee and each other party in writing of the notifying party's intent to be bound or not bound by the committee's advisory decision and the notice must be made within thirty days of the date the committee mails the written copy of its advisory decision to the parties.

(7) The party who is aggrieved by the advisory decision of the committee or by the refusal of a party to be bound by the committee's advisory decision rendered after a hearing conducted pursuant to this section may within thirty days after the expiration of the thirty day notice deadline specified in paragraph 6 herein initiate an informal contested case proceeding pursuant 2-4-604 MCA before the committee and the committee shall hear the matter in a de novo administrative proceeding as provided in Title 2, chapter 4, part 6. This informal contested case proceeding shall be conducted pursuant to the provisions of §§ 6.6.8204 - 6.6.8207 A.R.M.

(8) If either the employer or the insurer shall fail to appear at the committee hearing and no good cause for a continuance is shown, the committee shall render its decision on the basis of the best evidence available to it; provided, however, a hearing before the committee may be continued for good cause upon application to the committee orally or in writing before the hearing is concluded, and may be continued or reopened by the committee on application or on its own motion. Any party who fails to appear in person or by authorized representative at the hearing before the committee may within ten days after the scheduled date of the hearing file an application for reopening, and such application for reopening shall be granted if good cause is shown for failing to appear. An application for reopening must be in writing; it must state the reason or reasons believed to constitute good cause for failing to appear at the hearing; and it must be delivered or mailed within such ten-day period to the committee. If an application for reopening is not allowed, a

copy of such decision shall be given or mailed to each party to the hearing, and in the reopening proceedings the allowance of the application may be contested. Where it appears that the application for reopening or any other request or application may not have been filed within the period of time prescribed for filing, the applicant shall be notified and be given the opportunity to show that such appeal application or request was timely. If it is found that such application or request was not filed within the applicable time limit, it may be dismissed on such grounds. If it is found that such application or request was timely the matter shall be decided on the merits and an advisory ruling issued as provided by these rules. Copies of the decision under this provision shall be given or mailed to the policyholder and the insurer together with a clear statement of right of appeal or judicial review as may be appropriate.

AUTH: House Bill 414
IMP: Sec. 33-16-1011, 33-16-1012, 2-4-201 MCA

6.6.8203 ~~GENERAL HEARING PROCEDURE~~ INFORMAL CONTESTED CASE PROCEEDING (1) ~~This rule implements 33-16-1012, MCA, by setting forth procedural steps that shall be followed in hearings for administrative appeals involving classification determinations~~This rule sets forth procedural steps that shall be followed in informal contested case hearings for administrative appeals involving classification determinations.

(2) Classification determination hearings must be informal proceedings held pursuant to 2-4-604, MCA. Classification determination hearings are conducted in such a manner as to ascertain the substantial rights of the parties. All issues relevant to the classification determination are considered and passed upon. Any party and any witness may, under oath or affirmation, present pertinent evidence subject to examination by the committee and to cross-examination by the opposing party.

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

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

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

(6) ~~The committee may appoint a hearing examiner to decide all pre-hearing matters and to conduct the hearing. While a party may request the appointment of a hearing examiner, the decision of whether to appoint a hearing examiner rests with the committee~~The committee may in its discretion or at the request of any party appoint a hearings examiner to decide all pre-hearing matters and to conduct the hearing. After the hearings examiner is appointed the examiner shall take evidence and prepare proposed findings of fact and conclusions of law which the committee may accept or reject or modify in whole or in part based upon the evidence produced during the informal contested case proceeding.

AUTH: House Bill 414
IMP: Sec. 33-16-1012, 2-4-603, 2-4-604 MCA

6.6.8301 ESTABLISHMENT OF CLASSIFICATION FOR COMPENSATION PLAN NO. 2 (1) The committee hereby adopts and incorporates by reference the NCCI Basic Manual for Workers' Compensation and Employers Liability Insurance, ~~1980~~1996 ed., ~~as supplemented through August 30, 1994,~~ which establishes classifications with respect to employers electing to be bound by compensation plan No. 2 as provided in Title 39, chapter 71, part 22, Montana Code Annotated. A copy of the Basic Manual for Workers' Compensation and Employers Liability Insurance is available for public inspection at the Office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, 126 North Sanders, P.O. Box ~~2003014~~4009, Helena, MT ~~5962004-03014~~4009. Copies of the Basic Manual for Workers' Compensation and Employers Liability Insurance may be obtained by writing to the Montana Classification ~~and Rating~~Review Committee in care of the National Council on Compensation Insurance, ~~Two Tamarac Sq., Ste. 613,~~ 7535 E. Hampden Ave., Suite 607, Denver, CO 80231. Persons obtaining a copy of the Basic Manual for Workers' Compensation and Employers Liability Insurance must pay the committee's cost of providing such copies.

(2) Remains the same.

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

3. New rule I is proposed and rules 6.6.8001, 6.6.8101, 6.6.8201, 6.6.8202, and 6.6.8203, which can be found on page 6-1201 through 6-1206 of the Administrative Rules of Montana, are to be amended because with the passage of house bill 414 in the fifty-fourth legislative session, the rules need to be changed to conform to the provisions of that legislation. The proposed amendments to rule 6.6.8301 which can be found at page 6-1209 of the Administrative Rules of Montana, are necessary in order to adopt the new edition of the Basic Manual for Workers' Compensation and Employers Liability Insurance and changes to the NCCI Basic Manual for Workers' Compensation and Employers' Liability affect classifications for those employers listed below:

Code 8721 - Real Estate Appraisal Companies

It is proposed that a new classification code be established and that the introductory rate and rating values for such Code (8721) be equal to that of Code 8742 -- Salespersons, Collectors or Messengers--Outside until such time as the new classification develops sufficient statistics for ratemaking purposes. The address of the National Council of Compensation Insurers is changed in rule 6.6.8001 and also in rule 6.6.8301 which had previously been proposed and not yet adopted.

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

Robert Carlson, Chairperson
Montana Classification and Rating Committee
c/o National Council on Compensation Insurance, Inc.
7535 E. Hampden Ave., Ste. 607
Denver, CO 80231

Comments must be received no later than July 17, 1995.

5. Copies of the 1996 edition of the Basic Manual and the proposed supplements for real estate companies are available for public inspection at the Office of the State Insurance Commissioner, Room 270, Sam W. Mitchell Building, 126 North Sanders, P.O. Box 4009, Helena, Montana 59604. Copies are also available by writing the National Council on Compensation Insurance, 7535 East Hampden Ave., Suite 607, Denver, CO 80231.

6. The classification and rating committee will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, please contact the classification and rating committee no later than July 1, 1995, and advise the office of the nature of the accommodation needed. Please contact Tim

Hughes, Montana Classification and Rating Committee, National Council on Compensation Insurance, Inc., 7535 E. Hampden Ave., Ste. 607, Denver, Colorado 80231; tel (303) 695-8888; fax (303) 755-6498.

6. Robert Carlson has been designated to preside over and conduct the hearing.

BY: 
Robert Carlson, Chairperson
Classification and Rating Committee

BY: 
Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 5th day of June, 1995.

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

In the matter of the proposed adoption of a new rule for the administration of the 1995 Federal Community Development Block Grant Program	))))	NOTICE OF PROPOSED ADOPTION OF NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1995 CDBG PROGRAM

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 15, 1995, the Department of Commerce proposes to adopt by reference the above stated.

2. The proposed new rule will read as follows:

"I. INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1995 CDBG PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Community Development Block Grant Program 1995 Application Guidelines for Housing & Public Facilities Projects, the Montana Community Development Block Grant Program 1995 Application Guidelines for Economic Development Projects, and the Montana Community Development Block Grant Program 1995 Grant Administration Manual published by it as rules for the administration for the 1995 CDBG program.

(2) The rules incorporated by reference in (1) above, relate to the following:

(a) the policies governing the program,
(b) requirements for applicants,
(c) procedures for evaluating applications,
(d) procedures for local project start up,
(e) environmental review of project activities,
(f) procurement of goods and services,
(g) financial management,
(h) protection of civil rights,
(i) fair labor standards,
(j) acquisition of property and relocation of persons displaced thereby,
(k) administrative considerations specific to public facilities, housing rehabilitation and neighborhood revitalization, and economic development projects,
(l) project audits,
(m) public relations, and
(n) project monitoring.

(3) Copies of the regulation adopted by reference in (1) of this rule may be obtained from the Department of Commerce, Local Government Assistance Division, Capitol Station, Helena, Montana 59620."

Auth: Sec. 90-1-103, MCA, IMP, Sec. 90-1-103, MCA

REASON: This rule is necessary because the federal regulations governing the state's administration of the 1995 CDBG program and section 90-1-103, MCA, require the Department to adopt rules to implement the program.

3. Interested persons may submit their data, views or arguments concerning the proposed rule in writing to the Local Government Assistance Division, Department of Commerce, Capital Station, Helena, Montana 59620, to be received no later than 5:00 p.m., July 13, 1995.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620 to be received no later than 5:00 p.m., July 13, 1995.

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

Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25.

LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 5, 1995.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Teacher Certification	)	NOTICE OF PROPOSED AMENDMENT OF ARM 10.57.218 RENEWAL UNIT VERIFICATION
	)	NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On July 24, 1995 the Board of Public Education proposes to amend 10.57.218 Renewal Unit Verification.

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

10.57.218 RENEWAL UNIT VERIFICATION (1) ~~To verify the renewal units have been earned, certificate holders must submit:~~

~~(a) College transcript, or~~

~~(b) Certificate of completion, or~~

~~(c) Activity documentation form.~~

~~(2) An individual renewal unit summary sheet must accompany all applications for certificate renewal.~~

Applications to the office of public instruction for certificate renewal will be accompanied by verification of meeting the professional development requirements through:

(a) official documentation (transcripts or grade reports) from an accredited college or university, or

(b) a summary document, provided by the office of public instruction, itemizing the required number of renewal units for which the applicant submits copies of completed renewal unit registration forms.

~~(3)~~(2) Certificate holders not currently under contract in Montana may use an approved provider of renewal unit activities or apply directly to the certification division, office of public instruction, for professional development content other than credit from an accredited college or university ~~will be treated in the same manner as a contracted certificate holder~~.

AUTH: Sec. 20-4-102 MCA; IMP, Sec. 20-4-108 MCA

3. The board is proposing this amendment to the rule in order to bring this section in line with the current changes adopted by the board in the Montana Administrative Register issue 8, April 27, 1995 for the certification application procedures.

4. Interested parties may submit their data, views or arguments in writing to Wilbur Anderson, Chairman, Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than July 21, 1995.

5. If a person who is directly affected by the proposed amendment wishes to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing along with any written comments they have to Wilbur Anderson of the Board of Public Education, 2500 Broadway, Helena, MT 59620, no later than July 21, 1995.

6. If the board receives request for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from 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 the those directly affected has been determined to be 51 as there are 511 active school districts in Montana.

WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 6/5/95.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of Rule I, and the amendment of Rules 11.2.203, 11.2.214, 11.2.215 and 11.5.609 pertaining to fair hearings and review of records by the department director.	))))))	NOTICE OF PROPOSED ADOPTION OF RULE I, AND THE AMENDMENT OF RULES 11.2.203, 11.2.214, 11.2.215 AND 11.5.609 PERTAINING TO FAIR HEARINGS AND REVIEW RECORDS BY THE DEPARTMENT DIRECTOR

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 17, 1995, the Department of Family Services proposes to adopt Rule I and amend Rules 11.2.203, 11.2.214, 11.12.215 and 11.5.609 pertaining to fair hearings and review of records by the department director.

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

I. DAY CARE FACILITY AND BLOCK GRANT BENEFITS, HEARING (1) A person aggrieved by an adverse action in connection with day care facility licensing or registration, or day care block grant benefits may request a hearing as provided in ARM 11.2.203.

AUTH: Sec. 2-4-201 and 52-2-704 MCA
IMP: Sec. 2-4-201(2) and 52-2-726 MCA

11.2.203 OPPORTUNITY FOR HEARING (1) Where specified by department rule covering proceedings for contesting adverse actions, ~~A~~ a claimant or provider who is aggrieved by an adverse action of the department shall be afforded the opportunity for a hearing as provided in this chapter.

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

AUTH: Sec. 2-4-201 and 52-1-103 MCA
IMP: Sec. 2-4-201(2) and 52-1-103 MCA

11.2.214 NOTICE OF PROPOSAL FOR DECISION, FILING AND SERVICE OF BRIEFS, AND DIRECTOR REVIEW OF PROPOSAL FOR DECISION (1) remains the same.

(2) If a party disagrees with the proposal for decision, a request for review by the director may be made in writing to the Director, Department of Family Services, P.O. Box 8005, Helena, Montana 59604. The request must be received by the director within fifteen (15) days of the mailing of the proposal for decision. The director may designate an appropriate individual to conduct the review.

