RESERVE

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 24

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter the proposed amendment of ARM 4.12.1428	)	NOTICE OF PROPOSED AMENDMENT OF ASSESSMENT FEES ON ALL PRODUCE

NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons:

1. On January 20, 1996, the Montana Department of Agriculture proposes to amend the above stated rule 4.12.1428.

2. The proposed amended rule will read as follows (new material underlined, deleted material interlined)

4.12.1428 ASSESSMENT FEES ON ALL PRODUCE (1) The assessment fee on all produce except produce grown in Montana and inspected at shipping point shall be ~~5.5~~3.5¢ per each produce unit.

AUTH: 80-3-303, MCA IMP: 80-3-314, MCA

REASON:

This rule amendment reduces the assessment fee on produce sold or distributed in the state from 5.5 cents to 3.5 cents. This fee is paid by the produce dealer who first distributes produce in state or a grower who retails Montana grown produce with gross annual sales exceeding $15,000. The fee is based upon the unit of produce sold as defined in 80-3-302(6), MCA and established by type of produce in ARM 4.12.1429. The department has determined that it can provide the required services for this program based upon this proposed reduction in revenue. Because of an increase in produce sold and a subsequent revenue increase in FY 95 in the state, and a planned reduction in FY 96 and 97 budgets, revenues are greater than anticipated making a reduction in the assessment fee appropriate. It is expected that the amount of produce sold in FY 96 and subsequent fiscal years will remain at 3.9 million to 4.25 million units. The proposed amendment will reduce the revenue by $97,000.

3. Interested persons may submit their written data, views, or arguments concerning this amendment to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, no later than January 18, 1996.

4. If a party who is directly affected by the proposed amendment wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201 no later than January 18, 1996.

5. If the department 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 fewer than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be eight persons based on a total of 77 produce registrants.

W. Ralph Peck, Director
DEPARTMENT OF AGRICULTURE

Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State DECEMBER 6, 1995

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 4.3.401 through 4.3.406; ARM 4.9.513 through 4.9.536; ARM 4.10.703 through ARM 4.10.708; ARM 4.10.903; ARM 4.10.1205 through ARM 4.10.1207; ARM 4.10.1405 through ARM 4.10.1407; ARM 4.10.1701 through 4.10.1707; ARM 4.14.101, 4.14.201, 4.14.202; and ARM 4.16.601 and the Amendment of ARM 4.10.702, ARM 4.10.1204 and ARM 4.10.1404.	NOTICE OF PROPOSED REPEAL AND AMENDMENT OF RULES AND COMPLIANCE WITH HJR 5 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 20, 1996, the Department of Agriculture proposes to amend and repeal the above mentioned rules. These rules are proposed for repeal for the specific reasons stated below and the repeals are also intended to respond to and satisfy the rule reduction directives of HJR 5, 1995 Montana Legislative session.

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

4.10.702 REGISTRATION REQUIREMENTS (1) and (2) remain the same.

(3) The department hereby adopts the registration and labeling requirements as set forth in the Code of Federal Regulations Title 40, parts 152 and 156, effective as of (the date of this rule amendment). A copy can be obtained from the Montana Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201 (406-444-2944).

AUTH: 80-8-105 MCA IMP: 80-8-105 MCA

REASON: The reason for the amendment of 4.10.702 is to add an adoption by reference of certain provisions in the Code of Federal Regulations (CFR) which the department will enforce.

4.10.1204 APPLICATOR CLASSIFICATIONS AND REQUIREMENTS (1) through (6) remain the same.

(7) Livestock protection collar applicators shall have in their possession the "Technical Bulletin for the Livestock Protection Collar" and must use collars in accordance with Section 3 (Use Restrictions) and Section 4 (Supervision, Inspection of 1080 Livestock Protection Collars). The "Technical Bulletin for the Livestock Protection Collar" by the Montana Department of Agriculture and Montana Department of Livestock effective as of (the date of this rule amendment) contains the use restrictions that must be followed during application of the livestock protection collars and is

available from the Montana Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201 (406-444-2944) or the Montana Department of Livestock, P.O.Box 202001, Helena, MT 59620-2001 (406-444-2023).

AUTH: 80-8-108 MCA IMP: 80-8-105 MCA

REASON: ARM 4.10.1204 is amended to incorporate by reference certain sections of the technical bulletin for the livestock protection collar which the department will enforce.

4.10.1404 APPLICATOR CLASSIFICATIONS AND REQUIREMENTS (1) through (6) remain the same.

(7) Applicators using the M-44 device shall have in their possession the Use Restriction Bulletin (Training Manual for M-44 Applicators) and must use the M-44 device in accordance with the section titled "Use Restrictions for M-44 Cyanide Capsules". The Use Restriction Bulletin (Manual for M-44 Applicators) printed by the Montana Department of Agriculture effective as of (the date of this rule amendment) contains the use restrictions that must be followed during the application of the M-44 device and is available from the Montana Department of Agriculture, Agricultural Sciences Division, P.O.Box 200201, Helena, MT 59620-0201 (406-444-2944).

AUTH: 80-8-105 MCA IMP: 80-8-105 MCA
AUTH: 80-8-214 MCA
AUTH: 80-8-306 MCA

REASON: ARM 4.10.1404 is amended to incorporate by reference certain sections of the use restriction bulletin cited above.

The rules proposed to be repealed are as follows:

(Student Loans) ARM 4.3.401 through 4.3.406 are found on pages 4-55 through 4-56 of the Administrative Rules of Montana.

AUTH: 80-2-106 MCA IMP: 80-2-103 MCA, 80-2-106 MCA

REASON: Student loans have been discontinued. (Refer to ARM 4.3.407).

(Wheat & Barley Food and Fuel Grants) ARM 4.9.513 through 4.9.536 are found on pages 4-193 through 4-197.5 of the Administrative Rules of Montana.

AUTH: 80-11-205 MCA IMP: 80-11-222 MCA

REASON: Section 80-11-222 MCA authorizing Food and Fuel grants has been repealed. ARM 4.9.513 through 4.9.524 are exact duplicates of ARM 4.9.525 through 4.9.536.

(Restriction of Pesticide Rules) ARM 4.10.703 through 4.10.708 are found on pages 4-243 through 4-256 of the Administrative Rules of Montana.

AUTH: 80-8-105 MCA IMP: 80-8-105 MCA
80-8-211 MCA, 80-8-306 MCA 80-8-211 MCA, 80-8-306 MCA

REASON: The repeal of ARM 4.10.703 through 4.10.708 which were a verbatim statement of the Code of Regulations (CFR) are repealed as unnecessary.

(Endrin) ARM 4.10.903 is found on page 4-259 of the Administrative Rules of Montana.
AUTH: 80-5-108 MCA IMP: 80-8-105 AND 80-8-201 MCA

REASON: Is that this rule which suspended and canceled the use of Endrin became no longer necessary when the federal registration of the compound was canceled.

(1080 Livestock Protection Collars) ARM 4.10.1205 through 4.10.1207 are found on pages 4-263.2 through 4-263.5 of the Administrative Rules of Montana.
AUTH: 80-8-105 MCA IMP: 80-8-105 MCA

REASON: A verbatim statement of the technical bulletin are repealed as unnecessary.

(Rules of Registration and Use of M-44 Sodium Cyanide Capsules and M-44 Devices.) ARM 4.10.1405 through 4.10.1407 are found on pages 4-271 through 4-274.1 of the Administrative Rules of Montana.
AUTH: 80-8-105 MCA IMP: 80-8-105 MCA

REASON: A verbatim statement of the restricted use bulletin are repealed as unnecessary.

(Rodenticide Surcharge and Grants) ARM 4.10.1701 through 4.10.1707 are found on pages 4-301 through 4-303 of the Administrative Rules of Montana.
AUTH: 80-7-1108 MCA IMP: 80-7-1108 MCA

REASON: Statutes which these rules implemented have been repealed.

(Montana Agricultural Loan Authority) ARM 4.14.101, ARM 4.14.201 and 4.14.202 are found on pages 4-605 and 4-606 of the Administrative Rules of Montana.
AUTH: 80-12-103 MCA IMP: 2-3-103 MCA

REASON: Section 80-12-102 MCA was amended in 1991 to designate the department as the "authority" eliminating the nine member board. Also, since the department is the authority, the department has already adopted the Model Procedural and Public Participation rules.

(Agriculture Incubator Program) ARM 4.16.601 is found at page 4-735 of the Administrative Rules of Montana.
AUTH: 90-9-203 MCA IMP: 90-9-302 MCA

REASON: Section 90-9-302 MCA authorizing an agricultural incubator program has been repealed.

3. Interested persons may submit their written data, views, or arguments concerning these amendments and/or repeals to Ralph Peck, Director, Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201, no later than January 18, 1996.

4. If a party who is directly affected by the proposed amendments and/or repeals wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Ralph Peck, Director, Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201 no later than January 18, 1996.

5. If the department receives requests for a public hearing on the proposed amendments and/or repeals 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 fewer than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 100 people based on the assumption that these rules applied to a broad range of people in the agricultural industry which most likely would be well over a thousand.

W. Ralph Peck, Director
DEPARTMENT OF AGRICULTURE

Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State this 11th day of December 1995.

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

In the matter of the amendment of Rule 6.6.3802 pertaining to trust agreement conditions and Rule 6.6.3803 pertaining to conditions applicable to reinsurance agreements.	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 22, 1996, the State Auditor and Commissioner of Insurance proposes to amend Rule 6.6.3802 pertaining to trust agreement conditions and Rule 6.6.3803 pertaining to conditions applicable to reinsurance agreements.

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

6.6.3802 TRUST AGREEMENT CONDITIONS (1) The trust agreement required by ~~33-2-1216(5)(c)~~ 33-2-1217(2), MCA, must be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution as defined in 33-2-1501, MCA, and include the following conditions:

Subsections (1)(a) through (1)(j) remain the same.

(k) The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by ~~33-2-1216(5)(c), MCA~~ ARM 6.6.3803, so long as these required conditions are included in the trust agreement.

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

(c) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution may be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustees to invest funds and to accept substitution which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in ARM ~~6.6.3804(1)(b)~~ 6.6.3803(1)(b) of this subchapter.

Subsections (2)(d) through (2)(e) remain the same.

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

6.6.3803 CONDITIONS APPLICABLE TO REINSURANCE AGREEMENTS (1) Reinsurance agreements entered into in conjunction with trust agreements under these rules ~~must~~ may include the following:

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

AUTH: 33-1-313, 33-2-533, and 33-2-1517, MCA
IMP: 33-2-1216 and 33-2-1517, MCA

3. Rule 6.6.3802 is being amended to correct erroneous citations. Rule 6.6.3803 is being amended because "must" was incorrectly copied instead of "may" from the model regulation.

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 18, 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 18, 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

_____
Elizabeth A. O'Halloran
Rules Reviewer

Certified to the Secretary of State this 11th day of December, 1995.

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

In the matter of the repeal of Title 6, Chapter 6, Sub-Chapter 20 pertaining to unfair trade practices on cancellations, non-renewals, or premium increases of casualty or property insurance.	)))))	NOTICE OF PROPOSED REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 22, 1996, the State Auditor and Commissioner of Insurance proposes to repeal Title 6, Chapter 6, Sub-Chapter 20 pertaining to unfair trade practices on cancellations, non-renewals, or premium increases of casualty or property insurance.

2. The rules proposed for repeal are ARM 6.6.2001 PURPOSE AND APPLICABILITY; 6.6.2002 DEFINITIONS; 6.6.2003 MID-TERM CANCELLATION; 6.6.2004 ANNIVERSARY CANCELLATION AND ANNIVERSARY RATE INCREASES; 6.6.2005 NON-RENEWAL; and 6.6.2006 RENEWAL WITH ALTERED TERMS, and are located on pages 6-213 through 6-215.1 of the Administrative Rules of Montana. These rules are being repealed because they are duplicative of subsequently enacted legislation, 33-15-1101 through 33-15-1106, MCA. The authorizing and implemented statutes are as follows:

AUTH: 33-1-313, MCA
IMP: 2-4-305 and 2-4-314, MCA

3. 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 18, 1996.

4. 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 18, 1996.

5. 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

_____
Elizabeth A. O'Halloran
Rules Reviewer

Certified to the Secretary of State this 11th day of December, 1995.

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

In the matter of the amendment of Rule 6.6.1506 pertaining to premium deferral and cash discounts.	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 22, 1996, the State Auditor and Commissioner of Insurance proposes to amend Rule 6.6.1506 pertaining to premium deferral and cash discounts.

2. The proposed rule amendments are as follows (new material is underlined):

6.6.1506 PREMIUM DEFERRAL AND CASH DISCOUNTS

(1) Discount based on the time or date of premium payment shall be permitted. Cash discounts based on full payment premium will be permitted, with a maximum discount not to exceed 6% of the premium. The premium payment must be paid in full by the insured and accompany the application. The discount percentage amount must be shown on the declarations page of the policy. Insurers must include supporting data with filings that justify the discount.

Subsections (2) and (3) remain the same.

AUTH: 33-16-202, MCA
IMP: 33-16-201, MCA

3. Rule 6.6.1506 is being amended to discourage insurance producers from submitting hail insurance premiums from their own accounts and misrepresenting to the insuring company that the customer paid the premium when in fact that did not occur. This practice has acted as a rebate to the hail insurance customers as it allows an unauthorized sale discount in the premium. In addition, the improper use of the cash discount allowance presents an unfair competition situation for producers who abide with the intent of the cash discount rule.

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 18, 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 18, 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

Elizabeth A. O'Halloran
Rules Reviewer

Certified to the Secretary of State this 11th day of December, 1995.

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

In the matter of the amendment of Rules 6.10.102, 6.10.120 and 6.10.121 and the repeal of Rules 6.10.104A, 6.10.124, 6.10.128 and 6.10.129 pertaining to securities regulation.	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Interested Persons:

1. On January 22, 1996, at 9:00 a.m., a public hearing will be held in the conference room of the State Auditor's Office, Room 270, Mitchell Building, 126 North Sanders, Helena, Montana, to consider the amendment of rules 6.10.102, 6.10.120 and 6.10.121 and the repeal of rules 6.10.104A, 6.10.124, 6.10.128 and 6.10.129 pertaining to securities regulation.

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

6.10.102 DEFINITIONS As used in this sub-chapter, unless the context indicates otherwise:

Subsections (1) through (6) remain the same.

(7) "Promotional or developmental stage" means a corporation which has no public market for its shares and has no significant earnings within the past 5 years (or shorter period of its existence).

~~(7)~~ (8) Text remains the same.

~~(8)~~ (9) Text remains the same.

(10) "Significant earnings" exist if the corporation's earnings record over the last 5 years (or shorter period of its existence) demonstrates that for such period the corporation's net earnings per share is 30% of the public offering price per share (as adjusted for stock splits and stock dividends) or the corporation has earnings per share of 5% or more of the public offering price per share for each of any 2 consecutive years.

~~(9)~~ (11) Text remains the same.

AUTH: 30-10-107, MCA
IMP: 30-10-104, 30-10-107 and 30-10-206, MCA

REASON: This rule is being amended to include subsections (1) and (2) from rule 6.10.104A pertaining to the definition of promotional or developmental stage.

6.10.120 MONTANA LIMITED OFFERING EXEMPTION

Subsection (1) remains the same.

(2) Each person who offers or sells securities in this state to nonaccredited and/or accredited investors, as defined in Securities Act of 1933, Regulation D, Rule 230.501(a)(5) through 230.501(a)(7), shall be registered in accordance with 30-10-201, MCA. ~~It is a defense to a violation of the subsection if the issuer sustains the burden of proof to establish that he did not know and, in the exercise of reasonable care, could not have known that the broker-dealer or salesman was not appropriately registered in this state.~~

(3) An exemption under this rule is not available for the securities of an issuer if any of the parties described in Securities Act of 1933, Regulation A, ~~Rules 230.252(c), 230.252(d), 230.252(e), or 230.252(f)~~ Rule 230.262:

Subsections (3)(a) through (9) remain the same.

~~(10) The commissioner may, upon written request and a showing of good cause, waive the examination requirements of ARM 6.10.121 for a securities salesman offering and/or selling securities exempted by this rule.~~

~~(11)~~(10) Text remains the same.

~~(12)~~(11) Text remains the same.

~~(13)~~(12) An issuer using the Montana Limited Offering Exemption shall file such other information as the commissioner may require.

~~(14) The exemption authorized by this rule may be cited as the "Montana Limited Offering Exemption". (History: Sec. 30-10-105 and 30-10-107 MCA; IMP, Sec. 30-10-105 MCA; EMERG, NEW, Eff. 7/5/75; AMD, 1988 MAR p. 1803, Eff. 8/12/88.)~~

AUTH: 30-10-105 and 30-10-107, MCA
IMP: 30-10-105, MCA

REASON: Subsection (2) is being amended because the Central Registration Depository (CRD) which enables the issuer to verify electronically in which states a broker-dealer is registered to sell, reduces the burden of verification on the issuer. Subsection (3) is being amended because the Code of Federal Regulations (CFR) has been revised and the Montana Limited Offering Exemption (MLOE) citation should be changed to reflect the revision. Subsection (10) is being deleted because it is duplicative of ARM 6.10.121(1), and subsection (14) is being deleted because it is redundant, relative to the title of the section.

6.10.121 REGISTRATION AND EXAMINATION--SECURITIES SALESMEN, INVESTMENT ADVISER REPRESENTATIVES, BROKER-DEALERS, AND INVESTMENT ADVISERS

Subsections (1) through (6) remain the same.

~~(7) If an individual is not registered as an investment adviser representative because he is registered as a salesman pursuant to 30-10-201, MCA, then the investment adviser with~~

~~which the investment adviser representative is associated shall notify the broker dealer with which the investment adviser representative is registered as a salesman that the individual is acting as an investment adviser representative for the investment adviser. An investment adviser that uses an individual who is not required to register as an investment adviser representative because he is registered as a salesman pursuant to 30-10-201, MCA, shall first file with the commissioner a copy of the first page of the form U-4 as adopted by the North American Securities Administrators Association, Inc., disclosing the name of the individual's employing broker dealer. Upon termination of the investment adviser representative, the investment adviser shall file with the commissioner the form U-5 as adopted by the North American Securities Administrators Association, Inc.~~

~~(8)~~(7) Text remains the same.

AUTH: 30-10-107, MCA
IMP: 30-10-201, MCA

REASON: Subsection (7) is being deleted because the investment advisor exclusion was eliminated as of October 1, 1993.

3. The rules proposed for repeal are as follows:

Rule 6.10.104A is on page 6-2017 of the Administrative Rules of Montana.

AUTH: 30-10-107, MCA IMP: 30-10-206, MCA

Rule 6.10.124 is on pages 6-2027 through 6-2031 of the Administrative Rules of Montana.

AUTH: 30-10-105 and 30-10-107, MCA
IMP: 30-10-105, MCA

Rule 6.10.128 is on page 6-2037 of the Administrative Rules of Montana.

AUTH: 30-10-107, MCA IMP: 30-10-105, MCA

Rule 6.10.129 is on page 6-2037 of the Administrative Rules of Montana.

AUTH: 30-10-107 IMP: 30-10-105, MCA

REASON: Rule 6.10.104A is being repealed because the content of this rule is being added to rule 6.10.102 as subsections (7) and (10). Rule 6.10.124 is being repealed because the Montana Investment Capital Exemption has not been used in 2 years, and the second tier limited offering exemption and Small Corporate Registration offer an issuer a better avenue of raising equity capital.

Rules 6.10.128 and 6.10.129 are being repealed because the language contained in these sections is redundant and unnecessary.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments and repeals in writing to Heather Cafferty, Montana Securities Department, P.O. Box 4009, Helena, Montana 59604, and must be received no later than January 18, 1996.

5. The State Auditor's Office 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 no later than 5:00 p.m., on January 18, 1996, to advise us as to the nature of the accommodation needed. Please contact Heather Cafferty, Montana Securities Department, P.O. Box 4009, Helena, Montana 59604.

6. Heather Cafferty has been designated to preside over and conduct the hearing.

MARK O'KEEFE, State Auditor
and Commissioner of Securities

By G. Russell Harper
G. Russell Harper
Deputy State Auditor

By Elizabeth A. O'Halloran
Elizabeth A. O'Halloran
Rules Reviewer

Certified to the Secretary of State this 11th day of December, 1995.

BEFORE THE CLASSIFICATION REVIEW COMMITTEE
OF THE STATE OF MONTANA

In the matter of the amendment of rule 6.6.8301, concerning updating references to the NCCI Basic Manual for Workers' Compensation and Employers' Liability Insurance, 1996 ed.	)))))	NOTICE OF PROPOSED AMENDMENT OF RULE 6.6.8301 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. The Montana Classification Review Committee proposes to amend rule 6.6.8301 updating references to the NCCI Basic Manual for Workers' Compensation and Employers' Liability, 1996 edition on January 25, 1996.

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

6.6.8301 ESTABLISHMENT OF CLASSIFICATION FOR COMPENSATION PLAN NO. 2 (1) The committee hereby adopts and incorporates by reference the NCCI Basic Manual for Workers' Compensation and Employers Liability Insurance, 1996 ed., as supplemented through January 25, 1996, which establishes classifications with respect to employers electing to be bound by compensation plan No. 2 as provided in Title 39, chapter 71, part 22, Montana Code Annotated. A copy of the Basic Manual for Workers Compensation and Employers Liability Insurance is available for public inspection at the Office of the Commissioner of Insurance, Room 270, Sam W. Mitchell Building, 126 North Sanders, P.O. Box 4009, Helena, MT 59620-4009. Copies of the Basic Manual for Workers Compensation and Employers Liability Insurance may be obtained by writing to the Montana Classification Review Committee in care of the National Council on Compensation Insurance, Inc., ~~7535 E. Hampden Ave., Suite 607, Denver, CO 80231~~7220 West Jefferson Avenue, Suite 310, Lakewood, Colorado 80235. Persons obtaining a copy of the Basic Manual for Workers Compensation and Employers Liability Insurance must pay the committee's cost of providing such copies.

(2) Remains the same.

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

3. The proposed amendments are necessary in order to update references to the NCCI Basic Manual for Workers' Compensation and Employers' Liability. Changes to the NCCI Basic Manual for Workers' Compensation and Employers Liability affect classifications for those employers listed below:

Volunteer Firefighters

Purpose: To update the Basic Manual to reflect the change in the Montana statutes for the determination of wages to be used in the calculation of premium for volunteer firefighter organizations funded by a county, rural fire district or a fire service area.

Corporate Officers and Managers of Manager-Managed Limited Liability Companies (LLC)

Purpose: To update the Basic Manual to reflect the change in the Montana statutes for the provision of coverage to corporate officers and managers of LLC's as a result of the passage of HB 200, 1995 Legislature.

Revised Replacement Classifications for Code 9529 - Scaffolds or Sidewalk Bridges--Installation

Purpose: To establish Montana State Special Codes 5040 - "Crane, Distributing Tower, Elevator and Hoist Erection--Construction type for Others" and 5403 - "Scaffold Erection--All types - For Others."

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to:

Robert Carlson, Chairperson
Montana Classification Review Committee
c/o National Council on Compensation Insurance, Inc.
7220 West Jefferson Avenue, Suite 310
Lakewood, Colorado 80235
Telephone: 303-969-9456 Fax: 303-969-9423

Comments must be received no later than January 25, 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 written request for a hearing and submit this request along with any written comments he has to Robert Carlson, Chairperson, Montana Classification Review Committee, c/o National Council on Compensation Insurance, Inc., 7220 West Jefferson Avenue, Suite 310, Lakewood, Colorado 80235, no later than January 18, 1996.

