MONTANA ADMINISTRATIVE REGISTER

1995 ISSUE NO. 15
AUGUST 10, 1995
PAGES 1466-1599

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 15

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of Rule 2.5.403 concerning the application of preferences to contracts involving federal funds in state purchasing.	NOTICE OF PUBLIC HEARING ON THE AMENDMENT OF RULE 2.5.403 CONCERNING STATE PURCHASING.

TO: All Interested Persons:

1. On August 31, 1995 at 9:00 a.m. in Room 160, Mitchell Building, Helena, Montana, a public hearing will be held to address the amendment of Rule 2.5.403 concerning the application of preferences to contracts involving federal funds in state purchasing.

The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you need to request an accommodation, contact the department no later than 5:00 p.m. August 25, 1995, to advise us of the nature of the accommodation you need. Please contact the Procurement and Printing Division, Attn: Bonny Paxson, PO Box 200135, Room 165 Mitchell Building, 59620-0135; phone 406-444-2575; fax 406-444-2529; TDD 406-444-3314.

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

2.5.403 BIDDING PREFERENCES (1) Montana resident and Montana-made preferences, as required in 18-1-102 and 18-1-112, MCA, must be applied by a public agency when awarding contracts for supplies except in the following instances:

(a)-(d) Remain the same.

(e) procurements involving funds obtained from the federal government ~~where the application of preferences has been expressly prohibited.~~ , including term contracts, except in those cases where applicable federal statutes expressly mandate geographic preference.

(2)-(3) Remain the same. (AUTH. Sec. 18-1-114 and 18-4-221 MCA; IMP 18-4-221 MCA.)

3. The rule is being amended because the department was recently informed of a federal rule prohibiting the use of "statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference." (Section 1354, Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments; Federal Agency Implementation of Common Rule.

Federal Register Vol 53, March 11, 1988.)

The department has been advised by the federal Director of the Office of Common Rule, that the rule is meant to prohibit any preferences from being applied where federal dollars are involved, either when contracts are funded solely with federal funds or when federal funds are co-mingled with state funds.

The State of Montana has three preferences which are impacted by this federal rule; the Montana resident and Montana-made preferences mandated in Section 18-1-102, MCA and the printing preference found in Section 18-7-107, MCA. It is the intent of this department to not apply these preferences in any situation where federal funds are involved.

4. Sheryl Motl, Procurement and Printing Division, Department of Administration, Room 165, Mitchell Building, Helena, Montana, 59620, has been designated to preside over and conduct the hearing.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendment to Marvin Eicholtz, Administrator, Procurement and Printing Division, PO Box 200135, Room 165, Mitchell Building, Helena, Montana, 59620-0135 no later than September 8, 1995.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Lois Menzies, Director
Department of Administration

Certified to the Secretary of State on July 31, 1995.

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

In the matter of the proposed amendment of rule 6.6.5101 and the repeal of rules 6.6.5103 through 6.6.5125	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT TO REINSURANCE RULES ADOPTING THE PLAN OF OPERATION BY REFERENCE AND PROPOSED REPEAL OF PRESENT RULES FOR THE PLAN

TO: All Interested Persons

1. On September 7, 1995, at 9:00 a.m., in Fourth Floor Conference Room of the Mitchell Building, 126 Sanders St., Helena, Montana, the State Auditor proposes to amend ARM 6.6.5101 to adopt the plan of operation for the small employer health reinsurance program and to repeal ARM 6.6.5103 through 6.6.5125 which presently primarily comprise the plan of operation.

2. The changes in the plan are being made to comply with the amendments made to the small employer health reinsurance act. The plan of operation is being adopted by reference because the format of the plan of operation is awkward if adopted in its totality by rule. The rules that are being repealed are presently the plan of operation and which, in substantive part, are being included in the amended plan of operation.

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

6.6.5101 APPLICABILITY AND SCOPE (1) remains the same.

(2) remains the same.

(3) The plan of operation with changes through July 31, 1995 is hereby adopted and incorporated by reference. A copy of the plan of operation is available for public inspection at and a copy may be obtained from the Office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, 126 N. Sanders, P.O. Box 4009, Helena, Mt. 59620-4009.

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

4. The rules to be repealed are found on pages 6-1171 through 6-1192 of the Administrative Rules of Montana and are as follows:

6.6.5103 DEFINITIONS
6.6.5105 BOARD OF DIRECTORS OF PROGRAM
6.6.5107 SUPPORT COMMITTEES
6.6.5109 SELECTION, POWERS, AND DUTIES OF ADMINISTERING CARRIER
6.6.5111 REINSURANCE WITH THE PROGRAM

6.6.5113 AUDIT FUNCTIONS
6.6.5115 ASSESSMENTS
6.6.5117 REPORTS OF REINSURED RISKS
6.6.5119 FINANCIAL RECORD KEEPING AND ADMINISTRATION
6.6.5121 ERRORS, ADJUSTMENTS, PENALTIES, AND SUBMISSION OF DISPUTES
6.6.5123 PROPOSALS FOR AMENDMENTS TO PLAN
6.6.5126 STANDARDS FOR PRODUCER COMPENSATION LEVELS AND FAIR MARKETING OF PLANS

AUTH: 1-3-204 and 33-22-1819, MCA
IMP: 33-22-1819, MCA

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

Gary L. Spaeth, Hearing Officer
Montana State Auditor's Office
P.O. Box 4009
Helena, Montana 59604

Comments must be received no later than September 7, 1995.

5. Copies of the Plan of Operation are available for public inspection at the Office of the State Insurance Commissioner, Room 270, Sam W. Mitchell Building, 126 N. Sanders, P.O. Box 4009, Helena, Montana 59604.

6. The State Auditor will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, please contact the State Auditor's Office no later than September 1, 1995, and advise the office of the nature of the accommodation needed. Please contact Jeannie Davies, Montana State Auditor's Office, Room 270, Sam W. Mitchell Building, 126 N. Sanders, P.O. Box 4009, Helena, Montana 59604; telephone (406) 444-2040 or toll-free (800) 322-6148, fax (406) 444-3497.

7. Gary L. Spaeth has been designated to preside over and conduct the hearing.

BY: (for) _____
Mark O'Keefe, State Auditor and
Insurance Commissioner

BY: _____
Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 31st day of July, 1995.

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

In the matter of the adoption of a new rule relating to supervision, rehabilitation and liquidation of state regulated employer groups	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULE RELATING TO SUPERVISION, REHABILITATION AND LIQUIDATION OF SELF-FUNDED MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

TO: All Interested Persons

1. On September 7, 1995, at 9:30 a.m., in the Fourth Floor Conference Room of the Mitchell Building, 126 N. Sanders St., Helena, Montana, the State Auditor proposes to adopt a new rule relating to supervision, rehabilitation and liquidation of self-funded multiple employer welfare arrangements.

2. The proposed new rule provides as follows:

RULE I. SUPERVISION, REHABILITATION, AND LIQUIDATION

(1) The commissioner has the authority to impose sanctions on any self-funded multiple employer welfare arrangement for failure to maintain sufficient reserves as required by 33-35-209, MCA. The commissioner may impose and take any action or sanction as is authorized pursuant to the provisions of Title 33, chapter 2, part 13, MCA, which are adopted herein by reference. A copy of the statutes is available for public inspection at and a copy may be obtained from the Office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, 126 N. Sanders, P.O. Box 4009, Helena, MT 59620-4009.

AUTH: 33-35-209, MCA IMP: 33-35-209, MCA

3. The proposed rule is being adopted to comply with the requirements of SB376, chapter 420 of the session laws of the 1995 legislature. In order to effectively regulate self-funded Multiple Employer Welfare Arrangements, the commissioner needs power to supervise, rehabilitate or liquidate, and the best detail of such authority is presently found in statute.

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:

Gary L. Spaeth, Hearing Officer
Montana State Auditor's Office
P.O. Box 4009
Helena, Montana 59604

Comments must be received no later than September 7, 1995.

5. The State Auditor will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, please contact the State Auditor's Office no later than September 1, 1995, and advise the office of the nature of the accommodation needed. Please contact Jeannie Davies, Montana State Auditor's Office, Sam W. Mitchell Building, 126 N. Sanders, Room 270, P.O. Box 4009, Helena, Montana 59604; telephone (406) 444-2040 or toll-free (800) 322-6148, fax (406) 444-3497.

6. Gary L. Spaeth has been designated to preside over and conduct the hearing.

BY: (for)
Mark O'Keefe, State Auditor and Insurance Commissioner

BY:
Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 31st day of July, 1995.

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

In the matter of the general revision of rules (6.6.5001, 5004, 5008, 5020, 5024, 5028, 5032, 5036, 5044, 5050, 5058, 5060, 6062, and 5066) regarding small employer health benefit plans and reinsurance and the repeal of existing rules 6.6.5012, 5016, 5040, 5094, and 5098	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT TO THE SMALL EMPLOYER HEALTH BENEFIT PLANS AND REPEAL OF 6.6.5012, 5016, 5040, 5094, AND 5098

TO: All Interested Persons.

1. On September 7, 1995, at 10:00 o'clock a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana. The hearing will be to consider the general revision of rules regarding the Small Employer Health Insurance Availability Act as it was amended during the 1995 Session of the Montana Legislature.

2. The rules proposed for repeal are as follows: 6.6.5012 COVERED PREVENTIVE CARE AND HEALTH MAINTENANCE OF POLICIES UNDER STANDARD PLAN, 6.6.5016 SERVICES THAT MAY BE EXCLUDED FROM COVERAGE UNDER THE STANDARD PLAN, 6.6.5040 COST CONTAINMENT FEATURES OF BASIC AND STANDARD PLANS, 6.6.5094 CALCULATIONS RELATING TO PREMIUM RATE RESTRICTIONS, and 6.6.5098 ANNUAL FILING OF ACTUARIAL CERTIFICATION. Rule 6.6.5094 is found at page 6-1151 Administrative Rules of Montana; rule 6.6.5098 is found at page 6-1153 Administrative Rules of Montana. ARM 6.6.5094: AUTH: 1-3-204, 33-22-1819, MCA IMP: 33-22-1802, 33-22-1809, 33-22-1812, MCA. ARM 6.6.5098 AUTH: 1-3-204, 33-22-1819, MCA IMP: 33-22-1803, 33-22-1808, 33-22-1809, 33-22-1912, MCA.

3. The rules proposed for amendment provide as follows:

6.6.5001 DEFINITIONS For the purposes of this sub-chapter, the following terms have the following definitions:

(1) through (3) remain the same.

~~(4) "Case management" means the process of planning and coordinating care and services to meet the individual needs of eligible employees and eligible dependents. Case management includes assessment, care coordination and referral, case planning, and monitoring.~~

(~~5~~4) "Coinsurance" means the percentage of eligible charges which the insurer must pay, after the deductible is met.

(~~6~~5) "Copayment" means a fixed dollar amount or percentage of eligible charges which the insured must pay for each service after a deductible, if any, is met.

(~~7~~6) "Deductible" means the dollar amount of eligible charges which the insured must pay in an annual benefit period before any benefits are payable by the insurer.

(~~8~~7) "Eligible dependent" means any dependent defined in 33-22-1803 (12), MCA, including a common law spouse, or any child who qualifies as a dependent under the Internal Revenue Code.

(8) "Eligible employee" means any employee defined in 33-22-1803 (12), MCA. All employees who work an average of 30 hours a week or more shall be considered an eligible employee unless the insurance contract has specified in an endorsement a different hourly requirement of between 20 and 40 hours a week as contemplated in rule 6.6.5058 (3). An eligible employee does

not include an employee who works on a part-time, temporary or substitute basis.

(a) Seasonal employees working less than 9 months a year, but at least 3 months, and who meet the hourly workweek requirement may be included as eligible employees at the discretion of the employer.

(b) Part-time employees means anyone who works less than the hourly requirement of an eligible employee.

~~(9) "High risk pregnancy" means a pregnancy, the outcome of which is considered to be at high risk as determined by the case manager, based upon the following factors:~~

~~(a) Age 19 or younger and 35 or older;~~

~~(b) Medical factors which indicate the potential for a poor pregnancy outcome;~~

~~(c) Physical disability or mental impairment;~~

~~(d) Abuse of alcohol or drugs by the patient and/or someone in the person's immediate environment; and~~

~~(e) Psychosocial factors, including emotional and social needs.~~

(~~10~~9) "Lifetime maximum benefit" means maximum total benefits paid by the insurer throughout the life of the policy.

(~~11~~0) "Maximum annual out-of-pocket" means the total amount of eligible charges paid by the insured as copayments and deductible in an annual benefit period.

(~~12~~1) "New entrant" means an eligible employee, or the dependent of an eligible employee, who becomes part of an employer group after the initial period for enrollment in a health benefit plan.

(~~13~~2) "Risk characteristic" means the health status, claims experience, duration of coverage, or any similar characteristic related to the health status or experience of a small employer group or of any member of a small employer group.

(~~14~~3) "Risk load" means the percentage above the applicable base premium rate that is charged by a small employer carrier to a small employer to reflect the risk characteristics of the small employer group.

AUTH: 33-1-313 and 33-22-1822, MCA IMP: 33-22-1802, 33-22-1803, and 33-22-1813, MCA

6.6.5004 APPLICABILITY, SCOPE, AND TRANSITION

(1) and (2) remain the same.

(3) A carrier that provides individual health insurance policies to one or more of the employees of a small employer must be considered a small employer carrier and must be subject to the provisions of these rules with respect to such policies, if the small employer contributes ~~directly or indirectly~~ to the payment or reimbursement of premiums for the policies and the carrier is aware or should have been aware of such contribution. The carrier is not considered a small employer carrier if premiums are paid entirely by contributions from employees. A payroll deduction or list-billed premium arrangement is allowable only if premiums are paid entirely by contributions from employees. ~~An indirect contribution is any contribution~~

~~which benefits the employee monetarily. For the purpose of this rule, payroll deductions, list billed premium payments, and employer contributions to premiums paid through cafeteria plans, as defined in section 125 of the Internal Revenue Code, must be regarded as employer contributions.~~

~~(a) Any carrier that has a list billed premium payment arrangement with a small employer after the effective date of these rules shall do one of the following:~~

~~(i) cease using a list billing to bill individuals;~~

~~(ii) renew coverage; or~~

~~(iii) withdraw from the market, in accordance with the procedures in 33-22-1810, MCA.~~

~~(4) In the case of a carrier that provides individual health insurance policies to one or more employees of a small employer, the small employer must be considered to be an eligible small employer, and the small employer carrier must be subject to 33-22-1811, MCA, relating to availability of coverage, if:~~

~~(a) The small employer has from 3 to 25 employees who work 30 hours or more a week;~~

~~(b) The small employer contributes directly or indirectly to the premiums charged by the carrier; and~~

~~(c) The carrier is aware or should have been aware of the contribution by the employer.~~

(~~5~~4) These rules apply to all health benefit plans provided to small employers or to the employees of small employers, without regard to whether the health benefit plans are offered under, or provided through, a group policy or trust arrangement of any size sponsored by an association or employer contributions to premiums paid through cafeteria plans, as defined in section 125 of the Internal Revenue Code, unless excepted by 33-22-1803(25), MCA, or unless the plan constitutes both a multiple employer welfare arrangement as defined by section 29 USCS 1002(40)(A) and an employee welfare benefit plan under section 29 USCS 1002(1).

(~~6~~5) An individual health insurance policy is not subject to the provisions of these rules solely because the policyholder elects a deduction under section 162(l) of the Internal Revenue Code, entitled "special rules for health insurance costs of self-employed individuals."

(6) A group qualifies as a small employer group if it meets the definition in 33-22-1803 (25) and employs at least 3 but not more than 25 eligible employees regardless of whether the eligible employee intends to enroll in the group's health benefit plan. The number of eligible employees includes every employee who meets the hourly requirement set by the employer as defined in 33-22-1803(12) and 6.6.5001(8).

(7) through (9) remain the same.

(10) If a small employer has employees in more than one state, these rules must apply to any health benefit plans issued to the small employer if:

(a) remains the same.

(b) remains the same.

(c) In determining whether the laws of this state or another state apply to a health benefit plan issued to a small employer described in (~~9~~8), the provisions of (~~9~~8) apply as of the date the health benefit plan was issued to the small employer for the period that the health benefit plan remains in effect.

(d) remains the same.

(11) remains the same.

AUTH: 33-1-313 and 33-22-1822, MCA; IMP: 33-22-1802, 33-22-1808, and 33-22-1812, MCA

6.6.5008 COVERED SERVICES OF POLICIES UNDER STANDARD PLAN (1) Policies of insurance offered under the standard health benefit plan contemplated by ~~33-22-1812, MCA,~~ NEW SECTION 6 of HB 466 must provide ~~the following~~ coverage for medically necessary major medical services, subject to the deductible, coinsurance, copayment, maximum out-of-pocket, and lifetime maximum benefit levels~~, unless specifically exempted herein:~~.

~~(a) Coverage of inpatient hospital services, including but not limited to, semi-private room and board, intensive care services, and all other related hospital services.~~

~~(b) Coverage of outpatient hospital services.~~

~~(c) Coverage for hospital emergency room services, subject to a $75 copayment, if the insured is not admitted to the hospital. This copayment may not be applied toward the deductible or the maximum annual out-of-pocket.~~

~~(d) Coverage for obstetrical care delivery services, including services of physicians, certified nurse midwives and other nurse specialists, physician assistants, costs of delivery room, and other medically necessary services directly associated with the delivery.~~

~~(e) Coverage for services of physicians and other health care professionals, subject to the freedom of choice of practitioners of 33-22-111, MCA, except as provided in 33-30-102(1), MCA.~~

~~(f) Services of nutritionists, speech pathologists, audiologists, occupational therapists, and physical therapists, within limitations of other provisions of this plan, must be covered, if referred by a licensed medical doctor (MD), doctor of osteopathy (DO), or other provider if within the scope of practice as determined by the provider's licensing board and practice act.~~

~~(g) Coverage for medical nutrition services deemed medically necessary, including nutrition assessment and counseling for the following disease conditions. Costs must be reimbursed for nutrition consultations at a total cost of no more than $240 per benefit period, unless with prior approval of insurer:~~

~~(i) diabetes mellitus;~~

~~(ii) renal disease;~~

~~(iii) high risk pregnancies;~~

~~(iv) malnutrition;~~

~~(v) high risk pediatrics;~~

~~(vi) cardiovascular disease;~~
~~(vii) cancer;~~
~~(viii) gastrointestinal disease; and~~
~~(ix) eating disorders.~~

~~(g) Coverage for home health care under a plan written by an MD, DO, or other provider if within the scope of practice as determined by the provider's licensing board and practice act, when there is a cost savings compared to alternative services, as evidenced by an agreement between the referring practitioner, patient, and insurer, that home health care is desirable and cost effective.~~

~~(h) Coverage for chiropractic services not exceeding 24 treatments per year, unless an additional 11 visits are approved by the insurer, provided that the maximum covered charge must not exceed $25 per treatment.~~

~~(i) Coverage for the following mental health services in accordance with 33-22-703, MCA:~~

~~(i) mental illness;~~
~~(ii) alcoholism; and~~
~~(iii) drug abuse.~~

~~(j) Services for alcoholism and drug abuse will be covered if they meet the criteria set forth in the American Society of Addictive Medicine.~~

~~(k) Coverage of only drugs available by a prescription, which includes formularies and generic brand prescription drugs and contraceptives prescribed for the treatment of a medical problem and not solely for contraceptive purposes.~~

~~(l) Coverage for diagnostic X-ray and laboratory services.~~

~~(m) Coverage for ambulance transportation to nearest facility where necessary care is available.~~

~~(n) Coverage for rental of durable medical equipment, and coverage for purchase of such equipment in cases where purchase of the equipment would be more cost effective.~~

~~(o) Coverage for radiation therapy and chemotherapy.~~

~~(p) Coverage for state licensed hospice services, when the insured's life expectancy is determined by an MD or DO, to be six months or less.~~

(2) Coverage for all usual, customary, and reasonable charges related to medically necessary services rendered, as defined by the small employer carrier includes as follows:

(a) remains the same.

(b) remains the same.

(c) Coverage for all statutory mandated benefits, including, but not limited to those mandated by 33-22-132 (mammography examinations); 33-22-303, 33-22-512, 33-30-1014 (well child care); 33-22-703 (mental illness, and chemical dependency); 33-22-114, MCA, (services of physician's assistants - certified); 33-22-125, MCA (independent chiropractic examination and review); 33-22-130, MCA (treatment of adopted children); 33-22-131, MCA (phenylketonuria treatment); 33-22-301, 33-22-504, and 33-30-1001, MCA (newborns); 33-22-304, 33-22-506, and 33-30-1004, MCA (continuation of coverage for the handicapped); 33-22-305 through 311, MCA (the Individual Family

Disability Insurance Continuation of Coverage Act); 33-22-503, MCA (regarding continuation of benefits to dependents); 33-22-507, MCA (regarding continuing group coverage after reduction of work schedule); 33-22-508, MCA (regarding conversion on termination of eligibility); 33-22-509, MCA (regarding imposition of pre-existing conditions to a converted policy covered by a group contract); and 33-22-510, MCA (insured family-conversion entitlement).

(d) Standard plans must comply with 49-2-309.

(3) Standard health benefit plans must include at a minimum coverage for services discussed in (1) and (2) of this rule. Minimum cost sharing benefits for standard plans are specified in rule 6.6.5020 and 6.6.5024. Small employer carriers may offer a standard plan above the minimum coverage and benefit levels.

AUTH: 33-1-313 and 33-22-1822, MCA IMP: 33-22-1802 and 33-22-1812

Rules 6.6.5012 and 6.6.5016 are found on ARM pages 6-1109 and 6-1111 respectively. For both rules: AUTH: 1-3-204, 33-22-1819, MCA IMP: 33-22-1802 & 1812

~~6.6.5012 COVERED PREVENTIVE CARE AND HEALTH MAINTENANCE SERVICES OF POLICIES UNDER STANDARD PLAN (1) Policies of insurance offered under the standard health benefit plan contemplated by 33-22-1812, MCA, must provide full coverage of all costs of the following preventive care services, provided that no charges for such services may be subject to deductible or copayment requirements:~~

~~(a) The following preventive care for low-risk, asymptomatic adults:~~

~~(i) Coverage for one health examination and related counseling every 1-5 years, including current health history and counseling for tobacco and substance abuse, nutrition, exercise, sexual behavior, injury prevention, and dental care.~~

~~(ii) Coverage of age appropriate physical examinations, including, for ages 19-39, 1 exam every 5 years; for ages 40-49, 1 exam every 3 years; and for ages 50 and above, 1 exam every 1 to 2 years.~~

~~(iii) Coverage for mammography examinations as contemplated by 33-22-132, MCA.~~

~~(iv) Coverage for 3 consecutive normal pap smear tests following the onset of sexual activity, and subsequent tests every 3 years until age 65.~~

~~(v) Coverage of 1 cholesterol test every 5 years beginning at age 35.~~

~~(vi) Coverage of 1 stool test for occult blood (colon cancer) every 1 to 2 years beginning at age 50.~~

~~(vii) Coverage for 1 flexible sigmoidoscopy every 5 years beginning at age 50.~~

~~(viii) Coverage for annual flu shots after age 65.~~

~~(ix) Coverage for 1 pneumococcal vaccine after age 65.~~

~~(x) Coverage for 1 diphtheria/tetanus booster shot every 10 years following the initial series of shots.~~

~~(b) The following preventive care for children from birth to age 18:~~

~~(i) From birth through 2 years of age, coverage for well child care should follow the mandated benefits set forth in 33-22-303, 33-22-512, and 33-30-1014, MCA.~~

~~(ii) From age 3 through 18 years of age, coverage for interval health history and physical examinations conducted or performed by an MD, DO, or other provider if within the scope of practice as determined by the provider's licensing board and practice act, at intervals recommended by the American academy of pediatrics (AAP).~~

~~(iii) Coverage for immunizations of eligible dependents following schedules recommended by the AAP.~~

~~(c) The following reproductive health care:~~

~~(i) Family planning services, including contraception planning;~~

~~(ii) Pregnancy related services, including prenatal care; and~~

~~(iii) "Risk appropriate" prenatal care following medicaid guidelines. Risk appropriate prenatal care includes payment for case management for high risk pregnant individuals.~~

~~(d) Policies of insurance offered under the standard health benefit plan contemplated by 33-22-1812, MCA, must provide full coverage, after a copayment of $25 per consultation, for 4 visits per year to health care providers as listed under 33-22-111 and 33-22-114, MCA, of the patient's choice, except as provided in 33-30-102(1), MCA. This coverage must not be subject to deductible or coinsurance provision, but must be subject to a copayment of $25 per consultation and be applied toward meeting the out of pocket limit. This benefit must cover professional service fees only, and not the cost of tests, medications, or other items.~~

~~(2) In the event an individual's coverage changes from one benefit plan to another or from one carrier to another, the new benefit plan or the new carrier may count preventive care services paid for by prior carriers and benefit plans in determining whether a particular service or visit is covered.~~

~~6.6.5016 SERVICES THAT MAY BE EXCLUDED FROM COVERAGE UNDER THE STANDARD PLAN (1) Policies of insurance offered under the standard health benefit plan contemplated by 33-22-1812, MCA, may exclude the following health care services from coverage:~~

~~(a) Cosmetic surgery unless performed to correct functional impairment or defects caused by disease, trauma, or previous therapeutic processes;~~

~~(b) Diagnosis or treatment of infertility, when infertility is the only diagnosis;~~

~~(c) Treatment of temporomandibular joint syndrome, except medically necessary surgery on the temporomandibular joint;~~

~~(d) Eyeglasses, contact lenses, hearing aids, or any examination or fitting related to these devices except that such health care services must be offered as optional coverage;~~

~~(e) Eye refractive surgery, including radial keratotomy, unless the corrected vision in the operated eye is worse than~~

~~20/70 prior to surgery and can be corrected to 20/70 or better only by surgery;~~

~~(f) Routine foot care;~~

~~(g) Sex change surgery;~~

~~(h) Skilled nursing facility, except as recommended by case management;~~

~~(i) Experimental and investigational treatment;~~

~~(j) All services and supplies resulting from any illness or injury which occurs in the course of employment when the employer has elected or is required by law to obtain coverage for such under state or federal workers' compensation laws, occupational disease laws, or similar legislation, including employees' compensation or liability laws of the United States and applies to all services and supplies resulting from a work-related illness or injury even though:~~

~~(i) Coverage under the government legislation provides benefits for only a portion of the services incurred;~~

~~(ii) Your employer has failed to obtain such coverage required by law;~~

~~(iii) The member waives his or her rights to such coverage or benefits;~~

~~(iv) The member fails to file a claim within the filing period allowed by law for such benefits;~~

~~(v) The member fails to comply with any other provision of the law to obtain such coverage or benefits; or~~

~~(vi) The member was permitted to elect not to be covered by the Workers' Compensation Act but failed to properly make such election effective.~~

~~(A) This exclusion will not apply if an employer was not required and did not elect to be covered under any Workers' Compensation, occupational disease laws, or employer's liability acts of any state, country, or the United States.~~

~~(B) This exclusion will not apply if the workers' compensation insurer has denied benefits and claimant is pursuing redress through mediation, a contested case hearing, or a court, and no decision has been made on the case. If the workers' compensation coverage agrees to pay the claim, then the small employer carrier will be reimbursed for all expenses paid on the claim.~~

~~(k) Expenses that are or, without litigation could be, recovered through any federal, state, county, or municipal law, other than medicaid;~~

~~(l) Services for which there would be no charge in the absence of insurance;~~

~~(m) Services provided by immediate family members;~~

~~(n) Losses which are due to war or any act of war, whether declared or undeclared;~~

~~(o) Dental services, except for tumors or injury to the natural teeth and gums, except that such service shall be offered as optional coverage;~~

~~(p) Services and supplies not administered or ordered by an MD, DO, nurse specialist, or other covered professional.~~

~~(2) The commissioner may authorize any other exclusion which he deems to be consistent with the intent of the standard plan provisions contained in these rules.~~

6.6.5020 DEDUCTIBLE CHARGES, COINSURANCE, MAXIMUM ALLOWABLE OUT OF POCKET CHARGES, AND LIFETIME MAXIMUM BENEFIT LEVEL UNDER THE STANDARD PLAN (1) Policies of insurance offered under the standard health benefit plan contemplated by ~~33-22-1812, MCA,~~NEW SECTION 6 of HB466 must provide an annual deductible of $250 or less per person and $500 or less per family. Such deductible must be applicable to all benefits, except as specifically exempted by these rules or statute.