(2)(a) through (3) remain the same.

(4) If a request is received within the specified time period, the director or the director's designee shall consider the proposal for decision, the exceptions filed, briefs or oral argument presented and the record of the hearing, and shall:

(a) notify the claimant and any other party in writing of the director's decision; and

(b) notify the claimant and or other party of his right to judicial review.

(5) The director's or the designee's decision is the final agency decision.

AUTH: Sec. 2-4-201 and 52-1-103 MCA
IMP: Sec. 2-4-201(2) and 52-1-103 MCA

11.2.215 JUDICIAL REVIEW (1) A party who is aggrieved by a final decision of the director or the director's designee may seek judicial review of that decision by filing a petition in district court within 30 days after receipt of notice of the final decision as provided in section 2-4-702, MCA.

(2) A final decision under this chapter is binding on the department and its units and the department or a subunit of the department may not seek judicial review of a final decision.

AUTH: Sec. 2-4-201 and 52-1-103 MCA
IMP: Sec. 2-4-201(2) and 52-1-103 MCA

11.5.609 REQUEST FOR REVIEW AND AMENDMENT OF THE RECORD (1)(a) through (c) remain the same.

(d) If the subject is dissatisfied with the decision of the regional administrator or his/her designee(s), 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). The director may designate an appropriate individual to conduct the review.

(e) In making a determination regarding a request for an amendment to the record, the director or the director's designee 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.

AUTH: Sec. 41-3-208, 52-3-205 and 2-4-201 MCA
IMP: Sec. 41-3-205, 52-3-205 and 2-4-201 MCA

3. The Director of the Department of Family Services currently bears responsibility for reviews under the rules. The new Director of the Department of Public Health and Human Services should have the option of delegating the reviews to avoid delays and to utilize expertise.

The procedures in chapter 2 should only apply to programs transferred to the Department of Public Health and Human

Services from the Department of Family Services. The rules should be amended and Rule I should be adopted to clarify this point. Rule I is similar to existing rules referring back to ARM 11.2.203. See, e.g., ARM 11.12.110 covering fair hearings in regard to youth care facility licensing, ARM 11.16.139 covering fair hearings for adult foster care homes, ARM 11.18.121 covering fair hearings for community homes for persons with developmental disabilities.

4. On July 1, 1995, pursuant to SB 345, the Department of Family Services is abolished. The Department of Public Health and Human Services succeeds to the functions of the Department of Family Services in regard to review of contested cases and review of records under chapter 5. Pursuant to Section 2-15-136, MCA, references to the Department of Family Services in documents are applicable to the new department effective July 1, 1995.

5. Interested persons may submit their data, views or arguments to the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than July 14, 1995.

6. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than July 14, 1995.

7. If the Department of Family Services receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be more than 25 based on the number of persons directly affected by review of contested cases and review of records under chapter 5.

DEPARTMENT OF FAMILY SERVICES

Dave Mathes for

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State June 5, 1995.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 11.12.104 pertaining to the minimum requirements for application for youth care facility licensure.	)))))	NOTICE OF PROPOSED AMENDMENT OF RULE 11.12.104 PERTAINING TO THE MINIMUM REQUIREMENTS FOR APPLICATION FOR YOUTH CARE FACILITY LICENSURE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 17, 1995, the Department of Family Services proposes to amend Rule 11.12.104 pertaining to the minimum requirements for application for youth care facility licensure.

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

11.12.104 YOUTH CARE FACILITY, LICENSES (1) through (6) remain the same.

(7) Any applicant who has received services for substantiated abuse or neglect of a child as defined in ARM 11.5.602~~(1)(m)~~ shall be denied a foster care license unless special approval is given by the regional administrator after careful review of extenuating circumstances which justify the issuance of a restricted license.

(8) remains the same.

AUTH: Sec. 41-3-1103, 41-3-1142, 52-2-211, MCA
IMP: Sec. 41-3-1103, 41-3-1142, 52-2-211, MCA

3. Due to a re-arrangement of the definitional subsections within ARM 11.5.609, ARM 11.12.104 incorrectly references 11.5.609(1)(m) for the definition of substantiated abuse or neglect. The department proposes to delete any specific sub-sectional reference. Omitting subsection references to avoid the need for amendments has been recommended.

4. On July 1, 1995, pursuant to SB 345, the Department of Family Services is abolished. The Department of Public Health and Human Services succeeds to the functions of the Department of Family Services in regard to foster care support services. Pursuant to Section 2-15-136, MCA, references to the Department of Family Services in documents are applicable to the new department effective July 1, 1995.

5. Interested persons may submit their data, views or arguments to the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than July 14, 1995.

6. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than July 14, 1995.

7. If the Department of Family Services receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be more than 25 based on the frequency of special exceptions which have been requested of regional administrators.

DEPARTMENT OF FAMILY SERVICES

Doug Matthys for
Hank Hudson, Director

John Melcher
John Melcher, Rule Reviewer

Certified to the Secretary of State June 5, 1995.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 11.7.306 pertaining to the right to a fair hearing in regard to foster care support services	NOTICE OF PROPOSED AMENDMENT OF RULE 11.7.306 PERTAINING TO THE RIGHT TO A FAIR HEARING IN REGARD TO FOSTER CARE SUPPORT SERVICES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 17, 1995, the Department of Family Services proposes to amend Rule 11.7.306 pertaining to the right to a fair hearing in regard to foster care support services.

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

11.7.306 RIGHT TO FAIR HEARING (1) Any person denied substitute care placement or foster care maintenance payments by the department or against whom a foster care overpayment recovery is demanded by the department may request a hearing as provided in ARM 11.2.203 ~~within 90 days of the notice of denial~~.

AUTH: Sec. 2-4-201; 41-3-1103, MCA. IMP, Sec. 41-3-302; 41-3-1103 MCA.

3. The current rule conflicts with the rule it references, ARM 11.2.203. ARM 11.2.203 requires submittal of a request for hearing within 10 days. The department proposes to eliminate the conflict by deleting the language providing for the 90 day period. The department intends that the 10 day period apply by the reference to ARM 11.2.203.

4. On July 1, 1995, pursuant to SB 345, the Department of Family Services is abolished. The Department of Public Health and Human Services succeeds to the functions of the Department of Family Services in regard to foster care support services. Pursuant to Section 2-15-136, MCA, references to the Department of Family Services in documents are applicable to the new department effective July 1, 1995.

5. Interested persons may submit their data, views or arguments to the proposed amendment in writing to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than July 14, 1995.

6. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written

request for a public hearing and submit such request, along with any written comments, to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than July 14, 1995.

7. If the Department of Family Services receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be more than 25 based on the number of persons directly affected by adverse actions and times for requesting hearings.

DEPARTMENT OF FAMILY SERVICES

Doug Mattheis for
Hank Hudson, Director

John Melcher
John Melcher, Rule Reviewer

Certified to the Secretary of State June 5, 1995.

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA
[Effective July 1, 1995, the Board of Environmental Review]

In the matter of the amendment of rule 16.8.1907 increasing fees for the smoke management program.) NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULE

(Air Quality)

To: All Interested Persons

1. On July 21, 1995, at 8:00 a.m., or as soon thereafter as it may be heard, the board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rule.

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

16.8.1907 AIR QUALITY OPEN BURNING FEES (1)-(3) Remain the same.

(4)(a) The major open burning air quality permit application fee shall be based on the actual or estimated actual amount of air pollutants emitted by the applicant in the last calendar year during which the applicant conducted open burning pursuant to an air quality open burning permit for major open burning sources, as required under ARM 16.8.1304 (Major Open Burning Source Restrictions). The fee shall be the greater of the following, as adjusted by any amount determined pursuant to (b), below:

(i) a fee calculated using the following formula:
tons of total particulate emitted in the previous appropriate calendar year,
multiplied by ~~$9.09~~ 9.75; plus
tons of oxides of nitrogen emitted in the previous appropriate calendar year,
multiplied by ~~$2.27~~ 2.44; plus
tons of volatile organic compounds emitted in the previous appropriate calendar year,
multiplied by ~~$2.27~~ 2.44; or

(ii) a minimum fee of $250.

(b) Remains the same.

AUTH: 75-2-111, MCA; IMP: 75-2-211, 75-2-220, MCA

3. The board is proposing these amendments to the rule because they are necessary to meet the requirements of 75-2-220, MCA, enacted by Ch. 502 of the 1993 Legislature, that permit application fees be set annually to cover the DHES's reasonable direct and indirect costs of operating the permit program. [Note: DHES' duties under the Clean Air Act of Montana will be

transferred to the new Department of Environmental Quality as of July 1, 1995.] The amendments produce the fees calculated by the department's Air Quality Division as necessary to produce the budget it needs to operate a smoke management/open burning permit program adequate to protect the public from the impacts due to smoke from prescribed burning. The total budget for FY96 is $36,008.18, including $19,133.32 in personnel services and $16,874.86 in operating expenses. This represents a 2.36% increase from the FY95 budget of $35,179.57. The budget increase is based upon increases of $11.50 in personnel services and $817.11 in operating expenses charged to the department. Fees are based upon the smoke management group member's past year's emissions. A credit is extended for members who contribute in-kind services. Last year, there was a decrease in the total emissions by members who did not earn in-kind credit. To meet this year's budget, it is necessary to increase the cost per ton for particulate from $9.09 to $9.75 and to increase the cost per ton for oxides of nitrogen and volatile organic compounds from $2.27 to $2.44.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yolanda Fitzsimmons, Department of Health and Environmental Sciences [Department of Environmental Quality after June 30, 1995], P.O. Box 200901, Helena, MT 59620-0901, no later than 5:00 p.m. on July 14, 1995.

5. Will Hutchison has been designated to preside over and conduct the hearing.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State June 5, 1995 .

Reviewed by:

Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF JUSTICE

In the matter of the proposed adoption of new rules I, II, III, IV, V, VI, VII and VIII specifying the procedure for review, approval, supervision and revocation of cooperative agreements between health care facilities or physicians and the issuance and revocation of certificates of public advantage.	NOTICE OF PROPOSED ADOPTION OF NEW RULES PERTAINING TO PROCEDURES FOR COOPERATIVE AGREEMENTS BETWEEN HEALTH CARE FACILITIES OR PHYSICIANS AND THE ISSUANCE AND REVOCATION OF CERTIFICATES OF PUBLIC ADVANTAGE. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On July 17, 1995, the Department of Justice proposes to adopt new rules specifying the procedure for review, approval, supervision and revocation of cooperative agreements between health care facilities and the issuance and revocation of certificates of public advantage.

2. The proposed new rules provide as follows:

RULE I DEFINITIONS (1) "Access to health care" means the financial, temporal, and geographic availability of health care to individuals who need it.

(2) "Consolidation" means a transaction whereby two or more health care facilities or physician entities combine so as to form a new entity and the previous entities are dissolved.

(3) "Costs" or "health care costs" means the amount paid by consumers or third party payers for health care services or products.

(4) "Department" means the Department of Justice.

(5) "Merger" means a transaction by which ownership or control over substantially all of the stock, assets or activities of one or more health care facilities or physician entities is placed under the control of another facility or entity.

(6) "Health care facility," "certificate of public advantage," "cooperative agreement," and "agreement" have the meanings specified in Sec. 19, Ch. 378, Mont. L. 1995.

(7) "Person" means an individual or entity.

(8) "Physician" means a person licensed under Title 37, ch. 3, MCA, to practice medicine in the state of Montana.