6. If the classification review committee of the state of Montana receives requests for a public hearing on the proposed amendments from either 10% or 25, 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 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. For each category of classification affected, 10% of the persons directly affected has been determined to be as follows: 10 for the classification involving volunteer firefighters based on 104 persons in the state the classifications of which are affected by the proposed amendment; 6 for managed limited liability companies, based on 66 in the state the classifications of which are affected by the proposed amendment; 9 for the classification involving scaffolding construction based on 85 persons in the state the classifications of which are affected by the proposed amendment.

ROBERT CARLSON, CHAIRPERSON
CLASSIFICATION AND REVIEW COMMITTEE

By: Gary Spaeth
Gary Spaeth
Chief Legal Counsel

By: Elizabeth A O'Hall
Elizabeth A. O'Halloran
For Gary Spaeth
Rules Reviewer

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION and
THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 12.9.208 relating to the abandonment of the Skalkaho Game Preserve.	NOTICE OF PUBLIC HEARING

To: All Interested Persons.

1. On January 11, 1996, at 7:00 p.m. a public hearing will be held at the Granite County Museum and Cultural Center, 135 South Sansome, Philipsburg, Montana, to consider the proposed abandonment of the Skalkaho Game Preserve by repealing ARM 12.9.208.

2. Rule 12.9.208, the rule proposed to be repealed, is on page 12-614 of the Administrative Rules of Montana.

AUTH: 87-1-301, 87-5-402, MCA IMP: 87-1-305, 87-5-402, MCA

3. The repeal of ARM 12.9.208 is necessary due to the following reasons: Chronic elk depredation problems on adjacent private lands have occurred as a result of no elk harvest allowed in the preserve and very limited harvest on the Bitterroot Stock Farm. This has cost the department and landowners thousands of dollars for elk herding and in crop losses. Opening the preserve to hunting will help resolve these problems, particularly since the owners of the Stock Farm are beginning to allow controlled hunting. The management of the elk population would be improved by obtaining a more stable harvest and better distribution of the harvest, especially with the outlook of improved hunter access on the Bitterroot Stock Farm. If the preserve remains closed, elk will continue to move to and remain within the preserve during the hunting season, resulting in inadequate levels of harvest during most years.

Additional hunting opportunities will be provided for both archery and rifle hunters on 22,000 acres in an area where hunting has been limited to a small strip of U.S. Forest Service land between the preserve and Stock Farm. Opening the preserve would result in more quality hunting conditions, as hunters will not be concentrated into such a small area.

In addition to elk hunting, hunters will benefit from the opportunity to hunt other game animals and game bird species in the preserve such as moose, mule deer, black bear, and mountain grouse. There are no sensitive species within the Skalkaho Preserve that would be impacted by hunting.

Portions of the preserve boundary are poorly signed, making it difficult for sportsmen to determine which side of the preserve they are on. Opening the preserve to hunting will eliminate this problem.

4. Interested persons may present their data, views or arguments concerning the proposed repeal either orally at the hearing or in writing. Written data, views or arguments may be submitted to John Firebaugh, Department of Fish, Wildlife & Parks, 3201 Spurgin Drive, Missoula, Montana 59801, and must be received no later than January 22, 1996.

5. John Firebaugh, or another designated department official, will preside over and conduct the hearing.

RULE REVIEWER

Robert N. Lane

DEPT. OF FISH, WILDLIFE AND PARKS

Patrick Graham, Director of the Department of Fish, Wildlife and Parks, and Secretary of Fish, Wildlife and Parks Commission

Certified to the Secretary of State on December 11, 1995.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of a new rule establishing refund percentages for PTO or auxiliary engines, amendment of rules 18.9.101 through 18.9.106, 18.9.108 through 18.9.111, 18.9.116 through 18.9.118, 18.9.201 through 18.9.205, 18.9.301 through 18.9.303, 18.9.311, 18.9.312, 18.9.321 regarding motor fuels and the repeal of rules 18.9.304 and 18.9.305	)))))))))))))	NOTICE OF PUBLIC HEARING

TO: All Interested Persons.

1. On January 26, 1996, at 10 a.m., a public hearing will be held in the auditorium of the Department of Transportation building at Helena, Montana, to consider the adoption of new rule I, the amendment of rules 18.9.101 through 18.9.106, 18.9.108 - 18.9.111, 18.9.116 through 18.9.118, 18.9.201 through 18.9.205, 18.9.301 through 18.9.303, 18.9.311, 18.9.312, 18.9.321 and the repeal of rules 18.9.304 and 18.9.305.

2. The proposed new rule provides as follows:

RULE I REFUND PERCENTAGES FOR PTO OR AUXILIARY ENGINES

(1) A claimant who purchases and uses any gasoline or special fuel on which the Montana gasoline or special fuel license tax has been paid for the operation of a power-take off unit (PTO), or auxiliary engines fueled from the same supply tank as the highway vehicle, may obtain a refund of the license tax. The claimant must maintain the following records:

(a) The original sales receipts must have a preprinted number, the dealer's name and address, date, number of gallons, type of fuel, price per gallon, the vehicle in which the fuel was placed, the purchaser's name and address, and one of the following:

(i) dollar amount of tax;

(ii) rate of tax;

(iii) a statement that Montana tax is included in the price;

(b) If bulk fuel is purchased, the customer must keep dispersal records that indicate the date of disbursement, number of gallons withdrawn and the vehicle in which the fuel was delivered.

(2) The following percentages are allowed for the refund of gasoline or special fuel used in operating a PTO or auxiliary engines when the above records are maintained. The amounts are specified as a percentage of the total taxable fuel used by the

vehicle. All requests for refund must have attached an original sales receipt, bulk fuel invoice or a signed dealer affidavit. Work performed in accordance with 15-70-321, MCA, is not eligible for a refund. The percentages are:

Cement mixing/concrete pumping trucks	30%
Sanitation/garbage trucks/septic pumpers	30%
Sewer cleaning/jet vactor	30%
Super suckers	30%
Fire trucks	30%
Mobile cranes	30%
Line truck with digger/aerial lift	25%
Refrigeration trucks	25%
Sweeper trucks (must be motor vehicle)	25%
Self loaders/boom truck (i.e., logging trucks)	20%
Truck with hydraulic winch	20%
Wrecker	20%
Semi-wrecker	20%
Service truck with jack hammer/drill/crane	20%
Oil and water well service trucks	20%
Bulk feed truck	20%
Dump trailer trucks	20%
Dump trucks	20%
Hot asphalt distribution truck	20%
Leaf truck	20%
Pneumatic tank truck	20%
Salt spreader on dump truck	20%
Seeder truck	20%
Snow plow	20%
Spray truck	20%
Tank transport	20%
Tank trucks	20%
Car carrier with hydraulic winch	10%
Carpet cleaning van	10%
All others, including auxiliary engines under 15 horsepower	7.5%

AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-222 and 15-70-361 MCA

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

18.9.101 DETERMINATION OF WHEN GASOLINE, **SPECIAL FUEL, OR AVIATION FUEL** DISTRIBUTED (1) When gasoline, special fuel, or ~~including~~ aviation ~~gasoline,~~ fuel is withdrawn from a refinery or pipeline terminal in this state, the gasoline, special fuel, or aviation fuel shall be deemed to be distributed by the distributor who is the owner of the gasoline, special fuel, or aviation fuel ~~immediately~~ prior to the time of withdrawal, unless:

(a) the gasoline, special fuel, or aviation fuel is withdrawn for shipment or delivery to a licensed distributor, in which case it shall be deemed distributed by the shipping or delivering distributor ~~to whom shipped or delivered~~; or

(b) the gasoline, special fuel, or aviation fuel is

withdrawn for shipment or delivery to a person not licensed as a distributor for the account of a licensed distributor, in which case it shall be deemed distributed by the distributor for whose account the shipment or delivery is made.

(2) The ~~G~~gasoline, special fuel, or ~~including~~ aviation ~~gasoline,~~ fuel imported into this state (other than ~~that~~ gasoline, special fuel, or aviation fuel placed in storage at refineries or pipeline terminals) shall be deemed to be distributed after it has arrived in and is brought to rest in this state by the person who is the owner of the gasoline, special fuel, or aviation fuel at the time the gasoline, special fuel, or aviation fuel is unloaded. However, if ~~such~~ the owner is not licensed as a Montana distributor and if ~~such~~ the gasoline, special fuel, or aviation fuel was shipped or delivered into this state by a person who is licensed as a distributor, then the gasoline, special fuel, or aviation fuel shall be deemed to be distributed by ~~such~~ the licensed distributor.

(3) Deliveries of gasoline, special fuel, or aviation fuel to a distributor's own service station(s) or to any aviation dealer's storage tank(s) shall be treated as being sold and shall be deemed to be distributed.

AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-201, 15-70-204, 15-70-301, and 15-70-321 MCA

18.9.102 DISTRIBUTOR'S BOND (1) Gasoline, special fuel, or aviation fuel distributors must furnish the department of transportation a corporate surety bond executed by the distributor as principal with a corporate surety authorized to transact business in this state or other collateral security or indemnity. The total amount of bond or collateral security or indemnity ~~shall~~ must be equivalent to at least the monthly average of the previous calendar year, (12 months from the date of request), not more than twice the distributor's estimated monthly gasoline, special fuel, or aviation fuel tax, unless the distributor refuses to submit required financial statements. ~~but never less than $2,000 and in no case greater than $100,000, except as provided in subsection (3).~~ The department will establish the bond amount on a distributor with less than 12 months prior history.

(2) The department may require a distributor to post an additional bond not to exceed twice the distributor's estimated monthly gasoline, special fuel, or aviation fuel tax who has in the previous 12 month period:

(a) been delinquent for more than 10 days for more than one reporting period; ~~or~~

(b) has given the state a non-sufficient fund check~~, to post an additional bond not to exceed the distributor's estimated monthly gasoline tax.~~ and whose non-sufficient fund check was returned in result of a bank error more than twice;

(c) whose filing was returned for inadequate postage more than twice; or

(d) the department's review indicates that the required distributor's records are inadequate.

(3) Upon written application by a distributor and the showing of good cause, the department may, at its discretion, accept a bond, ~~or~~ collateral security, or indemnity in an amount less than twice the distributor's estimated monthly gasoline, special fuel, or aviation fuel tax if the distributor reports and pays its tax more frequently than monthly. For example, if the distributor pays his tax weekly, his bond would be ~~twice~~ the estimated weekly tax payment. In no instance will the amount of the bond be ~~less~~ more than twice the distributor's estimated tax payment, unless the distributor refuses to submit the required financial statements.

AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-202 and 15-70-341 MCA

18.9.103 DISTRIBUTOR'S STATEMENTS (1) Every distributor ~~shall~~ must file a monthly Distributor's ~~Gasoline~~ License Tax Report, ~~Form MF 32,~~ on a form furnished by the department within the time prescribed by 15-70-205, MCA. Supporting detail schedules ~~1, 2, 3, 4, 5, 6, 6A, and 6B~~ on forms furnished by the department ~~are to~~ must accompany ~~Form MF 32~~ the distributor's license tax report, ~~together~~ with all letters of explanation of credit deduction and the ~~remittance~~ payment ~~to cover the amount~~ of the license tax due.

(2) The department of transportation will accept ~~M~~machine tabulated data ~~will be accepted~~ in lieu of the schedules; ~~1 through 6B provided that~~

(a) if the data is in the same format as ~~shown~~ on the ~~required~~ schedules; or

(b) ~~if any other format is to be used,~~ the distributor ~~must make his~~ requests in writing ~~to the department of transportation with~~ and submits a copy of the format to be used ~~before authorization will be granted~~. The alternative format must be approved by the department prior to usage.

(3) Electronic filing is accepted in lieu of the schedules provided:

(a) the distributor requests in writing and submits a copy of the format to be used. The format must be approved by the department prior to usage.

AUTH: Sec. 15-70-104 and 15-70-115 MCA; IMP: Sec. 15-70-112, 15-70-113, 15-70-114, 15-70-115, and 15-70-205 MCA.

18.9.104 DISTRIBUTOR'S RECORDS (1) Every distributor importing, manufacturing, refining, dealing in, transporting, or storing fuel in this state ~~shall~~ must maintain and keep records, receipts, invoices, including electronic format data, and other pertinent papers the department requires. Every distributor must provide for a period of 3 years the following:

~~(1)~~(a) stock summary showing the monthly totals for the gallons of all gasoline, special fuel, or aviation fuel handled within this state with an analysis as to inventories, receipts, sales, use, transfers, and shipments; and

~~(2)~~(b) receipt journals, refinery production journals, sales journals, and copies of all invoices, bills of ladings, or other documents of supporting information.

(2) Every refinery and terminal in the state must submit

to the department monthly a copy of each bill of lading or manifest issued at the time of withdrawal. The department may waive the hard copy in lieu of electronic filing format.
AUTH: Sec. 15-70-104 and 15-70-115, MCA; IMP: Sec. 15-70-112, 15-70-113, 15-70-114, 15-70-115, 15-70-206, and 15-70-345, MCA.

18.9.105 DISTRIBUTOR'S INVOICE (1) Except as provided in subsection (2), any distributor who sells and delivers gasoline, special fuel, or aviation fuel in this state must issue an original invoice at the time of delivery to the purchaser. Each invoice ~~so issued shall~~ must contain the following:

(a) a preprinted consecutive ~~serial~~ number, except when invoices are automatically assigned a consecutive ~~serial~~ number by a computer or similar machine when issued;

(b) through (e) will remain the same.

(f) gallons invoiced--those common terms used or known to measure gasoline, special fuel, or aviation fuel such as temperature corrected at 60 degrees (net), and gross (cubical, volumetric, and shell);

(g) through (i) will remain the same.

(j) to establish that the tax has been charged, at least one of the following:

(i) the U.S. dollar amount of tax;

(ii) the rate of tax; or

(iii) a statement that the Montana tax is included in the price~~; and~~.

~~(k) double faced carbon on the original of first copy; except when invoices are automatically processed by a computer or similar machine when issued~~.

(2) For direct shipments ~~which are~~ accounted for on the monthly distributor's statement to the department of transportation, the original invoice may be issued to the purchaser at the time of billing.
AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-206, 15-70-207, 15-70-345, and 15-70-348 MCA

18.9.106 INVOICE ERROR (1) When an original invoice is issued in error, it must be canceled by a credit invoice and cross-referenced to all copies of the invoice covering the corrected transaction ~~being corrected~~. If a second invoice is issued, it ~~shall~~ must show the date and ~~serial~~ number of the original invoice and ~~that~~ the second invoice is in replacement ~~there~~of the first invoice.
AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-207 and 15-70-348 MCA.

18.9.108 WHOLESALE DISTRIBUTOR (1) As used in ~~15-70-201(6)(e), MCA, and~~ these rules, the term "wholesale distributor" and "wholesale distribution" includes any person who:

(a) purchases gasoline, special fuel, or aviation fuel and subsequently sells and delivers the gasoline, special fuel, or aviation fuel to retailers in bulk quantities in this state;

(b) elects to become licensed under 15-70-201~~(6)(e)~~, MCA, to assume the Montana state gasoline, special fuel, or aviation

fuel tax liability and the other obligations of a "distributor" pursuant to Title 15, chapter 70, parts 2 and 3, MCA, and these rules, and

(c) remains the same.

(2) remains the same.

(3) The term "wholesale distribution" does not include a parent corporation or company that sells gasoline, special fuel, or aviation fuel only to its wholly owned subsidiary service stations.

AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-201 and 15-70-301 MCA

18.9.109 WHOLESALE DISTRIBUTOR'S OBLIGATIONS (1) A wholesale distributor ~~shall~~ must comply with all the laws, rules, and other obligations which are imposed on a "distributor" of gasoline, special fuel, or aviation fuel.

AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-201 and 15-70-341 MCA

18.9.110 **WHOLESALE DISTRIBUTOR'S** ANNUAL LICENSE, LICENSE FEES AND LICENSE RENEWAL (1) The wholesale distributor's annual license provided for in 15-70-202~~(2)~~, MCA, ~~shall run~~ is effective from January 1 until December 31 of each year. All licenses will expire on December 31 of the licensed year.

(2) All licensees ~~shall~~ must pay a fee of $200 for each license regardless of the length of time the license is in effect.

(3) The application, bond, and fee for each license renewal ~~shall be~~ is due on or before the 15th of December of the ~~year~~ preceding ~~the~~ licensed year.

AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-201, 15-70-202, 15-70-301, and 15-70-341 MCA.

18.9.111 GASOHOL BLENDERS (1) Pursuant to 15-70-201~~(6)(c)~~, MCA, a person who blends alcohol with gasoline to produce gasohol is a "distributor" if no tax has been paid on the alcohol or gasoline ~~which is~~ blended to produce gasohol. As a distributor, the gasohol blender is responsible for paying the tax on all the alcohol and gasoline which has not been taxed and which is used to produce gasohol. If the person qualifies as a distributor solely on the basis of blending alcohol and gasoline, the person is a distributor only with respect to the alcohol and gasoline used to produce gasohol.

(2) The blending of alcohol with gasoline to produce gasohol does not make the gasohol blender a distributor for the purpose of the payment of the tax ~~which is~~ due on gasoline ~~which is~~ not blended with alcohol to produce gasohol. If the gasohol blender receives gasoline upon which no tax has been paid and ~~which is~~ not used to produce gasohol, the blender must qualify as and meet all the requirements to be either a distributor under 15-70-201~~(6)(a), (b), or (d)~~, MCA, or a "wholesale distributor" under 15-70-201~~(6)(c)~~, MCA, and pay the tax. Sections 15-70-201~~(6)(a), (b), (c), and (d)~~ and 15-70-301, MCA are the requirements for being a distributor or wholesale distributor on a basis other than being a gasohol blender. Only if the gasohol blender qualifies under these other requirements

can that blender purchase gasoline without tax for resale as gasoline.

(3) remains the same.

AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-201, 15-70-204 and 15-70-301 MCA

18.9.116 INCIDENCE OF THE ~~GASOLINE~~ FUEL TAX (1) The incidence of the ~~gasoline~~ distributor's license tax is on the distributor and not on the user. ~~Gasoline~~ Fuel is not exempt from taxation because the ultimate user or consumer is an agency of the United States government, including the United States armed forces, Montana, or other states, counties, incorporated cities and towns, and school districts of this state, or any other ~~tax exempt~~ entity, group, or individual.

AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-202 and 15-70-341 MCA.

18.9.117 DISTRIBUTOR - SUPPORTING DOCUMENTATION FOR BAD DEBT CREDIT (1) A ~~claim for~~ credit claim for taxes paid on accounts for which the distributor received no compensation must ~~be~~ accompany~~ied by~~ documents or copies of documents showing ~~that~~ the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to claim ~~shall~~ must be furnished as required by the department.

AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-225 and 15-70-364 MCA

18.9.118 PREPAYMENT OF MOTOR FUEL TAXES (1) A licensed ~~gasoline~~ distributor may overpay its known motor fuel tax liability. The overpayment must be designated as such by the distributor. The credit balance created by the overpayment will ~~be~~ apply~~ied~~ to future tax deficiencies if the gasoline, special fuel, or aviation fuel is reported and tax is paid within 30 days ~~after~~ of the due date. No penalty or interest will be imposed on future tax deficiencies to the extent the overpayment credit balance is sufficient to pay the deficiency. If the overpayment credit balance is not sufficient to cover the entire deficiency, penalty and interest will be assessed ~~against~~ on the remaining deficiency. No interest will ~~be~~ accrued on the overpayment credit balance.

AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-210 and 15-70-352 MCA

18.9.201 INTRASTATE ~~GASOLINE~~ FUEL DELIVERIES (1) Credit from gasoline, special fuel, or aviation fuel tax may be claimed on ~~Line 3 of~~ the statement provided for in ARM 18.9.103 for deliveries in this state to another distributor.

~~(2) In support of the credit claimed, a distributor shall execute Schedule 6 and the delivering distributor's part of Schedule 6A. Schedule 6 shall be submitted to the state as part of the tax report, and Schedule 6A shall be submitted in duplicate to the receiving distributor.~~

~~(3) The receiving distributor shall complete both copies of Schedule 6A received from the delivering distributor and then submit them to the state.~~

AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-204 and 15-70-343 MCA

18.9.202 EXPORT DELIVERIES (1) If the delivering distributor ships gasoline, special fuel, or aviation fuel to a Montana distributor at a point outside the state, ~~he~~ the distributor ~~shall~~ may claim a credit by reason of export except as outlined in (3) below and ~~shall~~ must report ~~such~~ the transaction ~~in~~ the same ~~manner~~ as an export to any other customer.

(2) If a distributor ships gasoline, special fuel, or aviation fuel to a point outside the state following receipt from another distributor in this state, the distributor receiving the fuel in this state shall be deemed the exporter. The distributor making the delivery within this state may claim credit as outlined in ARM 18.9.201.

(3) ~~If a distributor makes a sale of gasoline for export to another person, not qualified as a Montana distributor, who sends or carries the gasoline other than in the fuel supply tank of a motor vehicle out of Montana to another state or foreign country, the distributor making the sale shall claim credit for the gasoline as outlined in ARM 18.9.201.~~ If the delivery is placed into storage in this state and later distributed at a point outside this state, the distributor may not claim credit for the petroleum cleanup fee.

AUTH: Sec. 15-70-104 and 75-11-319 MCA; IMP: Sec. 15-70-221 and 15-70-356 MCA

18.9.203 IMPORT DELIVERIES (1) If a distributor ships gasoline, special fuel, or aviation fuel into Montana and delivers ~~such~~ the fuel directly to another distributor before ~~such~~ the fuel passes through ~~his~~ the pipeline storage in this state, the delivering distributor ~~shall~~ must report ~~such~~ the transaction as a receipt and ~~shall~~ may claim a credit ~~in~~ the same ~~manner prescribed for~~ as delivering distributors in ARM 18.9.201.

(2) If a distribution between distributors takes place outside the state and the receiving distributor ships the gasoline, special fuel, or aviation fuel into Montana, ~~he~~ the receiving distributor ~~shall~~ must report the import into pipeline storage or as a direct delivery to a customer.

AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-204 and 15-70-321 MCA

18.9.204 BLENDING STOCKS (1) ~~Gasoline~~ Distributors may transfer casinghead or catalytic blending stocks to other licensed distributors without the payment of tax; provided ~~that~~ these products will be used for blending purposes only and the ~~resultant~~ blended product will be distributed as gasoline.

AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-201, 15-70-204, 15-70-301, and 15-70-321 MCA

18.9.205 EXEMPTION - U.S. AND OTHER STATES (1) Licensed ~~gasoline~~ distributors making sales of gasoline, ~~including~~ special fuel, or aviation fuel, to the United States government or ~~another~~ a state entity FOB rack for use by the purchaser out of the state of Montana ~~shall~~ must report ~~such~~ the sale as a

credit to the amount of gasoline, special fuel, or aviation fuel distributed on the distributor's monthly statement as an export required by 15-70-205, MCA.
AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-204 and 15-70-321 MCA

18.9.301 REFUNDABLE ~~GASOLINE~~ FUEL SELLER'S ~~PERMIT~~ LICENSE (1) Any person ~~shall~~ must obtain a refundable ~~gasoline~~ fuel seller's license from the department of transportation prior to selling gasoline or special fuel on which a refund of tax may be claimed by the purchaser. Application for licenses (one license for each outlet) ~~shall~~ must be made on forms furnished by the department.

(2) A nontransferable license is issued and is effective until canceled or suspended by the department of ~~revenue~~ transportation.