(2) Policies of insurance offered under the standard health benefit plan contemplated by ~~33-22-1812, MCA,~~NEW SECTION 6 of HB466 must have a coinsurance provision in which the insurer must pay ~~80~~75% or more of eligible expenses after the deductible is met, except as specifically exempted by these rules or statute.

(3) Policies of insurance offered under the standard health benefit plan contemplated by ~~33-22-1812, MCA,~~NEW SECTION 6 of HB466 must provide maximum annual out-of-pocket charges of ~~$1,250~~2,000 or less per person and ~~$2,500~~4,000 or less per family. Such policies must also provide that, after the annual out-of-pocket limit is met, the insurer will pay 100% of all medically necessary charges up to the lifetime maximum benefit level.

(4) Policies of insurance offered under the standard health benefit plan contemplated by ~~33-22-1812, MCA,~~NEW SECTION 6 of HB466 must provide a lifetime maximum benefit of $1,000,000 or more.

AUTH: 33-1-313 and 33-22-1822, MCA IMP: 33-22-1802 and 33-22-1812

6.6.5024 HMO COST SHARING SCHEDULE AND EXCEPTION TO STANDARD PLAN PROVISIONS (1) Standard plans offered by HMOs must comply with ARM 6.6.5008~~, 6.6.5012, 6.6.5016, and 6.6.5020,~~. HMO plans may require that all services provided in ARM 6.6.5008 ~~and 6.6.5012~~ must be rendered or referred by a primary care provider.

(2) Standard plans offered by HMOs must offer a comparable level of benefits to a standard plan contemplated in ARM 6.6.5008 and 6.6.5020 as determined by the benefit equivalency and benefit value. ~~are exempt from the deductible charges, and coinsurance provisions of ARM 6.6.5020, but must comply with the maximum annual out of pocket and lifetime maximum requirements of ARM 6.6.5020. HMO plans must include the following cost sharing schedule:~~

~~INPATIENT HOSPITAL SERVICES~~

~~Semi Private Room and Board Charges: Copayment Per day~~	~~$200~~
~~Other Medically Necessary Hospital Charges~~	~~No copayment~~

~~OUTPATIENT HOSPITAL SERVICES~~

~~Outpatient Therapy~~	~~$15 copayment~~
~~Other Non emergency~~	~~No copayment~~

~~HOSPITAL EMERGENCY ROOM~~

~~If admitted to the hospital~~	~~No copayment for emergency room; inpatient copayment applies~~
~~If not admitted to the hospital~~	~~$75 copayment~~

~~OBSTETRICAL SERVICES~~

~~Inpatient delivery services~~	~~$200 per day~~

~~PHYSICIANS AND OTHER MEDICAL PROFESSIONALS~~

~~Hospital inpatient visits~~	~~No copayment~~
~~Physician office or home visits~~	~~$10 copayment~~
~~After hours visits (in or outpatient)~~	~~$10 copayment~~
~~Referred Services~~	~~$15 copayment~~
~~MEDICAL NUTRITION SERVICES~~	~~$15 copayment $240 limit per benefit period, unless with prior approval of insurer~~
~~HOME HEALTH CARE~~	~~No copayment~~

~~CHIROPRACTIC SERVICES~~

~~Copayment~~	~~$10 per visit~~
~~Maximum covered charge~~	~~$25 per visit~~
~~Covered treatments per year~~	~~24 visits, plus an additional 11 visits with the HMO's approval~~

~~MENTAL HEALTH SERVICES~~

~~Inpatient~~	
~~Copayment~~	~~$200 per day~~
~~Days of covered treatment~~	~~30 days per year~~
~~Outpatient~~	
~~Copayment~~	~~$25 per visit~~
~~Maximum covered charge~~	~~$1,000 combined with substance abuse treatment~~

~~SUBSTANCE ABUSE TREATMENT~~

~~Inpatient~~	
~~Copayment~~	~~$150 per day~~
~~Maximum covered charge~~	~~$4,000 per 24 month period~~
~~Lifetime maximum~~	~~$8,000~~
~~Outpatient~~	
~~Copayment~~	~~$25 per visit~~
~~Maximum covered charge~~	~~$1,000 combined with mental health service~~

~~PRESCRIPTION DRUGS~~

~~Generic and brand name, if generic not available~~	~~$5 copayment~~
~~Brand name at patient's request~~	~~$5 copayment plus the difference between generic and brand name~~

~~DIAGNOSTIC X RAY AND LABORATORY~~ ~~No copayment~~

~~AMBULANCE~~

~~Ground ambulance~~	~~$50 copayment~~
~~Air ambulance~~	~~$250 copayment~~

~~DURABLE MEDICAL EQUIPMENT~~ ~~20% copayment~~

~~RADIATION THERAPY AND CHEMOTHERAPY~~ ~~20% copayment~~

~~HOSPICE SERVICE~~ ~~No copayment~~

~~PREVENTIVE CARE SERVICES~~

~~Adult preventative care~~	~~No copayment~~
~~Children preventative care~~	~~No copayment~~
~~Reproductive and prenatal health care~~	~~No copayment~~

~~(3) The health maintenance visits contemplated in ARM 6.6.5012(1)(d) do not apply to HMO plans.~~

AUTH: 33-1-313, 33-22-1822, MCA; IMP: 33-22-1802, 33-22-1812, MCA

6.6.5028 CONTRACT LANGUAGE (1) Development of contract language for policies of insurance offered under the standard health benefit plan contemplated by ~~33-22-1812, MCA,~~NEW SECTION 6 of HB466 is the responsibility of the small employer carrier. ARM 6.6.5008, ~~6.6.5012, 6.6.5016,~~ 6.6.5020, and 6.6.5024 do~~es~~ not define actual policy of insurance contract language.

AUTH: 33-1-313 and 33-22-1822, MCA IMP: 33-22-1802 and 33-22-1812, MCA

6.6.5032 CRITERIA OF POLICIES OFFERED UNDER BASIC PLAN (1) Any health benefit plan offered to a small employer group that has a benefit value, as calculated in ARM 6.6.5036, of less than the benefit value of the insurer's standard plan will qualify as a basic health benefit plan contemplated by ~~33-22-1812, MCA~~NEW SECTION 5 of HB466.

(2) Any HMO plan offered ~~to~~by a small employer carrier that offers fewer benefits than the ~~insurer~~carrier's standard HMO plan is subject to the commissioner's final determination, as contemplated by ~~33-22-1812, MCA~~NEW SECTION 5 of HB 466.

(3) All basic health benefit plans and basic HMO plans contemplated by ~~33-22-1812, MCA~~NEW SECTION 5 OF HB 466, must include, but are not limited to the following benefits: ~~all benefits mandated by statute, including, but not limited to, maternity benefits contemplated by court interpretations of statutes.~~

(a) coverage for services and articles required by 33-22-1521 (2);

(b) coverage for mental health and chemical dependency required by Title 33, chapter 22, part 7, MCA;

(c) coverage for conversion of benefits required by 33-22-508 and 33-22-510 or by 33-30-1007;

(4) All basic health benefit plans and basic HMO plans contemplated by NEW SECTION 5 of HB 466 may exclude coverage for services of any category of licensed practitioners and any type of health care service otherwise required by law or rule, except as specified in (3) above. Basic health benefit plans must comply with 49-2-309, MCA.

AUTH: 33-1-313 and 33-22-1822, MCA IMP: 33-22-1802 and 33-22-1812

6.6.5036 CALCULATION OF BENEFIT VALUES (1) For the purposes of determining whether a health benefit plan is a basic health benefit plan under ARM 6.6.5032, a benefit value method may be developed and used by the small employer carrier as contemplated in 33-22-1803 (6). ~~t~~The following computations to determine a benefit value ~~must~~may be used, together with the values listed.

(a) ~~The~~An optional formula for calculating the benefit value is as follows:

BENEFIT VALUE = DEDUCTIBLE VALUE + COINSURANCE VALUE + LIFETIME MAXIMUM VALUE

where

DEDUCTIBLE VALUE = DEDUCTIBLE CLAIMS COST x Y x UTILIZATION(Y) / 0.8

and

COINSURANCE VALUE = COINSURANCE-STOPLOSS ~~-PLUS-~~ + DEDUCTIBLE CLAIMS COST x {[Z x UTILIZATION(Z)] - [Y x UTILIZATION(Y)]} / 0.8.

(b) through (d) remain the same.

(e) Calculations must be made for each health benefit plan offered by the carrier and compared to the benefit value of the carrier's standard health benefit plan. ~~The standard plan's benefit value, calculated from the formula in (c) and the values in (d), is $126.40.~~

~~(2) In instances wherein some benefits under the proposed basic health care plan are of significantly higher value than those offered under the small employer carrier's standard health benefit plan, and increase the overall value of the basic plan above the overall value of the carrier's standard plan, the carrier must file complete documentation justifying the plan's proposed classification with the commissioner.~~

~~(3) A benefit value for HMO plans cannot be calculated using the formula described in (1)(a). The benefit value and certification as standard or basic HMO plans will be determined by the department.~~

(2) Filing of basic plans for approval by the Department as stipulated in 6.6.5044 must include a description of the small employer carrier's benefit value method and the calculation of the benefit values of the carrier's standard and basic plans.

AUTH: 33-1-313 and 33-22-1812, MCA IMP: 33-22-1802, 33-22-1809, and 33-22-1812, MCA

Rule 6.6.5040 is found on ARM page 6-1114.

~~6.6.5040 COST CONTAINMENT FEATURES OF BASIC AND STANDARD PLANS (1) All basic health benefit plans and standard health benefit plans offered to small employers in this state must include at least two of the following cost containment features acceptable to the commissioner:~~

~~(a) A patient education and assistance program that provides guidance for seeking appropriate medical care, including written materials and phone call in services;~~

~~(b) A program for management of acute and long term care to determine appropriate cost effective treatment, which must include an agreement to the treatment plan by the patient,~~

~~family or authorized representative, the treating health care provider, and the insurer;~~

~~(c) A program for primary care providers and referrals, such as a health maintenance organization style of delivery of care, in which each patient has a primary care provider who makes all referrals to other providers;~~

~~(d) A program for review of health care services for patients to determine the medical necessity or appropriateness of service, consistent with 33-32-102(4), MCA;~~

~~(e) A preferred provider agreement between health care providers and the insurer, which may limit the amount a provider may charge an insured for service, as well as the amount a provider may be reimbursed; or~~

~~(f) The selective contracting with hospitals, physicians, and other health care providers as defined in 33-22-1701 through 33-22-1707, 33-30-302, AND 33-31-221, MCA.~~

AUTH: 33-1-313 and 33-22-1822, MCA; IMP: 33-22-1802 and 33-22-1812, MCA

6.6.5044 FILING AND APPROVAL OF BASIC AND STANDARD PLANS

(1) ~~All~~Every small employer carrier~~s~~ ~~shall~~must file with the commissioner for prior approval ~~all of the~~a standard health benefit plan~~s~~ that the~~y~~ carrier markets or intends to market in this state which ~~have~~has not been previously filed or approved by with the commissioner~~. Each such plan must be filed with the commissioner for prior approval~~ as a standard health benefit plan. ~~Each~~This filing ~~shall~~must include a statement either that the policy has not previously been filed ~~and~~or approved in this state or that the policy has previously been filed or approved in this state as either a basic plan or as a plan which is neither standard nor basic. The latter statement must include the date of the previous filing or approval. This filing must include a demonstration of, and the result of, the benefit value calculation for that plan in compliance with ARM 6.6.5036.

~~(2) All small employer carriers which already market health benefit plans previously filed with the commissioner which qualify as standard plans according to the requirements of ARM 6.6.5000 through 6.6.5024 shall file each plan with the commissioner for prior approval as a standard health benefit plan. Each filing shall include a statement that the policy has previously been filed and approved in this state, and shall provide the date of approval.~~

~~(3) The commissioner shall review each filing described in (1) and (2) and grant either tentative approval, final approval, or disapproval as a standard plan to each filing within 30 days of receipt of the filing. If the commissioner grants tentative approval to the plan as a standard plan, the small employer carrier may market the plan as a standard plan, subject to (9), pending final approval or disapproval. After 30 days but no later than 120 days, the commissioner shall review each filing which had been granted tentative approval for a final decision regarding approval or disapproval of the plan as a standard health benefit plan. If a plan is disapproved as a standard~~

~~health benefit plan, the commissioner shall notify the small employer carrier, in writing, of the reasons for the disapproval.~~

~~(4) All~~ (2) Every small employer carriers ~~shall~~must file with the commissioner for prior approval ~~all of the~~every basic health benefit plans that ~~they~~it markets or intends to market in this state which ~~have~~has not been previously filed with the commissioner. ~~Each such plan must be filed with the commissioner for prior approval~~ as a basic health benefit plan. Each filing ~~shall~~must include a demonstration of, and the result of, the benefit value calculation for that plan in compliance with ARM 6.6.5036. Each filing ~~shall~~must include a statement either that the policy has not previously been filed ~~and~~or approved in this state or that the policy has previously been filed or approved in this state as either a standard plan or as a plan which is neither standard nor basic. The latter statement must include the date of such filing or approval. Each filing must include a demonstration of, and the result of, the benefit value calculation for that plan in compliance with ARM 6.6.5036.

~~(5) All small employer carriers which already market health benefit plans previously filed with the commissioner which qualify as basic plans according to ARM 6.6.5032 shall file each plan with the commissioner as a health benefit plan which meets the requirements of a basic health benefit plan according to the test in ARM 6.6.5036. Each filing shall include a demonstration of, and the result of, the benefit value calculation for that plan in compliance with ARM 6.6.5036. Each filing shall include a statement that the policy has previously been filed and approved in this state and shall provide the date of approval. The small employer carriers shall further state for each of these plans that either:~~

~~(a) The plan is being filed as a basic plan; or~~

~~(b) The plan is being filed as a health benefit plan which is neither a standard nor a basic plan. The filing must include complete documentation which supports this classification.~~

~~(6) All health benefit plans which are filed as basic plans as described in (4) and (5)(a) shall be reviewed by the commissioner and granted either tentative approval, final approval, or disapproval as a basic plan within 30 days of receipt of the filing. If the commissioner tentatively approves a plan as a basic plan, the small employer carrier may market the plan as such, subject to (9), pending final approval or disapproval. After 30 days but no later than 120 days, the commissioner shall review each filing which had been granted tentative approval for a final decision regarding approval or disapproval of the plan as a basic health benefit plan. If a plan is disapproved as a basic health benefit plan, the commissioner shall notify the small employer carrier, in writing, of the reasons for the disapproval.~~

~~(7) All health benefit plans which are filed as plans which qualify as basic plans according to the test in ARM 6.6.5036, but which the small employer carriers state in compliance with (5)(b) do not qualify as basic plans, shall be reviewed by the commissioner and granted tentative status either~~

~~as a basic health benefit plan, a standard health benefit plan, or a health benefit plan which is neither standard nor basic, within 30 days of receipt of the filing. The small employer carrier may then market the plan as a basic plan, a standard plan, or neither a standard nor a basic plan, according to the status granted by the commissioner and subject to (9), pending a final decision by the commissioner. After 30 days but no later than 120 days the commissioner shall review each filing which had been granted tentative status for a final decision regarding approval of the plan as a basic health benefit plan, a standard health benefit plan, or a health benefit plan which is neither standard nor basic. If such plan is approved as a basic or a standard health benefit plan, the commissioner shall notify the small employer carrier, in writing, of the reasons for its classification.~~

~~(8) All~~(3) Every small employer carriers ~~shall~~must refile with the commissioner for prior approval ~~all of the~~every health benefit plans that ~~they~~it markets or intends to market in this state ~~which have been previously filed with the commissioner and~~ for which the benefit value exceeds the benefit value of the standard plan according to the benefit value calculation contemplated by ARM 6.6.5036, and which meets one of the criteria listed in (a) and (b) below. Each filing ~~shall~~must include a demonstration of, and the result of, the benefit value calculation for that plan ~~in compliance with ARM 6.6.5036~~. Each filing ~~shall~~must include a statement ~~that~~indicating whether or not the policy has been previously filed or approved in this state ~~and shall inform the commissioner as to whether the plan was approved, disapproved, or filed for informational purposes only and the date of such action. The commissioner shall review each filing and, if the benefit value calculation verifies that the plan is neither standard nor basic and that the filing meets all the requirements of the Montana Code Annotated which apply, grant approval to the filing within 60 days of receipt of the filing~~, the date of such filing or approval, and whether the plan was originally filed as a standard plan, a basic plan, a plan which is neither standard nor basic, or a plan which was originally filed or approved outside any of these definitions before the original effective date of these rules. If the ~~benefit value calculation shows~~commissioner determines that the plan is actually a standard or a basic plan, the commissioner shall so notify the small employer carrier~~,~~ in writing. The small employer carrier must ~~then~~either refile the plan as a standard or a basic health benefit plan, as ~~classified~~determined by the commissioner, or provide additional documentation supporting the small employer carrier's classification of the plan as neither standard nor basic, for the commissioner's review. This rule applies to any health benefit plan which:

(a) was previously filed or approved as either a standard or basic plan, but now may qualify as a plan which is neither standard nor basic because the carrier filed a new standard plan with a lower benefit value in accordance with NEW SECTION 6 of HB 466; or

(b) was not approved as a small group product pursuant to this act.

(~~9~~4) No small employer carrier may market any health benefit plans to small employers in this state, unless and until one of its basic health benefit plans and one of its standard health benefit plans have been approved by the commissioner.

(~~10~~5) ~~All~~Every small employer carrier~~s which intend to market one or more HMO plans shall~~must file with the commissioner for prior approval ~~all of the~~each HMO plan~~s~~ that ~~they~~it intend~~s~~ to market to small groups in this state which ~~have~~has not been previously filed with or approved by the commissioner as a small group product. Each such plan must be filed with the commissioner as either a standard HMO plan, a basic HMO plan, or an HMO plan that qualifies as neither a standard nor a basic HMO plan, according to ARM 6.6.5028. Each filing shall include complete documentation, including the benefit value and benefit equivalency methods and calculations, that~~which~~ justifies the small employer carrier's classification of the HMO plan as a standard HMO plan, a basic HMO plan, or neither. Each filing shall include a statement that the policy has not previously been filed and approved in this state.

(a) Previously approved HMO plans must be refiled if the small employer carrier intends to change the status of the plan as a standard HMO plan, basic HMO plan, or neither standard nor basic HMO plan.

~~(11) All small employer carriers which already market HMO plans previously filed with the commissioner shall again file each plan with the commissioner for approval as either a standard HMO plan, a basic HMO plan, or an HMO plan that qualifies as neither a standard nor a basic HMO plan, according to ARM 6.6.5032. Each filing shall include complete documentation which justifies the small employer carrier's classification of the HMO plan as a standard HMO plan, a basic HMO plan, or neither. Each filing shall include a statement that the policy has previously been filed and approved in this state, and shall provide the date of approval.~~

~~(12) The commissioner shall review each filing described in (10) and (11) and grant either tentative approval, final approval, or disapproval to each filing within 30 days of receipt of the filing. If the commissioner tentatively approves the small employer's designation of the plan, the small employer carrier may market the plan on that basis pending final approval or disapproval, subject to (14). After 30 days but no later than 120 days, the commissioner shall review each filing which had been granted a tentative approval and grant a final decision regarding approval or disapproval of the plan as a standard, basic, or neither standard nor basic HMO plan.~~

(~~13~~6) If the commissioner's determination as to whether an HMO plan is standard, basic, or neither standard nor basic is different from the small employer carrier's determination in (~~10~~5)~~ or (11)~~, the commissioner shall notify the small employer carrier, in writing, of the reasons for giving it a different classification. The small employer carrier ~~shall~~must either ~~immediately comply with the requirements of the HMO~~ refile this

plan ~~as classified~~ consistent with the determination by the commissioner, or provide additional documentation supporting the small employer carrier's classification of the plan as standard, basic, or neither, for the commissioner's review.

AUTH: 33-1-313, 33-1-501 and 33-22-1822, MCA IMP: 33-22-1802, 33-22-1811, and 33-22-1812, MCA

6.6.5050 STATUS OF CARRIERS AS SMALL EMPLOYER CARRIERS (1) ~~Within 30 days after the effective date of these rules, each~~ Any carrier ~~who intends to provide~~providing health benefit plans to small employers in this state ~~shall~~ must file a statement with the commissioner by March 29, 1996 indicating ~~whether~~ that the carrier intends to operate as a small employer carrier in this state. (Carriers granted status as small group carriers prior to October 1, 1995 do not need to re-notify the commissioner.) Status as a small employer carrier will be granted by the commissioner when the carrier has both a standard and a basic health benefit plan approved by the commissioner.

(a) Any carrier that has not provided notice to the commissioner regarding an intent to be a small employer carrier by March 29, 1996 shall be considered as opting not to operate as a small employer carrier and subject to the provisions of (3), (4) and (5) of this rule.

(2) Each new carrier applying for a certificate of authority to sell disability insurance in this state shall include with its application a statement whether it intends to operate as a small employer carrier in this state.

(3) Except as provided below in (4), no carrier may offer health benefit plans to small employers, or continue to provide coverage under health benefit plans previously issued to small employers in this state, unless the ~~filing pursuant to this rule indicates that the carrier intends to operate as a small employer carrier in this state~~ carrier has approved status as a small employer carrier.

(4) If ~~the filing made pursuant to this rule indicates that~~ a carrier ~~does~~opts not ~~intend~~ to operate as a small employer carrier in this state, the carrier may continue to provide coverage under health benefit plans previously issued to small employers in this state ~~for no more than 3 years following the date that the carrier declares that it does not intend to operate as a small employer carrier in this state~~ until September 30, 2002. Such continued small group policies must comply with ~~the act~~all other applicable provisions of the act and these rules, except 33-22-1810, 33-22-1813, and subsections (2) through (4) of this rule. Such continued small group policies must not be amended or benefits or coverage altered unless required to do so by law.

(5) If ~~a filing made pursuant to this rule indicates that~~ a carrier ~~does~~opts not ~~intend~~ to operate as a small employer carrier in this state, the carrier shall be precluded from operating as a small employer carrier in this state for a period of 5 years from the date of ~~the filing~~notice or March 29, 1996, whichever is earlier. Upon a written request from such a

carrier, the commissioner may reduce the period provided for herein, if the commissioner finds that permitting the carrier to operate as a small employer carrier would be in the best interests of the small employers in this state.

(a) remains the same.

AUTH: 33-1-313 and 33-22-1822, MCA IMP: 33-22-1802, 33-22-1812, and 33-22-1814, MCA

6.6.5058 REQUIREMENT TO INSURE ENTIRE GROUPS (1) and (2) remain the same.

(3) ~~Except as provided in (4), s~~Small employer carriers may not issue health benefit plans to small employers unless the health benefit plans cover all eligible employees and all eligible dependents as defined in 33-22-1803, MCA, and ARM 6.6.5001. The small employer has the sole discretion to define the hourly workweek eligibility criteria as a normal workweek between 20 and 40 hours, so long as the criteria is applied uniformly among all employees. If the employer has chosen to define the hourly eligibility as other than 30 hours a week, the employer must sign a contract endorsement stating the following:

(a) the specific hourly employee eligibility requirement between 20 and 40 hours an average workweek;

(b) that all employees have been informed of the eligibility requirement;

(c) that the hourly eligibility requirement was not established for the purposes of excluding an employee or dependent of an employee because of the individual's health status, claims experience or risk characteristics;

(d) and that the eligibility requirement applies uniformly among all employees.

~~(4) Small employer carriers may issue health benefit plans to small employers that exclude eligible employees or eligible dependents, as defined in 33-22-1803, MCA, and ARM 6.6.5001, only if one of the following applies:~~

~~(a) The excluded individuals have coverage under health benefit plans or other health benefit arrangement that provide benefits equal to or greater than the benefits provided under the health benefit plan offered by the employer as determined by the eligible employee or dependent;~~

~~(b) The excluded individuals do not have risk characteristics or other attributes that would cause the carriers to make decisions with respect to premiums or eligibility for a health benefit plan that are adverse to the small employer;~~

~~(c) The premium contribution to be paid by the eligible employee would have exceeded 7.5% of the adjusted gross income of the eligible employee and the employee decides not to be covered. The decision not to be covered for this reason is exclusively that of the employee; or~~

~~(d) An employee shows that, in changing policies, the 12-month waiting period in pre-existing conditions would be unduly burdensome to the employee. Whether the waiting period imposes such a burden is a decision that only the employee may make.~~

~~Employers shall refrain from influencing their employees' decisions.~~

(~~5~~4) Small employer carriers shall require each small employer that applies for coverage, as part of the application process, to provide a complete list of eligible employees and eligible dependents. The list must include a statement showing how much the employer is contributing to each employee's premiums. ~~The small employer carrier shall require the small employer to provide appropriate supporting documentation, such as a W-2 Summary Wage and Tax Form, to verify the information required under this paragraph.~~

(~~6~~5) Small employer carriers shall secure waivers with respect to each eligible employee and each eligible dependent who declines an offer of coverage under a health benefit plan provided to a small employer ~~for the reasons given in (4)~~. Such waivers must be signed by the eligible employees on behalf of such employee or the dependent of such employee and must certify that the individual who declined coverage was informed of the availability of coverage under the health benefit plan. The waiver form must not require that the reason for declining coverage be stated on the form and must include a written warning of the penalties imposed on late enrollees. Waivers must be maintained by the small employer carrier for a period of 6 years.

~~(a) Small employer carriers shall obtain, with respect to each individual who submits a waiver under (4), information sufficient to establish that the waiver is permitted.~~

(~~7~~6) Small employer carriers may not issue coverage to any small employer if the carrier is unable to obtain the list required under (~~5~~4), and the ~~a~~ waivers required under (~~6~~5) ~~or the information required under (6)(a)~~.

(a) Small employer carriers may not offer coverage to any small employer if the carrier, or a producer for such carrier, has reason to believe that the small employer or producer has induced or pressured an eligible employee, or dependent of an eligible employee, to decline coverage due to the individual's health status, claims experience or risk characteristics. Small employer carriers may not offer coverage to any small employer if the carrier, or a producer for such carrier, has reason to believe that the small employer has chosen to define an eligible employee in such a way as to specifically exclude from coverage an employee or dependent of an employee because of the individual's health status, claims experience or risk characteristics.

(b) Prior to submitting an application for coverage with the carrier on behalf of a small employer, each involved producer shall notify his or her small employer carrier of any circumstances that would indicate that the small employer has induced or pressured an eligible employee or eligible dependent, to decline coverage due to the individual's health status, claims experience or risk characteristics. Prior to submitting an application for coverage with the carrier on behalf of a small employer, each involved producer shall notify his or her small employer carrier of any circumstances that would indicate

that the small employer has defined an eligible employee in such a way as to specifically exclude from coverage an employee or a dependent of an employee because of the individual's health status, claims experience or risk characteristic.

(87) New entrants to a small employer group must be offered an opportunity to enroll in the health benefit plan currently held by such group by the end of ~~six~~twelve months of employment. Any new entrant that does not exercise the opportunity to enroll in the health benefit plan within the period provided by the small employer carrier may be treated as a late enrollee by the carrier, provided that the time within which to enroll in the health benefit plan extends at least 30 days after the date the new entrant is notified of his or her opportunity to enroll. If a small employer carrier has offered more than one health benefit plan to a small employer group pursuant to (2), the new entrant must be offered the same choice of health benefit plans as the other members of the group.

(a) and (b) remain the same.

(98) In the case of an eligible employee, or eligible dependent, who, prior to the effective date of 33-22-1811, MCA, or the date a small group carrier receives approved status pursuant to ARM 6.6.5050 and 6.6.5054, was excluded from coverage or denied coverage by a small employer carrier in the process of providing a health benefit plan to an eligible small employer, the small employer carrier shall provide an opportunity for the eligible employee or eligible dependent, to enroll in the health benefit plan currently held by the small employer.

(a) remains the same.

(b) The opportunity to enroll must meet the following requirements:

(i) The opportunity to enroll must begin on the effective date of 33-22-1811, MCA, or the date a small group carrier receives approved status pursuant to 6.6.5050 and 6.6.5054 ARM and continue for a period of at least 6 months.

(ii) remains the same.

(iii) The terms of coverage offered to an individual described in (98) may exclude coverage for pre-existing medical conditions for a period not to exceed 12 months, if the health benefit plan currently held by the small employer contains such an exclusion, provided that the exclusion period must be reduced by the number of days between the date the individual was excluded or denied coverage and the date coverage is provided to the individual pursuant to this provision. Exclusion of coverage for a pre-existing medical condition must be waived for the time period that the new enrollee had previous qualifying coverage.