AUTH: Sec. 50-4-612, MCA
IMP: Sec. 50-4-601 through 50-4-612, MCA

RULE II APPLICATION PROCEDURE (1) Health care facilities and physicians seeking a certificate of public advantage must apply to the department in writing and must include the following information in the application:

(a) a descriptive title;
(b) a table of contents;
(c) the names of each party to the application and the address of the principal business office of each party;
(d) the name, address, and telephone number of the persons authorized to receive notices and communications with respect to the application;
(e) a verified statement by a responsible officer of each party to the application attesting to the accuracy and completeness of the enclosed information;
(f) information relating to the proposed cooperative agreement, merger, or consolidation, including, if applicable:
(i) a description of the proposed agreement or transaction, including a list of any services or products that are the subject of the proposed agreement or transaction;
(ii) a description of any consideration passing to any person under the agreement or transaction, including the amount, nature, source, and recipient;
(iii) a description of each party's contribution of capital, equipment, or other value to the transaction, as well as each party's nonmonetary involvement in the arrangement, if any;
(iv) a description and summary of the financial performance of each party to the transaction for the preceding five years;
(v) identification of any tangential services or products associated with the services or products that are the subject of the proposed agreement or transaction;
(vi) a description of the geographic territory involved in the proposed agreement or transaction;
(vii) if the geographic territory described in item (vi) is different from the territory in which the applicants have engaged in the type of business at issue over the last five years, a description of how and why the geographic territory differs;
(viii) identification of all products or services that a substantial share of consumers would consider substitutes for any service or product that is the subject of the proposed agreement or transaction;
(ix) identification of whether any services or products of the proposed agreement or transaction are currently being offered, capable of being offered, utilized, or capable of being utilized by other providers or purchasers in the geographic territory described in item (vi);
(x) identification of the steps necessary, under current market and regulatory conditions, for other parties to enter the territory described in item (vi) and compete with the applicants;
(xi) a description of the previous history of dealings between the parties to the application;
(xii) a detailed explanation of the projected effects, including expected volume, change in price, and increased revenue, of the agreement or transaction on each party's current businesses, both generally as well as the aspects of the

business directly involved in the proposed agreement or transaction;

(xiii) the parties' estimate of their respective present market shares and that of others affected by the proposed agreement or transaction, and projected market shares after implementation of the proposed agreement or transaction;

(xiv) identification of business plans, reports, studies, or other documents that discuss each party's projected performance in the market, business strategies, competitive analyses and financial projections;

(xv) a description of the parties' performance goals, including quantitative standards for achieving the objectives of:

(A) lower health care costs; or

(B) higher quality health care or greater access to health care in Montana without any undue increase in health care costs;

(xvi) a description of how the anticipated efficiencies, cost savings and other benefits from the transaction will be passed on to the consumers of health care services;

(xvii) a description of the net efficiencies likely to result from the transaction, including an analysis of anticipated cost savings resulting from the transaction and the increased costs associated with the transaction;

(xviii) a statement of whether competition among health care providers or health care facilities will be reduced as a result of the proposed agreement or transaction; whether there will be adverse impact on quality, availability, or cost of health care; whether the projected levels of cost, access to health care, or quality of health care could be achieved in the existing market without the proposed agreement or transaction; and, for each of the above, an explanation of why or why not;

(xix) a description of why the anticipated cost savings, efficiencies and other benefits from the transaction are not likely to result from existing competitive forces in the market; and

(xx) if information is not supplied under any of the above items, an explanation of why the item is not applicable to the transaction or to the parties.

(g) A copy of any proposed cooperative agreement or other merger or consolidation document must be attached to the application.

(h) A copy of any documents, reports, studies, data compilations and other materials supporting the applicants' response to the requirements of this subsection must be attached to the application.

(2) The department may waive any of the requirements in subsection (1) that it finds, due to the nature of a particular cooperative agreement or transaction, inapplicable to its analysis of the agreement or transaction.

(3) The application and accompanying documents are public documents, except for any trade secrets, as defined by 30-14-402(4), MCA, or information otherwise required by law to be kept confidential. If the applicants believe the application

contains any information which must be kept confidential, such information must be clearly identified and duplicate applications must be submitted, one application with full information for the department's use and one redacted application available for release to the public. A written statement must accompany the application, explaining the legal basis for protection of any information as confidential.

(4) The time for action by the Department as prescribed in 50-4-603(3), MCA, does not begin to run until the application is determined by the Department to be complete. The Department shall act promptly to determine completeness of the application and may request any additional documents or information from the applicants necessary to make the application complete.

(5) Once the application is complete, the Department shall cause notice of the application to be published in the Special Notices section of the Montana Administrative Register and sent to any person who has requested to be placed on a list to receive notice of applications. All costs associated with publication of notice shall be borne by the applicants. A person may be placed on a list to receive notice by sending his or her name and address to: Attorney General's Office, 215 North Sanders, P.O. Box 201401, Helena, Montana, 59620-1401.

(6) Written comments with respect to the application will be accepted by the Department within 30 days after the notice is published. Persons submitting comments must provide a copy of the comments to the applicants. The applicants may respond in writing to the comments within 20 days after the deadline for submitting comments. The applicants must send a copy of their response to the person submitting the comment.

AUTH: Sec. 50-4-612, MCA
IMP: Sec. 50-4-601 through 50-4-612, MCA

RULE III PROCEDURE FOR REVIEW OF APPLICATIONS

(1) Following the close of the written comment period, the department shall schedule a public hearing on the application. If written comments have been submitted in opposition to the agreement or transaction, the hearing must be held within the geographic territory covered by the proposed agreement or transaction. The hearing must be held no later than 60 days after the application is determined by the Department to be complete. Notice of the hearing shall be mailed to the applicant and to all persons who have submitted written comments on the application. Notice also shall be published in the form prescribed by the department no later than 10 days before the hearing. The hearing shall be recorded in a manner suitable for transcription, but need not be transcribed unless the department's decision is appealed pursuant to 50-4-610, MCA. Costs associated with preparation of the transcript shall be paid by the party appealing the department's decision, unless otherwise ordered by the court.

(2) In its review of the application, the department may consider: the application and any supporting documents submitted by the applicants; the agreement; any written comments submitted by any person, and any written response by the applicants; any

comments, written or oral, submitted at the public hearing; and any other material bearing on whether the proposed agreement or transaction meets the objectives of lower health care costs or improved access to health care or higher quality health care without any undue increase in health care costs.

(3) The Department may seek advice and consultation from the Department of Public Health and Human Services, the state Health Care Advisory Council, and the Commissioner of Insurance.

AUTH: Sec. 50-4-612, MCA
IMP: Sec. 50-4-601 through 50-4-612, MCA

RULE IV STANDARDS FOR CERTIFICATION (1) In evaluating the potential benefits of a cooperative agreement, merger or consolidation, the department shall consider whether one or more of the following benefits may result from it:

(a) enhancement of the quality of health care provided to residents of Montana;

(b) preservation of health care facilities in geographical proximity to the communities traditionally served by those facilities;

(c) gains in the cost efficiency of services provided by the health care facilities or physicians involved;

(d) improvements in the utilization of health services and equipment;

(e) provision of services that would not otherwise be available;

(f) avoidance of duplication of health care resources; or

(g) any other manifestation of lower health care costs or of improved access to health care or higher quality health care as a result of the agreement or transaction.

(2) In evaluating any disadvantages likely to result from the agreement or transaction, the department may consider the following factors:

(a) adverse impact on quality, availability, or cost of health care services to consumers;

(b) adverse impact on the ability of health care payers to negotiate optimal payment and service arrangements with health care providers;

(c) reduction in competition among health care providers or other persons furnishing goods or services to, or in competition with, health care facilities or physicians that is likely to result directly or indirectly from the cooperative agreement, merger or consolidation; and

(d) the availability of arrangements less restrictive to competition that achieve the same benefits.

(3) In making determinations as to availability of or access to health care, the department may consider:

(a) the extent to which the utilization of needed health care services or products by the population to be served by the agreement or transaction is likely to increase or decrease;

(b) the extent to which the proposed agreement or transaction is likely to make available a new and needed service or product to a certain geographic area;

(c) the extent to which the proposed agreement or transaction is likely to otherwise make health care services or products more financially or geographically available to persons who need them; and

(d) any other factors bearing upon the availability of or access to health care.

(4) In making determinations as to quality, the department may consider the extent to which the proposed agreement or transaction is likely to:

(a) decrease morbidity and mortality;

(b) result in faster convalescence;

(c) result in fewer hospital stays;

(d) permit providers to attain needed experience or frequency of treatment, likely to lead to better outcomes;

(e) increase consumer satisfaction; and

(f) have any other features likely to improve or reduce the quality of health care.

(5) The department may condition approval on a modification of all or part of the proposed agreement or transaction to eliminate any restriction on competition that is not reasonably related to the goals of reducing costs or improving access to health care or quality of health care. The department may also establish terms and conditions for approval that are reasonably necessary to protect against abuses of private economic power, to ensure that the agreement or transaction is appropriately supervised and regulated by the State, or otherwise determined appropriate to best achieve lower health care costs, improved access to health care or higher quality health care.

(6) The department shall maintain on file all cooperative, merger and consolidation agreements for which a certificate of public advantage remains in effect. Any party to a cooperative agreement or transaction who terminates the agreement shall file a notice of termination with the Department within 30 days after termination.

AUTH: Sec. 50-4-612, MCA
IMP: Sec. 50-4-601 through 50-4-612, MCA

RULE V RECONSIDERATION (1) A request for reconsideration by a party whose application for a certificate of public advantage has been denied by the department must include a detailed statement of grounds upon which reconsideration is sought.

(2) Upon timely submittal of a request for reconsideration, the department shall publish notice of the public hearing required by 50-4-604, MCA the Montana Administrative Register. The public hearing must be held within the geographic territory covered by the proposed agreement or transaction. The hearing shall be recorded stenographically or electronically.

AUTH: Sec. 50-4-612, MCA
IMP: Sec. 50-4-601 through 50-4-612, MCA

RULE VI ACTIVE SUPERVISION (1) Parties to an approved cooperative agreement, merger or consolidation must submit, in accordance with the provisions of this rule, progress reports that provide information to enable the department to evaluate the impact of the agreement or transaction on the availability, cost effectiveness, quality, and delivery of health care services and to determine whether the parties have complied with its terms and with the order of the department approving the agreement or transaction.

(a) The first progress report must be submitted on or before the first anniversary date of issuance of the certificate of public advantage. Thereafter, progress reports must be submitted at the end of the first quarter following the end of the parties' fiscal year. Only one report must be submitted each year unless the department requests in writing the submission of additional reports.

(b) Each progress report must contain the following information:

(i) a narrative providing a qualitative and quantitative assessment of progress in meeting the objectives identified as the basis for issuance of the certificate, including references to reports produced by the parties in the normal course of business that provide statistical support for each assessment;

(ii) if the objective(s) of the certificate of public advantage is (are) not being met or progress cannot be demonstrated, a narrative explanation as to why the objective(s) is (are) not being met or there is no progress, together with the planned corrective actions and a proposed timetable for meeting the objective(s) of the certificate of public advantage; and

(iii) a narrative analysis of the benefits and disadvantages resulting from the implementation of the cooperative agreement, including benefits or disadvantages not previously identified.

(2) The department may require specific data relating to cost, access to health care, and quality of health care, or any other information it determines to be reasonably necessary to its inquiry, and may conduct such audits of the books, records, and other documents pertaining to the agreement or transaction and of the operations under the agreement, merger, or consolidation as the Department determines to be reasonably necessary. Any such audit shall be for the purpose of evaluating whether any terms and conditions imposed by the department have been met or to determine whether grounds exist for revocation under 50-4-609, MCA. The expense of the audit must be borne by the certificate holder(s). The audit report shall be considered confidential and shall not be disclosed by the department unless confidentiality is waived by the parties or disclosure is required by order of a district court after notice to the certificate holder(s).

(3) The department may solicit and consider public comment on any progress report required by this rule. The Department may request additional oral or written information from the certificate holder(s) or from any other source.

(4) The department may request additional information from the certificate holder(s) at any time during the implementation of the cooperative agreement, merger or consolidation. The parties shall respond within 30 days to any additional requests for information requested by the Department.

(5) If the department determines that the terms and conditions upon which a certificate has been issued are not being satisfied or that the agreement, merger, or consolidation is not meeting the objective(s) identified as the basis for the department's issuance of the certificate, it may impose additional terms and conditions determined necessary to effectuate the objectives of the certificate.

AUTH: Sec. 50-4-612, MCA
IMP: Sec. 50-4-601 through 50-4-612, MCA

RULE VII REVOCATION OF CERTIFICATES (1) The department may revoke a certificate of public advantage if it determines that:

(a) its approval of the cooperative agreement, merger or consolidation was procured by material fraud or misrepresentation;

(b) the parties have failed, in a material respect, to comply with the terms and conditions of the certificate granted by the Department and have failed, to the satisfaction of the department, to cure their noncompliance;

(c) the agreement or transaction is not resulting in lower health care costs or in improved access to health care or higher quality health care without undue increase in health care costs;

(d) the agreement or transaction has not and is not likely to substantially achieve the improvements in cost, access to health care, or quality of health care identified in the department's decision as the basis for its approval of the agreement, merger or consolidation; or

(e) the conditions in the marketplace have changed to such an extent that competition would promote reductions in cost and improvements in access and quality better than does the agreement or transaction at issue. In order to revoke on the basis that conditions in the marketplace have changed, the department's order must identify specific changes in the marketplace and articulate why those changes warrant revocation.

(2) The department shall not revoke a certificate of public advantage pursuant to [Rule VII(1)(e)] if it is reasonably possible for the parties to modify the agreement or transaction to accommodate the effect of any changed circumstances and achieve lower costs or improved access to health care or higher quality health care without any undue increase in health care costs.