(3) A licensed distributor qualifies as a seller of refundable gasoline or special fuel by ~~virtue of his~~ complianceying with the licensing and bonding requirements of a distributor. ~~Accordingly,~~ eEach distributor ~~shall~~ must submit to the department an application ~~and the required fee~~ for each place of business under ~~his~~ its control or operation ~~from which he~~ that sells refundable ~~gasoline~~ fuel. The department ~~shall~~ must issue a separate license for each ~~such~~ outlet.
AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-203 and 15-70-342 MCA

18.9.302 SELLER'S INVOICE (1) Any person, other than a licensed distributor, who sells and delivers gasoline or special fuel to a purchaser on which a refund may be claimed must issue an original invoice at the time of delivery, showing the number of gallons delivered. Each invoice ~~so~~ issued ~~shall~~ must be an original invoice ~~and double faced carbons shall be used in making carbon impressions and multiple copies thereof~~. Only one original invoice may be issued for each delivery. In addition to these requirements outlined, each invoice must contain or show the following:

(a) ~~(1)~~ a preprinted ~~serial~~ number;

(2) through (4) remain the same but are renumbered (b) - (d).

(e) ~~(5)~~ type of ~~gasoline~~ fuel;

(6) and (7) remain the same but are renumbered (f) and (g).

(h) ~~(8)~~ to establish ~~that~~ the tax has been charged, at least one of the following:

(i) ~~(a)~~ the U.S. dollar amount of tax;

(ii) ~~(b)~~ remains the same.

(iii) ~~(c)~~ a statement that the Montana tax is included in the price.
AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-207, 15-70-222, 15-70-348, and 15-70-361 MCA

18.9.303 FILING INVOICES (1) No altered or corrected invoice will be accepted for refund purposes when errors occur. The original invoice must not be altered or corrected but must be voided and a new original invoice issued. All altered or corrected invoices must be marked ~~as~~ voided and retained by the seller for a period of at least 3 years from the date issued.

(2) Each licensed seller is required to file for approval a completed sample set of invoices that will be issued covering sales to refund applicants. ~~Unless a change is made in the invoice format, it is not necessary that a sample invoice be filed when the seller's permit is renewed annually.~~ A sample invoice must be filed annually regardless if the invoice changed.

AUTH: Sec. 15-70-104 MCA; IMP: 15-70-222 and 15-70-361 MCA

18.9.311 LOST OR DESTROYED GASOLINE, **SPECIAL FUEL, OR AVIATION FUEL** (1) The department of transportation reserves the right to demand from a person claiming a refund under the provisions of 15-70-221 through 15-70-226, and 15-70-356 through 15-70-365, MCA, that positive proof be submitted ~~setting forth~~ of the exact amount of the loss and ~~setting forth~~ facts indicating ~~that~~ the gasoline, special fuel, or aviation fuel was never used on the highway or in the air. In offering this proof, the following procedures ~~are to~~ must be strictly adhered to by the person claiming the refund:

~~(1)~~(a) The claim for refund must ~~be~~ accompany~~ied by~~ the original invoice covering the purchase of gasoline, special fuel, or aviation fuel.

~~(2)~~(b) A ~~sworn,~~ notarized statement citing the circumstances covering the loss and how the amount of gasoline, special fuel, or aviation fuel lost was determined.

~~(3)~~(c) Substantiating records ~~are to~~ must be ~~made~~ available ~~which would~~ to reveal and account for the amount of gasoline, special fuel, or aviation fuel lost.

~~(4)~~(d) ~~Sworn a~~Affidavits from ~~those~~ individuals witnessing or involved in the loss of gasoline, special fuel, or aviation fuel ~~shall~~ must be obtained and ~~made~~ available to the department.

(2) The distributor may not claim a refund for the petroleum cleanup fee.

AUTH: Sec. 15-70-104 and 75-11-319 MCA; IMP: Sec. 15-70-222 and 15-70-361 MCA

18.9.312 GASOLINE, **SPECIAL FUEL, OR AVIATION FUEL** LOST FROM STORAGE (1) In ~~those~~ cases where gasoline, special fuel, or aviation fuel is placed into a storage tank or similar facility and the gasoline, special fuel, or aviation fuel is lost as a result of a leak in either the tank, ~~or~~ the line, or the pump connected to ~~such~~ the tank or facility, the department of transportation ~~shall be~~ is under no obligation to refund the tax ~~should~~ if a taxpayer fails:

~~(1)~~(a) to immediately notify the department of the loss; or

~~(2)~~(b) to comply strictly with the procedures provided in ARM 18.9.311; or

~~(3)~~(c) to take the necessary precautions to repair the leak and to attempt to minimize the loss.

(2) The distributor may not claim a refund for the petroleum cleanup fee.

AUTH: Sec. 15-70-104 and 75-11-319 MCA; IMP: Sec. 15-70-222 and

15-70-361 MCA

18.9.321 PROCESSING CLAIMS FOR REFUNDS (1) Upon receipt of an application for refund of ~~gasoline~~ fuel tax, the department of transportation has 120 working days ~~thereafter within which to make such investigation as it may desire to ascertain the truths of the statements made,~~ after receiving the claim to approve or reject it.

(2) After ~~the investigation~~ approval of the claim, the department ~~may correct the statement and approve the same as corrected if it finds errors therein which in its opinion were not inserted for the purpose of fraud~~ will process the refund.

(3) After rejection of the claim, ~~T~~the department may, after investigation, require the claimant to file an amended statement before action is taken ~~thereon~~. If the taxpayer submits an amended claim, the claim is reasonable, and the taxpayer has furnished substantial proof, the department in its discretion may accept ~~such~~ the amended claim.

(4) ~~The~~ A taxpayer~~, if he has already submitted a claim for refund and later thinks he should file an amended claim,~~ may, of ~~his~~ their own initiative, file an amended claim. If the claim is ~~a~~ reasonable ~~one~~ and the taxpayer has furnished substantial proof, ~~then~~ the department, in its discretion, may accept the amended claim.

AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-225, 15-70-226, 15-70-364, and 15-70-365 MCA

3. The proposed amendments to the existing motor fuel tax rules and new rule are necessary due to a series of legislative enactments. Prior to July 1, 1991, motor fuel rules were found within the Department of Revenue where that collection function had existed for a number of years. Effective July 1, 1991, all of the motor fuel tax collection transferred to the newly created Department of Transportation. In the 1993 regular session of the Legislature, Chapter 525 was enacted which moved the point of taxation for special fuel from the retail to the distributor's level. In the 1993 special session of the Legislature, Chapter 10 was enacted which created the dyed diesel program and made other changes to the special fuel collection program. In the 1995 regular session of the Legislature, several acts were passed that amended and modified the way the Department of Transportation would collect the motor fuels taxes. Because these rules had never been revised since their transfer to the Department of Transportation, these particular rules are made necessary in order to clarify those changes.

In 18.9.101 through 18.9.118, some 13 rules are amended which were originally in the gasoline distributor's subchapter. They are changed to include both gasoline and special fuel rules. The same is true in 18.9.201 through 18.9.205, subchapter 2, where special fuels is incorporated in a similar exemption as is gasoline. In subchapter 3, 18.9.301 through 18.9.321, special fuel is also incorporated into gasoline.

It is the Department's intention to repeal rules 18.9.304 and 18.9.305 and incorporate those changes into a new rule, which is a part of this notice. The purpose is to establish an equitable refund of gasoline and special fuel license tax on gallons of fuel used in operating either stationary engines or auxiliary engines that do not have an independent auxiliary fuel tank. During the 1995 legislative session, House Bill 299 was introduced to allow a refund of 20 percent of special fuel tax paid for operating ready mix concrete trucks. The Department promised to work with the individual trucking industries to establish an equitable refund percentage for all industries as an alternative to enacting that bill, which was not passed.

4. Rules 18.9.304 and 18.9.305, which can be found on page 18-1072 of the Administrative Rules of Montana, are proposed to be repealed.
AUTH: Sec. 15-70-104 MCA; IMP: Sec. 15-70-330 MCA

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to William G. Salisbury, Administration Division, Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, and must be received no later than January 26, 1996.

6. W. D. Hutchison, Agency Legal Services, has been designated to preside over and conduct the hearing.

MONTANA DEPARTMENT OF TRANSPORTATION

By: _____
MARVIN DYE, Director

_____
Lyle Manley, Rule Reviewer

Certified to the Secretary of State December 11, 1995.

BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT OF RULE 23.14.405, PERTAINING TO PEACE OFFICERS WITH OUT-OF-STATE EXPERIENCE WHO SEEK CERTIFICATION IN MONTANA	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 23, 1996, the Montana Board of Crime Control proposes to amend ARM 23.14.405, and require that peace officers with out-of-state training and peace officers formerly employed by designated federal agencies, in addition to the other requirements set forth in the rule, shall have been employed as a peace officer for a minimum of one year prior to employment in Montana.

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

23.14.405 REQUIREMENTS FOR THE BASIC CERTIFICATE In addition to ARM 23.14.403 and 23.14.404 above, the following are required for the award of the basic certificate:

(1) through (3)(c) remain the same.

(d) Shall have been employed as a peace officer for a minimum of one (1) year prior to employment in Montana.

(4) remains the same.

AUTH: Sec. 44-4-301 MCA IMP: Sec. 44-4-301 MCA

3. RATIONALE: Pursuant to Sec. 44-4-301(2)(a), the board of crime control is authorized to "establish minimum qualifying standards for employment of peace officers". Recently, there has been a significant increase in the number of out-of-state peace officers seeking certification and employment in Montana. The amendment is necessary in order to ensure that these peace officers are at least as qualified as peace officers who gain their certification wholly in Montana. This standard is comparable to ARM 23.14.405(1)(a).

4. Interested persons may present their data, views, or arguments, either orally or in writing to Rob Smith, Assistant Attorney General, Justice Building, 215 North Sanders, Helena, MT 59620. Comments must be received no later than January 19, 1996.

5. If a person who is directly affected by the proposed amendment wishes to submit his data, views, or 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 Rob Smith, Assistant Attorney General, Justice

Building, 215 North Sanders, Helena, MT 59620. The request must be received no later than January 19, 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 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 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 per cent of those persons directly affected has been determined to be eight persons, based on the average annual number of peace officers with out-of-state experience and training who gain POST certification as peace officers in Montana.

MONTANA BOARD OF CRIME CONTROL

By: Ellis E. Kiser
ELLIS E. KISER, EXECUTIVE DIRECTOR

Kathy Seeley
RULE REVIEWER

Certified to the Secretary of State December 11, 1995

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

In the matter of the proposed repeal of ARM 24.12.201 through 24.12.206, and 24.12.208 through 24.12.211, pertaining to the New Horizons program	NOTICE OF PROPOSED REPEAL OF RULES NO PUBLIC HEARING CONTEMPLATED

TO ALL INTERESTED PERSONS:

1. On January 22, 1996, the Department of Labor and Industry proposes to repeal rules related to the New Horizons Act (Title 39, chapter 7, part 6, MCA).

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this rule activity. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact the Legal/Centralized Services Division, Attn: Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TDD (406) 444-0532; fax (406) 444-1394.

2. The Department of Labor and Industry proposes to repeal ARM 24.12.201 through 24.12.206 and 24.12.208 through 24.12.211 in their entirety. The rules proposed for repeal are found at pages 24-717 through 24-720 of the Administrative Rules of Montana. Authority to repeal the rules is 39-7-601, 39-7-602 and 39-7-603, MCA. The rules proposed for repeal implement 39-7-602 through 39-7-607, MCA. Any person wishing to obtain a complete copy of the rules proposed for repeal should contact the person listed in paragraph 3 and request a copy of the New Horizons program rules.

There is reasonable necessity for the proposed repeals in order to implement the provisions of House Joint Resolution 5, enacted by the 1995 Legislature, because the statutory authority for program expenditures has previously expired, and the program is no longer in operation.

3. Interested persons may present their data, views, or arguments concerning the proposed repeals in writing to Mark Cadwallader, Legal/Centralized Services Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, so that the comments are received by no later than 5:00 p.m., January 19, 1996.

4. If a person who is directly affected by the proposed repeals wishes to express data, views or arguments either orally or in writing at a public hearing, the person must make a written request for a public hearing, and submit this request along with any comments the person has to Mark Cadwallader,

Legal/Centralized Services Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728. A written request for a hearing must be received by no later than 5:00 p.m., January 19, 1996.

5. If the Department receives requests for a public hearing on the proposed repeals from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee; 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 exceed 25, based on the number of persons who participated in the New Horizons program.

6. The Department proposes to make the repeals effective February 9, 1996. The Department reserves the right to repeal only portions of the rules, or to repeal some or all of the rules at a later date.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: December 11, 1995.

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

In the matter of the proposed repeal of ARM 24.14.101, 24.14.201 through 24.14.204, 24.14.301 through 24.14.306, pertaining to maternity leave) NOTICE OF PROPOSED REPEAL OF RULES) NO PUBLIC HEARING CONTEMPLATED

TO ALL INTERESTED PERSONS:

1. On January 22, 1996, the Department of Labor and Industry proposes to repeal rules related to maternity leave.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this rule activity. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact the Legal/Centralized Services Division, Attn: Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TDD (406) 444-0532; fax (406) 444-1394.

2. The Department of Labor and Industry proposes to repeal all the rules in ARM Title 39, chapter 14, in its entirety, consisting of ARM 24.14.101, 24.14.201 through 24.14.204 and 24.14.301 through 24.14.306. The rules proposed for repeal are found at pages 24-855, 24-857, 24-858, 24-865, 24-866 and 24-867 of the Administrative Rules of Montana. Authority to repeal the rules is 39-7-202, MCA. The rules proposed for repeal implement 39-7-202, 39-7-203, 39-7-203(1), 39-7-203(2), 39-7-203(5), 39-7-204, 39-7-204(4), 39-7-205, 39-7-206 and 39-7-207, MCA. Any person wishing to obtain a complete copy of the rules proposed for repeal should contact the person listed in paragraph 3 and request a copy of the maternity leave rules.

There is reasonable necessity for the proposed repeals in order to implement the provisions of House Joint Resolution 5, enacted by the 1995 Legislature, because the underlying statutory authority for the rules was previously repealed and/or transferred, and jurisdiction for issues involving maternity leave now rests with the Montana Human Rights Commission. The Montana Human Rights Commission adopts rules separately, pursuant to 49-2-204, MCA.

3. Interested persons may present their data, views, or arguments concerning the proposed repeals in writing to Mark Cadwallader, Legal/Centralized Services Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, so that the comments are received by no later than 5:00 p.m., January 19, 1996.

4. If a person who is directly affected by the proposed repeals wishes to express data, views or arguments either orally or in writing at a public hearing, the person must make a written request for a public hearing, and submit this request along with any comments the person has to Mark Cadwallader, Legal/Centralized Services Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728. A written request for a hearing must be received by no later than 5:00 p.m., January 19, 1996.

5. If the Department receives requests for a public hearing on the proposed repeals from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee; 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 exceed 25, based on the annual number of women in the state who become eligible for maternity leave.

6. The Department proposes to make the repeals effective February 9, 1996. The Department reserves the right to repeal only portions of the rules, or to repeal some or all of the rules at a later date.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: December 11, 1995.

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

In the matter of the proposed repeal of ARM 24.31.101, 24.31.401 and 24.31.402, pertaining to the crime victims compensation program	))))	NOTICE OF PROPOSED REPEAL OF RULES NO PUBLIC HEARING CONTEMPLATED

TO ALL INTERESTED PERSONS:

1. On January 22, 1996, the Department of Labor and Industry proposes to repeal rules related to the crime victims compensation program formerly operated by the Division of Workers' Compensation.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this rule activity. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact the Legal/Centralized Services Division, Attn: Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TDD (406) 444-0532; fax (406) 444-1394.

2. The Department of Labor and Industry proposes to repeal ARM Title 24, chapter 31 in its entirety, consisting of ARM 24.31.101, 24.31.401 and 24.31.402. The rules proposed for repeal are found at pages 24-2819 and 24-2839 through 24-2841 of the Administrative Rules of Montana. Authority to repeal the rules is 53-9-104(1)(a) and 53-9-122, MCA. The rules proposed for repeal implement 53-9-104(1)(a) and 53-9-122, MCA. Any person wishing to obtain a complete copy of the rules proposed for repeal should contact the person listed in paragraph 3 and request a copy of the crime victims compensation program rules.

There is reasonable necessity for the proposed repeals in order to implement the provisions of House Joint Resolution 5, enacted by the 1995 Legislature, because the underlying statutory authority for the rules was previously amended, and rule-making authority for issues involving the Crime Victims Compensation Act of Montana (Title 53, chapter 9, MCA) now rests with the Division of Crime Control, Department of Justice. The Department of Justice has adopted rules pertaining to the operation of programs under the Act. See: ARM Title 23, chapter 15.

3. Interested persons may present their data, views, or arguments concerning the proposed repeals in writing to Mark Cadwallader, Legal/Centralized Services Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, so that the comments are received by no later than 5:00 p.m., January 19, 1996.

4. If a person who is directly affected by the proposed repeals wishes to express data, views or arguments either orally or in writing at a public hearing, the person must make a written request for a public hearing, and submit this request along with any comments the person has to Mark Cadwallader, Legal/Centralized Services Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728. A written request for a hearing must be received by no later than 5:00 p.m., January 19, 1996.

5. If the Department receives requests for a public hearing on the proposed repeals from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee; 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 exceed 25, based on the number of persons who are the victims of crime in the state on an annual basis.

6. The Department proposes to make the repeals effective February 9, 1996. The Department reserves the right to repeal only portions of the rules, or to repeal some or all of the rules at a later date.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: December 11, 1995.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the repeal of Rules 26.2.301 and 26.2.501 pertaining to rental and royalty charges on state land, 26.3.132, 26.3.154, 26.3.188 pertaining to surface management, 26.3.201 and 26.3.203 pertaining to sale of state land, 26.3.301, 26.3.303, 26.3.307, 26.3.308, 26.3.312 and 26.3.318 pertaining to oil and gas leases, 26.3.402 and 26.3.407 pertaining to geothermal resources, and 26.3.501 through 26.3.518 pertaining to uranium leasing, and 26.3.602 pertaining to coal leasing on state land	NOTICE OF PROPOSED REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On January 29, 1996 the Department of Natural Resources and Conservation proposes to repeal Rules 26.2.301 and 26.2.501 pertaining to rental and royalty charges on state land, 26.3.132, 26.3.154, and 26.3.188 pertaining to surface management, 26.3.201 and 26.3.203 pertaining to sale of state land, 26.3.301, 26.3.303, 26.3.307, 26.3.308, 26.3.312, and 26.3.318 pertaining to oil and gas leases, 26.3.402 and 26.3.407 pertaining to geothermal resources, 26.3.501 through 26.3.518 pertaining to uranium leasing, and 26.3.602 pertaining to coal leasing on state land.

2. The rules proposed to be repealed are on pages 26-29, 26-41, 26-115, 26-134, 26-145.19, 26-149, 26-165 through 26-173, 26-176, 26-178, 26-181, 26-205, 26-208, and 26-222 through 26-231, respectively, of the Administrative Rules of Montana.

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

3. The proposed repealed rules are not necessary for the functioning of the reorganized Department of Natural Resources and Conservation and are being deleted pursuant to HJR-5 (1995).

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Jeff Hagener, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana 59620-1601. Any comments must be received no later than January 25, 1996.

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

request for a hearing and submit this request along with any written comments to Jeff Hagener, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana 59620-1601. Any comments must be received no later than January 25, 1996.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed repeal; 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 hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25 based on the number of persons who have an interest in the management of state trust lands.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

ARTHUR R. CLINCH, DIRECTOR

DONALD D. MacINTYRE, REVIEWER

Certified to the Secretary of State December 11, 1995.

BEFORE THE MONTANA DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of Rule 36.6.101 and repeal of Rules 36.6.201 through 36.6.202 pertaining to referendums for creating or changing conservation district boundaries and for conservation district supervisor elections.	))))))	NOTICE OF PROPOSED AMENDMENT OF RULE AND REPEAL OF RULES NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons.

1. On January 22, 1996, the Department of Natural Resources and Conservation proposes to amend Rule 36.6.101 pertaining to referendums for creating or changing conservation district boundaries and to repeal rules 36.6.201 through 36.6.202, pertaining to conservation district supervisor elections.

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

36.6.101 CONDUCT OF REFERENDUM (1) (a) The ~~Chief of the Soil Conservation Bureau~~ department shall appoint ~~one polling superintendent~~ an election administrator who may be the county election administrator.

(b) The ~~Polling Superintendent~~ election administrator shall appoint at least two ~~polling officers~~ election judges for each polling place.

(c) The ~~superintendent~~ election administrator and ~~polling officers~~ election judges shall take an oath or affirmation of office.

~~(d) The superintendent and polling officers shall be appointed at least three (3) weeks prior to the referendum.~~

(2) (a) The ~~Polling Superintendent~~ election administrator shall give due notice of the referendum. Such notice shall be given fourteen days prior to the referendum.

(b) Notice shall be given by posting in at least five conspicuous places where notices are usually placed.

(c) Notice may in addition be given through local news media.

(d) An affidavit of posting of notice shall be made.

(3) (a) Elections shall be held by one of the following methods:

(i) by open poll voting and absentee ballot;

(ii) by mail; or

(iii) by a combination of open poll voting in one precinct and by mail in another precinct, but not by both methods in a single precinct.

~~(iv) any qualified voter may vote by absentee ballot.~~

(b) Open poll elections may be held in conjunction with a general or special election provided proper arrangements are made with ~~respective authorities beforehand~~ the county election administrator.

(4) The ~~Polling Superintendent~~ election administrator shall obtain or prepare a poll list of eligible voters.

(5) ~~(a)~~ The ~~polling officers~~ election judges of each polling place shall submit the result of the referendum of their polling place to the ~~polling superintendent~~ election administrator.

~~(b) (i)~~ (6) The ~~polling superintendent~~ election administrator shall compile and certify the result of the referendum and submit the result to the ~~Soil Conservation Bureau Chief, Conservation Districts Division, Department of Natural Resources and Conservation, Helena, Montana 59601~~ department.

~~(ii)~~ (7) The ~~polling superintendent~~ election administrator shall return ~~all forms~~ the ~~(~~ oath of office, affidavit of posting notice (copy of notice attached), ~~Certificate of Registration,~~ poll lists, tally sheets, and certificate of result~~)~~ to the ~~Soil Conservation Bureau~~ department, along with the result of the referendum. ~~These forms shall be available on request at the Conservation Districts Division, Department of Natural Resources and Conservation, Helena, Montana 59601.~~

~~(c) The Department of Natural Resources and Conservation shall publish the result of the referendum.~~

AUTH: 76-15-208, MCA
IMP: 76-15-207 through 209, MCA

3. Rules 36.6.201 and 36.6.202 are proposed to be repealed. The rules proposed to be repealed are on pages 36-68 through 36-70 of the Administrative Rules of Montana.

AUTH: 76-16-321, MCA
IMP: 76-15-302 through 304, MCA

4. The purpose of the proposed amendments is to eliminate rules conflicting with current statutes and standard procedures used to conduct elections and referendums. These rules are necessary to implement the referendum procedures conducted by the department for the effective operations of the conservation districts. The rules proposed for repeal are no longer necessary and are being deleted pursuant to HJR 5 (1995).

5. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing to Laurie Zeller, Department of Natural Resources and Conservation, Box 201601, Helena, MT 59620-1601. The comments must be received on or before January 19, 1996.

6. If a person who is directly affected by the proposed adoption wishes to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any

written comments to Laurie Zeller, Department of Natural Resources and Conservation, Box 201601, Helena, MT 59620-1601. The comments must be received on or before January 19, 1996.

