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MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF PUBLIC HEARING
amendment of ARM	)	ON PROPOSED AMENDMENT OF
2.21.1711 and 2.21.1713	)	ARM 2.21.1711 AND
related to overtime and	)	2.21.1713 RELATED TO
nonexempt compensatory	)	OVERTIME AND NONEXEMPT
time	)	COMPENSATORY TIME

TO: All Interested Persons.

1. On January 4, 1996, a public hearing will be held at 9 a.m. in room 136, Mitchell Building, 125 N. Roberts St., Helena, Montana, to consider the proposed amendment of ARM 2.21.1711 and 2.21.1713 related to overtime and nonexempt compensatory time.

2. The proposed amendments provide as follows:

2.21.1711 ADMINISTRATION OF OVERTIME COMPENSATION AND NONEXEMPT COMPENSATORY TIME (1) - (2) Remain the same.
~~(3) As provided in ARM 2.21.4906, the state moving and relocation expense policy; "under no circumstances may the employee earn compensatory time or overtime during the time approved by the agency to allow the employee to accomplish the move." This includes nonexempt compensatory time accrued in lieu of overtime compensation.~~

(Auth. 2-18-102 MCA; Imp. 2-18-102 MCA)

2.21.1713 NONEXEMPT COMPENSATORY TIME (1) - (4) (a) Remain the same.

(b) At any time, pay cash for all or any portion of a covered employee's accrued compensatory time balance, and

(c) Adjust a covered employee's work schedule in a workweek or require the employee to take time off without pay so that the employee does not become eligible for the payment of overtime or accrual of nonexempt compensatory time and

~~(d) Require a covered employee to take accrued nonexempt compensatory time off during any workweek.~~

(5) Remains the same.

(Auth. 2-18-102 MCA; Imp. 2-18-102 MCA)

3. Amendment of ARM 2.21.1711 is necessary because the moving and relocation expense rule referenced in this paragraph has been proposed for repeal in order to comply with House Joint Resolution No. 5 passed by the 54th Legislature which calls for departments to review rules and delete unnecessary provisions. The reference will become obsolete.

Amendment of ARM 2.21.1713 is necessary following a decision by the U.S. Supreme Court not to review a decision by

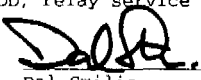
the United State Court of Appeals for the Eighth Circuit in *Heaton v. Moore, Director of Department of Corrections for the State of Missouri*, 43 F.3d 1176(8th Cir. 1994) The appeals court found "compensatory time is a 'right' under the Fair Labor Standards Act (FLSA), and section 207 (o)(5) entitles employees to use their accrued compensatory time at their discretion, except when their requested use of the time will unduly disrupt the employer's operations." ARM 2.21.1713(4)(d) which permits departments to require the use of accrued nonexempt compensatory time conflicts with the decision and needs to be deleted from the rule, in order for departments to be in compliance with the FLSA.


4. Interested persons may submit data, views, or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Gale Kuglin, Policy Coordinator, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127, and must be received no later than January 8, 1996.

5. Gale Kuglin, address given in paragraph 4 above, has been designed to preside over and conduct the hearing.

6. Alternative accessible formats of this document will be provided on request. Persons who need an alternative format of this rule notice, or who require some other reasonable accommodation in order to participate in this process, should contact Gale Kuglin, address given in paragraph 4 above, telephone: (406)-444-3984. For those with a TDD, relay service is available by dialing 1-800-253-4091.

BY:


Dal Smilie
Rule Reviewer


Lois Menzies
Director

Certified to the Secretary of State November 27, 1995

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM	)	ON PROPOSED AMENDMENT OF
2.21.1802, 2.21.1811, and	)	ARM 2.21.1802, 2.21.1811
2.21.1812 related to	)	AND 2.21.1812 RELATED TO
exempt compensatory time	)	EXEMPT COMPENSATORY TIME

TO: All Interested Persons.

1. On January 4, 1996, a public hearing will be held at 9 a.m. in room 136, Mitchell Building, 125 N. Roberts St., Helena, Montana, to consider the proposed amendment of ARM 2.21.1802, 2.21.1811 and 2.21.1812 related to exempt compensatory time.

2. The proposed amendments provide as follows:

2.21.1802 POLICY AND OBJECTIVES (1) - (2) Remain the same.

(3) Employees who are designated as exempt from the overtime provisions of the Fair Labor Standards Act of 1938, as amended, shall not be suspended without pay as a disciplinary action for less than one workweek, unless the suspension is for a major safety violation, in compliance with 29 CFR 541.118a5.

(3) Renumbered as (4) and remains the same.
(Auth. 2-18-102 MCA; Imp. 2-18-102 MCA)

2.21.1811 ADMINISTRATION OF EXEMPT COMPENSATORY TIME

(1) - (4) Remain the same.

~~(5) As provided in ARM 2.21.4906, the moving and relocation expense policy, "... under no circumstances may the employee earn compensatory time or overtime during the time approved by the agency to allow the employee to accomplish the move."~~

(Auth. 2-18-102 MCA; Imp. 2-18-102 MCA)

2.21.1812 EXEMPT EMPLOYEES AND COMPENSATORY TIME

(1) - (7) Remain the same.

~~(8) Excess exempt compensatory time for which an extension was granted in calendar year 1993, and for which an employee was not afforded a reasonable opportunity to take the time off, may be reinstated at the discretion of the department head or designee. The reinstated time will be treated as excess exempt compensatory time in calendar year 1994.~~

(9) - (14) Renumbered (8) - (13) and remain the same.
(Auth. 2-18-102 MCA; Imp. 2-18-102 MCA)

3. Amendment of ARM 2.21.1802 is necessary as a specific statement of policy following a recent court decision upholding the Fair Labor Standards Act's (FLSA) disciplinary regulation 29 CFR 541.118a5. (*Mueller v. Reich, Secretary of Labor*, Docket Nos. 94-3262 and 94-3263, May 15, 1995.) The regulation provides that exempt employees can only be subjected to disciplinary suspension of less than one workweek for major safety violations. Failure to specifically prohibit the possibility of such a suspension in our administrative rules could threaten the exempt status of employees. While the decision was rendered by the United States Court of Appeals for the Seventh Circuit and was not heard by Montana's federal appeals court circuit, the Ninth Circuit, we believe it would be a good practice to abide by that precedent as an indicator of how the Ninth Circuit might decide it.

Amendment of ARM 2.21.1811 is necessary because the moving and relocation expense rule reference in this paragraph has been proposed for repeal in order to comply with House Joint Resolution No. 5 passed by the 54th Legislature which calls for departments to review rules and delete unnecessary provisions. The reference will become obsolete.

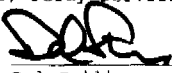
Amendment of ARM 2.21.1812 is necessary because the paragraph to be deleted permitted a one-time exception which has expired. This provision is no longer needed.

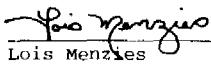
4. Interested persons may present data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments also may be submitted to Gale Kuglin, Policy Coordinator, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127, and must be received no later than January 8, 1996.

5. Gale Kuglin, address given in paragraph 4 above, has been designated to preside over and conduct the hearing.

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BY:


Dal Smilie
Rule Reviewer


Lois Menzies
Director

Certified to the Secretary of State November 27, 1995

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM	)	ON PROPOSED AMENDMENT OF
2.21.5006, 2.21.5007 and	)	ARM 2.21.5006, 2.21.5007 AND
2.21.5008 and the repeal	)	2.21.5008 AND THE REPEAL
of ARM 2.21.5007A,	)	OF ARM 2.21.5007A,
2.21.5007B and 2.21.5009	)	2.21.5007B AND 2.21.5009
related to reduction in	)	RELATED TO REDUCTION IN
work force	)	WORK FORCE

TO: All Interested Persons.

1. On January 4, 1996, a public hearing will be held at 9 a.m. in room 136, Mitchell Building, 125 N. Roberts St., Helena, Montana, to consider the proposed amendment of ARM 2.21.5006, 2.21.5007 & 2.21.5008, and the repeal of ARM 2.21.5007A, 2.21.5007B and 2.21.5009 related to reduction in work force.

2. The rules proposed to be repealed are found on pages 2-1277 through 2-1279 of the Administrative Rules of Montana. (Auth. 2-18-102 MCA; Imp. 2-18-102, 2-18-111, 2-18-1201 et seq. MCA)

3. The proposed amendments provide as follows:

2.21.5006 DEFINITIONS In addition to the definitions found in 2-18-1202, MCA, as used in this sub-chapter, the following definitions apply:

(1) - (4) Remain the same.
(Auth. 2-18-102, MCA; Imp. 2-18-102, 2-18-1201 et seq. MCA)

2.21.5007 POLICY (1) - (2) Remain the same.

(3) Skill ~~should~~ shall be applied first and only if skill does not differentiate between employees ~~should~~ will length of service with state government then be considered.

(4) An employee should be counseled as much in advance of the anticipated action as possible regarding available options and reasons for lay-off. An employee ~~must~~ shall be given a written notice of anticipated lay-off at the time of counseling, which provides a tentative effective date of layoff. An employee becomes eligible for benefits provided by the State Employee Protection Act, 2-18-1201 et seq., MCA, at the time the employee receives written notice of anticipated lay-off. If the lay-off is anticipated to last longer than 14 working days, the employee must shall be terminated.

(5) As provided in 2-18-1206, MCA, written notice must

be provided to an employee and the employee's collective bargaining agent, if any, at least 60 days prior to a reduction in force when 25 or more employees are affected by the RIF and 14 days notice when fewer than 25 employees are affected. If a lay-off is anticipated to last longer than 15 working days, the employee shall be terminated.

(5) Renumbered as (6) and remains the same.

(7) An employee shall be reinstated to the same position or a position in the same class, as the terms "position" and "class" are defined in 2-18-102, MCA, when such a position becomes vacant in the agency from which the employee was laid off, if the vacancy occurs within one year of the employee's effective date of lay-off. Agencies shall maintain a roster of employees who have been laid off from the agency and shall be offered reinstatement on a "last-out/first-in" basis by skill match within a job classification. An employee must be reinstated to the same position or a position in the same class when such a position becomes vacant in the agency from which the employee was laid off if such vacancy occurs during the employee's preference period. Specific reinstatement offers must be made to the employee in writing. The employee shall accept or reject the reinstatement offer in writing within 5 working days following receipt of the offer. If an employee rejects a reinstatement offer, the employee loses all rights to the employment offered, to participate in future internal recruitment, and to benefits provided by the State Employee Protection Act, 2-18-1201 et seq., MCA. An agency is not required to make subsequent reinstatement offers to the employee. If a reinstatement offer is rejected by the employee, the employee loses all rights to the employment offered. An agency is no longer required to reinstate a laid-off employee who has rejected a previous reinstatement offer.

++ (8) Acceptance of a permanent, seasonal or temporary position with a state agency does not end the reinstatement right for one year from the effective date of lay-off.

++ (9) In the process of achieving necessary reduction in the work force, an intra-department "bumping process" wherein individuals may be assigned to lower classifications within a series in lieu of a lay off can be used. This "bumping process" policy must be described in writing, posted for employees to see and submitted to the state personnel division, department of administration. Bumping is at the agency's discretion, not the employee's. If an agency chooses to allow bumping, the agency must have a written policy which must be applied consistently. The policy must identify work units and classes in which bumping may occur. The criteria used to bump must be as job specific as possible and the results of the bumping process should not have disparate impact on any protected group of employees, i.e. women, minorities, the handicapped.

(9) An employee is eligible to be considered as an internal applicant for job vacancies in the agency from which the employee was laid off for one year from the effective date

of lay-off.

(10) As provided in 2-18-1201 et seq., MCA, an employee who is terminated due to reduction in force within an agency and who has not chosen the additional retirement service purchase option described in 19-2-706, MCA, is entitled to:

(a) notice of announcements for jobs for which the employee may qualify that arise within the terminating agency or within state government. Notices must be provided by the state for a period of one year from the date of separation. Each state agency shall provide a copy of all vacancy announcements for which the agency will conduct simultaneous internal and job registry recruitment and shall provide a copy of all external vacancy announcements, except for positions exempt under 2-18-103 and 2-18-104, MCA, to the Helena job service office which shall compile and distribute the notice to laid off employees on a weekly basis;

(b) access to any job retraining and career development programs provided by the state, such as those provided through the Job Training Partnership Act service delivery areas dislocated worker programs, provided that the employee begins participating in a program within one year after the elimination of the employee's position;

(c) inclusion in a special job registry from which all agencies shall attempt to hire employees prior to seeking applications from the general public. The employee must be listed in the job registry according to the occupational categories in which the employee is qualified for employment. Participation in the job registry is voluntary. The Helena job service shall administer the job registry provided for in 2-18-1203, MCA;

(d) retain all accrued sick leave credits;

(e) retain, cash out or use accrued vacation leave credits to extend the employee's effective date of lay-off. Employees who have been laid off may choose to "bank" their credits with the agency that laid them off until they accept a permanent position in a state agency. The credits are not transferred if an employee accepts a temporary position in a state agency;

(f) relocation expenses as provided in state policy. An agency should consult with the Job Training Partnership Act service delivery areas dislocated worker programs prior to approving relocation expenses.

(11) An employee who elects to retain sick leave, vacation leave or both at the time of layoff may subsequently request the cash out of the leave in writing from the former employing agency.

(12) Implementation of the recruitment and selection components of the State Employee Protection Act, 2-18-1201 et seq., MCA, and other rights and benefits of employees who are reemployed following layoff are found in the recruitment and selection policy, ARM 2.21.3701 et seq., MCA, and specifically in ARM 2.21.3704, job registry program and reemployment following layoff.

(Auth. 2-18-102 MCA; Imp. 2-18-102, 2-18-1201 et seq.
MCA)

2.21.5008 VETERAN'S PREFERENCE IN RETENTION (1) During a reduction in force, an agency ~~must shall~~ retain in employment a veteran, disabled veteran, or an eligible relative, as provided in 39-29-111, MCA, and under conditions established in ARM 2.21.3623.

(Auth. 2-18-102 and 39-29-112 MCA; Imp. 39-29-111 MCA)

4. Repeal of ARM 2.21.5007A, 2.21.5007B and 2.21.5009 is necessary because in House Bill 490, the 54th Legislature repealed the sunset provision in the State Employee Protection Act, 2-18-1201 et seq. MCA. These rules served as interim rules during the period when the sunset provision was in place. They no longer are necessary now that the act has been made permanent.

5. Amendment of ARM 2.21.5006, 2.21.5007 and 2.21.5008 is necessary for the same reason, repeal of the sunset provision of the State Employee Protection Act.

The proposed amendment to ARM 2.21.5006 is made based on requests to clarify that in order to administer a reduction in force, the definitions in the act also apply.

The proposed amendments to ARM 2.21.5007 integrate the current rule and ARM 2.21.5007B, which was titled Benefits for Employees Laid Off Between April 22, 1993 and June 30, 1995. With the repeal of the sunset provision, the two rules can be merged into one rule which is consistent with the provisions of the act. Provisions regarding entitlement to benefits for employees who are rehired from lay-off which are found in ARM 2.21.5007, 2.21.5007A and 2.21.5007B will be relocated from the Reduction in Work Force Policy to the Recruitment and Selection Policy and specifically to ARM 2.21.3704, Job Registry Program and Reemployment Following Layoff. Amendments to the Recruitment and Selection Policy are proposed concurrently with this action. Minor changes to ARM 2.21.5007 are proposed at the request of agencies to clarify the definition of some terms and procedures.

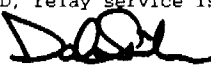
The amendment to ARM 2.21.5008 is proposed to conform the language of the rule with the preferred style for administrative rules.

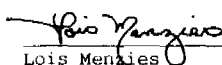
6. Interested persons may submit data, views, or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Gale Kuglin, Policy Coordinator, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127, and must be received no later than January 8, 1996.

7. Gale Kuglin, address given in paragraph 6 above, has been designated to preside over and conduct the hearing.

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BY:


Dal Smilie
Rule Reviewer


Lois Menzies
Director

Certified to the Secretary of State November 27, 1995

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM	)	ON PROPOSED AMENDMENT OF
2.21.3703 and 2.21.3704	)	ARM 2.21.3703 AND
and the repeal of ARM	)	2.21.3704 AND THE REPEAL
2.21.3713 related to	)	OF ARM 2.21.3713 RELATED
recruitment and selection	)	TO RECRUITMENT AND
	)	SELECTION

TO: All Interested Persons.

1. On January 4, 1996, a public hearing will be held at 9 a.m. in room 136, Mitchell Building, 125 N. Roberts St., Helena, Montana, to consider the proposed amendment of ARM 2.21.3703 and 2.21.3704, and the repeal of ARM 2.21.3713 related to recruitment and selection.

2. The rule proposed to be repealed is found on page 2-1109 of the Administrative Rules of Montana.
(Auth. 2-18-102 MCA; Imp. 2-18-102, 49-3-201 MCA)

3. The proposed amendments provide as follows:

2.21.3703 DEFINITIONS For purposes of this sub-chapter, the following definitions apply:

(1) - (11)(b) Remain the same.

(c) Reference checks are inquiries that relate to an applicant's possession of job-related qualifications and are made by requested of persons able to evaluate the applicant's job-related qualifications, such as a former or current supervisor.

(11)(d) - (12) Remain the same.

(Auth. 2-18-102 MCA; Imp. 2-18-102 and 49-3-201 MCA)

2.21.3704 JOB REGISTRY PROGRAM AND REEMPLOYMENT FOLLOWING LAYOFF (1) - (2)(a) Remain the same.

(b) "Employee" means, as provided in 2-18-1202, MCA, "a person employed by the state who has achieved permanent status, as defined in 2-18-101, MCA, or employed by the senate or house of representatives during the 53rd legislature for a period of at least 6 continuous weeks officers and employees of the legislative branch and teachers under the authority of the department of corrections who have been employed for at least 6 continuous months and who have waived benefits under the provisions of 19-2-706, MCA".

(2)(c)-(d) Remain the same.

(3) ~~The department of labor and industry, Helena job service office,~~ shall administer the job registry program provided for under the State Employee Protection Act. Agencies shall provide the ~~department of labor and industry, Helena job service office~~ with notice of a copy of all vacancy announcements for which the agency will conduct job registry recruitment or simultaneous internal and job registry recruitment and shall provide a copy of external recruitment vacancy announcements for all positions, permanent and temporary, except for positions exempt under 2-18-103 or 2-18-104, MCA. Prior to seeking applications from the general public, all agencies shall attempt to hire employees from the job registry program. The job registry program coordinator shall maintain placement files on all registry participants. These files must be made available to personnel officers seeking to fill vacant positions.

(4) Agencies ~~must~~ shall follow this procedure when posting positions for recruitment. An agency may implement each step described in this rule sequentially or an agency may combine the internal to agency and job registry recruitment steps. In either case, the job registry recruitment step shall be completed before the agency recruits to the general public.

(a) This step is called internal to agency recruitment, which is limited to current agency employees and employees laid off from the agency. An agency may post a vacant position internally ~~to the agency~~ in compliance with agency policy or provision of a collective bargaining agreement. The agency shall notify employees laid off from the agency of internal vacant positions for 1 calendar year from the effective date of lay-off. Reemployment of a person who was terminated at the expiration of seasonal employment is internal recruitment. If a selection is not made internally, the agency shall post the vacancy externally to the job registry program.

(b) This step is called job registry recruitment, which is limited to participants on the job registry. An agency shall post all permanent and temporary vacant positions, except positions exempt under 2-18-102 and 2-18-104, MCA, to the job registry program before posting to the general public. Current employees of the agency may not be considered with job registry applicants at this step. Seasonal positions are ~~excluded~~ included at this step if the agency will be re-employing persons who were not an employees ~~who was~~ terminated at the expiration of previous seasonal employment.

(c) This step is called simultaneous internal to agency and job registry recruitment. An agency may recruit for a position internally to the agency and to the job registry at the same time, unless this conflicts with agency policy or provision of a collective bargaining agreement. Internal applicants and job registry participants shall be treated as one applicant pool. Both groups shall be given equal consideration, however, job registry participants do not

receive additional preference. In order to break a tie between two candidates with substantially equal qualifications, the candidate with longer state government service shall be selected. If no one is selected at this step, an agency may post a vacant position externally to the general public.

~~(d)~~ This step is called general public recruitment. An agency may post a vacant position externally to the general public if there are no qualified participants on the job registry or the agency does not hire a referred job registry participant for documented, job-related reasons. An employee who elects not to participate on the job registry and who subsequently applies as an external applicant for a vacant position is not entitled to any additional consideration or preference.

(5) - (9) Remain the same.

(10) An agency should notify all referred qualified participants if a job registry participant is selected or if an agency is going to recruit externally to the general public.

(11) Remains the same.

(12) An employee may remain on the job registry through June 30, 1995 or until employment at a grade equal to or higher than the position from which the employee was laid off is secured, whichever occurs first. The job registry coordinator will ask participants on the job registry to update materials annually. Participation on the registry will be suspended if an employee fails to contact the coordinator within 30 days of the request. Participation may be reactivated by contacting the coordinator. This ends the

(13) An employee's participation on the job registry ends when:

(a) the employee secures employment at a grade equal to or higher than the position from which the employee was laid off;

(b) an employee refuses a reinstatement offer, as provided in ARM 2.21.5007. An agency shall notify the job registry coordinator when a reinstatement offer is refused; or

(c) an employee withdraws in writing from participation. Acceptance of a permanent position at a lower grade or acceptance of a seasonal or a temporary position does not end an employee's right to continue participation in the job registry program.

~~(13)~~ (14) An agency is encouraged to adopt a selection review procedure to resolve complaints from job registry participants who are not selected for positions. As provided in 2-18-1204, MCA, an employee "who is subsequently transferred to a different position in a state agency is entitled to the same hourly salary as previously received if the new position is at the same grade level or higher as the one previously held."

(15) A laid-off employee who is subsequently reemployed in a permanent position need not serve the qualifying period for use of annual leave and sick leave. Leave

which the employee has elected to bank transfers to the new position.

(16) Pay for an employee laid off from the legislative branch who accepts a classified position shall be determined using pay plan rule 1818, change from non-classified to classified position.

(17) An employee who is hired in a position at a grade lower than the one held at lay-off is treated as a voluntary demotion under pay plan rule 1812, demotions. Pay for an employee who is demoted as the result of a RIF, but who is not laid-off, is administered using pay plan rule 1812, demotions.

(18) In some cases, a demotion as a result of a RIF may be considered "exceptional circumstances" for purposes of a pay plan exception, as provided in pay plan rule 1828, individual pay plan exceptions - department of administration authorized.

(19) A termination caused by lay-off does not constitute a break in service for purposes of calculating longevity increment hours, unless the employee has refused to accept a reinstatement offer. On reemployment, the employee's longevity increment hours are restored. Only actual years of employment count toward longevity.

(Auth. 2-18-102 MCA; Imp. 2-18-1201 et seq. MCA)

4. . . Repeal of ARM 2.21.3713 is necessary because in House Bill 490, the 54th Legislature repealed the sunset provision in the State Employee Protection Act, 2-18-1201 et seq., MCA. This rule created an administrative reduction in force registry which no longer is needed now that the job registry provided for in the act is a permanent program.

5. . . Amendment of ARM 2.21.3703 is proposed at the request of a state agency to clarify the term "reference check."

Amendment of ARM 2.21.3704 is necessary as a result of the repeal of the sunset provision of the act and to implement other amendments to HB 490. Changes proposed in the operation of the job registry are made at the request of the job registry coordinator and agency personnel officers based on their experience with the administration of the program over the past two years. The changes include a requirement to annually update materials to continue participation and a description of the reasons participation will end. A new step in the registry process is proposed in ARM 2.21.3704 (4)(c). It will allow agencies to simultaneously recruit internally and from the job registry. This change will expand applicant pools, provide additional opportunity for job registry applicants to be considered for positions and will shorten the recruitment process for agencies.

Paragraphs (14) through (19) are relocated from the Reduction in Work Force Policy, ARM 2.21.5005 et seq. and specifically ARM 2.21.5007, for which amendments are concurrently proposed. In the past, these and similar provisions related to the rights of employees rehired following a lay-off have appeared in the Reduction in Work Force Policy because that policy was in effect before the Recruitment and Selection policy was adopted. Because these paragraphs address rights and benefits available at rehire and are linked to participation on the job registry, it is appropriate to transfer these provisions to the job registry rule. This amendment does not represent a substantive change in overall policy, but merely a transfer to a more logical location.

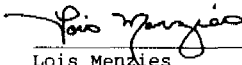
6. Interested persons may submit data, views, or arguments, either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Gale Kuglin, Policy Coordinator, State Personnel Division, Department of Administration, Box 200127, Helena, Montana 59620-0127, and must be received no later than January 8, 1996.

7. Gale Kuglin, address given in paragraph 6 above, has been designated to preside over and conduct the hearing.

8. Alternative accessible formats of this document will be provided on request. Persons who need an alternative format of this rule notice, or who require some other reasonable accommodation in order to participate in this process, should contact Gale Kuglin, address given in paragraph 6 above, telephone: (406)-444-3984. For those with a TDD, relay service is available by dialing 1-800-253-4091.

BY: 

Dal Smilie
Rule Reviewer



Lois Menzies
Director

Certified to the Secretary of State November 27, 1995

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

In the matter of the amendment)	NOTICE OF PUBLIC HEARING ON
of rules 2.55.321, 2.55.322,)	THE PROPOSED AMENDMENT OF
2.55.323, 2.55.324, 2.55.325,)	RULES 2.55.321, 2.55.322,
2.55.327, 2.55.401, 2.55.403,)	2.55.323, 2.55.324, 2.55.325,
2.55.405, 2.55.406, 2.55.407,)	2.55.327, 2.55.401, 2.55.403,
and 2.55.408 pertaining to)	2.55.405, 2.55.406, 2.55.407,
premium rate setting.)	and 2.55.408

TO: All Interested Persons:

1. On December 27, 1995, the State Compensation Insurance Fund will hold a public hearing at 2:00 p.m., in Room 301 of the State Compensation Insurance Fund Building, 5 South Last Chance Gulch, Helena, Montana, to consider the amendment of rules 2.55.321, 2.55.322, 2.55.323, 2.55.324, 2.55.325, 2.55.327, 2.55.401, 2.55.403, 2.55.405, 2.55.406, 2.55.407 and 2.55.408.

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

2.55.321 CALCULATION OF EXPERIENCE RATES (1) For each classification, the state fund staff in consultation with the ~~actuary and with approval of the board~~ shall calculate an experience rate based upon the experience of the class. The experience rate must be based on a review of the total incurred losses and total payroll in the classification during up to 10 full fiscal years immediately preceding the date of review; ~~adjusted by an expense ratio.~~ "Fiscal year" means the year beginning July 1. The experience rate is derived by dividing the weighted selected liabilities by the weighted selected payroll which has been multiplied by a ~~loss development factor that, in the aggregate, takes into account expenses and reserve development in order to arrive at total estimated losses and other actuarially predicted costs.~~ The number of selected payroll and liability years and the weight of each shall be approved by the board. ~~The net result is a set of experience-based rates which, based on payroll of the last complete fiscal year, would be expected to develop approximately the same level of revenue as the current set of rates in force after the application of credibility in ARM 2.55.322, and the exceptions provided in ARM 2.55.324.~~

~~(2) The experience rate for a classification must assume an expense ratio or loss development factor that takes into account operational costs, administrative costs, and reserve development in order to arrive at total incurred losses and other actuarially predicted costs. The net result is a set of~~

~~experience-based rates which, based on payroll of the last complete fiscal year, would be expected to develop approximately the same level of revenue as the current set of rates in force after the application of credibility in ARM 2.55.322, the limits in ARM 2.55.324(4) and the exceptions provided in ARM 2.55.324(2)-(3).~~

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

IMP: Sec. 39-71-2311, 39-71-2316 and 39-71-2330 MCA

RATIONALE: 2.55.321(1) - Deletion of "in consultation with the actuary" - The experience rate is calculated based on formulas and procedures established in the administrative rules utilizing State Fund data. Since the formulas and procedures are established in rule form, consultation with the actuary to simply calculate the experience rates is unnecessary and causes unnecessary expense.

Deletion of "and with approval of the Board" - The Board must approve the number of experience years and weight of each experience year. Once the number of experience years and weights are approved, calculation of experience rates is performed in accordance with this rule. The approval of the actual calculation is unnecessary.

Deletion of "adjusted by an expense ratio" and "loss development" - This amendment is a clarification of the rules. As used in this rule, the terms loss development factor and expense ratio represent the same factor. The use of both terms is redundant, and the components of the factor are specified in (2) of this rule for application in the experience rate. The loss development factor and expense ratio are implicit in the factor referred to in this rule.

2.55.321(2) - Deletion of entire subsection - Subsection (2) with amendments has been merged with subsection (1). The deletion of reference to "loss development" in both (1) and (2) is necessary because the term loss development factor and expense ratio as used in this rule represent the same factor. The components of the factor remain in the rule. The loss development factor and expense ratio are implicit in the factor referred to in this rule.

The reference to total "incurred" losses is replaced with total "estimated" losses which is more descriptive. Incurred losses are actual paid losses plus outstanding reserves. The rule requires expenses and reserve development to be included in total estimated losses.

The amendment also makes minor technical and stylistic changes.

2.55.322 CALCULATION OF CREDIBILITY WEIGHTED RATE (1) If the payroll, premium, and losses in a particular classification are not sufficient to provide a meaningful and credible

statistical basis for estimating an equitable distribution of costs, the state fund staff in consultation with the actuary and with approval of the board shall determine a credibility weighted rate for each classification. The credibility factors, approved by the board, may range from .01 through 1.00 and are based on graduated increments of expected liability. The expected liability is weighted selected payroll times the current manual rate times an expected loss rate recommended by the actuary and approved by the board. The experience rate times a credibility factor, plus the current manual rate multiplied by the board approved overall rate level adjustment times one minus the national council on compensation insurance (NCCI) advisory or rating organization factor plus the existing NCCI advisory or rating organization rate times the NCCI advisory or rating organization factor all times one minus the credibility factor yields the credibility weighted rate for a class code. For example: ER means experience rate; CF means credibility factor; MR means current state fund manual rate; RA means overall rate level adjustment; ANF means NCCI advisory or rating organization factor; and ANR means current NCCI advisory or rating organization rate adjusted for state fund expenses or other rating source rate. Credibility weighted rate equals $(((MR \times RA) \times (1 - ANF)) + (ANR \times ANF)) \times (1 - CF)) + (ER \times CF)$. The board will approve the NCCI advisory or rating organization factor. The state fund staff with approval of the board may substitute for an existing NCCI advisory or rating organization rate if another source of rates in use in Montana is more appropriate.

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

(3) The advisory or rating organization rates used shall be the latest filed or prior filed rates, as determined by the Board, at the time the Board determines the overall rate level adjustment.

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

IMP: Sec. 39-71-2311, 39-71-2316, and 39-71-2330 MCA

RATIONALE: 2.55.322(1) & (2) - Deletion of "meaningful and" - This term is not specific and therefore not necessary to the rule.

Deletion of "in consultation with the actuary and with approval of the Board." - The credibility weighted rate is calculated based on formulas and procedures established in administrative rules utilizing State Fund data. Since the formulas and procedures are established in rule form, consultation with the actuary is unnecessary, and causes unnecessary expense.

The board must approve the credibility factors, expected loss rate and the overall rate level adjustment. Once the factors have been approved, calculation of credibility weighted rates is performed in accordance with this rule. The approval of the actual calculation is unnecessary.

Add "multiplied by the board approved overall rate level adjustment" - The overall rate level adjustment on individual codes was previously performed only at the end of the individual rate calculation. This change places the overall rate level adjustment on the existing manual rates and uses those in the calculation, rather than applying the overall rate level adjustment only after the experience calculation. The State Fund is making this change to implement an Ernst and Young recommendation of July 5, 1994 which reads as follows: "The credibility formula in the class rate procedures, as it stands, does not help rates for classes with low credibility to move in the same direction as the overall rate indication. One component of the formula which could receive as much as 50% of the credibility is the current class rate. This tends to keep rates where they are. It should be replaced by the current class rate increased by the overall statewide rate change. If this were done, the rate for the class with very low credibility would tend to move in the same way as the overall rate change."

Deletion of "NCCI" and insertion of "advisory or rating organization", and deletion of "existing" or "current" before NCCI, see (3) below - This change is to assure the rules read consistently with the changes in SB384 enacted by the 1995 Legislature which deletes references to NCCI and inserts reference to the advisory or rating organization.

Insertion of "RA means overall rate level adjustment." - the overall rate level adjustment on individual codes was previously performed only at the end of the individual rate calculation. This change places the overall rate level adjustment on the existing manual rates and uses those in the calculation, rather than applying the overall rate level adjustment only after the experience calculation. The State Fund is making this change to implement an Ernst and Young recommendation of July 5, 1994 which reads as follows: "The credibility formula in the class rate procedures, as it stands, does not help rates for classes with low credibility to move in the same direction as the overall rate indication. One component of the formula which could receive as much as 50% of the credibility is the current class rate. This tends to keep rates where they are. It should be replaced by the current class rate increased by the overall statewide rate change. If this were done, the rate for the class with very low credibility would tend to move in the same way as the overall rate change."

2.55.322(3)- Adds new section - The State Fund must have the flexibility to utilize newly filed rates, or prior filed rates, if necessary. "Current" and "existing" NCCI rate is

being deleted to coincide with the necessary flexibility provided for in this new section.