AUTH: Sec. 50-4-612, MCA
IMP: Sec. 50-4-601 through 50-4-612, MCA

RULE VIII FEES (1) Fees for application for a certificate of public advantage are as follows:

(a) Payment of an initial application fee must accompany the filing of the application and is non-refundable. The initial fee is:

(i) if the application is for approval of a merger or consolidation between health care facilities or physician entities, or a joint venture exceeding $750,000 in value, one-quarter of one percent (.0025%) of the combined gross revenues of the applicants, as calculated from the most recently completed fiscal year of each applicant, provided that the fee shall not be less than $1,000 or more than $5,000;

(ii) if the application is for approval of a cooperative agreement that does not involve a merger or consolidation, or seeks approval of a joint venture not exceeding $750,000 in value, $750.

(b) In addition to the initial application fee, the applicants for a certificate of public advantage shall be jointly and severally obligated to pay the actual costs and expenses of the department incurred in conducting its review of the application, including but not limited to the costs associated with retention of any accounting, technical, or legal assistance determined necessary by the department.

(c) Within 30 days of receiving the completed application, the department shall notify the applicants of the department's anticipated expenses in connection with the review of the application. The applicants must pay the department's anticipated costs within 30 days of receiving the department's notice or the application will be deemed withdrawn. The applicants are liable for payment of all actual expenses incurred by the department, notwithstanding the department's estimate of its anticipated expenses, but if additional expenses will be incurred in excess of 20% beyond the department's estimate, it shall first give the applicants the opportunity to withdraw the application. If the application is withdrawn or deemed withdrawn, the applicants are jointly and severally liable for any costs incurred by the department up to and including the date of withdrawal of the application. If the department's anticipated expenses exceed its actual expenses, the department shall refund to the parties all excess amounts paid except the initial application fee.

(d) No decision regarding the issuance of a certificate of public advantage will be announced until the applicants have paid in full all application fees required under this section.

(2) Each annual report submitted under [Sec. 6, Ch. 526, L. 1995] must be accompanied by an application fee in the following amount:

(a) $500 if the certificate of public advantage issued by the department did not involve a merger or consolidation, or was issued for approval of a joint venture not exceeding $750,000 in value; or

(b) if the certificate of public advantage was issued for a merger or consolidation, or a joint venture exceeding $750,000 in value, an amount equal to one-eighth of one percent (.00125%)

of the combined gross revenues of the applicants, as calculated from the most recently completed fiscal year of each applicant, provided that the fee shall not be less than $500 or more than $1,500.

(c) If the department incurs actual expenses in its review of the report, the certificate holder(s) are jointly and severally obligated to pay all actual expenses in the manner prescribed in subsection (1).

AUTH: Sec. 7, Ch. 526, L. 1995
IMP: Ch. 526, L. 1995, sec. 50-4-601 through 50-4-612, MCA

3. The rules are necessary to meet the legislature's intent to provide immunity from the antitrust laws of the United States and the State of Montana to health care facilities and physicians who enter into cooperative agreements that will result in lower health care costs or in improved access to health care or higher quality health care without any undue increase in health care costs. The rules implement 50-4-601 through -612, MCA, and Chs. 378 and 526, L. 1995, which express the Montana legislature's intent that supervision and control over the implementation of cooperative agreements substitute state regulation of health care facilities and physicians for competition between the facilities or physicians. These rules will provide the supervision and control required by the legislature.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Joseph P. Mazurek, Attorney General, 215 North Sanders, P.O. Box 201401, Helena, Montana, 59620-1401, to be received no later than July 13, 1995.

5. If a person who is directly affected by the proposed adoption wishes to submit his or her data, views and arguments orally or in writing at a public hearing, s/he must make written request for a hearing and submit this request along with any written comments s/he has to Joseph P. Mazurek, Attorney General, 215 North Sanders, P.O. Box 201401, Helena, Montana, 59620-1401. The request and comments must be received no later than July 13, 1995.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 200 persons based on the fact

that there are 450 licensed health care facilities and 1,588 licensed physicians in Montana.

By: _____
CHRIS D. TWEETEN
Chief Deputy Attorney General

_____
(Rule Reviewer)

Certified to the Secretary of State June 5, 1995.

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

In the Matter of Proposed Repeal of Existing Rules and Adoption of New Rules Pertaining to Telephone Extended Area Service.	))))	NOTICE OF PUBLIC HEARING ON REPEAL OF RULES 38.5.1301 THROUGH 38.5.1303 AND ADOPTION OF NEW RULES I THROUGH VI

TO: All Interested Persons

1. On Tuesday, August 29, 1995 at 9:00 a.m., and continuing from day to day until completed, in the Bollinger Room, Public Service Commission offices, 1701 Prospect Avenue, Helena, Montana, the PSC will hold a hearing to consider the proposals identified in the above titles and described in the following paragraphs, all related to telephone extended area service (EAS).

2. The rules proposed for repeal are as follows:

38.5.1301 DEFINITION AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-03-3-1, MCA

38.5.1302 CONDITIONS FOR APPROVAL AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-3-301, MCA

38.5.1303 PROCEDURE AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-3-301, MCA

The text of these rules can be found at pages 38-661 through 38-663 of the Administrative Rules of Montana.

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

RULE I. DEFINITIONS (1) "Extended area service" (EAS) means a calling service between two exchanges or among exchanges within a region, provided as local service at local exchange rates or at an increment to local exchange rates rather than at toll prices.

(2) "Exchange-to-exchange EAS" means EAS between two exchanges, generally when outside a designated region.

(3) "Petitioned exchange" means the exchange to which another exchange petitions for EAS, or when consideration of EAS is other than by petition, the larger exchange (based on the number of main billed accounts), or in the context of a region, the common exchange or, if none, the largest exchange.

(4) "Petitioning exchange" means the exchange petitioning for EAS with another exchange, or when consideration of EAS is other than by petition, the smaller exchange.

(5) "Region" means an area wherein more than one exchange share a community of interest with a common exchange or wherein successful, practical, or equitable EAS necessitates intermediate, intervening, or area exchanges be considered as required exchanges.

(6) "Regional EAS" means EAS among exchanges within a designated region.

(7) "Required exchange" means an exchange that is not petitioned or petitioning, but is likely to be indispensable to successful, practical, and equitable EAS between the petitioned and petitioning exchange or among exchanges within a region. AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-3-301, MCA

RULE II. EAS -- GENERAL (1) To qualify for EAS the exchanges in an exchange-to-exchange EAS must be adjoining. Exchanges within a designated region must be contiguous to the region (within or adjoining at some point).

(2) When implemented, exchange-to-exchange or regional, EAS shall be mandatory (not optional) and shall be two way between the affected exchanges.

(3) These rules do not affect the status of any existing EAS program, but will be applied to expansion or modification of such programs, exchange-to-exchange and regional. AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-3-301, MCA

RULE III. EAS PROCEDURE -- GENERAL (1) The commission will consider commencing an EAS proceeding upon receipt of:

(a) a customer application for EAS accompanied by a customer petition signed by at least 30 percent of the qualifying customers within the petitioning exchange;

(b) an application by a commission-regulated telephone company; or,

(c) reasonable findings following a commission-initiated investigation.

(2) The customer petition shall be on a petition form approved by the commission, which shall include information deemed advisable and informative to the petitioners in the commission's discretion. Qualifying signatures shall be limited to one signature per main billed account and shall be accompanied by the printed name, address, and phone number of each person signing.

(3) EAS proceedings will be conducted in two phases, as described in [Rules V and VI, below], and, when required pursuant to the rules, as contested cases under Title 2, chapter 4, MCA (MAPA) and ARM Title 38, chapter 2 (commission procedural rules).

(4) Following proceedings the commission will determine whether or not the proposed EAS arrangement is in the public interest (based on the record, applicable law, and proper judgment and discretion of the commission) and issue a final order on the matter.

(5) When deemed necessary by the commission the commission may, on its own motion or the motion of any party to an EAS application or pending EAS docket:

(a) set reasonable limits on the maximum number of EAS requests actively pending before the commission at any one time (based on available resources, including time, and other pertinent factors); and

(b) reasonably prioritize EAS applications and pending EAS dockets for processing (based on past interest expressed to the commission, the overall public interest at stake, and other pertinent factors). AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-3-301, MCA

RULE IV. EAS PROCEDURE -- REGIONS (1) The commission may consider designating an area of exchanges a "region" and, as may be necessary, one or more individual exchanges in the region "required exchanges" when the circumstances so demand, including when:

(a) multiple exchanges share a community of interest with a common exchange;

(b) unsuccessful, impractical, inequitable, or problematic EAS would exist in the absence of designation as a region (including when customer confusion is likely to occur or when overlapping, bridging, or like methods of avoidance of toll charges are possible); or

(c) two or more exchanges are petitioning the same exchange for EAS, one exchange is petitioning two or more exchanges for EAS, a petitioning exchange is contiguous to, or within, a designated region, the petitioned exchange is within a region, or like circumstances or conditions exist.

(2) The designation of an area as a region may also be considered on petition signed by at least 30 percent of the customers within any petitioning exchange or an application by a commission-regulated telephone company.

(3) Designation of an area of exchanges as a region is in the commission's discretion and the commission retains the option to deny EAS to affected individual exchanges if it determines that regional EAS would be contrary to the public interest under the circumstances.

(4) Exchanges within a region need not meet the threshold calling criteria established in (Rule V) with all other exchanges within the region, but:

(a) must meet the criteria with at least one exchange within the region; or

(b) be designated a "required exchange" by the commission.

(5) Except as provided above, regional EAS will be considered under the same procedure and criteria as exchange-to-exchange EAS, with reasonable variation and allowance to accommodate the increase in number of exchanges affected and initial involvement of "required exchanges." AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-3-301, MCA

RULE V. EAS PROCEDURE -- PHASE I, COMMUNITY OF INTEREST DETERMINATION (1) Phase I shall be for determining whether a qualifying community of interest exists between or among exchanges. Upon receipt of proper application or proper find-

ings following a commission investigation, the commission will order the regulated telephone company (or companies) in the exchanges involved to initiate a call usage study, which shall be for the most recent three months for which data is available, to determine calling patterns between or among exchanges. The study must be completed and filed with the commission within 45 days of the commission order (an extension of time may be granted for good cause). In the event that a commission-regulated telephone company applies for EAS the call usage study may be submitted with the application.

(2) A sufficient indication of community of interest between the exchanges will be deemed to exist if, for at least two of the three months studied:

(a) the petitioning exchange averages at least eight calls per main billed account per month to the petitioned exchange; and

(b) more than 50 percent of the customers (based on main billed accounts) in the petitioning exchange make two or more calls per month to the petitioned exchange.

(3) If the study demonstrates a sufficient indication of community of interest its filing shall be accompanied by a statement of the company's (or companies') position on the requested EAS, with rationale for that position, and shall be followed by a commission notice to interested persons with an opportunity to object and request a hearing.

(4) If the study demonstrates no sufficient indication of community of interest its filing may be accompanied by a statement of the company's position and shall be followed by notice to interested persons with an opportunity to object and request a hearing.

(5) If a proposed EAS arrangement does not qualify using the calling pattern in (2), above, the applicant can attempt to establish, through economic, demographic, or other evidence, that a community of interest does exist for the majority of the affected customers. In this regard the commission may consider evidence such as location (relative to exchange boundaries) of schools; medical and emergency services; local government entities; police and fire protection; shopping and service centers; churches; agricultural and civic organizations; and employment centers. In addition argument may be made that the call usage study, although not meeting the threshold criteria, establishes community of interest from another standpoint (e.g., the two-way pattern is significant). If this option to establish community of interest is pursued, the applicant must file a notice of intent to establish community interest by the time fixed for objecting in (4), above.

(6) If objection is received to the call usage study or if a notice of intent to establish community of interest is filed or if the commission determines that it is in the public interest, a contested case will be commenced and a procedural order will be established.

(7) Following the contested case, or following the determination that no contested case is necessary, the commis-

sion will issue an order in phase I stating its determination that:

(a) a sufficient community of interest between the proposed EAS exchanges does not exist or that EAS implementation is not otherwise in the public interest (in which cases the proposed EAS arrangement will not be eligible for petitioning or consideration by the commission again for 24 months); or

(b) a sufficient community of interest exists to justify the consideration of EAS between the exchanges (in which case phase II will commence as provided in [Rule VI]). AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-3-301, MCA

RULE VI. EAS PROCEDURE -- PHASE II, COST ANALYSIS AND RATE DESIGN (1) Phase II shall be for determining cost and revenue impacts and for rate design. When the commission determines that a sufficient community of interest exists to warrant further consideration of EAS, the affected regulated local exchange company (or companies) shall be directed to perform an impact analysis. The company shall submit the results of the impact analysis along with rate design proposals to the commission within 90 days after the commission order commencing phase II, accompanied by all necessary company prefiled testimony, including an estimated implementation plan and schedule.

(2) The impact analysis shall include a determination of all cost and revenue impacts from implementation of the proposed EAS routes. These impacts include:

(a) losses in revenues from toll and other discontinued services such as foreign exchange service;

(b) increases in capital costs resulting from required additions to network capacity;

(c) changes in operating expenses;

(d) changes in interstate division of revenue settlements;

(e) changes in Bell-independent settlements;

(f) losses in switched and special access revenues;

(g) losses in billing and collection revenues; and

(h) changes in switched access allocations.