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

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

ARTHUR R. CLINCH, DIRECTOR

DONALD D. MacINTYRE,
RULE REVIEWER

Certified to the Secretary of State on Dec. 4, 1995.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the repeal of Rule 26.6.402 pertaining to Christmas tree cutting, Rules 26.6.501 through 26.6.504, and 26.6.511, pertaining to control of timber slash and debris, and Rule 26.6.601 pertaining to fire management and forest management	))))))	NOTICE OF PROPOSED REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On January 29, 1996 the Department of Natural Resources and Conservation proposes to repeal Rules 26.6.402 pertaining to Christmas tree cutting, 26.6.501 through 26.6.504, and 26.6.511 pertaining to control of timber slash and debris, and 26.6.601 pertaining to fire management and forest management.

2. The rules proposed to be repealed are on pages 26-1041, 26-1049 through 26-1051, and page 26-1101 of the Administrative Rules of Montana.

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

3. The proposed repealed rules are not necessary for the functioning of the reorganized Department of Natural Resources and Conservation and are being deleted pursuant to HJR-5 (1995).

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Don MacIntyre, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana 59620-1601. Any comments must be received no later than January 25, 1996.

5. If a person who is directly affected by the proposed repeal wishes to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Don MacIntyre, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, Montana 59620-1601. Any comments must be received no later than January 25, 1996.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed repeal; 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 hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25 based on the number of persons who have an interest in the management of state forest lands.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

ARTHUR R. CLINCH, DIRECTOR

DONALD D. MacINTYRE, REVIEWER

Certified to the Secretary of State December 11, 1995.

BEFORE THE MONTANA DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of amending Rules 36.10.115, 36.10.161, 36.10.201, and 36.10.202 pertaining to Fire Management	))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 31, 1996, the Department of Natural Resources and Conservation, proposes to amend Rules 36.10.115, 36.10.161, 36.10.201, and 36.10.202 pertaining to fire management.

2. Rule 36.10.115 is proposed to be amended as follows:

36.10.115 DEBRIS DISPOSAL Subsections (1) through (4) remain the same.

(5) During the fire season, flammable material and debris may not be burned, excepting under a written fire permit issued by the recognized agency for that forested land. All burning must be carried out in accordance with the department of ~~health and environmental sciences'~~ environmental quality's open burning restrictions.

AUTH: 76-13-109, MCA
IMP: 76-13-121, 76-13-126, MCA

3. Rule 36.10.161 is proposed to be amended as follows:

36.10.161 FORMULA TO SET LANDOWNER ASSESSMENTS FOR FIRE PROTECTION Subsections (1) through (2) remain the same.

(3) ~~(a)~~ Except as provided in (3) ~~(b)~~ (a), the per capita and per acre fees set for 1994 must remain in effect for subsequent years.

~~(b)~~ (a) The department shall reset the per capita and per acre fees whenever:

(i) it is necessary to reset fees to obtain the amount appropriated by the legislature; or

(ii) the fees assessed statewide pursuant to (2)(a) on persons who own 20 acres or less of land for which the department provides protection obtain more than 55% or less than 45% of the total amount appropriated by the legislature.

~~(c)~~ (b) Whenever the department resets the fees pursuant to ~~(3)(b)~~ (3)(a), it shall do so in accordance with (2) and the fees must remain in effect until either of the conditions in ~~(3)(b)~~ (3)(a) is met.

AUTH: 76-13-109, MCA
IMP: 76-13-105, 76-13-201, and 76-13-207, MCA

4. Rule 36.10.201 is proposed to be amended as follows:

36.10.201 PURPOSE (1) Under 87-3-106, MCA, the governor upon recommendation of the department of ~~state lands~~ natural resources and conservation may close an area to trespass because of fire danger and that area is automatically closed to hunting and fishing and remains closed so long as the fire closure remains in effect.

Subsection (2) remains the same.

AUTH: 87-3-106, MCA
IMP: 87-3-106, MCA

5. Rule 36.10.202 is proposed to be amended as follows:

36.10.202 MINIMUM MEASURES BY COUNTY COMMISSIONERS (1) Before submitting a request for a closure, the board of county commissioners shall have taken the following minimum steps:

~~(1)~~(a) initiated an active fire prevention program aimed at reducing preventable fires;

~~(2)~~(b) initiated an active fire detection and pre-suppression system aimed at the rapid detection of and response to fires that do occur;

~~(3)~~(c) organized local forces to suppress fires;

~~(4)~~(d) determined that current dire situations exceed the established county capabilities.

AUTH: 87-3-106, MCA
IMP: 87-3-106, MCA

6. The proposed amendments to Rules 36.10.115 and 36.10.201 are necessary because chapter 418, L. 1995, requires the reorganization of natural resource agencies. The Department of Health and Environmental Science functions have been transferred to the Department of Environmental Quality, and the Department of State Lands functions have been transferred to the Department of Natural Resources and Conservation.

7. The proposed amendments to Rules 36.10.161 and 36.10.202 are for editing purposes.

8. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Don MacIntyre, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT 59620-1601, on or before January 28, 1996.

9. If a person who is directly affected by the proposed amendments wishes to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Don MacIntyre, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT 59620-1601. The comments must be received on or before January 28, 1996.

10. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; 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 greater than 25 based on the number of landowners in Montana who own forested lands.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Arthur A. Clinch, Director

Donald D. MacIntyre, Rule Reviewer

Certified to the Secretary of State December 11, 1995

BEFORE THE MONTANA DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the amendment of rule 36.12.1101 establishing procedures for collecting processing fees for late claims	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On January 22, 1996, the Department of Natural Resources and Conservation proposes to amend rule 36.12.1101 which establishes procedures for collecting processing fees for late claims.

2. The proposed amendment of Rule 36.12.1101 provides as follows:

36.12.1101 PAYMENT DATE FOR FILING OF LATE CLAIMS (1) For a statement of claim filed after April 30, 1982, but prior to July 1, 1993, the $150 processing fee must be paid to the department. The department shall give notice of payment due by mailing a billing invoice to the current late claim owner or owners as documented in the department's records. If payment is not received within 60 days the department shall send a second notice, ~~by certified mail.~~ If the processing fee is not received within 45 days of the second notice the department shall add a remark to the claim stating: "No processing fee has been received for this late claim. Total amount due $150.00." This remark will also be added to any late claim for which the department is unable to determine a correct address or new owner for a billing invoice that is undeliverable by United States mail. The department will complete its mailing notifications under this rule prior to June 30, 1996.

Subsection (2) and (3) remain the same.

AUTH: 85-2-225, MCA
IMP: 85-2-225, MCA

3. This rule is proposed to be amended to reduce the overall cost of mailing the second late claim billing invoice.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Bob Arrington, Department of Natural Resources and Conservation, 1520 E. Sixth Avenue, Helena, MT 59620, on or before January 19, 1996.

5. If a person who is directly affected by the proposed adoption wishes to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along

with any written comments to Bob Arrington, Department of Natural Resources and Conservation, 1520 E. Sixth Avenue, Helena, MT 59620. The comments must be received on or before January 19, 1996.

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

Arthur R. Clinch, Director

Donald D. MacIntyre, Rule Reviewer

Certified to the Secretary of State December 4, , 1995

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

In the matter of the amendment of rules 46.30.507, 46.30.701 and 46.30.1605 pertaining to child support enforcement distribution of collections and non-AFDC services	)))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES

TO: All Interested Persons

1. On January 16, 1996, at 2:00 p.m., a public hearing will be held in the Basement Auditorium, Social and Rehabilitation Building, 111 N. Sanders, Helena, Montana to consider the amendment of rules 46.30.507, 46.30.701 and 46.30.1605 pertaining to child support enforcement distribution of collections and non-AFDC services. Additional sites for the hearing via teleconferencing are as follows:

Billings: Montana State University--Billings, Special Education Building, Room 162, 1500 N. 30th Street, Billings, Montana

Great Falls: Montana State University College of Technology--Great Falls, Room 147, 2100 16th Avenue South, Great Falls, Montana

Kalispell: Flathead Valley Community College, Learning Resource Center, Room 120, 777 Grandview Drive, Kalispell, Montana

Missoula: University of Montana--Missoula, Field House, Room 161, Intersection of South 6th Avenue East and Van Buren Street, Missoula, Montana

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 5, 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:

46.30.507 DISTRIBUTION OF COLLECTIONS ~~(1) Except as provided in subsection (3), when the CSED is enforcing a support obligation established by a court or administrative order,~~

~~collections shall first be applied to satisfy the current support obligation for the month in which the payment was collected. If any amount is collected in excess of the current support payment, the excess amount shall first be applied to satisfy fees, if any, awarded under 40-5-210, MCA, and the remainder shall be applied to satisfy any delinquency which is owing to the CSED by reason of 40-5-202 or 53-2-613, MCA. If the amount collected exceeds a delinquency owing to the CSED the excess amount shall be distributed to the obligee.~~

~~(2) When two or more obligees of the same obligor are receiving services from the CSED for the enforcement of a current support obligation, a collection of support which is less than the full amount of current support due to all the obligees, shall be distributed equally between the obligees. If the CSED is enforcing a delinquent support obligation for two or more obligees of the same obligor, after deducting fees and amounts owing to the CSED, if any, the delinquent amounts collected shall be distributed equally between the obligees, provided however, that the amount to be distributed shall not exceed the debt owing to each obligee.~~

~~(3) Payments collected to satisfy a support delinquency including but not limited to the proceeds from writs of execution, federal and state tax offsets, and lump sum payments will only be applied to satisfy fees and the delinquency. The collection or any part of it will not be applied towards current support even though the CSED may also be enforcing the current support obligation.~~

~~(4) Collections of delinquent support payments which are owing to the CSED under 40-5-202 and 53-2-613, MCA, after fees have been deducted shall be distributed in a sequence which will first satisfy the earliest unpaid installment of support due under a court or administrative order.~~

~~(5) When a payment received by the CSED is purported by an obligor to be a payment towards future support obligation under a court or administrative order, the amount shall not be applied to such future amounts unless and until any fees and delinquencies are first satisfied.~~

~~(6) In the absence of a court or administrative support order, voluntary payments made by an obligor shall first be applied to reimburse public assistance payments made to an obligee under Title IV-A of the Social Security Act. If the amount of the payment exceeds the amount necessary to reimburse such public assistance payments, the excess amount shall be distributed to the obligee. If no public assistance payments were paid to the obligee, the full amount of the voluntary payment shall be distributed to the obligee.~~

~~(7) Distribution of collections to an obligee who is a recipient of public assistance under Title IV-A of the Social Security Act, in addition to the provisions of this rule, shall also be made in substantial accord with the provisions of 45 CFR 302.51 and 302.52, as amended.~~

~~(8) For the purposes of distribution under this rule, the effective date of a support collection shall be the date on which the payment is received by the CSED, or by the clerk of court if the payment is required to be made to a clerk of court, whichever is earliest.~~

(1) Except as provided in (2), (6), (7) and (8), when the CSED is enforcing a support order, collections from all sources including but not limited to the proceeds from writs of execution, support liens and lump sum settlements will be distributed, to the extent the collection is sufficient, in the following sequence:

(a) to pay the current support obligation for the month in which the collection is made if current support has not previously been paid for that month to the obligee. However, if the obligee is a recipient of public assistance including Title IV-E foster care services, collections of current support shall be retained by the CSED for subsequent allocation according to applicable state and federal statutes and regulations;

(b) to satisfy accounts receivable owed by the obligor for recoupment of excess refunds, returns, reimbursements and other payments previously made to the obligor by the CSED because of error or mistake of fact;

(c) to satisfy fees awarded under 40-5-210, MCA which are owed by the obligor;

(d) to satisfy any arrears owing to the state of Montana by reason of 40-5-202, 40-5-221 and 53-2-613, MCA. If there are no arrears owing to the state of Montana or if the collection exceeds the arrears owed to the state, to satisfy arrears owed to the obligee; and

(e) to satisfy fines awarded under 40-5-208 or 40-5-226, MCA which are owed by the obligor.

(2) When the CSED is collecting support arrears only, amounts shall be distributed to open CSED cases according to (1)(b) through (1)(e).

(3) After a distribution of collections to the obligee is determined appropriate but before actual distribution is made, the CSED may:

(a) intercept a portion of the collections, as authorized by ARM 46.30.701, to be applied towards recoupment of over-payments previously made to the obligee;

(b) deduct from arrears collections, an amount to satisfy fees awarded under 40-5-210, MCA which are owed by the obligee.

(4) When the CSED is providing services to two or more obligees of the same obligor:

(a) a distribution of current support under (1)(a) which is less than the amount of current support due to all the obligees shall be prorated among the obligees based on the amount of current support due to each obligee;

(b) a collection of arrears owed under (1)(d) shall be distributed equally among the obligor's cases, provided however, that the amount distributed shall not exceed the arrears owed; and

(c) until current support and arrears owed by an obligor under a support order are satisfied, there shall be no distribution made to an obligee in a case where there is no support order.

(5) Notwithstanding the provisions of (4) above:

(a) if a particular collection is made through an order to withhold income, any amount distributed from that collection must be distributed only to the obligor's cases that currently have an order to withhold income in place;

(b) a payment by personal check, money order or like form of payment which is made payable only to a particular obligee, will be distributed only to that obligee's case;

(c) a collection resulting from a writ of execution or similar case-specific remedy must be distributed to the specific obligee's case;

(d) a payment received by an obligee directly from the obligor and turned over to the CSED for distribution under this section will not be distributed to any other obligee's case; and

(e) collections made through a clerk of court or other public or private child support enforcement authority, who forwards the collection to the CSED, shall be distributed only to the obligor's case designated by the clerk of court or other authority. If the forwarded collection fails to include a designated specific case, the distribution provisions of (4) will apply.

(6) A payment made by personal check, cashier's check or teller's check which is directed or restricted by a writing on the check to the payment of a particular debt, account or fund, will be distributed only to that particular debt, account or fund.

(7) A payment made in consideration of an agreement with the CSED, including an agreement to prepay costs and fees, will only be distributed according to the terms of the agreement.

(8) Collections resulting from federal and state tax offsets will be distributed only to arrears as provided under (1)(d) and, if appropriate, (4)(b).

(9) Except as provided in (11) below, the CSED shall not distribute collections or any part of collections towards future support, even though the obligor may so direct, until all appropriate distributions under (1) and, if appropriate, (4) are made first.

(10) In the absence of a support order, voluntary payments made by an obligor shall be distributed to the extent the payment is sufficient, in the following sequence:

(a) to satisfy any fees owed by the obligor under 40-5-210, MCA;

(b) to reimburse public assistance payments made to the obligee; and

(c) the excess amount, if any, shall be distributed equally among all of the obligees of the same obligor.

(11) For purposes of determining distribution under this rule, the effective date of a support collection shall be known as the date of collection.

(a) For collections made under an order to withhold income, the date of collection is the day the payor withholds the collection from the obligor's income. If the collection is paid by check, the date of collection is the date specifically reported by the payor in documentation accompanying the payment. If no date of collection is specifically reported, the date of collection is presumed to be the date shown on the check. This presumption may be overcome by credible evidence that the collection was withheld on another date. If credible evidence is received that a collection under an order to withhold is based on an advance payment to the obligor, the date of collection is presumed to occur in the future pay period represented by the advance;

(b) Except as provided in (11)(c), when a collection is received in the mail directly from the obligor, the date of collection is the postmark date. If the postmark is illegible or missing, the postmark date is presumed to be 3 days prior to receipt, if posted in the state of Montana, and 5 days prior to receipt if posted outside the state;

(c) If a collection is received in the form of a post-dated check, the date of collection shall be the date of the check;

(d) In all other cases, the date of collection shall be the day the CSED, or its collecting agent, receives the collection;

(12) Under this rule, collections characteristic of past due support, may be distributed as collections identified as current support. However, for purposes other than distribution, these collections will be accounted for as past due support.

(13) For the purposes of determining statutes of limitations, arrears, interest on arrears, collection remedies and similar uses, all collections, without regard to date of distribution, will be applied to satisfy the oldest unpaid installment of support due under the support order.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405, MCA
IMP: Sec. 17-4-105, 40-5-201 through 40-5-264 and 40-5-401 through 40-5-434, MCA

46.30.701 TERMS AND CONDITIONS (1) Under 40-5-203, MCA, the CSED will provide services to any obligee or obligor who files an application for services with the CSED. If public assistance was previously paid to an obligee, the CSED will continue to provide services to the obligee without need for an application. However, if the obligee refused or terminated continued services following the last payment of public assistance, the obligee must file an application. An application for services or an obligee's acceptance of continued services after termination of public assistance shall constitute

the applicant's or obligee's agreement to the following terms and conditions.

(2) For the purposes of this rule, "customer" means any person or entity who applies for CSED services or who is receiving CSED services.

~~(1)~~ (3) ~~In order to be eligible~~ ~~t~~To receive~~,~~ ~~or~~ and to continue to receive~~,~~ ~~support enforcement~~ CSED services under 40-5-203, MCA, ~~an obligee~~ a customer must:

~~(a) be a Montana resident;~~

~~(b) provide the CSED with information essential for the initiation or continuation of services;~~

~~(c) promptly advise the CSED of any material changes in information required for the initiation or continuation of services;~~

~~(d) surrender to the CSED all payments of support which were not received through the CSED;~~

~~(e) refrain from taking any action which may tend to compete with the efforts of the CSED;~~

~~(f) provide certified copies of support orders and modifications thereof, whether issued in Montana or elsewhere;~~

~~(g) indemnify the CSED for any monies collected by state or federal tax intercept which the CSED may be required to repay to the obligor or obligor's spouse because a return was amended, or because an injured spouse claim was made;~~

~~(h) abide by the rules and regulations regarding the distribution of support collections; and~~

~~(i) provide written notice to the CSED when termination of services is desired, except, when the obligee's children are eligible for and receive medicaid benefits the obligee may not terminate services without good cause.~~

(a) pay any application fee and any other fee which may be charged under 40-5-210, MCA;

(b) provide original certified copies of all child support orders, modifications of child support orders, whether issued by a Montana court or agency or by an out-of-state court or agency;

(c) provide certified copies of all payment records if support was ordered to be paid through the clerk of court, central registry or other public entity. If support was ordered to be paid directly to the obligee, provide any records, receipts or other materials which document payments made or received;

(d) upon request of the CSED, promptly provide any information, documents, statements, exhibits and other materials which the CSED, in its judgment, may determine relevant to the case or which the CSED finds is a necessary predicate to taking any action in the case. The customer must promptly advise the CSED of any later changes or additions to the information and materials previously provided to the CSED;

(e) promptly advise the CSED in writing of any change of address or status, or any new information about the customer or other parties in the case, including changes in physical custody of the child, or of any adoption proceedings;

(f) cooperate with the CSED by appearing at the time and place requested for interviews, hearings, depositions, blood draws, and other called for appearances where the presence of the customer is necessary for preparing testimony and evidence, providing information, testifying as witness and similar case pertinent activities;

(g) to ensure accurate payment records, if the obligee is the customer, the customer must promptly turn over to the CSED all child support payments received from the obligor. If the obligor is the customer, the customer must pay child support through the CSED for subsequent distribution to the obligee;

(h) let the CSED know immediately if the customer or any other party initiates any action, whether judicial, administrative or private, which competes with, is an alternative to, is inconsistent with, or which may in any way affect the action the CSED is taking in the case;

(i) except for the information available through the CSED's voice response unit (VRU) or the CSED's customer services unit, submit all requests for specific case information in writing to the CSED. In making any request for information, the customer must provide sufficient information to identify the customer as the person or entity entitled to receive the information.

~~(2) Collection of a current support obligation is available only when the child resides with the obligee, or current support is due under a support order.~~

(4) In some instances when the customer is the obligee, the customer may receive money to which the customer is not entitled. The CSED may make a written demand for repayment of the money from the customer. The customer's silence or failure to respond to the written repayment demand within 10 days of the demand shall be considered the customer's consent to recoupment of the money from any child support collection made on the customer's behalf. Recoupment shall be made by offsetting 10% of any current child support collection and by offsetting any additional child support collection made in excess of the current support obligation. If a customer contests the repayment demand, the CSED may file an action in the district court to establish and collect the amount.

~~(3)~~ (5) Except as provided in ~~subsection (6)~~ (7) of this rule, a customer cannot specify which of the CSED services that customer may want to receive. ~~the~~ The CSED will determine which services are appropriate and the ~~type,~~ timing and ~~extent~~ duration of those services in accordance with Title IV-D of the Social Security Act, and the regulations promulgated thereunder.

~~(4)~~ (6) ~~When providing services under 40-5-203, MCA, the CSED's involvement is to further the public interest at large and is not principally intended to benefit the obligee except in a fiduciary capacity.~~ CSED staff attorneys assigned to ~~an~~ a ~~obligee's~~ customer's case represent the CSED and no attorney-client relationship ~~will exist~~ exists between the ~~obligee~~ customer and the CSED attorney. At any hearing or in any action

undertaken by the CSED, the ~~obligee~~ customer may appear and be represented by independent counsel of ~~his or her~~ the customer's own choice.

~~(5) In all proceedings, the CSED assumes the right to promote and accept settlements and to compromise any claim or issue which is a part of or inherent to the services being rendered by the CSED. In entering into settlements or compromises the discretion of the CSED will be guided by the totality of circumstances including the time and effort required to resolve a case in the absence of settlement or compromise, the resources of the CSED, the interest of the public at large, the needs of the child, and the fiduciary relationship with the obligee. The obligee will be bound by any settlement, compromise or final disposition obtained by the CSED unless written notice of termination of service is received prior to final CSED action.~~

(7) When there are multiple or concurrent procedures and remedies, whether judicial or administrative, criminal or civil, federal or state, which may be applicable to the customer's case, the CSED, at its sole discretion, will determine which procedure and remedy to apply, including the sequence and timing of concurrent or consecutive actions.

(a) In determining which procedure or remedy to apply to an individual case, the discretion of the CSED will be guided by the totality of circumstances including the time and effort required, the resources of the CSED, the interest of the public at large and the needs of the child.

~~(6)~~ (8) Unless ~~an obligee's~~ the customer ~~children are eligible for~~ is an obligee whose child is receiving medicaid benefits~~,~~ or is covered by the medicaid program, the CSED shall, upon receipt of a written request from the ~~obligee~~ customer, refrain from the establishment or enforcement of health insurance orders~~, or the collection of past due support through tax refund intercept~~.

~~(7)~~ (9) The CSED may terminate services ~~in the event that a dispute arises between the obligor and the obligee which prevents the CSED from providing services~~:

(a) upon the request of the customer unless the customer is an obligee and the child is receiving public assistance benefits;

(b) when the CSED is unable to locate the customer within a 30 calendar day period despite attempts to make contact by phone and at least 1 certified letter to the customer's last known address;

(c) when the customer fails to provide any information, documents or other materials requested under (2) of this rule and the CSED cannot take the next step in the case without the information, documents or materials;

(d) when the customer fails to cooperate with the CSED and the customer's cooperation is necessary to the action initiated by the CSED; and

(e) for any other reason consistent with Title IV-D of the Social Security Act and the federal regulations promulgated thereunder.

(10) The CSED will notify the customer in writing 60 calendar days prior to termination of services under (8)(b) through (e) of this rule, of the CSED's intent to terminate services. The CSED will not terminate services if the customer, within the notice period, reestablishes contact with the CSED, supplies the requested information, documents or materials or begins to cooperate with the CSED, whichever is appropriate. The CSED's decision to terminate services is final and not subject to protest except as may otherwise be provided by law.