2.55.323 OVERALL RATE LEVEL ADJUSTMENT

(1) In order to determine the premium rate to be charged to an insured covered by the state fund for the following fiscal year, the state fund actuary shall recommend the projected revenue requirements overall rate level adjustment for the year which must be approved by the board of directors. The projected total revenue overall rate level adjustment must be sufficient to cover:

(a) through (c) remain the same.

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

(b) trends in the number and cost of accidents incurred during the immediately preceding period of up to 12 years;

~~(c) trends in the cost of accidents incurred during the immediately preceding period of up to 12 years;~~

(d)-(i) remain the same but are renumbered (c)-(g).

~~(h)-(i) other factors considered relevant in recommending an accurate projection of an overall rate level adjustment revenue requirements.~~

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

IMP: Sec. 39-71-2311, 39-71-2316 and 39-71-2330 MCA.

RATIONALE: 2.55.323(1) - Deletion of "revenue requirements" and "total revenue", and insert "overall rate level adjustment" - The State Fund is deleting the requirement of selecting an estimated dollar revenue amount. The overall percentage rate adjustment determined in Rule 2.55.324 is the essential component of the ratemaking process. The approval of an estimated dollar amount is unnecessary. The State Fund is statutorily required to be no more or less than self supporting. Therefore, reference to revenue requirements is not necessary in the rules.

Deletion of "which must be approved by the board of directors" - The requirement is redundant as the Board approval step for the overall rate level adjustment is in 2.55.324.

2.55.323(2)(b) & (c) - Deletion of the reference of "12 years" and combining (b) and (c) for ease of reading - The deletion of the 12 year reference clarifies that additional data years are available for review which gives the State Fund additional information, if relevant.

2.55.323(2)(h)(i) - Deletion of "revenue requirements" and insertion of "overall rate level adjustment" - These changes are to have consistency in terminology in light of the removal of the determination of a revenue requirement from 2.55.323(1).

2.55.324 PREMIUM RATESETTING (1) The board shall approve ~~an the overall rate level adjustment that provides an amount sufficient to meet the aggregate revenue projections.~~ Except as provided in subsections (2) through (7), to establish a premium

rate for a classification for the following fiscal year, the state fund staff ~~in consultation with the actuary and with approval of the board~~ shall apply the overall rate level adjustment factor to each credibility weighted rate, ~~in an amount sufficient to ensure that the aggregate of the premium for all classifications provides an amount sufficient to meet the actuarially determined aggregate revenue projections~~

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

(3) The state fund staff in consultation with the actuary and with approval of the board may set a classification's rate for all or a portion of the fiscal year at a percentage of the ~~NECF advisory or rating organization~~ rate adjusted for state fund expenses. The percentage of the advisory or rating organization rate shall based on a factor recommended by the state fund actuary of not be more than 150% of the NECF advisory or rating organization rate adjusted for state fund expenses or not less than 75% of the NECF advisory or rating organization rate adjusted for state fund expenses or substitute rate or at the rate of an equivalent class code recommended by the NECF advisory or rating organization or the state fund actuary. These situations include, but are not limited to:

(a) through (d) remain the same.

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

(b) The state fund board of directors will approve the limit any one large loss will impact the experience of a classification and apply the same limit to all classifications. The board may apply the same limit to all classifications, or different limits based upon the credibility factor of each classification with all classifications which have the same credibility factor treated alike.

(5) remains the same.

(6) For each construction class code defined in ARM 2.55.327, the state fund staff in consultation with the actuary and with approval of the board will calculate and apply an additional factor to offset the anticipated credits in ARM 2.55.327. These factors will be applied to each construction class code after the credibility weighted rate and ~~before the overall rate adjustment~~, however, the premium rate increase limits in (4)(a) does not apply.

(7) The board may approve for each class code a premium rate which is a percentage of or more than the ~~NECF advisory or rating organization~~ rate adjusted for state fund expenses or substitute rate. The board may use these percentages based upon the credibility factor of each code, with all codes which have the same credibility factor treated alike. However, no rate

generated by this percentage and applied to a class code shall be less than the state fund's experience-based rate for that class code and shall also be subject to the limitations in (4).

AUTH: Sec. 39-71-2315, and 39-71-2316, and 39-71-2330 MCA;

IMP: Secs. 39-71-2211, 39-71-2311, 39-71-2316, and 39-71-2330, MCA.

RATIONALE: 2.55.324(1) - Deletion of references to aggregate revenue projections twice and insertion of "level" - These changes are to have consistency in terminology in light of the removal of the determination of a revenue requirement from 2.55.323(1). The State Fund is statutorily required to be no more or less than self supporting. Therefore, reference to revenue projections is not necessary in the rules. The addition of "level" provides consistency in terminology in the rules.

Deletion of "in consultation with the actuary and with approval of the Board." - The consultation and approval is unnecessary as once the overall rate level adjustment is approved, application of it is in accordance with the rules.

Deletion of "credibility weighted" and insertion of "manual" - The overall rate level adjustment on individual codes was previously performed at the end of the individual rate calculation. This change places the overall rate level adjustment on the existing manual rates and uses those in the calculation, rather than applying the overall rate level adjustment after the experience calculation. The State Fund is making this change to implement an Ernst and Young recommendation of July 5, 1994 which reads as follows: "The credibility formula in the class rate procedures, as it stands, does not help rates for classes with low credibility to move in the same direction as the overall rate indication. One component of the formula which could receive as much as 50% of the credibility is the current class rate. This tends to keep rates where they are. It should be replaced by the current class rate increased by the overall statewide rate change. If this were done, the rate for the class with very low credibility would tend to move in the same way as the overall rate change."

2.55.324(3) - Deletion of "NCCI" and insertion of "advisory or rating organization" - This change is to assure the rules read consistently with the changes in SB384 enacted by the 1995 Legislature which deletes references to NCCI and inserts reference to the advisory or rating organization.

Deletion of "based on a factor" and insertion of "The percentage of the advisory or rating organization rate shall" - As used in this rule, the term "factor" was the same as "percentage". Deletion of "factor" and addition of reference to percentage provides consistency in terminology.

2.55.324(4)(a) - This amendment clarifies that the limit of premium rate increases or decreases is applied from the overall

rate level adjustment. In addition, minor stylistic changes have been made.

2.55.324(4)(b) - Insertion of language allowing the board to apply different large loss limits based upon the creditability of each code - This change allows the board an option with the ability to make credible classification codes more accountable for losses. The more credible the code, the more responsive the code rate would be to actual experience.

2.55.324(6) - Deletion of "and before the overall rate adjustment" - The overall rate level adjustment on individual codes was previously performed only at the end of the individual rate calculation. This change places the overall rate level adjustment on the existing manual rates and uses those in the calculation, rather than applying the overall rate level adjustment only after the experience calculation. The State Fund is making this change to implement an Ernst and Young recommendation of July 5, 1994 which reads as follows: "The credibility formula in the class rate procedures, as it stands, does not help rates for classes with low credibility to move in the same direction as the overall rate indication. One component of the formula which could receive as much as 50% of the credibility is the current class rate. This tends to keep rates where they are. It should be replaced by the current class rate increased by the overall statewide rate change. If this were done, the rate for the class with very low credibility would tend to move in the same way as the overall rate change."

Inserts "premium rate increase", and "(a) does" - Allows the construction credit program to remain as revenue neutral as possible by placing the cost of the program directly into the codes participating in the program. Such classification code rates may exceed the premium rate increase limit by the percentage of the additional factor.

2.55.324(7) - Deletion of "NCCI" and insertion of "advisory or rating organization" - This change is to assure the rules read consistently with the changes in SB 384 enacted by the 1995 Legislature which deletes references to NCCI and inserts reference to the advisory or rating organization.

2.55.325 VARIABLE PRICING WITHIN A CLASSIFICATION

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

(2) The annual analysis will include a determination of each insured's most recent policy effective date; earned premium

for the most recent complete fiscal year; ~~combined~~ incurred loss ratio, including any prior associated policies of up to three of the most recent complete fiscal years; and qualification for experience modification in the next fiscal year. The annual analysis will also include a variable pricing stabilization review.

(3) through (4)(ii) remain the same.

(iii) the insured's ~~combined~~ incurred loss ratio for up to three of the most recent complete fiscal years places the insured in the lowest rated variable pricing category as determined by a variable pricing stabilization review; and,

(iv) through (4)(b)(iv)(A) remain the same.

(B) the insured's ~~combined~~ incurred loss ratio for up to three of the most recent complete fiscal years is average as determined by a variable pricing stabilization review; and,

(C) through (4)(c)(ii) remain the same.

(iii) the insured's ~~combined~~ incurred loss ratio for up to three of the most recent complete fiscal years places the insured in the highest rated variable pricing category as determined by a variable pricing stabilization review; and,

(iv) through (5)(a) remain the same.

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

(c) through (i) remain the same.

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

IMP: Sec. 39-71-2311, 39-71-2316, 39-71-2330, and 39-71-2341 MCA.

RATIONALE: 2.55.325(1) - Deletion of effective date - Reference to the effective date is no longer necessary.

Deletion of "actuarially determined aggregate revenue requirements," - These changes are to have consistency in terminology in light of the removal of the determination of a revenue requirement from 2.55.323(1).

2.55.325(1), (2) & (4)(a)(iii), (4)(b)(B), (4)(c)(iii) - Deletion of "combined" and insertion of "incurred" - Combined loss ratio in insurance terms generally means a ratio of incurred losses, expenses and reserve development to earned premium. An incurred loss ratio is a ratio of actual paid losses plus outstanding reserves to earned premium. This revision clarifies that the type of loss ratio utilized within this rule is incurred loss ratio, not combined as used within the insurance industry. Therefore, these revisions do not cause any substantive change in the application of the rule.

The amendments also make minor stylistic changes.

2.55.325(5)(b) - Addition of "nonpayment of policy charge"
- This insertion makes the rule consistent with statute in that
the State Fund may cancel for nonpayment of policy charge along
with other listed items.

2.55.327 CONSTRUCTION INDUSTRY PREMIUM CREDIT PROGRAM

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

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

3365	5057	5183	5223	5462	5506	5651	6204	6306	7605
3724	5059	5188	5348	5472	5507	5703	6217	6319	7855
3726	5069	5190	5402	5473	5508	6003	6229	6325	9521
5020	5086	5213	5403	5474	5538	6005	6233	6365	9552
5022	5102	5215	5437	5479	5551	6017	6251	6400	
5037	5146	5221	5443	5480	5610	6018	6252	7538	
5040	5160	5222	5445	5491	5645	6045	6260	7601	

(4)(a) The following credit percentages, ~~filed by the~~
~~national council on compensation insurance (NCCI) with the~~
~~Montana insurance commissioner,~~ are to be applied to the manual
premium of the insured's construction class codes during the
survey period to determine the premium credit factor for the
fiscal year beginning July 1, ~~1992~~ 1995:

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

(b) The following credit percentages in lieu of the table
in (a) will be used for the fiscal year beginning July 1, 1993:

Average Hourly Wage	Credit Percentage
\$ 8.72 or less	None
\$ 8.73-\$ 9.72	.25%
\$ 9.73-\$10.72	.50%
\$10.73-\$11.72	.75%
\$11.73-\$13.09	1.00%
\$13.10-\$14.09	6.00%
\$14.10-\$15.09	7.00%

\$15.10-\$16.09	8.00%
\$16.10-\$17.09	9.00%
\$17.10-\$18.09	10.00%
\$18.10-\$19.09	11.00%
\$19.10-\$20.09	12.00%
\$20.10-\$21.09	13.00%
\$21.10 and above	14.00%

(c) The following credit percentages in lieu of the tables in (a) and (b) will be used for the fiscal year beginning July 1, 1994:

Average Hourly Wage	Credit Percentage
\$13.58 or less	0.00%
\$13.59-\$14.08	6.00%
\$14.09-\$14.58	7.00%
\$14.59-\$15.08	8.00%
\$15.09-\$15.58	9.00%
\$15.59-\$16.08	10.00%
\$16.09-\$16.58	11.00%
\$16.59-\$17.08	12.00%
\$17.09-\$17.58	13.00%
\$17.59-\$18.08	14.00%
\$18.09-\$18.58	15.00%
\$18.59-\$19.08	16.00%
\$19.09-\$19.58	17.00%
\$19.59-\$20.08	18.00%
\$20.09-\$20.58	19.00%
\$20.59-\$21.08	20.00%
\$21.09-\$21.58	21.00%
\$21.59 and above	22.00%

(d) The following credit percentages in lieu of the tables in (a), (b), and (c) will be used for the fiscal year beginning July 1, 1995:

Average Hourly Wage	Credit Percentage
\$13.97 or less	0.00%
\$13.98-\$14.47	8.00%
\$14.48-\$14.97	10.00%
\$14.98-\$15.47	12.00%
\$15.48-\$15.97	14.00%
\$15.98-\$16.47	15.00%
\$16.48-\$16.97	16.00%
\$16.98-\$17.47	17.00%
\$17.48-\$17.97	18.00%
\$17.98-\$18.97	19.00%
\$18.98-\$19.97	20.00%
\$19.98-\$20.97	21.00%
\$20.98 and above	22.00%

(b) The following credit percentages in lieu of the table in (a) will be used for the fiscal year beginning July 1, 1996.

Average Hourly Wage	Credit Percentage
<u>\$14.24 or less</u>	<u>0%</u>
<u>\$14.25 - \$14.74</u>	<u>8%</u>
<u>\$14.75 - \$15.24</u>	<u>10%</u>
<u>\$15.25 - \$15.74</u>	<u>12%</u>
<u>\$15.75 - \$16.24</u>	<u>14%</u>
<u>\$16.25 - \$16.74</u>	<u>15%</u>
<u>\$16.75 - \$17.24</u>	<u>16%</u>
<u>\$17.25 - \$17.74</u>	<u>17%</u>
<u>\$17.75 - \$18.24</u>	<u>18%</u>
<u>\$18.25 - \$19.24</u>	<u>19%</u>
<u>\$19.25 - \$20.24</u>	<u>20%</u>
<u>\$20.25 - \$21.24</u>	<u>21%</u>
<u>\$21.25 and above</u>	<u>22%</u>

(5) through (5)(ii) remain the same.

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

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

(v) through (6)(e) remain the same.

AUTH: Secs. 39-71-2315 and 39-71-2316 MCA;

IMP: Secs. 39-71-2211, 39-71-2311, 39-71-2316 and 39-71-2330 MCA.

RATIONALE: 2.55.327(3) - Deletion of class code 5086 - State Fund discontinued use of this class code. The future exposure was distributed to other class codes in the table.

2.55.327(4)(a)(b)(c)(d) - Deletion of old tables except for current FY96 table - To amend current rules to delete tables no longer in use. However, the tables in effect for the appropriate year will continue to be used for premium audit purposes.

2.55.327(4)(b) - Addition of new construction credit table - The table has remained the same as far as the credit percentage allowed, however the table has been amended to reflect the increase in the state's average weekly wage to \$380.00.

2.55.327(5)(b)(iii)(iv) - Insertion of "or managers of a limited liability company" - Insertion of this language makes the rule consistent with the HB 200 changes in regards to

limited liability companies and the relationship to workers' compensation.

2.55.401 EXPERIENCE MODIFICATION FACTOR (1) An insured, whose premium level qualifies, must be assigned an experience modification factor that reflects the insured's actual experience in comparison to the expected experience. "Experience modification factor" means a factor derived from an evaluation of payroll and accident experience in previous policy periods that is based on the formula of an national advisory or rating organization.

(2) The state fund shall use the methods used by the workers' compensation advisory or rating organization to identify a qualified insured and determine the insured's experience modification factor in order to reward an insured with a good safety record and penalize an insured with a poor safety record.

(3) remains the same.

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

IMP: 39-71-2311, 39-71-2316 and 39-71-2330 MCA.

RATIONALE: 2.55.401 - Addition of "advisory" - To make the rule consistent with SB 384 and its deletion of the reference to NCCI.

2.55.403 VOLUME DISCOUNT (1) remains the same.

(2) The state fund may provide a group volume discount to a group certified by the Department of Labor and Industry as provided by 39-71-433, MCA.

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

IMP: Secs. 39-71-433, 39-71-2311, 39-71-2316 and 39-71-2330 MCA.

RATIONALE: 2.55.403 - This rule is being amended to add a new section so as to incorporate the statutory group volume discount programs. This acknowledges the distinction between the individual volume discount and group volume discount programs.

2.55.405 SCHEDULED RATING - LOSS CONTROL NONCOMPLIANCE MODIFIER (1) through (1)(a) remain the same.

(b) an insured has refused on-site-safety consultative services after the state fund has offered in writing to provide on-site-safety consultative services to the insured or has failed to comply with safety consultant recommendations.

(2) and (3) remain the same.

(4) An insured subject to the premium modifier will ~~may~~ be assigned a quarterly report basis.

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

IMP: Sec. 39-71-2316, 39-71-2330 and 39-71-2341 MCA.

RATIONALE: 2.55.405(a) & (b) - Deletion of "on-site" and inclusion of language stating "or has failed to comply with safety consultant recommendations" - The deletion of the "on-site" requirement, permits the State Fund to implement this rule if an insured refuses safety consultative services regardless of

on-site visitation. It is still intended that on-site visitation will be conducted.

The addition is intended to permit the State Fund to implement this rule if an insured fails to comply with safety consultant recommendations that may exceed the minimum requirements of the Montana Safety Culture Act.

2.55.405(4) - Deletes "will", inserts "may" - This change allows the State Fund to assign the proper report basis to a policy based on the effective date of the application of the modifier. For example, if the modifier was effective on January 1, a semi annual report basis would be appropriate.

2.55.406 SCHEDULED RATING - UNIQUE RISK CHARACTERISTICS MODIFIER (1) through (5) remain the same.

(6) An insured subject to the modifier will may be assigned a quarterly report basis.

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

IME: Sec. 39-71-2316 and 39-71-2330 MCA.

RATIONALE: 2.55.406 (6) - Deletes "will", inserts "may" - This change allows the State Fund to assign the proper report basis to a policy based on the effective date of the application of the modifier. For example, if the modifier was effective on January 1, a semi annual report basis would be appropriate.

2.55.407 OPTIONAL DEDUCTIBLE PLANS (1) remains the same.

(2) The board shall establish deductible plans for each fiscal year. The board shall establish premium reduction percentages by hazard group for each level of deductible offered by the state fund. The hazard group is determined by the governing code of the employer. Each classification in use by the state fund shall be assigned a hazard group as published by the national council on compensation insurance advisory or rating organization, or as determined by the board.

(3) through (5) remain the same.

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

IME: Sec. 39-71-2316, 39-71-435 and 39-71-2330 MCA.

RATIONALE: 2.55.407 - Deletion to reference to "NCCI" and inclusion of "advisory or rating organization language" - To make the rule consistent with SB 384 and its deletion of the reference to NCCI.

2.55.408 RETROSPECTIVE RATING PLANS (1) remains the same.

(2) The board shall establish retrospective rating plans for each fiscal year utilizing the methods and formulas published by the National Council on Compensation Insurance Retrospective Rating Manual, 1984 edition, as revised to October 13, 1994 November 27, 1995. The board shall determine the factors, multipliers, ratios or other formula components for the plan.

(3) through (5) remain the same.

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA

IMP: Sec. 39-71-2316, 39-71-2330 and 39-71-2341 MCA

RATIONALE: 2.55.408 - Updates rule so as to include the most recent manual revisions.

3. The State Fund's premium rate setting rule amendments above are reasonably necessary to keep the processes, procedures, formulas and factors for rate setting as required by statute to be set forth in administrative rules, current with legislative changes, changes in business operations, to implement a recommendation on the State Fund rate setting process from Ernst & Young and to maintain their functionality.

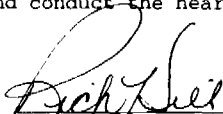
4. The State Compensation Insurance Fund makes reasonable accommodations for persons with disabilities who wish to participate in this public hearing. Persons needing accommodations must contact the State Fund, Attn: Ms. Jennifer Lynn, P.O. Box 4759, Helena, MT 59604; telephone (406) 444-6480; TDD (406) 444-5971; fax (406) 444-6555, no later than 5:00 p.m., December 20, 1995, to advise as to the nature of the accommodation needed and to allow adequate time to make arrangements.

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 state fund attorney Nancy Butler, Legal Department, State Compensation Insurance Fund, 5 South Last Chance Gulch, P.O. Box 4759, Helena, Montana 59604-4759, and must be received no later than 5:00 p.m. January 4, 1996.

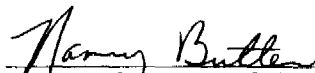
6. The State Fund Legal and Underwriting Departments have been designated to preside over and conduct the hearing.



Dal Smilie, Chief Legal Counsel
Rule Reviewer



Rick Hill
Chairman of the Board



Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State November 27, 1995.

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

In the matter of the repeal of	)	NOTICE OF PROPOSED
Title 6, Chapter 6, Sub-Chapter 4	)	REPEAL
pertaining to college student)	
life insurance.	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons:

1. On January 8, 1996, the State Auditor and Commissioner of Insurance proposes to repeal Title 6, Chapter 6, Sub-Chapter 4 pertaining to college student life insurance.

2. The rules proposed for repeal are ARM 6.6.401 APPLICABILITY; 6.6.402 SUBMISSION AND APPROVAL OF SALES MATERIALS; 6.6.403 REPRESENTATION OF SPECIAL TITLE, POLICY, OR COMPANY DIVISION; 6.6.404 REPRESENTATION AS TO POLICY VALUE AND SIZE; 6.6.405 DOWN PAYMENT REQUIRED; 6.6.406 RECEIPTS; 6.6.407 ALLOWABLE FINANCING ARRANGEMENTS; 6.6.408 PROMISSORY NOTES; 6.6.409 TRANSFER OF PROMISSORY NOTES; and 6.6.410 CANCELLATION, RELEASE, AND REFUND, and are located on pages 6-117 through 6-119 of the Administrative Rules of Montana. The authorizing and implemented statutes are as follows:

AUTH: 33-1-313, MCA
IMP: 2-4-314, MCA

3. Rules 6.6.401, 6.6.402, 6.6.406, 6.6.407, 6.6.408, and 6.6.409 are being repealed because subsequent enactments and existing statutes adequately address the issue of premium financed college student life insurance in today's market for such. Rules 6.6.403, 6.6.404 and 6.6.405 are being repealed because they are already regulated under the auspices of 33-18-203, 33-18-202, and 33-18-206, MCA, respectively. Rule 6.6.410 is being repealed because the subsequent enactment of 33-15-415, MCA, duplicates the provisions of 6.6.410.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Heather Cafferty, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604, and must be received no later than January 4, 1996.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments he has to Heather Cafferty, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604. A written request for hearing must be received no later than January 4, 1996.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 30 persons based on the 300 persons who have indicated interest in the rules of this agency and who the agency has determined could be directly affected by these rules.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By 
Frank Coté
Deputy Insurance Commissioner


Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 27th day of November, 1995.

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

In the matter of the amendment of)	NOTICE OF PROPOSED
Rule 6.6.4001 pertaining to the)	AMENDMENT
valuation of securities other than)	
those specifically referred to in)	NO PUBLIC HEARING
statutes.)	CONTEMPLATED

TO: All Interested Persons:

1. On January 8, 1996, the State Auditor and Commissioner of Insurance proposes to amend Rule 6.6.4001 pertaining to the valuation of securities other than those specifically referred to in statutes.

2. The proposed rule amendments are as follows (new material is underlined; material to be deleted is interlined):

6.6.4001. VALUATION OF SECURITIES OTHER THAN THOSE SPECIFICALLY REFERRED TO IN STATUTES (1) Securities and assets must be valued in accordance with valuation standards of the NAIC published in its 1995 ~~1994~~ Accounting Practices and Procedures manual and its December 31, 1995 ~~1994~~ Valuation of Securities manual.

(2) The department hereby adopts and incorporates herein by reference the standards adopted by the NAIC for valuation of securities and other investments appearing in its 1995 ~~1994~~ Accounting Practices and Procedures manual and its December 31, 1995 ~~1994~~ Valuation of Securities manual. These are nationally-recognized models for such standards. Copies of the manuals are available for inspection at the office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, Helena, Montana. Copies of the Accounting Practices and Procedures manual and the Valuation of Securities manual may be obtained by writing to the National Association of Insurance Commissioners, 120 West 12th Street, Suite 1100, Kansas City, MO 64105-1925. Persons obtaining copies of such manuals may be required to pay the NAIC's costs of providing such copies.

AUTH: 33-1-313, 33-2-533, and 33-2-1517, MCA
IMP: 33-2-533 and 33-2-1517, MCA

3. Rule 6.6.4001 is being amended because the manuals referenced are updated on an annual basis and are being changed to incorporate the most current manual.

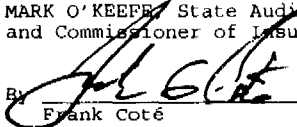
4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Heather Cafferty, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604, and must be received no later than January 4, 1996.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make a written request for a hearing and submit this request along with any written comments he has to Heather Cafferty, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604. A written request for hearing must be received no later than January 4, 1996.


6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 30 persons based on the 300 persons who have indicated interest in the rules of this agency and who the agency has determined could be directly affected by these rules.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By


Frank Coté

Deputy Insurance Commissioner


Gary M. Spaeth
Rules Reviewer

Certified to the Secretary of State this 27th day of November, 1995.

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF 8.111.305 QUALIFIED
to lending institutions and) LENDING INSTITUTIONS AND
loan servicers) 8.111.305A QUALIFIED LOAN
SERVICERS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 6, 1996, the Board of Housing proposes to amend the above-stated rules.

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

"8.111.305 QUALIFIED LENDING INSTITUTIONS (1) through (2)(d) will remain the same.

(e) an applicant which is governed by one of the regulatory agencies defined herein, must submit its most recent regulatory agency report, which must indicate a positive return on average assets, and (based on generally accepted accounting principles (GAAP)) indicate a total capital as a percentage of average assets of at least 6% or meet all applicable capital requirements of the regulatory agency and must have and maintain a minimum net worth according to generally-accepted accounting principles (GAAP) of \$1 million. An applicant not governed by a regulatory agency defined herein, must submit its most recent audited financial statements and current financial statements which have been prepared within 60 days of submission. Current financial statements shall be comprised of a balance sheet, year to date income statement, and a statement of change covering at least a six-month period. Current financial statements must indicate a positive return on average assets based on generally-accepted accounting principles (GAAP), and current financial statements must indicate total capital as a percentage of average assets of at least 6% and must have and maintain a minimum net worth according to generally-accepted accounting principles (GAAP) of \$1 million. (f) through (7) will remain the same."

Auth: Sec. 90-6-104, 90-6-106, 90-6-108, MCA; IME, Sec. 90-6-106, 90-6-108, 90-6-110, MCA

"8.111.305A QUALIFIED LOAN SERVICERS (1) through (e) will remain the same.

(f) an applicant which is governed by one of the regulatory agencies defined herein, must submit its most recent regulatory agency report which must indicate a positive return on average assets, and (based on generally-accepted accounting principles (GAAP)) must indicate a total capital as a percentage of average assets of at least 6% or meet all applicable capital requirements of their regulatory agency and

must have and maintain a minimum net worth according to generally-accepted accounting principles (GAAP) of \$1 million. An applicant not governed by a regulatory agency defined herein, must submit its most recent audited financial statements and current financial statements which have been prepared within 60 days of submission. Current financial statements shall be comprised of a balance sheet, year to date income statement, and a statement of change covering at least a six-month period. Current financial statements must indicate a positive return on average assets based on generally-accepted accounting principles (GAAP), and current financial statements and must indicate total capital as a percentage of average assets of at least 6% and must have and maintain a minimum net worth according to generally-accepted accounting principles (GAAP) of \$1 million.

Auth: Sec. 90-6-104, 90-6-106, MCA; IMP, Sec. 90-6-108, MCA

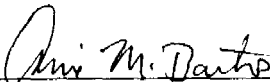
REASON: The proposed amendments are necessary to make Montana's requirements for lending institutions and loan servicers consistent with other state and federal requirements.

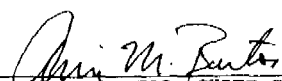
3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Housing, 2001 Eleventh Avenue, P.O. Box 200528, Helena, Montana 59620-0528, to be received no later than 5:00 p.m., January 4, 1996.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Housing, 2001 Eleventh Avenue, P.O. Box 200528, Helena, Montana 59620-0528, to be received no later than 5:00 p.m., January 4, 1996.

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

BOARD OF HOUSING
BOB THOMAS, CHAIRMAN


ANNIE M. BARTOS
RULE REVIEWER

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

Certified to the Secretary of State, November 27, 1995.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF APPLICATION
application for a	)	FOR CERTIFICATE OF PUBLIC
certificate of public	)	ADVANTAGE, PUBLIC COMMENT
advantage by the Columbus	)	PERIOD AND PUBLIC HEARING
Hospital and Montana)	
Deaconess Medical Center,)	
Great Falls, Montana.)	

TO: All Interested Persons.

1. Pursuant to Mont. Code Ann. §§ 50-4-601 through -623 and ARM 23.18.101 through 108, an application has been filed with the Montana Department of Justice for a certificate of public advantage. The application was filed by the Columbus Hospital and Montana Deaconess Medical Center of Great Falls, Montana, and requests a certificate for the proposed consolidation of the two facilities. The Department of Justice has determined that the application is complete and is now accepting public comment on the application.

2. The purpose of the statutes and rules is to provide immunity from the antitrust laws to health care facilities and physicians who enter into cooperative agreements that will result in lower health care costs or in improved access to health care or higher quality health care without any undue increase in health care costs.

3. Copies of the initial application may be obtained at a cost of \$35 plus postage from the Office of the Attorney General, 215 North Sanders, P.O. Box 201401, Helena, MT 59620 (406-444-2026). Supplemental information also has been submitted and is available to the public, except those documents for which confidentiality is provided under ARM § 23.18.102(4). Copies of both the initial application and supplemental information submitted by the applicants are available for viewing at either of the two hospitals. The documents may be reviewed at the Executive Offices of the Columbus Hospital at 500 15th Avenue South, Great Falls, Montana, by contacting Laura Goldhahn-Konen, Assistant Vice President, at 406-771-5624 or 406-788-5993. The documents also may be reviewed at the Administration Office of the Montana Deaconess Medical Center at 1101 26th Street South, Great Falls, Montana, by contacting Joyce Burgess, Executive Assistant, at 406-455-5482.

4. Interested parties may submit their data, views or arguments concerning the application in writing to Joseph P. Mazurek, Attorney General, 215 North Sanders, P.O. Box 201401, Helena, Montana, 59620-1401, to be received no later than January 8, 1996.

5. Pursuant to ARM § 23-18-102(7), persons submitting comments on the application must provide a copy of the comments

to the applicants. The copy may be sent to: Maxon R. Davis, Cure, Borer & Davis, P.C., 300 Central Avenue, Suite 320, P.O. Box 2103, Great Falls, MT 59403.

6. The applicants may respond in writing to any comments made on the application. The response must be submitted to the Attorney General no later than January 29, 1996, and a copy provided to the person submitting the comment to which response is made.

7. There will be a public hearing on the application on January 24, 1996, at the Great Falls Civic Center, in the Convention Center, 2 South Park Drive, Great Falls, Montana. The hearing will be held from 2:00 p.m. until 5:00 p.m. and from 6:30 p.m. until 8:30 p.m. Persons wishing to present oral testimony will be requested to register in advance of either segment of the hearing. Registration will commence at 1:30 p.m. for the afternoon portion of the hearing and at 6:00 p.m. for the evening portion of the hearing.

8. Under Mont. Code Ann. § 50-4-603, the Department of Justice may not issue a certificate of public advantage unless it finds that the proposal is likely to result in lower health care costs or is likely to result in improved access to health care or higher quality health care without any undue increase in health care costs. If the Department finds that these standards have been met, it may impose terms and conditions that it finds are appropriate in order to best achieve lower health care costs or greater access to or quality of health care. Persons submitting comments on the application are encouraged to address their comments to the perceived impact of the consolidation on health care costs, access, or quality, with specific information included in support of each issue addressed. Comments also may be addressed to terms or conditions which would be appropriate to best achieve the objectives of lower health care costs or greater access to or improved quality of health care.

By: 

JOSEPH P. MAZUREK
Attorney General

Certified to the Secretary of State November 27, 1995.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of ARM 24.30.102,) PROPOSED AMENDMENT OF
related to occupational safety) ARM 24.30.102 AND PROPOSED
and health standards for) REPEAL OF ARM 24.30.201
public sector employment, and) THROUGH 24.30.271
the proposed repeal of 71)
rules related to logging)
safety for public sector)
employment)

TO ALL INTERESTED PERSONS:

1. On January 3, 1996, at 10:00 a.m., a public hearing will be held in the first floor conference room at the Walt Sullivan Building (Dept. of Labor Building), 1327 Lockey Street, Helena, Montana, to consider the amendment of ARM 24.30.102, to generally incorporate by reference the current version of federal health and safety regulations, and the repeal of ARM 24.30.201 through 24.30.271, regarding logging safety rules.

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., December 27, 1995, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Safety Bureau, Attn: Mr. Dave Folsom, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-6418; 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 Mr. Folsom.