(3) Proposed EAS rates shall be designed so that EAS implementation is revenue-neutral to the affected local exchange company (or companies). EAS rate design will have both flat and usage-sensitive options. Except when there is a substantial basis for shifting the cost to others, the rates shall be designed to recover the costs of EAS from those customers who directly benefit from EAS. The rate proposals should include a detailed description of the costs considered, how the proposed rates recover the costs of EAS implementation, the extent to which these costs are recovered from the customers who directly benefit, and the extent to which these costs are shifted to other customers.

(4) If the proposed EAS involves two or more companies, the companies shall propose interconnection and compensation arrangements.

(5) Following receipt of the company's (or companies') analysis and prefiled testimony the commission will issue notices as might then be required, providing an opportunity for hearing and a contested case procedural order and schedule.

(6) The commission may, on its own motion or the motion of any party, in its sole discretion, direct that affected customers be surveyed (balloted) by mail to ascertain customer acceptance of the proposed EAS arrangement. The survey form (ballot) must be approved by the commission prior to distribution. The commission may also hold public hearings in the affected areas.

(7) The commission will conclude phase II with an order either approving or denying the proposed EAS arrangement. AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-3-301, MCA

4. Rationale: Repeal of existing EAS rules is reasonably necessary as the existing standards have proved difficult (or impossible) to meet and the proposed new procedures and standards, although sharing some aspects with the existing rules, include substantial modifications, making amendment impractical and cumbersome. Adoption of new rules I through VI is reasonably necessary to provide a realistic opportunity to satisfy the public interest and demand for EAS and establish practical and workable procedures for considering requests for EAS. The definitions (Rule I) are reasonably necessary to clarify the terminology applying. The general provisions and allowance for regions (Rules II, III, and IV) are necessary to preserve the integrity of EAS (existing and future) primarily by preventing situations that are likely to give rise to problems. As examples: the requirement that exchanges be adjoining and that EAS be two-way prevents customer confusion (including for intervening exchanges) and avoidance of toll routes by methods such as signaling (when EAS is one-way); the petition requirements allow for a reasonable indication that EAS is supported at the customer level before resources by all involved are dedicated to further process; the option to allow limitations on the number, a prioritization of pending EAS dockets will allow timely and quality consideration of each case and fairness to those exchanges long interested in or having a pressing need for EAS; and the allowance for regions prevents problems such as customer confusion and the avoidance of toll charges by overlapping or bridging. The two phase procedure (Rules V and VI) is necessary to prevent a dedication of resources by all involved to aspects of an EAS consideration that might not need to be reached if preliminary requirements are not established. The threshold criteria for community of interest is reasonably necessary to ensure that there is a realistic basis for EAS. The optional criteria is reasonably necessary to allow for consideration of EAS in the event that calling patterns miss some important factor. The balloting option is reasonably necessary to allow further public input in cases where the public interest is not entirely clear.

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 (original and 10 copies) to Martin Jacobson, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601 no later than August 29, 1995. However, the PSC requests that written comments be submitted no later than July 13, 1995, for review prior to hearing and any local satellite hearings that may be conducted (will be separately noticed). For that reason the parties to PSC Docket No. 94.2.5 (PSC's Investigation into Extended Area Service) will be directed to file written comments no later than July 13, 1995.

6. The Commission, a Commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, P.O. Box 201703, Helena, Montana 59620-1703, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

NANCY McCAFFREE, Chair

CERTIFIED TO THE SECRETARY OF STATE JUNE 5, 1995.

Reviewed By

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

In the matter of the amendment of rules 46.6.405, 46.6.407, 46.6.408, 46.6.409, 46.6.410, and 46.6.412 and the repeal of rules 46.6.306 and 46.6.411 pertaining to vocational rehabilitation financial need standards	))))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.6.405, 46.6.407, 46.6.408, 46.6.409, 46.6.410, AND 46.6.412 AND THE REPEAL OF RULES 46.6.306 AND 46.6.411 PERTAINING TO VOCATIONAL REHABILITATION FINANCIAL NEED STANDARDS

TO: All Interested Persons

1. On July 5, 1995, at 9:30 a.m., a public hearing will be held in Room 306 of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.6.405, 46.6.407, 46.6.408, 46.6.409, 46.6.410, and 46.6.412 and the repeal of rules 46.6.306 and 46.6.411 pertaining to vocational rehabilitation financial need standards.

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 June 26, 1995, 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 rules as proposed to be amended provide as follows:

46.6.405 VOCATIONAL REHABILITATION PROGRAM: PURPOSE OF FINANCIAL NEED ~~STANDARD~~ DETERMINATION Subsection (1) remains the same.

~~(2) The department will use the financial need standard in determining the eligibility of an individual for any of those vocational rehabilitation services listed in ARM 46.6.306(1)(c) and for calculating in ARM 46.6.411 the amount of financial supplementation to be provided by the department to a client for maintenance.~~

(2) The department may expend monies for the purchase of services for persons who are eligible for vocational rehabilitation services and who the department determines to be in financial need in accordance with these rules.

AUTH: Sec. 53-7-102 and 53-7-315 MCA

IMP: Sec. 53-7-102, 53-7-105, 53-7-108 and 53-7-310 MCA

46.6.407 VOCATIONAL REHABILITATION PROGRAM: DETERMINATION AND USE OF FINANCIAL NEED ~~PRIOR TO SERVICE~~

(1) The financial need of an individual ~~will be~~ is determined ~~within a reasonable time and will be determined~~by the department prior to the provision to an individual of any ~~of those~~ services listed in ~~ARM 46.6.306(2)(c)~~ the individual's IWRP and at least annually thereafter.

(a) The financial need of an individual is redetermined at any time that there is a change in the income and resources available to the individual.

(2) Any person eligible for vocational rehabilitation services is financially responsible for the services specified in the person's IWRP, except to the extent that the department determines that the person has financial need and the department determines that the financial need may be met in part or in whole by the vocational rehabilitation program or by other programs.

(3) Any person eligible for vocational rehabilitation services may receive the following services regardless of financial need:

(a) information and referral;

(b) services necessary for an assessment for vocational rehabilitation eligibility;

(c) counseling and guidance;

(d) placement;

(e) post employment services for which there is no direct expenditure of program funds;

(f) instructional services; and

(g) assessment for rehabilitation technology.

AUTH: Sec. 53-7-102 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-105, 53-7-108 and 53-7-310 MCA

46.6.408 VOCATIONAL REHABILITATION PROGRAM: INFORMATION FOR DETERMINATION OF FINANCIAL NEED

(1) The individual ~~will be~~ is the primary source of the financial information necessary for the determination by the department of ~~his~~ financial need. The department, within its discretion, may obtain information about an individual's financial resources and requirements from any reliable source. ~~All sources of financial information must be documented.~~

(2) An individual's consent ~~will be~~ is necessary for the department to obtain any personal financial information ~~concerning him~~. If an individual is an unemancipated minor, the consent of ~~his~~ the individual's parents or guardian ~~will be~~ is necessary for the department to obtain any personal financial information concerning ~~him or his~~ the individual's parents.

~~(3) Failure of an individual to consent to the release of pertinent financial information to the department necessary for~~

~~determining his financial resources or financial requirements will be considered to be a withdrawal of his application or client status for vocational services.~~

(3) The department does not expend program funds for funding vocational rehabilitation services for a person who fails to provide necessary financial information either directly or by consent to release.

(4) In accordance with departmental policies, any financial or other information obtained with an individual's consent or the consent of ~~his~~ the individual's parents ~~shall be~~ is confidential.

(5) Any financial information relied upon by the department in determining an individual's financial resources or financial requirements ~~shall be~~ is available to ~~him~~ the individual.

(6) The counselor may obtain information about an individual's financial resources and requirements from the individual or any reliable source.

AUTH: Sec. 53-7-102 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-105, 53-7-108 and 53-7-310 MCA

46.6.409 VOCATIONAL REHABILITATION PROGRAM: CALCULATION OF FINANCIAL NEED STANDARD ~~(1) An individual will be considered to have financial need for the purposes of determining eligibility for those services listed in ARM 46.6.306(1)(c), if he has insufficient financial resources by which to meet the estimated cost of subsistence and the cost of necessary vocational rehabilitation services conditioned on financial need.~~

~~(2) The department will use, in calculating the estimated cost of subsistence for an individual, the cost of living standards adopted by the economic assistance division of the department and provided in the AFDC table of assistance standards (see ARM 46.10.403).~~

(1) An individual has financial need if the individual's income and resources and any other income and resources available to the individual are less than the standards in the vocational rehabilitation program's table of income and resource standards.

(2) For individuals whose income and resources are equal to or less than the levels identified in the vocational rehabilitation income and resources table, and for whom comparable benefits are not available otherwise, the department may reimburse the cost of those services listed in the individual's IWRP that must be purchased.

(3) An individual must use unobligated personal income and resources in the purchase of those services listed in the individual's IWRP that must be purchased.

(4) The department hereby adopts and incorporates by reference the vocational rehabilitation income and resource table, dated July 1, 1995, published by the department. A copy

of the table may be obtained through the Department of Social and Rehabilitation Services, Rehabilitation Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: Sec. 53-7-102 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-105, 53-7-108 and 53-7-310 MCA

46.6.410 VOCATIONAL REHABILITATION PROGRAM: INCOME AND RESOURCES ~~(1) The department, in calculating the financial need of an individual will, except as provided otherwise in this rule, identify and consider all consequential financial resources actually available to him, including all financial resources, however derived, of the individual, of the individual's spouse, and, if the individual is an unemancipated minor, the financial resources of his parents.~~

~~(2) The department, in determining the financial resources of an individual, will rely upon only those financial resources of the individual which will actually be available to him during the period that he is receiving the vocational rehabilitation services provided by the department.~~

~~(3) The department, in determining the financial resources of an individual, will utilize the following financial resources:~~

~~(a) current income, including any benefit to which an individual may be entitled by way of pension, compensation for injury or other work loss, or insurance, as well as any in-kind service or renumeration in the case of on-the-job training actually available to him;~~

~~(b) capital assets, including both real and personal property;~~

~~(c) comparable benefits under any program available to a client or members of his family that may be utilized, in whole or in part, to meet the costs of any vocational rehabilitation services or the costs of physical and mental restoration services and maintenance. Consideration need not be given to comparable benefits for the costs of physical and mental restoration services and maintenance, if it would significantly delay the provision of services to a client or put the client at extreme medical risk. When a client is or would be eligible for comparable benefits, those benefits must be utilized for achieving the vocational rehabilitation objectives of the client;~~

~~(d) any other resources which the department within its discretion considers to be significant.~~

~~(4) The department, in determining the financial resources of an individual, will not utilize the following resources:~~

~~(a) an individual's or his parent's home;~~

~~(b) a small business or farm owned by an individual's parents in the case of a minor if that business or farm is determined by the department to be the primary source of income for the parents or is their major asset;~~

~~(c) resources necessary for the support of dependents in accordance with the financial need standard. Dependents are those for whom an individual has assumed financial responsibility or is legally responsible;~~

~~(d) obligations which the individual is required by legal process to pay;~~

~~(e) obligations which, in the discretion of the department, if recognized, would constitute a substantial obstacle to the achievement of the client's IWRP.~~

(1) The department, in calculating the financial need of an individual, identifies and considers all available income and resources of the individual, the individual's spouse and, if the individual is unemancipated, the income and resources of the individual's parents.

(2) Vocational rehabilitation program funds are available only to the extent financial need exists based on the vocational rehabilitation income and resource table and that comparable benefits from other sources are unavailable to provide or purchase the services identified in the IWRP.

(3) The financial need determination, except as otherwise provided, is based on current gross income projected for the next 12 months as an annual income.

(a) For an individual who is self-employed, the financial need determination is based on gross income adjusted for business expenses.

(b) Current gross income includes AFDC, DWC benefits, SSI benefits, earnings and interest.

(c) For an individual who is employed seasonally, annual income is calculated based on income history.

(4) Comparable services or benefits under any other programs that are currently available to an individual must be used to meet in whole or in part the cost of vocational rehabilitation services.

(a) If comparable benefits exist under any other program but are not immediately available to the individual, the individual may receive vocational rehabilitation services until those comparable services and benefits become available.

(b) If the determination of the availability of comparable benefits would delay the provision of VR services to any individual who is at extreme medical risk or would result in the loss of an immediate job placement opportunity the individual may receive vocational rehabilitation services until those comparable services and benefits become available. The determination of extreme medical risk is based upon medical evidence provided by an appropriate licensed professional.