(a) If CSED services are terminated and if there is a change in circumstances which would permit the CSED to reactivate prior terminated services or initiate new or additional services, the former customer can reinstate services by filing a subsequent application with the CSED.

~~(8)~~ (11) The CSED does not guarantee or warrant the results of services.

AUTH: Sec. 40-5-202, MCA
IMP: Sec. 40-5-203, MCA

46.30.1605 FEE SCHEDULE ~~(1) In any judicial or administrative action (including post judgment proceedings) in which the CSED is the prevailing party, the following fees will be charged to the obligor:~~

~~(a) actual costs and expenses; and~~

~~(b) standardized fees for administrative actions as follows:~~

~~(i) preparation of any notice under 40-5-208, 40-5-222, 40-5-223, 40-5-225, 40-5-232, 40-5-413, 17-4-103, MCA, 45 CFR 303.72, and ARM 46.30.803 (including, if appropriate, notice and entry of default orders) $8.50; plus~~

~~(ii) obtaining informal disposition of a noticed matter through negotiation, settlement or compromise $53.50; or~~

~~(iii) preparation for administrative hearing including interviewing and preparing witnesses, preparing and copying exhibits, research and investigation, and attendance at the hearing $72.00.; and~~

~~(c) Standardized fees for judicial proceedings:~~

~~(i) commencement of judicial proceedings through preparation and filing of pleadings, complaints, or petitions, including clerical and caseworker preparation and investigation (also includes, if appropriate, notice and entry of default judgments or orders) $66.50; plus~~

~~(ii) obtaining informal disposition by caseworker or legal staff through negotiation, compromise, or settlement $36.00; or~~

~~(iii) preparation for judicial trial, hearing or other proceeding including discovery, research, caseworker investigation, interviewing and preparing witnesses, pre hearing~~

~~briefs, and attendance at judicial trial, hearing or other proceedings.~~

~~(A) paternity actions $715.00~~

~~(B) all others $240.00~~

~~(d) Standardized fees for central office parent/asset locate $ 11.00;~~

~~(e) Standardized fees standardized fee for interstate actions~~

~~(i) registration with central registry $8.00~~

~~(ii) preparation of interstate transmittal $33.00~~

~~(iii) preparation of URESA petitions $81.00~~

(1) As authorized by 40-5-210, MCA, the CSED will charge fees to recover costs and expenses according to the following schedule:

(a) for each person, including the child, submitted or resubmitted for paternity blood testing, a standardized fee of $81.00;

(b) for mileage, each way and for each mile, when using a personal or state owned automobile to travel for in-person appearances at judicial or administrative hearings or trials as witness, hearing officer, CSED attorney or other CSED representative, a mileage allowance at a rate equal to the mileage allotment allowed by the United States internal revenue service for the proceeding year;

(c) for meals and lodging associated with travel for in-person appearances at judicial or administrative hearings or trials as witness, hearing officer, CSED attorney or other case prosecutor, a meal and lodging allowance as provided in 2-18-501, MCA;

(d) for time, effort and expenses in responding to petitions for judicial review including making typed transcriptions of hearing record and preparing briefs, a standardized fee of $250.00;

(e) for deposing or taking the deposition, including stenographic recording, and the taking of audio visual depositions, of a witness who resides more than 100 miles from the place of administrative hearing or who is unable to personally attend an administrative hearing because of age, illness, infirmity or imprisonment, a fee equal to actual cost incurred;

(f) for subpoena of a witness to personally appear at an administrative hearing, a fee equal to the actual amount paid to the witness as provided in 2-4-104, MCA, and recoverable under 25-10-201, MCA;

(g) for each hour in taking a responsive or corrective action in an existing judicial proceeding or in commencing an independent judicial action to set aside, declare void or vacate any order, decree or judgment in which the CSED is not a party or is not joined as a party to the action as provided by the rules of civil procedure and which purports to affect, expressly or implicitly, any right or interest of the CSED, a standardized

fee of $75.00 for each CSED attorney and a standardized fee of $50.00 for each CSED investigator; and

(b) for other actual costs and actual expenses incurred by the CSED.

(2) The fees in (1)(a) shall be assessed to the parent, whether the alleged father or the mother, whose denial of paternity necessitates the taking of paternity blood tests.

(3) Whenever the CSED is the prevailing party in an action or whenever the CSED is not a party to an action but incurs expenses and costs related to an action maintained by any other party, the fees in (1)(b) through (1)(h) shall be assessed to the party whose act, failure to act, negligence or omission caused the CSED to incur the costs and expenses which are the basis for these fees.

(4) In addition to the fees charged in (1), the CSED will charge fees to review and modify child support orders as follows:

(a) for a determination that a review is not appropriate or modification consent order entered prior to a review hearing, no fee; or

(b) for entry of a modification order resulting from a stipulated agreement obtained during review hearing, a fee of $200.00 assessed to the party or parties requesting the review hearing; or

(c) if the parties are unable to agree following a review hearing and the matter is submitted for arbitration, for entry of a modification order based on the arbitrator's recommendation, a fee of $550.00 assessed to the party or parties who failed to stipulate to a negotiated support order during the review hearing; or

(d) if the arbitrator's recommendation is disputed and a modification hearing is requested, for entry of a modification order subsequent to the modification hearing, a fee of $750.00 to be assessed against the party or parties requesting the hearing; and

(e) if a fee under (4)(b) through (d) is assessed to more than one party, the fee shall be apportioned equally between those parties; and

(f) for each party who requests a review hearing, arbitration or modification hearing and then withdraws from the requested proceeding after the CSED has prepared documents necessary to initiate the proceeding, a handling fee of $50.00.

(5) Under some circumstances, fees assessed to a party with low income under (4)(b) through (e) may be reduced. To determine if a reduction is appropriate, the CSED will refer to the child support determination worksheet (form CS-404A) prepared as part of the review and modification process. The CSED will then divide the figure shown on the worksheet for net available resources by the self support reserve. If the resultant number is greater or equal to 50%, no reduction of the fee is appropriate. If the resultant number is less than 50%, it shall be doubled and multiplied by the amount of the fee.

The number determined by this process is the reduced fee amount to be assessed to the low income party.

(6) Other fees assessed to the party or entity requesting the service are:

(a) for parent locate services, a fee of $11.00;

(b) for each intercept of federal and state income tax refunds in non public assistance cases, a standardized fee of $25.00 or actual costs if less than the standardized fee; and

(c) for photocopies of CSED files, records and other materials, for each page, a fee of $.25.

AUTH: Sec. 40-5-202 and 40-5-210, MCA
IMP: Sec. 40-5-210, MCA

3. The Child Support Enforcement Division (CSED) proposes to amend ARM 46.30.507, Distribution of Collections, to conform with federal distribution policy set out in 45 CFR 302.51, et seq. These federal regulations specify that all collections of child support, including those collections traditionally attributable to arrears, must first be distributed to pay current child support. The only exceptions to the federal policy are those collections obtained through state and federal tax refund intercepts.

By way of example, a writ of execution is used only to collect past due support. However, under the federal regulations, proceeds from writs are to be distributed to the family for current support if current support had not previously been paid to the family. Even though distributed as current support, the collection is nonetheless still attributable to arrears. This causes the collection to be distributed differently than the same collection is otherwise treated for accounting, crediting, enforcement and other similar purposes.

To effectuate the federal regulation, it is necessary to amend ARM 46.30.507. Inherent to these amendments is the necessity to distinguish between distribution policy and the posting of collections for all other purposes. It is also necessary to clarify the differences between cases where the CSED is enforcing current support and the enforcement of arrears only cases which are not affected by the federal policy.

Further amendments are necessary to supplement existing provisions to determine the "date of collection". The "date of collection" sets the standard for distinguishing between when a collection should be distributed as current support and when the collection may considered entirely as an arrears payment.

As a consequence of the new emphasis on current support, it is also necessary to distinguish between child support collections and collections of various earmarked accounts. For example, some collections, although in the nature of support, are not

strictly definable as child support for the purposes of the federal distribution policy. These collections may be payments towards fees, costs and expenses. These collections may also be to repay overpayments of child support caused by an injured spouse claim following the intercept of a tax refund. Collections of these and other earmarked accounts are not subject to the federal distribution policy.

The CSED proposes to amend ARM 46.30.701, Terms and Conditions. These are the rules which set out the standards and conditions for the provision of CSED services to personswho are not current recipients of public assistance. When these rules were adopted, it was contemplated that only state residents and obligees would receive services. Since then, there have been several policy changes at the federal level which make it clear that CSED services must be made available to both obligees and obligors and to all such persons without regard to residency. Numerous amendments throughout the rules are necessary to implement these policy changes.

Other amendments to ARM 46.30.701 are proposed to ensure consistent and timely payments of support to an obligee. This is accomplished by strengthening existing provisions to stress the need for accurate and continuous updating of case related information. Also stressed is the need for the customer to fully cooperate with the CSED in each stage of the process. Clarification is added to emphasize that if necessary information or cooperation is not provided the CSED may close the case.

A new provision is added to give the CSED and the obligee an easy, low cost means for recoupment of overpayments, excess refunds and other money paid to the customer to which the customer it not entitled. Prior to this proposed amendment it was necessary to negotiate the terms of repayment agreements on a case by case basis. The amendment will permit the CSED to recoup the overpayments by deducting 10% from payments the CSED would otherwise be required to distribute to the customer.

The CSED proposes to amend ARM 46.30.1605 to delete obsolete fees and to incorporate new fees identified as necessary since the original adoption of the rules. One set of amendments establishes fees to recover costs and expenses related to processing of requests for review and modification of support orders. The amendment would allow a fee to be assessed at each stage of the process up to a maximum fee of $750. Under this fee schedule, parties who cooperate and negotiate towards resolution during the early stages of modification action will be assessed a lesser fee, if any at all. The fee schedule, also contains a provision which permits the fee, once assessed, to be adjusted downward for low income parents.

While most CSED hearings are conducted by telephone, requests for in-person hearings and the need to attend judicial proceedings are increasing at a rapid rate. This requires substantial travel including overnight travel. Consequently, the proposed amendments will permit the CSED to recover mileage, lodging and meals and other travel expenses. If the in-person administrative or judicial hearing requires the production of witnesses or the deposition of witnesses, these amendments will also allow the CSED to recover those costs and expenses through fees.

When the CSED did appear at judicial hearings and the court subsequently awarded costs for CSED attorney and caseworker time, there were no standardized hourly fees and actual costs were difficult to ascertain. Therefore, the CSED proposes to amend the rule to set a standardized hourly fee. This fee incorporates wages and salaries, benefits and an allocated share of associated overhead expenses.

Other proposed amendments are necessary to define which party is responsible for paying the fees.

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 18, 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 December 11, 1995.

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

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

TO: All Interested Persons

1. On January 12, 1996, at 1:30 p.m., a public hearing will be held in Room 306 of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.6.405, 46.6.407, 46.6.408, 46.6.409, 46.6.410, and 46.6.412 and the repeal of rules 46.6.306 and 46.6.411 pertaining to vocational rehabilitation financial need standards.

The Department of 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 1, 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:

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

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

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

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

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

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

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

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

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

(a) information and referral;

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

(c) counseling and guidance;

(d) placement;

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

(f) instructional services; and

(g) assessment for rehabilitation technology.

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

46.6.408 VOCATIONAL REHABILITATION PROGRAM: INFORMATION FOR DETERMINATION OF FINANCIAL NEED

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

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

~~(3) Failure of an individual to consent to the release of pertinent financial information to the department necessary for determining his financial resources or financial requirements will be considered to be a withdrawal of his application or client status for vocational services.~~

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

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

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

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

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

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

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

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

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

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

(4) The department hereby adopts and incorporates by reference the vocational rehabilitation income and resource table, dated July 1, 1995, published by the department. A copy of the table may be obtained through the Department of Public Health and Human Services, Rehabilitation Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The financial need determination is based on the next twelve months' projected income except as otherwise provided.

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

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

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

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

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

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

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

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

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

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

(d) individual retirement accounts; and

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

(6) Income and resources that are not available during the period that the individual is receiving the vocational

rehabilitation services through the department are not income and resources for purposes of determining the person's financial need.

(7) The department may take into consideration the individual's financial obligations that are a substantial obstacle to the individual's rehabilitation in determining if the individual meets the financial need standard.

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

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

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

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

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

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

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

(a) The department ~~will~~ provide~~s, subject to the limitation in (b),~~ funding for the cost of tuition to a program of higher education that is more expensive than the highest tuition in the Montana university system if the department determines that the program is not available otherwise or that the overall cost of attendance to the department inclusive of tuition, room and board, texts and supplies at the program with the more expensive tuition will be less than the overall cost of attendance at the program in the Montana university system.

~~(b) For tuition to programs of higher education located outside of Montana, the department will provide funding for the~~

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

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

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

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

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

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

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

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

The proposed amendments to ARM 46.6.407, determination of financial need prior to service, are necessary to change this rule into a more general rule on the process of determination and the services to which the financial need determination is applied. The amendments are necessary to provide that the determination of financial need is an on-going process that will account for changes in a person's financial need, and to specify the services the availability of which is not subject to the financial need determination. The specification of the exempted services is necessary in that it currently appears in ARM 46.6.306 which is proposed for repeal.

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

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

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

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

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

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than January 18, 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 December 11, 1995.

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

In the matter of the amendment of rules 46.12.505, 46.12.509, 46.12.593 and 46.12.1705 pertaining to medicaid cost report filing deadlines and physician attestation for certain providers	)))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES

TO: All Interested Persons

1. On January 12, 1996, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.505, 46.12.509, 46.12.593 and 46.12.1705 pertaining to medicaid cost report filing deadlines and physician attestation for certain providers.

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 1, 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:

46.12.505 INPATIENT HOSPITAL SERVICES, REIMBURSEMENT (1) through (10)(b) remain the same.

(11) Inpatient hospital service providers shall be subject to the billing requirements set forth in ARM 46.12.303. ~~The attending physician must, shortly before, at or shortly after discharge (but before a claim is submitted), attest in writing to the principal diagnosis, secondary diagnoses, and names of procedures performed. The following statement must immediately precede the physician's signature: "I certify that the narrative descriptions of the principals and secondary diagnoses and the major procedures performed are accurate and complete to the best of my knowledge." In addition, when the~~ At the time a claim is submitted, the hospital must have on file a ~~current~~ signed and dated acknowledgement from the attending physician that the physician has received the following notice: "Notice to physicians: medicaid payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies or

conceals essential information required for payment of federal funds, may be subject to fine, imprisonment or civil penalty under applicable federal laws." The acknowledgement must ~~have been~~ be completed ~~upon being~~ by the physician at the time that the physician is granted admitting privileges at the hospital~~.~~, or before or at the time the physician admits his or her first patient to the hospital. Existing acknowledgements signed by physicians already on staff remain in effect as long as the physician has admitting privileges at the hospital. The provider may, at its discretion, add to the language of this statement the word "medicare" so that two separate forms will not be required by the provider to comply with both state and federal requirements. In addition, except for distinct part rehabilitation units and hospital resident cases, provider may not submit a claim until the recipient has been either:

(11)(a) through (17) remain the same.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

46.12.509 ALL HOSPITAL REIMBURSEMENT, GENERAL (1) through (3) remain the same.

(4) All hospitals reimbursed under ARM 46.12.505 or ARM 46.12.508 must file the cost report with the Montana medicare intermediary ~~within 90 days of the facility's fiscal year end or receipt of the department cost settlement detail reports, whichever is later.~~ on or before the last day of the fifth calendar month following the close of the period covered by the report. For fiscal periods ending on a day other than the last day of the month, cost reports are due 150 days after the last day of the cost reporting period. Extensions of the due date for filing a cost report may be granted by the intermediary only when a provider's operations are significantly adversely affected due to extraordinary circumstances over which the provider has no control, such as flood or fire. In the event a provider does not file ~~within 90 days,~~ a cost report within the time limit or files an incomplete cost report, ~~an amount equal to 10% of the provider's total reimbursement for the following month shall be withheld by the department. If the report is overdue or incomplete a second month, 20% shall be withheld. For each succeeding month the report is overdue or incomplete,~~ the provider's total reimbursement ~~shall~~ will be withheld. All amounts so withheld will be payable to the provider upon submission of a complete and accurate cost report. ~~Unavoidable delays may be reported with a full explanation and a request made for an extension of time limits prior to the filing deadline. However, there is a maximum limitation of one 30 day extension.~~

(5) through (8) remain the same.

AUTH: Sec. 2-4-201, 53-2-201, 53-6-113, MCA
IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

46.12.593 RESIDENTIAL TREATMENT SERVICES, COST REPORTING AND AUDITS (1) through (1)(d) remain the same.

(i) The provider must file its cost report and supporting documents with the department ~~within 90 days of the closing date of its fiscal year.~~ on or before the last day of the fifth calendar month following the close of the period covered by the report. For fiscal periods ending on a day other than the last day of the month, cost reports are due 150 days after the last day of the cost reporting period. Extensions of the due date for filing a cost report may be granted by the intermediary only when a provider's operations are significantly adversely affected due to extraordinary circumstances over which the provider has no control, such as flood or fire.

(ii) In the event a provider does not file a complete cost report complying with these rules ~~within 90 days of the closing date of its fiscal year, an amount equal to 10% of the provider's total reimbursement for the following month shall be withheld by the department. If the report is overdue or incomplete for more than 30 days, 20% shall be withheld. For each succeeding 30 days the report is overdue or incomplete,~~ as required in (1)(d)(i) above or files an incomplete cost report, the provider's total reimbursement ~~shall~~ will be withheld. All amounts so withheld will be payable to the provider upon submission of a cost report which complies with these rules. ~~Unavoidable delays may be reported with a full explanation and a request made for an extension of time limits prior to the filing deadline. However, there is a limit of one 30 day extension per cost report.~~

(1)(d)(iii) through (1)(g) remain the same.

AUTH: Sec. 2-4-201 and 53-6-113, MCA
IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

46.12.1705 FEDERALLY QUALIFIED HEALTH CENTERS, RECORD KEEPING AND REPORTS (1) through (4) remain the same.

(5) ~~Within 90 days after the end of its reporting period, an FQHC~~ All FQHC's must submit to the department or its agent in the form and detail required by the department, a cost report ~~covering the reporting period and containing~~ on or before the last day of the fifth calendar month following the close of the period covered by the report. For fiscal periods ending on a day other than the last day of the month, cost reports are due 150 days after the last day of the cost reporting period. Extensions of the due date for filing a cost report may be granted by the intermediary only when a provider's operations are significantly adversely affected due to extraordinary circumstances over which the provider has no control, such as flood or fire. The cost report must contain the following information:

(5)(a) through (7) remain the same.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 2-4-201, 53-2-201, 53-2-606, 53-6-101, 53-6-111 and 53-6-113, MCA

3. The proposed changes to ARM 46.12.505(11) are necessary to eliminate certain Medicaid program physician attestation requirements in the current rule. The current rule requires that for every individual medicaid inpatient hospital service claim the physician must attest in writing to the primary diagnosis, secondary diagnosis and procedures performed. The medicaid rule followed the medicare rule on the same subject.

The attestation requirement was one of several measures intended to hold hospitals and physicians accountable for the information submitted on claim forms. Because reimbursement is based in large part upon the recipient's diagnosis, the diagnosis information on the claim is critical to payment of the correct reimbursement. Both hospitals and physicians have complained of the administrative burden of completing the attestation statements. Medicare program experience indicates that the attestation requirement does not appear to be necessary, since the hospital must keep on file an acknowledgment signed by the physician and because the hospital is accountable under the language contained on the hospital claim form. The medicare program published a final rule in the federal register on September 1, 1995 eliminating the requirement that the physician sign an attestation for each claim. Medicare has retained the requirement that the hospital keep on file an acknowledgment signed by the physician.

The proposed changes to ARM 46.12.505(11) would change the current medicaid rule to follow the changes to the physician attestation rule adopted by medicare. The department believes that the proposed rule will provide adequate accountability of hospitals and physicians, while eliminating a burdensome paperwork requirement. Adoption of the same requirement used by medicare will also eliminate unnecessary duplication of procedures and paperwork for providers. The proposed changes to 46.12.505(11) will apply to medicaid inpatient hospital services provided on or after September 1, 1995, the effective date of the corresponding medicare changes.

The proposed changes to ARM 46.12.509, 593 and 1705 are necessary to revise medicaid cost report filing rules for hospitals, residential treatment centers (RTCs) and federally qualified health centers (FQHCs) to follow recent changes in medicare program requirements. Current medicaid rules require these providers to file their annual cost reports within 90 days after the end of their individual fiscal years. The rule permits a provider to obtain one 30-day extension, and provides for progressively increasing withholding of reimbursement if the report is not filed or is filed in an incomplete state. In response to provider complaints that 90 days was not a

sufficient amount of time within which to complete and file the reports, medicare adopted federal regulation changes that allow hospital providers until the end of the fifth month after the close of the provider's fiscal period to file cost reports, or until 150 days after the close of the fiscal period if the provider's fiscal period does not end on the last day of the month. Because the new rule will grant providers at least a month more than they could have obtained with an extension under the old rule, medicare will allow extensions past the 5-month period only if the provider's operations have been significantly affected due to extraordinary circumstances over which the provider has no control, such as flood or fire.

The proposed changes will follow the changes adopted by medicare. The department believes that it is appropriate for the hospital, RTC and FQHC programs to allow providers the longer period of 5 months to file cost reports. Delay in receiving the cost reports will not prevent the department from timely completing annual rate setting or other requirements for these programs. Providers in many or most cases prepare one cost report to be submitted to both the medicare and medicaid programs. Adoption of the same period and related requirements used by medicare will also eliminate unnecessary duplication of procedures and paperwork for providers. The department will not adopt the longer 5-month period for medicaid nursing facility cost reports, although some nursing facility providers are combined hospital-nursing facilities. Receipt of the nursing facility cost reports is critical to timely data analysis and completion of annual rate setting for the nursing facility program. Delay in receipt of the cost reports would not be appropriate for this program.

The proposed changes to 46.12.509, 593 and 1705 will apply to medicaid cost reports for fiscal periods ending on or after June 27, 1995, the effective date of the corresponding medicare changes.

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 18, 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 December 11, 1995.

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

In the matter of the amendment of rule 11.7.510 pertaining to the goal for reducing the percentage of children in foster care for two or more years	)))))	CORRECTED NOTICE OF PROPOSED AMENDMENT

TO: All Interested Persons

1. On October 26, 1995 the Department of Public Health and Human Services published notice of the proposed amendment of rule 11.7.510 pertaining to the goal for reducing the percentage of children in foster care for two or more years at page 2224 of the 1995 Montana Administrative Register, issue number 20.

2. The proposed notice of amendment inadvertently left out the notice of the public's right to comment on the proposed rule amendment. Consequently the Department is changing the date it proposes to amend rule 11.7.510 from December 22, 1995 to January 29, 1996 and adds the following clause (which would have been number 6) to the published notice:

Interested persons may submit their data, views or arguments to the proposed amendment in writing to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Public Health and Human Services, PO Box 4210, Helena, MT 59604-4210, no later than January 18, 1996.

3. All portions of the October 26, 1995 notice of proposed amendment not specifically changed by this amended notice remain the same.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State December 11, 1995.

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

In the matter of the amendment of Rules 6.6.4102 and 6.6.4202 pertaining to insurance licensee continuing education fees and continuing education program administrative rule definitions.	))))))	NOTICE OF AMENDMENT

TO: All Interested Persons.

1. On November 9, 1995, the state auditor and commissioner of insurance of the state of Montana published notice of public hearing with respect to the proposed amendment of rules 6.6.4102 and 6.6.4202. The notice was published at page 2325 of the 1995 Montana Administrative Register, issue number 21.