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

24.30.102 OCCUPATIONAL SAFETY AND HEALTH CODE FOR PUBLIC SECTOR EMPLOYMENT (1) Section 50-71-311 MCA, of the Montana Safety Act provides that the department of labor and industry may adopt, amend, repeal and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment to render them safe. The federal Occupational Safety and Health Act of 1970 does not include safety standards coverage for employees of this state or political subdivisions of this state. It is the intent of this rule that public sector employees of this state and political subdivisions of this state shall be protected to the greatest extent possible by the same safety standards for employments covered by the federal Occupational Safety and Health Act of

1970. The department is therefore adopting by reference certain occupational safety and health standards, adopted by the United States Secretary of Labor under the Occupational Safety and Health Act of 1970. The department has determined, with the assent of the secretary of state, that publication of the rules would be unduly cumbersome and expensive. Copies of the rules adopted by reference are available and may be obtained at cost from the Montana Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624, or the Superintendent of Documents, United States Government Printing Office, 941 North Capitol Street, Washington, D.C. 20401.

(2) As used in the rules adopted by reference in subsection (3) below, unless the context clearly requires otherwise, the following definitions apply:

(a) "Act" means the Montana Safety Act (50-71-101 through 50-71-334, MCA.

(b) "Assistant secretary of labor" or "secretary" means the commissioner of the Montana department of labor and industry.

(c) "Employee" or "public sector employee" means every person in this state, including a contractor other than an independent contractor, who is in the service of a public sector employer, as defined below, under any appointment or contract of hire, expressed or implied, oral or written.

(d) "Employer" or "public sector employer" means this state and each county, city and county, city school district, irrigation district, all other districts established by law and all public corporations and quasi public corporations and public agencies therein who have any person in service under any appointment or contract of hire, expressed or implied, oral or written.

(3) The department of labor and industry hereby adopts a safety code for every place of employment conducted by a public sector employer. This safety code adopts by reference the following occupational safety and health standards found in the Code of Federal Regulations, as of July 1, ~~1994~~ 1995:

(a) Title 29, Part 1910,

(b) the provisions of 29 CFR 1910.146 appendix C, example 1, part A, as mandatory provisions that are applicable to all confined spaces; and

(c) Title 29, Part 1926.

(4) All sections adopted by reference are binding on every public sector employer even though the sections are not separately printed in a separate state pamphlet and even though they are omitted from publication in the Montana Administrative Register and the Administrative Rules of Montana. The safety standards adopted above and printed in the Code of Federal Regulations, Title 29, as of July 1, ~~1994~~ 1995, are considered under this rule as the printed form of the safety code adopted under this subsection, and shall be used by the department and all public sector employers, employees, and other persons when referring to the provisions of the safety code adopted under this subsection. All the provisions, remedies, and penalties found in the Montana Safety Act (50-71-101 through 50-71-334,

MCA) apply to the administration of the provisions of the safety code adopted by this rule.

(5) For convenience, the federal number of a particular section found in the code of federal regulations should be used when referring to a section in the safety code adopted in subsection (3) above. The federal number is to be preceded by the term (5). Thus, when section 1910.27 of the Code of Federal Regulations pertaining to fixed ladders is to be referred to or cited, the correct cite would be "subsection (5) 1910.27 of section 24.30.102 ARM" or "ARM 24.30.102(5) 1910.27".

AUTH: Sec. 50-71-311 MCA

IMP: Sec. 50-71-311 and 50-71-312 MCA

REASON: The proposed amendments to this rule are reasonably necessary to incorporate by reference the current federal rules promulgated by the Occupational Health and Safety Administration (OSHA). The proposed amendments are also reasonably necessary to add the portion of the OSHA rules related to logging operations, because the Department has proposed repealing ARM 24.30.201 through 24.30.271, related to logging safety.

3. The Department of Labor and Industry proposes to repeal ARM 24.30.201 through 24.30.271 in their entirety. Those rules are found at pages 24-2409 through 24-2463 of the Administrative Rules of Montana. Authority to repeal the rules is 50-71-106 and 50-71-311, MCA, and the rules proposed for repeal implement 50-71-106 and 50-71-311, MCA. There is reasonable necessity for the proposed repeal because the proposed amendments to ARM 24.30.102 will incorporate OSHA's new logging safety rules. In addition the repeals will implement the provisions of House Joint Resolution 5 (1995), by reducing the number of rules by 71 and reducing the number of pages of rules by 53.

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:

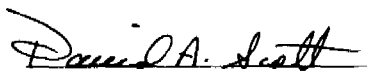
John Maloney, Bureau Chief
Safety Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

and must be received by no later than 5:00 p.m., January 10, 1996.

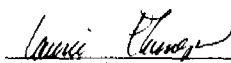
5. In addition to the publication of this notice in the Montana Administrative Register, an abbreviated Notice of Public Hearing is being published in one or more daily newspapers of general circulation in this state, as required by 50-71-302, MCA. Persons interested in viewing or obtaining a copy of the abbreviated Notice of Public Hearing published in a newspaper should contact Mr. Folsom at the address listed in paragraph 1 of this Notice.

6. The Department proposes to make these amendments and repeals effective March 1, 1996; however, the Department reserves the right to make these amendments and/or repeals effective at a later date, or not at all.

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



David A. Scott
Rule Reviewer



Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: November 27, 1995.

BEFORE THE MILK CONTROL BUREAU
DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of proposed	)	NOTICE OF PROPOSED AMENDMENT
amendments to several rules:)	
rule 8.79.101 as it relates to	)	NO PUBLIC HEARING
definitions for the purchase	)	CONTEMPLATED
and resale of milk; rule)	
8.79.102 as it relates to)	
transactions involving the)	
resale of milk; and rule)	
8.79.201 as it relates to the)	
regulation of unfair trade)	
practices.	)	DOCKET #24-95

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

1. On January 11, 1996, the Department of Livestock proposes to amend the following rules: 8.79.101, 8.79.102, and 8.79.201. The proposed amendments will become effective January 26, 1996.

2. The rules as proposed to be amended provide as follows: (text of rule with matter to be omitted interlined and new matter added, then underlined)

"8.79.101 DEFINITIONS

(1)-(1)(1) remains the same.

~~(m) "Store" means any supermarket, grocery, soda fountain, dairy store, confectionery, or similar mercantile establishment, whether rural or urban, which sells milk over the counter or on the premises to customers at retail.~~

~~(n)(m)~~ "Department" means the department of commerce livestock.

~~(e)(n)~~ "Board" means the board of milk control.

~~(p)(o)~~ "Bureau chief" "Bureau" means the chief of the milk control bureau of the department."

AUTH: 81-23-104, MCA

IMP: 81-23-103 and 402, MCA

"8.79.102 TRANSACTIONS INVOLVING THE PURCHASE AND RESALE OF MILK WITHIN THE STATE (1) ~~On the farm prices as fixed by this board will apply only to those producer distributors who produce, process and sell at retail prices on the farmstead only milk exclusively produced by their herds.~~

(2)(1) As an aid to the efficient collection of license fees and assessments, each distributor who purchases milk from producers shall deduct from payments due such producers any license fees and administrative assessments due the department from such producers under section 81-23-202 and 81-23-105, MCA. The distributor shall transmit such fees and assessments to the department together with a statement of individual producer assessment payments. Assessments under 81-23-202, MCA, shall be reported and paid at least quarterly, as provided in that section. Assessments under 81-23-105, MCA, and ARM 8.79.302 shall be separately reported and paid monthly.

(3)(2) Deductions of any kind (other than assessments that are required under 81-23-105 and 81-23-302, MCA, and license fees) from payments due producers may be made ONLY UPON WRITTEN AUTHORIZATION from producers, or, in the case of cooperatives, upon formal resolution of the directors at a regular business meeting. A copy of such authorization shall be retained by the distributor as part of its permanent records for its own protection.

(4) ~~Distributors, jobbers and import jobbers delivering to wholesale stops must leave at such wholesale stops an invoice of the sales of fluid milk for each day's delivery, itemized as to number of each separate form or use of milk sold and the total price of each such form or use sold. In instances where the distributor elects to utilize a computer to bill its customers, the distributor may elect to forego recording the total price and unit price of each such form or use of milk sold on the invoice left with the wholesale customers. In the computer invoice utilized, the billing system must indicate for each delivery, the number of each separate form or use of milk sold, the unit price of and the total price of each such form or use sold.~~

(5) ~~All tests approved by the Montana department of livestock shall be considered by the department of commerce as official tests for the purpose of administration of the Milk Control Act.~~

(6)(3) When producer payments are based upon butterfat tests from composite samples, a portion of each composite sample must be retained until the succeeding composite sample is tested.

(7)(4) Each distributor must maintain a record of butterfat tests of each producer's milk or cream covering each pay period and provide each producer with each butterfat test

result made for that producer as provided in ~~subsection-(10)~~ (7) of this rule. Such record shall be kept on file for two ~~(3)~~ years and be made available to any authorized agent of the department upon request.

~~(8)~~(5) On or before the tenth day of each month, the bureau chief will post for public inspection in the main office of the department an original notice of the class I, II and III prices to be paid producers for grade A milk by distributors during the next calendar month. In addition thereto and on the same day, he ~~the bureau~~ will cause a correct copy of the posted notice to be mailed to each distributor, producer-distributor, and producer licensed under the Act. The notices must contain not only statements of the correct prices to be paid, but statements of the applicable Chicago area average prices relied upon, and the mathematical computations by which Montana prices were arrived at.

(9)-(14) (b) Remains as written, but renumbered (6)-(11) (b).

(c) At any time a distributor is unwilling or unable to reconcile the audit results with rules of the board and/or department it may request a review of the audit by the bureau chief. The time limitation for final settlement payment to producers will be stayed until ten ~~(10)~~ days after such review is completed and the distributor has received notice of the ~~bureau-chief's~~ bureau's decision.

(d) Within ten ~~(10)~~ days after the distributor receives notice of the ~~bureau-chief's~~ bureau's decision it may file written application for appearance before the department at its offices in Helena, Montana to review the decision of the bureau chief. The time limitation on final settlement payment to producers will be further stayed until review by the department is completed. After such a review, the department will make official findings and conclusions and order, to be effective upon the issuance thereof.

(15)-(16) Remains as written, but renumbered (12)-(13).

~~(17)~~(14) Except for persistent repetition of the cases set forth in ~~subsection-(16)~~ (13) of this rule, no producer's contract or purchasing agreement, whether express or implied, may be terminated by a distributor except for cause after notice and hearing by the department in accordance with the rules and procedures prescribed by the Montana Administrative Procedure Act.

(18)-(19) Remains as written, but renumbered (15)-(16).

AUTH: 81-23-104, MCA
IMP: 81-23-103 and 402, MCA

"8.79.201 REGULATION OF UNFAIR TRADE PRACTICES

(1) Under authority delegated by the provisions of 81-23-104, MCA, the following transactions of business among licensees under the Milk Control Act and among licensees and the general public are declared to be unfair trade practices subject to enforcement sanctions provided by statute, to-wit:

~~(a) The payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts by any persons, whether in the form of money or otherwise.~~

~~(b) The giving of any milk, cream, dairy products, services, or articles of any kind, except to bona fide charities, for the purpose of securing or retaining the fluid milk or fluid cream business of any customer.~~

~~(1) The sampling of class I milk products to consumers will be permitted when each sample does not exceed three (3) fluid ounces and no consumer receives more than one (1) sample each day.~~

~~(c) The extension to certain customers of special prices or services not available to all customers who purchase milk in like quantity under like terms and conditions.~~

~~(d) The purchasing, processing, bottling, packaging, transporting, delivering or otherwise handling milk which is to be or is sold in the state of Montana or otherwise disposed of at less than the minimum wholesale or minimum retail prices established by the board pursuant to the act.~~

~~(e)(a) The payment of a lesser price than the applicable producer price established by the board pursuant to the act by any distributor to any producer for milk which is distributed to any person, including agencies of the federal, state or local government.~~

~~(f) The compensation of, or other preferred treatment of, a purchaser of milk, including a chain store or grocers' association, by a dealer, either directly or indirectly because such purchaser takes delivery elsewhere than at the location where such milk shall be used, consumed or resold, or for transporting such milk to any other location after accepting delivery thereof. The term purchaser in this context shall not include milk dealers or outside salesmen who distribute fluid milk products processed by a milk dealer.~~

~~(g) The giving or agreeing to give, discounts, whether in the form of money, merchandise, coupons, stamps, prizes, bonuses or premiums in any form or the buying or selling of any merchandise conditional upon the sale of fluid milk products which would directly or indirectly reduce the monetary value of such products below the minimum price established by official rule of the board of milk control.~~

~~(h) The using of such items as bottle caps, cartons, stamps, coupons or any other item distributed with milk sold at retail or wholesale to qualify a person to receive a prize,~~

~~award, or any other thing of value, which would directly or indirectly reduce the monetary value of fluid milk or fluid milk products below the minimum retail or wholesale price established by official rule of the board of milk control.~~

~~(i) The selling by any distributor to any store, chain store, supermarket, restaurant, marketing cooperative, or other wholesale customers, under any mutual or secret agreement, arrangement, combination, contract or common understanding whereby the ultimate wholesale price for milk received by the distributor is less than that fixed in the applicable official price announcement of this board.~~

~~(j) The solicitation or acceptance from any distributor by any store, chain store, supermarket, restaurant, marketing cooperative, or other wholesale customer, under any mutual or secret agreement, arrangement, combination, contract or common understanding whereby the ultimate wholesale price for milk received by the distributor is less than that fixed in the applicable official price announcement of this board.~~

~~(k) The engaging by any distributor in the sale or offering for sale to wholesale customers of fluid milk and cream products under the jurisdiction of the department in combination with the sale of uncontrolled food items whether uncontrolled food items are sold or offered for sale at less than cost, or at unrealistically low prices. Such sales dilute the actual price for milk ordered and intended by the board in its official price fixing announcements.~~

~~(l) The acceptance or solicitation by wholesale customers of fluid milk and cream products under the jurisdiction of the department in combination with uncontrolled food items when the uncontrolled food items are accepted or solicited for purchase at less than cost to the distributor or at unrealistically low prices.~~

~~(m) The luring away competitor's salesmen through the device of according to the salesman or salesmen unrealistic bonuses, commissions, fringe benefits or other incentives.~~

~~(2)-(4) Remains the same."~~

AUTH: 81-23-104, MCA

IMP: 81-23-103 and 402, MCA

3. Rules 8.79.101, 8.79.102, and 8.79.201 are being amended because of passage of Senate Bill #364 which eliminates statutory authority to set minimum wholesale and retail prices.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to the Milk Control Bureau, 1520 East Sixth Avenue - Rm. 50, PO Box

200512, Helena, MT 59620-0512. Any comments must be received no later than January 4, 1996.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Milk Control Bureau at the above address. A written request for hearing must be received no later than January 4, 1996.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent or twenty-five, whichever is less, of the persons who are directly affected by the proposed amendment, from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent (10%) of those persons directly affected has been determined to be 27 persons based on an estimate of licensed resident and nonresident producers, in-state and out-of-state distributors, jobbers, and producer-distributors.

MONTANA DEPARTMENT OF LIVESTOCK

By: 
Marc Bridges, Exec. Secretary
Board of Livestock

By: 
Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State November 27, 1995.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of Rules I through	)	PROPOSED ADOPTION AND
XXXV and the amendment of	)	AMENDMENT OF RULES
46.12.501, 46.12.3204,)	
46.12.3401, 46.12.3805,)	
46.12.4805, 46.12.4806 and)	
46.12.5003 pertaining to)	
AFDC, food stamps and)	
medicaid assistance under)	
the FAIM project)	

TO: All Interested Persons

1. On January 3, 1996, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rules I through XXXV and the amendment of 46.12.501, 46.12.3204, 46.12.3401, 46.12.3805, 46.12.4805, 46.12.4806 and 46.12.5003 pertaining to AFDC, food stamps and medicaid assistance under the FAIM project.

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 December 22, 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 adopted provide as follows:

[RULE I] FAIM; PURPOSE (1) These rules implement the demonstration project entitled families achieving independence in Montana (FAIM) authorized under section 1115 of the Social Security Act, 42 USC 1315, excluding cases with tribal members living on a reservation which operates a tribal JOBS program. The purpose of this project is to provide alternatives to improve the public assistance system and to assist families in becoming self-sufficient.

(2) The demonstration project will be implemented in some counties no earlier than February 1, 1996 and no later than February 1, 1997. The demonstration project shall end no later than the last day of the 32nd quarter ending after the deemed beginning date.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211 and 53-4-601, MCA

[RULE II] FAIM: FEDERAL REGULATIONS ADOPTED BY REFERENCE

(1) The FAIM AFDC program shall be governed by the regulations of the administration for children and families of the U.S. department of public health and human services governing the aid to families with dependent children contained in 45 CFR parts 205, 206, 232, 233, 234, 235, 238, 239, 250, 255 and 256, except as the rules in this chapter make specific provisions which are contrary to the federal regulations, in which case these rules shall take precedence over the federal regulations. The department hereby adopts and incorporates by reference 45 CFR parts 205, 206, 232, 233, 234, 235, 238, 239, 250, 255 and 256, as amended through October 1, 1993. A copy of 45 CFR parts 205, 206, 232, 233, 234, 235, 238, 239, 250, 255 and 256, as amended through October 1, 1993 may be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4201.

AUTH: 53-4-212, MCA

IMP: 53-4-211 and 53-4-601, MCA

[RULE III] FAIM: DEFINITIONS (1) The definitions

contained in ARM 46.10.110 and 46.10.803 apply to this chapter unless a different definition is specified in this rule, in which case the definition in this rule shall take precedence.

(2) The following definitions apply to this chapter:

(a) "Community services program (CSP)" is the assistance program designed for individuals who have exhausted their time-limited pathways benefits but have not yet achieved self-sufficiency or found alternatives to public assistance. CSP requires adults to perform community service activities in return for continued benefits.

(b) "Deemed income" means the portion of a person's income considered available as unearned income to the assistance unit, whether or not it is actually contributed to the assistance unit.

(c) "Dependent child" means a person under the age of 18 years or older than 18 but less than 19 years if the person is a full-time student in a secondary school expected to obtain a secondary school diploma or its equivalent before the month of the person's 19th birthday, who lives with a specified caretaker relative as defined in ARM 46.10.302.

(d) "Earned income" means all income, whether in cash or in kind, earned by an individual through wages, salary, commissions, tips, or any other profit from activity in which the individual is engaged, including but not limited to all amounts withheld or deducted for income or social security taxes, garnishments, attachments, income deductions or insurance premiums or any other withholdings.

(e) "FAIM coordinator" means the case worker who will determine eligibility for FAIM benefits, assist clients to develop their family investment agreement, monitor the agreements and make referrals to other resources.

(f) "FAIM employment and training" means the training, resources and career choices activities in the family investment

agreement for participants who are not referred to and enrolled in the JOBS program.

(g) "Family investment agreement" (FIA) means a written document outlining pathways and community service program requirements and the steps a family will take in order to achieve self-sufficiency.

(h) "Participant" means a person who is eligible for and receiving FAIM benefits in the job supplement, pathways or community services programs.

(i) "Pathways" means the time-limited case assistance program designed to provide families with employment, training and education opportunities leading to permanent public assistance alternatives. The duration of pathways is 24 months for single-parent households or 18 months for two parent households. Participation requirements are stated in the family investment agreement.

(j) "Two parent household" means all households in which two parents reside, regardless of whether the two parents are parents of the same dependent child or two or more different children.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211 and 53-4-601, MCA

[RULE IV] FAIM: DISQUALIFICATION HEARING (1) If a participant in FAIM appears to have committed an intentional program violation (IPV) as defined in 45 CFR 235.112, the county office of human services must initiate administrative disqualification hearing (ADH) procedures.

(2) The individual subject to the ADH must be contacted in writing and requested to appear for a pre-hearing meeting at the local county office. During the pre-hearing meeting, the county office will provide to the individual the following:

(a) an explanation of the charges against the individual;
(b) the total amount of the overpayment and the time period for which the claim was established;

(c) the evidence which exists;
(d) the individual's right to an administrative disqualification hearing;

(e) the option to waive the right to an ADH by signing a written "waiver of right to administrative disqualification hearing"; and

(f) an explanation of the disqualification period and repayment obligation if the individual is found to have committed an IPV at an ADH or signs a waiver of the individual's right to an ADH.

(3) If the individual does not sign a waiver of the right to an ADH at the pre-hearing meeting in the county office, an ADH shall be scheduled and the individual alleged to have committed an IPV shall be sent a written notice of the hearing at least 30 days prior to the date of the hearing. The notice must contain all the information specified in 45 CFR 235.113.

(4) The ADH shall be conducted by an impartial individual appointed or employed by the department as a hearing officer who

has not had previous involvement in the individual's case and shall comply with all the requirements of 45 CFR 235.113.

(5) The hearing officer shall issue a written decision after the ADH which shall comply with the requirements of 45 CFR 235.113.

(6) If the hearing officer determines after an ADH has been held that the individual committed an IPV, the department must provide the individual with a written notice of disqualification prior to the commencement of the disqualification period. The notice must contain the information specified in 45 CFR 235.113.

(7) If it is determined through an ADH that an individual committed an IPV or if the individual alleged to have committed an IPV signs a waiver of right to ADH, the period of disqualification shall be:

- (a) 6 months for the first violation;
- (b) 12 months for the second violation; and
- (c) permanently for the third violation.

(8) Disqualification shall begin the first month which follows the date the individual receives written notice of disqualification. If the individual is not eligible for benefits at the time the disqualification period is to begin, the disqualification period will not begin to run until the individual applies for and is determined eligible for benefits. Once a disqualification has been imposed, the period of disqualification must continue uninterrupted until completed regardless of the eligibility of the disqualified individual's household.

(9) The determination of IPV made by the hearing officer is the final agency decision and can be appealed only by applying to the district court as provided in Title 2, chapter 4, subchapter 7, MCA. The determination by the hearing officer that an IPV has occurred cannot be reversed by a subsequent fair hearing decision relating to the same or a similar issue.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211 and 53-4-601, MCA

[RULE VI] FAIM: FAIM COMPONENT AND TIME LIMITS (1) The AFDC portion of the FAIM project consists of three components referred to as the job supplement, pathways and community services programs.

(2) The job supplement program (JSP) is intended to divert individuals who are AFDC-eligible and at risk of becoming dependent on public assistance. Its elements include:

- (a) enhanced child support enforcement assistance;
- (b) earned income disregards as provided in [Rule XII];
- (c) a onetime employment-related payment as provided in [Rule XVIII];
- (d) medicaid coverage as provided in ARM 46.12.501;
- (e) child care assistance as provided in [Rule XXXIV];
- (f) referral to appropriate community resources;
- (g) information about and assistance in applying for the earned income tax credit; and

(h) medicaid coverage and child care assistance extended beyond the eligibility period as provided in ARM 46.12.3401 and [Rule XXXI].

(3) The pathways program is a time-limited program designed to provide families with employment, training and educational opportunities leading to self-sufficiency. Its elements include:

(a) cash assistance for a maximum of 24 months for single parent households and 18 months for two parent households, which months need not be consecutive;

(b) child support enforcement assistance;

(c) earned income disregards as provided in [Rule XII];

(d) medicaid coverage as provided in ARM 46.12.501;

(e) referral to appropriate community resources;

(f) information about and assistance in applying for the earned income tax credit;

(g) a onetime employment-related payment as provided in ARM 46.12.3401 and [Rule XVIII];

(h) extended medicaid coverage and child care assistance as provided in ARM 46.12.3401 and [Rule XXXI].

(4) The community services program (CSP) furnishes assistance to caretaker relatives whose time limited benefits under the pathways program have expired, provided the caretaker relative performs community services activities as required. The elements of the CSP include:

(a) cash assistance;

(b) enhanced child support enforcement assistance;

(c) earned income disregards as provided in [Rule XII];

(d) medicaid coverage as provided in ARM 46.12.501;

(e) referral to appropriate community resources;

(f) information about and assistance in applying for the earned income tax credit; and

(g) extended medicaid coverage and child care assistance as provided in ARM 46.12.3401 and [Rule XXXI].

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211, 53-4-601 and 53-4-603, MCA

[RULE VI] FAIM: EXEMPTIONS TO TIME LIMITED BENEFITS

(1) Benefits under the pathways program are time limited as provided in [Rule VI]. A caretaker relative is exempted from those time limits if the individual:

(a) is under age 20 and attending high school or completing an equivalency program;

(b) has a verifiable illness, injury or physical or mental impairment, handicap or disability which prevents the individual from participating in activities to help the individual gain self-sufficiency;

(c) is 60 years of age or older;

(d) is needed to care for another household member with a disability who requires special care;

(e) is the parent of a dependent child under age one;

(f) is a teen parent in the individual's own case who is complying with required family investment agreement activities; or

(g) cannot participate in activities to help the individual gain self-sufficiency because child care assistance is not available.

(2) In two parent households, each parent must meet one of the criteria listed in (1)(a) through (g) in order for the case to be exempt from the time limit.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211, 53-4-601 and 53-4-607, MCA

[RULE VII] FAIM: LIVING WITH A SPECIFIED RELATIVE (1) The requirements of ARM 46.10.302(1) through (1)(b) pertaining to the necessity of living with a specified relative apply to persons seeking assistance in the FAIM project.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211 and 53-4-601, MCA

[RULE VIII] FAIM: INCLUSION IN ASSISTANCE UNIT (1) The parent or parents of a dependent child who live with the child must be included in the assistance unit, regardless of whether the parents are married to each other, if the parent or parents meet all other conditions of eligibility. The parent or parents' income and resources will be counted in determining FAIM eligibility and benefit amount and the parent or parents' needs will be included in the grant.

(2) The stepparent of a child who lives with the child and the child's natural or adoptive parent must be included in the assistance unit if the stepparent meets all other conditions of eligibility. The stepparent's income and resources will be counted in determining FAIM eligibility and benefit amount and the stepparent's needs will be included in the grant.

(a) A person who is married to the child's parent by means of either a ceremonial or common law marriage is a stepparent.

(3) All persons under the age of 18 years who live in the home must be included in the assistance unit, including but not limited to half brothers and sisters and stepsiblings of the child applying for or receiving assistance, if they meet all other conditions of eligibility. Their income and resources will be counted in determining FAIM eligibility and benefit amount and their needs will be included in the grant.

(4) New members will be added to the assistance unit the month after the month in which the new member entered the household or is reported to be living in the household, whichever occurs later.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211 and 53-4-601, MCA

[RULE IX] FAIM: CHILD SUPPORT ENFORCEMENT COOPERATION REQUIREMENTS (1) In every FAIM and FAIM AFDC-related medicaid

only case where one or both of the child's parents is absent from the home, the applicant or recipient must comply with the requirements of ARM 46.10.314 pertaining to child support and medical support.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211 and 53-4-601, MCA

[RULE XI FAIM: PROPERTY RESOURCES] (1) For purposes of this rule, the definitions in ARM 46.10.406 apply.

(2) In determining eligibility for FAIM benefits, the department will evaluate resources which are currently available to an assistance unit requesting or receiving assistance and will apply the limitations set out in this rule. The equity value of all currently available resources of the assistance unit will be counted in determining eligibility for assistance, unless such resources are specifically excluded in (3)(a) through (3)(h) of this rule. If the value of the assistance unit's countable resources exceeds \$3000, they are ineligible for FAIM benefits.

(3) The following resources are not counted as currently available resources:

(a) the resources specified in ARM 46.10.406(4)(a) and (c) through (i);

(b) vehicles as follows:

(i) all income-producing vehicles; and

(ii) one vehicle which is not income-producing regardless of its value; however, the equity in any additional vehicles must be counted as a currently available resource;

(c) the cash value of life insurance policies;

(d) restitution made to individuals of Japanese ancestry who were interned during World War II as per the Civil Liberties Act of 1988;

(e) restitution made to Aleuts who were relocated during World War II as per the Civil Liberties Act of 1988;

(f) major disaster and emergency assistance as per the Disaster Relief and Emergency Assistance Amendments of 1988;

(g) student financial assistance made for attendance costs under Title IV of the Higher Education Act or Bureau of Indian Affairs student assistance programs as per the Higher Education Technical Amendment Act of 1987; and

(h) earned income tax credit (EITC) advance payments and refunds.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211, 53-4-601 and 53-4-606, MCA

[RULE XII FAIM: TREATMENT OF INCOME] (1) The definitions in ARM 46.10.505(1), (2), (2)(a), (4), (5), (6), (7) and [Rule III] apply to this rule.

(2) Unearned income shall be treated as provided in ARM 46.10.506 through 46.10.508(1)(a).

(3) Earned income shall be treated as provided in ARM 46.10.510 through 46.10.512.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211 and 53-4-601, MCA

[RULE XII] FAIM: INCOME DISREGARDS AND INCOME DEEMING

(1) When testing net monthly income and determining the amount of the assistance payment, the following amounts are subtracted in the order listed from the earned income of each member of the assistance unit after exclusions provided in [Rule XVI]:

(a) in the case of an assistance unit receiving benefits under the pathways and job supplement programs, \$200 from the earned income of each wage earner and in the case of assistance units receiving benefits in the community services program, \$100 from the earned income of each wage earner, except that neither of these disregards applies to individuals whose income is deemed as described in (3);

(b) in the case of an assistance unit receiving benefits in the pathways and job supplement programs, 25% of the remaining earned income after the disregards in (1)(a) have been applied; and

(c) in the pathways, job supplement and community services programs, payments for the care of each working member's dependent child or incapacitated adult living in the same household and receiving assistance under Title 46 of the ARM, not to exceed \$200 per month per child or incapacitated adult.

(i) The payment amount incurred for the dependent child or incapacitated adult in the budget month will be deducted. The amount deducted shall not include amounts paid for charges incurred in months other than the budget month or amounts previously used to determine eligibility and benefit amount.

(2) When testing net monthly income and determining the amount of the assistance payment, the amount of any child support payments made under court order by any member of the assistance unit to any individual not living in the household is subtracted from the income of the household, whether earned or unearned or both.

(3) Income must be deemed when determining eligibility for individuals who are sponsors of aliens or spouses of a caretaker relative who is not the natural or adoptive parent of the dependent child and whose needs are included in the assistance unit's grant. Income of these individuals, less disregards listed in (a) through (d) below, must be counted as unearned income to the assistance unit whether or not such income is actually contributed to any member of the assistance unit. The following amounts shall be subtracted from income:

(a) disregard a \$90 standard work expense;

(b) disregard an amount of income equal to the FAIM net monthly income standard for a family consisting of the individual and the individual's natural or adopted children, if such children are claimed as dependents for federal income tax purposes and are living in the same household as the individual, but are not included in the FAIM assistance unit;

(c) disregard actual verified amounts paid by the individual to others not living in the household who are claimed

by the individual as dependents for federal income tax purposes;
and

(d) disregard actual verified amounts of alimony or child support paid by the individual to other persons not living in the household.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211 and 53-4-601, MCA

[RULE XIII] FAIM: LIMITS ON DISREGARDS (1) The earned income disregards in [Rule XII] are applicable without limit on the number of months that they can be applied.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211 and 53-4-601, MCA

[RULE XIV] FAIM: LUMP SUM PAYMENTS (1) Lump sum payments are payments of a non-recurring sum of earned or unearned income.

(2) The assistance unit may lose eligibility for one or more months if, when the lump sum payment is added to all other countable resources, the total exceeds the \$3000 resource limitation. To determine how long the assistance unit will be ineligible, if at all, the amount of the payment is divided by \$3000. If the figure obtained by such division is one or more, the assistance unit will be ineligible for that many months.

(3) The period of ineligibility begins the month following the receipt of the lump sum payment. After the period of ineligibility has ended, any part of the payment remaining is considered a resource in the first month following the period of ineligibility.

(4) If receipt of a non-recurring lump sum in excess of the resource limitation is reported or discovered after the month of receipt, the ineligibility period is calculated as stated in (2) above. As provided in ARM 46.10.108, an overpayment of benefits may exist.

(5) The period of ineligibility will be recalculated with respect to the remaining months if:

(a) an error was made in the original calculation of the ineligibility period; or

(b) the funds have become unavailable for reasons beyond the control of the assistance unit.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211 and 53-4-601, MCA

[RULE XV] FAIM: EXCLUDED EARNED INCOME (1) In testing gross and net monthly income and in determining the monthly grant, the following earned income is to be excluded:

(a) the earned income of a dependent child who is attending elementary or high school, regardless of the child's age; and

(b) earned income tax credit (EITC) advance payments and refunds.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211 and 53-4-601, MCA

[RULE XVII] FAIM: EXCLUDED UNEARNED INCOME (1) In testing gross monthly income and net monthly income and in determining grant amount, the unearned income specified in ARM 46.10.506(1)(a) through (1)(r) and the following shall be excluded:

(a) gifts of money for special occasions such as holidays, birthdays and graduations, up to \$50 per gift per month for each participant;

(b) energy assistance payments based on financial need;

(c) restitution made to individuals of Japanese ancestry who were interned during World War II as per the Civil Liberties Act of 1988;

(d) restitution made to Aleuts who were relocated during World War II as per the Civil Liberties Act of 1988;

(e) major disaster and emergency assistance as per the federal disaster relief and emergency assistance amendments of 1988; and

(f) the following income of enrolled tribal members:

(i) judgment claims payments;

(ii) judgments derived from submarginal lands;

(iii) per capita payments;

(iv) interest earned on excluded funds; and

(v) up to \$2000 per year of income derived from leases or other uses of individually owned trust or restricted lands.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211 and 53-4-601, MCA

[RULE XVII] FAIM: RESTRICTIONS ON ASSISTANCE PAYMENTS

(1) Pathways and community services program assistance payments are made directly to eligible persons for their own unrestricted use except in cases of protective payees.

(2) Job supplement program payments may be made to the participant, protective payee or vendor.

(3) The check may not be mailed to the grantee in care of a creditor or delivered through indirect representation.