(5) The following personal assets are excluded from consideration of financial need:

(a) the individual's or the individual's parents' home;

(b) a small business or farm owned by the individual or the individual's parents, in the case of a minor, if that business or farm is determined by the department to be the

primary source of income for the individual or the parents or is a major asset;

(c) obligations which the individual is required by legal process to pay;

(d) individual retirement accounts; and

(e) trust funds established as a result of disability to assist with the present and future medical and independent living expenses of the individual.

(6) Income and resources that are not available during the period that the individual is receiving the vocational rehabilitation services through the department are not income and resources for purposes of determining the person's financial need.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-108, 53-7-303, 53-7-306 and 53-7-310 MCA

46.6.412 VOCATIONAL REHABILITATION PROGRAM: PAYMENT OF TUITION FOR HIGHER EDUCATION ~~(1) The department will provide, in accordance with the provisions of this rule, funding to a vocational rehabilitation client for payment of tuition for a program of higher education, community/junior college, vocational school, technical school or institute, or hospital school of nursing that the department determines in accordance with a client's IWRP is necessary for the vocational rehabilitation of the client.~~

~~(2) The department will provide funding to a client for payment of tuition in a program of higher education, community/junior college, vocational school, technical school or institute, or hospital school of nursing only to the extent that the client has need for such funding.~~

~~(a) Funding from the department for the cost of tuition is limited to and may not exceed the difference between the cost of tuition and the total of the funding the client can contribute and the funding for tuition received by the client from other sources.~~

~~(b)~~(1) Prior to a determination by the department as to the amount of funding ~~a client~~ an individual should receive for the cost of tuition, a client must apply for and pursue a federal Pell education ~~loan to pay the costs of tuition~~ grant.

Subsection (3) remains the same in text but is renumbered (2).

~~(4)~~(3) The department, except as provided in subsection (3)(a)~~,~~ and (b) ~~and (c)~~, ~~will~~ provides funding for the cost of tuition for a client at a public or private program of higher education up to but not exceeding the highest tuition charge in the Montana university system.

(a) The department ~~will~~ provides~~, subject to the limitation in (b),~~ funding for the cost of tuition to a program of higher education that is more expensive than the highest tuition

in the Montana university system if the department determines that the program is not available otherwise or that the overall cost of attendance inclusive of tuition, room and board, texts and supplies at the program with the more expensive tuition will be less than the overall cost of attendance at the program in the Montana university system.

~~(b) For tuition to programs of higher education located outside of Montana, the department will provide funding for the cost of tuition up to but not exceeding the highest tuition charge in the Montana university system unless the department determines based on extenuating circumstances that it will provide funding for the cost of tuition up to but not exceeding the tuition rate that would be paid for that program by the vocational rehabilitation agency in the state in which the program is located.~~

~~(c)~~(b) For tuition to a nationally recognized program~~,~~ designed and staffed for persons with severe disabilities, the department ~~will~~ provide~~s~~ funding for the cost of tuition ~~up to but not exceeding the tuition rate that would be paid for that program by the vocational rehabilitation agency in the state in which the program is located~~.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

3. The rules 46.6.306 and 46.6.411 as proposed to be repealed are on pages 46-288 and 46-278 of the Administrative Rules of Montana.

AUTH: Sec. 53-7-102 MCA
IMP: Sec. 53-7-102 and 53-7-105 MCA

4. The vocational rehabilitation services program provides an array of vocational and vocationally-related services to persons who, due to a disability, are in need of services in order to realize employment opportunities.

The proposed changes to the rules governing financial need for vocational rehabilitation services are generally necessary to restructure the rules for better comprehension, to remove and add requirements as necessary, and to revise the methodology for determinations of financial need.

The proposed amendments to ARM 46.6.405, purpose of financial need standard, are necessary to remove references to rules proposed for repeal and to provide a general statement of purpose.

The proposed amendments to ARM 46.6.407, determination of financial need prior to service, are necessary to change this

rule into a more general rule on the process of determination and the services to which the financial need determination is applied. The amendments are necessary to provide that the determination of financial need is an on-going process that will account for changes in a person's financial need, and to specify the services the availability of which is not subject to the financial need determination. The specification of the exempted services is necessary in that it currently appears in ARM 46.6.306 which is proposed for repeal.

The proposed amendments to ARM 46.6.408, information for determination of financial need, are necessary to improve the comprehensibility of the rule, to clarify that the provision of program funds for purchase of services is predicated upon receipt of necessary financial information, and to clarify that financial information may be obtained from any reliable source.

The proposed amendments to ARM 46.6.409, financial need standard, and ARM 46.6.410, resources, are necessary to revise the methodology for calculation of financial need. The current methodology, incorporating standards from the AFDC program, is difficult to administer in a fair and equitable manner. The proposed methodology, based on standards derived specifically for the vocational rehabilitation program, can be administered more equitably. The proposed standards are more appropriate for the purposes of the program.

The proposed amendments to ARM 46.6.412, payment of tuition for higher education, are necessary to remove specific limitations that are unnecessary. The remaining applicable limitations will provide adequate fiscal control over fund expenditures on tuition.

The repeal of ARM 46.6.306 is necessary due to the consolidation of the provisions on the applicability of financial need determinations in the proposed amendments to ARM 46.6.407.

The repeal of ARM 46.6.411 is necessary in that the rule is duplicative of ARM 46.6.409, 46.6.410, 46.6.505, and 46.6.517.

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 July 13, 1995.

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 June 5, 1995.

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

In the matter of amendment of ARM 2.43.432 relating to purchase of additional service in retirement systems administered by the Board.) NOTICE OF AMENDMENT

TO: All Interested Persons.

1. On April 13, 1995, the Public Employees' Retirement Board published notice of the proposed amendment of ARM 2.43.432, relating to the purchase of additional service in the retirement systems administered by the Board, at page 516 of the 1995 Montana Administrative Register, Issue No. 7.

2. The Board has amended ARM 2.43.432 with the following changes:

2.43.432 "1-FOR-5" ADDITIONAL SERVICE (1) through (5) same as proposed.

~~(6) PERS members may purchase more than one year of service on a monthly installment plan if the installment contract is initiated prior to July 1, 1995. Monthly payments may be calculated using a term length of up to ten years, but in all cases the term of the installment contract may not exceed one year. If a term length of more than one year is used to calculate the monthly payments, it is the member's responsibility to make arrangements to pay the balance of the installment contract which will be due on July 1, 1996.~~

AUTH: 19-2-403, MCA
IMP: 19-3-513 and 19-7-311, MCA, Ch.180, L. 1995

3. No testimony or comments were received at the hearing. One verbal comment was received during the comment period.

COMMENT:
Paragraph (6) was intended to provide a means for current Public Employees' Retirement System members with options to purchase additional service prior to July 1, 1995, in the event HB 268 was passed and significantly increased the cost of purchasing additional service. HB 268 did not pass, therefore paragraph (6) is not required and should be deleted.

RESPONSE:
The Board concurred and deleted paragraph (6).

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

_____
Dan Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on May 22, 1995.

BEFORE THE CLASSIFICATION AND RATING COMMITTEE
OF THE STATE OF MONTANA

In the matter of the amendment of rule 6.6.8301, updating references to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1980 ed.	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 13, 1995, the Classification and Rating Committee published notice of the proposed amendment to rule 6.6.8301 concerning updating references to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance at pages 522-525 of the 1995 Montana Administrative Register, issue number 7. Those attending the hearing and commenting were Pat Hooks, who appeared on behalf of the Montana Beer and Wine Wholesalers Association; Molli Quitrey, who appeared on behalf of Broadwater Beverage; Robert Clausen, who appeared on behalf of Clausen Distributing; John Decker, who appeared on behalf of Briggs Distributing; Harry Watkins, who appeared on behalf of Zip Beverages; and Dave Greaves, who appeared on behalf of Earl's Distributing. The Committee also received written concerns from the Legislative Administrative Code Committee and John Decker.

2. The committee has amended the rule as follows:

6.6.8301 ESTABLISHMENT OF CLASSIFICATIONS FOR COMPENSATION PLAN NO. 2 (1) The committee hereby adopts and incorporates by reference the NCCI Basic Manual for Workers' Compensation and Employers Liability Insurance, 1980 ed., as supplemented through ~~August 30, 1994~~April 3, 1995, which establishes classifications with respect to employers electing to be bound by compensation plan No. 2 as provided in Title 39, chapter 71, part 22, Montana Code Annotated. A copy of the Basic Manual for Workers' Compensation and Employers Liability Insurance is available for public inspection at the Office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, 126 North Sanders, P.O. Box 4009, Helena, MT 59604-4009. Copies of the Basic Manual for Workers' Compensation and Employers Liability Insurance may be obtained by writing to the Montana Classification and Rating Committee in care of the National Council on Compensation Insurance, Inc., Two Tamarac Square, Suite 613, 7535 East Hampden Ave., Denver, CO 80231. Persons obtaining a copy of the Basic Manual for Workers' Compensation and Employers Liability Insurance must pay the committee's cost of providing such copies.

(2) Same as proposed amendment.

3. The proposed supplements and references to the NCCI Basic Manual for Workers Compensation and Employers Liability, including the proposal concerning Beer or Ale Distributors, were adopted by reference and are to be included in the manual effective on the dates listed in the notice of public hearing.

4. There were two categories of comments received.

COMMENT 1:
The administrative code committee was concerned about proposed dates supplementing the NCCI manual.

RESPONSE:
The suggestion was carefully considered and upon consulting the Code Committee's staff, the Committee has adopted a change to correspond with the date of filing of the notice of hearing and will do so in the future when supplements are made.

COMMENT 2:
The testimony received at the hearing concerned the following proposed blending of classifications: 7390, Beer and Ale Dealers - Wholesalers and Drivers and 8742, Salespersons, Collectors or Messengers - Outside.

RESPONSE:
The committee seriously considered the comments received and declined to accept the recommendations. From the survey done by the Montana Beer and Wine Wholesalers Association, four were opposed to the change, eight were for the change and five had no opinion. The committee also considered the impact and reviewed the actuarial process and concluded that there would be no overall premium increase because some distributors would have increased premiums while others would have a premium decrease under the proposal. The purpose for proposing the change was to eliminate possible wrong reporting since it appeared that certain classified positions were receiving injuries inconsistent from what would be expected from persons in those positions if correctly reported.

By: _____
Robert Carlson, Chairperson
Classification and Rating Committee

By: _____
Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State June 5, 1995.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of Accreditation Standards; Procedures	)))	NOTICE OF ADOPTION ON PROPOSED AMENDMENT OF ARM 10.55.601 ACCREDITATION STANDARDS; PROCEDURES

To: All Interested Persons

1. On March 16, 1995, the Board of Public Education published a notice of proposed amendment concerning ARM 10.55.601 Accreditation Standards; Procedures at page 331 of the Administrative Register, Issue number 5.

2. The board has adopted the rule as proposed.

3. The board is proposing this amendment to the rule in order to correct language that has been amended in ARM 10.55.712 by the board.

WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 6/05/95

BEFORE THE FISH, WILDLIFE, & PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of proposed amendment of ARM 12.6.901 relating to a no wake speed zone in the North Shore and Marshall Cove of Cooney Reservoir	NOTICE OF THE AMENDMENT OF RULE 12.6.901

To: All Interested Persons

1. On April 27, 1995, the Fish, Wildlife & Parks Commission (commission) published notice of the proposed amendment of the above-captioned rule at page 555, 1995 Montana Administrative Register, issue number 8.

2. The commission has adopted the rule as proposed.

AUTH: 87-1-303, 23-1-106(1), MCA
IMP: 87-1-303, 12-1-106(1), MCA

3. No adverse comments or testimony were received.

4. The rule has been reviewed and approved by the Department of Health and Environmental Sciences as required by §87-1-303(2), MCA, with a determination that the rule would not have an adverse impact on public health or sanitation.

FISH, WILDLIFE & PARKS
COMMISSION

Robert N. Lane
Rule Reviewer

Patrick J. Graham
Secretary

Certified to the Secretary of State on June 5, 1995.

BEFORE THE OFFICE OF THE GOVERNOR
OF THE STATE OF MONTANA

In the matter of the amendment of Rules 14.8.201, 14.8.203, and 14.8.205 pertaining to electrical supply shortage	))))	NOTICE OF AMENDMENT

To: All Interested Persons.

1. On January 12, 1995, the Governor's Office published notice of the proposed adoption of amended rules 14.8.201, 14.8.203, and 14.8.205, pertaining to electrical supply shortage in the Montana Administrative Register Issue No. 1, starting at page 12 and inclusive of page 13.

2. The Governor has amended the rules as proposed.

3. No comments were received.

MARC RACICOT
GOVERNOR

JUDY BROWNING
RULE REVIEWER

Certified to the Secretary of State May 18, 1995.