(iv) Small employer carriers shall provide written notice ~~at least 45 days~~ prior to the opportunity to enroll provided in (98) to each small employer insured under a health benefit plan offered by such carrier. The notice must clearly describe the rights granted under this subsection to employees and dependents who were previously excluded from or denied coverage and the

process for enrollment of such individuals in the employer's health benefit plan.

AUTH: 33-1-313 and 33-22-1822, MCA IMP: 33-22-1802, 33-22-1811, and 33-22-1812, MCA

6.6.5060 COVERAGE THROUGH ASSOCIATIONS (1) Associations providing health insurance to small groups must comply with this act and its regulations. Associations are exempt from this act only if they do not deny coverage to any small employer member of the association or any employee of its small employer members who apply for coverage as part of a group.

(2) remains the same.

(3) Associations that have received exemption must provide guaranteed issue policies ~~by~~after January 1, 1995.

(4) remains the same.

AUTH: 33-1-313, 33-1-501, and 33-22-1822, MCA IMP: 33-22-1802 and 33-22-1803

6.6.5062 RESTORATION OF COVERAGE (1) through (3) remain the same.

~~(4) The health benefit plan under (3) must not be eligible for reinsurance under the provisions of 33-22-1818 and 33-22-1819, MCA, except that the carrier may reinsure new entrants to the health benefit plan who enroll after the restoration of coverage.~~

AUTH: 33-1-313 and 33-22-1822, MCA IMP: 33-22-1802, 33-22-1809, 33-22-1812, and 33-22-1814, MCA

6.6.5066 QUALIFYING PREVIOUS AND QUALIFYING EXISTING COVERAGES (1) For the purposes of 33-22-1811(3)(b), MCA, an individual must be considered to have qualifying previous coverage with respect to a particular service if the previous policy, certificate, or other benefit arrangement covering such individual ~~met~~meets the definition of qualifying previous coverage contained in 33-22-1803(21), MCA~~, if such previous coverage retained essentially the same benefits or provided increased benefits and provided benefits with respect to the service~~.

(2) If a waiting period for pre-existing conditions is to be applied, the small employer carrier shall ascertain the source of previous or existing coverage of each eligible employee and each dependent of an eligible employee at the time such employee or dependent initially enrolls in the health benefit plan provided by the small employer carrier. The small employer carrier may contact the source of previous or existing coverage to resolve any questions about the benefits or limitations related to such previous or existing coverage.

(3) In cases referred to in 33-22-1810(2), MCA, the replacement coverage for small employers must not have pre-existing conditions exclusions applied to benefits comparable to

those in the employer's previous coverage. The previous coverage in such cases must be considered qualifying previous coverage to the level of benefits comparable to the employer's previous coverage.

AUTH: 33-1 313 and 33-22 1822, MCA IMP: 33-22-1802, 33-22-1810, 33-22-1811, and 33-22-1812, MCA

3. The rules are necessary to comply with the changes made to the Montana Small Employer Health Insurance Availability Act as amended in HB 466 and found at Chapter 377 of the Session Laws of the 1995 Legislative session.

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:

Gary L. Spaeth, Hearing Officer
Montana State Auditors Office
Room 270, Sam W. Mitchell Building, 126 North Sanders, P.O. Box 4009, Helena, Montana 59604.

Comments must be received no later than September 7, 1995.

5. The State Auditor will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, please contact the State Auditor's Office no later than September 1, 1995, and advise the office of the nature of the accommodation needed. Please contact Jeannie Davies, Montana State Auditors Office, Room 270, Sam W. Mitchell Building, 126 North Sanders, P.O. Box 4009, Helena, Montana 59604. Telephone (406)-444-2040 or toll free (800)-322-6148, fax (406)-444-3497.

6. Gary L. Spaeth has been designated to preside over and conduct the hearing.

BY: (for) _____
Mark O'Keefe, State Auditor and Insurance Commissioner

BY: _____
Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 31st day of July, 1995.

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

In the matter of the proposed amendment of ARM 12.6.701 requiring wearable personal flotation devices for each person aboard any motorboat or vessel launched upon the waterways of Montana.	NOTICE OF PROPOSED AMENDMENT OF ARM 12.6.701 No Public Hearing Contemplated

TO: All interested persons

1. On October 15, 1995, the Montana Department of Fish, Wildlife & Parks proposes to amend ARM 12.6.701 to read as follows with a delayed effective date of May 1, 1996:

12.6.701 PERSONAL FLOTATION DEVICES AND LIFE PRESERVERS

(1) The following are requirements for personal flotation devices and life preservers upon motorboats and vessels launched upon the waters of this state:

(a) all recreational boats ~~less than 16 feet in length~~, and ~~all~~ canoes and kayaks of any length must have one type I, II, or III device (of a suitable size) ~~or type IV~~ aboard for each person;

(b) a type V device may be substituted for types I, II, III when properly worn on the person at all times while the vessel is in operation;

(c) all recreational boats 16 feet in length and over, in addition to the above, must have one throwable type IV device (seat cushion with handles or ring buoy);

(d) type I, II, and III devices shall be readily accessible to all persons on board; the type IV device shall be immediately available for use.

(2) The following are requirements for sailboards used on waters of this state:

(a) if two or more persons are occupying a sailboard, each occupant must have a coast guard approved life preserver securely fastened to his person;

(b) A person operating a sailboard (windsurfer), who has not reached his 15th birthday, must have a coast guard approved life preserver securely fastened to his person.

(3) The amendment to subsection (1)(a) of this rule, requiring all boats to carry personal flotation devices, is effective May 1, 1996.

AUTH: 87-5-105, MCA IMP: 87-5-105, MCA

2. Rationale for proposed amendment: The amendment if adopted will require that all recreational boats in the state of Montana must carry a wearable personal flotation device for each person aboard a vessel. The rule does not require the devices to be worn. This amendment is needed to bring the rule in

compliance with coast guard requirements, adopted on August 4, 1993. See 58 Fed. Reg. 41602. Since a portion of the coast guard requirements are not effective until May 1, 1996, and the department feels it is prudent to provide time for the public to become aware of the new requirements, the department is proposing to delay the effective date of the proposed amendment to May 1, 1996.

3. Interested parties may submit their data, views or arguments, either orally or in writing, to Elizabeth Lodman, Department of Fish, Wildlife & Parks, P.O. Box 200701, Helena, Montana 59620-0701, no later than September 30, 1995.

4. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments to Elizabeth Lodman, Department of Fish, Wildlife & Parks, P.O. Box 200701, Helena, Montana 59620-0701, no later than September 30, 1995.

5. 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 agency or subdivision or from any association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register and mailed to all interested persons. The department has determined that 10% of the number of persons affected is greater than 25 based on the number of potential boaters in Montana.

MONTANA DEPARTMENT OF FISH, WILDLIFE & PARKS

Robert N. Lane
Rule Reviewer

Patrick J. Graham, Director

Certified to the Secretary of State on July 31, 1995.

BEFORE THE FIRE PREVENTION AND INVESTIGATION BUREAU
OF THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption, repeal and amendment of rules pertaining to the adoption of the 1994 Uniform Fire Code and the 1994 edition of the Uniform Fire Code Standards	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT AND REPEAL

TO: All Interested Persons

1. On September 14, 1995, at 10:00 a.m., the Fire Prevention and Investigation Bureau of the Montana Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider: (1) the proposed adoption of new rules I through X, (2) the repeal of ARM 23.7.105; and (3) the amendment of ARM 23.7.108, 23.7.109, 23.7.113, and 23.7.201.

2. The Fire Prevention and Investigation Bureau proposes to adopt by reference and significantly amend the 1994 edition of the Uniform Fire Code (UFC) and Uniform Fire Code Standards (UFC Standards). The additions to the UFC which the bureau proposes will be identified so as to fit consistently with the topical numbering system used in the UFC. The bureau also proposes to amend three other rules to conform to the new edition of the UFC and to amend one rule dealing with fireworks.

3. Because the bureau is amending a document which it is adopting by reference, several things should be explained. ARM 23.7.105, which currently adopts the UFC and UFC Standards, is proposed to be repealed, and in its place new rules will be adopted, which will adopt the UFC and elaborate the changes which the bureau proposes to make. This is necessary because the 1994 edition of the UFC will be modified so extensively. To avoid redundancy, only section and subsection numbers, not article numbers, of the UFC will be used. (Section numbers are four-digit numbers; subsection numbers contain the same four numbers, but have additional numbers and decimal points.) The rules which the bureau proposes to amend will read as follows (new material is underlined; material to be deleted is interlined):

23.7.108 SMOKE DETECTORS IN RENTAL UNITS (1) and (2) remain the same.

(3) Appendix I-A~~(6)~~ SECTION 6 - SMOKE DETECTORS of the Uniform Fire Code shall govern the installation of smoke detectors in all dwelling units subject to this rule.

AUTH: 50-3-102 MCA
IMP: 50-3-102 MCA

23.7.109 CERTIFICATE OF APPROVAL FOR DAY CARE CENTERS FOR THIRTEEN OR MORE CHILDREN (1) and (2) remain the same.

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

(l) Space under stairwells shall not be used for storage of any kind except as permitted by UFC Sec. ~~12.106(c)~~ 1210.3 Exception.

(4) through (6) remain the same.

AUTH: Sec. 50-3-102 MCA
IMP: Sec. 50-3-102 MCA

23.7.113 DEFINITIONS (1) remains the same.

(2) "Building code" means the latest edition of the Uniform Building Code adopted by the department of commerce. Whenever a provision of the Building Code is incorporated within the Uniform Fire Code by reference, such provision is hereby adopted for application to all buildings within the jurisdiction of the state fire prevention and investigation bureau, unless the bureau chief determines otherwise in accordance with UFC Section ~~2.301~~ 103.1.2. Copies of the Uniform Building Code may be obtained from the Building Codes Bureau of the Department of Commerce, 1218 East Sixth Avenue, Helena, Montana 59620.

(3) through (15) remain the same.

(16) "Fire service area" means a local government unit established and operated pursuant to Title 7, chapter 33, part 24, MCA.

(16) through (27) remain the same, but are renumbered (17) through (28).

AUTH: Sec. 50-3-102 MCA
IMP: Sec. 50-3-102 MCA

23.7.201 RETAIL FIREWORKS SALE (1) through (4) remain the same.

(5) Except as provided in subsection (12) of this rule, retail sale of fireworks shall be conducted from stands located at least 300 feet from a church or hospital, 50 feet from any flammable liquid dispensing device or installation, 50 feet from other inhabited ~~buildings~~ areas, and 30 feet from any public roadway.

(6) remains the same.

(7) Stands shall be equipped inside with at least one pressurized water extinguisher with a minimum rating of 2A or one garden hose connected to an available water supply.

(8) through (11) remain the same.

(12) Retail sale of fireworks from occupancies other than those authorized by this rule is prohibited, except that fireworks may be sold out of an existing retail business establishment under the following conditions:

(a) The amount of fireworks on display in the customer service area contains an aggregate of no more than one pound of ~~black powder~~ pyrotechnic composition; and

(b) remains the same.

(i) It is constructed of material sufficient to achieve a one-hour fire resistant-rated barrier between the storage area and the customer service area. The fireworks must be stored in cabinets made of wood or equivalent material that is at least one inch thick, and each cabinet must contain no more than an aggregate of 5 pounds of ~~black powder~~ pyrotechnic composition;

(ii) and (iii) remain the same.

(13) remains the same.

AUTH: Sec. 50-3-102(3) MCA
IMP: Sec. 50-3-102(3) MCA.

4. The proposed new rules will read as follows: [Additions to the Uniform Fire Code are underlined, deletions are interlined, and all material not mentioned is adopted unchanged; bracketed [] material is explanatory and will not appear in the final rule. Whole sections and articles have been added to the Uniform Fire Code, and illustrative numbering that is consistent with that of the code will be used. Some references to sections or subsections of the UFC will state that further subsections are included, these subsections will have at least numbers identical to those of the section being referred to, e.g., Section 5202.12.2.1 is a subsection of Section 5202.12; Sections 4601 through 4607 are all subsections of Article 46; Section 1105 is not a subsection of Section 1104.]

NEW RULE I ADOPTION OF UNIFORM FIRE CODE (1) The fire prevention and investigation bureau hereby adopts and incorporates by reference the Uniform Fire Code and appendices, 1994 edition (UFC), and the Uniform Fire Code Standards, 1994 edition (UFC Standards), with the additions, amendments, and deletions enumerated in this sub-chapter. Copies of the Uniform Fire Code and related materials may be obtained from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, CA 90601-2298, (310) 692-4226 or from the MSU Fire Training School, 2100 16th Avenue South, Great Falls, MT 59405-4997, (406) 761-7885.

(2) If there is any conflict between the Uniform Fire Code and the Montana Code Annotated, the provisions of the Montana Code Annotated control.

(3) This rule establishes a minimum fire protection code to be used in conjunction with the Uniform Building Code, ARM 80.70.101, et seq. Nothing in this rule prohibits any local government unit from adopting those chapters of the Uniform Fire Code that are not adopted by the fire prevention and investigation bureau.

AUTH: Sec. 50-3-102 MCA
IMP: Sec. 50-3-103 MCA

NEW RULE II ADMINISTRATION (1) Article I of the UFC is adopted with the following deletions:

(a) Subsection 103.1.4 Appeals is not adopted; and

(b) Subsection 105.8 Permit Required, subsections a.2 through a.5, b.1, c.1, c.3 through c.8, d.1, d.2, e.1, f.1 through f.5, h.2, h.3, l.1 through l.3, m.1 through m.3, o.1 through o.3, p.1, p.2, r.1 through r.3, s.1, t.1, t.2, and w.1 only, are not adopted.

(2) Pursuant to Subsection 101.8, all appendices of the UFC are adopted, with the following deletions:

(a) APPENDIX II-C MARINAS, Section 3 Permits is not adopted;

(b) APPENDIX II-D RIFLE RANGES (including all sections) is not adopted;

(c) APPENDIX II-G SECONDARY CONTAINMENT FOR UNDERGROUND TANK SYSTEMS CONTAINING FLAMMABLE OR COMBUSTIBLE LIQUIDS (including all sections) is not adopted;

(d) APPENDIX II-H SITE ASSESSMENTS FOR DETERMINING POTENTIAL FIRE AND EXPLOSION RISKS FROM UNDERGROUND FLAMMABLE OR COMBUSTIBLE LIQUID TANK LEAKS (including all sections) is not adopted;

(e) APPENDIX I-A, Subsection 1.2 Effective Date, is amended as follows:

1.2 Effective Date. ~~Within 18 months after the effective date of Appendix I-A, plans for compliance shall be submitted and approved, and within 18 months thereafter the work shall be completed or the building shall be vacated until made to conform.~~ Plans and specifications for the necessary alterations shall be filed with the chief within the time period established by the department after the date of owner notification. Work on the required alterations to the building shall be completed within 36 months.

The chief shall grant necessary extensions of time when it can be shown that the specified time periods are not physically practical or pose an undue hardship. The granting of an extension of time for compliance shall be based upon the showing of good cause and subject to the filing of an acceptable systematic progressive plan of correction with the chief.

AUTH: Sec. 50-3-102 MCA
IMP: Sec. 50-3-103 MCA

NEW RULE III ADDITIONAL DEFINITIONS ARTICLE 2-DEFINITIONS AND ABBREVIATIONS is adopted with the following additions:

(1) "Farm" means a tract of land devoted to agricultural purposes;

(2) "Ranch" means a tract of land devoted to the raising of livestock; and

(3) "Rural" means any area outside a three-mile radius of a Class 1 or a Class 2 city's boundaries, as defined in 7-1-4104, MCA and outside a one and one-half mile radius of a Class 3 city's boundaries.

AUTH: 50-3-102 MCA, 50-61-102 MCA
IMP: 50-3-102, 50-61-102 MCA

NEW RULE IV GENERAL PROVISIONS FOR SAFETY Articles 9 through 13 of the UFC are adopted with the following deletions:
(1) Section 1104 Parade Floats (including all subsections) is not adopted; and
(2) Subsection 1302.3 False Alarms is not adopted.

AUTH: Sec. 50-3-102 MCA
IMP: Sec. 50-3-103 MCA

NEW RULE V SPECIAL OCCUPANCY USES Articles 24 through 36 of the UFC are adopted without change.

AUTH: Sec. 50-3-102 MCA
IMP: Sec. 50-3-103 MCA

NEW RULE VI SPECIAL PROCESSES Articles 45 through 52 of the UFC are adopted with the following deletions, amendments, and additions:
(1) Subsection 5202.12 Vapor Recovery. (including all subsections) is not adopted;
(2) Subsection 5202.3.4 Fuel tanks at bulk plants. is amended by adding the following exception to the existing subsection (which is unchanged): EXCEPTION: Tanks located at bulk plants in rural areas as permitted for rural automotive motor vehicle fuel-dispensing stations in Section 5300.;
(3) Subsection 5202.3.9 Inventory control. is amended by adding the following exception to the existing subsection (which is unchanged): EXCEPTION: Other methods as approved by the Montana department of environmental quality UST program are acceptable.;
(4) Subsection 5202.4.1 Aboveground tanks. is amended by adding the following exception to the existing sub-section (which is unchanged): EXCEPTION: As permitted at rural areas in accordance with Section 5300.;
(5) Subsection 5202.5.3.3 Leak detection. is amended by adding the following exception to the existing subsection (which is unchanged): EXCEPTION: Other leak detection methods as approved by the Montana department of environmental quality UST program are acceptable.; and
(6) The following entire Article (53) is added to the UFC:

Article 53-Rural Motor Vehicle Fuel-Dispensing Stations

SECTION 5301 – GENERAL

5301.1 Scope. Rural automotive motor vehicle fuel-dispensing stations shall be in accordance with these rules. Such operations shall include public accessible operations but excludes farms and ranches. Flammable and combustible liquids and LP-gas shall also be in accordance with Article 79 and 82.

5301.2 Definitions. For definitions of CNG, COMBUSTIBLE LIQUID, FLAMMABLE LIQUID and MOTOR VEHICLE FUEL-DISPENSING STATION, see Article 2.

5301.3 Plans.

5301.3.1 Plans Submittal. Plans submittal is required for rural motor vehicle fuel-dispensing stations.

5301.3.2 Plans and specifications. Plans and specifications shall be submitted for review and approval prior to the installation or construction of a rural motor vehicle fuel-dispensing station utilizing flammable or combustible liquids. Both aboveground and underground storage vessels shall be shown on plans. For each station, plans and specifications shall include, but not be limited to, the following:

1. Plans, blueprints or drawings for the renovation or construction of a rural motor vehicle fuel-dispensing station that utilizes aboveground storage of flammable or combustible liquids, or both, must be submitted to the Fire Prevention and Investigation Bureau by registered receipt mail for approval before beginning construction. The fire prevention and investigation bureau shall approve or deny the plans within 50 calendar days or they are automatically considered approved. The plans must comply with Sections 7901.8, 7901.11, 7902.1.8.2.1, 7902.1.10, 7902.1.11, 7902.1.13, 7902.2.3, and Article 53 of the Uniform Fire Code and the National Electrical Code and contain the following information:

A. Quantities and types of liquids to be stored;

B. Distances from tanks and dispensers to property lines and buildings;

C. Vehicle access;

D. Fire appliances;

E. Vehicle impact protection;

F. Aboveground tanks and their supports;

G. Method of storage and dispensing;

H. Overfill prevention, spill containment, vents, dispensers, and other equipment and accessories;

I. Seismic design in accordance with Building Code;

J. Secondary containment;

K. Venting;

L. Piping;

M. Electrical systems;

N. Emergency controls; and

O. Other information as required by the chief.

2. Prior to proposed rural motor vehicle fuel-dispensing station renovation or construction the applicant shall obtain a letter of preliminary review within 10 calendar days from the local fire official responsible for fire protection. This letter and two sets of plans, blueprints or drawings shall be submitted to the fire prevention and investigation bureau for examination and approval of compliance with this rule.

5301.4 Location of Dispensing Operations and Storage Vessels.

5301.4.1 Dispensing operations.

5301.4.1.1 General. Flammable and combustible liquids, CNG and LP-gas shall not be dispensed in buildings and dispensers for such products shall not be located in buildings. Exception: dispensing of flammable and combustible liquids inside buildings in accordance with Section 5302. See Sections 5302, 5203 and 5204 for additional requirements.

5301.4.1.2 Dispensing devices. Dispensing devices shall be located as follows:

1. Ten feet (3048 mm) or more from property lines.

2. Ten feet (3048 mm) or more from buildings having combustible exterior wall surfaces or buildings having noncombustible exterior wall surfaces that are not part of one-hour fire-resistive assembly.

EXCEPTION: Canopies constructed in accordance with the Building Code.

3. Such that all portions of the vehicle being fueled will be on the premises of the motor vehicle fuel dispensing station.

4. Such that the nozzle, when the hose is fully extended, will not reach within 5 feet (1524 mm) of building openings, and

5. Twenty feet (6096 mm) or more from fixed sources of ignition.

5301.4.1.3 Bulk plants. Motor vehicle fuel dispensing stations located at bulk plants shall be separated by a fence or similar barrier from the area in which bulk operations are conducted. See also Section 5302.3.4.

5301.4.2 Storage vessels. Storage vessels for LP-gas and CNG shall be located 20 feet (6096 mm) or more from aboveground tanks containing flammable or combustible liquids.

5301.5.1 Protection of dispensers. Dispensing devices shall be protected against physical damage from vehicles by mounting on a concrete island 6 inches (152.4 mm) or more in height or by other approved methods.

5301.5.2 Dispenser installation. Dispensing devices shall be secured in an approved manner. Dispensers shall not be secured to the island using piping or conduit.

5301.5.3 Emergency shutdown devices. Emergency shutdown devices shall be provided for all fuel dispensers in locations approved by the chief. Emergency shutdown devices for exterior fuel dispensers, at unattended facilities, shall be located within 75 feet (22860 mm) of, but not less than 25 feet (7620 mm) from, dispensers. For interior fuel dispensing operations, the emergency shutdown devices shall be installed at approved locations. Activation of the emergency shutdown devices shall stop the transfer of fuel to the dispensers and close all valves which supply fuel to dispensers. Such devices shall be distinctly labeled EMERGENCY FUEL SHUTDOWN DEVICE. Signs shall be provided in approved locations.

5301.5.4 Dispenser electrical disconnects. An electrical disconnect switch shall be provided for all dispensers in accordance with the Electrical Code. The disconnect shall be placed in the OFF position before repairing dispensers and before closing a motor vehicle fuel-dispensing station.

5301.6 Supervision of Dispensing Operations

5301.6.1 General. The dispensing of fuel into fuel tanks of automotive or portable containers shall be under the supervision of a qualified attendant at all times.

EXCEPTION: Unsupervised dispensing of flammable and combustible liquids, LP-gas and CNG as a motor fuel is allowed in accordance with Sections 5301.6.3, 5302, 5203 and 5204.

5301.6.2 Attendants. The attendant's primary function shall be to supervise, observe and control the dispensing of motor fuels. The attendant shall prevent the dispensing of flammable and combustible liquids and flammable gases into containers not in compliance with this code, control sources of ignition, give immediate attention to accidental spills or releases, and be prepared to use fire extinguishers. A method of communicating with the fire department shall be provided for the attendant.

5301.6.3 Unsupervised dispensing. Unsupervised dispensing is allowed when the owner or operator provides, and is accountable for, daily site visits, regular equipment inspection and

maintenance, conspicuously posted instructions for the safe operation of dispensing equipment, and posted telephone numbers for owners or operators. A sign, in addition to the signs required by Section 5301.8, shall be posted in a conspicuous location reading:

During hours of operation, stations having unsupervised dispensing shall be provided with a fire alarm transmitting device. A telephone not requiring a coin to operate is acceptable.

5301.7 Sources of Ignition. Electrical equipment shall be in accordance with the Electrical Code.

Smoking and open flames shall be prohibited in areas where fuel is dispensed. The engines of vehicles being fueled shall be stopped.

5301.8 Signs. Signs prohibiting smoking, prohibiting dispensing into unapproved containers and requiring vehicle engines to be stopped during fueling shall be conspicuously posted within sight of each dispenser.

5301.9 Fire Protection. Portable fire extinguishers shall be provided as set forth in U.F.C. Standard 10-1.

5301.10 Clearance from Combustible Materials. Weeds, grass, brush, trash and other combustible materials shall be kept not less than 10 feet (3048 mm) from fuel storage vessels and fuel-handling equipment.

5301.11 Maintenance. Fueling systems shall be maintained in proper operating condition.

5301.12 Spill control and drainage control. Spill control and drainage control shall be provided as set forth in Section 7901.8.

5301.13 Leaking Aboveground Storage Tanks. A leaking tank shall be reported to the local fire official and the department and may be replaced with an approved tank of the same volume without prior written approval as required in 5302.2.4.1. Subsequent inspection and approval shall be made by the local fire official.

SECTION 5302 -- RURAL FLAMMABLE AND COMBUSTIBLE LIQUID MOTOR VEHICLE FUEL-DISPENSING STATIONS

5302.1 General. Rural automotive motor vehicle fuel-dispensing stations utilizing flammable or combustible liquids shall be in accordance with Section 5302. See also Article 79.

5302.2 Approvals.

5302.2.1 General. Equipment and appliances used for the storage or dispensing of flammable and combustible liquids shall be approved or listed in accordance with Section 5302.2.

5302.2.2 Approved equipment. Pits and piping used for flammable and combustible liquids shall be approved.

5302.2.3 Listed equipment. Tanks, electrical equipment, dispensers, hose, nozzles, and submersible or subsurface pumps used for the storage or dispensing of flammable and combustible liquids shall be listed.

5302.3 Storage of Fuel.

5302.3.1 General.

1. Class I, II and III-A liquids may be stored in aboveground storage tanks at automotive motor vehicle fuel-dispensing stations located in "rural areas" as defined in Rule III Additional Definitions. Primary tanks may be of horizontal or vertical design but shall not exceed 12,000 gallons individual capacity or 48,000 gallons aggregate capacity.

2. Storage tanks, at the option of the owner, may be installed in accordance with the requirements of Section 5202.3.1 or Appendix II-F of the 1994 Edition, Uniform Fire Code as adopted.

5302.3.2 Interconnection of aboveground tanks and underground tanks. A connection shall not be made between an aboveground tank and an underground tank.

5302.3.3 Fueling from portable tanks. Portable and semiportable tanks are allowed to be temporarily used in conjunction with the dispensing of Class I, II or III-A liquids into the fuel tanks of motor vehicles or other motorized equipment on premises not normally accessible to the public when approved by the chief.

5302.3.4 Fuel tanks at bulk plants. Storage tanks storing Class I, II, III-A liquids at bulk plants located in "rural areas", as defined in Rule III Additional Definitions, and are interconnected for use at motor vehicle fuel-dispensing stations shall be installed in accordance with Section 5302 and shall have no capacity restrictions.

5302.3.5 Class I liquids in basements or pits. Class I liquids shall not be stored or used within a building having a basement or pit into which flammable vapors could travel unless such area is provided with ventilation designed to prevent the accumulation of flammable vapors therein.

5302.3.6 Container storage inside buildings. Class I, II or III-A liquids stored inside motor vehicle fuel-dispensing station

buildings shall be in approved containers and in accordance with Section 7902.5.

5302.3.7 Testing of leak-detection devices. Leak-detecting devices shall be tested annually by the owner or occupant of the property on which they are located. Test results shall be maintained and be available to the chief on request.

5302.3.8 Inventory control. Accurate daily inventory records shall be maintained and reconciled on Class I, II and III-A liquid storage tanks for indication of possible leakage from tanks and piping. The records shall be kept at the premises and available to the chief upon request and shall include records showing, by product, daily reconciliation between sales, use, receipts and inventory on hand. If there is more than one system consisting of tanks serving separate pumps or dispensers for a product, the reconciliation shall be ascertained separately for each tank system. A consistent or accidental loss of Class I, II or III-A liquids shall be immediately reported to the fire department.

5302.4 Dispensing.

5302.4.1 Aboveground tanks. Class I and Class II liquids may be dispensed into the fuel tank of a motor vehicle from aboveground tanks when the aboveground tanks are located in "rural areas" and the tanks are installed in accordance with these rules.

New installations shall provide the following at the time of installation. Existing installations shall provide the following within 36 months of the adoption of this rule.