(4) Payments may not be forwarded from one address to another.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211 and 53-4-601, MCA

[RULE XVIII] FAIM: ONETIME EMPLOYMENT-RELATED PAYMENT

(1) A onetime employment-related payment may be provided to participants in the job supplement and pathways program. Onetime means that the payment may be received once in the individual participant's life time while participating in the pathways program and once while participating in the job supplement program. The payment may be made at the department's discretion for a variety of employment-related expenses, including:

(a) transportation, including vehicle repairs, down payment on a vehicle, tires, insurance, driver's license fee, gas, etc.;

(b) clothing, such as uniforms and other specialized clothing and footwear or other employment-required apparel;

(c) tools and equipment;

(d) union dues, special fees, licenses or certificates;

(e) up-front costs for employment such as agency fees, testing fees or child care for the first two months of employment;

(f) up-front fees of self-employment such as business license, deposits for phone and/or utility hookups, post office box rental, etc.; or

(g) non-covered medical expenses such as eyeglasses, emergent dental care or required physical exams.

(2) A onetime employment-related payment will be provided only if:

(a) all other resources, including but not limited to community services and private and commercial loans, have been exhausted;

(b) the expenses for which the payment is requested have been verified;

(c) at least two written cost estimates have been submitted for major expenses; and

(d) the pathways participant is losing eligibility due to increased earnings from employment.

(3) Payments cannot duplicate funds available through supportive services provided by other agencies or programs.

(4) Payments will be made to the individual unless a vendor payment is specifically requested.

(5) The maximum amount of the payment will be up to three times the maximum monthly benefit payment for an assistance unit of that size. Families who receive such a payment will be ineligible to receive future cash benefits in the pathways or community services programs for a period of time equal to twice the number of months which is obtained when the amount of the payment received is divided by the maximum monthly benefit payment for an assistance unit of that size.

(a) The period of ineligibility following the payment will not count toward the pathways time limit described in [Rule V].

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211, 53-4-601 and 53-4-603, MCA

[RULE XIX] FAIM: FAMILY INVESTMENT AGREEMENT (1) The family investment agreement (FIA) is a document listing required activities and mutual obligations of the state and the participant regarding the course of action leading to the family's self-sufficiency and providing the time limits within which such activities and obligations shall be performed.

(a) All participants are required to negotiate and comply with their FIA as a condition of eligibility for financial assistance in the pathways and community services programs.

(b) The FIAs will be reviewed at least every 3 months for pathways participants and at least once every 6 months for community services participants. They may also be re-negotiated as needed or at the request of either the participant or the FAIM coordinator.

(i) Once the agreement is completed, it is signed by the participant and the coordinator. The participant receives a signed, hard copy.

(c) Failure to perform the activities required in the FIA on a timely basis will result in sanctions in accordance with [Rule XX].

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211, 53-4-601, 53-4-606 and 53-4-608, MCA

[RULE XX] FAIM: SANCTIONS (1) If any member of the assistance unit fails to comply without good cause with a pathways or community services program requirement, including but not limited to any requirement under a family investment agreement, the assistance unit will be sanctioned by means of the reduction of the monthly FAIM assistance payment by an amount equal to the portion of the payment allocated to the needs of that member.

(2) The sanctions imposed for failure to comply are the following:

(a) for the first occurrence: loss of the member's portion of the assistance payment for 1 month or until the failure to comply ceases, whichever is longer;

(b) for the second occurrence: loss of the member's portion of the assistance payment for 3 months or until the failure to comply ceases, whichever is longer;

(c) for the third occurrence: loss of the member's portion of the assistance payment for 6 months or until the failure to comply ceases, whichever is longer; or

(d) for the fourth and any subsequent occurrences: loss of the member's portion of the assistance payment for 12 months or until the failure to comply ceases, whichever is longer.

(3) During the sanction period, the department, for the purposes of calculating a household's grant, will not take into account the needs of the member or members of the household who failed to comply with FIA requirements or other program requirements, even if that person is a minor parent, a dependent child or the only dependent child in the assistance unit. However, the income and resources of the non-complying member or members will be considered in determining eligibility and grant amount during the sanction period.

(4) When the applicable sanction period specified in (2)(a) through (2)(d) has been completed, the grant will not be increased to reflect the addition of the sanctioned individual's needs back into the grant until the sanctioned individual has successfully complied with all program requirements for 10 consecutive working days.

(5) For pathways participants, the sanction penalty period will count toward the time limits provided in [Rule V].

(6) In addition to the loss of financial assistance for the needs of the sanctioned individual as specified in (1) through (3) above, the sanctioned individual will also not be covered by medicaid during the sanction period if the failure to comply involved any of the following requirements:

(a) child support enforcement as specified in [Rule IX];
(b) health plan enrollments as specified in ARM 46.12.3215; or

(c) cooperation with the department's investigation of eligibility, including quality control requirements.

(7) In cases where medicaid coverage is lost during the sanction period and the sanctioned individual cures the failure to comply before the applicable sanction period specified in (2)(a) through (2)(d) expires, medicaid eligibility will be reinstated back to the first day of the month in which the individual complies.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211, 53-4-601 and 53-4-608, MCA

[RULE XXI] FAIM: REPORTING REQUIREMENTS (1) All applicants for or participants in FAIM assistance must report any change of address and any change in income, resources, household composition or other circumstances which may affect eligibility or benefit amount as soon as possible, but in any event within 10 days after the applicant or participant has knowledge of the change.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211 and 53-4-601, MCA

[RULE XXII] FAIM FOOD STAMP PROGRAM: PURPOSE (1) The rules in this chapter govern food stamp eligibility, benefit amount and other requirements for families in the families achieving independence in Montana (FAIM) program.

(2) The FAIM food stamp program shall be governed by the regulations of the food and consumer service of the U.S. department of agriculture contained in 7 CFR, parts 271 through 275, except as the rules in this chapter make specific provisions which are contrary to the federal food stamp regulations, in which case these rules shall take precedence over the federal regulations. The department hereby adopts and incorporates by reference 7 CFR 271 through 275, as amended through January 1, 1995. A copy of 7 CFR 271 through 275 as amended through January 1, 1995 may be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: Sec. 53-2-201 and 53-2-901, MCA

IMP: Sec. 53-2-901, MCA

[RULE XXIII] FAIM FOOD STAMP PROGRAM: DEFINITIONS

(1) "Benefit month" means the calendar month for which food stamp benefits are issued.

(2) "Department" means the Montana department of public health and human services.

(3) "Earned income" means wages, earnings or other payments or remuneration received for work and includes all income specified in 7 CFR 273.9(b)(1)(i) through (v).

(4) "Unearned income" means all income which does not meet the definition of earned income in (3) of this rule and includes all income specified in 7 CFR 273.9(b)(2)(i) through (vi).

(5) "Household" means an individual or group of individuals who live together and customarily purchase and prepare food together and whose eligibility for food stamps shall be determined together as a unit.

(6) "Prospective budgeting" means the determination of a household's eligibility and benefit amount based on an estimate of the income and circumstances which will exist in the benefit month.

AUTH: Sec. 53-2-201 and 53-2-901, MCA

IMP: Sec. 53-2-901, MCA

[RULE XXIV] FAIR FOOD STAMP PROGRAM: DETERMINING ELIGIBILITY AND BENEFIT AMOUNT (1) Eligibility and the amount of food stamp benefits to which the household is entitled shall be determined using prospective budgeting.

(2) Eligibility begins as of the date the household's application for food stamps is received in the office of human services in the county where the household resides. If a new member joins a household which is already receiving benefits, the new member will be included in the household for purposes of determining eligibility and benefit amount beginning the month after the month in which the new member's presence is reported.

(3) Once a household has been determined to be eligible for food stamps, the household will continue to receive food stamps continuously until the department determines that the household is no longer eligible. The household shall not be required to complete a new application for food stamps unless the household's benefits are terminated voluntarily or involuntarily and the household subsequently wishes to receive benefits again after a break of 30 or more days in eligibility.

(a) The department will re-evaluate the household's eligibility and benefit amount once a year after the initial determination of eligibility. This re-evaluation shall include a face-to-face interview with a member of the household or an authorized representative of the household.

(b) The department shall re-evaluate the household's eligibility whenever information is received concerning changes in the household's income or circumstances which may affect eligibility or benefit amount.

AUTH: Sec. 53-2-201 and 53-2-901, MCA

IMP: Sec. 53-2-901, MCA

[RULE XXV] FAIR FOOD STAMP PROGRAM: REPORTING AND VERIFICATION REQUIREMENTS (1) The household is required to

report all changes which may affect the household's eligibility or benefit amount, including but not limited to changes in the household's address and shelter expenses, composition, income or resources.

(a) Changes must be reported as soon as possible but not later than 10 days after the household has knowledge of the change.

(b) The household is not required to report a change of income which is less than \$25 per month.

(2) Households with earned income must cooperate with a quarterly review of the household's income and circumstances conducted by the department.

AUTH: Sec. 53-2-201 and 53-2-901, MCA

IMP: Sec. 53-2-901, MCA

[RULE XXVI] FAIR FOOD STAMP PROGRAM: STANDARD UTILITY ALLOWANCE (1) The standard utility allowance (SUA) as specified in the department's food stamp manual will be used in determining eligibility and benefit amount for all households, regardless of whether the household has any heating or cooling costs, unless the household chooses to use its actual costs instead.

(a) The household may use actual costs in lieu of the SUA only if the household provides verification that their average monthly utility expenses exceed the SUA.

AUTH: Sec. 53-2-201 and 53-2-901, MCA

IMP: Sec. 53-2-901, MCA

[RULE XXVII] FAIR FOOD STAMP PROGRAM: RESOURCES (1) A household shall be eligible for food stamp benefits only if the combined countable resources of all household members do not exceed \$3000.

(2) In determining eligibility for food stamps, vehicles owned by a member of the household shall be counted as follows:

(a) the value of any income-producing vehicle shall be excluded;

(b) the value of one vehicle which is not income-producing shall be excluded regardless of the vehicle's value;

(c) the equity value of each vehicle which is not otherwise excluded shall be counted as a resource to the household. Equity value is obtained by subtracting from the fair market value of the vehicle the amount of any enforceable lien, encumbrance, or security interest in the vehicle.

AUTH: Sec. 53-2-201 and 53-2-901, MCA

IMP: Sec. 53-2-901 and 53-2-904, MCA

[RULE XXVIII] FAIR FOOD STAMP PROGRAM: DEPENDENT CARE DEDUCTION (1) In determining eligibility and benefit amount, payments for the care of a dependent child or incapacitated adult living in the household will be deducted from the household's earned income. The maximum amount which can be deducted is \$200 per month per person receiving dependent care.

(a) If the payment is for the care of a child, it is deductible only if the child is:

(i) under the age of 16 years; or
(ii) physically or mentally incapable of caring for himself or herself, as determined by a licensed physician or psychologist.

(b) Only payments for care of the dependent person during the period of time the household member is at the place of employment or is in transit between the day care site and the place of employment may be deducted.

(c) Tuition or other payments to a private educational institution for a child who is 6 years of age or older cannot be deducted for any period of time when public schools are in session in the area where the child lives.

AUTH: Sec. 53-2-201 and 53-2-901, MCA

IMP: Sec. 53-2-901, MCA

[RULE XXIX] FAIM FOOD STAMP PROGRAM: UNEARNED INCOME EXCLUSIONS (1) The following kinds of unearned income are not counted in determining food stamp eligibility and benefit amount:

(a) energy assistance payment based on financial need;
(b) undergraduate student loans and grants for educational purposes made or insured under any program administered by the commissioner of education;
(c) gifts of money for a special occasion such as a birthday, holiday or graduation up to \$50 per gift per month for each household member; and
(d) child support payments returned to the household by the department's child support enforcement division, up to \$50 per month.

AUTH: Sec. 53-2-201 and 53-2-901, MCA

IMP: Sec. 53-2-901 and 53-2-904, MCA

[RULE XXX] FAIM FOOD STAMP PROGRAM: EMPLOYMENT RELATED PAYMENTS (1) Onetime employment related payments received by a member of the household pursuant to [Rule XVIII] will not be counted in determining food stamp eligibility and benefit amount.

AUTH: Sec. 53-2-201 and 53-2-901, MCA

IMP: Sec. 53-2-901, MCA

[RULE XXXI] FAIM: EXTENDED CHILD CARE REQUIREMENTS
(1) Extended child care (ECC), if necessary to permit a member of the FAIM family to accept or retain employment, and if requested, shall be provided to needy families with dependent children who meet the requirements of ARM 46.10.408(1)(a) through (1)(b)(iii).

(2) The family is eligible for extended child care if:

(a) the family received assistance in the pathways, job supplement or community services programs in Montana at least 1 month immediately preceding the first month of ineligibility;

(b) the family ceased to be eligible for the job supplement (JSP), pathways or community services programs (CSP) because of increased income; and

(c) the family requests extended child care benefits, provides required information and meets income standards as provided in [Rule XXXII].

(3) Eligibility for extended child care begins with the first month in which the family is ineligible for pathways, JSP or CSP because of increased income and continues for a period of 12 consecutive months unless the caretaker relative satisfies any of the conditions specified in ARM 46.10.408(3)(a) through (3)(d).

(4) The provisions of ARM 46.10.408(4) and (4)(a) pertaining to child care during breaks in employment and establishing eligibility for AFDC apply to extended child care participants.

(5) The department shall make child care payments in accordance with the requirements and payment amounts set forth in ARM 46.10.404. Child care assistance for each eligible child will be paid directly to the child care provider or to the family if requested. If the family requests to receive the child care payment, they must pay their child care provider for child care services incurred. The family is required to make co-payments as set forth in [Rule XXXII] and must also pay their child care provider for child care incurred in amounts over the state reimbursement levels.

(a) If the family does not pay their provider for any amount owed under the ECC program, they will lose their eligibility for extended child care until they pay their child care debt or make satisfactory arrangements to pay it. They also will lose the option to receive the child care payment directly.

(6) Families must report changes of income and changes in household composition or address within 10 days. Failure to report any of these changes could result in an overpayment of benefits. When a family receives extended child care assistance for which it is not eligible or in an amount larger than that to which it is entitled, the family must repay the department the amount specified in ARM 46.10.408(5)(a), (5)(b) or (5)(c), whichever is applicable.

(7) The amount which the family is required to repay under (6) of this rule is a debt due to the state until fully paid. All adult members of the family residing in the household at the time an overpayment occurs shall be jointly and severally liable for the amount which the family is required to repay.

(8) A family which is dissatisfied with an action taken on its application for extended child care assistance or the continuation of such assistance is entitled to a fair hearing as provided in ARM 46.2.202.

(a) The family is entitled to a fair hearing with regard to the issues specified in ARM 46.10.408(8)(a)(i) and (8)(a)(ii)

and with regard to whether the family was in violation of the requirements of (5) of this rule; and

(iv) whether an overpayment of extended child care assistance has occurred and the amount of such overpayment, if any.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211, 53-4-601 and 53-4-612, MCA

[RULE XXXII] FAIM: SLIDING FEE SCALE FOR EXTENDED CHILD CARE (1) The following table is a sliding fee scale which indicates the amount the family receiving extended child care will contribute towards child care costs. The number of household members which contribute to the sliding fee scale family size will be determined by using FAIM rules for determining household members as specified in [Rule VIII]. The amount of countable gross family income will be determined according to FAIM rules for counting income.

(2) The co-payment for families using less than 20 hours per week of child care will be 1/2 of the co-payment shown in the following table:

(a) 133% OF POVERTY SLIDING FEE SCALE

Family Size	Gross Monthly Income	Co-payment (1 child)	Co-payment (2 children)*
2	0 - 700	\$ 32	
	701 - 800	41	
	801 - 900	52	
	901 - 1000	65	
	1001 - 1112	81	
	1113+- ineligible		
3	0 - 900	\$ 34	\$ 39
	901 - 1000	45	50
	1001 - 1100	58	64
	1101 - 1200	73	79
	1201 - 1395	95	102
	1396+- ineligible		
4	0 - 1100	\$ 36	\$ 42
	1101 - 1200	49	55
	1201 - 1300	64	71
	1301 - 1400	81	88
	1401 - 1500	100	108
	1501 - 1679	126	134
	1680+- ineligible		
5	0 - 1300	\$ 38	\$ 45
	1301 - 1400	53	60
	1401 - 1500	70	78
	1501 - 1600	89	97
	1601 - 1700	110	119
	1701 - 1800	133	142
	1801 - 1963	162	172
	1964+- ineligible		

6	0 - 1500	\$ 40	\$ 48
	1501 - 1600	57	65
	1601 - 1700	76	85
	1701 - 1800	97	106
	1801 - 1900	120	130
	1901 - 2000	145	155
	2001 - 2100	172	183
	2101 - 2247	205	216
	2248+- ineligible		
7 or more	0 - 1700	\$ 42	\$ 51
	1701 - 1800	61	70
	1801 - 1900	82	92
	1901 - 2000	105	115
	2001 - 2100	130	141
	2101 - 2200	157	168
	2201 - 2300	186	198
	2301 - 2400	217	229
	2401 - 2530	252	265
	2531+- ineligible		

* Note: There will be no additional charge if a family places more than 2 children in child care; the maximum fee will be the 2 children rate.

(3) The department will pay the portion of the family's child care costs, based on the established reimbursement rates for the appropriate type of care, which the family is not required to pay pursuant to (2) of this rule.

AUTH: Sec. 53-4-212 and 53-4-612, MCA

IMP: Sec. 53-4-211, 53-4-601 and 53-4-612, MCA

[RULE XXXIII] FAIM PATHWAYS: CHILD CARE (PCC) (1) The department must provide child care assistance to recipients who participate in the pathways portion of the families achieving independence in Montana (FAIM) demonstration project. Child care assistance will be provided only for the period of time when the recipient is engaged in an activity required by the recipient's family investment agreement or is traveling between the child care site and the site of the required activity. However, if the required activity is post-secondary education, the number of hours of child care assistance per week will be limited as provided in the community operating plan in effect in the participant's county of residence.

(a) The child for whom the care is provided must be either included in the assistance unit or a recipient of supplement security income (SSI) under Title XVI of the Social Security Act and must meet the requirements of ARM 46.10.408(1)(a) through (1)(b)(ii).

(2) The department shall make child care payments in accordance with the requirements and payment amounts set forth in ARM 46.10.404. Child care assistance for each eligible child will be paid directly to the child care provider or to the family if requested. If the family requests to receive the child care payment, they must pay their child care provider for child care services incurred. The family must also pay their

child care provider for child care incurred in amounts over the state reimbursement levels.

(a) If the family does not pay their provider the amount paid by the state under the pathways program, they will lose their eligibility for pathways child care until they pay their child care debt or make satisfactory arrangements to pay it. They also will lose the option to receive the child care payment directly.

(3) The provisions of ARM 46.10.408(5) through (7) pertaining to reporting of changes, overpayments and repayments of amounts overpaid apply to pathways child care.

(4) A family which is dissatisfied with an action taken on its application for pathways child care assistance or the continuation of such assistance is entitled to a fair hearing as provided in ARM 46.2.202.

(a) The family is entitled to a fair hearing with regard to the issues of:

(i) the family's eligibility for assistance; and

(ii) whether an overpayment of pathways child care assistance has occurred and the amount of such overpayment, if any.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-211, 53-4-601 and 53-4-603, MCA

[RULE XXXIV] FAIM JOB SUPPLEMENT: CHILD CARE (JSP) (1) The department must provide child care assistance to FAIM participants in the job supplement program if child care is necessary to permit a member of the FAIM family to work. Child care assistance will be provided only for periods of time when a family member is engaged in gainful employment or is traveling between the child care site and the place of employment.

(2) Child care assistance up to \$200 a month for each eligible child will be paid directly to the child care provider or to the family if requested. If the family requests to receive the child care payment, they must pay their child care provider for child care services incurred. The family must also pay their child care provider for child care incurred in amounts over the state reimbursement level of \$200 a month for each eligible child.

(a) If the family does not pay their child care provider the amount paid by the state under the job supplement program, they will lose their eligibility for JSP child care until they pay their child care debt or make satisfactory arrangements to pay it. They also will lose the option to receive the child care payment directly.

(3) The child for whom the care is provided must be either included in the FAIM assistance unit or a recipient of supplemental security income (SSI) under Title XVI of the Social Security Act and must meet the requirements of ARM 46.10.408(1) (a) through (1) (b) (ii).

(4) The department shall make child care payments in accordance with the requirements and payment amounts set forth in ARM 46.10.404, except that in cases where the department

makes child care payments to the family, the requirement in ARM 46.10.404 that a provider be licensed, registered or legally unregistered does not apply.

(5) The provisions of ARM 46.10.408(5) through (7) pertaining to reporting of changes, overpayments and repayments of amounts overpaid apply to JSP child care.

(6) A family which is dissatisfied with an action taken on its application for JSP child care assistance or the continuation of such assistance is entitled to a fair hearing as provided in ARM 46.2.202.

(a) The family is entitled to a fair hearing with regard to the issues of:

(i) the family's eligibility for assistance; and

(ii) whether an overpayment of JSP child care assistance has occurred and the amount of such overpayment, if any.

AUTH: 53-4-212, MCA

IMP: 53-4-211, 53-4-601 and 53-4-603, MCA

[RULE XXXV] FAIM COMMUNITY SERVICES; CHILD CARE (CSCC) (1)

The department must provide child care assistance to FAIM recipients who participate in the community services program, if child care is necessary to permit a member of the FAIM family to perform community services or other activities required by the family investment agreement. Child care assistance will be provided only for periods of time when a family member is performing community services or is traveling between the child care site and the site of the community services.

(2) Child care assistance for each eligible child will be paid directly to the child care provider or to the family if requested. If the family requests to receive the child care payment, they must pay their child care provider for child care services incurred. The family must also pay their child care provider for child care incurred in amounts over the state reimbursement levels.

(a) If the family does not pay their child care provider the amount paid by the state under the community services program, they will lose their eligibility for CSP child care until they pay their child care debt or make satisfactory arrangements to pay it. They also will lose the option to receive the child care payment directly.

(3) The child for whom the care is provided must be either included in the FAIM assistance unit or a recipient of supplement security income (SSI) under Title XVI of the Social Security Act and must meet the requirements of ARM 46.10.408(1) (a) through (1) (b) (ii).

(4) The department shall make child care payments in accordance with the requirements and payment amounts set forth in ARM 46.10.404.

(5) The provisions of ARM 46.10.408(5) through (7) pertaining to reporting of changes, overpayments and repayments of amounts overpaid apply to community services child care.

(6) A family which is dissatisfied with an action taken on its application for CSP child care assistance or the

continuation of such assistance is entitled to a fair hearing as provided in ARM 46.2.202.

(a) The family is entitled to a fair hearing with regard to the issues of:

- (i) the family's eligibility for assistance; and
- (ii) whether an overpayment of CSP child care assistance has occurred and the amount of such overpayment, if any.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211, 53-4-601 and 53-4-603, MCA

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

46.12.501 SERVICES PROVIDED (1) The following medical or remedial care and services shall be available to all persons who are certified eligible for medicaid benefits under this chapter (including deceased persons, categorically related, who would have been eligible had death not prevented them from applying), except certain recipients of AFDC-related medical assistance as provided in (2). However, only those medical or remedial care and services also covered by medicare shall be available to a person who is certified eligible for medicaid benefits as a qualified medicare beneficiary under ARM 46.12.4101 and 46.12.4102.

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

(2) Individuals who are recipients of assistance in the pathways, community services or job supplement components of the families achieving independence in Montana (FAIM) project and who are 21 years of age or older and all recipients of AFDC-related medical assistance only who are 21 years of age or older will receive basic medicaid benefits, except that pregnant women will be entitled to all services specified in (1)(a) through (ad). Basic medicaid benefits are the services specified in (1)(a) through (ad) except the following:

(a) eyeglasses and optometric services;

(b) audiology and hearing aids;

(c) personal care services in the recipient's home;

(d) dental services; and

(e) durable medical equipment.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-6-101, 53-6-103, 53-6-131 and 53-6-141, MCA

46.12.3204 LIMITATION ON THE FINANCIAL RESPONSIBILITY OF RELATIVES (1) Only Except as provided in (2), only the income and resources of a spouse or, if the individual is an individual who is under age 21 or blind or disabled, of a natural or adoptive parent or, if specifically provided for in subchapters 34, 36, 38 and 40, of a stepparent will be considered available to an individual in determining his eligibility for medicaid. The income and resources of any other relative will not be considered available to the individual.

(2) In the case of an individual applying for or receiving AFDC-related medicaid in the FAIM project, the income and

resources of every person included in the same assistance unit as the individual as required by [Rule VIII] are considered available to the individual, regardless of whether the income and resources are actually contributed to the individual. Persons whose income and resources are considered available to the individual include, but are not limited to:

(a) Stepparents of a dependent child as defined in [Rule III].

(b) Siblings, stepsiblings or half-siblings of a dependent child as defined in [Rule III].

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

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-131, MCA

46.12.3401 GROUPS COVERED, NON-INSTITUTIONALIZED AFDC-RELATED FAMILIES AND CHILDREN (1) remains the same.

(a) individuals receiving AFDC including individuals participating in the pathways or community services programs of the FAIM project;

(1)(a)(i) through (1)(a)(iv) remain the same.

(v) individuals under age 21 who currently reside in Montana and are receiving foster care or adoption assistance under Title IV-E of the Social Security Act, whether or not such assistance originated in Montana. Eligibility requirements for Title IV-E foster care and adoption assistance are found in ARM 46.10.307-; and

(vi) individuals receiving assistance as participants of the FAIM job supplementation program.

(1)(b) through (1)(c)(ii)(B) remain the same.

(d) individuals who have been receiving assistance in the FAIM project and whose assistance is terminated because of earned and/or unearned income. These individuals may continue to receive medicaid for up to 12 additional months, providing:

(i) they received or are deemed to have received AFDC in the FAIM project for at least 1 month immediately prior to the month they became ineligible for FAIM assistance; and

(ii) during the second 6 months of the 12-month period, their combined earned and unearned income does not exceed 185% of the federal poverty guidelines.

(1)(d) through (1)(f)(i) remain the same in text but are renumbered (1)(e) through (1)(g)(i).

~~(g)~~ (h). A pregnant woman whose pregnancy has been verified, and whose family income does not exceed 133% of the federal poverty guidelines and whose countable resources do not exceed \$3,000;

(1)(g)(i) through (h) remain the same in text but are renumbered (1)(h)(i) - (1)(i).

(i) Presumptive eligibility is established by submission of an application by the applicant on the form specified by the department, to a qualified presumptive eligibility provider, verification of pregnancy and a determination by the qualified presumptive eligibility provider provided that applicant's

household income does not exceed the income standard and resource standards specified in subsection (1)(g) (h).

(1)(h)(i)(A) through (1)(h)(ii) remain the same in text but are renumbered (1)(i)(i)(A) through (1)(i)(ii).

~~(i)~~ (j) a pregnant woman who becomes ineligible for AFDC, SSI or medicaid due solely to increased income and whose countable resources do not exceed \$3,000 and whose pregnancy is disclosed to the department and verified prior to closure of AFDC, SSI or medicaid;

(1)(i)(i) and (1)(i)(ii) remain the same in text but are renumbered (1)(j)(i) and (1)(j)(ii).

~~(j)~~ (k) a child born on or after October 1, 1983, who has attained age 6 but has not yet reached the age 19, and whose family income does not exceed 100% of the federal poverty guidelines and whose countable resources do not exceed \$3,000;

~~(k)~~ (l) a child through the month of the sixth birthday whose family income does not exceed 133% of the federal poverty guidelines and whose countable resources do not exceed \$3,000;

(1)(l) through (1)(o) remain the same in text but are renumbered (1)(m)-(1)(p). (2) through (4) remain the same.

AUTH: Sec. 53-4-212 and 53-6-113, MCA

IMP: Sec. 53-6-101, 53-6-131, 53-6-134 and 53-4-231, MCA

46.12.3805 RESOURCE STANDARDS. NON-INSTITUTIONALIZED MEDICALLY NEEDY (1) Except as provided in (2) for households receiving assistance in the FAIM project. The the medically needy resource limitations are:

Family
Size

1	\$2,000
2	3,000

(1)(a) remains the same.

(2) For households receiving assistance in the FAIM project, the medically needy resource limitation is \$3,000 regardless of the number of members in the household.

(2) through (3) remain the same in text but are renumbered (3) through (4).

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-131 and 53-6-402, MCA

46.12.4805 HEALTH MAINTENANCE ORGANIZATIONS: ENROLLMENT

(1) Recipient enrollment with an HMO contracting with the department is voluntary, except as noted below.

(a) Individuals 21 years of age or older receiving medicaid or medically needy assistance as participants of the FAIM project, and who are not pregnant, are required to enroll in a HMO if one is available in the enrollment area and has not

reached its maximum enrollment. If the HMOs in the enrollment area are at maximum enrollment, the individual must participate in the passport to health program as required in ARM 46.12.5001, et seq.

(2) through (12) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-113, 53-6-116 and 53-6-117, MCA

46.12.4806 HEALTH MAINTENANCE ORGANIZATIONS: DISENROLLMENT

(1) An enrollee may request, without good cause, disenrollment from an HMO at any time, except that an individual required to enroll in an HMO per ARM 46.12.4805(1)(a) may disenroll only for good cause.

(2) through (10) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-113, 53-6-116 and 53-6-117, MCA

46.12.5003 PASSPORT TO HEALTH PROGRAM: ELIGIBILITY

(1) remains the same.

(a) aid to families with dependent children (AFDC) including participants in the FAIM project;

(b) AFDC-related including participants in the FAIM project;

(2)(c) through (5) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA

IMP: Sec. 53-6-116 and 53-6-117, MCA

4. In 1995 the 54th Montana Legislature authorized the Department of Health and Human Services in Senate Bill 209 to operate a demonstration "welfare reform" project known as Families Achieving Independence in Montana (FAIM) in accordance with waivers granted by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture. This project will promote self-sufficiency by requiring families to enter into family investment agreements which will set forth the required activities and the responsibilities of the recipient and the department to help the family achieve economic independence. For persons receiving aid to families with dependent children (AFDC), food stamps and medicaid as FAIM participants certain new eligibility and participation requirements will apply. These rules are necessary to implement the FAIM project as provided in Title 53, chapter 4, subchapter 6, MCA.

Among other things, this project will institute time limits on the receipt of cash benefits for adult recipients and require adult participants to perform community service activities to continue receiving monetary assistance for themselves when those time limits have expired; will eliminate coverage of certain

optional medicaid services (i.e., services which the states may at their option provide to medicaid recipients, as opposed to services mandated by federal law) for most recipients aged 21 or older; will provide a new resource limit, \$3,000, which is the same for AFDC, food stamp and medicaid eligibility and change the manner in which some resources such as automobiles are counted and make the methodology consistent in the FAIM AFDC and Food Stamp programs; will give AFDC recipients greater incentives to work by providing larger earned income disregards which allow families to keep more of the income they earn; and will provide extended child care and medicaid benefits for persons no longer eligible for cash assistance. The FAIM project will also provide an alternative to receipt of AFDC cash assistance by establishing the Job Supplement program. This program will not pay cash benefits but will assist working families by providing child care and medical assistance, onetime employment related payments to help with expenses necessary to gain or maintain employment and other supportive services to help families avoid dependence on cash assistance.

Under the FAIM project, all adults who are not exempted from time limits because of some reason which temporarily or permanently limits their ability to achieve self-sufficiency will receive cash benefits in a component known as the Pathways program for a maximum of 24 months in a single parent household and 18 months in a two parent household. This differs from the traditional AFDC program in which a family can continue to receive cash benefits as long as there is a child under the age of 18 (or in some cases 19) years in the household. When the maximum number of months of cash assistance has been received in Pathways, adult recipients will be required to participate in the Community Service program in order to continue receiving cash assistance for themselves. However, there are no time limits on benefits for dependent children, nor are dependent children required to perform community service work in order to receive benefits.

The FAIM project is being implemented gradually beginning February 1, 1996 when FAIM will be introduced in a few counties. By 1997, FAIM will be implemented in every county in the State. However, according to the terms of the federal waivers under which FAIM is being operated, control groups must be maintained in order to evaluate the success of the new programs. Therefore the department will continue to provide AFDC, medicaid and food stamps to some families under the current policies and requirements.

The adoption of new rules is necessary to authorize the establishment of the three components of FAIM, namely the Job Supplement program, Pathways program and Community Service program and to specify new requirements for eligibility and participation, time limits and exemptions from time limits, medical coverage for persons over 21 and a number of other matters necessary to implement the FAIM project. The department

also must keep its current AFDC, medicaid and food stamp rules to govern the control group receiving benefits under the traditional programs. Some amendments to the current rules are also necessary to add definitions and terminology pertaining to FAIM.

It should be noted that the department is not adopting detailed rules at this time concerning requirements for participation in the Community Service program, because no one will be participating in that program until their time limited benefits in the Pathways program have been used. This will not occur until 18 months after the commencement of the FAIM project, since adults in two parent families can receive benefits in Pathways for 18 months.

The amendment of several medicaid rules is necessary to authorize certain policy changes relating to medicaid eligibility requirements and coverage under FAIM. The amendment of ARM 46.12.501 is necessary to specify that recipients aged 21 or older (except pregnant women) will be covered by basic medicaid and to specify which services are covered and non-covered under basic medicaid. ARM 46.12.3204 relating to relative responsibility (that is, which relatives' income and resources will be considered in determining the financial eligibility of an individual for medicaid) must be amended to provide that the income and resources of all members of the assistance unit (that is, all persons residing in the same household who are related by blood, marriage, or adoption), including stepparents, siblings, stepsiblings and half siblings, will now be used to determine eligibility. In the past, only the income and resources of natural and adoptive parents was considered, in keeping with requirements of federal law. However, this limitation has been waived in the FAIM project and the income and resources of all members of the household will now be counted in full, as provided in Rule VIII. All members of the household will also receive assistance (cash assistance for their own needs as well as Medicaid coverage), as further provided in Rule VIII.