2. The agency has amended rules 6.6.4102 and 6.6.4202 exactly as proposed.

3. No comments or testimony were received.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By: _____
Frank Coté
Deputy Insurance Commissioner

_____
Elizabeth A. O'Halloran
Rules Reviewer

Certified to the Secretary of State this 11th day of December, 1995.

BEFORE THE DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to general rule of the department, repeal of a rule pertaining to process servers, and repeal of rules pertaining to polygraph examiners, private employment agencies and public contractors	NOTICE OF AMENDMENT OF A GENERAL RULE PERTAINING TO THE DEPARTMENT OF COMMERCE, REPEAL OF A RULE PERTAINING TO PROCESS SERVERS AND THE REPEAL OF RULES PERTAINING TO POLYGRAPH EXAMINERS, PRIVATE EMPLOYMENT AGENCIES AND PUBLIC CONTRACTORS

TO: All Interested Persons:

1. On October 26, 1995, the Department of Commerce published a notice of proposed amendment of a rule pertaining to general department personnel and the repeal of rules pertaining to process servers, polygraph examiners, private employment agencies and public contractors at page 2175, 1995 Montana Administrative Register, issue number 20.

2. The Department has amended ARM 8.2.207 and repealed ARM 8.2.401, 8.47.401 through 8.47.405, 8.51.101 through 8.51.701 (8.51.503 was previously repealed), 8.115.301, 8.115.304 8.115.305 and 8.115.313 through 8.115.316 exactly as proposed (8.115.301 through 8.115.303 and 8.115.306 through 8.115.312 were reserved rules).

3. No comments or testimony were received.

DEPARTMENT OF COMMERCE

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 11, 1995.

BEFORE THE BOARD OF DENTISTRY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to applications to convert inactive status licenses, dental hygienists, and definitions; repeal of a rule pertaining to use of auxiliary personnel and dental hygienists; and adoption of a new rule pertaining to dental auxiliaries	CORRECTED NOTICE OF AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO DENTISTS, DENTAL HYGIENISTS AND DENTAL AUXILIARIES

TO: All Interested Persons:

1. On July 27, 1995, the Board of Dentistry published a notice of proposed amendment, repeal and adoption of rules pertaining to dentists, dental hygienists and dental auxiliaries at page 1380, 1995 Montana Administrative Register, issue number 14. On November 22, 1995, the Board published an adoption notice amending, repealing and adopting the rules, some with changes, at page 2469, 1995 Montana Administrative Register, issue number 22.

2. The Board inadvertently omitted striking the language "all reversible" from subsection (1) of ARM 8.16.602 in the adoption notice. The language "and subject to (3) below," should read "and subject to (2) below," since (2) was deleted and (3) renumbered (2) in the adoption notice. Replacement pages will reflect these changes when completed for the December 31, 1995 deadline.

3. The Board also noted that new rule I, numbered ARM 8.16.707A in paragraph 2. of the adoption notice, indicates new rule number I as "8.28.707A FUNCTIONS FOR DENTAL AUXILIARIES" under the amendments to the proposal. That rule should be numbered "8.16.707A" as shown in paragraph number 2. of the adoption notice. The last sentence in (9) should read "portions of" instead of "portions or." These changes will also be reflected in the replacement pages for December 31.

BOARD OF DENTISTRY
CAROL SCRANTON, DDS, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 11, 1995.

BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment and repeal of rules pertaining to the horse racing industry	)))	NOTICE OF AMENDMENT AND REPEAL OF RULES PERTAINING TO THE HORSE RACING INDUSTRY

TO: All Interested Persons:

1. On October 26, 1995, the Board of Horse Racing published a notice of proposed amendment of rules pertaining to the horse racing industry at page 2178, 1995 Montana Administrative Register, issue number 20.

2. The Board has amended ARM 8.22.703, 8.22.709 and 8.22.1621 and repealed ARM 8.22.1001 through 8.22.1018 and 8.22.1020 through 8.22.1025 exactly as proposed. ARM 8.22.1019 was a reserved rule.

3. No comments or testimony were received.

BOARD OF HORSE RACING
JAMES SCOTT, D.V.M., CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 11, 1995.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment and adoption of rules pertaining to the outfitting industry	NOTICE OF AMENDMENT OF RULES PERTAINING TO FEES AND ADOPTION OF NEW RULES ON MORATORIUM AND OPERATIONS PLAN REVIEW

TO: All Interested Persons:

1. On September 14, 1995, the Board of Outfitters published a notice of public hearing on the proposed amendment and adoption of rules pertaining to the outfitting industry, at page 1761, 1995 Montana Administrative Register, issue number 17. On November 9, 1995, the Board published an adoption notice at page 2388, 1995 Montana Administrative Register, issue number 21, which amended ARM 8.39.518 and adopted new rules I (8.39.801) and II (8.39.802) exactly as proposed. The board tabled the adoption of proposed new rules III and IV until further discussion was completed. Comments regarding new rule III were addressed in the adoption notice published on November 9.

2. The Board has voted to adopt new rule III (8.39.803) exactly as proposed.

3. No other comments or testimony were received.

BOARD OF OUTFITTERS
O. KURT HUGHES, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 11, 1995.

BEFORE THE BOARD OF PLUMBERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to definitions and fees and adoption of new rules pertaining to medical gas piping installation endorsements	NOTICE OF AMENDMENT OF 8.44.402 DEFINITIONS AND 8.44.412 FEE SCHEDULE AND ADOPTION OF NEW RULES PERTAINING TO MEDICAL GAS PIPING INSTALLATION ENDORSEMENTS

TO: All Interested Persons:

1. On September 28, 1995, the Board of Plumbers published a notice of proposed amendment and adoption of the above-stated rules at page 1842, 1995 Montana Administrative Register, issue number 18.

2. The Board has amended ARM 8.44.402 and 8.44.412 and adopted new rules I through IV (8.44.501 through 8.44.504) exactly as proposed.

3. No comments or testimony were received.

BOARD OF PLUMBERS
DICK GROVER, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 11, 1995.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment, repeal and adoption of rules pertaining to realty regulation	)))	CORRECTED NOTICE OF AMENDMENT, REPEAL AND ADOPTION OF RULES PERTAINING TO REALTY REGULATION

TO: All Interested Persons:

1. On August 24, 1995, the Board of Realty Regulation published a notice of proposed amendment, repeal and adoption of rules at page 1609, 1995 Montana Administrative Register, issue number 16. On November 9, 1995, the Board published the notice of adoption at page 2397, 1995 Montana Administrative Register, issue number 21.

2. Section 37-51-604, MCA, was cited as the implementing section for ARM 8.58.707, 8.58.709, 8.58.710 and 8.58.711 in the original notice. House Bill 518, which became effective on October 1, 1995, repealed section 37-51-604. Section 37-1-101, MCA, will be cited as the implementing section for those rules in the replacement pages for December 31, 1995.

BOARD OF REALTY REGULATION
STEVE CUMMINGS, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 11, 1995.

BEFORE THE BOARD OF VETERINARY MEDICINE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to fees and the adoption of a new rule pertaining to licensees from other states	NOTICE OF AMENDMENT OF 8.64.402 FEES AND THE ADOPTION OF A NEW RULE PERTAINING TO LICENSEES FROM OTHER STATES

TO: All Interested Persons:

1. On October 26, 1995, the Board of Veterinary Medicine published a notice of proposed amendment and adoption of the above-stated rules at page 2189, 1995 Montana Administrative Register, issue number 20.

2. The Board has amended ARM 8.64.402 and adopted new rule I (8.64.509) exactly as proposed.

3. The Board has thoroughly considered all comments and testimony received. Those comments and the Board's responses thereto are as follows:

COMMENT: One comment was received supporting the Board's adoption of new rule I.

RESPONSE: The Board acknowledges the comment and has adopted the rule as proposed.

BOARD OF VETERINARY MEDICINE
KENNETH BRUCHEZ, DVM, PRESIDENT

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 11, 1995.

BEFORE THE BOARD OF HOUSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to financing programs, lending institutions and income limits and loan amounts	)))))	NOTICE OF AMENDMENT OF 8.111.303 FINANCING PROGRAMS, 8.111.305 QUALIFIED LENDING INSTITUTIONS AND 8.111.405 INCOME LIMITS AND LOAN AMOUNTS

TO: All Interested Persons:

1. On October 26, 1995, the Board of Housing published a notice of proposed amendment of the above-stated rules at page 2202, 1995 Montana Administrative Register, issue number 20.

2. The Board has amended the rules exactly as proposed.

3. No comments or testimony have been received.

BOARD OF HOUSING
BOB THOMAS, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 11, 1995.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Teacher Certification	)	NOTICE OF AMENDMENT OF ARM 10.57.403 CLASS 3 ADMINISTRATIVE CERTIFICATE; 10.57.405 CLASS 5 PROVISIONAL CERTIFICATE

To: All Interested Persons

1. On September 14, 1995, the Board of Public Education published a notice of proposed amendment concerning ARM 10.57.403 Class 3 Administrative Certificate and ARM 10.57.405 Class 5 Provisional Certificate at page 1769 of the Montana Administrative Register, Issue number 17. On November 9, 1995, the Board of Public Education published an additional notice of proposed amendments to ARM 10.57.405 Class 5 Provisional Certificate at page 2377 of the 1995 Montana Administrative Register, Issue number 21.

2. The board has adopted ARM 10.57.403 rule as proposed and the board has adopted ARM 10.57.405 as proposed and published in Montana Administrative Register Issue 17 and Issue 21. It was not written in the published notice (MAR Notice No. 10-3-182) that ARM 10.57.405 would remain unchanged from (7)(a)(iii) through (10).

3. The board has adopted these amendments to change the language to include school psychologist to the supervisor endorsement and administrative certificate language and to make the understanding of the rule clearer.

Wayne D. Buchanan

WAYNE BUCHANAN, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 12/11/95.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of Teacher Certification	)	NOTICE OF ADOPTION OF CLASS 7 AMERICAN INDIAN LANGUAGE AND CULTURE SPECIALIST

To: All Interested Persons

1. On November 30, 1995, the Board of Public Education held a hearing on the proposed new rule Class 7 American Indian Language and Culture noticed on page 2089 of the Montana Administrative Register, issue # 19.

2. The board has adopted the proposed new rule as proposed with the following changes:

10.57.407 CLASS 7 AMERICAN INDIAN LANGUAGE AND CULTURE SPECIALIST

(1) Term: 5 years - renewable.

(2) Basic qualification: The office of public instruction shall issue a class 7 certificate based upon verification by the American Indian tribe for which the language and culture certification is desired that the individual has met tribal standards for competency and fluency as a requisite for teaching that language and culture. Candidates for Class 7 certification must meet all non-academic requirements for certification in Montana.

(3) Qualification criteria: ~~Each tribe will develop its own criteria~~ The board will accept and place on file the criteria developed by each tribe for qualifying an individual as competent to be a specialist in its language and culture.

(4) Renewal: Sixty units of renewal activities authorized and verified by the tribe will be required for renewal of a class 7 certificate.

(5) Responsibilities: A school district may assign an individual certified under this rule to ~~teaching or~~ only, specialist services within the field of American Indian language and culture under such supervision as the district may deem appropriate. No ~~additional~~ teaching certificate or endorsement is required for duties within this prescribed field.

~~(6) Sunset provision: This rule shall expire fifteen years after the date of adoption established by the board of public education.~~

AUTH: Sec. 20-4-102 MCA; IMP, Sec. 20-4-103, 20-4-106 MCA

3. At the public hearing which was held November 30, 1995, twelve persons testified as proponents and three as opponents. Nine proponents and one opponent submitted written comments to November 15, 1995, the date on which the Board closed the hearing record. The proponents stressed the importance of adopting the rule because of

the dwindling number of fluent speakers on the different reservations which varied from six individuals (Chippewa-Cree) to 4600 (Crow). Proponent testimony argued that the Class 7 would allow tribal elders, many of whom are of advanced age, with limited formal education, to teach American Indian language and culture. Another point raised by the proponents was that the various tribes should be the entities that set the qualifications for the class 7 specialist certificate because the usual certification entities, the colleges and state education department, do not have individuals qualified to determine the language fluency or understanding of the culture to certify candidates for certification. An attorney for the Administrative Code Committee suggested that the language in subsection (3) changed to take into account the sovereignty of the Indian tribes and to remove the requirement that tribes submit certification criteria. The Board adopted the ACC recommendations. Opponent objections fell into two categories. The first was that the proposal was a departure from the previous certification categories in that it did not require a college degree for a specialist certificate. The opponents expressed the fear that this would establish a precedent and that other groups wold ask for similar certification. The board rejected this argument, citing the fact that there is an affirmative duty placed on the state by the constitution in Article X,section 1.,(2) to recognize and preserve "the unique cultural heritage of the American Indians." The second class of objections by opponents concerned the way in which local school districts might utilize the services of individuals with class 7 certification and the effect this would have on the students. However, the board determined that these were local school district concerns that were not unlike concerns encountered with the employment of any certified individual. The board considered all statements and determined that the need for this certification classification outweighed the possible problems that might be encountered in its implementation. In addition, the board adopted the proponents' recommendation that the sunset clause was not needed due to the fact that all certification standards are reviewed by the board at five year intervals. The board adopted two other amendments in order to make the language more clear.

Wayne Buchanan, Executive Secretary
Board of Public Education

Certified to the Secretary of State on 12/11/95.

BEFORE THE DEPARTMENT OF JUSTICE
DIVISION OF FORENSIC SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of Rules 23.4.201, 23.4.212, 23.4.213 and 23.4.217 and the adoption of new Rule I concerning the administration of preliminary alcohol screening tests and the training of peace officers who administer the tests.	NOTICE OF ADOPTION AND AMENDMENT OF RULES

TO: All Interested Persons.

1. On October 12, 1995, the Department of Justice published notice of its intent to amend and adopt the above-captioned rules at pages 2093 through 2097 of the Montana Administrative Register, Issue No. 19.

2. The agency has amended rules 23.4.201, 23.4.212, 23.4.213 and 23.4.217 as proposed.

3. The agency has adopted new rule I with the following change:

NEW RULE I (23.4.225) PROBABLE CAUSE TESTS

(1) PRELIMINARY BREATH TESTERS (PBTs)

(a) All models and/or types of PBTs used for development of probable cause evidence must be approved by the division. A list of approved PBTs will be maintained at the division.

(b) Individuals conducting PBTs as authorized by statute must be certified as breath test specialists.

(c) Individuals certified as breath test specialists pursuant to 23.4.216 on or before July 1, 1995 are deemed to be PBT-certified after attending a PBT operation course approved by the division of forensic sciences. Individuals certified as breath test specialists after July 1, 1995 are deemed to be PBT certified.

(d) Individuals responsible for field certification of the PBT must receive training approved by the division outlining the procedures for conducting such certifications.

(e) All PBT results will be recorded in a manner approved by the division of forensic sciences.

AUTH: Section 61-8-405 MCA IMP: Section 61-8-405 MCA

4. The only comment received was from the staff of the agency:

COMMENT:
The staff commented on new rule I, and requested that subsection (1)(e) be added on grounds of clarity and consistency.

RESPONSE:
The staff's request has merit and is adopted.

DEPARTMENT OF JUSTICE

JOSEPH P. MAZUREK
Attorney General

Rule Reviewer

Certified to the Secretary of State December 11, 1995.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment and adoption of subsequent amendments to federal rules presently incorporated by reference in rules 23.5.101 and 23.5.102, the amendment of rule 23.5.105 and the repeal of rules 23.5.103, 23.5.104, and 23.5.106 through 23.5.111 pertaining to motor carrier and commercial motor vehicle safety standard regulations.	)))))))))	NOTICE OF THE REPEAL OF RULES 23.5.103, 23.5.104, AND 23.5.106 THROUGH 23.5.111 AND AMENDMENT OF 23.5.101, 23.5.102 AND 23.5.105

TO: All Interested Persons.

1. On November 9, 1995, the Department of Justice published notice of public hearing at pages 2380-2383, Issue No. 21 of the Montana Administrative Register of the proposed amendment of rules 23.5.101, 23.5.102 and 23.5.105 and the repeal of rules 23.5.103, 23.5.104, and 23.5.106 through 23.5.111.

2. The Department has amended rule 23.5.101 exactly as proposed and repealed rules 23.5.103, 23.5.104, and 23.5.106 through 23.5.111.

3. The Department has amended rules 23.5.102 and 23.5.105 as proposed with the following changes:

23.5.102 FEDERAL MOTOR CARRIER SAFETY RULES AND STATE MODIFICATIONS

(1) All commercial motor vehicles, as defined in 61-1-134, MCA, and motor carriers that are subject to regulation by the department under 44-1-1005, MCA, shall comply with and the department does hereby adopt, by reference, the following portions of the federal motor carrier safety regulations of the department of transportation, subject to the provisions of (2) below. The regulations adopted are 49 CFR Part 385, 49 CFR Part 387, 49 CFR Parts 390 through 399 (excluding subpart H of Part 391) and ~~Appendix~~ Appendices B and G to subchapter B of chapter III, Title 49 of the Code of Federal Regulations, updated through the effective date of this rule. Copies of the regulations may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(2) The federal regulations incorporated herein by reference are subject to the following modifications:

(a) For purposes of intrastate motor carriers, subsection (a) of the definition of "commercial motor vehicle" in 49 CFR 390.5 shall be restricted to those vehicles with a gross vehicle

weight or manufacturer's rated capacity of 26,001 pounds or more.

(b) For purposes of part 385 and parts 390 through 399, the definition of "commercial motor vehicles" in section ~~390.3~~ 390.5, shall include vehicles used in either interstate commerce or intrastate commerce.

(c) For purposes of part 385 as applied to intrastate carriers, the "compliance review~~,~~" ~~as defined in section 390.3,~~ will be referred to as a "safety fitness review."

(d) With respect to 49 CFR 385.21, a "Motor Vehicle Inspection Application" prescribed by the department shall be used by all intrastate carriers instead of a "Motor Carrier Identification Report, Form MCS-150"; this report may be obtained from the Montana Highway Patrol/Motor Vehicle Inspection Bureau, 303 North Roberts, Helena, MT 59620.

(e) Part 391 is subject to the age and physical qualification provisions of ARM 23.3.505 and 23.3.506, for those individuals operating under a type 2 commercial vehicle operator's endorsement and not engaged in "interstate commerce", as defined in 49 CFR, part 391.

(f) 49 CFR 392.10 and 49 CFR 393.42 apply only to vehicles that are engaged in interstate commerce as defined in 49 CFR 390.5.

(g) Any reference to the Federal Highway Administration, Administrator or FHWA staff or special agents shall be considered to be a reference to the department as applied to commercial motor vehicles and motor carriers operating intrastate, and where appropriate to the context, to commercial motor vehicles and motor carriers operating interstate.

AUTH: Sec. 44-1-1005(1), MCA IMP: Sec. 44-1-1005(1).

23.5.105 SAFETY INSPECTION PROGRAM; PURPOSE AND OUT-OF-SERVICE CRITERIA (1) The safety inspection program implemented by the department of justice is intended to focus on those driver-related and mechanical factors most often blamed for accidents involving trucks, passenger carriers, and hazardous material transporters and is designed to remove potentially unsafe drivers and imminently hazardous vehicles from Montana's highways.

(2) In addition to the federal regulations adopted in ARM 23.5.102, the safety inspection program will follow Commercial Vehicle Safety Alliance (CVSA), Memorandum of Understanding, Appendix A, North American Uniform Out-of-Service Criteria ~~(Rev. 4/1/95)~~, incorporated herein by reference. A copy of the North America Uniform Out-of-Service Criteria may be obtained from the Commercial Vehicle Safety Alliance, 5430 Grosvenor Lane, Suite 130, Bethesda, MD 20814 ~~or directly from the department~~.

(3) For purposes of this program, inspection may be waived for any vehicle subject to inspection and bearing a CVSA inspection decal issued by state or province using CVSA out-of-service criteria within the preceding 90 days, as identified by color code and corner trimming.

AUTH: Sec. 44-1-1005(1), MCA IMP: Sec. 44-1-1005(1).

4. The Department conducted a public hearing on December 1, 1995, which was presided over by Brenda Nordlund of the Appellate Legal Services Bureau, Department of Justice. Oral comments were received from a representative of the Montana Motor Carriers Association, supporting the changes as proposed, and department staff. No written comments were received as of December 7, 1995. Comments from the hearing are summarized as follows, along with the response of the Department:

Comment: To avoid confusion as to the Department's authority over both commercial motor vehicles and motor carriers, express reference to latter should be included in rules 23.5.102 and 23.5.105.

Response: The Department agrees with the comment, as its jurisdiction under 44-1-1005, MCA, clearly extends not just to the commercial motor vehicle itself, but also to the motor carrier who operates those vehicles or who employs individuals to operate the vehicles in the carrier's behalf.

Comment: Reference in the proposed amendment to rule 23.5.102(2)(b) to the definition of "commercial motor vehicle" should be changed from section 390.3 to section 390.5. Additionally, reference to same incorrect section should be changed or omitted from rule 23.5.102(2)(c).

Response: The Department has checked the reference and agrees that the correct reference should be section 390.5. As to the former, the requested change has been made by correction; as to the latter, by omission of the reference entirely.

Comment: In proposed 23.5.105(2), reference to the 4/1/95 revision date of the Commercial Vehicle Safety Alliance, (CVSA), Memorandum of Understanding, Appendix A, North American Uniform Out-of-Service Criteria, should be deleted, as both the department and industry will expect that as to a particular inspection, the current version of the out-of-service criteria will be used, rather than an out-dated version. On a related note, the most recent version of the out-of-service criteria will be more readily available from the CVSA directly, rather than the Department.

Response: The Department agrees that staff will be relying on the most recent version of criteria in performing their inspections and the CVSA offices are a better source from which to obtain copies of the most recent revision, particularly in quantity. Therefore, the requested changes have been made.

Comment: Appendix B to subchapter B of chapter III, Title 49, should be included in the adoption by reference to clarify extent of Department's authority to conduct on-site inspection of a motor carrier.

Response: The Department agrees with the comment, to extent, authority conferred until Appendix B is coextensive with the department's authority under 44-1-1005, MCA, as applied to intrastate motor carriers. If not, appendix B application would be limited to interstate motor carriers and where consent has been obtained, intrastate motor carriers. The requested change has been made.

MONTANA DEPARTMENT OF JUSTICE

By: _____
JOSEPH P. MAZUREK, Attorney General

_____
Rule Reviewer

Certified to the Secretary of State, December 11, 1995

BEFORE THE MONTANA BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE
STATE OF MONTANA

In the matter of the amendment of ARM 23.14.802, 23.14.804, 23.14.807 and 23.14.808, and the repeal of ARM 23.14.805, 23.14.806, 23.14.809 and 23.14.810 of the Peace Officer Standards and Training Council pertaining to the revocation and/or suspension of peace officer certification.	NOTICE OF AMENDMENT AND REPEAL OF RULES

TO: All Interested Persons:

1. On September 28, 1995, the Montana Board of Crime Control published notice of the proposed amendment and repeal of the above-captioned rules pertaining to the revocation and/or suspension of peace officer certification. The notice was published at pages 1883 through 1886 of the Montana Administrative Register, Issue No. 18.

2. The agency has amended and repealed the rules as proposed.

3. No comments or testimony were received.

MONTANA BOARD OF CRIME CONTROL

By: _____
ELLIS E. KISER, EXECUTIVE DIRECTOR

_____
Rule Reviewer

Certified to the Secretary of State, December 11, 1995.