1. Valves.

A. Fire valve. Tanks shall be equipped with a heat-actuated shut-off device.

B. Breakaway valves. Product delivery hoses are equipped with a listed emergency breakaway device designed to retain liquid on both sides of the breakaway point. Such devices shall be installed and maintained in accordance with manufacturer's instructions.

C. Over-fill device. Horizontal tanks shall be provided with either an automatic shut-off device capable of stopping the delivery of fuel when the level in the tank reaches 90 percent of tank capacity or an audible alarm that sounds when reaching a 90 percent capacity. Bottom fill vertical tanks shall be provided with a tank level gauge marked at 85 per cent of tank capacity, or other approved means.

2. Guard posts. Guard posts or other means shall be provided outside the dike to protect the area where tanks are

installed. The design shall be in accordance with Section 8001.9.3.

3. Fencing. Tanks shall be surrounded by a fence not less than 5 feet in height, constructed of wire mesh, solid metal sheathing or masonry.

5302.4.2 Filling of portable containers and cargo tanks. Class I, II and III-A liquids shall not be dispensed into portable containers unless such container is of approved material and construction, and having a tight closure with screwed or spring cover so designed that the contents can be dispensed into without spilling. Cargo tanks shall be filled at bulk plants or terminals.

5302.4.3 Design and construction.

5302.4.3.1 General. Class I and II liquids shall be transferred from tanks by means of fixed pumps so designed and equipped as to allow control of the flow and to prevent leakage or accidental discharge.

Supplemental means shall be provided outside of the dispensing area whereby the source of power can readily be disconnected in the event of fire or other accident.

Dispensing devices for Class I, II or III-A liquids shall be of an approved type. See Article 90, Standard u. 1.6. Class I, II or III-A liquids shall be dispensed by approved pumps taking suction through the top of the container on horizontal tanks. Vertical tanks dispensing Class I, II or III-A liquids may rely on gravity flow connected to "day tanks", not exceeding 250 gallons capacity, provided with submersible pumps or may be directly connected to suction pumps located in the base of the dispenser. Class I, II, and III-A liquids shall not be dispensed by a device that operates through pressure within a storage tank or container unless the tank or container has been approved as a pressure vessel for the use to which it is subjected. Air and oxygen pressure shall not be used for dispensing Class I, II or III-A liquids.

See Section 5302.5 for pressure-delivery motor vehicle fuel-dispensing stations.

5302.4.3.2 Nozzles. A listed automatic-closing-type hose nozzle valve with or without a latch-open device shall be provided on island-type dispensers used for dispensing Class I, II or III-A liquids.

Overhead-type dispensing units shall be provided with a listed automatic-closing-type hose nozzle valve without a latch-open device.

EXCEPTION: A listed automatic-closing-type hose nozzle valve with latch-open device is allowed to be used if the design of the system is such that the hose nozzle valve will close automatically in the event the valve is released from a fill opening or upon impact with a driveway.

Where dispensing of Class I, II or III-A liquids is performed by someone other than a qualified attendant, a listed automatic-closing-type hose nozzle valve shall be used incorporating the following features:

1. The hose nozzle valve shall be equipped with an integral latch-open device.

2. When the flow of product is normally controlled by devices or equipment other than the hose nozzle valve, the hose nozzle valve shall not be capable of being opened unless the delivery hose is pressurized. If pressure to the hose is lost, the nozzle shall close automatically.

3. The hose nozzle shall be designed such that the nozzle is retained in the fill pipe during the filling operation.

5302.4.4 Supervision. In addition to the requirements in Section 5301.6, dispensing equipment used at unsupervised locations shall comply with one of the following:

1. The amount of fuel being dispensed is limited in quantity by a preprogrammed card,

2. Dispensing devices are programmed or set to limit uninterrupted fuel delivery to 25 gallons (94.6 L) and require a manual action to resume continued delivery, or

3. Product delivery hoses are equipped with a listed emergency breakaway device designed to retain liquid on both sides of the breakaway point. Such devices shall be installed and maintained in accordance with manufacturer's instructions.

5302.4.5 Dispensing inside garages. Where an outside location is impractical, dispensing devices approved for inside use are allowed to be installed inside a garage or similar establishment which stores, parks, services or repairs automotive equipment. The location of and safeguards for such dispensing devices shall be approved. Dispensing devices shall be protected from physical damage by vehicles by mounting such devices on a concrete island, or by equivalent means, and shall be located in a position where they cannot be struck by an out-of-control vehicle descending a ramp or other slope.

The dispensing area shall be provided with an approved mechanical or gravity ventilation system. When dispensing units are located below grade, only approved mechanical ventilation shall be used and the entire dispensing area shall be protected

by an approved automatic sprinkler system. Ventilating systems shall be electrically interlocked with Class I liquid dispensing units such that the dispensing units cannot be operated unless the ventilating fan motors are energized. See also Section 5302.10.

5302.4.6 Electrical controls. A control shall be provided that will allow the pump to operate only when a dispensing nozzle is removed from its bracket or normal position with respect to the dispensing unit and the switch on the dispensing unit is manually actuated. This control shall also stop the pump when all nozzles have been returned, either to their brackets or to the normal nondispensing position.

5302.4.7 Special-type dispensers. Approved special-dispensing systems such as, but not limited to, coin-operated and remote preset types, are allowed at motor vehicle fuel-dispensing stations, provided there is at least one qualified attendant on duty while the station is open to the public, and:

1. The attendant or supervisor on duty shall be capable of performing the functions and assuming the responsibilities set forth in Sections 5301 and 5302.4.4.

2. Instructions for the operation of dispensers shall be conspicuously posted.

3. Remote preset-type devices shall be set in the off position while not in use so that the dispenser cannot be activated without the knowledge of the attendant.

4. The dispensing device shall be in clear view of the attendant at all times and obstacles shall not be placed between the dispensing devices and the attendant, and

5. The attendant shall be able to communicate with persons in the dispensing area at all times.

5302.5 Pressure Delivery Motor Vehicle Fuel-dispensing Stations.

5302.5.1 General. Systems used for the dispensing of Class I or II liquids that transfer the liquid from storage to individual or multiple dispensing units by pumps that are not located at dispensing units shall be in accordance with Section 5302.5.

EXCEPTION: The chief is authorized to alter or impose additional regulations where such systems are located within buildings.

Notification shall be given to the chief prior to abandonment, alteration or repair of any part of a pressure delivery system, except the dispenser.

5302.5.2 Pits. Pits intended to contain subsurface pumps or fittings from submersible pumps shall not be larger than necessary to contain the intended equipment and to allow the free movement of hand tools operated from above grade.

Pits and covers shall be designed and constructed to withstand the external forces to which they could be subjected. When located above an underground tank, at least 1 foot (305 mm) of earth or sand cover shall be maintained over the top of the tank.

Pits shall be protected against ignition of vapors by one of the following methods:

1. Sealing the unpierced cover with mastic or by bolting against a gasket in an approved manner, or

2. Filling the pit with a noncombustible inert material.

5302.5.3 Piping, valves and fittings.

5302.5.3.1 General. Piping, valves and fittings shall be designed for the working pressures and structural stresses to which they could be subjected. Metallic piping in contact with the ground shall be provided with cathodic protection. Threaded joints or connections shall be made up tight with the use of an approved pipe joint sealing compound. Nonmetallic joints shall be approved and shall be installed in accordance with the manufacturer's instructions.

5302.5.3.2 Valves. A check or manual valve shall be provided in the discharge dispensing supply line from the pump with a union between the valve and the same pump discharge.

An approved emergency shutoff impact valve incorporating a fusible link designed to close automatically in the event of severe impact or fire exposure shall be rigidly mounted and connected by a union in the dispensing supply line at the base of each dispensing device. The shear section of the impact valve shall be mounted flush with the top of the surface upon which the dispenser is mounted.

Existing dispensers not equipped with an impact valve shall be so equipped within 36 months of the adoption of this rule.

5302.5.3.3 Leak detection. Pumps shall have installed on the discharge an approved leak-detection device which will provide an indication if the piping and dispensers are not essentially liquid tight.

5302.5.3.4 Testing. Upon completion of the installation, the system shall be tested in accordance with Section 7901.11.

5302.6 Electrical Equipment.

5302.6.1 General. Areas where Class I liquids are stored, handled or dispensed shall be in accordance with Section 5302.6. See also Section 7901.4.

5302.6.2 Electrical wiring and equipment. Electrical wiring and equipment shall be installed in a manner which provides reasonable safety to persons and property. Evidence that wiring and equipment are of the type approved for use in the hazardous locations as set forth in Table 5302.6-A and that wiring and equipment have been installed in accordance with the Electrical Code shall be provided.

5302.6.3 Classified area. In Table 5302.6-A, a classified area need not extend beyond an unpierced wall, roof or other solid partition.

For area classifications not covered in Section 5302.6.2 and not listed in Table 5202.6-A, the chief is authorized to classify the extent of the hazardous area.

5302.7 Heating Equipment.

5302.7.1 Electrical heating equipment. Electrical heating equipment shall be in accordance with Section 5302.6.

5302.7.2 Fuel-burning equipment. Fuel-burning equipment, other than wet heat system and direct-fired makeup air heaters, shall not be located in dispensing rooms or in areas where vapors could migrate. Such systems shall be in accordance with the Mechanical Code.

5302.8 Drainage Control. Provisions shall be made to prevent liquids spilled during dispensing operations from flowing into buildings. Acceptable methods include grading driveways, raising doorsills, or other approved means.

5302.9 Fire Protection. A fire extinguisher with a minimum rating of 2-A, 20-B:C shall be provided and located such that it is not more than 75 feet (22,860 mm) from any pump, dispenser or fill-pipe opening.

5302.10 Motor Vehicle Fuel-dispensing Stations Located inside Buildings.

5302.10.1 General. Automotive motor vehicle fuel-dispensing stations which dispense fuels into vehicles in areas that are wholly or partially enclosed by the walls, floors or ceilings of the buildings shall be in accordance with Section 5302.10. See also Section 5302.4.5.

EXCEPTION: Motor vehicle fuel-dispensing stations located inside a building with two or more sides of the dispensing area open to the building exterior so that normal ventilation can be expected to dissipate flammable vapors.

Dispensing of fuel into motor vehicles inside of buildings is allowed only when approved by the chief.

5302.10.2 Construction. Automotive motor vehicle fuel-dispensing stations within buildings shall be constructed in accordance with the Building Code.

5302.10.3 Ventilation.

5302.10.3.1 General. Heating, ventilation and air-conditioning systems shall be in accordance with the Mechanical Code.

5302.10.3.2 Interlocks on dispensers. When mechanical systems for ventilation are installed serving only the area where fuels are dispensed, the system shall operate when the motor vehicle fuel-dispensing station is open for business and shall be interlocked to dispensing units so that fuel cannot be dispensed unless the ventilation system is in operation.

5302.10.3.3 Exhaust system design. The exhaust system shall be designed to provide air movement across all portions of the dispensing floor area and to prevent the flow of flammable vapors beyond the dispensing area. Exhaust inlet ducts shall not be less than 3 inches (76.2 mm) or more than 12 inches (304.8 mm) above the floor. Exhaust ducts shall not be located in floors or penetrate the floor of the dispensing area and shall discharge to a safe location outside the building.

5302.10.4 Piping.

5302.10.4.1 General. Piping systems shall be in accordance with Section 7901.11.

5302.10.4.2 Enclosure of vent piping. Fuel and flammable vapor piping inside buildings, but outside of the motor vehicle fuel-dispensing station area, shall be enclosed within a horizontal or a vertical shaft used only for this piping. Vertical and horizontal shafts shall be constructed of materials having a fire-resistance rating of not less than two hours.

AUTH: Sec. 50-3-102 MCA
IMP: Sec. 50-3-103 MCA

NEW RULE VII SPECIAL EQUIPMENT Articles 61, 62, and 63 of the UFC are adopted without change.

AUTH: Sec. 50-3-102 MCA
IMP: Sec. 50-3-103 MCA

NEW RULE VIII SPECIAL SUBJECTS Articles 74 through 88 of the UFC are adopted with the following deletions, amendments, and additions:

(1) Subsection 7703.1 Use and Handling. (including all subsections) is not adopted;

(2) Subsection 7703.2 Transportation. (including all subsections) is not adopted;

(3) Subsection 7802.3 Prohibition. is not adopted;

(4) Subsection 7702.2.1.1 Storage. is amended as follows: Subsection 7702.2.1.1 Storage. The maximum quantities, storage conditions, and fire-protection requirements for gunpowder and ammunition stored in a building shall be as follows:

1. Smokeless powder-

~~200 pounds (90.7 kg) in a Type 4 magazine, or~~

~~400 pounds (181.4 kg) in separate portable Type 4 magazines in a completely sprinklered building. The quantity of product in a magazine shall not exceed 200 pounds (90.7 kg).~~

In accordance with Sections 50-61-120 and 50-61-121, MCA.

2. Commercially manufactured sporting black powder--

25 pounds (11.3 kg) in a separate, portable Type 4 magazine.

3. Small arms primers or percussion caps-

~~750,000, with not more than 100,000 stored in one pile and piles separated from each other by at least 15 feet (4572 mm), or~~

~~Greater than 750,000, when in accordance with the following:~~

~~3.1 The storage room shall not be accessible to unauthorized persons,~~

~~3.2 Primers or percussion caps shall be stored in a 1 inch (25.4 mm) nominal thickness wood cabinet or equivalent with self-closing doors with not more than 200,000 primers or caps per cabinet,~~

~~3.3 Shelves in cabinets shall be vertically separated by at least 2 feet (6069 mm),~~

~~3.4 Cabinets shall be located against walls of the storage rom with at least 40 feet (12,192 mm) between cabinets, or with at least 20 feet (6096 mm) between cabinets when barricades are installed midway between cabinets. Such barricades shall be securely attached to the wall, shall project from the wall at least 10 feet (3048 mm) and shall be at least twice the height of cabinets. Barricade construction shall be of ¼ inch (6.4 mm) boiler plate or 2 inches (50.8 mm) of wood, brick or concrete block,~~

~~3.5 Primers or percussion caps shall be separated from flammable liquids, flammable solids and oxidizing materials by a distance of 25 feet (7620 mm) or by a fire partition having a fire resistive rating of at least one hour, and~~

~~3.6 The building shall be protected by an automatic sprinkler system.~~

In accordance with 50-61-120 and 50-61-121, MCA.

(5) SECTION 7904 -- SPECIAL OPERATIONS is amended as follows: [subsections of SECTION 7904 not mentioned are adopted without change]

7904.1 General. The following special operations shall be in accordance with Sections 7901, 7902 and 7903 except as provided in Section 7904.

1. Storage and dispensing of flammable and combustible liquids ~~on farms and~~ at construction sites.
2. Well drilling and operating.
3. Bulk plants or terminals.
4. Loading and unloading of tank vehicles and tank cars.
5. Tank vehicles and tank vehicle operation.
6. Refineries.
7. Storage and dispensing of flammable and combustible liquids on farms and ranches.

7904.2 Storage and Dispensing of Flammable and Combustible Liquids ~~on Farms and~~ at Construction Sites.

7904.2.1 General. Permanent and temporary storage and dispensing of Class I and II liquids for private use ~~on farms and rural areas and~~ at construction sites, earth-moving projects, gravel pits or borrow pits shall be in accordance with Section 7904.2.

EXCEPTION: Storage and use of fuel-oil and containers connected with oil-burning equipment regulated by Article 61 and the Mechanical Code.

7904.2.5.4 Location.

7904.2.5.4.1 General. Tanks containing Class I or II liquids shall be kept outside of and at least 50 feet (15,240 mm) from buildings and combustible storage. Additional distance shall be provided when necessary to ensure that vehicles, equipment and containers being filled directly from such tanks will not be less than 50 feet (15,240 mm) from structures~~, haystacks~~ or other combustible storage.

7904.2.8 Dispensing from tank vehicles.

7904.2.8.1 General. When approved by the chief, liquids used as fuels may be transferred from tank vehicles into the tanks of motor vehicles or special equipment, provided:

1. The tank vehicle's specific function is that of supplying fuel to motor vehicle fuel tanks,

2. The dispensing line does not exceed 50 feet (15,240 mm) in length,

3. The dispensing nozzle is an approved type,

4. The dispensing hose is properly placed on the approved reel or in a compartment provided before the tank vehicle is moved,

5. Signs prohibiting smoking or open flame within 25 feet (7620 mm) of a tank vehicle or the point of refueling are prominently posted on the tank vehicle,

6. Electrical devices and wiring in areas where fuel dispensing is conducted are in accordance with the Electrical Code,

7. ~~Vapor recovery systems are provided in accordance with Section 5202.12,~~

~~8.~~ Tank vehicle dispensing equipment is operated only by designated personnel who are trained to handle and dispense motor fuels, and

~~9~~8. Provisions are made for controlling and mitigating unauthorized discharges.

AUTH: Sec. 50-3-102 MCA
IMP: Sec. 50-3-102 MCA

NEW RULE IX FLAMMABLE AND COMBUSTIBLE LIQUIDS The following subsections are added to ARTICLE 79-FLAMMABLE AND COMBUSTIBLE LIQUIDS, of the UFC:

7904.8 Storage and Dispensing of Flammable and Combustible Liquids on Farms and Ranches

7904.8.1 General. Permanent and temporary storage and dispensing of Class I and II liquids for private use in motor vehicles on farms and ranches shall be in accordance with Section 7904.8.

EXCEPTION: Storage and use of fuel-oil and containers connected with oil-burning equipment regulated by Article 61 and the Mechanical Code.

7904.8.2 Combustibles and open flames near tanks. Storage areas shall be kept free of weeds and extraneous combustible

material. Open flames and smoking are prohibited in flammable or combustible liquid storage areas.

7904.8.3 Marking of tanks and containers. Tanks and containers for the storage of liquids aboveground shall be conspicuously marked with the name of the product which they contain and the word FLAMMABLE. Existing tanks not marked and labeled shall be marked and labeled within 12 months of the adoption of this code in accordance with Section 7901.9.2 and Section 7902.1.3.2.

7904.8.4 Containers for storage and use. Metal containers used for storage of Class I or II liquids shall be in accordance with DOT requirements or shall be of an approved design.

Discharge devices shall be of a type that does not develop an internal pressure on the container. Pumping devices or approved self-closing faucets used for dispensing liquids shall not leak and shall be well maintained. Individual containers shall not be interconnected and shall be kept closed when not in use.

Containers stored outside shall be in accordance with Section 7902.

7904.8.5 Permanent and temporary tanks for storage and use.

7904.8.5.1 General. The capacity of permanent and temporary aboveground tanks containing Class I or II liquids shall not exceed 12,000 gallons individual capacity and an aggregate capacity of 48,000 gallons. Tanks shall be constructed and labeled in accordance with Section 7902.1.8.2.

7904.8.5.2 Supports and foundations.

7904.8.5.2.1 General. Supports and foundations for aboveground storage tanks on farms and ranches shall be in accordance with Section 7904.8.5.2.

7904.8.5.2.2 Tanks at grade. Tanks shall rest on the ground or on foundations made of concrete, masonry, piling or steel. Tank foundations shall be designed to minimize the possibility of uneven settling of the tank and to minimize corrosion in any part of the tank resting on the foundation.

7904.8.5.2.3 Tanks above Grade. Tanks shall be securely supported. Supports for tanks storing Class I, II or III-A liquids shall be of concrete, masonry, or steel. Single wood timber supports, not cribbing, laid horizontally are allowed for outside aboveground tanks if not more than 12 inches (304.8 mm) high at their lowest point.

7904.8.5.2.4 Design of supports. The design of the supporting structure for tanks shall be in accordance with well-established engineering principles of mechanics and shall be in accordance with the Building Code. Tanks shall be supported in a manner

which prevents the excessive concentration of loads on the supporting portion of the shell.

7904.8.5.3 Fill opening. Fill openings shall be separate from vent openings and shall apply to new tanks only.

7904.8.5.4 Vents. Each new tank shall be provided with a free-opening vent of a size not less than specified in Table 7904.2-A to relieve vacuum or pressure which could develop in normal operation or from fire exposure. Venting shall be in accordance with Section 7902.1.10 and 7902.1.11.

Vents shall be arranged to discharge in a manner which prevents localized overheating or flame impingement on any part of the tank in the event vapors from such vents are ignited.

7904.8.5.5 Location.

7904.8.5.5.1 General. Tanks containing Class I or II liquids shall be kept outside of and at least 50 feet (15,240 mm) from inhabited buildings and dwelling units. Distances from public ways and property lines shall be in accordance with Tables 7902.2-A and 7902.2-F.

7904.8.5.5.2 Locations where aboveground tanks are prohibited. The storage of Class I and II liquids in aboveground tanks is prohibited in any area inside a 3 mile radius of Class 1 or Class 2 city boundaries and inside 1 1/2 mile radius of Class 3 boundaries as defined according to these rules, except for tanks existing on the effective date of these rules. Existing installations must comply with the retroactive requirements of this chapter.

7904.8.5.6 Type of tank.

7904.8.5.6.1 General. Tanks may be of horizontal or vertical design.

7904.8.5.6.2 Tanks with top openings only. Horizontal tanks with top openings only shall be mounted and equipped as follows:

1. Supports and foundations shall be in accordance with 7904.8.5.2.

2. Horizontal tanks with top openings only shall be equipped with a tightly and permanently attached, approved pumping device having an approved hose of sufficient length for filling vehicles, equipment or containers to be served from the tank. An effective antisiphoning device shall be included in the pump discharge unless a self-closing nozzle is provided. Siphons or internal pressure discharge devices shall not be used. Existing hoses not equipped with a breakaway coupling shall be retro-fitted within 12 months of the adoption of this code.

7904.8.5.6.3 Tanks for gravity discharge. Horizontal and vertical tanks with a connection in the bottom or end for gravity dispensing liquids shall be mounted and equipped as follows:

1. Supports and foundations shall be in accordance with 7904.8.5.2.

2. Bottom or end openings for gravity discharge shall be equipped with a valve located adjacent to the tank shell which will close automatically in the event of fire through the operation of an effective heat-actuated shut-off device. Existing tanks not equipped with a heat-actuated shut-off device shall be retro-fitted within 12 months of the adoption of rule. If this valve cannot be operated manually, it shall be supplemented by a second manually operated valve. The gravity discharge outlet shall be provided with an approved hose equipped with a self-closing valve at the discharge end. Existing hoses not equipped with a break away coupling shall be retro-fitted within 12 months of the adoption of this code.

7904.8.5.7 Spill control, drainage control and diking. Indoor storage and dispensing areas shall be provided with spill control and drainage control as set forth in Section 7901.8. Outdoor storage areas shall be provided with drainage control or diking as set forth in Section 7902.2.8.

7904.8.6 Electrical wiring and equipment.

7904.8.6.1 General. Electrical wiring and equipment shall be installed and maintained in accordance with the Electrical Code.

AUTH: Sec. 50-3-102 MCA
IMP: Sec. 50-3-102 MCA

NEW RULE X STANDARDS (1) The Uniform Fire Code Standards (Vol. 2 of the UFC) are adopted, with the following amendment:

UNIFORM FIRE CODE STANDARD 10-1

SELECTION, INSTALLATION, INSPECTION, MAINTENANCE AND TESTING OF PORTABLE FIRE EXTINGUISHERS

See Sections 1002.1, 1006.2.7, 1102.5.2.3, 2401.13, 3209, 4502.8.2, 4503.7.1, 5201.9, 7901.5.3, 7902.5.1.2.1 and 7904.5.1.2, Uniform Fire Code.

This standard, with certain deletions, is based upon the National Fire Protection Association Standard for Portable Fire Extinguishers, NFPA Standard 10-1994.

SECTION 10.101 - AMENDMENTS

The Standard for Portable Fire Extinguishers, NFPA 10-1994, applies to the selection, installation, inspection, maintenance and testing of portable fire extinguishers except as follows:

1. Sec.1.1 is revised as follows:

1-1 Scope.

The provisions of this standard apply to the selection, installation, inspection, maintenance and testing of portable extinguishing systems except when a provision in UNIFORM FIRE CODE, Volume 1 is applicable, in which case UNIFORM FIRE CODE, Volume 1 provisions take precedence.

2. Sec. 1-2 is deleted.

3. Sec. 1-3 is revised by amending the definition of "authority having jurisdiction" as follows:

AUTHORITY HAVING JURISDICTION is the official responsible for the administration and enforcement of this standard.

The definitions of "approved", "labeled" and "listed" shall be as set forth in UNIFORM FIRE CODE, Volume 1.

The definition of "should" is deleted.

4. Sec. 1-5.2 is revised by substituting the phrase "UFC Standard 81-1" for the phrase "NFPA 231, Standard for Indoor General Storage."

5. Sec. 1-7 (b) is revised as follows:

(b) Hazardous materials shall be identified in accordance with U.F.C. Standard 79-3. Hazardous materials shall be classified in accordance with Article 80, UNIFORM FIRE CODE.

6. Sec. 2-1 is revised as follows:

2-1 General Requirements.

Extinguishers shall be suitable for the anticipated growth and character of the fire, the construction and occupancy of the individual property or premises, the vehicle or hazard to be protected, and ambient-temperature conditions. Selection of the class, size, number and location of extinguishers shall be as specified in the UNIFORM FIRE CODE, Volume 1 when applicable; when not, the selection shall be required by this standard. Where extinguishers are required but a specific class, size, number or location is not given, the selection shall be subject to the approval of the chief and the following:

1. The gross weight of the extinguisher and the physical ability of the anticipated user.

2. Exposure of the extinguisher to corrosive atmospheres.

3. Adverse reaction between the agent in the extinguisher and the material or equipment being protected.

4. Mobility of wheeled units over terrain of the premises and the configuration of routes which may limit access.

5. The effective range of the extinguishers which could be subject to wind or draft conditions.

6. The ability and number of available personnel to operate the extinguisher.

7. The health and safety of the user.

To protect the health and safety of the user, the chief is authorized to require installation of extended-throw nozzles, special ventilation and other protective measures, including the training of personnel.

7. Sec. 2-3.2 is revised as follows:

2-3.2 Fire Extinguisher and Size and Placement for Cooking Grease Fires. A sodium bicarbonate or potassium bicarbonate dry-chemical-type portable fire extinguisher having a minimum rating of 40-B shall be installed within 30 feet (9144 mm) of commercial food heat-processing equipment, as measured along an unobstructed path of travel.

8. Sec. 3-1.5 is ADDED as follows:

3-1.5 The type, size, number and placement of fire extinguishers for special storage occupancies is addressed in U.F.C. Standard 81-1, High-piled General Storage of Combustibles in Buildings; U.F.C. Standard 81-2, High-piled Rack Storage of Combustibles in Buildings; and NFPA 231-D,Storage of Rubber Tires.

9. Sec. 3-2.2 is revised as follows:

3-2.2 One half of the fire extinguishers required under Table 3-2.1 are allowed to be omitted when the building is equipped with a Class II or III standpipe system that complies with UNIFORM FIRE CODE, Article 10 and the Building Code. See U.B.C. Standard 9-2.

10. Sec. 4-1.1 is revised as follows:

4-1.1 Approved existing extinguisher installations maintained in accordance with the conditions under which they were approved are allowed to continue in use. Such extinguishers shall be maintained in a safe and operative condition and shall be inspected and recharged as required by this standard.

EXCEPTIONS: 1. Soda acid, foam, loaded stream, antifreeze and water fire extinguishers of the inverting type shall not be recharged or placed in service for fire protection use.
2. Vaporizing liquid extinguishers containing carbon tetrachloride or chlorobromomethane shall not be installed or used in any location for fire-protection use.

11. Sec 4-5.3.8 is revised by deleting the first sentence and substituting as follows:

The removal of Halon 1211 from extinguishers shall be accomplished using only a "listed" halon closed-recovery system.

12. Sec. 5-5.1.2 is revised as follows:

5-5.1.2. The equipment for testing compressed gas cylinders and cartridges shall be an approved water-jacket type.

13. Sec. 5-5.2 is revised as follows:

5-5.2. The testing procedures for the internal examination and hydraulic testing of noncompressed gas cylinders and shells shall be in accordance with approved standards.

14. Sec. 5-5.3 is revised as follows:

5-5.3. The hydrostatic testing procedures for hose assemblies shall be in accordance with nationally recognized standards.

15. Chapter 6 is deleted.

(2) Pursuant to Subsection 9001.1 of the UFC, Uniform Fire Code Appendix Standard A-II-F-1 Testing Requirements for Protected Motor Vehicle Fuel Storage Tanks (including all subsections) is specifically adopted.