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

In the matter of the amendment of ARM 16.20.712 regarding criteria for determining nonsignificant changes in water quality	NOTICE OF AMENDMENT OF RULE

(Water Quality)

To: All Interested Persons

1. On April 13, 1995, the board published notice of the above proposed amendment of an existing rule at page 531 of the Montana Administrative Register, Issue No. 7.

2. The board has adopted the rule as proposed with no changes.

3. No oral or written comments were received.

RAYMOND W. GUSTAFSON, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

By _____
ROBERT J. ROBINSON, Director

Certified to the Secretary of State June 5, 1995.

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 16.24.414 regarding tuberculosis testing of employees in a day care center	NOTICE OF AMENDMENT OF ARM 16.24.414

TO: All Interested Persons:

1. On April 27, 1995, the department published a notice of amendment of ARM 16.24.414 at page 564 of the 1995 Montana Administrative Register, Issue No. 8.

2. The department has amended the rule as proposed.

3. No comments were received.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State June 5, 1995.

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 16.44.103, 105, 320, 402, 404, 415, and 905 concerning control of hazardous waste.	))))	NOTICE OF AMENDMENT OF RULES (Hazardous Waste)

To: All Interested Persons

1. On April 27, 1995, the department published a notice of amendment on the above-captioned amendments at page 560 of the 1995 Montana Administrative Register, Issue No. 8.

2. The department amended the rules as proposed with no changes.

3. The department received one written comment on the proposed amendments. That comment is summarized and responded to below.

COMMENT: The commentator inquired whether the department will continue to inform conditionally exempt small quantity generators of proposed regulations, revised regulations, and workshops that affect conditionally exempt small quantity generators. The commentator further inquired what mechanism will ensure that the commentator "is informed of proposed regulations" and "receive[s] any revised regulations manuals".

RESPONSE: The amendments to ARM 16.44.402 and 404 eliminate the provisions for registration and payment of fees for conditionally exempt small quantity generators. The department believes that the amendments will not significantly affect the dissemination of information from the department regarding hazardous waste management issues, such as rule adoptions, announcements of workshops, and other compliance assistance information. Hazardous waste handlers, including conditionally exempt small quantity generators, can continue to receive all notices of rulemaking activities by making a single request for notice of all rulemaking activities of the department (see, §75-10-302(2), MCA). Copies of updated rules will continue to be available from the department upon request. In addition, the department will continue to make every reasonable attempt to alert affected hazardous waste handlers of regulatory changes, workshops and other issues concerning hazardous waste management, as allowed by resource and budgetary constraints. For these reasons, the department has adopted the amendments as proposed.

ROBERT J. ROBINSON, Director

Certified to the Secretary of State June 5, 1995.

Reviewed by:
Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of the proposed amendments and repeal of rules concerning the location of utilities in highway right-of-way	))))))))	CORRECTED NOTICE OF AMENDMENT OF RULES 18.7.224, 18.7.229 AND 18.7.231

TO: All Interested Persons.

1. On May 11, 1995, the Department of Transportation published a notice at page 854 of the Montana Administrative Register, issue number 9, of the amendment and repeal of the above-captioned rules which concern the location of utilities in highway right-of-way.

2. The notice of amendment did not show the omission of several internal catchphrases to the existing rules. In addition, some words are being deleted and letters lowercased. These amendments are necessary to ensure uniformity with the amended rules and to comply with ARM 1.2.215 which prohibits the use of internal catchphrases. The corrected rule amendments read as follows:

18.7.224 LONGITUDINAL OCCUPANCY BY NEW UNDERGROUND FACILITIES (1) For ~~C~~communication and ~~E~~electrical ~~P~~power ~~F~~facilities, ~~+~~ underground facilities shall be installed according to the requirements of the National Electrical Safety Code.

(2) remains the same as in the notice of amendment.

(3) For ~~W~~water and sewer facilities, pipeline installation shall conform to the current standards for Montana Public Works Standards Specifications and to the state's current Standard Specifications for Road and Bridge Construction and all applicable federal regulations.

(4) through (6) remain the same as in the notice of amendment.

AUTH: 60-3-101 and 60-4-402 MCA; IMP: Sec. 60-3-101 and 60-4-402 MCA

18.7.229 UNDERGROUND CROSSING METHODS (1) will remain the same as in the notice of amendment.

(2) For ~~C~~crossing ~~N~~new ~~H~~highways, ~~+~~ ~~F~~facility crossings necessitated by new highway construction shall be built in accordance with the foregoing standards unless the department and utility shall otherwise mutually agree.

AUTH: Sec. 60-3-101 and 60-4-402 MCA; IMP: Sec. 60-3-101 and 60-4-402 MCA

18.7.231 GENERAL CONSIDERATIONS (1)(a) through (e) will remain the same as in the notice of amendment.

(f) ~~Rubbish and Debris~~ ——The utility shall return the right-of-way to its original condition as nearly as practicable and shall remove all of its rubbish and debris promptly following completion of its activities.

(g) ~~Inspection of Work by State~~ ——Work performed by the utility within the highway right-of-way shall be subject to inspection at all times.

(h) ~~Work Performed After Initial Installation~~ ——Subsequent to the initial installation, all repair, maintenance, reconstruction, relocation, or removal of utility facilities shall be accomplished in such a manner as will cause the least interference with normal operation and maintenance of the highway.

(i) ~~Damage to Utility Facilities~~ —— The ~~S~~state shall not be responsible or liable for damage which may occur to utility facilities occupying highway right-of-way under these regulations.

(j) through (k) will remain the same as in the notice of amendment.

(l) ~~Maintenance of Facilities~~ ——The utility, at its sole expense, shall maintain in a satisfactory condition, the installations and structures occupying the highway right-of-way. Maintenance work, except in emergency situations, may not be conducted from within access control limits of controlled-access highways.

(m) through (q) will remain the same as in the notice of amendment.

AUTH: Sec. 60-3-101 and 60-4-402 MCA; IMP: Sec. 60-3-101 and 60-4-402 MCA

3. Replacement pages for the corrected notice of amendment will be submitted to the Secretary of State on June 30, 1995.

MONTANA DEPARTMENT OF TRANSPORTATION

By: _____
MARVIN DYE, Director

_____
Lyle Manley, Rule Reviewer

Certified to the Secretary of State June 5, 1995.

BEFORE THE BOARD OF LABOR APPEALS
FOR THE STATE OF MONTANA

In the matter of the amendment of ARM 24.7.306, related to the rules of procedure before the Board of Labor Appeals	NOTICE OF AMENDMENT OF ARM 24.7.306

TO ALL INTERESTED PERSONS:

1. On March 30, 1995, the Board of Labor Appeals published notice at pages 440 to 441 of the Montana Administrative Register, Issue No. 6, to consider the amendment of ARM 24.7.306.

2. On April 28, 1995, a public hearing was held in Helena concerning the proposed amendments. No member of the public appeared to make oral and written comments. No written comments from members of the public were received prior to the closing date of May 5, 1995.

3. The Board received one comment on the proposed amendments from the staff of the Administrative Code Committee. The following is a summary of the comment received, along with the Board's response to the comment:

Comment 1: The staff of the Administrative Code Committee commented that the statement of reasonable necessity did not explain the holding of Bean v. Board of Labor Appeals and how the ruling influenced the Board's decision to propose the amendments.

Response 1: The recent Montana Supreme Court decision, Bean v. Board of Labor Appeals, No. 94-278 (decided March 15, 1995) found that ARM 24.7.306 required that the Board either review a transcript of Bean's contested case or listen to the tape recordings made of the contested case. The Bean case implies, inter alia, that because of ARM 24.7.306, the Board must review the entire record of every case it hears. Contested case hearings last anywhere from as little as half an hour to several days in length. Transcripts are not requested by the parties in many instances. The Board believes that the interests of the parties and the State to a speedy and relatively informal resolution of unemployment insurance disputes are better met by the rule as amended. The Board believes that rule, as amended, still permits the parties to direct the Board's attention to particular areas of the record that the parties believe to be relevant to the issue(s) on appeal to the Board. However, the Board believes that the rule, as amended, will allow the Board to concentrate on rendering a speedy decision on the issues raised by the parties, rather than spending its time and resources listening to tapes or reading transcripts related to matters that are not in dispute.

4. The Board has amended the rule exactly as proposed.

5. The amendments to the rule are effective June 16, 1995, and apply to any appeal made on or after that date.

David A. Scott
Rule Reviewer

Daniel D. Johns, Chair
BOARD OF LABOR APPEALS

Certified to the Secretary of State: June 5, 1995.

BEFORE THE DEPARTMENT OF STATE LANDS
AND BOARD OF LAND COMMISSIONERS
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 26.3.137, 26.3.138, and 26.3.183 and the repeal of 26.3.166, pertaining to changes in the recreational use license fee and certain rental rates for state lands.	NOTICE OF AMENDMENT AND REPEAL

TO: All Interested Persons.

1. On December 22, 1994, the agency published a notice at page 3177 of the Montana Administrative Register, Issue No. 24, of the amendment of ARM 26.3.137, 26.3.138, and 26.3.183 and repeal of ARM 26.3.166, pertaining to changes in the recreational use license fee and certain rental rates for state lands.

2. The agency has repealed ARM 26.3.166.

3. The agency has adopted ARM 26.3.138 as proposed.

4. The agency has adopted ARM 26.3.137 and 26.3.183 with the following modifications:

26.3.137 MINIMUM RENTAL RATES

(1) and (2) remain the same.

(3) The rental rate for all grazing leases and licenses shall be on the basis of the animal-unit-month carrying capacity of the land to be leased or licensed. For grazing leases issued before July 1, 1993, the minimum rental rate per AUM until the first date of renewal after July 1, 1993, is the average price per pound of beef cattle on the farm in Montana for the previous year multiplied by six. For grazing leases issued or renewed after June 30, 1993, and for all grazing licenses, the minimum rental rate per AUM is, beginning on ~~March 1, 1996~~ JUNE 16, 1995, the average price per pound of beef cattle on the farm in Montana for the previous year multiplied by ~~7.54~~ 6.71. The department shall appraise and reappraise the classified grazing lands and grazing lands within classified forest lands under its jurisdiction in accordance with section 77-6-201, MCA, to determine the carrying capacity and shall maintain records of such appraisals in its files. Such determination shall be made from time to time as the department considers necessary, but at least once during the term of every lease or license.

(4) and (5) remain the same.

(6) same as proposed.

(AUTH: 77-1-106, 77-1-209, MCA; IMP: 77-1-106, 77-1-208, 77-6-502, and 77-6-507, MCA.)

26.3.183 GENERAL RECREATIONAL USE OF STATE LANDS; LICENSE REQUIREMENT

(1) remains the same.

(2) A general recreational use license is issued for a 12-month period beginning on March 1 of each year and expiring on the last day of February of the next year. The cost of a general recreational use license is $5 before March 1, 1996, ~~and $10 after~~ AFTER February 29, 1996, THE COST OF THE LICENSE IS $5 FOR PERSONS 17 YEARS OF AGE OR YOUNGER OR 60 YEARS OF AGE OR OLDER. THE COST OF THE LICENSE FOR PERSONS WHO ARE OLDER THAN 17 AND YOUNGER THAN 60 IS $10. FAMILY MEMBERS LIVING WITHIN THE SAME HOUSEHOLD MAY OBTAIN RECREATIONAL USE LICENSES BY PAYING A FAMILY FEE OF $20. The license is personal and non-transferable. It may be purchased at any authorized license agent of the department of fish, wildlife and parks. Any person may purchase a recreational use license for a spouse, parent, child, brother or sister, but the license is not valid until signed by the person in whose name it is issued.

(3) through (7) remain the same.

(AUTH: 77-1-106, 77-1-802, MCA; IMP: 77-1-106, 77-1-804, MCA.)

CABINSITES

COMMENT 1: Several commentors argued against raising the minimum cabinsite lease rate from $150.00 to $250.00. They stated that the minimum should vary with site-specific conditions and that an across-the-board minimum is arbitrary. Others argued that the $250.00 minimum will result in relinquishment of leases, thereby decreasing overall revenues to the trusts.

RESPONSE: A minimum rental is established on the premise that there is a lower limit to the value for such a use. The Advisory Council recommended establishing the $250.00 minimum rental to assure a fair return to the trust based on a review of private lease rates in Montana and adjacent states. The Board concurs with that recommendation. It would be speculative to assume that leases would be relinquished. Additionally, if leases were relinquished, it is possible that in many instances, other parties would be interested in acquiring those leases.

COMMENT 2: Several commentors stated that lessees are required to pay for all improvements out-of-pocket and that these improvements increase the value of the land. As such, the appraised value of the land increases and results in increased rental rates being assessed. The rental rate should be set so as to not penalize lessees for making improvements.

RESPONSE: The rental rate is based upon 3.5% of the appraised value of the land. This value is set by the Department of Revenue and is based on comparable bare land values without regard to improvements.

COMMENT 3: A number of commentors stated that the appraisals done by the Department of Revenue are inaccurate and are not based on site-specific reviews.