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

In the matter of the amendment of ARM 24.21.414 and the adoption of wage rates for certain apprenticeship programs	) NOTICE OF THE AMENDMENT) OF ARM 24.21.414 AND THE) ADOPTION OF WAGE RATES))

TO ALL INTERESTED PERSONS:

1. On September 28, 1995, the Department published notice at pages 1887 through 1890 of the Montana Administrative Register, Issue No. 18, to consider the amendment of ARM 24.21.414, and the adoption of wage rates related to certain non-urban apprenticeship programs in the building construction industry.

2. On October 20, 1995, a public hearing was held in Helena concerning the proposed amendments at which oral and written comments were received. Additional written comments were received prior to the closing date of October 27, 1995.

3. After consideration of the comments received, the Department of Labor and Industry has amended ARM 24.21.414 as follows: (new matter underlined, deleted matter interlined, added matter in all capitals)

24.21.414 WAGE RATES TO BE PAID IN BUILDING CONSTRUCTION OCCUPATIONS (1) through (3) Remains the same.

(4) The applicable journeyman wage for the areas outside of the counties listed in (3) is the weighted average of the journeyman wage in the same region, as determined by survey.

(a) The department will biennially survey registered apprenticeship program sponsors that are not located in the counties listed in (3). In determining the location of the program sponsor, the department will consider the primary location of the employing entity that provides the apprentice's training. Montana human services regions will be used for the survey. The applicable journeyman wage is the weighted average for the corresponding apprenticeable occupation for each region.

(b) The biennial survey of registered apprenticeship sponsors may be coordinated with the surveys used to calculate the standard hourly prevailing rate of wages. The department, in order to coordinate the biennial surveys referred to in this paragraph, may undertake an initial interim survey that is followed in less than 2 years by the biennial survey.

~~(c)(i) If there are no survey responses for a particular occupation in a given region, the applicable wage rate for that occupation in that survey region is the highest of:~~

~~(A) the recognized journeyman wage rates applicable to that occupation;~~

~~(B) provided for in a registered apprenticeship standard;~~

~~(C) for program sponsors located in that region, other~~

~~than in a county listed in subsection (3).~~

~~(ii) The rate is ascertained by the registration agency based upon its review of registered apprenticeship documents.~~

~~(iii) If there is no registered apprenticeship program for a given occupation in the survey region, then a rate will not be established for the survey period.~~ IF THERE ARE NO SURVEY RESPONSES FOR A PARTICULAR OCCUPATION IN A GIVEN REGION, THE APPLICABLE WAGE RATE FOR THAT OCCUPATION IN THAT SURVEY REGION IS THE RATE ASCERTAINED BY THE REGISTRATION AGENCY, BASED ON A REVIEW OF REGISTERED APPRENTICESHIP DOCUMENTS. THE RATE FOR THAT OCCUPATION WILL BE SET AT THE HIGHEST RECOGNIZED JOURNEYMAN WAGE RATE CONTAINED IN A REGISTERED APPRENTICESHIP STANDARD FROM A PROGRAM SPONSOR LOCATED IN THAT REGION, NOT INCLUDING SPONSORS LOCATED IN A COUNTY LISTED IN (3).

(d) IF THERE IS NO REGISTERED APPRENTICESHIP PROGRAM FOR A GIVEN OCCUPATION IN THE SURVEY REGION, THEN A RATE WILL NOT BE ESTABLISHED FOR THE SURVEY PERIOD.

(5) Same as proposed.

(6) Remains the same.

(7) This rule applies to apprenticeship agreements registered with the department on or after ~~December 1, 1995~~ JANUARY 1, 1996.

AUTH: Sec. 39-6-101 MCA
IMP: Sec. 39-6-101 and 39-6-106 MCA

4. After consideration of the comments, the Department has adopted wage rates as proposed, but with the following changes:

Urban Counties:

Operating Engineer $16.60 (all seven counties)

Non-urban regions:

Occupation	Region 1	Region 2	Region 3	Region 4	Region 5
Operating Engineer	$16.60	$16.60	$16.60	$16.60	$16.60
Plumber & Pipefitter					$19.40

AUTH: Sec. 39-6-101 MCA
IMP: Sec. 39-6-101 and 39-6-106 MCA

5. The Department has thoroughly considered the comments and testimony received on the proposed amendments and rates. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: Staff of the Administrative Code Committee commented that the proposed amendment to ARM 24.21.414(4)(c) was confusing and did not follow established practices for use of a colon and

subparts. Staff suggested rewording and/or reorganizing the text.
Response 1: The Department has reworded and reorganized the text as suggested.

Comment 2: Don Halverson, Plumbers and Pipefitters Local #459, submitted additional data for plumbers and pipefitters.
Response 2: The Department added this information to the calculation of the base journey-level rate for apprentice wages for plumbers and pipefitters. As a result, the rate for this occupation increased in Region 5.

Comment 3: Doris Rominisko, Montana Operating Engineers and Associated General Contractors Joint Apprenticeship and Training Trust, commented that the occupation "operating engineer" should take the place of other operating engineer occupations for final rates. She submitted additional data for operating engineers.
Response 3: The Department agrees with the comment and will use the occupation "operating engineer" for the final rates. The Department added this information to the calculation of the base journey-level rate for apprentice wages for operating engineers. As a result, the rate for this occupation increased in all rural regions and urban counties.

Comment 4: Some commenters stated that the wage rate survey period should be annual, not biennial. Other commenters objected to the use of a survey at all.
Response 4: The Department believes that a biennial wage rate survey, coordinated with other periodic surveys that the Department undertakes represents a reasonable and cost-effective way of gathering the information, with minimal impact on respondents. The Department will conduct its apprenticeship wage rate survey along with the biennial construction industry prevailing wage survey. If the prevailing wage survey is conducted on an annual basis in the future, the apprenticeship survey will be conducted annually, too.

Comment 5: Several commenters expressed concern that businesses without apprentices were responding to the wage survey.
Response 5: The Department's survey methodology is such that only those apprenticeship sponsors who employ journey-level workers were sent surveys.

Comment 6: Several commenters stated that they felt the wage rates should include fringe benefits.
Response 6: The Department believes that it cannot require payment of fringe benefits for apprentices, due to federal law preemption by ERISA. The Department notes that when other states have attempted to require payment of fringe benefits (or the cash equivalent), the requirement has been struck down by the courts on ERISA grounds.

Comment 7: Several commenters stated that because of the reference to prevailing wage occupation definition used in ARM

24.12.414, or for other reasons, the apprenticeship wage rate statewide should be based on prevailing wage rates.
Response 7: The Department does not use the prevailing wage rate (which includes fringe benefits) for the reasons stated in the above response. The use of certain hourly rates, taken from other surveys, does not change the prevailing wage rates.

Comment 8: A commenter suggested that instead of using survey or prevailing wage rates, the Department should simply allow a sponsor to use a percentage of the sponsor's "shop rate."
Response 8: The Department believes that it would be very difficult for it to obtain and verify "shop rate" data. The Department notes that not all building trades have a "shop rate" that would fit the proposed methodology. The Department will keep the suggestion in mind as an alternative, if the current methodology proves unworkable.

Comment 9: Several commenters generally opposed the adoption of apprenticeship wage rates.
Response 9: The Department's adoption of apprenticeship wage rates is done so in fulfillment of the provisions of ARM 24.21.414, adopted earlier in the year. See generally the comments and responses below in paragraph 6.

Comment 10: A commenter supported the proposed wage rates, because the former system discouraged apprenticeship in some areas where apprentices were required to be paid as much or more than journey-level workers.
Response 10: The Department agrees with the comment and believes that the regional approach to wage setting, taking into account urban and non-urban wage rates, is equitable.

Comment 11: Several commenters stated that it is unfair for an urban-based employer to pay apprentices a lower rate when working outside of an urban area.
Response 11: The urban-based sponsors are not required to pay their apprentices a lower wage when the apprentice works outside an urban county. The sponsor cannot pay apprentices a lower rate than that provided for in the sponsorship agreement.

Comment 12: Some commenters opposed excluding from the non-urban survey those urban-based sponsors that do work in non-urban areas. One commenter supported the primary location methodology.
Response 12: The Department believes that a regional approach is the most equitable basis for setting wage rates. The Department believes that the survey methodology appropriately sets the survey parameters of surveying sponsors based upon where the sponsor has a shop location. See also generally the July 27, 1995, Notice of Adoption.

Comment 13: A commenter expressed concern that the adoption of the rates would require the employing sponsor to raise the pay of current apprentices.

Response 13: The rule only applies to sponsorship agreements entered into on or after January 1, 1996. The Department has amended the applicability date from December 1, 1995, to January 1, 1996, to conform with the adoption date of the wage rates.

Comment 14: A commenter questioned whether an apprentice that is working under a joint apprenticeship training committee arrangement would be paid differently if the apprentice moves from one employer to another.
Response 14: There would be no change to the method or rate of payment for an apprentice indentured prior to January 1, 1996. Only an apprentice indentured on or after January 1, 1996, would be subject to the rates as adopted.

Comment 15: A commenter suggested that the Department hold additional public hearings concerning the adoption of apprenticeship wage rates.
Response 15: The Department believes that additional public hearings on apprenticeship wage rates are not needed. The Department held a public hearing in June concerning the proposed rules regarding the methodology for adopting wage rates, as well as the October 20 public hearing regarding the rates themselves.

6. Additional comments were made during the comment period, regarding matters not proposed for amendment or change. The Department believes that the following comments are not relevant to the proposed changes and therefore not required to be included in this Notice, but has listed them because of the interest expressed.

Comment 16: Several commenters stated that they were opposed to the use of surveys for apprenticeship rate setting and for any rates that treat urban and non-urban apprentices differently.
Response 16: The Department notes that the proposed amendments do not change the portion of the rule that provides for urban and non-urban rates, and the basic plan for obtaining non-urban rates via a survey methodology. ARM 24.21.414 was adopted effective August 1, 1995, following a public hearing and comment period, and applies to apprenticeship agreements entered into on or after January 1, 1996. The commenters are encouraged to generally review the comments and responses contained in the July 27, 1995, Notice of Adoption, found at page 1418, Montana Administrative Register, issue 14.

Comment 17: A commenter generally opposed the Department's use of an advisory committee in establishing ARM 24.21.414, and felt that the advisory committee was inherently unfair.
Response 17: The Department's use of an advisory committee was described in greater detail in the May 11, 1995, Notice of Public Hearing, found at page 758, Montana Administrative Register, issue 9, and the July 27, 1995, Notice of Adoption.

The Department believes that it had a fair representation of union and non-union interests, as well as urban and non-urban interests.

Comment 18: A commenter stated that sponsors should be required to fulfill the apprenticeship commitment to an apprentice before being allowed to hire another entry-level apprentice.
Response 18: The Department agrees with the comment. ARM 24.21.412 was adopted, effective August 1, 1995, for that reason.

7. The amendments and rates are effective January 1, 1996.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: December 11, 1995.

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

In the matter of the amendment of ARM 24.28.101, 24.28.102, 24.28.103, 24.28.104, 24.28.105, 24.28.106, 24.28.107, 24.28.108 and 24.28.111, the adoption of new RULE I, and the repeal of ARM 24.28.109, all related to workers' compensation mediation	) NOTICE OF AMENDMENT, ADOPTION AND REPEAL OF RULES

TO ALL INTERESTED PERSONS:

1. On October 26, 1995, the Department published notice at pages 2216 through 2221 of the Montana Administrative Register, Issue No. 20, to consider the amendment, adoption and repeal of rules related to workers' compensation mediation.

2. On November 17, 1995, a public hearing was held in Helena concerning the proposed amendments and repeals. Oral and written comments were offered by members of the public. Additional written comments were received prior to the closing date of November 24, 1995.

3. After consideration of the comments received on the proposed amendments, the Department has amended ARM 24.28.101, 24.28.102, 24.28.103, 24.28.104, 24.28.105, 24.28.107 and 24.28.111 exactly as proposed.

4. After consideration of the comments received on the proposed amendments, the Department has amended ARM 24.28.106 and 24.28.108 as proposed, except for the following changes: (new matter underlined, deleted matter stricken, additional changes shown in all capital letters)

24.28.106 MEDIATION CONFERENCES (1) ~~The mediator shall conduct one or more mediation conferences.~~ THE MEDIATOR SHALL CONDUCT ONE MEDIATION CONFERENCE AND RE-CONVENE IF NECESSARY, OR UPON REQUEST. Conferences may be conducted by telephone conference call. If an in-person conference is requested, it must be held in Helena, Montana.

AUTH: Sec. 39-71-2407 MCA IMP: Sec. 39-71-2411 MCA

24.28.108 MEDIATOR'S REPORT--RECOMMENDATION (1) The parties and the mediator are encouraged to attempt to resolve issues at a mediation conference. If issues are not resolved at or before a mediation conference, the mediator shall issue a report as set forth in (2).

(2) Within 10 working days after a mediation conference, the mediator shall prepare a written report to the parties setting forth the mediator's recommended solution and the basis for the recommendation. If the mediator does not prepare a

written report within 10 working days after a mediation conference, the parties may proceed directly to workers' compensation court. The mediator may also set forth alternative solutions. ~~When parties have offered specific solutions which are not recommended by the mediator, the mediator shall explain why the solutions are not recommended.~~ WHEN PARTIES HAVE OFFERED SPECIFIC SOLUTIONS WHICH ARE NOT RECOMMENDED BY THE MEDIATOR, THE MEDIATOR SHALL EXPLAIN WHY THE SOLUTIONS ARE NOT RECOMMENDED. ~~Within 45 days of the date of the mediator's report, each party shall notify the mediator whether the recommended solution, or an alternate solution, is accepted.~~

~~(3) If both parties cannot reach a solution after 45 days, either party may petition the workers' compensation court for a resolution of the dispute. Nothing in this rule shall prevent a party from petitioning the workers' compensation court prior to the expiration of the 45 days, if both parties agree that they cannot resolve the dispute.~~

AUTH: Sec. 39-71-2407 MCA IMP: Sec. 39-71-2409 and 2411 MCA

5. After consideration of the comments received on the proposed rule, the Department has adopted the rule as proposed with the following changes: (new matter underlined, deleted matter stricken)

RULE I (24.28.112) FILE INFORMATION (1) ~~Upon receipt of notice of mediation conference, the insurer shall submit to the mediator all relevant file information.~~ The petitioner shall submit with the petition a copy of all information or documentation that supports their position and that will be used at the mediation conference. Upon receipt of notice of mediation conference, the respondent shall submit to the mediator a copy of all information or documentation that supports their position and that will be used at the mediation conference. If appropriate, the mediator may ask for additional information. The information must be sent to the mediator at least 1 week prior to the conference date.

(2) The mediator, at the mediator's option and with the approval of the insurer, may review and copy the insurer's file at the insurer's place of business.

AUTH: Sec. 39-71-2407 MCA IMP: Sec. 39-71-2411 MCA

6. The Department has repealed ARM 24.28.109 exactly as proposed.

7. The Department has thoroughly considered the comments and testimony received on the proposed amendments. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: Commenters requested the rule require the Petitioner, as well as the Respondent, to provide copies of file information.

Response 1: The Department has revised the rule to accommodate this request by requiring the Petitioner to submit copies of

file documents with the mediation petition.

Comment 2: Commenters suggested the rule be amended to provide more guidance with respect to which documents the mediator needs prior to a conference.
Response 2: Since each case requires different documentation, instead of amending the rules to require specific file documents, the mediator will enclose a written request (in the form of a checklist) with the Notice of Mediation Conference asking the Respondent to provide specific file information, if needed.

Comment 3: A commenter suggested the rule be amended to allow mediators the option to review the insurer's file at the insurer's place of business and request copies of itemized documents.
Response 3: The Department agrees with the suggestion and has amended the rule accordingly.

Comment 4: A commenter suggested the rule should require the file copies be sent to the mediator 14 days before the conference date to allow for timely mail delivery.
Response 4: Because of the shortened timeframes between receipt of a mediation petition and mailing of the Notice of Mediation Conference, the Department does not believe it can require 14 days, so it has retained the one week timeframe.

Comment 5: A commenter suggested that the Department amend ARM 24.28.101(2)(i) to ensure mediation has jurisdiction to mediate disputes involving apportionment between two separate occupational disease causes.
Response 5: The rule lists exclusions to mediation. The Department's mediators currently do mediate these disputes. The statute does not allow for apportionment between two occupational disease causes, so the Department relies on 39-72-303, MCA as a guide in these issues.

Comment 6: A commenter suggested amending the rules to allow mediation jurisdiction over all occupational disease claim issues.
Response 6: The statute controls the process to determine whether or not a worker is suffering from an occupational disease. Therefore, the statute, not the rules, would have to be amended. Mediation accepts jurisdiction of most benefit disputes on a claim after it has been deemed an occupational disease.

Comment 7: A commenter felt once a claim has been mediated, all issues on that claim should be deemed submitted.
Response 7: The statutes, not the rule, require each benefit issue to be mediated. The purpose of the statute is to allow the respondent a chance to evaluate the issue and to facilitate resolutions.

Comment 8: A commenter requested that the Department reinstate the language stricken from ARM 24.28.106.
Response 8: Since the statute requires the mediator to hold at least one conference, the Department has reinstated and revised the rule to accommodate this request.

Comment 9: A commenter suggested that the Department amend the rule to require the mediator to issue a written report within 15 working days of the conference.
Response 9: The current rule requires the mediator to issue a written report within 10 working days of the conference. The majority of our customers have requested reductions in timeframes. Since the commenter didn't explain why he was requesting an increase in the time allowed for the written report, the Department is not amending the rule as requested.

Comment 10: Commenters requested the language stricken in 24.28.108 be reinstated.
Response 10: The Department will reinstate the language requiring the mediator to explain why offered solutions are not recommended. The Department believes the balance of the stricken language regarding the response time post conference is redundant and unnecessary in a rule, because it is in the statute.

Comment 11: Commenters requested reinstatement of 24.28.109 regarding dismissal for non-cooperation and amendments to the rule to require the mediator to act in non-cooperation situations.
Response 11: The Department agrees with the commenters that the mediator should act in non-cooperation situations, as required in the statute. Since the rule was redundant with the statute, the Department has repealed it. If a party feels a non-cooperation situation exists and the mediator does not acknowledge it, the party should bring it to the mediator's attention.

Comment 12: A commenter requested the rules require the mediator to take a substantive position on entitlement and provide a detailed analysis of how that position was reached. Another commenter requested the mediator be required to issue written findings and conclusions.
Response 12: The statutory process does not anticipate fact finding and conclusions of law. To issue such findings and conclusions requires a formal binding process controlled by rules of evidence and procedure, similar to contested case hearings. Within the existing parameters, mediation can be whatever the parties agree it should be on a case by case basis. The parties should make their needs known to the mediator. If the parties agree a detailed case analysis would enable them to resolve the dispute or would like the mediator to conduct the mediation as a settlement conference, etc, they should let the

mediator know. The mediators are not judges or decision makers, but would welcome any requests within the statutory parameters which would facilitate resolution of a dispute.

8. The amendments and repeal are effective January 1, 1996.

David A. Scott
Rule Reviewer

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: December 11, 1995.

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

In the matter of the adoption of Rules I through VII pertaining to medicaid self-directed personal care services	))))	NOTICE OF THE ADOPTION OF RULES

TO: All Interested Persons

1. On August 24, 1995, the Department of Public Health and Human Services published notice of the proposed adoption of Rules I through VII pertaining to medicaid self-directed personal care services at page 1656 of the 1995 Montana Administrative Register, issue number 16.

2. The Department has adopted the following rules as proposed with the following changes:

[RULE I] 46.12.559 SELF-DIRECTED PERSONAL ~~CARE~~ ASSISTANCE SERVICES, DESCRIPTION AND PURPOSE (1) Self-directed personal ~~care~~ ASSISTANCE services are medically necessary in-home services provided to medicaid ~~recipients~~ CONSUMERS whose disability functionally limits performing activities of daily living, and who take the responsibility or have a representative to take the responsibility of managing the services. Self-directed personal ~~care~~ ASSISTANCE services are intended to provide control of service delivery to the ~~recipient~~ CONSUMER and to allow the ~~recipient~~ CONSUMER to direct health related tasks.

(2) ~~Recipients must demonstrate capacity to manage services to a health care professional in order to participate in the program.~~ CONSUMERS WILL PROVIDE THEIR PHYSICIAN OR HEALTH CARE PROFESSIONAL EVIDENCE OF ABILITY TO MANAGE THEIR PERSONAL ASSISTANCE SERVICES.

(a) THE SCOPE AND DETAIL OF THE EVIDENCE SHALL BE DETERMINED BY THE PHYSICIAN OR HEALTH CARE PROFESSIONAL.

(3) ~~Recipients~~ CONSUMERS who are unable to utilize self-directed personal ~~care~~ ASSISTANCE SERVICES may receive services through the personal ~~care~~ ASSISTANCE services program managed by provider agencies under agreement with medicaid.

AUTH: Sec. 53-6-113 and 53-6-145, MCA
IMP: Sec. 53-6-101 and 53-6-145, MCA

[RULE II] 46.12.559A SELF-DIRECTED PERSONAL ~~CARE~~ ASSISTANCE SERVICES, APPLICATION OF GENERAL PERSONAL CARE RULES (1) The following ARM cites apply to the self-directed personal ~~care~~ ASSISTANCE services program:

(1)(a) remains as proposed.

(b) ARM 46.12.556(2), (4), (5), (9), (10), (12), (17), (18), (21) ~~(20) through (23)~~ and (25), pertaining to requirements, limitations and termination of services;

(1)(c) remains as proposed.

(d) ARM 46.12.558(1), ~~and~~ (6) ~~through~~ and (9), pertaining to compliance reviews.

AUTH: Sec. 53-6-113 and 53-6-145, MCA
IMP: Sec. 53-6-101 and 53-6-145, MCA

[RULE III] 46.12.559B SELF-DIRECTED PERSONAL ~~CARE~~ ASSISTANCE SERVICES, ~~RECIPIENT~~ CONSUMER REQUIREMENTS (1) To qualify for self-directed personal ~~care~~ ASSISTANCE the ~~recipient~~ CONSUMER must:

(a) have a medical condition which results in the need for personal ~~care~~ ASSISTANCE services;

(b) be capable of assuming the management responsibilities of ~~attendants~~ ASSISTANTS or have an immediately involved representative willing to assume this responsibility;

(c) have authorization from a PHYSICIAN OR health care professional to participate in the program; and

(1)(d) remains as proposed.

(2) The ~~recipient~~ CONSUMER must be capable of acting as though the personal ~~care attendant~~ ASSISTANT is their employee for the ~~purpose~~ PURPOSES of selection, management and supervision of the personal ~~care attendant~~ ASSISTANT, although the personal ~~care attendant~~ ASSISTANT is the employee of a self-directed personal ~~care~~ ASSISTANCE provider.

(a) The ~~recipient~~ CONSUMER has the primary responsibility in the scheduling, training and supervision of the personal ~~care attendant~~ ASSISTANT. The ~~recipient~~ CONSUMER has the right to require that a particular ~~person~~ ASSISTANT discontinue providing services to the ~~recipient~~ CONSUMER.

~~(b) The recipient shall cooperate with and assist the self-directed personal care provider with decisions related to:~~

~~(i) whether a particular person is to be hired as the recipient's personal care attendant;~~

~~(ii) whether the personal care attendant should be subject to progressive disciplinary action; and~~

~~(iii) whether the employment of a personal care attendant should be terminated.~~

~~(c)~~ (b) The ~~recipient~~ CONSUMER may have an immediately involved representative assume some or all of the responsibilities imposed by this rule. An immediately involved representative is a person who is directly involved in the day to day care of the ~~recipient~~ CONSUMER. An immediately involved representative must be available to assume the responsibility of managing the ~~recipient's~~ CONSUMER'S care, including directing the care as it occurs in the home.