AUTH: Sec. 50-3-103 MCA
IMP: Sec. 50-3-103 MCA

5. The rule proposed to be repealed, Rule 23.7.105, is located on p. 23-361.1 of the Administrative Rules of Montana.

AUTH: 50-3-102 MCA
IMP: 50-3-102 MCA

6. RATIONALE As new materials, technology, methods of construction, safety devices and prevention techniques appear, the International Fire Code Institute studies, adopts and publishes those changes in the Uniform Fire Code and Uniform Fire Code Standards. The objective of the Uniform Fire Code Standards is to provide cities, counties, states and governmental agencies with a set of codes and standards which are correlated to provide the safest methods of establishing and implementing fire safety. The department is adopting the 1994 Uniform Fire Code and Uniform Fire Code Standards so Montana citizens will have the benefit of the most current and up-to-date codes available.

The first three amendments are necessary to correlate definitions and internal references to the 1994 edition of the UFC. The final proposed rule amendment regarding the retail sale of fireworks is necessary to clarify and stay abreast of advances in technology.

New Rules I through X are proposed to be adopted because of the requirements of Secs. 50-3-102(2) and (3) as well as 50-3-103, MCA.

The deletions and amendments are proposed to be made to the UFC to take account of the requirements of Montana law and Montana's geographic and demographic conditions. The rationale for the additions which the fire prevention and investigation bureau proposes to the UFC is as follows:

New Rule VI(6) (New Article 53) is proposed to be adopted to establish reasonable regulations regarding aboveground rural motor vehicle fuel-dispensing installations. The November 1993 Special Session of the Montana legislature adopted Senate Joint Resolution 4, entitled "A joint resolution of the Senate and the House of Representatives of the State of Montana strongly urging the United States Congress to refrain from imposing new standards and restrictions on aboveground storage tanks". This resolution was prompted by concerns over the difficulties that have been experienced in complying with federal laws and regulations governing underground storage tanks and trepidation that storage of fuel in aboveground tanks will become cost prohibitive. This Rule addresses this concern through adoption and amendment of the Uniform Fire Code and Uniform Fire Code Standards.

New Rule IX is proposed to be adopted to establish reasonable regulations regarding above ground storage and dispensing of flammable and combustible liquids on farms and ranches. The November 1993 Special Session of the Montana legislature adopted Senate Joint Resolution 4, entitled "A joint resolution of the Senate and the House of Representatives of the State of Montana strongly urging the United States Congress to refrain from imposing new standards and restrictions on aboveground storage tanks". This resolution was prompted by

concerns over the difficulties that have been experienced in complying with federal laws and regulations governing underground storage tanks and trepidation that storage of fuel in aboveground tanks will become cost prohibitive. This Rule addresses this concern through adoption and amendment of the Uniform Fire Code and Uniform Fire Code Standards.

ARM 23.7.105 is proposed to be repealed because it will be superseded by new rules I through X.

7. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Anita L. Varone, Administrative Officer, Montana Department of Justice, Law Enforcement Services Division, P.O. Box 201417, Helena, MT 59620-1417, no later than September 14, 1995.

8. Robert F.W. Smith, Office of the Attorney General, 215 North Sanders, Helena, MT 59634 has been designated to preside and conduct the hearing.

/s/ Chris D. Tweeten
Deputy Attorney General

/s/ Kathy Sanders
Rule Reviewer

Certified to the Secretary of State July 31, 1995.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the proposed adoption of new rules, amendment of 24.9.102, 204, 206, 209, 212, 213, 216, 218, 220, 224 - 226, 230, 231, 262A and 264, and the repeal of 24.9.201, 202, 215, 217, and 802 relating to procedures before the Montana Human Rights Commission	)	NOTICE OF PROPOSED ADOPTION, AMENDMENT, AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On September 19, 1995, the Montana Human Rights Commission proposes to amend, adopt, repeal and transfer the following rules which pertain to the organization and investigative procedures of the commission. These amendments are part of a general rewriting of the rules of the Commission to consolidate all provisions which have general applicability in a single subchapter, to clarify procedures and definitions, to simplify procedures which are cumbersome for parties to complaints before the commission and to allow removal of complaints to district court when the commission will be unable to certify the complaint for hearing within one year from the date of filing.

2. The full text of rules proposed to be amended is as follows:

24.9.102 ~~ORGANIZATION~~ RESPONSIBILITIES OF THE STAFF OF THE HUMAN RIGHTS COMMISSION. (1) ~~The Human Rights Division is the staff of the Human Rights Commission. The division is a division of the Department of Labor and Industry. However, the division is answerable directly to the Commission.~~ The human rights ~~Division~~ commission staff is responsible for investigating complaints of discrimination, presenting cases before the commission, serving as staff of the commission, and acting for the commission to implement the policy of the state of Montana against discrimination.
(AUTH: Sec. 2-15-1706 MCA; IMP, Sec. 2-4-201 MCA)

RULE I (NEW) COMMISSION MEETINGS: QUORUM; DECISION MAKING AUTHORITY. (1) (a) The commission shall meet upon call of the chairperson, or at the written request of at least three members, the time or place to be designated by the person calling the meeting.

(b) A majority of the membership constitutes a quorum to do business. A contested case may be heard before a hearing officer, an individual commissioner acting as hearing officer, or by at least three members of the commission. The commission may designate one or more non-members to substitute

for a commission member or members in the case of disqualification or other appropriate circumstances.

(c) The commission shall appoint a member of the staff to act as secretary of the commission. The staff will keep general minutes of all commission meetings whether in person or by telephone conference call as a public record.

(2) A single commission member may issue an order in a contested case proceeding which is of a purely procedural nature. For example, a single commissioner may sign an order regarding a briefing schedule, or an order extending the time in which a party may file exceptions when both parties stipulate that such may be done.

AUTH: § 49-2-204
IMP: §§ 49-2-201, 49-2-502, 49-2-505

24.9.802 COMMISSION MEETINGS; QUORUM; DECISION MAKING AUTHORITY Rule 24.9.802 is on page 24-481 of the Administrative Rules of Montana.

AUTH: § 49-2-204
IMP: §§ 49-2-201, 49-2-502, 49-2-505

RULE II (NEW) LIBERAL CONSTRUCTION; EFFECT OF PARTIAL INVALIDITY (1) The following rules describe the procedure followed by the human rights commission in receiving, investigating, and resolving complaints of discrimination.

(2) The commission will construe the provisions of the act, the code, and these rules liberally in all proceedings under them, with a view to effect their objects and to promote justice. A principle objective of the act and code is to assure that there will be no discrimination in certain areas of the lives of Montana citizens, except under the most limited of circumstances. Liberal construction of the act and code includes, without limitation, giving broad coverage and inclusive interpretation of the human rights statutes and rules to assure enforcement and protection of the state laws prohibiting discrimination.

(3) In construing the provisions of the act and code, the commission will refer to federal civil rights case law where it is both useful and appropriate and does not conflict with the purposes and intentions of state law.

(4) If a part of these rules is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of these rules is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application or applications.

(5) Where errors of law or procedure do not cause prejudice to a party or deny a party a fair hearing or fundamental justice, they may be disregarded. Parties who assign error for the violation of any rule must demonstrate that a failure to comply with these rules is in fact prejudicial or constitutes prejudice as a matter of law.

(6) Where strict adherence to these rules would cause undue hardship or create a substantial injustice to a party, the commission or staff may modify, waive, or excuse their application. The commission or staff may not modify, waive,

or excuse mandatory acts which are required by statute or due process of law.

(7) Parties who choose not to be represented by counsel and who represent themselves must substantially comply with the provisions of these rules, subject to the provisions of subsection (6). The commission or staff may modify the strict application of these rules to an unrepresented party to the extent they are not mandatory in order to assure fundamental fairness.

AUTH: Sec. 49-2-204, 49-3-106
IMP: Sec. 49-2-501, 49-2-504, 49-3-304, 49-3-305, 49-3-307, 49-2-505, 49-3-308, MCA.

24.9.201 LIBERAL CONSTRUCTION; EFFECT OF PARTIAL INVALIDITY Rule 24.9.201 is on page 24-361 of the Administrative Rules of Montana.

AUTH: 49-2-204, 49-3-106 MCA;
IMP: Sec. 49-2-501, 49-2-504, 49-3-304, 49-3-305, 49-3-307 MCA.

RULE III (NEW) DEFINITIONS The following definitions apply throughout this chapter:

(1) "The act" means the human rights act, Title 49, Chapter 2, MCA.

(2) "Administrator," "commission administrator," or "division administrator" means the executive director employed by the human rights commission who is responsible for the supervision of the commission staff.

(3) "Charging party" means a person who files a complaint with the human rights commission.

(4) "The code" means the governmental code of fair practices, Title 49, Chapter 3, MCA.

(5) "Commission" means the human rights commission as established by § 2-15-1706, MCA.

(6) "Commissioner" means a member of the human rights commission.

(7) "Division" means the staff of the human rights commission.

(8) "Respondent" means any person against whom a complaint is filed.

(9) "Person" means a person as defined in Sec. 49-2-101(14), MCA.

(10) "Right to sue letter" means a document which terminates the jurisdiction of the commission over a complaint under the act or code and allows a charging party or aggrieved person to file a discrimination action in district court.

(11) "Staff" or "commission staff" means the staff of the human rights commission.

AUTH: Secs. 49-2-204 and 49-3-106, MCA
IMP: Sec. 49-2-101, 49-2-201, 49-2-509, 49-3-101, 49-3-312, MCA.

24.9.202 DEFINITIONS Rule 24.9.202 is on page 24-361 of the Administrative Rules of Montana.
AUTH: Secs. 49-2-204 and 49-3-106, MCA
IMP: Sec. 49-2-101, 49-2-201, 49-2-509, 49-3-101, 49-3-312, MCA.

24.9.204 COMPLAINT; WHO MAY FILE, TIMELINESS (1) A complaint may be filed with the commission by or on behalf of any person claiming to be aggrieved by a violation of the act or code. A person claiming to be "aggrieved" ~~within the meaning of this section shall~~ may include any group, organization, or association whose membership includes representatives of an ethnic, racial, religious, political, age, sex, marital status or disability group alleged to be aggrieved by a discriminatory act or practice or which exists for the purpose of fostering or protecting the interests of such ethnic, racial, religious, political, age, sex, marital status or disability group or groups.

(2) Complaints alleging a violation of the act may also be filed by the ~~division~~ administrator, based on information received by the ~~division~~ staff.

(3) A complaint must be filed within 180 days ~~of~~ after the alleged act of discrimination occurred or was discovered ~~or the cessation of a pattern of discrimination~~ unless the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy. If such a procedure is initiated, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered. If the complaint alleges a continuing violation of the act or code, or a discriminatory policy, these time periods begin to run on the later of the date the continuing violation or discriminatory policy ceased or the date it was discovered. (AUTH: Sec. 49-2-204, 49-3-106 MCA; IMP, Sec. 49-2-501, 49-3-304 MCA)

24.9.206 ~~DIVISION~~ COMMISSION STAFF COMPLAINTS; CLASS ACTIONS BY INDIVIDUALS OR GROUPS (1) When the ~~division~~ commission staff has reason to believe that ~~any~~ a person ~~or organization~~ is or has been engaged in a discriminatory practice in violation of the act, ~~it~~ the administrator may file a complaint with the commission ~~alleging that the respondent is or has been engaged in a practice which violates the act. Such a complaint must be filed within 180 days of the most recent occurrence of the actions or practices complained of unless the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or~~

~~policy. If such a procedure is initiated, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered~~. A complaint filed by the ~~division~~ administrator may seek relief authorized by law for any and all persons adversely affected by the practice or actions ~~complained of~~. ~~Division complaints shall be filed by the division administrator.~~

(2) ~~In addition to complaints filed by the division a complaint may be filed by or on behalf of an aggrieved person~~ An aggrieved person may file a complaint alleging that ~~the respondent is engaging or~~ a person has engaged in a practice or action which discriminates against a class of persons in violation of the act or code. (AUTH: Sec. 49-2-204, 49-3-106 MCA; IMP, Sec. 49-2-501, 49-2-505, 49-3-304, 49-3-308 MCA.)

24.9.209 COMPLAINT; PLACE AND MANNER OF FILING, INSUFFICIENCY, EFFECTIVE DATE OF AMENDMENTS (1) Complaints alleging any violation of the act or code shall be filed with the human rights commission by either mailing or personally delivering them to the office of the Human Rights Commission, 616 Helena Avenue, Suite 302, P.O. Box 1728, Helena, MT 59624-1728. Complaints shall be in writing and shall be sworn to before a notary public or other person authorized by law to administer oaths and take acknowledgments.

(2) ~~A~~ Any signed preliminary inquiry, intake form, or other written statement may be deemed a complaint if it sufficiently identifies parties and describes the actions being complained of. If the description does not state facts establishing an unlawful practice over which the commission has jurisdiction, the commission staff shall attempt to promptly contact the charging party to ascertain if other facts exist which, when added to the complaint, would describe ~~such~~ an unlawful practice. If ~~such~~ sufficient facts do not exist, the staff will notify the charging party that the commission has no jurisdiction over the complaint, and the case will be dismissed. If ~~such~~ sufficient facts do exist or are alleged to exist, the complaint may be amended. Any amendments to cure defects, omissions, or verification, including facts added to establish jurisdiction, will relate back to the original filing date. (AUTH: Sec. 49-2-204, 49-3-106, MCA; IMP, Sec. 49-2-501, 49-3-304 and 49-3-305, MCA.)

24.9.212 CONFIDENTIALITY (1) The commission ~~shall~~ will maintain the confidentiality of privacy interests entitled to protection by law. Any information which is made public may be altered to provide for the anonymity of persons whose privacy interests are entitled to protection by law.

(2) No complaint, information obtained in the investigation of a complaint, or other information in the commission file ~~shall~~ will be made a matter of public information by the commission prior to a finding under ARM 24.9.224 regarding cause to believe discrimination occurred or other agency

action terminating investigation and entering an order with respect to a complaint. This rule ~~shall~~ does not limit the commission's disclosures of such information to a party, individual, or agency as may be necessary to carry out the commission's obligations under Montana statutes or these rules. The commission may disclose any record or information contained ~~therein~~ in any record to any party, individual, or agency pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains.

(3) ~~Upon~~ After a finding ~~regarding~~ of reasonable cause or no reasonable cause ~~to believe discrimination occurred,~~ or other agency action terminating the investigation in a case, the complaint, information obtained in the investigation of a the complaint and other information in the commission file which do not relate to privacy interests protected by law ~~shall~~ become public information.

(4) Disclosure of information regarding complaints alleging violations of federal law which are within the jurisdiction of the human rights commission because of worksharing arrangements with federal agencies may be further restricted by provisions of federal law.

(5) All settlement and conciliation agreements are public information except to the extent that they relate to privacy interests entitled to protection by law. A governmental entity does not have a privacy interest in any settlement or conciliation agreement.

(6) Information which is subject to the protection of Montana's constitutional right of privacy, Article 2, § 10, which is requested or subpoenaed under the authority of § 49-2-203, MCA or these rules will not be disclosed to any individual, agency, or party outside the commission, except as required by law. The commission or hearing examiner may issue appropriate protective orders. (AUTH: Sec. 49-2-204, 49-3-106 MCA; IMP, Sec. 49-2-501, 49-2-505, 49-3-304, 49-3-308 MCA)

24.9.213 COMPLAINT; WITHDRAWAL OF COMPLAINT BY CHARGING PARTY; REDESIGNATION BY COMMISSION ADMINISTRATOR (1) Any person who has filed a complaint with the commission, or any person on whose behalf a complaint has been filed may make a request in writing that the complaint be withdrawn. If the withdrawal is based on a private settlement, a copy of the settlement agreement must accompany the request.

(2) Upon receipt of a written request for withdrawal of the complaint, the commission administrator shall dismiss the complaint either entirely or insofar as it alleges a particular cause of action in favor of the party seeking the withdrawal, or seeks an individual remedy for such party. ~~However, the~~

(3) The ~~commission~~ administrator may reserve ~~so much of the complaint as~~ any part of the complaint which alleges a cause of action in favor of any other person or group or may redesignate the complaint as a commission complaint ~~in regard~~ with respect to any allegation or remedy which is not specific to the withdrawing party alone. ~~Such redesignation shall~~ Redesignation does not constitute the filing of a new complaint and ~~shall~~ ~~relate~~ relates back ~~in time~~ to the date

the original complaint was filed. (AUTH: Sec. 49-2-204, 49-3-106 MCA; IMP, Sec. 2-4-603, 49-2-504, 49-3-307 MCA)

24.9.215 COMPLAINT; DEFERRAL FROM LOCAL, STATE OR FEDERAL AGENCIES Rule 24.9.215 is on page 24-367 of the Administrative Rules of Montana.

AUTH: Sec. 49-2-204, 49-3-106, MCA.

IMP: Sec. 49-2-501, 59-2-502, 49-2-503, 49-2-504, 49-2-505 MCA.

24.9.216 NOTICE OF FILING OF COMPLAINT (1) ~~After a complaint is filed with the commission, or after the commission receives a complaint deferred from any local, state or federal agency, the division shall promptly furnish the respondent with written notice of the complaint. The notice shall include identification of the person filing the complaint and a concise description of the alleged unlawful discriminatory practice.~~ The commission staff will promptly mail a copy of any complaint filed with the commission to the respondent. (AUTH: Sec. 49-2-204, 49-3-106, MCA; IMP, Sec. 49-2-204, 49-3-307, MCA)

24.9.217 COMPLAINT; NOTICE TO COMMISSION Rule 24.9.217 is on page 24-367 of the Administrative Rules of Montana.

AUTH: Sec. 49-2-204, 49-3-106, MCA.

IMP: Sec. 49-2-502, 49-3-307, MCA.

24.9.218 COMPLAINT, COMMENCEMENT OF INVESTIGATION, MEDIATION (1) ~~Once a complaint has been received by the commission, the human rights division shall commence investigation of the complaint.~~ As soon as possible after the complaint is received, it shall be assigned to a member of the staff for investigation. ~~In conducting the investigation, the~~ The staff should contact the charging party (and, in the case of a complaint filed on behalf of anyone, the persons alleged to be aggrieved) to ascertain the basis for the complaint and to inquire as to such additional facts and allegations as may be necessary to amend the complaint into its proper form and to make a determination whether the complaint is supported by substantial evidence. The staff should also contact the respondent to obtain the viewpoint of the respondent, to ascertain additional facts, and to assure that the respondent understands the nature of the complaint and the requirements of the law. The staff may also inquire into facts to determine whether the commission has jurisdiction over the complaint.

(2) ~~After the commencement of the investigation, the~~ The staff may undertake efforts to achieve a voluntary resolution of the case through mediation with the parties. Any settlement of a case at any stage, whether mediated by the commission staff or reached by the parties independently, ~~shall be~~ is subject to ~~approval by the division administrator on behalf of the commission~~ the provisions of ARM 24.9.226. (AUTH: Sec. 49-2-204, 49-3-106, MCA; IMP, Sec. 2-4-603, 49-2-504, 49-3-307, MCA)

24.9.220 EMERGENCY ORDER (1) ~~If, after~~ After a complaint is filed, if it appears that substantial and irreparable damage to any charging party or aggrieved person will occur unless prompt action is taken, the ~~division~~ administrator may petition the district court for an injunction for appropriate relief. ~~to prevent or remedy the action causing the damage.~~ (AUTH: Sec. 49-2-204, 49-3-106, MCA; IMP, Sec. 49-2-503, 49-3-306, MCA)

24.9.224 INVESTIGATION; ~~DETERMINATION REGARDING CAUSE~~ FINDING OF REASONABLE CAUSE OR NO REASONABLE CAUSE (1) ~~When a complaint is assigned to a member of the staff for investigation, the staff investigator shall undertake a prompt, thorough, and impartial investigation of the allegations of the complaint to determine if there is substantial evidence (reasonable cause) to believe that an act of discrimination has taken place. When~~ At the conclusion of the investigation ~~is complete, or is sufficiently complete to justify a finding~~, the staff ~~shall~~ will issue a finding of reasonable cause if the allegations of the complaint are supported by ~~that there is or is not~~ substantial evidence. ~~(reasonable cause) to credit the allegations of the complaint. A lack of reasonable cause finding may also be based upon a determination that~~ The staff will issue a finding of no reasonable cause if the allegations of the complaint are not supported by substantial evidence, or if the commission lacks jurisdiction over the complaint. The finding will include a brief statement of the reasons for the staff's conclusions and will be mailed to all parties. (AUTH: Sec. 49-2-204, 49-3-106 MCA; IMP, Sec. 49-2-504, 49-3-307 MCA)

24.9.225 PROCEDURE ON FINDING OF ~~LACK OF~~ NO REASONABLE CAUSE (1) ~~If the staff finds lack of reasonable cause to believe discrimination occurred in regard to any complaint, the staff shall serve notice of the finding on all parties. The notice shall include a statement of the reasons for the finding. The notice shall~~ A finding of no reasonable cause will be accompanied either by a dismissal order and right to sue letter in accordance with ARM 24.9.263 or by a ~~statement allowing the charging party or aggrieved person to request~~ notice certifying the case for a hearing before the commission in accordance with ARM 24.9.230.

~~(2) The determination to dismiss the complaint and issue a right to sue letter or to allow the charging party or aggrieved person an opportunity for hearing before the commission shall be within the sound discretion of the administrator. If the administrator elects to allow the charging party or aggrieved person an opportunity for hearing before the commission, the notice shall specify the time within which the charging party or aggrieved person must file a written request for hearing which in no case shall be less than 14 days from the date the notice of the finding is mailed to the parties.~~

~~(3) Upon a finding of lack of reasonable cause to believe discrimination occurred and the administrator's grant of an~~

~~opportunity for a hearing, if the charging party or aggrieved person makes a timely written request for hearing the administrator shall certify the case for hearing in accordance with ARM 24.9.230. If no timely written request for hearing is made the staff shall issue a dismissal order and right to sue letter in accordance with ARM 24.9.263.~~

~~(4) Upon request of a party made within a reasonable time, the commission may vacate an order of dismissal issued pursuant to subsection (3), if vacating the order is justified for any of the following reasons:~~

~~(a) mistake, inadvertence, surprise, or excusable neglect;~~

~~(b) fraud (whether intrinsic or extrinsic), misrepresentation, other misconduct of an adverse party, or gross error by the staff; or~~

~~(c) any other reason justifying relief from the operation of the dismissal order.~~

~~(5) A motion under subsection (4) does not affect the finality of a dismissal order or suspend its operation.~~

~~(6) The commission may correct errors on its own motion. The commission may vacate an order on its own motion where there is a lack of jurisdiction or where there has been fraud upon the commission.~~

~~(7)~~ (2) Any objection to a dismissal order and right to sue letter issued under subsection (1) ~~shall~~ must be filed in accordance with the provisions of ARM 24.9.264. (AUTH: Sec. 49-2-204, 49-3-106 MCA; IMP, Sec. 49-2-504, 49-2-505, 49-2-509, 49-3-307, 49-3-308, 49-3-312 MCA)

24.9.226 CONCILIATION AND SETTLEMENT (1) If the ~~division~~ staff issues a reasonable cause finding, the ~~division administrator~~ or staff ~~person designated by the administrator shall~~ will attempt to resolve the case by conciliation. ~~by written recommendation, conference, or other reasonable means to effect a conciliation of the case.~~ No statements made by any party in the course of a conciliation offer or in any oral or written discussion concerning conciliation ~~shall~~ will be admissible in any hearing held concerning the complaint. Agreement to a conciliated settlement of the case ~~shall~~ does not constitute an admission of violation of any law by the respondent.

(2) ~~Any~~ A conciliation or other settlement agreement reached by the parties ~~shall be reduced to~~ must be in writing, ~~and~~ signed by the parties, and ~~. No conciliation agreement shall be binding until it is~~ approved by the ~~division~~ administrator ~~on behalf of the commission~~.

(3) The administrator may refuse to approve a conciliation or other settlement agreement which does not resolve all allegations or remedies for all persons or groups affected by the alleged discrimination. Alternatively, the administrator may treat the agreement as a withdrawal in accordance with ARM 24.9.213. ~~Once a conciliation agreement has been approved it shall have the same effect and be as binding as a commission order issued after hearing.~~

~~(3)~~ (4) A conciliation or other settlement agreement may be enforced by the commission or by any party in the same manner as a final commission order ~~issued after hearing~~ by

seeking appropriate orders in the district court pursuant to § 49-2-508, MCA. ~~In addition, any party to a conciliation agreement or the division may file a petition with the commission alleging violation of the terms of the conciliation agreement. The division shall investigate any such charge and in conducting its investigation may exercise all the powers that it exercises in regard to the investigation of a charge of discrimination. If the division administrator determines that a party is violating or has violated any material term of a conciliation agreement, the administrator may petition the commission for an order compelling compliance with the agreement and providing such additional remedial relief as the situation may dictate, including compensation for any pecuniary loss occasioned by the violation.~~

~~(4) A hearing on a petition to enforce a conciliation agreement shall be held before the commission or a hearing examiner and shall be conducted in accordance with the provisions of these rules for contested cases generally. The issue before the commission or hearing examiner on a petition to enforce a conciliation agreement shall be the compliance of the parties with the terms of the agreement. The merits of the underlying complaint shall not be an issue. If the matter is heard by a hearing examiner, the findings and conclusions of the hearing examiner shall be considered and confirmed or rejected by the commission in the manner provided in these rules for commission review of the findings and conclusions of hearing examiners generally. Any order issued by the commission upon a petition to enforce a conciliation agreement shall be enforceable in the same manner as an order issued by the commission after a contested hearing on a complaint of discrimination.~~

(5) A conciliation or other settlement agreement may include in its terms ~~means whereby the division may monitor the respondent's compliance with it. A conciliation agreement may contain~~ any remedy which could have been ordered by the commission after hearing. It may also include terms for monitoring compliance with the agreement.

~~(6) The division administrator may refuse to approve a conciliation agreement, even if the individual parties agree to the proposed settlement, if the remedies outlined in the agreement are considered to be inadequate to cure the discrimination complained of. A party may appeal the division administrator's refusal to the commission by filing an objection within the (10) days of the notification of the refusal. In addition, the division administrator may approve an agreement curing only part of the discrimination discovered by the division's investigation and continue to attempt conciliation to cure the discriminatory acts which remain unremedied. Conciliation of a case in regard to the claims of any person or group of persons shall not prohibit the division from filing a complaint against the same respondent alleging discriminatory acts affecting others not party to the conciliation, if these acts, or the effects of these acts are not corrected by the conciliated agreement.~~

~~(7) The division shall attempt to achieve a conciliated resolution of the case for so long as it appears that a successful conciliation is possible.~~

~~(a)~~ (6) When a conciliated settlement does not appear possible following a finding of reasonable cause, the ~~division~~ staff shall inform all parties in writing that the conciliation period is concluded ~~. The division may reopen the conciliation period in its discretion. Once conciliation has concluded without success, the division shall~~ and certify the case to the commission for hearing. ~~Certification of a case for hearing does not prohibit the parties and the division from continuing to attempt to conciliate the case.~~

~~(8)~~ (7) The parties must inform the commission of all terms of any settlement entered into after the commission has issued a final order. (AUTH: Sec. 49-2-204, 49-3-106 MCA; IMP, 49-2-504, 49-2-505, 49-3-307, 49-3-308 MCA)

24.9.230 CERTIFICATION OF A CASE TO COMMISSION FOR HEARING (1) Whenever the ~~division~~ staff has issued a finding ~~that substantial evidence (~~ of reasonable cause ~~) exists to believe that a respondent has engaged in a discriminatory practice in violation of the act or code~~ and ~~that~~ conciliation efforts have been unsuccessful, the administrator shall notify the commission of the failure of conciliation and certify ~~that~~ the case ~~should be set~~ for hearing. ~~If the division has issued a finding that no substantial evidence (lack of reasonable cause) exists to believe that a respondent has engaged in a discriminatory practice in violation of the act or code, but the charging party or aggrieved person has requested a hearing before the commission in accordance with ARM 24.9.225, the case shall also be certified for hearing.~~ In any other case, if the administrator determines that a hearing on a complaint is necessary as a matter of fundamental fairness, or in the public interest, the administrator may notify the commission and certify the case for hearing. (AUTH: Sec. 49-2-204, 49-3-106 MCA; IMP, Sec. 49-2-505, 49-2-506, 49-3-308, 49-3-312 MCA)

24.9.231 NOTICE OF CERTIFICATION FOR HEARING (1) Notice that a case has been certified to the commission for hearing shall include:

(a) A statement indicating that the case has been certified to the commission for hearing;

(b) A statement indicating that the commission or hearing examiner will set a time and place for hearing, and that the hearing will be held in the county where the discriminatory practice is alleged to have occurred, unless the respondent or the commission requests a change of venue for good cause;

(c) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(d) A reference to the particular sections of the statutes and rules involved;

(e) A statement that a formal proceeding may be waived pursuant to Section 2-4-603, MCA;

(f) A statement advising the parties of their right to be represented by counsel at hearing;

(g) A statement that a hearing examiner has been appointed to conduct the hearing, if applicable.