Additionally, ARM 46.12.3401 must be amended to specify that recipients of AFDC in the FAIM project are covered by medicaid, to specify that persons who are not receiving AFDC cash assistance but are receiving other benefits such as child care in the Job Supplement component of FAIM are deemed to be receiving AFDC and hence are covered by medicaid, and to specify that the resource limit for some AFDC-related coverage groups such as pregnant women and the "poverty child" group will now be \$3,000. ARM 46.12.3805 is also being amended to change the resource limit for medically needy assistance, which now begins at \$2,000 for a household of one and increases for larger households to \$3,000. The purpose of adopting the \$3,000 resource limit is to have a standard resource limit for the AFDC, Food Stamps and Medicaid programs under FAIM. This is less confusing for both recipients and employees determining

eligibility than the different resource limits for each program which exist in the current or traditional AFDC, Food Stamp and Medicaid programs. Under FAIM the resource limit for AFDC, food stamps and medicaid will be \$3,000.

Finally, ARM 46.12.4805 and 46.12.4806 pertaining to enrollment in health maintenance organizations (HMOs) must be amended to provide that FAIM participants over the age of 21 who are not pregnant must enroll in an HMO if one is available and must enroll in the department's managed care program, Passport to Health, if an HMO is not available.

The FAIM project will make significant changes in the department's employment and training programs. For recipients of AFDC, a new "FAIM" job opportunity and basic skills (JOBS) program is now being created in addition to the traditional JOBS program which will continue to serve the control group of AFDC recipients and will be known as "Control JOBS." Additionally, another program, to be known as "FAIM Employment and Training" is being established.

However, the adoption of new rules and the amendment of the current JOBS rules necessary to implement these changes is addressed in a separate rule notice, MAR Notice No. 37-7.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than January 4, 1996.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State November 27, 1995.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of Rules I through	)	THE PROPOSED ADOPTION AND
XL and the amendment of	)	THE AMENDMENT OF RULES
rules 46.10.801, 46.10.803,)	
46.10.805, 46.10.808,)	
46.10.809, 46.10.810,)	
46.10.811, 46.10.823,)	
46.10.825, 46.10.833 and)	
46.10.835 pertaining to the)	
traditional JOBS program,)	
the FAIM JOBS program and)	
FAIM employment and training)	
)	

TO: All Interested Persons

1. On January 3, 1996, at 3:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rules I through XL and the amendment of rules 46.10.801, 46.10.803, 46.10.805, 46.10.808, 46.10.809, 46.10.810, 46.10.811, 46.10.823, 46.10.825, 46.10.833 and 46.10.835 pertaining to the traditional JOBS program, the FAIM JOBS program and FAIM employment and training.

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 December 22, 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 adopted provides as follows:

[RULE I] FAIM JOBS PROGRAM: PURPOSE (1) The rules in this subchapter govern the job opportunity and basic skills (JOBS) program for recipients of aid to families with dependent children who are participating in the families achieving independence in Montana (FAIM) project. The purpose of the FAIM JOBS program is to provide education, training, work activities and support services to assist participants in becoming economically self-sufficient.

(2) The FAIM JOBS program shall be governed by the regulations of the administration of children and families of the U.S. department of health and human services pertaining to the JOBS program contained in 45 CFR, part 250, except as the rules in this chapter make specific provisions which are

contrary to the federal regulations. The department hereby adopts and incorporates by reference 45 CFR, part 250 as amended through October 1, 1995. A copy of 45 CFR, part 250 as amended through October 1, 1995 may be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 111 N. Sanders, P.O. Box 4120, Helena, MT 59604-4210.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE II] FAIM JOBS PROGRAM: DEFINITIONS (1) The definitions contained in ARM 46.10.110 and 46.10.803 apply to this chapter unless a different definition is specified in this rule, in which case the definition in this rule shall take precedence.

(2) The following definitions apply to this chapter:

(a) "Dependent child" means a person under the age of 18 years or older than 18 but less than 19 years if the person is a full-time student in a secondary school expected to obtain a secondary school diploma or its equivalent before the month of the person's 19th birthday, who lives with a specified caretaker relative as defined in ARM 46.10.302.

(b) "FAIM coordinator" means the employee of the county office of human services who will determine eligibility for pathways, help clients develop the family investment agreement, monitor those agreements and make referrals to other resources as appropriate.

(c) "Family investment agreement (FIA)" means the agreement between the pathways participant and the department which details activities in which members of the assistance unit must participate to achieve self-sufficiency.

(d) "Initial assessment" means a process to determine a person's employment potential and service needs.

(e) "Pathways" means the component of FAIM in which adult recipients receive assistance for a limited period of time, not to exceed 24 months for single parent families and 18 months for two parent families, while participating in activities to achieve self-sufficiency under a family investment agreement.

(f) "Primary wage earner (PWE)" means the natural or adoptive parent in a two parent household who earned the most gross income during the 2 years immediately preceding the month of application.

(g) "Recipient" means a person who is eligible for and receiving assistance in pathways, including persons who are eligible for pathways but do not receive a check because the amount of the grant is less than \$10 but more than zero because of the receipt of a periodic extra paycheck, and persons participating in work supplementation whose grants are temporarily suspended.

(h) "Teen parent" means a custodial parent aged 13 through 19.

(i) "Work activities" means job search, on-the-job training, work supplementation, alternative work experience and unsubsidized employment.

AUTH: Sec. 53-4-601 and 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE III] FAIM JOBS PROGRAM: EXEMPT STATUS (1) All persons who are participating in the pathways component of the FAIM project are required to participate in the JOBS program if the county determines by means of a standardized screening procedure that JOBS participation is appropriate, unless:

(a) the person is specifically exempted as provided in (3);

(b) the department determines that it does not have the resources to provide the services of the JOBS program to the person; or

(c) the JOBS program is not available in the county where the person resides.

(2) The department, in collaboration with the participant, will determine which component or components of the JOBS program are most appropriate for the pathways AFDC recipient.

(3) Individuals will be exempt from participation in FAIM JOBS as specified in ARM 46.10.805(3)(a) through (3)(m), subject to the following provisions:

(a) In a two parent household, the family, in collaboration with the FAIM coordinator may decide which parent will be exempted to care for a child under the age of 1 year, except as provided in (3)(b). This decision cannot be changed more often than once every 6 months and must be documented in the family investment agreement (FIA).

(b) If one parent in a two parent household is exempt from participation because of pregnancy, incapacity or because that parent is caring for an incapacitated household member as provided in ARM 46.10.805(3)(e), (3)(f) and (3)(h) or is currently sanctioned pursuant to [Rule XX] for failure to participate, only the parent who is already exempt or under sanction will be exempted to care for the child, unless a licensed physician, nurse midwife, psychologist, licensed professional counselor or licensed social worker verifies that said parent is physically or mentally unable to care for the child.

(4) The provisions of ARM 46.10.805(4) through (10) apply to individuals participating in FAIM, subject to the following provisions:

(a) For two parent households, the primary wage earner (PWE) must participate unless specifically exempt under ARM 46.10.805(3).

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE IV] FAIM JOBS PROGRAM: JOBS ACTIVITIES

(1) Participants in the FAIM JOBS program may participate in the activities specified in ARM 46.10.807(1)(a) through (1)(i), in accordance with their employability plan and subject to the approval of their case manager, except as provided in (3) of this rule.

(2) The FAIM coordinator may refer pathways participants into one single JOBS component for the duration of a class or training if there is space in that specific class or training. Pathways participants entering JOBS in this manner will be enrolled for the duration of that class or training only.

(3) Participants in two parent households of the JOBS program may participate in the activities specified in ARM 46.10.807(2)(a) through (2)(h)(ii), in accordance with their employability plan and subject to the approval of their case manager.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE V] FAIM JOBS PROGRAM: ALTERNATIVE WORK EXPERIENCE PROGRAM (AWEP) (1) The provisions pertaining to the alternative work experience program (AWEP) contained in ARM 46.10.808 apply to participants in FAIM JOBS.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE VI] FAIM JOBS PROGRAM: PARTICIPATION REQUIREMENTS FOR EDUCATIONAL ACTIVITIES (1) A teen parent who is 16 years or older, but under 20 who has not completed high school or its equivalent or any other mandatory student referred to JOBS, must participate in educational activities in accordance with the requirements of ARM 46.10.809 for caretaker relatives.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE VII] FAIM JOBS PROGRAM: JOBS CHILD CARE (1) In accordance with the requirements of ARM 46.10.810 regarding child care, the department must provide child care assistance to pathways participants who are enrolled in the FAIM JOBS program and need child care in order to participate in approved activities of the program, including training.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE VIII] FAIM JOBS PROGRAM: TWO PARENT HOUSEHOLD PARTICIPATION AND OTHER REQUIREMENTS (1) The FAIM JOBS participation requirements for two parent households participating in FAIM are the same as the requirements for JOBS-UP participation for AFDC-UP households contained in ARM 46.10.811, except that the following provisions govern two parent FAIM households:

(a) Both parents shall be referred by the county. Both may be served by the FAIM JOBS contractor or the second parent may be referred back to the FAIM coordinator for other FIA activities which may include child care during the hours the primary wage earner (PWE) participates in JOBS.

(b) Hours of participation required of a primary wage earner are as follows:

(i) a total of 30 hours per week in all JOBS counties if child care is a mandated FIA activity for the second parent for at least 10 of those hours. If the second parent is not required by the FIA to provide child care for ten or more hours, then participation is limited to 20 hours.

(ii) of the total hours required in ARM 46.10.811(6) (a), a minimum of 16 hours per week must be spent by at least one parent in the household in the alternative work experience program, on-the-job training employment, Job Training Partnership Act work experience or limited internship or unsubsidized employment or a combination of the above.

(A) A parent under the age of 25 who has not completed high school or an equivalent course of education may, by the JOBS case manager's discretion, substitute educational activities for part or all of the 16 hour requirement, so long as the parent is making satisfactory progress in the educational activity. They are still required to participate for the full 20 or 30 hours, whichever is applicable.

(c) Participation or availability to participate in JOBS is required beginning with the date of application and continuing as long as the family is a pathways participant and JOBS is part of their FIA activities. The requirements of ARM 46.10.811(9) (a) through (9) (c) also apply.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE IX] FAIM JOBS PROGRAM: REQUIREMENTS FOR SATISFACTORY PROGRESS IN EDUCATIONAL AND WORK AND TRAINING ACTIVITIES (1) For FAIM JOBS participants engaged in educational activities, including but not limited to post-secondary education, satisfactory progress shall be determined in accordance with the provisions of ARM 46.10.813 pertaining to requirements for satisfactory progress in educational and work and training activities.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XI] FAIM JOBS PROGRAM: JOB SEARCH (1) Participants may be required to participate in individual or group job search for as long as the case manager deems necessary to gain employment.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XII] FAIM JOBS PROGRAM: ON-THE-JOB TRAINING (OJT)

(1) For FAIM JOBS participants participating in on-the-job training (OJT), the provisions of ARM 46.10.817 apply.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XIII] FAIM JOBS PROGRAM: TRAINING SERVICES--POST-SECONDARY (1) A JOBS participant may be allowed to participate in a post-secondary education program, in accordance with time limits contained in the community operating plan approved by the department for the county in which the participant resides, if the requirements of ARM 46.10.819(1)(a) through (1)(e) are satisfied. The provisions of ARM 46.10.819(2) and (2)(a) also apply to FAIM JOBS participants. Additionally, post-secondary education will be an allowed activity only if:

(a) the participant has anything less than a 4-year degree or needs to update an existing degree or meet certification requirements;

(b) child care funds are available; and

(c) the participant lives in a single parent family.

(2) The participant may have to complete or document some or all of the following in order to participate in post-secondary education:

(a) list the availability and acceptability of jobs in the area related to the requested degree;

(b) a one-on-one assessment;

(c) acceptable TABE (test of adult basic education) scores;

(d) a written essay to verify writing capabilities;

(e) the availability of financial aid;

(f) a referral from another training program;

(g) letters of personal references; and

(h) anticipated completion dates.

(3) A participant attending a FAIM JOBS approved post-secondary education program may be eligible for supportive services deemed necessary for participation, including child care, in accordance with [Rule XIII].

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XIII] FAIM JOBS PROGRAM: SUPPORTIVE SERVICES AND ONE TIME WORK-RELATED EXPENSES AVAILABILITY (1) Supportive services and one time work-related expenses will be provided to FAIM JOBS participants in accordance with the requirements and specifications contained in ARM 46.10.825.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

[RULE XIV] FAIM JOBS PROGRAM: AVAILABILITY OF SERVICES AFTER LOSS OF PATHWAYS AFDC ELIGIBILITY (1) A FAIM JOBS participant who loses eligibility for the pathways program for any reason other than being sanctioned pursuant to [Rule XX] may with the consent of the case manager in collaboration with the FAIM coordinator, receive case management activities and supportive services for up to 90 days from the date AFDC closes.

(2) A JOBS participant who is participating in on-the-job training funded by JOBS or JTPA and loses eligibility for the pathways program may receive case management activities, supportive services and child care until the participant completes the training described in the on-the-job contract, even if the time required to complete the training exceeds 90 days after the date the participant's AFDC case is closed, if the case manager and FAIM coordinator concur.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613 MCA

[RULE XV] FAIM JOBS PROGRAM: LEAD AGENCY (1) The provisions of ARM 46.10.829 concerning lead agencies apply to the FAIM JOBS program.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

[RULE XVII] FAIM JOBS PROGRAM: RESPONSIBILITIES OF LEAD AGENCY (1) The lead agency must conduct an initial assessment of employability and assist the participant in a quest toward immediate employment. The initial assessment may be conducted through various methods such as interview, testing, counseling and self-assessment instruments. Part of the initial assessment of a two parent household consists of the determination of the PWE. The initial assessment must be based on the factors specified in ARM 46.10.831(2)(a) through (2)(c).

(2) The lead agency must, with each participant, enter into the mandatory JOBS contract developed by the department. The person must be informed of the purpose of the contract and the participant's obligations under the contract.

(3) An employability plan must be developed for each participant.

(4) The lead agency must coordinate and arrange for services that will assure effective participation of participants in the program and in FAIM. This includes possible AWEF site development and consultation and concurrences procedures for county pathways participants not in JOBS.

(5) The lead agency will number among its FAIM JOBS participants those designated participants under the food stamp work program and will report on these clients both under JOBS and food stamp requirements.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,

MCA

[RULE XVII] FAIM JOBS PROGRAM: PARTICIPANTS EMPLOYABILITY PLAN AND JOBS CONTRACT (1) The employment plan consists of assessment results and planning strategies, the employment goal or goals and the components designed to place the participant in employment. The employability plan must meet the requirements of ARM 46.10.833(1)(a) through (1)(f) and must also contain assessment information.

(2) The FAIM JOBS contract is the agreement between the department and the participant and specifies the rights and responsibilities of each party. The JOBS contract must contain the information specified in ARM 46.10.833(2)(a) through (2)(e).

(3) The employability plan is not a contract between the participant and the department. However, failure to comply with the employability plan without good cause will result in the participant being sanctioned under [Rule XX].

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,

MCA

[RULE XVIII] FAIM JOBS PROGRAM: CASE MANAGEMENT (1) A case manager is available to each FAIM JOBS participant. Case management will be provided in accordance with the provisions of ARM 46.10.835 (2)(a) through (2)(h).

(2) Case management may be provided for up to 90 days after termination from the pathways program.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,

MCA

[RULE XIX] FAIM JOBS PROGRAM: GOOD CAUSE (1) A FAIM JOBS participant may have good cause for failure to participate in the program. Good cause includes any of the circumstances specified in ARM 46.10.837(1)(a) through (1)(d)(iii).

(2) A FAIM JOBS participant has good cause for failure to accept employment due to, but not limited to, any of the

circumstances specified in ARM 46.10.837(2)(a) through (2)(c) (ii)(E). These circumstances include the fact that:

- (a) the wage is less than the federal minimum wage; and
- (b) child care is necessary and is not available.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XX] FAIM JOBS PROGRAM: SANCTIONS (1) After referral to the JOBS program, a pathways recipient who is required to participate in the FAIM JOBS program and who, without good cause, refuses or fails to participate in the program or refuses or fails to accept or maintain employment will lose, as provided for in (3), their portion of the pathways grant. The sanctions will be imposed for failure to participate in any aspects of the program including orientation, assessment, employability, plan development, case management and participation in assigned components.

(2) Sanctions imposed for failure to comply with FAIM requirements other than JOBS participation, including FIA activities other than JOBS, may affect a participant's JOBS participation. If this occurs, the person may be carried over in JOBS for 90 days if the case manager and FAIM coordinator agree on this action.

(3) The sanctions imposed for failure to participate without good cause are as provided in [Rule XX as proposed in MAR Notice No. 37-6] pertaining to sanctions in the FAIM project.

(4) During the sanction period, the department, for the purposes of calculating a household's pathways grant will not take into account the needs of the following persons:

- (a) the person, including an only dependent child, who failed to participate; or

- (b) the second parent in a two parent household if that parent is not required to participate. The second parent must be given the option to participate or declare the intent to participate if slots are unavailable.

(5) An automatic referral to child protection services will occur when a sanction is imposed.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XXII] FAIM JOBS PROGRAM: CONCILIATION (1) When there is a dispute between the JOBS operator and a participant regarding a required JOBS activity, conciliation must be provided to resolve the dispute. A matter may not be referred by a provider to the department for consideration and pursuit of a sanction unless that matter cannot be resolved through conciliation.

(2) The procedures and requirements specified in ARM 46.10.841(2)(a) through (2)(1)(iii) apply in cases where the

participant belongs to a single parent household rather than a two parent household.

(3) The same conciliation procedures and requirements set forth in ARM 46.10.841(2)(a) through (2)(1)(ii) apply to pathways two parent households, except that the time for the JOBS operator and the participant to meet and attempt to reach an agreement shall not exceed 10 days from the date of the request for conciliation.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XXII] FAIM JOBS PROGRAM: FAIR HEARING PROCEDURE (1) A recipient participating in any work-related program or activity under the JOBS program, including on-the-job training and alternative work experience programs, is entitled to a fair hearing and appeal provided in ARM 46.2.201 et seq. with respect to a sanction that has not been resolved by the conciliation process provided in [Rule XXI] and with respect to on-the-job working conditions.

(2) Benefits may be continued as provided for in ARM 46.2.206 pending the fair hearing decision.

(3) A recipient who is dissatisfied with the decision of the fair hearing officer with regard to any of the matters set forth in (1) may appeal as specified in ARM 46.10.843(3) through (3)(b).

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XXIII] FAIM JOBS PROGRAM: WORK SUPPLEMENTATION PROGRAM, CONDUCT OF PROGRAM (1) Requirements for the FAIM work supplementation program are as specified in ARM 46.10.847.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XXIV] FAIM EMPLOYMENT AND TRAINING: PURPOSE

(1) These rules govern FAIM employment and training for persons who are recipients of the pathways or community services programs of the families achieving independence in Montana (FAIM) project.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XXV] FAIM EMPLOYMENT AND TRAINING: DEFINITIONS

(1) The definitions contained in ARM 46.10.110, 46.10.803 and [Rule III, as proposed to be adopted in MAR

notice no. 37-6], apply to this chapter unless a different definition is specified in this rule, in which case the definition in this rule shall take precedence.

(a) "Case management for FIA" means the process of formulating and developing a family investment agreement (FIA) which describes an employability plan for a participant.

(b) "Custodial parent" means a caretaker relative.

(c) "Pathways employment related payment (PERP)" is a one time payment made to families losing eligibility for pathways benefits because of increased income.

(d) "Recipient" means a person who is eligible for and receiving assistance in the pathways or community services components of FAIM, including persons who are eligible for pathways or community services benefits but do not receive a grant because the amount is less than \$10 but more than zero and persons whose grants are temporarily suspended because of receipt of a periodic extra pay check.

(e) "Teen parent" means a custodial parent aged 13 through 19.

(f) "Time clock" means the 18-month or 24-month period of eligibility for adult recipients in the pathways program.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XXVII] FAIM EMPLOYMENT AND TRAINING: ELIGIBILITY

(1) A person who is eligible for pathways and is not participating in FAIM JOBS is required to participate in FAIM employment and training as provided in these rules. No one is exempt. All adults and teen parents must participate in FAIM employment and training or FAIM JOBS activities as indicated in the FIA.

(2) In a two parent household, both parents will be referred to the FAIM JOBS program. One parent may be referred back for FAIM employment and training activities.

(3) Placement of persons into FAIM employment and training services will be based upon the following factors:

(a) the suitability of the available services for meeting the person's needs as identified in the profile model or by the FAIM coordinator; and

(b) the availability of the necessary services.

(4) FAIM employment and training activities may differ from community to community based on available resources. Participants may be placed in any activities available in their home community.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XXVII] FAIM EMPLOYMENT AND TRAINING ACTIVITIES

(1) Participants in the FAIM employment and training program may, in accordance with their FIA and subject to

availability in their community, participate in the activities specified in ARM 46.10.807(1)(a) through (1)(g) and also in the following activities:

(a) post-secondary training or education in the pathways program and in the community services program (CSP) if post-secondary is an acceptable CSP activity in the community where the participant resides; and

(b) volunteer activities designated appropriate in the FIA.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XXVIII] FAIM EMPLOYMENT AND TRAINING: ALTERNATIVE WORK EXPERIENCE PROGRAM (AWEP) (1) The provisions pertaining to the alternative work experience program (AWEP) contained in ARM 46.10.808 apply to participants in FAIM employment and training.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XXIX] FAIM EMPLOYMENT AND TRAINING: PARTICIPATION REQUIREMENTS FOR EDUCATIONAL ACTIVITIES (1) A custodial parent who is between the ages of 13 and 19 years who has not completed high school or its equivalent must participate in FIA activities which may include educational activities such as pursuit of a high school diploma or its equivalent.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XXX] FAIM EMPLOYMENT AND TRAINING: CHILD CARE (1) The department must provide child care assistance to pathways and CSP participants who are participating in the FAIM employment and training program and need child care in order to participate in approved activities of the program, including training. Child care assistance can be in the form of alternative child care resources unique to each community. The requirements and specifications contained in ARM 46.10.810(1)(a) through (1)(b)(ii)(B) apply to FAIM employment and training child care.

(2) The department shall make child care payments in accordance with the requirements and payment amounts set forth in ARM 46.10.404.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XXXI] FAIM EMPLOYMENT AND TRAINING: TWO PARENT FAMILIES PARTICIPATION AND OTHER REQUIREMENTS (1) Once a two parent family moves from pathways into the community services program, they must begin to participate in FAIM employment and training to keep the adult portions of the grant.

(2) The two parent family shall have access to all the activities set forth in ARM 46.10.807(1)(a) through (1)(h), but not post-secondary training or education.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XXXII] FAIM EMPLOYMENT AND TRAINING: POST-SECONDARY PARTICIPATION CRITERIA (1) Post-secondary education may be an allowable activity for FAIM employment and training if it is an approved part of the community operating plan for the county in which the participant resides and if:

(a) the participant has anything less than a 4-year degree or needs to update an existing degree or meet certification requirements;

(b) child care funds are available; and

(c) the requirements of ARM 46.10.819(1)(a), (1)(c), (1)(d) and (1)(e) are met.

(2) The cost of post-secondary education including tuition, books and fees will not be paid by the department.

(3) The participant may have to complete or document some or all of the following in order to participate in post-secondary activities:

(a) the availability and acceptability of jobs in the area related to the requested degree;

(b) a one-on-one assessment;

(c) acceptable TABE (test of adult basic education) scores.

(d) a written essay to verify writing capabilities;

(e) the availability of financial aid;

(f) a referral from another training program;

(g) letters of personal references; and

(h) anticipated completion dates.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XXXIII] FAIM EMPLOYMENT AND TRAINING: REQUIREMENTS FOR SATISFACTORY PROGRESS IN EDUCATIONAL, WORK AND TRAINING ACTIVITIES (1) Satisfactory progress in educational activities and post-secondary education in FAIM employment and training is as specified in ARM 46.10.813.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XXXIV] FAIM EMPLOYMENT AND TRAINING: JOB SEARCH

(1) Participants may be required to participate in individual or group job search for the number of hours listed in the family investment agreement.

(2) Job search may also be required in conjunction with some other education, training or employment activity which is designed to enhance the participant's employment prospects.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613 MCA

[RULE XXXV] FAIM EMPLOYMENT AND TRAINING: ON-THE-JOB TRAINING (OJT) (1) The requirements of ARM 46.10.817 apply to on-the-job training in the FAIM employment and training program.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

[RULE XXXVI] FAIM EMPLOYMENT AND TRAINING: SUPPORTIVE SERVICES AND ONE TIME PATHWAYS EMPLOYMENT RELATED EXPENSES AVAILABILITY (1) Supportive services for child care and transportation shall be available if they are determined necessary for a person to participate in FAIM employment and training.

(a) Child care for FAIM employment and training activities may consist of state-paid voucher child care or alternative child care developed in each community.

(b) Reimbursement for transportation may be provided in the pathways program. Reimbursement for transportation will not be provided in the community services program.

(2) One time pathways employment-related payments (PERP) may be made for expenses determined necessary to accept or maintain employment which may include:

(a) transportation costs;
(b) liability insurance for necessary private transportation;

(c) auto repair for necessary private transportation;

(d) tools for employment;

(e) clothing, personal grooming and hygiene;

(f) fees, transcripts, applications, birth certificates, GED or equivalency fees;

(g) medical physicals, prescriptions, eye glasses and immediate dental care; and

(h) items necessary to search for or obtain employment.

(3) Participants accepting a pathways employment related payment will be ineligible for a pathways or community services monetary grant for a period of 2 months for each month's worth of benefits received.

(4) Supportive services and pathways employment-related payments may be provided as appropriate by the FIA coordinator or service provider.

(5) Provision of supportive services and pathways employment - related payments is contingent upon the availability of funding.

(6) The provision of supportive services and pathways employment-related payments will be through voucher payments.

(7) Supportive services and pathways employment-related payments must be referenced in the FIA and be consistent with employment goals.

(8) Supportive services and pathways employment-related payments shall not be made if the participant has similar services available through other programs.

AUTH: Sec. 53-4-212 MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613 MCA

[RULE XXXVIII] FAIM EMPLOYMENT AND TRAINING: FAMILY INVESTMENT AGREEMENT (1) The family investment agreement (FIA) will outline the steps the person or family must take to reach self-sufficiency. It must include the employment goal or goals and the components designed to place the participant in employment. The FIA must:

- (a) describe services to be provided;
- (b) describe the activities that will be undertaken by the participant to achieve the employment goal;
- (c) describe any needs of the assistance unit that might be met by demonstration JOBS; and
- (d) be re-evaluated at least quarterly or more often if a significant change has occurred in household circumstances.

(2) The FIA is the agreement between the department and the participant and specifies the rights and responsibilities of each party. The FIA should specify the following:

- (a) the length of participation in the program;
- (b) the hours of participation per week;
- (c) the education, training and employment activities and the support services that the participant is to participate in;
- (d) the responsibilities of each of the parties; and
- (e) the manner of assessment.

(3) The FIA is not a contract between the participant and the department. However, failure to comply with the FIA without good cause will result in the participant being sanctioned under [Rule XXXIX].

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

[RULE XXXVIII] FAIM EMPLOYMENT AND TRAINING: GOOD CAUSE (1) A FAIM employment and training participant may have good cause for failure to participate in the program. Good cause includes, but is not limited to, any of the circumstances specified in ARM 46.10.837(1)(a) through (1)(d)(iii).

(2) A FAIM employment and training participant has good cause for failure to accept employment under the auspices of the program due to, but not limited to, any of the circumstances specified in ARM 46.10.837(2)(a) through (2)(c)(ii)(E).

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XXXIX] FAIM EMPLOYMENT AND TRAINING: SANCTIONS

(1) After pathways or community services program (CSP) payments have begun, a recipient who is required to participate in FAIM employment and training and who, without good cause, refuses or fails to participate in the program or refuses or fails to accept or maintain employment will have his or her needs removed from the grant. The sanctioned recipient's income and resources will continue to be considered for financial eligibility for the family. The sanctions will be imposed for failure to participate in any aspects of the program including orientation, assessment, family investment agreement completion and participation in assigned components.

(2) The sanctions imposed for failure to participate without good cause are as provided in [Rule XX] pertaining to sanctions in the FAIM project.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

[RULE XL] FAIM EMPLOYMENT AND TRAINING: FAIR HEARING PROCEDURE (1) A recipient participating in any work-related program or activity under FAIM employment and training, including on-the-job training and alternative work experience programs, is entitled to a fair hearing and appeal provided in ARM 46.2.201 et seq. with respect to on-the-job working conditions.

(2) Benefits may be continued as provided in ARM 46.2.206 pending the fair hearing decision.

(3) A recipient who is dissatisfied with the decision of the fair hearing officer with regard to any of the matters set forth in (1) may appeal as specified in ARM 46.10.843(3) through (3)(b).

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613,
MCA

46.10.801 CONTROL JOBS: PURPOSE (1) remains the same.

(2) The rules in this subchapter shall govern the control JOBS program, that is, the JOBS program operating under traditional requirements as opposed to the FAIM JOBS program or the demonstration JOBS program.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-701,
53-4-703 and 53-4-705, MCA

46.10.803 CONTROL JOBS: DEFINITIONS (1) through (6) remain the same.

(7) "Case management" means the process for formulating and ~~developing~~ implementing an employability plan for a participant.

(8) remains the same.

(9) "Conciliation" means the informal process provided for in ARM 46.10.841, for resolving a participant's or agency's complaint, grievance, or dispute.

(10) "Department" means the department of ~~social and rehabilitation services~~ public health and human services.

(11) through (14) remain the same.

(15) "FAIM" means the families achieving independence in Montana project.

(16) through (21) remain the same in text but are renumbered (17) through (22).

~~(22) (23)~~ "Job readiness activities" means instruction in job seeking and job retention skills, career definition, work ethic and attitudes, and occupational and labor market information.

(23) through (28) remain the same in text but are renumbered (24) through (29).

(30) "Mandatory student" means an AFDC teen, on their own or in their parent's household, who has dropped out of school and is required to participate in the JOBS program.

(29) through (36) remain the same in text but are renumbered (31) through (38).

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-702, 53-4-703, 53-4-704, 53-4-705, 53-4-706, 53-4-707, 53-4-708, 53-4-715, 53-4-716, 53-4-717 and 53-4-718, MCA

46.10.805 CONTROL JOBS: ELIGIBILITY, EXEMPT STATUS (1) through (1)(c) remain the same.

~~(2) The alternative work experience program is a component of the JOBS program designed to improve the employability of participants by assigning the participant to work in a non-profit organization. The department, who finally decides, will determine which component or components of the JOBS program are most appropriate for the AFDC recipient.~~

(3) through (3)(b) remain the same.

(c) a person age 16 to 18, who is enrolled and regularly attending elementary, secondary, vocational, or technical school as a full-time student as defined by the institution, Persons enrolled in home school curricula are not exempt, but such activities in a county registered home school program will count as an acceptable JOBS activity.

(3) (d) remains the same.

(e) a person who is temporarily incapacitated, verified in writing by a licensed physician or psychologist, which, by itself or in conjunction with age, prevents the person from engaging in employment or training for a continuous period of at least 30 days;

(3) (f) through (10) remain the same.

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

IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-706, 53-4-707, 53-4-708, 53-4-715, 53-4-717 and 53-4-720, MCA

46.10.808 CONTROL JOBS: ALTERNATIVE WORK EXPERIENCE PROGRAM (AWEP) (1) The alternative work experience program (AWEP) is a component of the JOBS program designed to improve the employability of participants by assigning a participant to work in a nonprofit organization or public agency or in a for profit private agency which provides a public service. The specific purposes of AWEP are to:

(1) (a) through (3) (e) remain the same.

~~(4) Participants will be placed only in local government or private non-profit organizations.~~

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

IMP: Sec. 53-2-201, 53-4-703 and 53-4-705, MCA

46.10.809 CONTROL JOBS: PARTICIPATION REQUIREMENTS FOR EDUCATIONAL ACTIVITIES (1) A caretaker relative who is 16 years or older but under 20 who has not completed high school or its equivalent or any other mandatory student must participate in educational activities in pursuit of a high school diploma or its equivalent if the case manager determines that such educational activities are appropriate.

(a) A caretaker relative, 16 or 17 years of age or any other mandatory student, may be exempted from high school or equivalent education attendance if the determination is based on an educational assessment and if a provision is made for the person to participate in another educational activity or work activity.

(b) A caretaker relative, age 16 through 19, caring for a child under the age of 3 1/2 is exempt from educational activities unless full-time child care is available.

(c) A caretaker relative under age 20 or any other mandatory student not exempted from educational activities may be required to participate in training or work activities in lieu of educational activities if the person is not making satisfactory progress in educational activities or an educational assessment determines educational activities are not appropriate for the person.

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

(4) Persons aged 16 through 18, enrolled in a county registered home school and counting these activities as JOBS

activities, are required to be monitored by the JOBS case manager for determination of satisfactory progress.