RESPONSE: If a lessee feels the land value set by the Department of Revenue is inaccurate, he or she may appeal that appraised value to the county tax appeal board for review.

COMMENT 4: Making money for the trust is not the sole purpose of trust land management, and other factors, such as community benefit, should be taken into consideration in setting the cabinsite lease rate.

RESPONSE: Under cases decided by the Montana Supreme Court and under general trust law, the purpose of trust lands is to generate sustained income for the trust beneficiaries. Furthermore, both the Enabling Act and the Montana Constitution require the Board to charge full market value for any compensable use of the land. The Board can consider other factors only to the extent they do not diminish generation of income.

COMMENT 5: Several people stated that their lease rates have increased dramatically in the last few years. They argued that, even if the state charged too little in the past, dramatic increases should not be made because lessees won't be able to afford their leases.

RESPONSE: Since 1989, the formula for cabinsite rental rates has been and continues to be based on acquiring 3.5% of the appraised land value. Therefore, increased rental rates have resulted from escalating land values.

GRAZING

COMMENT 6: Several commentors stated that a 10% (1 year out of 10) non-use deduction is too low and that one year in three is more typical of the time that lessees do not use their leased state land.

RESPONSE: A 10% non-use deduction would result in a factor of 7.54; a 20% non-use deduction would result in a factor of 6.71; and a 33.3% non-use deduction would result in a factor of 5.89. Based on the comments received, the Board concurs that a 10% non-use reduction is too low. However, a 33.3% deduction would be excessive. Therefore, the Board has adjusted the rate to reflect a 20% non-use deduction and has set the multiplier at 6.71. In addition, in order to comply with its trust responsibilities regarding new leases issued, the Board has made the new rate immediately applicable to new leases issued after the effective date of this amendment.

COMMENT 7: Several commentors felt that the carrying capacities set by the Department are too high and are not reflective of actual use or available forage.

RESPONSE: The setting of carrying capacity is separate from the determination of the proper rental rate per AUM for grazing on state land. This comment is therefore beyond the scope of this rulemaking. Nevertheless, the Board is of the opinion that its method of setting carrying capacity is proper. The Department uses the ecological site index method to determine carrying capacities on state land. This method uses range sites, precipitation, and forage species to determine an average carrying capacity. The actual carrying capacity in any given year may fluctuate depending on that year's climatic conditions.

COMMENT 8: Several people stated that the grazing rate on state land is too high when compared to the grazing rates on federal lands.

RESPONSE: Unlike the Board, federal agencies are not subject to a fiduciary duty to secure full market value for grazing of federal lands. Furthermore, federal leases differ in actual administration and management including carrying capacities, turn-in/turn-out dates, and control of public access. In addition, the federal rate is a single rate for public lands in the western United States. Therefore, the federal rate does not set precedent for setting grazing rates on state lands. The Board must make its own determination based on the requirements of the Montana Enabling Act and the Montana Constitution.

COMMENT 9: Several persons stated that the proposed increase is unfair given the recent drop in cattle prices.

RESPONSE: The factor, which is being changed from 6 to 6.71, reflects the state's full share of the livestock weight gain that is attributable to grazing on state lands. The other factor in the formula, the average price per pound of beef sold in the state for the previous year, will continue to reflect fluctuations in cattle prices. Therefore, the rate does fluctuate with the livestock market.

COMMENT 10: Numerous lessees stated that recreational use limits their ability to manage and utilize their lease and the rental rate should be adjusted to account for this limitation.

RESPONSE: The Advisory Council recognized the impact attributable to recreational use on the leasehold interest and included a deduction in its recommended lease rate to compensate for this impact. The Board has accepted this recommendation. Additionally, procedures to limit impacts of recreational use are available through the recreational use rules.

COMMENT 11: Many commentors stated that state lessees are responsible for all costs associated with management of state land and that, on private land, the lessor is responsible for those costs. They stated that the factor of 7.54 in the proposed rule does not take all of these costs into account.

RESPONSE: The Advisory Council recommended deductions that were based on review of various lease circumstances and represent a statewide average projected cost per AUM. The Board has determined that the applied deductions accurately reflect state leasehold conditions - with one exception. See response to Comment 6 regarding the adjustment to the non-use deduction.

COMMENT 12: Many commentors predicted that if the lease rates are too high, many leases would be relinquished, resulting in a reduction of revenues to the trust.

RESPONSE: The Board's fiduciary responsibility is to achieve full market value for all compensable uses of state land, including grazing. It would be speculative to assume that leases would be relinquished. Additionally, if leases were relinquished, it is possible that in many instances other parties

would acquire those leases.

COMMENT 13: Why was a cattle price from only one year, which was a high year, used to calculate a factor and not a 3-5 year average?

RESPONSE: The Advisory Council used the most current information available to determine the rental rate. The Council felt that the 1993 cattle price was reflective of an average cattle price over several years. The Board concurs with this finding.

COMMENT 14: Some commentors stated that $5.14/AUM is too low considering that grazing is a use which generates income for the user. [The $5.14/AUM rate would be the rate with a factor of 7.54 as compared to the existing rate of $4.09/AUM at a factor of 6 for the 1994 grazing season.]

RESPONSE: The Board's responsibility is to achieve full market value for all uses of state trust lands. The Board must also consider the long term productivity and revenue generation from the trust resources. The multiplying factor in the formula represents the state's share of anticipated weight gain per AUM. That weight gain translates to the income the livestock owner will receive from the sale of the livestock. Therefore, the state is sharing in that income.

COMMENT 15: A number of commentors stated that the proposed grazing rate is not reflective of the impacts for that use.

RESPONSE: The impacts of the grazing use are controlled by the carrying capacity established by the Department. The Department sets these capacities to properly utilize and preserve the long term productivity of the forage resource.

COMMENT 16: There should be no deductions made when calculating the lease rate because those items listed for deduction are actually required as part of the lease agreement.

RESPONSE: The average private lease rate includes a lessee's contribution for certain amenities typically provided by the private lessor. The state does not offer these amenities to lessees of state land and it is appropriate for the state lease rate to be adjusted accordingly. It is therefore appropriate to set the state lease rate by deducting from the statewide average private lease rate those costs borne by the state lessee that are not typically borne by a lessee of private land.

COMMENT 17: Some commentors stated that the $1.57 deduction for recreational use should not apply across-the-board because not all state land is available for recreational purposes.

RESPONSE: The Advisory Council determined that the $1.57 deduction for recreational use was a legitimate statewide average monetary impact on the leasehold interest. On a site-specific basis, recreational use may have a greater or lesser impact. However, it would be extremely difficult to set this

deduction on a tract-by-tract basis. The Board therefore concurs with the Advisory Council's methodology.

RECREATIONAL USE

COMMENT 18: Many commentors felt that the $5.00 recreation license fee should not be increased because:

- there is no justification for raising the fee;
- any increase in the fee will make purchasing it unaffordable and may result in unlicensed use of state lands;
- the majority of state lands are scattered, the boundaries are unmarked and contain very few, if any, improvements;
- the trust would receive more compensation by leaving the $5.00 license fee in place and making more effort in promoting the program.

Other commentors stated that the Board arbitrarily reduced the proposed fee for recreational use as proposed by the Advisory Council.

Some commentors stated that the proposed $10.00 license fee is not reflective of the actual value for recreational use and feel that the trust is not being compensated at full market value.

Finally, a number of commentors recommended that a family license be available and that youth or the elderly be allowed to purchase a license at a reduced fee.

RESPONSE: In 1993, Bioeconomics, Inc. released a study indicating that the $5.00 license fee was below market value. On the basis of this study and comments received, the Board has determined that the fee should be raised in certain instances. Bioeconomics recommended that the rate should be $25.00 for residents and $50.00 for non-residents. However, the Board believes that these fees would result in a significant decrease in licenses sold and in revenue generated from licenses sold. Furthermore, lower rates for minors, senior citizens, and families would increase revenues. The Board has determined that the fee structure that will maximize recreational use program income is:

- $5.00 for persons under the age of 18 and of the age of 60 and over;
- $10.00 for persons over the age of 17 and under the age of 60;
- $20.00 for licenses for all members of a family.

COMMENT 19: Many commentors stated that the proposed increase in the recreational use fee is not proportionate to the increase in grazing fees. Others stated that the proportional increase argument is irrelevant because the recreational use fees were too low to begin with.

RESPONSE: The proportional increase argument is not relevant because the Board must determine the current full market value of each use independent of the other uses. Furthermore, it must determine those values without regard to the adequacy of the previous rate.

COMMENT 20: Why was there no proposed increase for commercial recreational use such as outfitting? Outfitters should be the only persons charged for recreational use on state land because they make a profit from its use.

RESPONSE: Fees for outfitting on state lands were not proposed for amendment as part of this rulemaking proceeding. Therefore, the Board cannot act on the comment as it relates to outfitting fees. The Enabling Act and the Constitution require that the trusts be compensated for any use which has a monetary value. Several studies have indicated that recreational use does have value, and therefore a fee for that use is required.

COMMENT 21: Some commentors stated that use of state land is already funded through purchase of hunting and fishing licenses.

RESPONSE: This statement is incorrect. Uses of state trust lands are not funded through the fees acquired from the sale of hunting and fishing licenses. The Department of Fish, Wildlife and Parks (DFWP) administers the sale of fishing and hunting licenses and utilizes revenues from those sales for its programs.

COMMENT 22: Many people stated that DFWP should pay a yearly use fee to DSL to compensate the trust for recreational use and that this fee could then be recouped by charging an extra minimal fee for the conservation license.

RESPONSE: The change recommended for recreational use of state trust lands would require legislative action. The Board agrees that this alternative should be explored further and has instructed the Department and DFWP to do so. If an acceptable methodology can be determined, it will be presented to the 1997 Legislature for consideration.

COMMENT 23: Many people stated that these lands belong to Montana citizens and that their tax dollars were used to purchase the lands. They argued that they should be allowed to use them without further compensation to the state.

RESPONSE: State school trust lands were not purchased with state tax dollars. The state trust lands were granted to Montana by the federal government at statehood to be held in trust for the purpose of generating income for the educational institutions of the state of Montana.

COMMENT 24: Some commentors stated that recreational use of state land promotes family unity and values. They also stated that increasing the license fee will only serve to make such use unaffordable.

RESPONSE: The Board has taken this comment into consideration and has provided a special license rate for families. The Board believes this special rate will increase revenues generated by license sales.

COMMENT 25: No one bought the $5.00 license and no one will buy a $10.00 license.

RESPONSE: Sales of the licenses have steadily increased since inception of the recreational use program in 1992. Sales of recreational use licenses for the 1994 license year exceeded 31,500. The Board does not believe that increasing the license fee will result in an overall decrease in license revenues.

COMMENT 26: Some people stated that Montana is the only state to charge for recreational use of state land.

RESPONSE: This statement is incorrect. Other states do, in fact, receive compensation for recreational use or the right to control that use on state lands. Currently, Texas, Colorado, New Mexico, Nebraska, and Oklahoma receive compensation. Other states are considering implementation of recreational use programs which will compensate their respective trusts.

COMMENT 27: Many people feel that increased license fees should only be applicable to non-residents and that resident fees should remain the same.

RESPONSE: As stated in the response to Comment 18, the Board has determined that the license fee should be increased for all recreational users except minors and senior citizens.

COMMENT 28: Many people stated that there have already been too many changes to the program and that any additional changes at this time are unwarranted and will only result in further noncompliance.

RESPONSE: Previous amendments to the recreational use rules were made in response to citizen petitions to amend those rules. Senate Bill 424, from the 1993 Legislature, directed the Board to review all fees for surface uses of state trust lands, including recreational use, and to obtain full market value for those uses. The Board has done so by taking input from the Advisory Council and has promulgated rules accordingly.

Reviewed by:

John F. North
Chief Legal Counsel

Arthur R. Clinch
Commissioner

Certified to the Secretary of State June 5, 1995.

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

In the matter of the amendment of Rule 36.22.1242 pertaining to the rate of the privilege and license tax on oil and gas production.	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 27, 1995, the Board of Oil and Gas Conservation published notice of the proposed amendment of rule 36.22.1242, pertaining to the rate of the privilege and license tax on oil and gas production, in the Montana Administrative Register Issue No. 8, starting at page 566 and inclusive of page 567.

2. On May 25, 1995, a public hearing was held to consider the amendment of rule 36.22.1242.

3. Two comments were received in support of the amendment.

4. The Board has amended the rule as proposed.

THOMAS P. RICHMOND
ADMINISTRATOR

DONALD D. MACINTYRE
RULE REVIEWER

Certified to the Secretary of State June 6, 1995.

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, 1995. This table includes those rules adopted during the period April 1, 1995 through June 30, 1995 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, 1995, this table and the table of contents of this issue of the MAR.

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