(2) The ~~division~~ administrator shall notify the parties of the certification for hearing.

(3) Notice that a complaint has been certified to the commission for hearing and the copy of the complaint shall be served on all parties in the manner provided in Rule ~~4(d)~~ 4D of the Montana Rules of Civil Procedure, Title 25, Chapter 20, MCA. (AUTH: Sec. 49-2-204, 49-3-106, MCA; IMP, Sec. 49-2-505, 49-3-308, 49-3-312, MCA)

24.9.262A ISSUANCE OF RIGHT TO SUE LETTER WHEN REQUESTED BY A PARTY (1) At the request of any~~Any~~ party to a case before the commission, other than a case alleging a violation of § 49-2-305, MCA (housing discrimination), ~~may request that~~ the administrator shall issue a right to sue letter if the commission has not yet held a contested case hearing and 12 months have elapsed since the complaint was filed, unless: ~~.~~

~~(2) The administrator may refuse to issue a right to sue letter if:~~

(a) the party requesting the issuance of the right to sue letter has failed to comply with the terms of a lawful subpoena issued during investigation;

(b) the party requesting the issuance of the right to sue letter has waived the right to request removal either by specific written waiver or by conduct constituting an implied waiver;

(c) the party requesting the issuance of the right to sue letter has filed the request more than 30 days after service of the notice of certification for hearing on that party, and the commission or its hearing examiner has scheduled a hearing to be held within 90 days of the date of service of the notice of certification for hearing ~~, unless the request is made within 30 days of service of the notice of certification for hearing~~ on the requesting party; or

(d) the party requesting the issuance of a right to sue letter has unsuccessfully attempted through court litigation to prevent the commission staff from investigating the complaint.

(2) At the request of a party to a case before the commission, other than a case alleging violation of § 49-2-305, MCA (housing discrimination), the administrator may issue a right to sue letter if the administrator determines that the commission will not hold a contested case hearing within 12 months after the filing of the complaint and that the interests of fundamental fairness or the public interest support the issuance of the right to sue letter.

(3) A party who requests issuance of a right to sue letter and is dissatisfied with a decision of the administrator refusing to issue a right to sue letter may seek commission review of the decision by filing or mailing written objections within 14 days after the decision is served. The date of mailing will be established by U. S. Postal Service postmark. Briefs are not required. A party who files such an objection and wishes to file a supporting brief must file and serve an original and six (6) copies of the brief within five days of

filing or mailing the objection. Any opposing party who wishes to file an answer brief must file and serve an original and six (6) copies of the brief within ten days of service of the initial brief. A party making an objection who wishes to file a reply brief must file and serve an original and six (6) copies of the brief within ten days of service of an answer brief. If a party ~~filing~~ making an objection does not file a supporting brief, any opposing party may request permission from the commission to file a brief in opposition to the objection. The objection will be considered at the next commission meeting after conclusion of the briefing schedule. Consideration of the objection will be based upon the written record unless oral argument is requested and authorized by the commission. ~~Service by mail is complete upon mailing.~~

(4) ~~After receipt of written objections to a decision to refuse to issue a right to sue letter, the commission will set a time for consideration of the objections. Section 2-4-604, MCA, governs the commission's consideration of the objections.~~ Briefs on objections to the administrator's failure to issue a right to sue letter may not exceed 10 pages in length. Each party should provide copies of any specific exhibits from the record which the party deems essential for the commission to read. Requests for oral argument must be made in writing at the time of filing the first brief of each party. If the request is contained in a brief, the caption should indicate that oral argument is requested. If a request for oral argument is timely made, ten minutes for each party will be reserved for oral argument during the commission meeting at which the objection will be considered.

(5) If the commission sustains the objections to the refusal to issue a right to sue letter, it will direct the administrator to issue a right to sue letter. (AUTH: Sec. 49-2-204, 49-3-106 MCA; IMP, Sec. 49-2-509, 49-3-312 MCA)

24.9.264 EFFECT OF ISSUANCE OF RIGHT TO SUE LETTER

(1) The issuance of a right to sue letter pursuant to ARM 24.9.222, 24.9.225, or 24.9.262A shall constitute the completion of the administrative process with regard to any complaint of discrimination in which a right to sue letter is issued.

(2) A party who is dissatisfied with a decision to issue a right to sue letter may seek commission review of the decision by filing or mailing a written objection within 14 days after the decision is served. The date of mailing will be established by U. S. Postal Service postmark. Briefs are not required. A party who ~~files such~~ makes an objection and wishes to file a supporting brief must file and serve an original and six (6) copies of the brief within five days of filing or mailing the objection. Any opposing party who wishes to file an answer brief must file and serve an original and six (6) copies of the brief within ten days of service of the initial brief. A party making an objection who wishes to file a reply brief must file and serve an original and six (6) copies of the brief within ten days of service of an answer brief. If a party ~~filing~~ making an objection does not file a supporting brief, any opposing party may request permission

from the commission to file a brief in opposition to the objection. The objection will be considered at the next commission meeting after conclusion of the briefing schedule. Consideration of the objection will be based upon the written record unless oral argument is requested and authorized by the commission. ~~Service by mail is complete upon mailing.~~

(3) ~~After receipt of written objections to a decision to issue a right to sue letter, the commission will set a time for consideration of the objections. Section 2-4-604, MCA, governs the commission's consideration of the objections.~~ Briefs on objections to the issuance of a right to sue letter may not exceed 10 pages in length. Each party's brief should provide copies of any specific exhibits from the record which the party believes are essential for the commission to read. Requests for oral argument must be made in writing at the time of filing the first brief of each party. If the request is contained in a brief, the caption should indicate that oral argument is requested. If a request for oral argument is timely made, ten minutes for each party will be reserved for oral argument during the commission meeting at which the objection will be considered.

(4) If the commission sustains the objections to the issuance of a right to sue letter, it will reopen the case before the commission by remanding the case to the ~~division~~ staff for further investigation or to be certified for hearing. (AUTH: Sec. 49-2-204, 49-3-106 MCA; IMP, Sec. 49-2-509, 49-3-312 MCA)

4. The rule changes are proposed as a result of the commission's periodic review of rules, to simplify language and procedures for parties with complaints before the commission, and to conform the rules to current practice.

Rule 24.9.102 is amended to simplify language and eliminate redundancy in describing the functions of the commission staff.

Rule I is adopted to consolidate organizational rules in Subchapter 1. The text of this rule is currently found in Rule 24.9.802. The current language is also being amended to improve language and eliminate the passive voice.

The repeal of Rule 24.9.802 is necessary to eliminate duplication after adopting Rule I above.

Rule II is adopted to consolidate existing references to and update the commission's interpretation of liberal construction of the Montana Human Rights Act and Governmental Code of Fair Practices to reflect current case law.

The repeal of Rule 24.9.201 is necessary to eliminate duplication after the adoption of Rule II above.

Rule III is adopted in Subchapter 1 to consolidate definitions of terms used throughout ARM Chapter 24.9.

The repeal of Rule 24.9.202 is necessary to eliminate duplication after adoption of Rule III above.

Rule 24.9.204 is being amended to simplify and update language and to clarify the timeliness of complaints alleging continuing violations of the act or code or discriminatory policies to reflect current case law.

Rule 24.9.206 is being amended to simplify and update language and remove redundant material.

Rule 24.9.209 is being amended to simplify and update language and to specify that a signed written statement which may be considered as a complaint under the current rule may be a preliminary inquiry or intake form.

Rule 24.9.212 is amended to update procedures for maintaining confidentiality of information entitled to protection of Montana's constitutional right of privacy.

Rule 24.9.213 is amended to require that a withdrawal of a complaint based on a private settlement agreement must include a copy of the agreement and to simplify and update language.

Rule 24.9.215, regarding deferral of complaints from other agencies, is repealed as redundant. These complaints are handled in the same manner as all other complaints, and no special rules are necessary to continue this practice.

Rule 24.9.216 is being amended to simplify language and to reflect the current practice of notifying respondents of the filing of complaints by simply mailing a copy of the complaint.

The repeal of Rule 24.9.217 is necesary to eliminate redundancy regarding notice of complaints to commission. The current rule merely restates the substance of § 49-2-502, MCA.

Rule 24.9.218 is amended to make settlements at any stage of proceedings subject to the same procedures and to simplify and update language.

Rule 24.9.220 is amended to simplify and update language.

Rule 24.9.224 is amended to simplify and update language.

Rule 24.9.225 is amended to eliminate a cumbersome and confusing procedure for discretionary certification of cases for hearing after a finding of no reasonable cause and to simplify and update language. The new procedure for these cases, where the interests of fairness or the public interest may justify certifying a case for hearing without a finding of reasonable cause, is found in proposed amendment to Rule 24.9.230.

Rule 24.9.226 is amended to clarify the review process for settlements and conciliations reached during commission proceedings on complaints, to eliminate redundant enforcement procedures before the Commission, and to simplify and update language. As amended, the rule will allow parties or the commission to enforce commission orders, settlement agreements, or conciliation agreements in the same manner in district court.

Rule 24.9.230 is being amended to remove references to the procedure eliminated in amending Rule 24.9.225, to add a simpler process for the discretionary certification of cases in which a finding of reasonable cause has not been made, and to simplify and update language.

Rule 24.9.262A is being amended to allow the administrator to issue a right to sue letter in the interests of fairness or in the public interest if the administrator determines that the commission will not hold a contested case hearing within 12 months after the filing of the complaint, to establish the postmarked date as the date of filing of objections to staff denial of a request for Notice of Right to Sue, to clarify

procedures for such objections, and to simplify and update language. The current rule, implementing Secs. 49-2-509 and 49-3-312, MCA, requires that the parties wait the entire 12 months before requesting a right to sue. The commission's backlog of cases has consistently been so large that most parties are entitled to request a right to sue at the end of 12 months from the date of filing before the case is certified for hearing but after the investment of significant time and effort by both commission staff and the parties. The amendment allows the staff to anticipate the election of removal in cases where fundamental fairness, or the public interest is best served by allowing the parties to proceed in district court without further delay.

Rule 24.9.264 is being amended to establish the postmark date as the date of filing of objections to issuance of Notice of Dismissal and Notice of Right to Sue and to clarify procedures for such objections, including new limits on the length of briefs and a requirement that parties provide sufficient copies of each brief and of exhibits from the record which it deems relevant to the objections for each member of the commission and for the staff assisting the commission with the review.

5. Interested persons may submit data, views, or arguments concerning the proposed rulemaking in writing to Anne L. MacIntyre, Administrator, Montana Human Rights Commission, P.O. Box 1728, Helena, MT 59624. Any comments must be received no later than September 11, 1995.

6. A person who is directly affected by the proposed rulemaking and wishes to express data, views or arguments orally or in writing at a public hearing must make written request for a hearing and submit this request along with any written comments to Anne L. MacIntyre, Administrator, Human Rights Commission, P.O. Box 1728, Helena, MT 59624-1728, no later than September 11, 1995.

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

affected has been determined to be more than 25 persons based upon the number of potential parties to cases in Montana.

Jane Lopp, Chair
Montana Human Rights Commission

By: _____
Anne L. MacIntyre, Administrator,
Montana Human Rights Commission

_____
Mark Cadwallader, Rule Reviewer
Department of Labor

Certified to the Secretary of State July 31, 1995

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

In the matter of the proposed amendment of ARM 24.30.2542, the adoption of four new rules and the repeal of ARM 24.30.2543, 24.30.2544, 24.29.2545 and 24.30.2546, concerning safety committees	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT, ADOPTION AND REPEAL OF RULES (Safety Culture Act)

TO ALL INTERESTED PERSONS:

1. On September 11, 1995, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Transportation, Helena, Montana, to consider the amendment of ARM 24.30.2542, the adoption of new rules I through IV, and the repeal of ARM 24.30.2543, 24.30.2544, 24.30.2545, and 24.30.2546, all related to safety committees under the Safety Culture Act.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., September 5, 1995, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Jean Branscum, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-6401; TDD (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Ms. Branscum.

2. The Department of Labor and Industry proposes to amend a rule as follows: (new matter underlined, deleted matter interlined)

24.30.2542 SAFETY COMMITTEE REQUIRED FOR EVERY EMPLOYER WITH MORE THAN FIVE EMPLOYEES (1) Except as provided by [new rules II, III and IV], every ~~Every~~ employer that is subject to the requirements of ARM 24.30.2541 must also have a safety committee. If an employer is a party to a collective bargaining agreement that provides for the establishment and operation of a safety committee, the terms of the collective bargaining agreement shall govern the operation of the safety committee, notwithstanding any other provisions of this rule and ARM 24.30.2543 through 24.30.2546.

(2) Remains the same.

(3) A safety committee should not be dominated by either management or labor. Federal law prohibits domination of a safety committee by management. ~~In order to avoid domination by management, these rules govern the following aspects of a safety committee:~~

~~(a) composition of the committee (see ARM 24.30.2543);~~
~~(b) scheduling of meetings (see ARM 24.30.2544);~~
~~(c) role of the committee (see ARM 24.30.2545); and~~
~~(d) scope of duties of the committee (see ARM 24.30.2546).~~

(4) Every safety committee shall:

(a) be composed of employee and employer representatives and hold regularly scheduled meetings, at least once every 4 months. The committee(s) should be of sufficient size and number to provide for effective representation of the workforce. Employers with multiple workplaces may elect to have more than one committee. The safety committee(s) shall:

(i) include in its membership representatives of employees and employer, with employer representatives not exceeding employee representatives;

(ii) include in its employer representative membership appointed, elected and/or volunteer members;

(iii) include in its employee membership volunteers or members elected by their peers. Where employees are represented by a labor organization(s) that organization may choose to appoint or conduct elections to select employee members to serve on safety committee(s); and

(b) include safety committee activities that assist the employer in fact finding. The department recommends that the committee document its activities (i.e. attendees, subjects discussed) and act as a fact finding body and report to the employer regarding:

(i) assessing and controlling hazards;

(ii) assessing safety training and awareness topics;

(iii) communicating with employees regarding safety committee activities;

(iv) developing safety rules, policies and procedures;

(v) educating employees on safety related topics;

(vi) evaluating the safety program on a regular basis;

(vii) inspecting the workplace;

(viii) keeping job specific training current;

(ix) motivating employees to create a safety culture in the workplace; and

(x) reviewing incidents of workplace accidents, injuries and illnesses.

(4) Remains the same, but is renumbered as (5).

AUTH: Sec. 39-71-1505 MCA IMP: Sec. 39-71-1505 MCA

REASON: The proposed amendments are reasonably necessary to implement the provisions of Chapter 238, Laws of 1995 (Senate Bill 287) related to providing for a waiver of safety committees. The proposed amendments also simplify the provisions relating to the duties of a safety committee and related administrative obligations.

3. The Department of Labor and Industry proposes to adopt new rules as follows:

RULE I AVERAGE LOST WORKDAY INCIDENCE RATE FOR OCCUPATIONAL INJURIES AND ILLNESSES (1) For the purpose of

determining when a waiver of the safety committee requirement is appropriate, the department annually establishes the average lost workday incidence rate for occupational injuries and illnesses for Montana entities. The average incidence rate is applicable to entities within the same 2-digit Standard Industrial Classification (SIC) code.

(2) The average incidence rate is based upon Montana data compiled and published by the U.S. department of labor, bureau of labor statistics. If sufficient credible Montana data is lacking for a given 2-digit SIC code, the department will use national data.

(3) A copy of the current list of average incidence rates is available by writing the department's Safety Bureau, P.O. Box 1728, Helena, Montana, 59624-1728, or telephoning (406) 444-6401.

AUTH: Sec. 39-71-1505 MCA IMP: Sec. 39-71-1505 MCA

RULE II WAIVER OF SAFETY COMMITTEE REQUIREMENTS FOR INDIVIDUAL PLAN NO. 1 SELF-INSURERS (1) An individual plan no. 1 self-insurer that is subject to the requirement of having a safety committee may request a waiver of that requirement from the department.

(2) The department may grant a waiver of the safety committee requirement to a plan no. 1 self-insurer if the self-insurer presents sufficient evidence that it has an effective safety program. Such a waiver is valid for one year, and may be renewed. If the self-insurer is a member of the Montana self-insurers guaranty fund, the decision of the department to grant a waiver is not effective unless the Montana self-insurers guaranty fund concurs in the decision. Evidence must include, but need not be limited to, proof of the following:

(a) a written safety plan that complies with the provisions of the Montana Safety Culture Act and the rules implementing the Act;

(b) documentary evidence of employee participation in the safety program; and

(c) a 3 year average lost workday incidence rate for occupational injuries and illnesses that is not greater than 55% of the current average incidence rate for Montana entities with the same 2-digit SIC code.

(3) If the self-insurer disagrees with a department decision not to grant a waiver, the self-insurer may request a contested case hearing.

AUTH: Sec. 39-71-1505 MCA IMP: Sec. 39-71-1505 MCA

RULE III WAIVER OF SAFETY COMMITTEE REQUIREMENTS FOR GROUP PLAN NO. 1 SELF-INSURERS (1) A group plan no. 1 self-insurer whose members are subject to the requirement of having a safety committee may request a waiver of that requirement from the department.

(2) The department may grant a waiver of the safety committee requirement to a plan no. 1 self-insurer if the self-insurer presents sufficient evidence that it has an effective safety program. Such a waiver is valid for one year, and may be

renewed. If the self-insurer is a member of the Montana self-insurers guaranty fund, the decision of the department to grant a waiver is not effective unless the Montana self-insurers guaranty fund concurs in the decision.

(3) The self-insured group may seek either a waiver for all members of the group or only for certain individual members of the group. The decision on the scope of the waiver request lies solely within the discretion of the self-insured group.

(4) The self-insurer seeking a waiver must prove the existence of an effective safety program. Evidence must include, but need not be limited to, proof of the following:

(a) if the request is for an individual employer that is a member of the group:

(i) the employer has a written safety plan that complies with the provisions of the Montana Safety Culture Act and the rules implementing the Act;

(ii) documentary evidence of employee participation in the safety program; and

(iii) a 3 year average lost workday incidence rate for occupational injuries and illnesses that is not greater than 55% of the current average incidence rate for Montana entities with the same 2-digit SIC code; or

(b) if the request is for the group as a whole:

(i) each member of the group has a written safety plan that complies with the provisions of the Montana Safety Culture Act and the rules implementing the Act;

(ii) documentary evidence of employee participation in the safety program; and

(iii) each member has an individual 3 year average lost workday incidence rate for occupational injuries and illnesses that is not greater than 55% of the current average incidence rate for Montana entities with the same 2-digit SIC code.

(5) If the self-insurer disagrees with a department decision not to grant a waiver, the self-insurer may request a contested case hearing.

AUTH: Sec. 39-71-1505 MCA IMP: Sec. 39-71-1505 MCA

RULE IV WAIVER OF SAFETY COMMITTEE REQUIREMENTS FOR PLAN NO. 2 AND PLAN NO. 3 EMPLOYERS (1) Any plan no. 2 or plan no. 3 employer that is subject to the requirement of having a safety committee may request a waiver of that requirement from the insurer that provides the employer with workers' compensation insurance.

(2) An insurer may grant a waiver of the safety committee requirement to an employer for one year, which may be renewed, if the employer provides to the insurer sufficient evidence of the following:

(a) an effective written safety plan that complies with the provisions of the Montana Safety Culture Act and the rules implementing the Act, including documentary evidence of employee participation in the safety program; and

(b)(i) a satisfactory modification factor, if applicable; or

(ii) a low incidence of workplace injuries.

(3) Each plan no. 2 or plan no. 3 insurer may establish criteria to determine what constitutes sufficient evidence of the factors identified in (2). An insurer may grant a waiver to an employer if:

(a) the employer's modification factor is not higher than .87; or

(b) if the employer does not have a modification factor established, the employer has a 3 year average lost workday incidence rate for occupational injuries and illnesses that is not greater than 55% of the current average incidence rate for Montana entities with the same 2-digit SIC code.

(4) Disputes between an insurer and an employer concerning the granting or denial of a waiver must be resolved in the manner provided by the insurance contract for resolution of disputes.

AUTH: Sec. 39-71-1505 MCA IMP: Sec. 39-71-1505 MCA

REASON: The proposed new rules are reasonably necessary to implement the provisions of Chapter 238, Laws of 1995 (Senate Bill 287), regarding waiver of the requirement for employers to have a safety committee.

4. The Department proposes to repeal the following rules in their entirety:

24.30.2543 COMPOSITION OF THE SAFETY COMMITTEE
24.30.2544 SCHEDULING OF THE SAFETY COMMITTEE MEETINGS
24.30.2545 ROLE OF THE SAFETY COMMITTEE
24.30.2546 SCOPE OF DUTIES OF THE SAFETY COMMITTEE

The rules proposed for repeal are found at pages 24-2785 through 24-2787 of the Administrative Rules of Montana. Authority for the repeals is based upon 39-71-1505, MCA; the rules to be repealed implement 39-71-1505, MCA. There is reasonable necessity for repeal of the rules in order to simplify the subject matter contained in the rules. ARM 24.30.2542 is proposed to be amended to address the same general subject matter as addressed by these rules. The repeals are in response to the provisions of Chapter 238, Laws of 1995 (Senate Bill 287), regarding waiver of the requirement for employers to have a safety committee.

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

John Maloney, Bureau Chief
Safety Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

and must be received by no later than 5:00 p.m., September 18, 1995.

6. The Department proposes to make the amendments, new rules, and repeals effective November 1, 1995; however, the Department reserves the right to amend, adopt or repeal some or all of the rules at a later time, or to withdraw one or more of the proposals.

7. The Hearing Bureau of the Legal/Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

Mark Cadwallader
Alternate Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: July 31, 1995.

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

In the matter of the proposed adoption of 3 new rules related to the operation of the contractor registration program (SB 354)	) NOTICE OF PUBLIC HEARING ON) PROPOSED ADOPTION OF NEW) RULES))

TO ALL INTERESTED PERSONS:

1. On September 1, 1995, at 10:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the adoption of 3 new rules related to the operation of the contractor registration program created pursuant to Chapter 500, Laws of 1995 (Senate Bill 354).

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., August 28, 1995, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TDD (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Ms. Wilson.

2. The Department of Labor and Industry proposes to adopt new rules as follows:

RULE I CONTRACTOR REGISTRATION FEES (1) Effective October 1, 1995, the fee for the issuance, renewal or reinstatement of a contractor certificate of registration is $80.00.

AUTH: Sec. 39-9-103 MCA IMP: Sec. 39-9-206 MCA

RULE II EVIDENCE OF COMPLIANCE WITH LAWS (1) Compliance with workers' compensation laws must be demonstrated by either:

(a) a certificate of insurance issued by the contractor's workers' compensation insurer (or self-insured group) stating that the contractor's employees are covered for liability under the Montana Workers' Compensation Act and Occupational Disease Act; or

(b)(i) a copy of the contractor's independent contractor exemption certificate issued by the department; and

(ii) a written statement, made under penalty of perjury, that the contractor does not have any employees that are required to be covered for workers' compensation purposes.

(2) Compliance with unemployment insurance laws must be demonstrated by either:

(a) the Montana unemployment insurance account number; or

(b) a written statement, made under penalty of perjury, that the contractor does not have any employees that are required to be covered for unemployment insurance purposes.

AUTH: Sec. 39-9-103 MCA IMP: Sec. 39-9-202 MCA

RULE III ACCEPTABLE FORMS OF SECURITY (1) The following are acceptable forms of security for providing the bond required of contractors:

(a) a surety bond issued by a corporate surety licensed to do business in Montana;

(b) cash;

(c) a certificate of deposit; or

(d) an irrevocable letter of credit.

(2) A certificate of deposit that is offered as security must:

(a) be issued in the name of, and payable to, the Montana department of labor and industry;

(b) be issued by a financial institution (preferably located in Montana) which has its deposits insured by an agency of the United States government;

(c) be delivered to the offices of the department, in Helena, Montana; and

(d) have a maturity date that does not exceed one year.

(3) An irrevocable letter of credit that is offered as security must:

(a) be issued and payable to the Montana department of labor and industry;

(b) be issued by a financial institution (preferably located in Montana) which has its deposits insured by an agency of the United States government;

(c) be delivered to the offices of the department, in Helena, Montana; and

(d) continue in effect for one year after the date the financial institution notifies the department in writing that the irrevocable letter of credit will terminate.

(4) The amount of the security required to be deposited by a contractor is determined according to the provisions of 39-3-703, MCA.

(5) Interest on a certificate of deposit used as security inures to the benefit of the contractor.

AUTH: Sec. 39-3-702 and 39-9-103 MCA
IMP: Sec. 39-3-703 and 39-9-203 MCA

REASON: There is reasonable necessity to adopt these rules in order to implement the registration provisions of Senate Bill 354 (Chapter 500, Laws of 1995) as of the effective date of October 1, 1995. As of October 1, 1995, contractors that are not registered at the time they enter into a contract are prohibited from suing to enforce that contract or enforce lien rights stemming from that contract. In addition, a prime contractor that verifies the registration of a subcontractor will be able to avoid vicarious liability for workers' compensation or unemployment insurance matters flowing from the

subcontractor. These rules will apply to all contractors in Montana involved in the building trades, other than those 16 groups or classifications of persons exempted from registration by 39-9-211, MCA.

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

Dennis Zeiler, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., September 8, 1995.

4. The Department proposes to make these new rules effective October 1, 1995. However, because the statute granting rule-making authority to the Department does not go into effect until October 1, 1995, notice of the adoption of these rules cannot be published until October 12, 1995. The rules so adopted will be applied retroactively to October 1, 1995.

5. The rules proposed in this notice are intended as interim measures during the start-up of the contractor registration program. The Department intends to undertake additional rule-making to supplement (and if appropriate, amend) these rules, following informal discussions with interested persons as to suggestions regarding rules. The Department expects that it will propose additional rules to address other issues related to the registration process, education, and enforcement. The Department anticipates that the additional rule-making will occur in Fall or Winter 1995.

6. The Hearing Bureau of the Legal/Centralized Services Division of the Department has been designated to preside over and conduct the hearing.

Mark Cadwallader
Alternate Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: July 31, 1995.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of rules 44.5.107, 44.5.108, and 44.5.112 pertaining to Fees for Limited Liability Companies and Limited Liability Partnerships	NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

1. On Wednesday, September 6, 1995 at 10 a.m., a public hearing will be held at the Secretary of State Office Conference Room in Room 225 of the Capitol Building in Helena, Montana, to consider the amendments of rules 44.5.107, 44.5.108, and 44.5.112. These rules will be applied retroactively to October 1, 1995.

2. The rules proposed to be amended provide as follows with the matter to be stricken interlined and new matter added, then underlined:

44.5.107 FEES FOR FILING DOCUMENTS AND ISSUING CERTIFICATES - ASSUMED BUSINESS NAMES OR LIMITED LIABILITY PARTNERSHIPS The secretary of state shall charge and collect for:

(1) filing an application for registration of limited liability partnership or assumed business name and issuing a certificate, ~~$15.00~~ $20.00 (plus a $50.00 license fee for limited liability partnerships);

(2) filing an application for renewal of registration of limited liability partnership or assumed business name and issuing a certificate, ~~$15.00~~ $20.00;

(3) filing an application for an amendment to the registration of limited liability partnership or assumed business name and issuing a certificate, ~~$15.00~~ $20.00;

(4) filing an application to reserve a~~n~~ limited liability partnership name or assumed business name and issuing a certificate, $10.00;

(5) filing an application for cancellation of limited liability partnership or assumed business name, $5.00;

(6) filing any other disclosure statement or report of an assumed business name~~,~~ or limited liability partnership, ~~$15.00~~ $20.00. Authority Sec. 30-13-217, MCA; IMP, Sec. 30-13-217, MCA

44.5.108 MISCELLANEOUS CHARGES - ASSUMED BUSINESS NAMES OR LIMITED LIABILITY PARTNERSHIPS The secretary of state shall charge and collect:

(1) for furnishing a certified copy of any document, instrument or paper relating to a~~n~~ limited liability partnership or assumed business name, 50 cents per page and $2.00 for the certification;

(2) for furnishing any certificate not mentioned in this rule, or ARM 44.5.107, $15.00;

(3) for furnishing a computerized printout of assumed business name information, $1.00. Authority Sec. 30-13-217, MCA; IMP, Sec. 30-13-217, MCA

44.5.112 FEES FOR FILING DOCUMENTS - LIMITED LIABILITY COMPANIES The secretary of state shall charge and collect for:

(1) filing articles of organization, $20.00~~.~~ (plus a $50.00 license fee);

Subsections (2) through (10) remain the same.