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

IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-705, 53-4-708, 53-4-715 and 53-4-720, MCA

46.10.810 CONTROL JOBS; CHILD CARE (1) Subject to the requirements of ~~subsection~~ (2) of this rule, the department must provide child care assistance to AFDC recipients who are enrolled in the JOBS program, or a tribal JOBS program or the families achieving independence in Montana employment and training demonstration project and need child care in order to participate in approved activities of the program, including training.

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

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

IMP: Sec. 53-4-701, 53-4-703 and 53-4-716, MCA

46.10.811 CONTROL JOBS: UNEMPLOYED PARENTS TRACK PARTICIPATION AND OTHER REQUIREMENTS (1) In an unemployed parent assistance unit, each parent as a part of the AFDC pay for performance program, the primary wage earner (PWE) applicant must attend JOBS-UP orientation, assessment, and employability planning as part of the non-financial criteria for eligibility. A mandatory spouse must attend these activities either at time of application or once AFDC has been approved unless that parent is specifically exempt under ARM 46.10.805. Failure to attend orientation or assessment by a parent who is not exempt will result in the sanction of that parent as provided in ARM 46.10.839.

(2) through (6) remain the same.

(a) a total of ~~40~~ 30 hours per week in ~~a county having a complete JOBS program or 20 hours per week in a county having a minimal JOBS program~~ all JOBS counties; and

(b) of the total hours required in ~~subsection~~ (6)(a), a minimum of 16 hours per week must be spent by at least one parent in the AFDC-UP household in the alternative work experience program, on-the-job training employment, ~~and/or~~ Job Training Partnership Act work experience or limited internship or unsubsidized employment or a combination of the above.

(i) A parent under the age of 25 who has not completed high school or an equivalent course of education may, in by the JOBS case manager's discretion, substitute educational activities for part or all of the 16 hour requirement, so long as the parent is making satisfactory progress in the educational activity. They are still required to participate for the full 30 hours.

(7) through (9) remain the same.

(a) The household's application for AFDC-UP will be denied if either parent the primary wage earner or the non-exempt spouse who is required to participate in the JOBS

program fails to satisfactorily participate without good cause.

(b) A recipient household or a household losing an exemption and transferring or moving to a new JOBS county must immediately enroll in that county's JOBS program to meet application or receipt of benefit requirements.

(9) (b) remains the same in text but is renumbered (9) (c).

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

IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-705, 53-4-706, 53-4-707 and 53-4-720, MCA

46.10.823 CONTROL JOBS: SELF-INITIATED EDUCATION OR TRAINING (1) through (2) (a) (i) (A) remain the same.

(B) If a slot is not available at the time the department completes the assessment, the person will be put on a waiting list until a slot is available. The person's position on the waiting list will be based on the priorities set forth in subsections (2) (a) (ii) (A) through (2) (a) (iii). The waiting list will be revised as to priorities each month day. Each year a new waiting list will be established.

(2) (a) (ii) through (2) (d) remain the same.

(3) Child care will be provided for a person participating in a self-initiated program approved by the department:

(a) until the end of the person's current school year as defined by the institution the person is attending or until the person is no longer eligible for AFDC, or comes under the FAIM project rules, whichever occurs first; and

(3) (b) remains the same.

AUTH: Sec. 53-4-212, 53-4-703, 53-4-719 and 53-4-720, MCA

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

46.10.825 CONTROL JOBS: SUPPORTIVE SERVICES AND ONE TIME WORK-RELATED EXPENSES AVAILABILITY (1) through (1) (a) (i) remain the same.

(A) the cost of public transportation or, if unavailable, reimbursement for private vehicle at 25 cents per mile, up to ~~\$100.00~~ \$75.00 per week;

(1) (a) (i) (B) through (4) remain the same.

(5) The provision of supportive services and one time work-related expenses will be through voucher payments, cash reimbursement or purchase of service.

(6) through (8) remain the same.

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

IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-715, 53-4-716 and 53-4-720, MCA

46.10.833 CONTROL JOBS: PARTICIPANT'S EMPLOYABILITY PLAN AND JOBS CONTRACT (1) The employment plan consists of assessment results and planning strategies, the employment

goal or goals and the components designed to place the participant in employment. The employability plan must:

(a) contain assessment information:

(1)(a) through (1)(f) remain the same in text but are renumbered (1)(b) through (1)(g). (2) remains the same.

(a) that participation is required and the length of participation in the program;

(b) program activities and hours of participation for each activity the hours of participation per week;

(c) the education, training and employment activities and the that support services are available that the participant is to participate in;

(2)(d) remains the same.

(e) the manner of assessment the rights of the participant.

(3) remains the same.

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

IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-715 and 53-4-720, MCA

46.10.835 CONTROL JOBS: CASE MANAGEMENT (1) A case manager is may be available to each participant.

(2) through (3) remain the same.

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

IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-715 and 53-4-720, MCA

3. In 1995 the 54th Montana Legislature authorized the Department of Health and Human Services in Senate Bill 209 (53-4-601 et seq., MCA) to operate a demonstration "welfare reform" project known as Families Achieving Independence in Montana (FAIM). This project will promote self-sufficiency among participants by providing training and other employment related activities while simultaneously providing incentives to move toward economic independence in the form of time limits on cash assistance for adults and increased earned income disregards which allow participants to retain more of their income and still receive cash assistance. One significant feature of the Pathways component of FAIM (described below) is the Family Investment Agreement which details the obligations and activities required to be performed by each member of the FAIM household to work toward the goal of self-sufficiency, including but not limited to educational and training activities.

Under the FAIM project, all adults who are not exempted from time limits because of some reason which temporarily or permanently limits their ability to achieve self-sufficiency will receive cash benefits in a component known as the Pathways Program for a maximum of 24 months in a single parent household and 18 months in a two parent household. When the maximum number of months of cash assistance has been received

in Pathways, adult recipients will be required to participate in the Community Services program in order to continue receiving cash assistance for themselves. The department proposes to adopt rules governing eligibility and participation requirements for assistance under the FAIM project in a separate rule notice, MAR Notice No. 37-6.

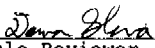
The FAIM project will make significant changes in the department's employment and training programs. A new "FAIM" job opportunity and basic skills (JOBS) program is now being created for AFDC recipients. The current "traditional" JOBS program will continue to serve the control group of AFDC recipients who are not participating in FAIM and will be known as "Control JOBS." Control JOBS is necessary because, according to the terms of the federal waivers under which the FAIM project is operating, control groups must be maintained in order to evaluate the success of the new programs. Additionally, another JOBS program, to be known as "FAIM Training and Employment" is being established in accordance with federal waiver requirements to provide structure for FAIM participants engaged in Family Investment Activities. The adoption of rules governing FAIM JOBS and FAIM Employment and Training is necessary to specify the participation requirements, exemptions from participation, services provided including child care, sanctions, and other aspects of these new programs.

Some amendments to the rules governing the JOBS program currently in effect, including the definitions section at ARM 46.10.803, are necessary to incorporate FAIM terminology. Certain amendments unrelated to FAIM are also necessary. ARM 46.10.805 is being amended to provide that persons participating in home schooling will not be exempted from JOBS participation but may be allowed to participate in home schooling as an approved JOBS activity. The amendment of ARM 46.10.808 pertaining to the Alternative Work Experience program (AWEP) is necessary to allow participants to be placed with private, for-profit agencies providing a public service as well as with non-profit organizations and public agencies. This will expand the number of potential job sites for AWEP participation. The amendment of ARM 46.10.823 pertaining to self-initiated education is necessary to permit the waiting list for self-initiated child care to be updated daily instead of monthly. Due to budgetary constraints, ARM 46.10.825 is being amended to reduce the amount that can be paid to JOBS participants for transportation from \$100 to \$75 per week. Another amendment is being made to ARM 46.10.825 to specify that supportive services and one-time employment related payments can be made by cash payment or vendor payments as well as by voucher, to conform the rule to the department's current policy as reflected in its JOBS State Plan.

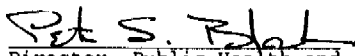
4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written

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 January 4, 1996.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.



Rule Reviewer



Director, Public Health and
Human Services

Certified to the Secretary of State November 27, 1995.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of rules 16.10.1501	)	FOR PROPOSED
through 16.10.1505,	)	AMENDMENT OF RULES
16.10.1507, 16.10.1512,)	
16.10.1518, 16.10.1519,)	
16.10.1522 through 16.10.1527)	
and 16.10.1529 pertaining to)	
swimming pool licensing)	
requirements)	

TO: All Interested Persons

1. On January 9, 1996, at 2:00 p.m., a public hearing will be held in Room C209, Side 2, of the Cogswell Building 1400 Broadway, Helena, Montana to consider the proposed amendment of rules 16.10.1501 through 16.10.1505, 16.10.1507, 16.10.1512, 16.10.1518, 16.10.1519, 16.10.1522 through 16.10.1527 and 16.10.1529 pertaining to swimming pool licensing requirements.

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 January 2, 1996, 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:

16.10.1501 PURPOSE-APPLICABILITY (1) This subchapter defines swimming pools and spas; establishes minimum standards for the construction, maintenance and operation of swimming pools and spas and associated facilities; regulates the inspection of such facilities, and provides for the enforcement of this subchapter.

(2) The intent of these rules is to assure a safe and sanitary environment in and around the public swimming pool and spa.

(3) All swimming pools or spas constructed after June 28, 1985, ~~shall must~~ be constructed in accordance with the requirements of this subchapter. Any swimming pool or spa in existence and in operation as of June 28, 1985, ~~shall must comply with the requirements of ARM 16.10.1513 and must~~, as to any aspect of the pool or spa which is remodeled after June 28, 1985, conform to the requirements of this subchapter in effect at the time of the remodeling, provided that ~~flow-through hot springs~~ pools shall comply with the requirements of ARM 16.10.1527.

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-106, 50-53-107 and 50-53-108, MCA

16.10.1502 DEFINITIONS In addition to the definitions in 50-53-102, MCA, the following definitions apply to this subchapter:

(1) through (4) remain the same.

~~(5) "Director" means the director of the Montana Department of Health and Environmental Sciences.~~

(6) and (7) remain the same in text but are renumbered (5) and (6).

(7) "Flow-through hot springs pool" means a hot springs pool in which the water is continually flowing and in which the water volume exchange is sufficient to produce a turnover of the entire volume of pool water to waste every 8 hours.

(8) "Hot springs pool" means an indoor or outdoor structure or basin containing an artificial body of naturally hot water, which is intended for swimming, soaking or recreational bathing. The term, as used in these rules, includes but is not limited to hot springs spas, hot springs swimming pools and hot springs wading pools.

(8) and (9) remain the same in text but are renumbered (9) and (10).

~~(10) (11) "Regulatory authority" means the Department of Health and Environmental Sciences department of public health and human services or local boards of health and their authorized representatives.~~

(11) remains the same in text but is renumbered (12).

~~(12) (13) "Spa" means a unit designed for recreational bathing or therapeutic use which is not drained, cleaned or refilled for individual use. It may include, but not be limited to, hydrojet circulation, hot water, cold water, air induction bubbles, or any combination thereof. Industry terminology for a spa includes, but is not limited to, therapeutic pool, hydrotherapy pool, whirlpool, hot ~~spatub~~, or jacuzzi. A spa is included as either a public swimming pool or a privately owned public swimming pool, as defined in ~~subsections (14) (15)(a) and (b)~~ and includes a hot springs spa, of this rule for the purposes of this subchapter.~~

(13) remains the same in text but is renumbered (14).

~~(14) (15) "Swimming pool" or "pool" means any indoor or outdoor structure, basin, chamber, or tank containing an artificial body of water intended for swimming, diving or recreational bathing having a water depth of 2 feet or more in any portion. For purposes of this subchapter, a "swimming pool" or "pool" is either:~~

~~(a) "Privately owned public swimming pool or spa" means meaning any swimming pool or spa operated in conjunction with lodging facilities, (e.g., motels, hotels, campgrounds, apartments, condominiums) (such as motels, hotels, campgrounds, apartments, and condominiums that are rented or leased), health or athletic clubs, or any other non-governmentally owned swimming or bathing facility; or~~

~~(b) "Public swimming pool or spa" means meaning any indoor~~

~~or outdoor structure, basin, chamber or tank containing an artificial body of water intended for recreational bathing, two feet or more in depth at any which is used by one or more persons for swimming, bathing, or other recreational activity, swimming pool or spa operated by a person as owner, licensee, lessee, or concessionaire, whether or not a fee is charged. The As stated in 50-53-101, MCA, the term "public swimming pool or spa" does not include swimming pools or spas located on private property used for swimming, bathing, or other recreational activities only by the homeowner, members of his the homeowner's family, or their invited guests; or medicinal hot water baths for individual use. Any person who is charged money or other consideration to use the pool is not an invited guest for the purposes of this definition.~~

(15) through (18) remain the same in text but are renumbered (16) through (19).

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-106 and 50-53-107, MCA

16.10.1503 REVIEW OF PLANS (1) through (3) remain the same.

(4) Whenever plans and specifications are required by (1) of this rule, and prior to the operation of the pool or spa, the regulatory authority shall inspect the pool or spa and related facilities to determine whether it was constructed in compliance with the applicable requirements of this subchapter and with the approved plans and specifications. On major facilities, ~~(e.g., school, city, county pools or other large or complex facilities) such as school, city, or county pools or other large or complex facilities,~~ the Department of Health and Environmental Sciences department shall perform pre-opening inspections when requested by a local health authority and when the department determines that its own expertise is necessary for an adequate technical inspection.

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-107, MCA

16.10.1504 WATER SUPPLY (1) remains the same.

(2) The department hereby adopts and incorporates by reference the rules in Title 16, chapter 20, subchapters 2 and 4, which set standards for construction, testing, treatment and operation of public water supplies in order to prevent their contamination. A copy of Title 16, chapter 20, subchapters 2 and 4, may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901.

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-106 and 50-53-107, MCA

16.10.1505 SEWAGE (1) remains the same.

(2) The department hereby adopts and incorporates by reference the rules in Title 16, chapter 20, subchapter 4, which set construction and operation standards for public sewerage systems. A copy of Title 16, chapter 20, subchapter 4, may be obtained from the Water Quality Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901.

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-106 and 50-53-107, MCA

16.10.1507 AREA REQUIREMENTS, DECK AREAS, HANDHOLDS

(1) All swimming pools and spas ~~shall~~ must be designed and constructed to withstand all anticipated bather loads. Consideration ~~shall~~ must be given to the shape of the pool or spa from the standpoint of safety, the need to facilitate supervision of bathers using the pool or spa, and maintaining adequate recirculation of the pool or spa waters. Pools must have a minimum of 24 square feet for each person in the pool's maximum anticipated bather load, and spas must have a minimum of 10 square feet for each person in the spa's maximum anticipated bather load.

(2) remains the same.

(3) The deck surface must meet the following requirements:

(a) The deck surface shall must be impervious, and easily cleanable, and must entirely surround the swimming pool.

(b) Use of deck carpet is not permitted within 6 feet of the pool or spa.

(c) If deck carpet is used 6 feet away, it must be clean and be maintained in good repair.

(d) The department may allow a deviation from (3)(a) above after the applicant submits to the department:

(i) a written application that demonstrates to the department that the deviation does not have the potential to cause adverse public health effects, the use of deck carpeting is necessary for safety purposes due to the nature of the pool or spa, and no reasonable alternative to the use of deck carpeting exists; and

(ii) a written plan that describes measures ensuring the deck carpeting is thoroughly cleaned daily and appropriate methods of cleaning and sanitizing will be used.

(4) through (11) remain the same.

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-107, MCA

16.10.1512 RECIRCULATION SYSTEM (1) The recirculation system ~~shall~~ must consist of pumping equipment, hair and lint catcher and filters, together with all necessary pipe connections to the inlets and outlets of the swimming pool and spa and a valve system for backwashing the filters. As an integral part of the recirculation system, equipment ~~shall~~ must be provided

for disinfecting the water and adding any necessary chemicals and make-up water. The entire system and all of its component parts ~~shall~~ must be capable of producing a 6-hour turnover of the entire volume of the swimming pool ~~throughout the normal filter cycle~~ except that a flow-through hot springs pool which recirculates must be capable of producing an 8-hour turnover of the entire volume of pool water to waste. The main drain or drains in the deep end of the pool shall be clearly visible at all times. ~~Spa pools~~ Spas require a 30 minute turnover rate of the entire volume of the unit.

(2) through (17) remain the same.

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-107, MCA

16.10.1518 WATER TESTING AND TESTING EQUIPMENT (1) An approved test kit for determining the pH range of 6.8 to 8.2, or 7.2 to 8.5 for hot springs pools, must ~~shall~~ be provided. The kits ~~shall~~ must be capable of measuring pH accurately to the nearest 0.2 pH units.

(2) remains the same.

(3) An approved test kit or oxidation reduction potential (ORP) measuring device for the determination of chlorine residuals in the range of 0 to ~~2-8~~ 5.0 parts per million ~~shall~~, or bromine residuals in the range of 0 to 8.0 parts per million, must be provided. When testing kits for chlorine utilize comparative color standards, the standards ~~shall~~ must be accurate to within plus or minus 0.1 ppm. The test kit ~~shall~~ must test for free and total chlorine residual. DPD test method is the required procedure.

(4) remains the same.

(5) Equivalent test kits or ORP measuring devices for other approved disinfectant residuals ~~shall~~ must be provided.

(6) If ORP is used as a method for determining sanitizer strength, the approved range is a minimum of 650 millivolts (mv) to a maximum of 750 mv.

(7) Residual chlorine and pH must be measured at least once every 4 hours that the swimming pool or spa is in operation, with date and time of testing noted on the operation records.

(8) Water temperature must be measured at least once per hour for every hour of operation for all spas and all types of hot springs pools, with date and time of testing noted on the operation records.

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-107, MCA

16.10.1519 HEATING, VENTILATION AND LIGHTING (1) and (2) remain the same.

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-107, MCA

16.10.1522 BACTERIOLOGICAL AND CHEMICAL QUALITY (1) and (2) remain the same.

(3) All swimming pools and spas, when open or in use, ~~shall must~~ be continuously disinfected by a chemical which imparts a residual effect and ~~shall must~~ be maintained in an alkaline condition. Disinfection must be handled by mechanical means. A chlorine residual of ~~1.0-3.0~~ 5.0 (3.0-5.0 ppm recommended) must be maintained in the pool at all times. A difference of .5 ppm between free and total chlorine readings in swimming pools requires superchlorination. Spa pools ~~shall must~~ be superchlorinated daily as necessary which will be indicated by use of a DPD test kit.

(4) through (8) remain the same.

(9) The total alkalinity of the water ~~should must~~ be at least 80 ppm and no greater than 200 ppm.

(10) The department hereby adopts and incorporates by reference Standard Methods for the Examination of Water and Wastewater by the American Public Health Association, the American Waterworks Association, and the Water Pollution Control Association (APHA, AWA, WPCA), 15th Edition, 1980, which establishes test procedures and what to test for in swimming pools. Copies of Standard Methods for the Examination of Water and Wastewater (APHA, AWA, WPCA) may be obtained from the ~~Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901.~~

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-107, MCA

16.10.1523 OPERATION, CLEANING AND MAINTENANCE (1) An accurate ~~report~~ record showing the daily operation of the swimming pool or spa ~~shall must~~ be maintained at the facility. This ~~report shall~~ record must include information regarding the sanitation and safety aspects of the pool or spa, including but not limited to disinfectant residuals, pH, total alkalinity, combined chlorine, cyanuric acid, water temperature, maintenance records, and bather load. All sanitation and safety aspect tests must be tested at least twice daily, with additional sanitation and safety aspect tests being performed as required by ARM 16.10.1518. These ~~reports shall~~ records must be kept on file for 6 24 months for review by the regulatory authority. The swimming pool or spa must furnish copies of the records to the department upon the department's request.

(2) through (6) remain the same.

(7) ~~Spa pools~~ Spas that are not flow-through hot springs spas and are used primarily for soaking or recreational bathing must ~~are not to be~~ operated at a water temperature not exceeding 105°F 104°F as determined by the use of an inline thermometer.

(8) ~~Spa pools shall~~ Spas must be drained, and thoroughly cleaned weekly, and sanitized every 72 hours.

(9) Every spa must have a clock visible from the spa so that bathers can monitor the time they have spent in the spa.

(10) Operators of public swimming pools and spas must be thoroughly knowledgeable of good practices of pool operation and with the laws and rules pertaining to public pools and spas.

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-106 and 50-53-107, MCA

16.10.1524 SAFETY (1) Swimming A conduct safety sign or signs must be conspicuously posted at every pool and spa safety regulations shall be conspicuously posted at every swimming pool or spa stating regulated by this subchapter and include the following words or words of substantially the same meaning:

(a) "No person is allowed in the pool alone."

(b) "Spitting, spouting of water, or blowing the nose in the swimming pool or spa shall be strictly prohibited."

(c) "Boisterous or rough play or running shall not be permitted in the swimming pool or spa, the walk area, in dressing rooms, in shower rooms, or in toilet rooms."

(d) "Bottles, crockery, glassware, or other hazardous objects shall not be permitted in the swimming area."

(e) "Smoking shall not be permitted in the swimming or bathing area."

(f) "Alcohol, food or gum is not allowed in or near the pool."

(2) A medical safety sign or signs must be conspicuously posted at every spa regulated by this subchapter and include the following words or words of substantially the same meaning:

(a) "No person under the influence of an intoxicating liquor or drug may use the pool."

(b) "Warning - people using prescription medications and/or having the following medical conditions should consult with their physician before entering the spa: pregnancy, heart disease, diabetes, high blood pressure, or other serious medical condition."

(c) "Heat stroke warning - adults limited to 15 minutes in spa and no children under age 5 years allowed."

(3) Every privately owned public swimming pool or spa regulated by this subchapter must conspicuously post at every pool or spa location a warning sign that states "NO LIFEGUARD ON DUTY" or words of equivalent meaning, with clearly legible letters at least 4 inches high. In addition, the sign must state "NONSWIMMERS AND CHILDREN UNDER AGE 14 SHOULD NOT USE THE POOL WITHOUT A RESPONSIBLE ADULT IN ATTENDANCE".

(4) An individual certified in cardiopulmonary resuscitation shall must be on the premises at all times. Copies of all CPR certification shall be kept on file at the pool.

(5) remains the same in text but is renumbered (5).

(6) An emergency telephone shall be located within 100' of the pool or spa, available to the public, and with an emergency number posted.

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-107, MCA

16.10.1525 EQUIPMENT AND PERSONNEL (1) remains the same.

(2) Every publicly owned public swimming pool shall must have a trained lifeguard or lifeguards in complete charge of bathing facilities who shall have authority to enforce all rules of safety. The number of lifeguards shall must be based on one per 2,000 square feet of pool area or fraction thereof, with a minimum of one lifeguard at all public pools regardless of size. Lifeguards shall must be currently trained in American Red Cross methods of first aid and water safety or its equivalent. Each lifeguard shall must be at least 16 years of age. Lifeguards shall be on duty at all times when a swimming pool or bathing place is open for use by the bathers.

~~(3) Privately owned public swimming pools and spas shall display warning signs in plain view which shall state "WARNING - NO LIFEGUARD ON DUTY" with clearly legible letters at least four inches high. In addition, the sign shall state "CHILDREN SHOULD NOT USE THE POOL WITHOUT AN ADULT IN ATTENDANCE."~~

(4) through (7) remain the same in text but are renumbered (3) through (6).

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-107, MCA

16.10.1526 DISEASE CONTROL (1) remains the same.

(2) Before entering the pool or spa, all bathers shall must be required to take a cleansing shower ~~in the nude~~, using warm water and soap.

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-107, MCA

16.10.1527 HOT SPRINGS POOLS AND FLOW-THROUGH HOT SPRINGS POOLS (1) ~~All flow through pools built, remodeled or altered after June 28, 1985, shall be equipped with an approved disinfection system. Any hot springs pool other than a flow through hot springs pool must comply with all other provisions of this subchapter, with the exception that the pH of pool water must be maintained at no less than 7.2 and no greater than 8.5.~~

~~(2) Pools in existence on June 28, 1985, which rely on a flow through water exchange mechanism shall:~~

~~(a) provide sufficient water volume exchange that will produce a four hour turnover of the entire volume of pool water to waste, and~~

~~(b) meet all bacteriological standards as set forth in (1) of ARM 16.10.1522. If standards cannot be met, a disinfection device must be installed and utilized.~~

(2) In addition to the requirements of (1) above, any hot springs pool, whether or not it is a flow through pool, must meet the following requirements:

(a) The pool must be equipped with an accurate flow indicator to measure the turnover in the pool, except that the department may allow a deviation from the use of an accurate flow indicator by an applicant who demonstrates in a written application to the department that the water volume exchange

turn-over rate from the pool can be accurately measured by an alternative method and that the deviation does not have the potential to cause adverse public health effects. To be eligible for a deviation from the accurate flow indicator requirement, the applicant must submit to the department as part of its application a plan that describes the alternative method that accurately measures the water volume exchange turn-over rate.

(b) Each pool must have an inline thermometer installed to monitor the temperature of the pool, except that the department may allow a deviation from the use of an inline thermometer by an applicant who can demonstrate in a written application to the department that the water temperature can be accurately measured by an alternative method in lieu of an inline thermometer and that the deviation does not have the potential to cause adverse public health effects. To be eligible for a deviation from the inline thermometer requirement, the applicant must submit to the department as part of its application a plan that describes the alternative method that accurately measures the water temperature.

(c) Upon request by the department, the pool must collect water samples for bacteriological or other testing for public health investigations or when the turnover rate is greater than 8 hours, the provisions of (3)(c)(i) below are not met, or the pool is a flow-through hot springs pool that does not utilize the alternative of chemical disinfection but has not been drained, cleaned, and sanitized every 72 hours.

(3) (d) Flow-through pools in existence and in operation on June 28, 1985, shall Each pool must be maintained to prevent corrosion, algae growth and other mineral accumulation on the pool walls, floor and equipment. Hot water mineral pools are particularly subject to such conditions.

(3) Every flow-through hot springs pool must comply with the following:

(a) Each such pool must comply with the provisions of ARM 16.10.1503 through ARM 16.10.1507; ARM 16.10.1510 through ARM 16.10.1511; ARM 16.10.1515; ARM 16.10.1517(1) and (3); ARM 16.10.1518(1), (7), and (8); ARM 16.10.1519 through ARM 16.10.1520; ARM 16.10.1521(2); ARM 16.10.1522(1), (2), (6), (7), and (9); ARM 16.10.1523 through ARM 16.10.1526; and ARM 16.10.1528 through ARM 16.10.1531.

(b) The temperature of a pool or spa used primarily for soaking may not exceed 106° F, and the temperature of a pool used primarily for swimming may not exceed 100° F. Water temperature must be monitored at a frequency in accordance with ARM 16.10.1518, and records must be maintained in accordance with ARM 16.10.1523.

(c) As required by 50-53-115, MCA, each flow-through hot springs pool must either be drained, cleaned, and sanitized every 72 hours, along with all surfaces that flow into the pool, or the pool must be disinfected with a chlorine or bromine residual. The following requirements apply to each alternative:

(i) If the pool and the surfaces flowing into it are drained, cleaned, and sanitized every 72 hours, records of the

cleanings must be maintained in accordance with ARM 16.10.1523; or

(ii) If the pool is disinfected, a chlorine residual of 1 to 5 parts per million (3-5 parts per million is recommended) or a bromine residual of 3 to 6 parts per million must be maintained in the pool at all times. In addition, the pool must comply with the provisions of ARM 16.10.1513, ARM 16.10.1514, and ARM 16.10.1518.

(d) If, as allowed by 50-53-115, MCA, the pool is not chemically disinfected, a sign must be conspicuously posted at poolside that states the following in the same words or words of substantially the same meaning: "State law does not require chemical disinfection of this pool (or spa) if it is completely drained and sanitized every 72 hours. Therefore, no person with diarrhea, skin infection, open sores, a "runny nose", or a communicable disease is allowed in the pool".

(e) The pH of the pool water must be maintained at no less than 7.2 and no greater than 8.5.

(4) remains the same.

AUTH: Sec. 50-53-103, MCA

IMP: Sec. 50-53-107, MCA

16.10.1529 INSPECTIONS (1) remains the same.

(2) Whenever an inspection of a swimming pool or spa is made, the findings shall be recorded on an inspection form provided or authorized by the department. The inspection form shall summarize the requirements of this subchapter. If one or more violations are determined to exist, the inspectional remarks shall be marked to reference the violations and shall specify the correction to be made and the date by which the correction is to be made. A copy of the completed inspection report form shall be furnished to the person in charge of the swimming pool or spa at the conclusion of the inspection. The completed inspection form is a public document that shall be available for public review or distribution upon payment of copying cost to any person on request.

(3) remains the same.

(4) A critical point inspection requires an inspection for compliance with 50-53-107, MCA, and ARM 16.10.1513, 16.10.1519(2), 16.10.1522, and 16.10.1525. In addition, inspection for the requirements of ARM 16.10.1527 is required if the pool is a flow-through hot springs pool.

AUTH: Sec. 50-53-103, MCA


IMP: Sec. 50-53-103, 50-53-106, 50-53-107 and 50-53-209, MCA

3. The department is proposing amendments to its swimming pool licensing rules primarily in order to implement specific licensing requirements for flow-through hot springs pools mandated by Senate Bill 400, passed by the 1995 Legislature. In addition, it is necessary to amend the rules generally to clarify unclear current provisions in the rules and to most

effectively protect the public by adopting the most up-to-date health and safety requirements accepted nationally by pool and spa operators, such as the National Swimming Pool Foundation. Also, since some hot springs pools in the state do not fit the definition in SB 400 of a "flow through hot springs pool", it is also necessary to establish separate standards applying to all hot springs pools, as well as to those that are not "flow through". Finally, editing changes are being proposed to incorporate language conforming to the legislature's bill drafting manual standards and the changes resulting from departmental reorganization adopted by the 1995 Legislature.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Russ Cater, Chief Legal Counsel, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than January 12, 1996.

5. The department's Office of Legal Affairs has been designated to preside over and conduct the hearing.



Rule Reviewer



Director, Public Health and
Human Services

Certified to the Secretary of State November 27, 1995.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF PUBLIC HEARING ON THE
of ARM 42.21.106, 42.21.107,) PROPOSED AMENDMENTS AND REPEALS
42.21.113, 42.21.122, 42.21.)
123, 42.21.124, 42.21.131,)
42.21.137, 42.21.138, 42.21.)
139, 42.21.140, 42.21.151,)
42.21.155, 42.21.156, 42.21.)
158, 42.21.301, 42.21.302,)
42.21.303, 42.21.304, 42.21.)
305, 42.21.310 and REPEAL of)
42.21.309 and 42.21.313)
relating to Personal Property)

TO: All Interested Persons:

1. On January 3, 1996, at 9:30 a.m., a public hearing will be held in the 4th Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendments of ARM 42.21.106, 42.21.107, 42.21.113, 42.21.122, 42.21.123, 42.21.124, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.155, 42.21.156, 42.21.158, 42.21.301, 42.21.302, 42.21.303, 42.21.304, 42.21.305, 42.21.310 and repeal of 42.21.309 and 42.21.313 relating to personal property.

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

42.21.106 TRUCKS (1) Market value for trucks rated over 1 ton is 80% of the average retail value for trucks, as shown in the "Truck Bluebook Official Used Truck Valuation," January 1 edition of the year of assessment. This guide may be reviewed in the department or purchased from the publisher National Market Report, Inc., 900 South Wabash Avenue, Chicago, Illinois 60606 Maclean Hunter Market Reports, 29 North Wacker Drive, Chicago, Illinois 60606.

(2) For all trucks which cannot be valued under subsection (1), the department of revenue ~~or its agent~~ shall try to ascertain the original FOB through old truck valuation guidebooks. If an original FOB cannot be ascertained, the department of revenue ~~or its agent~~ may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation schedule in subsection (4) to arrive at a value which approximates 80% of the average retail value. The trend factors shall be the latest available in the Marshall Valuation Service Manual for the year of assessment. The Marshall Valuation Service Manual published by Marshall and Swift Publication Company, ~~1617 Beverly Boulevard~~ 911 Wilshire Boulevard, 16th Floor, P.O. Box 26307, Los Angeles, California 90026, is herein adopted by reference.

(3) If the methods mentioned in subsections (1) and (2) cannot be used to ascertain 80% of the average retail value of

a truck, the owner or applicant must certify to the department of revenue ~~or its agent~~ the year acquired and the acquired price before that value can be applied to the schedule in subsection (4).

(4) The trended depreciation schedule referred to in subsections (2) and (3) is listed below and shall be used for the 1995~~6~~ tax year. The percentages approximate 80% of the average retail value of all trucks over 1 ton as calculated from the guidebook listed in subsection (1).

TRUCK TRENDED DEPRECIATION SCHEDULE

YEAR ACQUIRED	% GOOD
1995	80%
1994	41%
1993	37%
1992	32%
1991	30%
1990	25%
1989	23%
1988	20%
1987	19%
1986	17%
1985	15%
1984	13%
1983	11%
1982 and before	10%
1996	80%
1995	46%
1994	40%
1993	36%
1992	31%
1991	28%
1990	24%
1989	22%
1988	19%
1987	17%
1986	15%
1985	13%
1984	11%
1983 and before	10%

(5) through (6) remain the same.

(7) This rule is effective for tax years beginning after December 31, 1994~~5~~.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138, 15-6-139, 15-6-140, and 61-3-321 MCA.

42.21.107 TRAILERS (1) The market value for trailers up to and including 18,000 pounds maximum gross loaded weight, except those subject to a fee in lieu of property tax, will be

the wholesale value as ascertained by the following methods:

(a) through (b) remain the same.

(c) For all trailers which cannot be valued under subsections (1)(a) and (b), the department of revenue ~~or its agent~~ shall try to ascertain the original FOB through old valuation guidebooks. If an original FOB cannot be ascertained, the department of revenue ~~or its agent~~ may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation schedule in subsection (1)(e) to arrive at a value which approximates wholesale market value.

(d) If the methods mentioned in subsections (1)(a), (b), and (c) cannot be used to ascertain a wholesale market value for a trailer, the owner or applicant must certify to the department of revenue ~~or its agent~~ the year acquired and the acquired price before that value can be applied to the schedule in subsection (1)(e).

(e) The trended depreciation schedule referred to in subsections (1)(b), (c), and (d) is listed below and shall be used for the 1995~~6~~ tax year.

TRAILERS 0 - 18,000 LBS. G.V.W.

<u>YEAR NEW/ACQUIRED</u>	<u>% GOOD</u>
1995	80%
1994	59%
1993	57%
1992	54%
1991	51%
1990	48%
1989	45%
1988	42%
1987	41%
1986	40%
1985	38%
1984	36%
1983	34%
1982	32%
1981	30%
1980	28%
1979	26%
1978	24%
1977	22%
1976	20%
1975 and before	15%
1996	80%
1995	59%
1994	57%
1993	54%
1992	51%
1991	48%
1990	45%

<u>1989</u>	<u>42%</u>
<u>1988</u>	<u>41%</u>
<u>1987</u>	<u>39%</u>
<u>1986</u>	<u>38%</u>
<u>1985</u>	<u>36%</u>
<u>1984</u>	<u>34%</u>
<u>1983</u>	<u>32%</u>
<u>1982</u>	<u>30%</u>
<u>1981</u>	<u>28%</u>
<u>1980</u>	<u>26%</u>
<u>1979</u>	<u>24%</u>
<u>1978</u>	<u>22%</u>
<u>1977</u>	<u>20%</u>
<u>1976 and before</u>	<u>15%</u>

(2) The wholesale value for all trailers 18,001 - 25,999 GVW is:

(a) The wholesale value for trailers shall be the quick sale as listed in the "Green Guide", ~~Equipment Guide Book Company, 2800 West Bayshore Road, P.O. Box 10113, Palo Alto, California 94303~~ Dataquest, 1290 Ridder Park Drive, San Jose, California 95131. This guide may be reviewed in the department or purchased from the publisher.

(b) through (d) remain the same.

(e) The trended depreciation schedule mentioned in sub-sections (2)(b) and (c) is listed below and shall be used for the 1995~~6~~ tax year. It is the same schedule as used in ARM 42.21.106.

TRAILERS 18,001 - 25,999 LBS. G.V.W.

<u>YEAR ACQUIRED</u>	<u>% GOOD</u>
<u>1995</u>	<u>80%</u>
<u>1994</u>	<u>41%</u>
<u>1993</u>	<u>37%</u>
<u>1992</u>	<u>32%</u>
<u>1991</u>	<u>30%</u>
<u>1990</u>	<u>25%</u>
<u>1989</u>	<u>23%</u>
<u>1988</u>	<u>20%</u>
<u>1987</u>	<u>19%</u>
<u>1986</u>	<u>17%</u>
<u>1985</u>	<u>15%</u>
<u>1984</u>	<u>13%</u>
<u>1983</u>	<u>11%</u>
<u>1982 and before</u>	<u>10%</u>
<u>1996</u>	<u>80%</u>
<u>1995</u>	<u>46%</u>
<u>1994</u>	<u>40%</u>
<u>1993</u>	<u>36%</u>
<u>1992</u>	<u>31%</u>

<u>1991</u>	<u>28%</u>
<u>1990</u>	<u>24%</u>
<u>1989</u>	<u>22%</u>
<u>1988</u>	<u>19%</u>
<u>1987</u>	<u>17%</u>
<u>1986</u>	<u>15%</u>
<u>1985</u>	<u>13%</u>
<u>1984</u>	<u>11%</u>
<u>1983 and before</u>	<u>10%</u>

(3) This rule is effective for tax years beginning after December 31, 1994⁵.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138, 15-6-139, and 15-6-201 MCA.

42.21.113 LEASED AND RENTED EQUIPMENT (1) through (2) remain the same.

(3) The trended depreciation schedule referred to in subsections (1) and (2) is listed below and shall be used for tax year 1995⁶.

Year			
New/Acquired	\$0 - 500	\$501 - 1,500	\$1,501 or Greater
<u>1994</u>	<u>70%</u>	<u>85%</u>	<u>85%</u>
<u>1993</u>	<u>45%</u>	<u>69%</u>	<u>66%</u>
<u>1992</u>	<u>20%</u>	<u>52%</u>	<u>51%</u>
<u>1991</u>	<u>9%</u>	<u>35%</u>	<u>39%</u>
<u>1990 and older</u>	<u>9%</u>	<u>20%</u>	<u>24%</u>
<u>1995</u>	<u>70%</u>	<u>85%</u>	<u>85%</u>
<u>1994</u>	<u>43%</u>	<u>69%</u>	<u>70%</u>
<u>1993</u>	<u>19%</u>	<u>52%</u>	<u>50%</u>
<u>1992</u>	<u>9%</u>	<u>34%</u>	<u>34%</u>
<u>1991 and older</u>	<u>9%</u>	<u>20%</u>	<u>21%</u>

(4) remains the same.

(5) For rental video tapes the following schedule shall be used:

Year Acquired	Trended % Good
<u>1993</u>	<u>25%</u>
<u>1992</u>	<u>15%</u>
<u>1991</u>	<u>10%</u>
<u>1995</u>	<u>25%</u>
<u>1994</u>	<u>15%</u>
<u>1993</u>	<u>10%</u>

(6) This rule is effective for tax years beginning after December 31, 1994⁵.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-136 MCA.

42.21.122 LIVESTOCK (1) through (3) remain the same.

(4) The average market value for ostriches, emus and rheas shall be determined by multiplying the average adult live weight times the average price per pound marketed during the preceding 12 month period, December through November.

~~(4)~~(5) All livestock - less than 24 months of age, all swine - less than 6 months of age, poultry and bees are exempt from ad valorem property taxation. For the purposes of this subsection, livestock are defined pursuant to 15-1-101, MCA.

~~(5)~~(6) Miscellaneous livestock shall be valued as follows:
(a) through (g) remain the same.

~~(6)~~(7) This rule is effective for tax years beginning after December 31, 1994⁵.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-136, 15-6-137, and 15-6-207, MCA.

42.21.123 FARM MACHINERY AND EQUIPMENT (1) The average ~~wholesale market~~ value for farm machinery and equipment shall be the "average loan" value as shown in the "Official Guide Tractors and Farm Equipment", Fall Edition, for the year previous to the year of the assessment. For purposes of 15-8-111(3)(a), MCA, "loan" value is best represented by the "average wholesale value" listed in the above publication. This guide may be reviewed in the department or purchased from the publisher: North American Equipment Dealers Association, 10877 Watson Road, St. Louis, Missouri ~~62127~~⁶³¹27-1081.

(2) remains the same.

(3) For all farm machinery and equipment which cannot be valued under subsection (1) and (2), the department of revenue ~~or its agent~~ shall try to ascertain the original FOB through old farm machinery and equipment valuation guidebooks. If an original FOB cannot be ascertained, the department of revenue ~~or its agent~~ may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation schedule in subsection (5) to arrive at a value which approximates average loan value. The trend factors shall be the same as those mentioned in ARM 42.21.106.

(4) If the methods mentioned in subsections (1) through (3) cannot be used to ascertain average loan value for farm machinery and equipment, the owner or applicant must certify to the department of revenue ~~or its agents~~ the year acquired and the acquired price before that value can be applied to the schedule in subsection (5).

(5) The trended depreciation schedule referred to in subsections (2) through (4) is listed below and shall be used for tax year 1995⁶. The schedule is derived by using the guidebook listed in subsection (1) and the ~~"Farm Tractor Trade-In Guide" and "Farm Equipment Trade In Guide" of the current year of assessment and are incorporated by reference, Technical Publications Division, Intertec Publishing Corporation, Box 12901, Overland Park, Kansas 66212~~ Western Official Guide North American Equipment Dealers Association, 10877 Watson Road, St.

Louis, Missouri 63127, as the data base. The trended depreciation schedule will approximate average loan value.

<u>YEAR</u>	<u>TRENDED % GOOD AVERAGE LOAN</u>
1995	65%
1994	52%
1993	49%
1992	46%
1991	43%
1990	40%
1989	39%
1988	36%
1987	33%
1986	34%
1985	33%
1984	32%
1983	31%
1982	31%
1981	31%
1980	32%
1979	33%
1978	31%
1977	29%
1976	27%
1975	25%
1974	24%
1973	23%
1972	22%
1971 and before	20%
1996	65%
1995	52%
1994	49%
1993	46%
1992	43%
1991	40%
1990	39%
1989	36%
1988	34%
1987	34%
1986	33%
1985	32%
1984	30%
1983	31%
1982	31%
1981	32%
1980	32%
1979	31%
1978	29%
1977	27%
1976	25%

<u>1975</u>	<u>24%</u>
<u>1974</u>	<u>23%</u>
<u>1973</u>	<u>22%</u>
<u>1972 and before</u>	<u>20%</u>

(6) remains the same.

(7) This rule is effective for tax years beginning after December 31, 1994~~5~~.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.

42.21.124 PER CAPITA LIVESTOCK TAX REPORTING PROCEDURE

(1) For purposes of assessing the per capita tax on livestock, poultry and bees to pay the expense of enforcing the livestock, poultry and bee laws, the following categories of livestock, poultry and bees shall be used by the producer to report the number of animals within each category. The established categories are:

(a) through (h) remain the same.

(i) All sheep - 9 months and older-;

(j) All ostriches, emus and rheas - 9 months and older.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-136, 15-6-207, 15-24-921, 15-24-922 and 15-24-925 MCA.

42.21.131 HEAVY EQUIPMENT (1) The wholesale market value of heavy equipment shall be the quick sale as shown in the "Green Guide" and "Green Guide for Older Equipment" for the current year of assessment. This guide may be reviewed in the department or purchased from the publisher and is incorporated by reference: Equipment Guide Book Company, 2800 West Bayshore Road, P.O. Box 10113, Palo Alto, California 94303 Dataquest, 1290 Ridder Park Drive, San Jose, California 95131.

(2) For all heavy equipment which cannot be valued under subsection (1), the department of revenue ~~or its agent~~ shall try to ascertain the original FOB through old heavy equipment valuation guidebooks. If an original FOB cannot be ascertained, the department of revenue ~~or its agent~~ may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation schedule in subsection (5) to arrive at a value which approximates wholesale value. The trend factors are the most recent available in the Marshall Valuation Service Manual for the year of assessment. The Marshall Valuation Service Manual published by "Marshall and Swift Publishing Publication Company", 1617 Beverly Boulevard 911 Wilshire Boulevard, 16th Floor, P.O. Box 26307, Los Angeles, California 90026, is herein adopted by reference.

(3) through (4) remain the same.

(5) The trended depreciation schedule referred to in subsections (2), (3) and (4) is listed below and shall be used for tax year 1995~~6~~. The percentages approximate the "quick sale" values as calculated in the guidebooks listed in subsection (1).

HEAVY EQUIPMENT TRENDED DEPRECIATION SCHEDULE

<u>YEAR</u>	<u>% GOOD WHOLESALE</u>
1995	80%
1994	65%
1993	51%
1992	45%
1991	41%
1990	37%
1989	36%
1988	35%
1987	31%
1986	28%
1985	27%
1984	25%
1983	25%
1982	25%
1981	27%
1980	25%
1979	26%
1978	26%
1977	27%
1976	25%
1975	25%
1974	23%
1973 and before	21%
1996	80%
1995	65%
1994	51%
1993	45%
1992	43%
1991	40%
1990	34%
1989	33%
1988	33%
1987	30%
1986	27%
1985	26%
1984	25%
1983	24%
1982	25%
1981	26%
1980	24%
1979	25%
1978	26%
1977	25%
1976	25%
1975	25%
1974 and before	21%

(6) This rule is effective for tax years beginning after December 31, 1994~~5~~, and applies to all heavy equipment.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-135, 15-6-138, and 15-6-140 MCA.

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT

(1) Seismograph units and allied equipment shall be valued using the cost approach to market value. The taxpayer must provide to the department ~~or its agent~~ the acquired cost, the year acquired, and an itemized description of each piece of equipment. The acquired cost will be trended to current replacement cost and then depreciated according to the schedules mentioned in subsection (2).

(2) through (3) remain the same.

(4) The trended depreciation schedules referred to in subsections (1) through (3) are listed below and shall be used for tax year 1995~~6~~.

SEISMOGRAPH UNITS

<u>TRENDED</u>		<u>TREND</u>		<u>TRENDED</u>		<u>WHOLESALE</u>	<u>WHOLESALE</u>
<u>YEAR</u>							
<u>ACQUIRED</u>	<u>% GOOD</u>	<u>FACTOR</u>	<u>% GOOD</u>	<u>FACTOR</u>	<u>% GOOD</u>		
1995	100%	1.000	100%	80%	80%		
1994	85%	1.000	85%	80%	68%		
1993	69%	1.016	70%	80%	56%		
1992	52%	1.029	54%	80%	43%		
1991	34%	1.037	35%	80%	28%		
1990	20%	1.060	21%	80%	17%		
1989 & older	5%	1.087	5%	80%	4%		
1996	100%	1.000	100%	80%	80%		
1995	85%	1.000	85%	80%	68%		
1994	69%	1.032	71%	80%	57%		
1993	52%	1.053	55%	80%	44%		
1992	34%	1.067	36%	80%	29%		
1991	20%	1.074	21%	80%	17%		
1990 & older	5%	1.098	5%	80%	4%		

SEISMOGRAPH ALLIED EQUIPMENT

<u>YEAR</u>		<u>TREND</u>	<u>TRENDED</u>
<u>ACQUIRED</u>	<u>% GOOD</u>	<u>FACTOR</u>	<u>% GOOD</u>
1995	100%	1.000	100%
1994	85%	1.000	85%
1993	69%	1.016	70%
1992	52%	1.029	54%
1991	34%	1.037	35%
1990	20%	1.060	21%
1988 & older	5%	1.087	5%

1996	100%	1.000	100%
1995	85%	1.000	85%
1994	69%	1.032	71%
1993	52%	1.053	55%
1992	34%	1.067	36%
1991	20%	1.075	21%
1990 & older	5%	1.098	5%

(5) This rule is effective for tax years beginning after December 31, 1994⁵.

AUTH: Sec. 15-1-201 MCA; IME, Sec. 15-6-138 MCA.

42.21.138 OIL AND GAS FIELD MACHINERY AND EQUIPMENT

(1) Oil and gas field machinery and equipment shall be valued using the cost approach to market value. The taxpayer must provide to the department ~~or its agent~~ the acquired cost, the year acquired, and an itemized description of each piece of machinery and equipment. The acquired cost will be trended to current replacement cost and then depreciated according to the schedule mentioned in subsection (2).

(2) remains the same.

(3) The trended depreciation schedule referred to in subsections (1) and (2) is listed below and shall be used for tax year 1995⁶.

OIL AND GAS FIELD PRODUCTION EQUIPMENT TRENDED DEPRECIATION SCHEDULE

YEAR ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1995	100%	1.000	100%
1994	95%	1.000	95%
1993	89%	1.016	90%
1992	83%	1.029	85%
1991	77%	1.037	80%
1990	71%	1.060	75%
1989	65%	1.087	71%
1988	58%	1.149	66%
1987	51%	1.198	61%
1986	45%	1.211	54%
1985	39%	1.217	47%
1984	33%	1.234	41%
1983	28%	1.267	35%
1982	23%	1.305	30%
1981 & older	20%	1.353	30%
1996	100%	1.000	100%
1995	95%	1.000	95%
1994	89%	1.032	92%
1993	83%	1.053	87%
1992	77%	1.067	82%
1991	71%	1.075	76%
1990	65%	1.098	71%

<u>1989</u>	<u>58%</u>	<u>1.126</u>	<u>65%</u>
<u>1988</u>	<u>51%</u>	<u>1.190</u>	<u>61%</u>
<u>1987</u>	<u>45%</u>	<u>1.242</u>	<u>56%</u>
<u>1986</u>	<u>39%</u>	<u>1.256</u>	<u>49%</u>
<u>1985</u>	<u>33%</u>	<u>1.261</u>	<u>42%</u>
<u>1984</u>	<u>28%</u>	<u>1.279</u>	<u>36%</u>
<u>1983</u>	<u>23%</u>	<u>1.313</u>	<u>30%</u>
<u>1982 & older</u>	<u>20%</u>	<u>1.332</u>	<u>27%</u>

(4) remains the same.

(5) This rule is effective for tax years beginning after December 31, 1994.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.

42.21.139 WORKOVER AND SERVICE RIGS (1) through (4) remain the same.

(5) The trended depreciation schedule referred to in subsections (2) and (4) is listed below and shall be used for tax year 1995.

SERVICE AND WORKOVER RIG
TRENDED % GOOD SCHEDULE

<u>YEAR</u>	<u>% GOOD</u>	<u>WHOLESALE FACTOR</u>	<u>TRENDED WHOLESALE % GOOD</u>
<u>1995</u>	<u>100%</u>	<u>80%</u>	<u>80%</u>
<u>1994</u>	<u>92%</u>	<u>80%</u>	<u>74%</u>
<u>1993</u>	<u>84%</u>	<u>80%</u>	<u>67%</u>
<u>1992</u>	<u>76%</u>	<u>80%</u>	<u>61%</u>
<u>1991</u>	<u>67%</u>	<u>80%</u>	<u>54%</u>
<u>1990</u>	<u>58%</u>	<u>80%</u>	<u>46%</u>
<u>1989</u>	<u>49%</u>	<u>80%</u>	<u>39%</u>
<u>1988</u>	<u>35%</u>	<u>80%</u>	<u>28%</u>
<u>1987</u>	<u>30%</u>	<u>80%</u>	<u>24%</u>
<u>1986</u>	<u>24%</u>	<u>80%</u>	<u>19%</u>
<u>1985 & older</u>	<u>20%</u>	<u>80%</u>	<u>16%</u>
<u>1996</u>	<u>100%</u>	<u>80%</u>	<u>80%</u>
<u>1995</u>	<u>92%</u>	<u>80%</u>	<u>74%</u>
<u>1994</u>	<u>84%</u>	<u>80%</u>	<u>67%</u>
<u>1993</u>	<u>76%</u>	<u>80%</u>	<u>61%</u>
<u>1992</u>	<u>67%</u>	<u>80%</u>	<u>54%</u>
<u>1991</u>	<u>58%</u>	<u>80%</u>	<u>46%</u>
<u>1990</u>	<u>49%</u>	<u>80%</u>	<u>39%</u>
<u>1989</u>	<u>35%</u>	<u>80%</u>	<u>28%</u>
<u>1988</u>	<u>30%</u>	<u>80%</u>	<u>24%</u>
<u>1987</u>	<u>24%</u>	<u>80%</u>	<u>19%</u>
<u>1986 & older</u>	<u>20%</u>	<u>80%</u>	<u>16%</u>

(6) This rule is effective for tax years beginning after December 31, 1994.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.

42.21.140 OIL DRILLING RIGS (1) remains the same.

(2) The department of revenue shall prepare a 10-year trended depreciation schedule for oil drilling rigs. The trended depreciation schedule shall be derived from depreciation factors published by "Marshall and Swift Publication Company". The trended depreciation schedule for tax year 1995~~6~~ is listed below.

DRILL RIG
TRENDED % GOOD SCHEDULE

<u>YEAR</u>	<u>TRENDED % GOOD</u>
1995	100%
1994	92%
1993	84%
1992	76%
1991	67%
1990	58%
1989	49%
1988	35%
1987	30%
1986	24%
1985 and older	20%
1996	100%
1995	92%
1994	84%
1993	76%
1992	67%
1991	58%
1990	49%
1989	35%
1988	30%
1987	24%
1986 and older	20%

(3) remains the same.

(4) This rule is effective for tax years beginning after December 31, 1994~~5~~.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA.

42.21.151 TELEVISION CABLE SYSTEMS (1) remains the same.

(2) The average market value for the dishes and towers will be determined by using a 5-year trended depreciation schedule on dishes and 10-year trended depreciation schedule on towers. Both the trend factors and the depreciation tables will be derived from the Marshall and Swift Publication Company, ~~1617~~ Beverly-Boulevard 911 Wilshire Boulevard, 16th Floor, P. O. Box 26307, Los Angeles, California 90026. The trend factors shall be the most recent available from the "Average of all Indexes" listed in the above publication.

(3) remains the same.

(4) The trended depreciation schedules referred to in subsections (2) and (3) are listed below and shall be in effect for tax year 1995.

TABLE 1: 5-YEAR "DISHES"

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1994	85%	1.000	85%
1993	69%	1.024	71%
1992	52%	1.043	54%
1991	34%	1.056	36%
1990 & older	20%	1.077	22%
1995	85%	1.000	85%
1994	69%	1.032	71%
1993	52%	1.061	55%
1992	34%	1.082	37%
1991 & older	20%	1.095	22%

TABLE 2: 10-YEAR "TOWERS"

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1994	92%	1.000	92%
1993	84%	1.024	86%
1992	76%	1.043	79%
1991	67%	1.056	71%
1990	58%	1.077	62%
1989	49%	1.106	54%
1988	39%	1.165	46%
1987	30%	1.215	36%
1986	24%	1.233	30%
1985 & older	20%	1.245	25%
1995	92%	1.000	92%
1994	84%	1.032	87%
1993	76%	1.061	81%
1992	67%	1.082	72%
1991	58%	1.095	64%
1990	49%	1.117	55%
1989	39%	1.147	45%
1988	30%	1.208	36%
1987	24%	1.260	30%
1986 & older	20%	1.278	26%

(5) This rule is effective for tax years beginning after December 31, 1994.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 and 15-6-140 MCA.

42.21.155 DEPRECIATION SCHEDULES (1) remains the same.

(2) The trended depreciation schedules for tax year 19956 are listed below. The categories are explained in ARM 42.21.156. The trend factors are derived according to ARM 42.21.156 and 42.21.157.

CATEGORY 1

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1994	70%	1.000	70%
1993	45%	1.009	45%
1992	20%	0.980	20%
1991 and older	10%	0.946	9%
1995	70%	1.000	70%
1994	45%	0.957	43%
1993	20%	0.964	19%
1992 and older	10%	0.936	9%

CATEGORY 2

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1994	85%	1.000	85%
1993	69%	1.005	69%
1992	52%	1.005	52%
1991	34%	1.020	35%
1990 and older	20%	1.011	20%
1995	85%	1.000	85%
1994	69%	0.998	69%
1993	52%	1.002	52%
1992	34%	1.003	34%
1991 and older	20%	1.018	20%

CATEGORY 3

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1994	85%	1.000	85%
1993	69%	1.000	69%
1992	52%	0.997	52%
1991	34%	0.990	34%
1990 and older	20%	1.014	20%
1995	85%	1.000	85%
1994	69%	0.978	67%

1993	<u>52%</u>	<u>0.978</u>	<u>51%</u>
1992	<u>34%</u>	<u>0.974</u>	<u>33%</u>
1991 and older	<u>20%</u>	<u>0.968</u>	<u>19%</u>

CATEGORY 4

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1994	<u>85%</u>	<u>1.000</u>	<u>85%</u>
1993	<u>69%</u>	<u>0.994</u>	<u>69%</u>
1992	<u>52%</u>	<u>1.006</u>	<u>52%</u>
1991	<u>34%</u>	<u>1.022</u>	<u>35%</u>
1990 and older	<u>20%</u>	<u>1.030</u>	<u>21%</u>
1995	<u>85%</u>	<u>1.000</u>	<u>85%</u>
1994	<u>69%</u>	<u>0.989</u>	<u>68%</u>
1993	<u>52%</u>	<u>0.981</u>	<u>51%</u>
1992	<u>34%</u>	<u>0.993</u>	<u>34%</u>
1991 and older	<u>20%</u>	<u>1.008</u>	<u>20%</u>

CATEGORY 5

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1994	<u>85%</u>	<u>1.000</u>	<u>85%</u>
1993	<u>69%</u>	<u>1.018</u>	<u>70%</u>
1992	<u>52%</u>	<u>1.027</u>	<u>53%</u>
1991	<u>34%</u>	<u>1.039</u>	<u>35%</u>
1990 and older	<u>20%</u>	<u>1.056</u>	<u>21%</u>
1995	<u>85%</u>	<u>1.000</u>	<u>85%</u>
1994	<u>69%</u>	<u>1.017</u>	<u>70%</u>
1993	<u>52%</u>	<u>1.036</u>	<u>54%</u>
1992	<u>34%</u>	<u>1.045</u>	<u>36%</u>
1991 and older	<u>20%</u>	<u>1.057</u>	<u>21%</u>

CATEGORY 6

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1994	<u>85%</u>	<u>1.000</u>	<u>85%</u>
1993	<u>69%</u>	<u>0.958</u>	<u>66%</u>
1992	<u>52%</u>	<u>0.987</u>	<u>51%</u>
1991	<u>34%</u>	<u>1.026</u>	<u>39%</u>
1990 and older	<u>20%</u>	<u>1.086</u>	<u>24%</u>
1995	<u>85%</u>	<u>1.000</u>	<u>85%</u>
1994	<u>69%</u>	<u>1.012</u>	<u>70%</u>
1993	<u>52%</u>	<u>0.969</u>	<u>50%</u>
1992	<u>34%</u>	<u>0.998</u>	<u>34%</u>
1991 and older	<u>20%</u>	<u>1.038</u>	<u>21%</u>

CATEGORY 7

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1994	92%	1.000	92%
1993	84%	1.021	86%
1992	76%	1.044	80%
1991	67%	1.075	72%
1990	58%	1.118	65%
1989	49%	1.165	57%
1988	39%	1.210	47%
1987	30%	1.235	37%
1986	24%	1.255	30%
1985 and older	20%	1.280	26%
1995	92%	1.000	92%
1994	84%	1.023	86%
1993	76%	1.044	79%
1992	67%	1.068	72%
1991	58%	1.100	64%
1990	49%	1.144	56%
1989	39%	1.192	46%
1988	30%	1.238	37%
1987	24%	1.263	30%
1986 and older	20%	1.283	26%

CATEGORY 8

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1994	92%	1.000	92%
1993	84%	1.023	86%
1992	76%	1.040	79%
1991	67%	1.054	71%
1990	58%	1.083	63%
1989	49%	1.125	55%
1988	39%	1.177	46%
1987	30%	1.219	37%
1986	24%	1.250	30%
1985 and older	20%	1.301	26%
1995	92%	1.000	92%
1994	84%	1.025	86%
1993	76%	1.049	80%
1992	67%	1.067	71%
1991	58%	1.081	63%
1990	49%	1.111	54%
1989	39%	1.154	45%
1988	30%	1.207	36%
1987	24%	1.250	30%
1986 and older	20%	1.283	26%

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-139 MCA.

42.21.156. CATEGORIES (1) remains the same.

(2) Category 1 consists of computer systems, data processing equipment, software, computerized medical equipment, and video games. The index used will be the "Producer Price Index for the 1972 Standard Industrial Classification Manual", Code #3674, "Semiconductors and Related Devices", published by the United States Department of Labor, Bureau of Labor Statistics. A 4-year depreciation table will be used.

(3) through (9) remain the same.

AUTH: Sec. 15-1-201(1) MCA; IMP, Sec. 15-6-139 MCA.

42.21.158. PROPERTY REPORTING TIME FRAMES (1) Taxpayers having property in the state of Montana on January 1 of each year must complete the statement as provided for in 15-8-301, MCA. With the exception of livestock owners, the taxpayer has 30 days from the date of receipt of any request for information to respond to the department of revenue ~~or its agent's~~ request for information. The department ~~or its agent~~ may grant a 30-day extension if the taxpayer requests such an extension during the 30-day period. Upon request from the taxpayer, the department shall provide a copy of the assessed value of individual pieces of personal property.

(2) If the taxpayer shall fail to respond to the department ~~or its agent's~~ request for information during the time frames set forth in subsection (1), the department ~~or its agent~~ shall assess the property under the provisions of 15-1-303, MCA.

(3) If such requests for information involve migratory property as defined in 15-24-301, MCA, the taxpayer will have 5 days to respond to the department ~~or its agent's~~ request for information as provided by 15-16-111, MCA. The department ~~or its agent~~ may grant a 10-day extension if the taxpayer requests such an extension during the 5-day period and the department ~~or its agent~~ is satisfied the property will remain in the county for a time period sufficient to guarantee the payment of taxes.

(4) If the taxpayer shall fail to respond to the department ~~or its agent's~~ request for information during the time frames set forth in subsection (3), the department ~~or its agent~~ shall assess the property under the provisions of 15-1-303, MCA.

(5) A taxpayer who raises livestock has 14 days from February 1 to respond to the department ~~or its agent's~~ request for information. The department ~~or its agent~~ may grant a 10-day extension if the taxpayer requests such an extension before February 15.

(6) This rule is effective for tax years beginning after December 31, 1994.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-8-303, 15-24-902, 15-24-903, 15-24-905, and 15-24-920 MCA.

42.21.301. VALUATION PROCEDURE (1) To determine the market value for automobiles and trucks, ~~motorcycles~~ and

quadricycles assessed under 61-3-503, MCA, vehicle assessment staff will use the methods in ARM 42.21.302 through 42.21.305 in a sequential order until a definite value is determined.

AUTH: Secs. 15-1-201 and 61-3-506 MCA; IMP, 15-8-202 MCA.

42.21.302 VEHICLES LISTED IN THE GUIDES (1) through (1)(b) remains the same.

(2) Licensed ~~motorcycles~~ and licensed quadricycles listed in the guides will be valued using:

(a) remains the same.

AUTH: Secs. 15-1-201 and 61-3-506 MCA; IMP, Sec. 15-8-202 MCA.

42.21.303 VEHICLES PREVIOUSLY REGISTERED THAT ARE "SUBSEQUENTLY NOT LISTED" IN THE GUIDES (1). Automobiles, trucks, ~~licensed motorcycles~~, and licensed quadricycles assessed under 61-3-503, MCA, and previously registered and subsequently not listed in the guides will be valued as follows:

(a) through (b) remain the same.

AUTH: Secs. 15-1-201 and 61-3-506 MCA; IMP, Sec. 15-8-202 MCA.

42.21.304 VEHICLES NEVER LISTED IN THE GUIDES

(1) Automobiles, trucks, ~~licensed motorcycles~~, and licensed quadricycles assessed under 61-3-503, MCA, and never listed in the guides will be valued as follows:

(a) through (2) remain the same.

AUTH: Secs. 15-1-201 and 61-3-506 MCA; IMP, Sec. 15-8-202 MCA.

42.21.305 TRENDED DEPRECIATION SCHEDULES (1) 1995~~6~~ trended percent depreciation schedule for licensed ~~motorcycles~~ and licensed quadricycles:

<u>Year</u>	<u>Trended % Good</u>
1995	80%
1994	64%
1993	58%
1992	55%
1991	49%
1990	45%
1989	43%
1988	41%
1987	41%
1986	34%
1985	33%
1984	29%
1983	26%
1982	23%
1981	23%
1980 and older	21%

<u>1996</u>	<u>80%</u>
<u>1995</u>	<u>64%</u>
<u>1994</u>	<u>58%</u>
<u>1993</u>	<u>55%</u>
<u>1992</u>	<u>49%</u>
<u>1991</u>	<u>45%</u>
<u>1990</u>	<u>43%</u>
<u>1989</u>	<u>41%</u>
<u>1988</u>	<u>41%</u>
<u>1987</u>	<u>34%</u>
<u>1986</u>	<u>33%</u>
<u>1985</u>	<u>29%</u>
<u>1984</u>	<u>26%</u>
<u>1983</u>	<u>23%</u>
<u>1982</u>	<u>23%</u>
<u>1981 and older</u>	<u>21%</u>

(2) 19956 trended depreciation schedule for automobiles and trucks with a rated capacity of 1 ton and less:

<u>Year</u>	<u>Trended % Good</u>
<u>1995</u>	<u>80% of FOB</u>
<u>1994</u>	<u>80%</u>
<u>1993</u>	<u>72%</u>
<u>1992</u>	<u>61%</u>
<u>1991</u>	<u>52%</u>
<u>1990</u>	<u>43%</u>
<u>1989</u>	<u>35%</u>
<u>1988</u>	<u>30%</u>
<u>1987</u>	<u>24%</u>
<u>1986</u>	<u>19%</u>
<u>1985</u>	<u>16%</u>
<u>1984</u>	<u>12%</u>
<u>1983</u>	<u>10%</u>
<u>1982</u>	<u>8%</u>
<u>1981</u>	<u>7%</u>
<u>1980</u>	<u>7%</u>
<u>1979</u>	<u>7%</u>
<u>1978 and older</u>	<u>7%</u>

<u>1996</u>	<u>80% of FOB</u>
<u>1995</u>	<u>80%</u>
<u>1994</u>	<u>77%</u>
<u>1993</u>	<u>67%</u>
<u>1992</u>	<u>58%</u>
<u>1991</u>	<u>48%</u>
<u>1990</u>	<u>39%</u>
<u>1989</u>	<u>32%</u>
<u>1988</u>	<u>26%</u>
<u>1987</u>	<u>23%</u>
<u>1986</u>	<u>18%</u>
<u>1985</u>	<u>15%</u>

<u>1984</u>	<u>12%</u>
<u>1983</u>	<u>9%</u>
<u>1982</u>	<u>8%</u>
<u>1981</u>	<u>7%</u>
<u>1980</u>	<u>7%</u>
<u>1979 and older</u>	<u>7%</u>

AUTH: Secs. 15-1-201 and 61-3-506 MCA; IMP, Sec. 15-8-202 MCA.