(11) filing an application of a foreign limited liability company for a certificate of authority to transact business in this state and issuing a certificate of authority, $20.00 (plus a $50.00 license fee);

Subsections (12) through (23) remain the same. Authority Sec. 35-8-211, MCA; IMP, Sec. 35-8-202, 35-8-212, 35-8-1003, MCA.

3. The rationale for proposed amendments for rules 44.5.107 and 44.5.108 is to set fees for the activities associated with the newly enacted Limited Liability Partnerships Act. The amendments to rules 44.5.107 and 44.5.108 are necessary to proscribe fees commensurate with the costs of filing, storing and retrieving information in a timely and accurate manner. The amendments to rules 44.5.107 and 44.5.112 are being made to indicate the $50.00 license fee required in Section 30-13-117, MCA as amended by Ch. 499 Laws of Montana 1995 and Section 35-8-212, MCA, is in addition to the filing fee.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Garth Jacobson, Secretary of State's Office, P. O. Box 202801, Helena, MT 59620-2801 and must be received no later than September 8, 1995.

5. Garth Jacobson, Secretary of State's office been designated to preside over and conduct the hearing.

By: Secretary of State Mike Cooney

Garth Jacobson, Rule Reviewer

Dated this 31st day of July, 1995.

BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the amendment of rules 46.12.605 and 46.12.606 pertaining to medicaid coverage and reimbursement of dental services	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.605 AND 46.12.606 PERTAINING TO MEDICAID COVERAGE AND REIMBURSEMENT OF DENTAL SERVICES

TO: All Interested Persons

1. On September 5, 1995, at 10:00 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 46.12.605 and 46.12.606 pertaining to medicaid coverage and reimbursement of dental services.

The Department of Public Health and Human 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 August 29, 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:

46.12.605 DENTAL SERVICES, REIMBURSEMENT Subsections (1) through (1)(b) remain the same.

(c) the department's fee schedules contained in sections G and H ~~dated, July 1993,~~ of the department's dental services provider manual (October 1995) and in section F~~, dated July 1993,~~ of the department's denturist services provider manual (July 1993) published by the department.

(2) For the purpose of specifying fees for reimbursement of covered dental and orthodontic services, the department incorporates by reference sections G and H~~, dated July 1993,~~ of the department's dental service provider manual (October 1995) published by the department:

(a) dental and orthodontic services that are designated in the manual as being reimbursed through the report method, "BR", or are listed in the manual under the fee column are reimbursed by the medicaid program at 65.2% of the billed charge for services provided to adults and 80% of the billed charge for services provided to children. For purposes of this rule, services provided to children are services provided while the recipient is under age 21.

(3) Subject to ARM 46.12.516, children's dental ~~Dental~~ and orthodontic services not listed in sections G and H of the

dental services provider manual that are determined to be medically necessary by the department's designated review organization after an EPSDT screen will be reimbursed through the "by report" method ~~which is 65.2%~~ at 80% of the billed charges;

(4) For the purpose of specifying fees for reimbursement of covered denturist services, the department incorporates by reference section F~~, dated July 1993,~~ of the department's denturist service provider manual (July 1993).

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

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-113 and 53-6-141 MCA

46.12.606 DENTAL SERVICES, COVERED PROCEDURES (1) For purposes of specifying dental and orthodontic services covered by the medicaid program and the limitations on the coverage of those services, the department incorporates by reference sections G and H~~, dated July 1993,~~ of the dental services provider manual (October 1995) published by the department.

(2) For purposes of specifying denturist services, covered by the medicaid program and the limitations on the coverage of those services, the department incorporates by reference section F~~, dated July 1993,~~ of the denturist services provider manual (July 1993) published by the department:

Subsections (2)(a) through (5)(b) remain the same.

(c) replacement of lost dentures is a covered service~~; and~~ subject to the following requirements and limitations:

Subsection (5)(c)(i) remains the same.

~~(d) denture replacement is subject to prior authorization requirements and the following limits:~~

Subsections (5)(d)(i) and (5)(d)(ii) remain the same in text but are renumbered (5)(c)(ii) and (5)(c)(iii).

~~(iii)~~ (iv) dentures which are between 5 and 10 years old may be replaced when the treating dentist documents the need for replacement, but reimbursement will be at the rate for duplicating (or jumping) the dentures; ~~and~~

~~(iv)~~ (v) the limits on coverage of denture replacement may be exceeded when the designated review organization determines that the existing dentures are causing the recipient serious physical health problems~~.~~; and

(vi) replacement of lost dentures is limited to one replacement per recipient per lifetime.

Subsections (6) through (8) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-101 and 53-6-113 MCA

3. The proposed rules are necessary to increase medicaid fees for dental services provided to children and to adopt limitations on coverage and reimbursement of certain dental procedures.

Since enactment of the early and periodic screening, diagnostic and treatment (EPSDT) program by Congress in 1987, dental services for children have been a primary focus of mandatory medicaid services for children. While EPSDT has been expanded from its original form to broaden the federal service coverage requirements for children, dental services have remained a primary focus of the program. Dental services are one of the core preventative services that children require to maintain their general health. The EPSDT program has increased the need and demand for access to preventative and restorative dental services for children.

The proposed rule would increase medicaid fees for dental services provided to children in order to encourage dental service providers to expand access to dental services for medicaid eligible children. The proposed fees are contained in a fee schedule that is part of a new provider manual that will be incorporated by reference in the rule. The fees were set using average charge information for 1995 obtained by surveying providers and starting with a fee at 80% of the average charge for each service. The department then reviewed each fee with provider groups and adjusted some of the individual fees upward or downward to more appropriate levels. A copy of the proposed fee schedule is available upon request from the Department of Public Health and Human Services, Medicaid Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

The new dental services manual proposed to be incorporated into the rule will also contain a revised list of covered services. Based upon professional review of the services currently covered, the department is proposing to eliminate or limit medicaid coverage of certain procedures because the services have been determined to be cosmetic in nature or not medically necessary, or because an adequate alternative service is available at lower cost. Reimbursement for other specific services has been increased or added to allow utilization in appropriate cases. A list of the specific proposed changes is available upon request from the Department of Public Health and Human Services, Medicaid Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

The department estimates that the proposed rules will increase medicaid expenditures under the dental program by $850,310 in fiscal year 1996 and $928,878 in fiscal year 1997, including both state and federal funds. A copy of the proposed changes may be obtained from local county human service offices. The medicaid advisory council has been advised of the proposed changes on July 20, 1995.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department

of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than September 7, 1995.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

6. The rule changes will become effective October 1, 1995.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State July 31, 1995.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of rules 46.13.303, 46.13.304 and 46.13.401 pertaining to low income energy assistance program	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.13.303, 46.13.304 AND 46.13.401 PERTAINING TO LOW INCOME ENERGY ASSISTANCE PROGRAM

TO: All Interested Persons

1. On August 30, 1995, at 10:00 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 46.13.303, 46.13.304 and 46.13.401 pertaining to low income energy assistance program.

The Department of Public Health and Human 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 August 21, 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:

46.13.303 TABLES OF INCOME STANDARDS (1) The income standards in the table in subsection (2) below are the ~~1994~~ 1995 U.S. government office of management and budget poverty levels for households of different sizes. This table applies to all households, including self-employed households.

(a) Households with annual gross income at or below 125% of the ~~1994~~ 1995 poverty level are financially eligible for low income energy assistance. Households with an annual gross income above 125% of the ~~1994~~ 1995 poverty level are ineligible for low income energy assistance.

(2) Annual income standards for all households:

Family Size	Poverty Guideline		125 Percent		150 Percent	
One	$ ~~7,360~~	7,470	$ ~~9,200~~	9,338	~~$11,040~~	11,205
Two	~~9,840~~	10,030	~~12,300~~	12,538	~~14,760~~	15,045
Three	~~12,320~~	12,590	~~15,400~~	15,738	~~18,480~~	18,885
Four	~~14,800~~	15,150	~~18,500~~	18,938	~~22,200~~	22,725
Five	~~17,280~~	17,710	~~21,600~~	22,138	~~25,920~~	26,565
Six	~~19,760~~	20,270	~~24,700~~	25,338	~~29,640~~	30,405
Additional member add	~~2,480~~	2,560	~~3,100~~	3,200	~~3,720~~	3,840

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-201 MCA

46.13.304 CALCULATING INCOME Subsections (1) through (2) remain the same.

(a) the household's annual gross income is between 125% and 150% of the ~~1994~~ 1995 U.S. government office of management and budget poverty level for the particular household size;

Subsections (2)(b) through (3) remain the same.

(a) the household's annual gross income is between 125% and 150% of the ~~1994~~ 1995 U.S. government office of management and budget poverty level for the particular household size;

Subsections (3)(b) through (3)(c)(x) remain the same.

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-201 MCA

46.13.401 BENEFIT AWARD MATRICES Subsections (1) through (2)(d) remain the same.

TABLE OF BENEFIT LEVELS

(i) SINGLE FAMILY

# BEDROOMS	NATURAL GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	~~$264~~ 215	~~$360~~ 294	~~$362~~ 297	~~$283~~ 239	~~$230~~ 192	~~$210~~ 176
TWO	~~369~~ 313	~~508~~ 428	~~511~~ 432	~~411~~ 348	~~334~~ 280	~~305~~ 255
THREE	~~502~~ 427	~~692~~ 583	~~697~~ 589	~~561~~ 474	~~455~~ 381	~~415~~ 348
FOUR	~~691~~ 587	~~953~~ 802	~~958~~ 810	~~771~~ 652	~~626~~ 524	~~571~~ 479

(ii) MULTI-FAMILY

# BEDROOMS	NATURAL GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	~~$215~~ 182	~~$296~~ 249	~~$297~~ 251	~~$301~~ 254	~~$194~~ 162	~~$177~~ 148
TWO	~~323~~ 274	~~445~~ 375	~~448~~ 379	~~453~~ 383	~~292~~ 245	~~267~~ 223
THREE	~~474~~ 402	~~663~~ 550	~~667~~ 556	~~665~~ 562	~~428~~ 359	~~391~~ 328
FOUR	~~654~~ 470	~~763~~ 642	~~768~~ 649	~~776~~ 657	~~501~~ 419	~~457~~ 383

(iii) MOBILE HOME

# BEDROOMS	NATURAL GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	~~$214~~ 181	~~$295~~ 248	~~$296~~ 251	~~$250~~ 211	~~$193~~ 162	~~$177~~ 148
TWO	~~312~~ 265	~~431~~ 362	~~433~~ 366	~~366~~ 309	~~283~~ 237	~~258~~ 216
THREE	~~414~~ 352	~~571~~ 480	~~574~~ 486	~~484~~ 410	~~376~~ 314	~~342~~ 287
FOUR	~~462~~ 393	~~637~~ 536	~~641~~ 542	~~541~~ 457	~~418~~ 351	~~383~~ 320

Subsection (2)(e) remains the same.

AUTH: Sec. 53-2-201 MCA
IMP: Sec. 53-2-201 MCA

3. ARM 46.13.303 contains tables of income standards which show the poverty level (guideline), 125% of poverty, and 150% of poverty for different sized families. The tables showing 125% of poverty are used in determining eligibility for the Low Income Energy Assistance Program (LIEAP), which is limited to persons whose annual gross income is equal to or less than 125% of the federal poverty level. Tables showing the poverty level are included because the size of an eligible family's benefit is based on what percentage of poverty their income is. Tables showing 150% of poverty are included because deductions from income for dependent care costs and medical expenses prescribed in ARM 46.13.304 are available only if the family's gross annual income is between 125% and 150% of the poverty level. The amendment of ARM 46.13.303 and 46.13.304 is necessary in order to take into account inflationary cost increases as reflected in the 1995 U.S. Office of Management and Budget poverty levels. These updated tables are to be used rather than the 1994 poverty levels to determine eligibility for LIEAP.

The Department anticipates that Montana's 1995 federal block grant for energy assistance will be 25% less than its grant for 1994. Therefore ARM 46.13.401 must be amended to reduce the figures in the benefit award matrices taking into consideration this reduced funding as well as Department of Energy cost projections for 1995-96. The average LIEAP benefit will be reduced by only 15% despite the anticipated 25% reduction in funding because some Energy Conservation and Energy Assistance Account funds will be used for benefits rather than for client education and outreach in order to minimize benefit reductions.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than September 7, 1995.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva
Rule Reviewer

Russell E. Cater acting
Director, Public Health
and Human Services

Certified to the Secretary of State July 31, 1995.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of rule 46.12.508 pertaining to medicaid reimbursement for outpatient hospital imaging and other diagnostic services	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.508 PERTAINING TO MEDICAID REIMBURSEMENT FOR OUTPATIENT HOSPITAL IMAGING AND OTHER DIAGNOSTIC SERVICES

TO: All Interested Persons

1. On August 30, 1995, at 11:00 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 rule 46.12.508 pertaining to medicaid reimbursement for outpatient hospital imaging and other diagnostic services.

The Department of Public Health and Human 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 August 21, 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 rule as proposed to be amended provides as follows:

46.12.508 OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT

Subsection (1) remains the same.

(2) Except for the services reimbursed as provided in subsections (3) through ~~(7)~~ (9), all facilities will be reimbursed on a retrospective basis. Allowable costs will be determined in accordance with ARM 46.12.509(2) and subject to the limitations specified in ARM 46.12.509(2)(a), (b) and (c). The department may waive retrospective cost settlement for such facilities which have received interim payments totaling less than $100,000 for inpatient and outpatient hospital services provided to Montana medicaid recipients in the cost reporting period, unless the provider requests in writing retrospective cost settlement. Where the department waives retrospective cost settlement, the provider's interim payments for the cost report period shall be the provider's final payment for the period.

Subsection (2)(a) remains the same.

(3) Except as otherwise specified in these rules, the following outpatient hospital services will be reimbursed under a prospective payment methodology for each service as described in subsections (4) through ~~(7)~~ (9) of this rule.

Subsections (4) through (7)(e) remain the same.

(8) Imaging services will be reimbursed on a fee basis. For each imaging service or procedure, the fee will be 160% of the technical component of the medicare resource-based relative value scale (RBRVS) or, if there is no technical component under RBRVS for the procedure, the fee will be 100% of the global amount of the medicare RBRVS. The imaging services reimbursed under this subsection are the individual imaging services listed in the 70000 series of the Current Procedural Terminology, Fourth Edition (CPT-4). For imaging services where no medicare fee has been assigned, the fee is 62% of usual and customary charges for a hospital designated as a sole community hospital as defined in ARM 46.12.503 or 60% of usual and customary charges for a hospital that is not designated as a sole community hospital as defined in ARM 46.12.503.

(9) Other diagnostic services will be reimbursed on a fee basis. For each diagnostic service or procedure, the fee will be 160% of the technical component of the medicare resource-based relative value scale (RBRVS) or, if there is no technical component under RBRVS for the procedure, the fee will be 100% of the global amount of the medicare RBRVS. The individual diagnostic services reimbursed under this subsection are those listed in the Current Procedural Terminology, Fourth Edition (CPT-4) in Addendum K to Chapter VII, Bill Review, of the Medicare Part A Intermediary Manual, Part 3 (HCFA Pub. 13-3).

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-6-101, 53-6-111, 53-6-113 and 53-6-141 MCA

3. The proposed rules are necessary to revise the current medicaid reimbursement methodology for imaging and other diagnostic services under the outpatient hospital program. The department proposes to adopt a prospective payment methodology to replace the current retrospective cost-based approach for imaging and other diagnostic services. The 1993 legislature authorized a study and evaluation of outpatient hospital reimbursement, and the study was performed by Abt Associates on behalf of the department. Abt recommended that imaging and other diagnostic services be reimbursed using a prospective methodology similar to that used by medicare. Medicaid currently reimburses these services at rates higher than medicare. The proposed rule is necessary to adopt a more efficient and cost-effective reimbursement methodology for imaging and other diagnostic services.

The proposed methodology would reimburse imaging and other diagnostic services at 160% of the technical component of the medicare resource-based relative value scale (RBRVS) commonly referred to as the Physician's Medicare Fee Schedule. The medicare fee schedule, global fee, consists of a technical and a professional component. The technical component covers the facility's supplies, staff time and other items. The professional component covers the physician service, which is reimbursed separately by medicaid under the physician services program. In a few cases, there is no technical component for a

particular procedure code under medicare. In these cases, the fee would be 100% of the global medicare fee. For imaging services where no medicare fee has been assigned, reimbursement will be a prospective fee set at a specified percentage of usual and customary charges. The proposed medicaid fees would provide incentives for hospitals to be efficient and cost-effective in providing these services. The proposed fees would also be certain, easy to understand and easy for the department to administer and update.

The proposed methodology has been revised from the methodology proposed in the July 1 outpatient hospital reimbursement rule. That earlier proposal was withdrawn based upon new information that became available after the original proposal and which suggested that the proposed methodology would generate lower fees than originally estimated. The fees under this proposal are substantially higher than the fees under the previous proposal.

In the aggregate, the proposed change is estimated to reduce medicaid payments to hospitals for outpatient hospital services in an amount estimated to be between $200,000 and $400,000. The actual dollar amount of the anticipated reduction cannot be determined with certainty because the necessary data to make a more specific estimate is unavailable.

The proposed new rule subsections are numbered as proposed subsections (8) and (9) to correspond to other changes to ARM 46.12.508 that became effective July 1, 1995 but that do not yet appear in the ARM volumes.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than September 7, 1995.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

6. The rule changes will be effective October 1, 1995.

Dawn Sliva
Rule Reviewer

Russell E. Cater acting
Director, Public Health and Human Services

Certified to the Secretary of State July 31, 1995.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of rules 46.12.805 and 46.12.806 pertaining to medicaid coverage and reimbursement of durable medical equipment	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.805 AND 46.12.806 PERTAINING TO MEDICAID COVERAGE AND REIMBURSEMENT OF DURABLE MEDICAL EQUIPMENT

TO: All Interested Persons

1. On August 30, 1995, at 1:30 p.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 46.12.805 and 46.12.806 pertaining to medicaid coverage and reimbursement of durable medical equipment.

The Department of Public Health and Human 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 August 21, 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:

46.12.805 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, REIMBURSEMENT REQUIREMENTS

(1) Requirements for the purchase or rental of prosthetic devices, durable medical equipment, ~~and~~ medical supplies and related maintenance, repair and services are as follows:

(a) ~~Except as provided in subsection (5)~~ Subject to the requirements of this rule, the department will pay the lowest of the following for prosthetic devices, durable medical equipment, ~~and~~ medical supplies and related maintenance, repair and services not also covered by medicare for the recipient:

(i) the provider's ~~actual submitted~~ usual and customary charge for the item; or

Subsection (1)(a)(ii) remains the same.

(b) ~~Except as provided in subsection (5)~~ Subject to the requirements of this rule, the department will pay the lowest of the following for prosthetic devices, durable medical equipment, ~~and~~ medical supplies and related maintenance, repair and services which are also covered by medicare for the recipient:

(i) the provider's ~~actual submitted~~ usual and customary charge for the item;

Subsections (1)(b)(ii) and (1)(b)(iii) remain the same.

(c) For all purposes under ARM 46.12.805 and 46.12.806, the amount of the provider's usual and customary charge may not exceed the reasonable charge usually and customarily charged by the provider to all payers. The charge will be considered reasonable if less than or equal to the manufacturer's suggested list price. For items without a manufacturer's suggested list price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount. For items that are custom fabricated at the place of service, the amount charged will be considered reasonable if it does not exceed the average charge of all medicaid providers by more than 20%. For rental items, the reasonable monthly charge may not exceed a percentage of the reasonable purchase charge, as specified in subsection (3).

Subsection (1)(c) remains the same in text but is renumbered (1)(d).

(i) for any line item of prosthetic device, durable medical equipment, ~~and~~ medical supplies and related maintenance, repair and services on which charges exceed $1000.00;

Subsections (1)(c)(ii) through (1)(d) remain the same in text but are renumbered (1)(d)(ii) through (1)(e).

~~(e)~~ (f) Reimbursement for prosthetic devices, durable medical equipment, ~~and~~ medical supplies and related maintenance, repair and services utilized by nursing facility residents and billed by a nursing facility is subject to the limits in the department's rules governing nursing facility reimbursement.

Subsection (2) remains the same.

(3) Medicaid reimbursement for items provided on a rental basis is limited as follows:

(a) Total medicaid rental reimbursement for items listed in medicare's capped rental program or classified by medicare as routine and inexpensive rental will be limited to 120% of the purchase price for that item. Monthly rental fees will be limited to 10% of the purchase price and payments will be limited to 12 months.

(i) For purposes of this limit, the purchase price is the purchase fee specified in the department's fee schedule established under ARM 46.12.806. If no purchase or rental fee has been set for the item, the purchase price shall be the applicable by report percentage, as specified in ARM 46.12.806 (2) and (3), of the provider's usual and customary charge for the item, determined in accordance with subsection (1)(b). If no purchase fee has been set but a monthly rental fee has been set, the purchase price shall be 10 times the monthly rental fee established in accordance with ARM 46.12.806.

(ii) Interruptions in the rental period of less than 60 days will not result in the start of a new 12-month period or new 120% of purchase price limit, but periods in which service is interrupted will not count toward the 12-month limit.

(iii) A change in supplier during the 12-month period will not result in the start of a new 12-month period or new 120% of purchase price limit. Providers are responsible to investigate whether another supplier has been providing the item to the recipient and medicaid will not notify suppliers of this

information. The provider may rely upon a separate written statement of the recipient that another supplier has not been providing the item, unless the provider has knowledge of other facts or information indicating that another supplier has been providing the item. The supplier providing the item in the twelfth month of the rental period is responsible to transfer ownership to the recipient.

(iv) If rental equipment is changed to different but similar equipment, the change will not result in the start of a new 12-month period or new 120% of purchase price limit, unless:

(A) the change in equipment is medically necessary as a result of a substantial change in the recipient's medical condition;

(B) a new certification of medical necessity for the new equipment is completed and signed by a physician; and

(C) the medicaid services division prior authorizes the change in equipment.

(b) During the 12-month rental period, medicaid rental reimbursement includes all supplies, maintenance, repair, components, adjustments and services related to the item during the rental month. No additional amounts related to the item may be billed or reimbursed for the item during the 12-month rental period. The supplier providing the rental equipment during the rental period is responsible for all maintenance and servicing of the equipment.

(c) After 12 months rental, the recipient will be deemed to own the item and the provider must transfer ownership of the item to the recipient. After the 12-month rental period, the provider may bill separately for supplies, maintenance, repair, components, adjustments and services related to the item, subject to the requirements of these rules, except that repair charges are not reimbursable during the manufacturer's warranty period.

(d) All rentals will be paid on a monthly basis, except air fluidized beds which will be reimbursed at a daily rental rate.

(i) Medicaid will pay an entire monthly rental fee for the initial month of rental even if less than a full month. When a rental extends into a second or subsequent month, medicaid will pay a rental fee for a partial month only if the partial month period is at least 15 days.

(e) Items classified by medicare as needing frequent and substantial servicing will be reimbursed by medicaid on a monthly rental basis only. The 120% cap specified in subsection (3)(a) does not apply and rental reimbursement may continue as long as the item is medically necessary.

(f) If the purchase of a rental item is cost effective, the department may negotiate with the provider to purchase the item.

(4) If no purchase fee has been set for a purchase item but a monthly rental fee has been set, medicaid reimbursement for purchased items shall be limited to 10 times the monthly rental fee established in accordance with ARM 46.12.806.

Subsections (4) through (5)(a)(iii) remain the same in text but are renumbered (5) through (6)

(7) Medical coverage of diapers is limited to 180 diapers per recipient per month. Medicaid will not reimburse delivery fees in addition to the amount reimbursed for diapers.

AUTH: Sec. 53-2-201 and 53-6-113 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141 MCA

46.12.806 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) Providers must bill for prosthetic devices, durable medical equipment, ~~and~~ medical supplies and related maintenance, repair and services using the procedure codes and modifiers set forth, and according to the definitions contained, in the health care financing administration's common procedure coding system (HCPCS). Information regarding billing codes, modifiers and HCPCS is available upon request from the Department of ~~Social and Rehabilitation Services~~ Public Health and Human Services, Medicaid Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

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

(b) Upon review of the aggregate number of billings as provided in subsection (a), the department will establish a fee for each item which has been billed at least 50 times by all providers in the aggregate during the previous 12-month period. The department shall set each such fee at 90% of the average charge billed by all providers in the aggregate for such item during such previous 12-month period. For purposes of determining the number of billings and the average charge, the department will consider only those billings that comply with ARM 46.12.805(1)(c).

Subsection (2)(b)(i) remains the same.

(c) ~~For~~ Except as provided in subsection (f), for all items for which no fee has been set under the provisions of subsection (b), the department's fee schedule amount shall be 90% of the provider's ~~actual~~ usual and customary charge.

(i) For purposes of subsection (c), the amount of the provider's usual and customary charge may not exceed the reasonable charge usually and customarily charged by the provider to all payers. The charge will be considered reasonable if less than or equal to the manufacturer's suggested list price. For items without a manufacturer's suggested list price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount. For items that are custom fabricated at the place of service, the amount charged will be considered reasonable if it does not exceed the average charge of all medicaid providers by more than 20%. For rental items, the reasonable monthly charge may not exceed a percentage of the reasonable purchase charge, as specified in ARM 46.12.805(3).

Subsections (d) through (d)(ii) remain the same.

(e) For all diapers and diaper-related supplies, the department's fee schedule shall be the diaper fee schedule dated October 1, 1995, which the department hereby adopts and incorporates by reference. A copy of the department's October 1, 1995 diaper fee schedule may be obtained from the Department of Public Health and Human Services, Medicaid Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(f) For new procedure codes where a medicare fee is available, the department's fee schedule amount shall be the medicare allowable charge, until the department sets a fee based upon 50 billings for the procedure code as provided in subsection (2)(c).

Subsections (3) through (4)(b) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141 MCA

3. The proposed rule amendments are necessary to adopt certain requirements and limitations regarding reimbursement under the medicaid durable medical equipment program.

The current provider manual indicates that medicaid policy is not to pay more in rentals than the amount of the purchase price for the item. As a general policy, this limit does not take into account differences between various types of equipment. In some circumstances the limit simply is not workable. Yet in other circumstances, providers have billed medicaid for excessive amounts by charging rental fees which over time greatly exceed the reasonable purchase price of an item. This policy also failed to account for the cost of necessary supplies and maintenance of rental items.

Providers have questioned the department's procedure for the billing of supplies and maintenance for rental items. The department believes that all supplies necessary for rental equipment should be included in the monthly rental amount, but some providers are billing separate additional amounts for supplies and maintenance.

Some providers have also abused the reimbursement process by charging medicaid higher amounts for items than usually and customarily charged to all other payers. The department's rules in some circumstances allow for payment of the provider's actual submitted charge. This has been interpreted to mean the provider's usual and customary charge. In many cases it is apparent that the charges are excessive, yet it is very difficult to establish the level of the provider's usual and customary charge for a particular item.

The proposed adoption of new ARM 46.12.805(3) through 46.12.805(3)(e) and 46.12.805(4) is necessary to limit reimbursement for rental items to an efficient and cost-effective amount. The proposed amendment would place a limit on rental fees paid by

medicaid for certain equipment. The limit would apply only to equipment that is subject to the medicare capped rental program or classified by medicare as "routine and inexpensive rental." For these items, total medicaid payments would not exceed 120% of the purchase price of the item. The monthly rental is limited to 10% of the purchase price for up to 12 months. The proposed amendments to ARM 46.12.805(1), 46.12.805(1)(a), 46.12.805(1)(b), 46.12.805(1)(c)(i), 46.12.805(1)(f), 46.12.805(3)(b) and 46.12.806(1) would provide that the rental amounts include all related supplies, maintenance, repairs, etc. The limit is set at 120% of the purchase price to allow for the included supplies, maintenance and repairs.

The proposed rule amendments in ARM 46.12.805(3)(a) through 46.12.805(3)(e) also specify various details as to how the limit would be applied in particular circumstances. The rule specifies how the purchase price would be determined for purposes of the rental limit, the circumstances under which a new 12-month period would begin and that rentals will be reimbursed on the basis of a monthly fee. Ownership of rental items would transfer to recipients after 12 months of rental and providers could bill separately for maintenance, repairs and supplies after the 12-month rental period.

The proposed rule amendments to ARM 46.12.805(1)(a)(i), 46.12.805(1)(b)(i), 46.12.805(1)(c) and 46.12.806(2)(c) would also place a specific limit upon the amount that providers may charge to the medicaid program. Charges would be limited to the reasonable charge usually and customarily charged by the provider to all payers. The provider could not charge medicaid for the same item more than it charges other payers. Also, the charge must be reasonable, and it would be considered reasonable if it is no more than the manufacturer's suggested list price. If there is no list price, the charge would be considered to be reasonable if the provider's acquisition cost is at least 50% of the charge. For items custom fabricated by the provider, charges would be considered reasonable if within 20% of the average charge by all providers for the same item. The department believes that these amounts are consistent with reasonable industry practice. The department believes that adoption of these limitations will prevent excessive charges to the medicaid program, while allowing reasonable and adequate reimbursement for covered items.

Questions have also arisen regarding the meaning of the phrase "covered by medicare" in ARM 46.12.805(1)(a) and (b). The issue has been whether this means that medicare generally covers the item or whether it means medicare is covering the item for the particular recipient. The proposed rule amendment specifies that the medicare allowable amount applies as a limit only where medicare is covering the item for that recipient. In such cases, the provider is providing the item based upon the medicare payment and medicaid pays only the coinsurance and deductible to bring the total payment up to the medicare

allowable charge. The proposed amendment is necessary to specify the reimbursement amount in these circumstances.

The proposed rule amendment in new ARM 46.12.806(2)(e) would also adopt specific fees for diapers and diaper-related items. Medicaid covers diapers for recipients needing diapers because of a medical condition. Suppliers presently are reimbursed 90% of their customary charges, which have proven to exceed amounts charged to other payers. In addition, providers have charged for delivery of the diapers and related items. Program costs in this area have been increasing 28% annually. The proposed amendment is necessary to limit fees to a reasonable amount, while maintaining fees at a level adequate to maintain access to suppliers throughout the state.

The proposed rule amendment would adopt a fee schedule for diapers and related items. The fee schedule would fit into the provisions of ARM 46.12.805(1)(a) and 46.12.805(1)(b), and in effect provide an upper limit of reimbursement. The fee for diapers will be $.70 per diaper and all billing must be on a per diaper basis, rather than based upon varying units such as packages, cases, etc. The fee for liners, shields and pads will be $.40 each. Other miscellaneous incontinence items will continue to be paid on a "by report" basis. The proposed fees were determined after reviewing the average amount currently reimbursed and surveying providers. Delivery fees would not be billable in addition to the set fees. In addition, the proposed rule amendment to ARM 46.12.805(7) will limit medicaid coverage to 180 diapers per month. This amount is more than adequate for the vast majority of recipients. The proposed limits and fees for diapers and related items are necessary to reimburse these items in a more efficient and cost effective manner and to discourage unnecessary use by recipients.

The department estimates that the diaper related provisions of the proposed rule will result in decreased expenditures of approximately $442,347 for the biennium, including both state and federal funds. The fiscal impact associated with changes in the rental of durable medical equipment is unknown.

The proposed amendment to ARM 46.12.806(2)(b) is necessary to assure that fees set using average provider billings are set based upon reasonable charges. Otherwise, providers could benefit from a higher fee simply by repeatedly billing excessive charges for an item. The proposed rule would eliminate excessive charges from the billings for purposes of setting fees under this subsection.

Proposed ARM 46.12.806(2)(f) is necessary to impose a reasonable limitation on the amount paid on new procedure codes. Where medicare has set a fee for the procedure code, the medicaid fee will be the medicare fee until the department sets a fee based upon the average of 50 billings under ARM 46.12.806(2)(c). At that time, the department fee would replace the medicare fee.

A copy of the proposed rule amendments may be obtained from local county human service offices.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than September 7, 1995.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

6. The rule changes will become effective October 1, 1995.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State July 31, 1995.

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

In the matter of the amendment of ARM 12.2.501 pertaining to crappie as nongame species in need of management	NOTICE OF AMENDMENT OF ARM 12.2.501

TO: All interested persons

1. On March 30, 1995, the Department of Fish, Wildlife and Parks published notice of the proposed amendment of the above-captioned rule at page 429 of the 1995 Montana Administrative Register, issue number 6.

2. The department has amended the rule as proposed.

3. No comments or testimony were received.

MONTANA DEPARTMENT OF FISH, WILDLIFE & PARKS

Robert N. Lane
Rule Reviewer

Patrick J. Graham, Director

Certified to the Secretary of State July 31, 1995.

**BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA**

In the matter of the amendment of rules 16.8.1404, 16.8.1413 and 16.8.1429, dealing with opacity requirements at kraft pulp mills	NOTICE OF AMENDMENT OF RULES

(Air Quality)

To: All Interested Persons

1. On February 23, 1995, the board published notice of the proposed amendment of the above-captioned rules at page 254 of the 1995 Montana Administrative Register, Issue No. 4.

2. At its regularly scheduled meeting of May 19, 1995, the board adopted the amendments as proposed with no changes.

3. The board appointed Will Hutchison as hearing officer to preside over a public hearing in Missoula. The board received two written comments prior to the hearing and numerous comments and documents during the hearing. In response to the hearing officer's request, several persons who commented at the hearing supplemented their oral comments after the hearing with written materials referred to in their testimony.

COMMENT: The department explained its rationale for the proposed amendments. The department reviewed the history of ARM 16.8.1404, opacity regulation of Stone Container Corporation's recovery boilers, and Stone's petition for a declaratory ruling interpreting ARM 16.8.1404 as allowing a 35% opacity limit on Stone's No. 4 recovery boiler, installed in 1972. The department explained that, after the board granted Stone's petition, and after the board granted the department's petition for rehearing, the department and Stone reached an agreement to try to resolve the matter through a public rulemaking proceeding. The department explained that the opacity limits and monitoring requirements in the proposed amendments would be more stringent than the limits in the board's September, 1994, decision granting Stone's petition for a declaratory ruling, more stringent than the 35% opacity limit under the federal new source performance standards (NSPS) for new kraft pulp mill recovery boilers, and as stringent or more stringent than the opacity limits for kraft pulp mill recovery boilers in the majority of states having kraft pulp mills and/or kraft pulp mill opacity rules. The department explained that the 30% opacity limit that would apply to Stone's No. 4 recovery boiler would be less stringent than the 20% limit set in the department's 1992 permit modification that resulted in Stone's permit appeal and petition for a declaratory ruling. The department stated that the proposed continuous 6-minute average opacity monitoring requirements would enhance the department's

ability to measure compliance by recovery boilers installed on or before September 24, 1976, which are not subject to NSPS monitoring requirements. The department stated that the proposed opacity limits will not increase Stone's allowable mass particulate emission limits or affect Stone's compliance with the Missoula PM-10 control plan.

RESPONSE: The board found the lack of any increase in Stone's allowable mass particulate emission limits to be a desirable component of the amendments. The board also favors the use of continuous 6-minute average opacity monitoring requirements to continuously monitor compliance, without the restrictions of periodic visual observations. The amended rules' application of lower opacity limits to Stone's No. 3 and No. 5 recovery boilers, instead of addressing just the disputed limit for the No. 4 boiler, is also a desirable component of the amendments.

COMMENT: Several people commented in support of the rule amendments, and specifically supported the continuous monitoring requirements as an improvement over visual monitoring of opacity and as an aid to mill operators in complying with opacity standards. Ed Scott, director of environmental affairs, and W.G. Stuart, general manager, for Stone Container Corporation, spoke in support of the amendments. They stated that the proposed opacity limits are stringent when compared to the requirements in other states where Stone has kraft pulp mills. They stated that the proposed monitoring requirements that would apply to Stone's older recovery boilers should result in reduced mass emissions and opacity.

RESPONSE: The amended rules' application of lower opacity limits to Stone's No. 3 and No. 5 recovery boilers, instead of addressing just the disputed limit for the No. 4 boiler, and the addition of continuous monitoring requirements for the No. 3 and No. 4 recovery boilers are desirable components of the amendments.

COMMENT: Many of the comments received in opposition to the proposed amendments did not relate specifically to the proposed amendments but related to health problems asserted to be related to particulate emissions from the Stone mill, studies regarding the adverse health affects of particulate pollution, the health impacts of pollutants other than particulate, opposition to state regulation of Stone, and ethical obligations of board members. Representatives of local environmental organizations presented a list of proposals to improve air and water quality at the Stone mill.

RESPONSE: Based on reference information and peer reviewed studies submitted with some of these comments, the board adopted a finding concluding that the lower opacity limits contained in the proposed rule amendments would protect the public health or environment of the state and would mitigate harm to the public health or environment. State, as opposed to

local, regulation of a facility such as Stone's kraft pulp mill is required by Mont. Code Ann. § 75-2-301(4).

The petitions and list of proposals to improve air and water quality at Stone's mill contained provisions that are outside the subject matter of the noticed rule amendments, so the board could not consider them as part of this rulemaking proceeding.

COMMENT: Some persons commenting expressed opposition to the department attempting to resolve the declaratory ruling proceeding through a negotiated rulemaking and without an analysis of the health impacts of the proposed amendments. Opponents stated that the language of the present rule requires a 20% opacity limit for Stone's No. 4 recovery boiler and that the board erred in interpreting the rule to allow a 35% limit. Some opponents asserted that the negotiated rulemaking prohibited the board from modifying or rejecting the proposed amendments.

RESPONSE: It is common to resolve disputed legal issues through legislation or rulemaking. The department did not present an analysis of the health impacts of the proposed amendments. However, the proposed amendments are intended to provide more stringent opacity limits than the limits resulting from the board's interpretation of the present rules. With the amendment of the present rules to require continuous 6-minute average opacity monitoring on all kraft pulp mill recovery boilers, adverse health impacts should be reduced. Stone presented three months of monitoring data indicating that continuously monitoring opacity from all three of Stone's recovery boilers resulted in a significant reduction in opacity and particulate emissions.

By agreeing to the request to initiate rulemaking on the proposed rule amendments submitted by Stone and the department, the board did not give up its discretion to adopt, reject, or modify the proposed rules or delegate that discretion to any other person or entity. Following public comment and deliberation, the board decided to adopt the proposed rule amendments.

COMMENT: Many persons commenting asserted that the proposed amendments are less restrictive than present requirements and objected to less stringent air quality standards for Stone when local regulations are requiring Missoula citizens to reduce emissions from private vehicles and wood stoves.

RESPONSE: The proposed 30% opacity limit for recovery boilers installed after November 23, 1968, that would affect Stone's No. 4 recovery boiler, is less restrictive than the 20% opacity limit that the department and many commenters have asserted applies under the present rules. However, the proposed 30% opacity limit for recovery boilers installed after November

23, 1968, is more restrictive than the board's interpretation of the present rules as allowing a 35% opacity limit and there is no dispute that the other proposed opacity limits and monitoring requirements are more restrictive than the requirements of the present rules.

COMMENT: Several opponents urged the board to adopt opacity limits of no greater than 20% for all of Stone's recovery boilers, including the No. 5 recovery boiler, which is presently subject to a 35% NSPS limit.

RESPONSE: Under the present state rules, and under federal regulations, new kraft pulp mill recovery boilers are required to meet only a 35% opacity limit. There was insufficient evidence presented for the board to find that a 20% opacity limit is necessary to protect public health and welfare.

COMMENT: Several opponents stated that any action by the board in this matter should have a beneficial impact on Missoula's air quality.

RESPONSE: Based on reference information and peer reviewed studies submitted with some of these comments, the board adopted a finding concluding that the lower opacity limits contained in the proposed rule amendments would protect the public health or environment of the state and would mitigate harm to the public health or environment.

COMMENT: Jim Carlson, director of environmental health for the Missoula City-County Health Department, spoke in opposition to the proposed amendments. He asserted that a 20% opacity limit on Stone's No. 4 recovery boiler would significantly reduce mass particulate emissions below the allowable limits in Stone's air quality permit. He stated that monitoring data produced by Stone showed that, with present pollution control equipment, Stone could meet opacity limits of 15%, 25% and 10% on recovery boilers No. 3, 4 and 5, respectively. He commented that continuous opacity monitoring could and should be required in Stone's permit for all three recovery boilers without the proposed rule amendments.

RESPONSE: There was insufficient data presented to conclude that a 20% opacity limit on kraft pulp mill recovery boilers is necessary to protect public health and welfare or that a 20% opacity limit on Stone's No. 4 recovery boiler would significantly reduce Stone's **actual** mass particulate emissions. Stone presented evidence that the No. 4 recovery boiler was operating under 20% opacity most of the time now. There was no evidence presented that the present rules or Stone's present permit provide authority to the department to require continuous 6-minute average opacity monitoring for Stone's No. 3 or No. 4 recovery boilers at this time. That authority is contained in the proposed amendments.

COMMENT: Several opponents commented that monitoring data provided by Stone showed that Stone could comply, and should be required to comply with, a 20% opacity limit on the No. 4 recovery boiler.

RESPONSE: There was insufficient data presented for the board to find that a 20% opacity limit is necessary to protect public health and welfare or that Stone's No. 4 recovery boiler could continuously meet a 20% opacity limit.

COMMENT: Garon Smith, associate professor of chemistry and member of the Missoula City-County Air Pollution Control Board, commented as a neutral party. He stated that, based upon monitoring data provided by Stone, actual opacity from Stone's recovery boilers is significantly less than the limits in the present and proposed rules and he suggested that it would be more productive for the community and Stone to engage in a cooperative effort to reduce plant-wide particulate emissions.

RESPONSE: The board agrees with these comments.

4. The record in this rulemaking proceeding indicates that a portion of the proposed rule may result in imposition of a more stringent state standard than the present comparable federal standard for opacity from kraft pulp mill recovery boiler stacks constructed or modified after September 24, 1976. The record indicates that the federal new source performance standard (NSPS) limit for such recovery boiler stacks is 35%. The limit in the proposed rule, at ARM 16.8.1413(9), is 30%.

After deliberation at its meeting of May 19, 1995, the board adopted a finding concluding that the lower opacity limit contained in the proposed rule would protect the public health or environment of the state, would mitigate harm to the public health or environment, and is achievable under current technology at a reasonable cost to the regulated community.

The board made this finding after review of the record and deliberation concerning the record in this proceeding. Testimony in the record indicates that lowered opacity limits result in lowered particulate (PM-10) emissions. This testimony was not in dispute. Testimony and exhibits in the record referenced a 1994 article from the Annual Review of Public Health entitled Acute Respiratory Effects of Particulate Air Pollution. The article used a meta analysis of 20 air pollution studies. It found total mortality is observed to increase by approximately 1% per 10-part per million increase in PM-10 particulates and stronger associations were observed for cardiovascular mortality (1.4 %) and respiratory mortality (3.4%). The study did not detect acute effects with cancer or other nonpulmonary and noncardiovascular causes of mortality. The study also found associated increased hospital and emergency room admissions, especially for asthmatics, and decreased lung function and capacity. (Exhibit 9, pages 123-

27.) Similar results were found in summaries of other studies. (Speaker 40, Exhibit 30.) The board found the evidence on this issue in this proceeding conformed with peer-reviewed scientific studies reviewed by the board in other matters that have come before it in other proceedings, in particular the Billings SO2 SIP proceeding. Testimony from employees of the company operating the only kraft pulp mill in Montana stated the proposed state standard contained in the proposed rule is achievable using current technology at a nominal cost. (Speaker 4, Exhibit 4; also see Exhibits 9 and 28 for data: Speaker 5, Exhibit 5.)

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY YOUNKIN, Chairperson

Certified to the Secretary of State July 31, 1995.

Reviewed by:

_____
John F. North, DEQ Attorney

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of rules 16.42.302, 304-310, 312-318, and 320-323 concerning evaluation of asbestos hazards and conduct of asbestos abatement; requirements for accreditation and permitting of, and training courses for, persons involved in asbestos abatement; and requirements for permits for asbestos abatement projects.	NOTICE OF AMENDMENT OF RULES (Asbestos)

To: All Interested Persons

1. On May 25, 1995, the department published notice of the proposed amendment of the above-captioned rules at page 874 of the 1995 Montana Administrative Register, Issue No. 10.

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

3. No oral or written comments were received.

MARK A. SIMONICH, Director

Certified to the Secretary of State July 31, 1995.

Reviewed by:

John F. North, DEQ Attorney

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of rule 16.42.402 and 16.42.405 concerning accreditation of asbestos-related occupations and penalties for violations of asbestos laws and rules	)))))	NOTICE OF AMENDMENT OF RULES (Asbestos)

To: All Interested Persons

1. On June 29, 1995, the department published notice of the proposed amendment of the above-captioned rules at page 1095 of the 1995 Montana Administrative Register, Issue No. 12.

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

3. No oral or written comments were received.

Mark A. Simonich
MARK A. SIMONICH, Director

Certified to the Secretary of State July 31, 1995.

Reviewed by:

John F. North
John F. North, DEQ Attorney

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of rules 46.12.520, 46.12.521, 46.12.522, 46.12.2002, 46.12.2011 and 46.12.2013 pertaining to medicaid podiatry, physician and mid-level practitioner services	))))))	NOTICE OF THE AMENDMENT RULES 46.12.520, 46.12.521, 46.12.522, 46.12.2002, 46.12.2011 AND 46.12.2013 PERTAINING TO MEDICAID PODIATRY, PHYSICIAN AND MID-LEVEL PRACTITIONER SERVICES

TO: All Interested Persons

1. On May 25, 1995 the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.12.520, 46.12.521, 46.12.522, 46.12.2002, 46.12.2011 and 46.12.2013 pertaining to medicaid podiatry, physician and mid-level practitioner services at page 913 of the 1995 Montana Administrative Register, issue number 10.

2. The Department has amended rules 46.12.520, 46.12.521, 46.12.522, 46.12.2002, 46.12.2011 and 46.12.2013 as proposed.

3. Effective July 1, 1995, and in accordance with Chapter 546 of the 1995 Legislature, the Department of Social and Rehabilitation Services was abolished and its duties and programs were assumed by the new Department of Public Health and Human Services. In accordance with 2-15-136 MCA, all references in these rules to the Department of Social and Rehabilitation Services will be changed to the Department of Public Health and Human Services.

4. The Department has thoroughly considered all commentary received:

COMMENT: The Department received two telephone inquiries on how the revised ARMs affected the definition of physician assistants.

RESPONSE: The section of ARM that defines physician assistants was not revised so there is no effect.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State July 31, 1995.

VOLUME NO. 46 OPINION NO. 8

ANNEXATION - Effect of annexation of rural fire district territory on obligation to repay loan incurred by district;
CITIES AND TOWNS - Effect of annexation of rural fire district territory on obligation to repay loan incurred by district;
FIRE DISTRICTS - Effect of annexation of district territory on obligation to repay loan incurred by district;
INTERGOVERNMENTAL COOPERATION - Effect of annexation of rural fire district territory on obligation to repay loan incurred by district;
MONTANA CODE ANNOTATED - Sections 7-2-4716(2), 7-12-4102(2)(e)(ii), 7-33-2109, -2121, -2122, -2124, -2129;
MONTANA LAWS OF 1991 - Chapter 459;
OPINIONS OF THE ATTORNEY GENERAL - 42 Op. Att'y Gen. No. 126 (1988), 38 Op. Att'y Gen. No. 87 (1980);
REVISED CODES OF MONTANA, 1947 - Section 11-2008.

HELD: When a city annexes territory which has been part of a rural fire district, Montana law does not allow the district to tax the annexed property to finance repayment of a nonbonded loan incurred by the fire district prior to the annexation.

July 21, 1995

Mr. Mike Salvagni
Gallatin County Attorney
615 South 16th Avenue, Room 100
Bozeman, MT 59715

Dear Mr. Salvagni:

You have requested my opinion on the following question:

> If a city annexes an area from a rural fire district, does the obligation for a loan incurred by the fire district go with the property?

Your question arises from the annexation by the City of Bozeman in March 1994 of a portion of the Sourdough Rural Fire District ["District"] which had previously been contiguous to, but outside, the boundaries of the city. The annexed portion was owned by one Donald F. Hannah. In 1992, the District had entered into an agreement with the State Board of Investments for a loan by the Board of $101,500 to the District for the purchase of certain equipment and facilities for the District's operations. Prior to the annexation, Hannah's annexed property was subject to tax levy to retire the District's indebtedness to the Board. You inquire whether it remains subject to levy or other charge to repay the loan after the property has been annexed to the city.

Before answering your question, I must address a preliminary issue. In the memorandum accompanying your request, you pose the question whether under current law, rural fire districts may borrow money without issuing bonds. Such power had been recognized by prior Attorney General's Opinions reasoning that the power to borrow was necessarily implied in order to ensure achievement of the purposes of creation of the rural fire district. 42 Op. Att'y Gen. No. 126 (1988), 38 Op. Att'y Gen. No. 87 (1980). In addition, this question has been definitively answered in the affirmative by HB 113, introduced in the 1995 Legislature, passed and signed by the Governor, and effective October 1, 1995. That bill amended Mont. Code Ann. § 7-33-2109, the statute authorizing rural fire districts to raise money by issuing bonds, by adding language which explicitly authorized rural fire districts to borrow money without issuing bonds or, in the words of the bill, to "pledge the income of the district . . . to secure financing necessary to procure equipment and buildings to house the equipment." However, this bill did not address your primary question.

A rural fire district has only those taxing powers provided by the legislature. 3A C. Antieau, Local Government Law § 30D.08 (1992). Mont. Code Ann. § 7-33-2109 generally limits the taxing power of a rural fire district to "all property within a rural fire district." Annexation of a portion of the district removes the annexed property from the district, since by statute rural fire districts may consist only of property "in any unincorporated territory or town," Mont. Code Ann. § 7-33-2101. It would ordinarily follow then that removal of property from the confines of a rural fire district would also remove the property from the taxing power of the district.

The legislature has, however, created exceptions to this rule, providing in Mont. Code Ann. § 7-33-2124 that property "detracted" from a district through the division process set forth in Mont. Code Ann. §§ 7-33-2122 and -2123 remains liable for "any existing warrant and bonded indebtedness." Similarly, Mont. Code Ann. § 7-33-2129 provides that property which leaves a rural fire district through annexation "is liable for any bonded indebtedness of the rural fire district existing as of the date of the annexation," and provides a method of offsetting the municipal tax burdens by the amount of the rural fire district tax assessments. In the absence of a similar legislatively created exception--for example, for tax levies to retire indebtedness other than bonded indebtedness--I am unable to find authority for a rural fire district to levy taxes against property which is not within the boundaries of the district.

I presume that the legislature was aware of the provisions that had been made for retirement of bonded indebtedness when it enacted the recent legislation referred to above, recognizing the power of rural fire districts to incur other kinds of indebtedness. See Helena Valley Irr. Dist. v. State H'way

Comm'n, 150 Mont. 192, 199, 433 P.2d 791, 794 (1967). Had the legislature intended to extend the power of rural fire districts to allow taxation to retire nonbonded debts, it could easily have so provided. The absence of such provision counsels against recognizing the power to tax annexed property for the retirement of non-bonded indebtedness.

Prior opinions have recognized that powers of rural fire districts may be implied by necessity. In 38 Op. Att'y Gen. No. 87 (1980), for example, Attorney General Greely held that rural fire districts had the implied power to borrow money without issuing bonds to finance the purchase of fire equipment, since the ultimate purpose of the creation of the district would be frustrated in the absence of the ability to purchase fire-fighting equipment. I find no need to imply the power to continue to tax property which leaves the district to retire such nonbonded loans. It is common for such loans to be secured by security interests in the property purchased with their proceeds. That is the case with the loan at issue here. Loan Agreement Between Board of Investments of the State of Montana and Sourdough Rural Fire District, Ex. H. Moreover, when the 1980 opinion was issued, rural fire districts lacked the power to create bonded indebtedness. That power has since been conferred by the legislature. Mont. Code Ann. § 7-33-2109(2).

There is no reason to believe that rural fire districts cannot secure financing for their equipment and building needs through one of these two methods in the absence of the power to tax annexed property to retire nonbonded indebtedness. If that becomes the case, the legislature has the power to enact corrective statutes. I therefore conclude that the absence of statutory authority to tax annexed property to retire nonbonded debt precludes a finding that the authority exists.

A second issue is raised by Mont. Code Ann. § 7-2-4716(2), which states in part:

> Annexed property which is part of a sanitary district or other special service district which has installed water, sewer, or other utilities or improvements paid for by the residents of said district shall not be subject to that part of the municipal taxes levied for debt service for the first 5 years after the effective date of annexation.

At this point we must ask whether a rural fire district is a "special service district." The term "special service district" is not defined in either statutory or case law in Montana. Applying the doctrine of ejusdem generis, the term "special service district" must be defined by reference to the examples given in the defining statute. County of Chouteau v. City of Fort Benton, 181 Mont. 123, 126, 592 P.2d 504, 506 (1979). The examples contained within the statute refer to improvements of the capital investment type, which would not include fire

protection. City of Butte v. School Dist. No. 1, 29 Mont. 336, 341, 74 P. 869, 871 (1904); Mont. Code Ann. § 7-12-4102(2)(e)(ii). Although the legislative history is not explicit on this point, the lengthy consideration and eventual rejection of a proposed amendment to this statute designed to address the problems of annexations of territory from fire districts leads me to conclude that the 1974 legislature did not intend that the section of the statute discussed above should apply to rural fire districts. Mins., Senate Local Gov't Comm., Feb. 21, 1974, at 1-3, Feb. 28, 1974, at 1-3.

A third issue involves Mont. Code Ann. § 7-33-2124, which regulates the distribution of assets and liabilities following the division of a rural fire district. However, it does not appear that the annexation of rural fire district territory fits what the legislature intended by the term "division." The history and context of Mont. Code Ann. § 7-33-2124 reveal that when a rural fire district is "divided," the original district becomes two or more districts. Mont. Code Ann. §§ 7-33-2121 and -2122; Rev. Codes Mont. § 11-2008 (1947). Both before and after annexation, on the other hand, there is but one district--albeit a smaller one after a successful annexation. Also, it is my understanding that the statutory procedure for the division of a rural fire district is not usually followed in cases of municipal annexation. I therefore conclude that Mont. Code Ann § 7-33-2124 has no application to property which leaves a district through annexation.

Finally, an approach to which you devote considerable attention is best summarized in your statement:

> If the obligation to pay the loan does not go with the annexed property, then there is an unconstitutional interference with the Sourdough Fire District's right to contract.

Insofar as this approach seeks a determination concerning the constitutionality of the statutory scheme, I decline to address that issue. A strong presumption exists that statutes are constitutional and, as Attorney General, I am routinely called upon to defend the validity of state statutes. It has, therefore, been my usual practice to decline consideration of questions involving the constitutionality of state statutes, and I do so here.

In any event, I would be hard-pressed to find that the annexation of a portion of the District without providing that the annexed area remains subject to tax for District purposes impairs the obligation of the loan contract between the District and the Board of Investments. I note initially that the loan documents make no warranty as to the identity or amount of property which would be subject to taxation by the district to

retire the loan balance. Moreover, the loan documents expressly provide that the District's obligation to repay the loan

> shall be absolute and unconditional . . . and shall not be . . . modified in any manner or to any extent whatsoever, including, without limiting the generality of the foregoing, any . . . change in the laws of the United States or of the State.

Loan Agreement between Board of Investments of the State of Montana and Sourdough Rural Fire District, § 5.04. A reduction in the amount of property subject to tax to retire the loan would not in any way diminish or change the responsibilities of the parties under the loan contract. As far as the loan contract is concerned, the District would remain obligated for the full amount of the loan.

State ex rel. Savings Bank v. Barret, 25 Mont. 112, 63 P. 1030 (1901), the case on which you rely on this point, recognizes that a statutory impairment of a contract occurs when "a law relieves the parties from the moral obligation of performing the original stipulations of the contract and prevents their legal enforcement." 25 Mont. at 119 (citations omitted). Under the terms of the contract at issue here, no statute would operate to relieve the District of its obligation to repay the loan, and accordingly no impairment of its contract could be found.

THEREFORE, IT IS MY OPINION:

> When a city annexes territory which has been part of a rural fire district, Montana law does not allow the district to tax the annexed property to finance repayment of a nonbonded loan incurred by the fire district prior to the annexation.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/rfs/kaa

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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