42.21.310 FINAL VALUATION AUTHORITY (1) Should a taxpayer dispute the average trade-in value as indicated on the computer-generated registration card, the final authority will be the average trade-in value as found in the appropriate guidebook ~~by department field staff.~~

AUTH: Secs. 15-1-201 and 61-3-506 MCA, IMP, Sec. 15-8-202 MCA.

The Department proposes to repeal the following rules:

42.21.309 PAYMENT OF THE NEW CAR SALES TAX AND THE AD VALOREM TAX found at page 42-2164 of the Administrative Rules of Montana.

AUTH: Secs. 15-1-201 and 61-3-506 MCA; IMP, Sec. 15-8-202 MCA.

42.21.313 TAX RATE PERCENTAGE found at page 42-2164 of the Administrative Rules of Montana.

AUTH: Secs. 15-1-201 and 61-3-506 MCA; IMP, Sec. 15-8-202 MCA.

3. The department is proposing the amendments because 15-8-111, MCA, requires the department to assess all property at 100% of its market value except as provided in 15-7-111, MCA. The statute does not address in detail how the department is to arrive at market value.

To determine the market value of certain property the department has historically used and adopted the concept of trending and depreciation. The method by which trended depreciation schedules are derived is described in the existing rules, and that method is not being changed. However, the method does result in annual changes to the schedules. The First Judicial District Court has indicated that those schedules must be a part of the rule.

Additionally, since the department no longer has an agent in each county, reference to "or its agent" has been stricken throughout the rules. Mailing addresses for several guide books and manuals have been corrected.

In order to reflect 1995 legislation, ARM 42.21.122 is amended to specify how the valuation for ostriches, emus, and rheas will be determined. Computerized medical equipment has been added to 42.21.156. Other legislation spelled out that motorcycles are no longer subject to ad valorem valuation, but


will be subject to set fees. This results in proposed amendments to ARM 42.21.301 through 42.21.305.


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:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than January 12, 1996.

5. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.


CLEO ANDERSON
Rule Reviewer


MICK ROBINSON
Director of Revenue

Certified to Secretary of State November 27, 1995.

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

In the matter of the adoption of) NOTICE OF ADOPTION
new rules I through V regarding)
the regulation of managed care)
community networks)

TO: All Interested Persons.

1. On September 18, 1995, the State Auditor and Commissioner of Insurance (commissioner) published notice of the public hearing on proposed adoption of new rules I through V concerning the regulation of managed care community networks at page 1819 of the 1995 Montana Administrative Register, issue number 18.

2. On October 19, 1995, a public hearing was held in Helena concerning the proposed adoption. One person testified at the hearing and nine comments were received prior to the deadline of October 26, 1995.

3. After consideration of the comments received on the proposed rules, the commissioner has adopted new Rules I (6.6.5801) through V (6.6.5805) with the following changes:

RULE I (6.6.5801) MANAGED CARE COMMUNITY NETWORKS:
DEFINITIONS (1) "Managed care community network" or "network" means "an entity, other than a health maintenance organization, that is owned, operated, or governed by a person and that provides or arranges managed health care services under contract with the [Department of Public Health and Human Services of the state of Montana] to enrollees of the program," as provided for in 53-6-702(4), MCA.

(2) "Commissioner" means the commissioner of insurance provided for in ~~section~~ 2-15-1903, MCA.

AUTH: ~~Sections 53-6-701 through 53-6-709~~ 53-6-703,
33-31-103 and 33-31-115, MCA
IMP: ~~Sections 56-6-701 through 56-6-709 and 33-31-~~
115 53-6-703, MCA

RULE II (6.6.5802) CRITERIA FOR ASSESSING THE FINANCIAL
SOUNDNESS OF A NETWORK (1) through (4) remain the same as
proposed.

AUTH: ~~Sections 53-6-701 through 53-6-709 and 33-31-~~
115 53-6-703(3), MCA
IMP: ~~Sections 56-6-701 through 56-6-709 and 33-31-~~
115 53-6-703, MCA

RULE III (6.6.5803) PROTECTION AGAINST INSOLVENCY
(1) and (2) remain the same as proposed.

~~(3) A network must comply with section 33-31-216, MCA, in order to continue to operate. A network must maintain an appropriate deposit of securities with the commissioner, maintain the minimum net worth of \$200,000.00, and provide evidence that it has complied with section 33-31-216(10), MCA.~~

AUTH: ~~Sections 53-6-701 through 56-6-709 53-6-703(6)~~
and 33-31-115, MCA
IMP: ~~Sections 56-6-701 through 56-6-709 and 33-31-~~
~~115 53-6-703, MCA~~

RULE IV (6.6.5804) REDUCTION OR ELIMINATION OF REQUIREMENTS (1) ~~The commissioner may reduce or eliminate requirements of Title 33, Chapter 31, MCA, which apply to a network, if it can be demonstrated that the requirement is unnecessary for the operation of the network in a rural area or because of federal requirements for prepaid health plans.~~

~~(2)(1) If a network seeks reduction or elimination of a requirement of Title 33, Chapter 31, MCA, regarding its operation in this state, the network must take the following steps:~~

~~(a) The network must submit a written request to the commissioner in which the network:~~

~~(i) states the specific requirement in Title 33, Chapter 31, MCA, regarding whether it wants a reduction or an elimination; and~~

~~(ii) explains why the requirement is unnecessary for its operation in a rural area or because of federal requirements for prepaid health plans.~~

~~(3)(2) The text remains the same as proposed.~~

~~(4)(3) The commissioner must either approve or reject the request of the network within 60 days of his receipt of all information relevant to the decision. Within 60 days after submission of the request, the commissioner shall either deny the request in writing (stating his reasons for the denial) or shall initiate rulemaking proceedings regarding the elimination or reduction in accordance with 2-4-302 through 2-4-305, MCA.~~

AUTH: ~~Sections 53-6-701 through 53-6-709 33-31-103,~~
33-31-115 and 53-6-703(1)(a), MCA
IMP: ~~Sections 56-6-701 through 56-6-709 and 33-31-~~
~~115 53-6-703, MCA~~

RULE V (6.6.5805) APPLICATION REVIEW FEE (1) ~~The commissioner shall may charge the network an application review fee for the commissioner's actual cost of review of the network's application. In no case, however, shall the fee be more than \$500.00.~~

AUTH: ~~Sections 53-6-701 through 53-6-709 53-6-703(4)~~
and 33-31-115, MCA
IMP: ~~Sections 56-6-701 through 56-6-709 and 33-31-~~
~~115 53-6-703, MCA~~

4. The commissioner has thoroughly considered all comments received and responds as follows:

Rule I (6.6.5801)

Comment: The commissioner's staff recommends amending the format of Rule I (6.6.5801(1)) to comply with 2-4-305(2), MCA, which requires rules to clearly indicate statutory language where such language is duplicated.

Response: The commissioner concurs and revises the rule accordingly.

Comment: The commissioner's staff recommends amending the citations to the statutes authorizing the rules and statutes implemented by the rules to clearly reflect the specific grant of rulemaking authority and the specific statute implemented by the rule.

Response: The commissioner concurs and revises the rule accordingly.

Rule II (6.6.5802)

Comment: A comment was made that this rule did not provide any guidelines concerning what the commissioner will consider as measures for altering standards for determining the financial soundness of a network which is composed of providers who directly render health care and are located within the community in which they seek to contract.

Response: In general, some relaxation of the financial standards may be possible for networks comprised of local providers. Standards may be relaxed if a standard is demonstrated to be unnecessary for the operation of a managed care network in a rural area or because of federal requirements for prepaid health plans.

Comment: A comment was made that for the sake of clarity this rule should point out that in addition to the minimum capitalization of \$200,000, a network must also meet the deposit requirement of 33-31-216, MCA.

Response: Managed Care Community Networks are bound to comply with 33-31-216, MCA, pursuant to 53-6-703(6), MCA. Given that the standards are not eliminated or reduced by rule and are clearly enumerated in statute, reiteration of the deposit requirement would be unnecessarily duplicative of statutory language and would contravene 2-4-305(2), MCA.

Comment: The commissioner's staff recommends amending the citations to the statutes authorizing the rules and statutes implemented by the rules to clearly reflect the specific grant of rulemaking authority and the specific statute implemented

by the rule.

Response: The commissioner concurs and revises the rule accordingly.

Rule III (6.6.5803)

Comment: It was suggested that the annual audited financial report, mentioned in subsection (2) of the rule, be made mandatory rather than a discretionary requirement by the commissioner.

Response: Making the annual audited financial report mandatory would place greater obligations upon Managed Community Care Networks than are placed on Health Maintenance Organizations. The commissioner concludes that making the annual audited financial report discretionary gives him sufficient authority to obtain essential information without imposing unnecessary burdens on some networks.

Comment: The commissioner's staff recommends removing the language of Rule III(3) because it is unnecessarily duplicative of statutory language found in 53-6-703(6), MCA, and 33-31-216, MCA. The language of Rule III(3) does not amplify either the language or the effect of the statutes.

Response: The commissioner concurs and revises the rule accordingly.

Comment: It was suggested that subsection (3) of this rule include the words "if required" in reference to the requirement of a deposit of securities.

Response: Since the language of Rule III(3) has been removed, inserting "if required" is no longer relevant.

Comment: A comment was made that this rule should recite the financial examination requirements and the continuing review provisions which the commissioner intends to implement in his oversight of networks.

Response: Since the financial examination requirements applying to networks are already outlined in Title 33, Chapter 31, MCA, the commissioner believes that presentation in this rule is unnecessarily duplicative of statutory language. The commissioner will certainly carefully review all financial information from networks. However, a list of specific analytical techniques to be applied does not seem meaningful, inasmuch as certain review procedures will be appropriate for one network but not for another. Therefore, these rules do not include specific continuing review provisions.

Comment: The commissioner's staff recommends amending the citations to the statutes authorizing the rules and statutes

implemented by the rules to clearly reflect the specific grant of rulemaking authority and the specific statute implemented by the rule.

Response: The commissioner concurs and revises the rule accordingly.

Rule IV (6.6.5804)

Comment: The commissioner's staff recommends removing the language of Rule IV(1) because it is unnecessarily duplicative of statutory language found in 33-31-115, MCA, and 53-6-703(1)(a), MCA. The staff also recommends that the rule language which restricts reduction or elimination of Title 33, Chapter 31 requirements to those unnecessary for the operation of the network in a rural area or because of federal requirements for prepaid health plans should be moved to Rule IV(1)(a)(ii) to reflect restrictions placed on the commissioner's rulemaking authority by the authorizing legislation's statement of intent.

Response: The commissioner concurs and revises the rule accordingly.

Comment: It was suggested that the word "rural" in subsection (1), now found in new (1)(a)(ii), be defined so as to determine what entities are subject to this rule.

Response: The word "rural" was used in the Statement of Intent to Senate Bill 388. In that context it was also undefined. Federal regulations address the nature of a "rural" area in the context of Medicaid services. As Managed Care Community Networks are developed to serve Medicaid recipients, Federal interpretations of the term "rural" will suffice.

Comment: A comment was made that subsection (1) provides no guidelines as to which provisions of Title 33, Chapter 31 may be eliminated or reduced for a network.

Response: The circumstances of each network or class of networks will be different. To try to anticipate each and every situation which might arise and establish appropriate standards for elimination or reduction in rules would be fruitless.

Comment: It was suggested that if a network requested the elimination or reduction of portions of HMO law, a public hearing should be noticed at which the commissioner might receive commentary as to the wisdom of granting the request.

Response: The commissioner has discretionary authority to hold hearings for any purpose within the scope of the Insurance Code and as deemed by him to be necessary. In cases

in which the commissioner determines that a public hearing is necessary for the initial examination of the petitioner's request for reduction or elimination of a requirement, the commissioner will hold a public hearing pursuant to his discretionary authority. In the event the commissioner determines, with or without conducting a public hearing, that the network is entitled to a reduction or elimination of a requirement, the commissioner must go through the rulemaking process to reduce or eliminate the requirement. Pursuant to the Montana Administrative Procedure Act, the public then has the right to comment upon the proposed rule relating to the reduction or elimination of a requirement.

Comment: The commissioner's staff recommends amending the language in Rule IV(4) (renumbered (3)) to reflect the commissioner's obligation to rule on the request within 60 days. The staff also recommends that language be added to clarify that an elimination or reduction of a requirement of Title 33, Chapter 31 must be accomplished through use of the rulemaking process.

Response: The commissioner concurs and revises the rule accordingly.

Comment: The commissioner's staff recommends amending the citations to the statutes authorizing the rules and statutes implemented by the rules to clearly reflect the specific grant of rulemaking authority and the specific statute implemented by the rule.

Response: The commissioner concurs and revises the rule accordingly.

Rule V (6.6.5805)

Comment: A comment was made that the fee for the commissioner's review of a network's application should be the actual cost of the review rather than limiting the fee to \$500.

Response: The commissioner has concluded that a removal of the \$500 cap on the cost of the review is desirable. Further, he believes that the imposition of the full actual cost should be made discretionary rather than mandatory. Language effecting these changes has been included in the adopted rules.

Comment: The commissioner's staff recommends amending the citations to the statutes authorizing the rules and statutes implemented by the rules to clearly reflect the specific grant of rulemaking authority and the specific statute implemented by the rule.

Response: The commissioner concurs and revises the rule accordingly.

MARK O'KEEFE
STATE AUDITOR AND
COMMISSIONER OF INSURANCE

By: Rusty Harper
Rusty Harper
Deputy State Auditor

Gary L. Spaeth
Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 21st day of November, 1995.

BEFORE THE CLASSIFICATION REVIEW COMMITTEE
OF THE STATE OF MONTANA

In the matter of the adoption of) CORRECTED NOTICE OF
Rule I and the amendment of rules) ADOPTION AND
6.6.8001 through 6.6.8203 and rule) AMENDMENT
6.6.8301 and adopting the 1996 Ed.)
of the NCCI Basic Manual for)
Workers Compensation and)
Employers Liability)

TO: All Interested Persons.

1. On June 15, 1995, the classification review committee published a notice at page 985 of the Montana Administrative Register, Issue No. 11, of the public hearing on proposed amendment and adoption of the above-captioned rules pertaining to the adoption of new rule I (6.6.8202A), amendment of rules 6.6.8001 through 6.6.8203 and rule 6.6.8301 and the adoption of the 1996 edition of the NCCI Basic Manual for Workers Compensation and Employers Liability. On October 12, 1995, the classification review committee published a notice at page 2138 of the Montana Administrative Register, Issue No. 19, of the adoption and amendment of the above-captioned rules.

2. The notice of hearing cited House Bill 414 as the rulemaking authority for rules 6.6.8001 through 6.6.8203. House Bill 414 has been codified as 33-16-1012, MCA, and therefore House Bill 414 should be replaced by 33-16-1012, MCA, as the authority for these rules. The notice of adoption and amendment adopted rule 6.6.8101 as proposed in the notice of hearing; however, the notice of hearing inadvertently omitted the text of rule 6.6.8101(1)(d) and renumbered (e) as (d). Because of a typographical error in the notice of hearing, the cites for the statutes being implemented by rule 6.6.8101 repeated 2-4-201 and omitted 2-4-202, MCA. The notice of adoption and amendment inadvertently omitted the words "may" and "to" from rule 6.6.8202A(7), and used inconsistent format and style in several places in that rule. The notice of adoption and amendment inadvertently omitted adoption of rule 6.6.8202A(8). The corrections to the amendments and adoption of these rules are as follows:

6.6.8101 ADOPTION OF MODEL RULES (1) through (1)(c) remain the same as proposed in the notice of hearing.

(d) 1.3.218; and

(e) 1.3.222 through 1.3.233.

(2) through (3) remain the same as proposed in the notice of hearing.

AUTH: ~~House Bill 414~~ Sec. 33-16-1012, MCA

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

6.6.8202A (NEW RULE 1) INFORMAL ADVISORY HEARING PROCEDURE (1) Remains the same as proposed in the notice of hearing.

(2) Remains the same as adopted in the notice of adoption and amendment.

(3) through (6) remain the same as proposed in the notice of hearing.

(7) The party who is aggrieved by the advisory decision of the committee or by the refusal of a party to be bound by the committee's advisory decision rendered after a hearing conducted pursuant to this ~~section~~ rule may within ~~thirty~~ 30 days after the expiration of the ~~thirty~~ 30 day notice deadline specified in ~~paragraph (6)~~ herein initiate an informal contested case proceeding pursuant to 2-4-604, MCA, before the committee and the committee shall hear the matter in a de novo administrative proceeding as provided in Title 2, chapter 4, part 6, MCA. This informal contested case proceeding shall be conducted pursuant to the provisions of ~~Section~~ ARM 6.6.8204 - 6.6.8206 ARM. If the party who is aggrieved by the advisory decision of the committee or by the refusal of a party to be bound by the committee's advisory decision does not initiate such informal contested case proceeding within the 30 day deadline, such advisory decision shall be binding upon the parties.

(8) Remains the same as proposed in the notice of hearing.

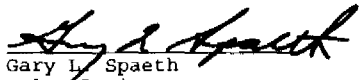
AUTH: ~~House Bill 414~~ Sec. 33-16-1012, MCA

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

3. Replacement pages for the corrected notice of adoption and amendment will be submitted to the Secretary of State on December 31, 1995.

ROBERT CARLSON, CHAIRPERSON
CLASSIFICATION REVIEW COMMITTEE

By: 
Frank Coté
Deputy Insurance Commissioner


Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 27th day of November, 1995.

BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT OF
of rules pertaining to high risk)	8.4.505 HIGH RISK PREGNANCY:
pregnancy and conditions which)	CONDITIONS REQUIRING PRIMARY
require physician consultation)	CARE BY A PHYSICIAN AND
)	8.4.506 CONDITIONS WHICH
)	REQUIRE PHYSICIAN CONSULTA-
)	TION

TO: All Interested Persons:

1. On July 27, 1995, the Board of Alternative Health Care published a notice of proposed amendment of the above-stated rules at page 1377, 1995 Montana Administrative Register, issue number 14.

2. The Board has amended ARM 8.4.505 exactly as proposed, and has amended ARM 8.4.506 as proposed, but with the following changes:

"8.4.506 CONDITIONS WHICH REQUIRE PHYSICIAN CONSULTATION OR TRANSFER OF CARE (1) through (a)(vi) will remain the same as proposed.

(vii) post term ~~greater than 41 1/2~~ at 42 weeks by dates and physical exam;

(viii) through (c)(xiv) will remain the same as proposed.

(xv) abnormal body temperature (outside the 97-100°F range, not resolved within one hour);

(xvi) and (xvii) will remain the same as proposed."

Auth: Sec. 37-27-105, MCA; IMP, Sec. 37-27-105, MCA

3. The Board accepted written comments through August 24, 1995. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, are as follows:

COMMENT NO. 1: Two comments were received stating ARM 8.4.506(1)(a)(vii) should not state post-term greater than 41 1/2 weeks by dates, because 41 1/2 weeks gestation is a textbook definition of a normal gestational period, and it makes no sense to consult with a physician at that time for no other reason. This consultation would not benefit the midwife, the client or the physician. Consultation at 42 weeks is reasonable.

RESPONSE: The Board concurs with the comment and will amend the rule as shown above to the standard 42 weeks as being post-term. Consultation should occur after that time.

COMMENT NO. 2: One comment was received stating ARM 8.4.506(1)(a)(xxvi) should add language to the current language on history of previous stillbirth to say "unless documented cord accident," as this complication is rare and unlikely to repeat itself.

RESPONSE: The Board noted that this addition would not clarify the rule in any way, and could certainly be discussed during any consultation with a physician, as the rule requires.

COMMENT NO. 3: One comment was received stating ARM 8.4.506(1)(c)(xv) should clarify "abnormal body temperature," as this can sometimes be caused by a cool room, and can be resolved by warming the baby.

RESPONSE: The Board concurs with the comment, and will amend the rule as shown to state "(outside the 97-100° Fahrenheit range, not resolved within one hour)."

COMMENT NO. 4: Three comments were received stating ARM 8.4.506 on physician consultation should more clearly define "consultation," as it is often difficult to find a physician willing to consult with a direct entry midwife, and the expectations for such a consultation are not clear.

RESPONSE: The Board noted that (1) of ARM 8.4.506--not reprinted in this proposed rule amendment notice as it was not being amended--already addresses consultation, and alternatives to a physician consultation when this can not be obtained. The Board did not propose changes to "consultation" in this notice, but is continuing to address this issue and will file a new proposed rule notice if changes or further definitions are deemed necessary.

BOARD OF ALTERNATIVE HEALTH CARE
MICHAEL BERGKAMP, ND, CHAIRMAN

BY: 
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE


ROBERT P. VERDON, RULE REVIEWER

Certified to the Secretary of State, November 27, 1995.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of rules pertaining to fees) 8.16.405 FEE SCHEDULE AND
) 8.16.606 FEE SCHEDULE

TO: All Interested Persons:

1. On September 28, 1995, the Board of Dentistry published a notice of proposed amendment of the above-stated rules at page 1823, 1995 Montana Administrative Register, issue number 18.

2. The Board has amended the rules exactly as proposed.

3. Written comments were accepted through October 26, 1995. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, are as follows:

COMMENT NO. 1: Four comments were received stating the Board should have made a reasonable adjustment in dental hygienist fees in response to the concerns voiced by dental hygienists at an earlier rule hearing which increased the fees to \$100.00, instead of waiting for the Legislature to request a review of the fees.

RESPONSE: The Board noted that following the initial hearing, the Board adequately answered licensee comments and felt the sharing of expenses not specific to one particular license group was justifiable. All members of the Board participate in and decide on every Board issue, no matter which licensees are involved. Since dental hygienists chose to take this issue to the Legislature, the House Business and Labor Committee became involved and requested the Board look into reducing dental hygienist fees. The Board decided to see what could be done to accommodate the House Committee's request, in an effort to diffuse the tension. The House Business Committee was not the sole reason for the Board's review of the dental hygienist fees, however, as the Board had begun the process of gathering budgetary data, etc., before the Legislature met in response to numerous inquiries from dental hygienists to reduce fees.

COMMENT NO. 2: Five comments were received stating the administrative work and costs associated with dental hygienist licenses had demanded a 35 percent increase in fees. The Board should function with better fiscal accountability. The Board should also provide a breakdown of the budget which requires these fee amounts, and should consider the figures proposed at the last Legislative session, in which an independent Board for dental hygienists was proposed at \$30.00 - \$35.00 per year in fees.

RESPONSE: The Board noted that the budget situation showed an overall need to increase fees. At the same time, the Board has been looking at finances and will continue its efforts to contain costs while still performing its required and necessary

duties. The Board has already stated it will review fees annually and determine if further adjustments can be made for all licensees based on budgetary requirements. The Board additionally noted, however, that all costs are associated with various Board activities the Board undertakes. The costs have risen, of course, due to litigation, etc., but all costs represent activities undertaken, with costs incurred and money spent.

COMMENT NO. 3: Two comments were received stating the amount of "overpayment" by the dental hygienists in 1995 should have been considered in the proposed rule notice. The comment stated that if \$30.00 more than their share was paid by dental hygienists last year, this year's renewal should reflect the overpayment of almost \$13,000.

RESPONSE: See response to Comment No. 1 above. The Board also noted that it does not consider the 1995 dental hygiene license fees as an overpayment.

COMMENT NO. 4: Two comments were received stating the Board should reduce the contracted amount between the Board and the Montana Professional Assistance Program (MPAP), and have the dentists only pay for it, as they are the only ones who can benefit from the program. The Board should question the financing of the MPAP program in general.

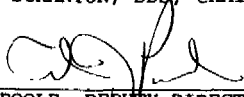
RESPONSE: See response to Comment No. 1 above. The Board noted the equity between physician and dentist fees for MPAP had been resolved with the 1994 dentist portion of the contract corrected between the Board of Medical Examiners and the Board of Dentistry. Dentists are the only license group under the Board of Dentistry that pay for MPAP, and have always been the only group to pay.

COMMENT NO. 5: One comment was received stating the budget should be available to all licensees, and should contain numbers showing whether dental hygienists are paying for one third of the rent, secretarial support, etc., as well as percentages for complaints, legal costs, etc. associated with dental hygienists and percentages for travel costs related to Board members.

RESPONSE: The Board noted the budget/financial report is presented at each Board meeting, and is available to all licensees. This report contains the breakdown of all costs incurred by the Board. The Board's budget report does not, however, break down costs among the various license groups, as this is a combined Board, and costs are shared by all. The

Department of Commerce dictates the format of the SBAS budget reports for all licensing boards.

BOARD OF DENTISTRY
CAROL SCRANTON, DDS, CHAIRMAN

BY: 
ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE


ROBERT P. VERDON, RULE REVIEWER

Certified to the Secretary of State, November 27, 1995.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules pertaining to fees and	)	8.40.404 FEE SCHEDULE AND
dangerous drugs and adoption of	)	8.40.1215 ADDITIONS,
a new rule pertaining to trans-	)	DELETIONS AND RESCHEDULING
mission of prescriptions by	)	OF DANGEROUS DRUGS AND THE
facsimile	)	ADOPTION OF A NEW RULE
	)	PERTAINING TO TRANSMISSION
	)	OF PRESCRIPTIONS BY
	)	FACSIMILE

TO: All Interested Persons:

1. On September 28, 1995, the Board of Pharmacy published a notice of proposed amendment and adoption of the above-stated rules, at page 1834, 1995 Montana Administrative Register, issue number 18.

2. The Board has amended and adopted the rules exactly as proposed. New rule I will be numbered 8.40.416.

3. Written comment was accepted through October 26, 1995. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, are as follows:

COMMENT NO. 1: One comment was received stating that new rule I should not allow a faxed prescription to be filled for Schedule III, IV and V controlled substances without presentation of the original prescription, as this creates new possibilities for diversion.

RESPONSE: The Board noted that this new rule was substantially similar to the federal rule (59 CFR Sec. 1306.02-1306.31 (1994)) which allows faxed prescriptions of schedule III, IV and V controlled substances to be filled, but not schedule II. The Montana rules are consistent with the federal rule. In addition, the Board noted that current Board rules allow telephone transmission of schedule III, IV and V controlled substance prescriptions without the need for later presentation of the original, so new rule I allowing this system by fax should not be more restrictive than the current practice.

COMMENT NO. 2: One comment was received stating new rule I requiring presentation of the original prescription for schedule II controlled substances after a faxed version is received serves no practical or legal purpose, and will cause confusion for the practitioner and hardship for the patient.

RESPONSE: The Board noted that federal regulations (59 CFR Sec. 1306.02-1306.31 (1994)) already require the original signed prescription be presented before the pharmacist may fill the prescription, whether or not a faxed version has previously been received, so the Montana rule (new rule I) is consistent with the federal rule. The Board noted that the practical advantage in faxing such a prescription would be to allow the pharmacist additional time to fill the prescription, and have


it ready for immediate dispensing upon presentation of the original prescription.

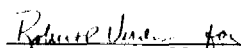
COMMENT NO. 3: One comment was received stating new rule I should include a definition of "long term care facility," as many facilities change names, and overlap responsibilities to provide multi-level care, and may be unclear as to whether they fit in this definition.

RESPONSE: The Board noted that the federal rules upon which the Montana rule is based do not provide such a definition. The Montana Board will consider whether this additional definition is necessary, and will publish it in a later proposed rule notice if it is deemed necessary by Board vote.

BOARD OF PHARMACY
ED HARRINGTON, PRESIDENT

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 27, 1995.

BEFORE THE BOARD OF MILK CONTROL
DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of) NOTICE OF AMENDMENT OF RULE
amendments to rule 8.86.301 as)
it relates to elimination of)
minimum wholesale and retail)
prices; as it relates to)
producer price formulas.) DOCKET #23-95

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

1. On October 26, 1995, the Montana Board of Milk Control published notice of proposed amendments of ARM 8.86.301 concerning the elimination of minimum wholesale and retail prices and how it relates to producer price formulas. Notice was published at page 2192 of the 1995 Administrative Register, issue no. 20, as MAR NOTICE 8-86-52.

2. The board has amended the rule as proposed.

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

3. No comments or testimony were received.

MONTANA BOARD OF MILK CONTROL
MILTON G. OLSEN, Chairman

By: Marc Bridges
Marc Bridges, Exec. Secretary
Board of Livestock
Department of Livestock

By: Lon Mitchell
Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State November 27, 1995.

In the matter of amending)
Rule 36.2.608 pertaining) NOTICE OF AMENDMENT
to fees for)
environmental impact statements)

1. On September 28, 1995, the Department of Natural Resources and Conservation published notice of the proposed amendment to rule 36.2.608 concerning fees for environmental impact statements, at pages 1891 and 1892 of the Montana Administrative Register, issue number 18.

3. Therefore, the amendment to Rule 36.2.608 was adopted as proposed.

BY: Arthur R. Clinch
ARTHUR R. CLINCH
DIRECTOR

BY: Donald D MacIntyre
DONALD D. MACINTYRE
RULE REVIEWER

Certified to Secretary of State November 15th, 1995.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of a new rule	)	NOTICE OF ADOPTION OF
to reject, modify, or	)	ARM 36.12.1020 SIXMILE
condition permit applications	)	CREEK BASIN CLOSURE
in the Sixmile Creek Basin)	

TO: All Interested Persons

1. On September 28, 1995, the Department of Natural Resources and Conservation published a notice of public hearing on the proposed new rule to reject, modify, or condition permit applications in the Sixmile Creek Basin at pages 1893 and 1894, Montana Administrative Register, Issue number 18. Notices were also published on September 27, October 4, and October 11, 1995, in the Missoulian. Individual notices were mailed on September 19, 1995, to 62 water users in the proposed closure area.

2. On November 14, 1995, at 7:00 p.m., a public hearing was held in the Visitor Center of the Nine Mile Ranger Station. During the hearing and the prescribed comment period, the Department received comments from interested persons.

3. The proposed new rule is being adopted as proposed. The closure period will be from June 1 through September 15.

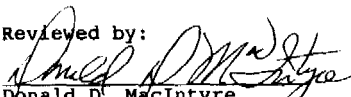
4. The Department has thoroughly considered all comments received. The following is a summary of the comments and the Department's response to these comments which were all in favor of the closure.

COMMENT: There is not sufficient water in the basin to allow full use of the existing water rights. The closure period should be extended to April 1 rather than June 1.

RESPONSE: The record supports the closure of the Sixmile Creek Basin from June 1 through September 15. There are no factual data to support closure for a longer period. If conditions in the Sixmile Creek Basin change and the petitioners have factual data demonstrating there is a shortage during other periods of the year, they can petition the Department at that time to close the basin during those periods.

5. No other oral or written comments were received.

Reviewed by:


Donald D. MacIntyre


Arthur R. Finch, Director

Certified to the Secretary of State November 27, 1995.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT OF
amendment of ARM 1.2.419	)	ARM 1.2.419
regarding scheduled dates for	)	FILING, COMPILING, PRINTER
the Montana Administrative	)	PICKUP AND PUBLICATION OF
Register	)	THE MONTANA ADMINISTRATIVE
	)	REGISTER

TO: All Interested Persons.

1. On October 26, 1995, the Secretary of State published notice of the proposed amendment of ARM 1.2.419 relating to the compiling, printer pickup and publication of the Montana Administrative Register for 1996 at page 2239 of the 1995 Montana Administrative Register, issue no. 20.

2. The Secretary of State is amending the rule as proposed except for the following changes:

1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadlines, compiling dates, printer pickup dates and publication dates for material to be published in the Montana Administrative Register are listed below:

dates remain the same except:

<u>March 25</u>	<u>March 26</u>	<u>March 27</u>	<u>April 11</u>
-----------------	-----------------	-----------------	-----------------

(2) All material to be published must be submitted by ~~4:00~~ 5:00 p.m. on the scheduled filing date. All material submitted after the scheduled filing ~~date~~ deadline will not be published until the next scheduled publication date.

AUTH: Sec. 2-4-312, MCA IMP, Sec. 2-4-312, MCA

3. A hearing was held on November 16, 1995. Two people attended the hearing and written comments were received from three state agencies. Testimony and written comments were received and are summarized as follows:

Comment: The March 25 filing date will not be published until April 11.

Response: The Secretary of State appreciates the comment and has changed the publication date to April 4.

Comment: Two agencies felt that changing the filing deadline from 5:00 to 1:00 would create hardship on their personnel.

Response: The Secretary of State accepts the comments and will not change the filing deadline from 5:00.

Comment: One agency not directly opposing the deadline change suggested alternatives to the time change such as strictly enforcing the deadline or charging a higher per-page filing fee.

Response: The Secretary of State will consider these options.

Comment: One agency requested that the Secretary of State prepare a rules manual to distribute to agencies for preparing rules.

Response: This comment is out of the scope of this rulemaking notice, but will be considered.



MIKE COONEY
Secretary of State

By Angela Jultz
Deputy



GARTH JACOBSON
Rule Reviewer

Dated this 27th day of November 1995.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1995. This table includes those rules adopted during the period September 1, 1995 through December 31, 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 September 30, 1995, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1994 and 1995 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions. Accumulative Table entries will be listed with the department name under which they were proposed, e.g., Department of Health and Environmental Sciences as opposed to Department of Environmental Quality.

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