AUTH: Sec. 53-6-113 and 53-6-145, MCA
IMP: Sec. 53-6-101 and 53-6-145, MCA

[RULE IV] 46.12.559C SELF-DIRECTED PERSONAL ~~CARE~~ ASSISTANCE SERVICES, PLAN OF CARE REQUIREMENTS (1) A ~~recipient~~ CONSUMER must ~~have~~ DEVELOP a ~~plan of care~~ SERVICE PLAN AND HAVE IT approved annually by a physician or health care professional prior to receiving self-directed personal ~~care~~ ASSISTANCE services. The plan must include:

(a) the ~~recipient's~~ CONSUMER'S need for personal ~~care~~ ASSISTANCE services as documented BY THE PROVIDER AGENCY through completion of the department's personal ~~care~~ ASSISTANCE services ~~recipient~~ CONSUMER profile;

(b) tasks assigned to the personal ~~care attendant~~ ASSISTANT;

(1)(c) remains as proposed.

(d) a training plan for ~~attendants~~ ASSISTANTS performing health related tasks;

(1)(e) remains as proposed.

(f) a schedule ~~of supervision by a health care professional which is related to the recipient's health care needs and which is no less than~~ TO UPDATE THE CONSUMER PROFILE BY THE PROVIDER AGENCY AT LEAST once every 180 days.

AUTH: Sec. 53-6-113 and 53-6-145, MCA
IMP: Sec. 53-6-101 and 53-6-145, MCA

[RULE V] 46.12.559D SELF-DIRECTED PERSONAL CARE ASSISTANCE SERVICES, PROVIDER REQUIREMENTS (1) Self-directed personal ~~care~~ ASSISTANCE providers have the following responsibilities:

(a) ASSIST CONSUMERS TO identify resources for personal ~~care attendants~~ ASSISTANTS;

(b) advise the ~~recipient~~ CONSUMER regarding program participation;

(c) ~~assist in determining~~ DETERMINE the amount of services available to the ~~recipient~~ CONSUMER BY COMPLETING THE CONSUMER PROFILE;

(d) re-certify ~~recipient's~~ CONSUMER needs every 180 days;

(e) review the plan of care; AND

~~(f) act as a resource for attendant management issues;~~

~~(g)~~ (f) act as the employer of record for personal care ~~attendants~~ ASSISTANTS for the ~~purpose~~ PURPOSES of payroll and federal hiring practices~~; and~~.

~~(h) act as a liaison between the recipient and the department.~~

AUTH: Sec. 53-6-113 and 53-6-145, MCA
IMP: Sec. 53-6-101 and 53-6-145, MCA

[RULE VI] 46.12.559E SELF-DIRECTED PERSONAL ~~CARE~~ ASSISTANCE SERVICES, GENERAL REQUIREMENTS (1) remains as proposed.

(2) Self-directed personal ~~care~~ ASSISTANCE providers are limited to businesses organized under the laws of the state of Montana.

(3) Self-directed personal ~~care~~ ASSISTANCE services may only be delivered by an ~~attendant~~ INDIVIDUAL who is the employee

of a medicaid enrolled provider and who is selected by the ~~recipient~~ CONSUMER or their immediately involved representative.

(4) Personal ~~care~~ ASSISTANCE services managed by provider agencies under agreement with medicaid are not available to individuals participating in the self-directed personal ~~care~~ ASSISTANCE program.

(a) THE USE OF PERSONAL ASSISTANCE SERVICES MANAGED BY PROVIDER AGENCIES MAY BE PERMISSIBLE IN THE EVENT THAT THE CONSUMER'S EMERGENCY BACK UP PLAN FAILS.

(5) ~~Routine home~~ HOME health skilled nursing services are not available to ~~recipients enrolled in this program~~ CONSUMERS for the completion of health maintenance activities WHICH THE CONSUMER HAS BEEN AUTHORIZED TO MANAGE.

(a) THE USE OF HOME HEALTH SKILLED NURSING SERVICES MAY BE PERMISSIBLE IN THE EVENT THAT THE CONSUMER'S EMERGENCY BACK UP PLAN FAILS.

(6) ~~Recipients~~ CONSUMERS who have been terminated from the self-directed program may apply for personal ~~care~~ ASSISTANCE services through the medicaid personal ~~care~~ ASSISTANCE services program managed by approved provider agencies.

AUTH: Sec. 53-6-113 and 53-6-145, MCA
IMP: Sec. 53-6-101 and 53-6-145, MCA

[RULE VII] 46.12.559F SELF-DIRECTED PERSONAL ~~CARE~~ ASSISTANCE SERVICES, COMPLIANCE REVIEWS (1) Compliance reviews shall be conducted on ~~both the recipient and~~ the provider by department staff at the provider's premises ~~or the recipient's home~~.

(a) COMPLETION OF THE COMPLIANCE REVIEW MAY REQUIRE PARTICIPATION FROM THE CONSUMER.

(2) remains as proposed.

(a) on an annual basis; OR

~~(b) at the time of initial re-certification for a new recipient; or~~

(2)(c) through (3)(b) remain as proposed in text but are renumbered (2)(b) through (3)(b).

~~(c) attendant management;~~

~~(d) attendant recruitment;~~

(3)(e) remains as proposed in text but is renumbered (3)(c).

~~(f)~~ (d) ~~attendant~~ ASSISTANT surveys; and

~~(g)~~ (e) ~~recipient~~ CONSUMER surveys.

(4) ~~Recipients and providers~~ PROVIDERS must achieve a 90% compliance rate as provided in ARM 46.12.558.

(5) ~~Recipients and providers~~ PROVIDERS have two opportunities to achieve a 90% compliance rate or the following may occur:

~~(a) recipients shall be terminated from the self directed program;~~

(5)(b) remains as proposed in text but is renumbered (5)(a).

AUTH: Sec. 53-6-113 and 53-6-145, MCA
IMP: Sec. 53-6-101 and 53-6-145, MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: Commentor questioned why ARM 46.12.556(3) is not being applied to the self-directed program.

RESPONSE: ARM 46.12.556(3) provides for the prior authorization of personal care services for individuals residing in foster homes. Personal care services are allowed to individuals in foster care only for short-term, acute care needs because the nature of foster care is that the majority of help with personal care is already paid for through the foster home payment. It would not be appropriate for the department to duplicate payment for personal care services. Except in limited circumstances the person in foster care would not have an attendant at all so self-direction of an attendant is not generally applicable in this situation.

COMMENT: ARM 46.12.556(8) should be included in Rule II (46.12.559A).

RESPONSE: ARM 46.12.556(8) provides that the recipient must agree to accept the provision of personal care services as specified in the plan of care. It is expected that the consumer in the self-directed personal assistance program will develop his own plan of care; however, that task is not listed in Rule II (46.12.559A) or IV (46.12.559C). The department will change Rule IV (46.12.559C) to indicate this responsibility.

COMMENT: It is unclear that with the exclusion of ARM 46.12.556 (12) in Rule II (46.12.559A) that an individual who is eligible for personal care attendant services under a home and community based services (HCBS) waiver is eligible to participate in the self directed program for the purposes of managing their personal care attendants.

RESPONSE: The intent of the department is that the HCBS recipient who is otherwise eligible for the self directed program will be able to self direct their HCBS personal care services. Rule II (45.12.559A) will be amended so that ARM 46.12.556(12) is not an exclusion.

COMMENT: ARM 46.12.556(18) should be included in proposed Rule II (46.12.559A).

RESPONSE: The department concurs and will change Rule II (46.12.559A).

COMMENT: The inclusion of ARM 46.12.556(22) and (23) conflicts with the statutory language of HB 504 (Chapter 525, Session Laws of Montana, 1995). In addition (23) does not allow any appeal

rights before suspension of services which would likely result in grave medical circumstances to the recipient.

RESPONSE: The department agrees that the overall intent of HB 504 is to allow more control by the consumer. Therefore, references to ARM 46.12.556(20), (22) and (23) will be deleted from Rule II (46.12.559A). Issues regarding termination will be left to individual agreements between the consumer and provider agency.

COMMENT: Rule IV (46.12.559C) directly conflicts with the statement of intent in the statute which states that the plan "may" include the items listed as (d) through (f).

RESPONSE: The department is required to adopt rules governing the use of personal assistants by persons with disabilities. The word "may" is discretionary. It grants to the department the authority to describe what should be in a plan of care. The department has chosen to include training, recruitment and replacement of personal assistants and schedules and annual review of care by the health care professional as mandatory plan of care requirements.

COMMENT: Rule V (46.12.559D)(a), (c), (f) and (h) have no basis for inclusion, are burdensome on providers and should be stricken.

RESPONSE: The intent of Rule V (46.12.559D)(a) is for the provider to share information with the consumer about possible assistants to interview that the agency might know of and to provide advice in the recruitment of assistants at the request of the consumer. The rule will be changed to read assist consumers to identify resources for personal assistants. Rule V (46.12.559D)(c) will be changed to read "determine the amount of services available to the consumer by completing the consumer profile". The department is responsible for determining the amount, scope and duration of the service and completion of the consumer profile satisfies this responsibility. The department agrees to strike Rule V (46.12.559D)(f) and (h) due to the potential burden on the providers.

COMMENT: Commentor wants to know who is going to train the recipient to train the personal assistant and take on the liability when they only go in the home once every 180 days.

RESPONSE: Consumers who want this rule state that they have gone through rehabilitation and know best what needs to be done for them. It is the responsibility of the consumer to train the personal assistant. There are several possibilities for the consumer to get training. The consumer can be trained by his physician or health care professional, a home health agency or community agencies working with disabled individuals. Section 53-6-146(5), MCA indicates that liability for training lies with the person directing his own care.

COMMENT: One commentor believes that supervision of care only once every 180 days is not enough, Rule IV (46.12.559C)(1)(f).

RESPONSE: Consumers who want this rule state they have been trained on what to look for in their physical condition. Consumers can train their personal assistants on what conditions to watch for. The provider agency can be asked to reassess the consumer at any time. The consumer is responsible for seeking appropriate medical care. There is no reason to believe that a consumer of personal assistance services is less capable than the general population to make informed decisions about when to see a physician or other health care professional.

COMMENT: Commentor wanted clarification on who can be a provider agency.

RESPONSE: Any business organized under the laws of Montana, which can meet the requirements in Rule V (46.12.559D), may apply to be a provider of personal assistance services.

COMMENT: Several commentors recommended that the list of health maintenance activities in Rule VI (46.12.559E)(1) be expanded, specifically to include tube feeding, prevention strategies and nutrition status. It was suggested the wording be changed to "health maintenance activities include but is not limited to . . .".

RESPONSE: The definition of health maintenance activities is exactly what is listed in the statute (see HB 504, section 2, 37-8-103(3), MCA). We are not able to change the wording to be more inclusive.

COMMENT: The department should clarify the method in which capacity shall be determined for consumers seeking to participate in the self-directed personal assistance program. Rule I (46.12.559)(2).

RESPONSE: The department's intention is to have the health care professional and the consumer come to an agreement that the consumer is capable of directing their day to day care. The phrase "demonstrate capacity" was not intended to describe a formal process. The section has been re-written to better reflect the intentions of the department.

COMMENT: Rule III (46.12.559B)(2)(b) contradicts the intent of the law. The recipient should make the decision related to the hiring of a patient care attendant and not merely cooperate and assist with this decision.

RESPONSE: The department agrees. (2)(b) of Rule III (46.12.559B) will be deleted. The working relationship between the consumer and the provider agency will be left to their own discretion.

COMMENT: Clarify the term "health care professional" as used in Rule II (46.12.559A)(2).

RESPONSE: As described in the law (HB 504; 37-8-103(3), MCA); for the purposes of services delivered under this program, a health care professional is an individual licensed pursuant to Title 37 as a physician assistant-certified, nurse practitioner, registered nurse or occupational therapist or a medical social worker working as a member of a case management team for the purpose of the home and community based services program of the Department of Public Health and Human Services. This term is not defined in rule as this would violate section 2-4-305(2), MCA of the Montana Administrative Procedure Act which provides that "Rules may not unnecessarily repeat statutory language".

COMMENT: Clarify the relationship between Rule IV (46.12.559C)(1) and (1)(f), in regards to the re-assessment of the consumer.

RESPONSE: The consumer must develop a plan of care and have it approved by a physician or health care professional in order to access the program. Every 180 days, the provider agency will perform oversight which includes determining if the hours of service are adequate, discussing any issues that may be affecting the delivery of services and assist the consumer in evaluating assistants. The individual from the provider agency may or may not be a health care professional. The department has changed the language to provide further clarification.

COMMENT: Rule IV (46.12.559C)(1)(d) should clarify the responsibility of training.

RESPONSE: The consumer has primary responsibility for determining the amount and scope of training they desire their assistants to have. They are also responsible for providing on-the-job training or accessing other services to provide training for their assistants.

COMMENT: Clarify who is to be included in the emergency back-up plan referenced in Rule IV (46.12.559C)(1)(c).

RESPONSE: The emergency back-up plan is a plan established by the consumer to access services in the event that the assistant is unable to or fails to show for a shift. The plan could include already trained assistants, family members or friends. The plan is designed to assist the consumer in preparing for "breaks" in service. This is the same responsibility that a provider agency for conventional services has.

COMMENT: Clarify the relationship between a skilled home health agency and an emergency back-up plan.

RESPONSE: The consumer may not have an emergency back-up plan which is based upon the use of skilled home health services or conventional personal care services. Skilled home health (for

authorized tasks) and/or conventional personal care services may be accessed when and if their emergency back-up plan fails. The department can not guarantee the availability of these services to the consumer, due to the emergent nature. This relationship is clarified in the amendments to the proposed rule.

COMMENT: Provider responsibility needs to be further clarified in the rule.

RESPONSE: The rule provides the basic structure in which the provider agency must operate. To provide extensive detail may unnecessarily burden the provider.

COMMENT: Clarify the relationship between re-certification every 180 days and the annual review process.

RESPONSE: Re-certification every 180 days is a process which ensures that the individual has adequate hours to meet their needs, an evaluation of the attendants occurs and that any service delivery issues are discussed. The annual review process is the same, except that the consumer must complete a new service plan and obtain a new authorization for participation and completion of any health maintenance tasks from their physician or health care professional. The department has modified the language for clarification.

COMMENT: Clarify how the provider agency will be accountable for care when, after admission and plan of care development, interaction for evaluation and supervision occurs only once every 180 days.

RESPONSE: The provider agency is not developing the services plan, nor "supervising" the consumer who is participating in the program. A self-directed personal assistance program is based upon the consumer taking the responsibility for tasks (i.e. developing the service plan, managing attendants, etc.) and assuming the responsibility for the services delivered. The accountability for care rests with the consumer or immediately involved representative who is directing the care.

COMMENT: Under medicare the requirements are for the registered nurse (RN) to be responsible for the plan of care, the safety of the plan of care and to act as a case manager for the individual. Because of this, there is a distinct conflict between a RN who is in the home under skilled medicare home health services and a personal assistant who is taking directions from the consumer. Please clarify the liability of this situation.

RESPONSE: The relationship between a medicare-certified home health agency (HHA) (or a RN working for a HHA) who is providing skilled services to an individual receiving personal care services through a non-related entity was addressed in December 1994 by the Health Care Financing Administration (HCFA). HCFA

deleted proposed requirements requiring the supervision of home health aids or personal care attendants by the Home Health Agency. Proposed amendments to 42 CFR 484.36 were deleted. (See Volume 59 Federal Register 65482, 65493 (December 20, 1994).)

Other potential conflicts or liability between the RN and the consumer's personal assistant are not issues that can be resolved by this department. The Montana legislature has specifically created a program to encourage personal assistant services to be under the direct supervision of the consumer. Recognizing potential conflicts the legislature adopted 53-6-145(5), MCA which assesses liability with the person directing the services. Under this program the consumer or their representative is directing the services and thus is potentially the liable party. For a more in-depth analysis it is recommended that you consult with a private attorney in order to assess the liability of specific fact situations as they arise.

COMMENT: Clarify the allowable tasks associated with Rule VI (46.12.559E)(1) health maintenance activities and where the associated liability falls.

RESPONSE: The department does not wish to develop a laundry list of tasks which would be allowable under this program. Nor does the department have the expertise or legal authority to assess legal liability. The statutory language has a clear intent that the full scope of these tasks can be performed if, in the absence of the disability, the consumer could provide it for themselves and it could be safely performed in the home. The physician and/or health care professional will authorize participation and health maintenance tasks based on this standard. The statutory language is clear, "[m]edical and related liability for personal care services provided pursuant to this section rests with the person directing the services". This is not addressed in the rule, as according to 2-4-305(2), MCA; "[r]ules may not unnecessarily repeat statutory language".

COMMENT: Since the RN or LPN, as indicated in the Nurse Practice Act, is directing administration of medications, clarify the liability of the RN's license when a consumer chooses to direct the attendant in an alternative administration method when the RN is not at the home.

RESPONSE: It appears that the commentor has confused nursing delegation with self-directed personal care. The statutory language associated with this program clearly exempts individuals in this program from the Nurse Practice Act. This exemption applies specifically to the health maintenance activities only. There is no role in this program for a RN, unless the RN personally chooses to sign a service plan. Signing the service plan authorizes an individual to participate in the program and/or manage specific health maintenance tasks.

COMMENT: Clarify Rule VI (46.12.559E)(5) regarding the availability of routine home health skilled nursing services.

RESPONSE: Home health skilled nursing services for the completion of health maintenance tasks are not available to individuals who have been authorized to manage specific tasks. For example, this means that a consumer who has authorization to manage their bowel treatments would not have access to home health agency services for the same function on a routine basis. A consumer may self-refer for such service, in the event that their emergency back up plan fails. The consumer can access home health skilled nursing services for tasks which have not been authorized for self management. The language has been modified to clarify the intention of the department.

COMMENT: A number of individuals commented on the inclusion of compliance reviews in the rules as it pertains to the consumer as described in Rule VII (46.12.559F).

RESPONSE: The department has modified the language so that the consumer is participating in the process only at the request of the department. This would happen when the department representative has questions regarding the actual services being provided in the home or in completing a consumer survey about the program. The consumer needs to remain involved in this process since they have acquired responsibilities that in the conventional delivery system would be the responsibility of a provider agency. Additionally, this is one mechanism the department has to monitor the success of this program.

COMMENT: Rule II (46.12.559A)(1)(d) cross references ARM 46.12.558 and the inclusion into this rule is confusing and repetitive.

RESPONSE: The department notes the potential confusion and has re-written the reference as "(1), (6) and (9)" in order to clarify the cross reference.

COMMENT: It appears the individual originally requesting greater freedom and autonomy in their physical care will still lack the ability to "control" the personal care assistant (PCA).

RESPONSE: There is more control for the consumer in this program than in the conventional personal assistance program. Consumers are entirely responsible for recruiting, training, supervising and managing their attendants. The ability to "control" the PCA will not be available as the PCA is always going to be the formal employee of an agency.

COMMENT: Include a section of definitions for key terms such as recipient, PCA, provider, health care professional, the department and the immediately involved representative.

RESPONSE: The only term which is not readily addressed in rule or used as a commonly used term is the health care professional. This term is defined in statutory language (37-8-103(3), MCA) which by statute may not be unnecessarily repeated in the rules.

COMMENT: We object to exclusion from the Nurse Practice Act. This exclusion could lead to exclusions for other categories of patients. A great deal of discussion and deliberation was employed before the rule on "delegation for nursing duties" was published. There is a great fear that this could open "Pandora's Box" and eventually lead to anyone performing nursing tasks. We have concerns with this precedent.

RESPONSE: The exemption from the Nurse Practice Act for these individuals was granted by the Montana legislature with the passage of HB 504. The rules process is not the forum to express concerns regarding the underlying legislation.

COMMENT: It seems the rationale for this legislation was to give medicaid personal care services recipients a choice in providers. That has been given with a recent change in the medicaid department which has opened up the personal care program to a multi-provider system.

RESPONSE: The rationale behind this program is to provide consumers with the capability to manage their personal care functions. These consumers have sought to gain more control over a very intimate part of their lives. In doing this they have openly accepted not only new responsibilities, but varying degrees of risk. This legislation was not related to the decision of the medicaid staff to open the conventional personal assistance program to multi-providers.

COMMENT: (4) of proposed new Rule VI (46.12.559E) may be invalid because it appears to conflict with 53-6-145 (3), MCA enacted by Ch. 525, section 1, Laws of 1995 (House Bill No. 504). This law mandates that the department provide personal care services as part of the medicaid program in a self-directed model if the personal assistant is an employee of an entity willing to provide the protections guaranteed to workers under existing labor laws. It is further argued that 53-6-145 (4), MCA does not grant the department the discretion to determine if personal assistant services will be offered under the medicaid program but rather it (4) does not require the impaired person to use personal assistant services.

RESPONSE: Section 53-6-145, MCA should not be read as a stand alone section of the Montana code. It must be read as an integral part of chapter 6 which deals with the medicaid program. Section 53-6-101, MCA sets forth mandatory and optional services which may be provided as part of the medicaid program. Personal care or personal assistant services are not one of the mandated services listed in 53-6-101, MCA. The statement of intent included in HB 504 does not mandate personal assistant services but rather directs the department "to allow

a person with a disability . . . to arrange for and direct the use of the personal assistant." This is allowed only if the department has authorized personal care assistance as an "optional" medicaid service.

Other than those services that are specifically listed in 53-6-101(2), MCA as mandatory services, the department has the authority to determine other services to be covered by its medicaid program. (9) and (11) authorize the department to establish the "amount, scope, and duration" of medical services. See also 53-6-113 (2), MCA.

Section 53-6-145 (4), MCA clearly and unambiguously states that this section, i.e. 53-6-145 (which includes (3)) "does not mandate personal assistant services." This exclusion from other mandatory services does not conflict with the words or the intent of (3). (3) specifically refers to a "self-directed service model as described in this section." It is not a mandate for all "personal care services".

It is a general rule of statutory construction that when there are several provisions that may otherwise be inconsistent, a construction should be adopted, if possible, that will give effect to all of them. With this general rule in mind, it is reasonable for the agency to conclude that personal care services are "optional" and that service may be completely eliminated but once the department decides to implement a personal care program it must have a "self-directed" model as one of its components. This interpretation gives effect to what may appear to be conflicts within the words of (3) and (4) of 53-6-145, MCA.

Subsection (4) of Rule VI eliminates neither personal care services nor the self-directed model. It merely provides that these services should not work in such a fashion which would allow for duplication or higher costs if an individual would rely upon both models. Participation in self-directed personal assistance services requires the consumer to take the responsibility for managing their personal assistance services. Allowing an individual to receive services from this model and the conventional agency based model would split the management responsibility, drive up costs and potentially disrupt the continuity of care. The department would incur such additional costs as nurse oversight, recruitment, training and management of attendants and the potential of doing two compliance reviews. Duplication of services could also occur. By using conventional personal care services, the consumer would also have to follow the requirements of the program, though it would be for only part of a day or week. The coordination of two similar but not equal programs, would be difficult at best. This subsection has been amended to clarify that interpretation and to allow use of both programs if the consumer's emergency back up plan fails.

The addition of (4) of Rule VI (46.12.559E) or its subsequent amendment does not unnecessarily repeat the provision of the statute but rather, acts upon the authority of the department as expressed in 53-6-145 (4),MCA to determine "the amount, scope, and duration of the personal assistant services provided under the medicaid program."

COMMENT: Thirty-three home health agencies did not receive notice of the rule hearing.

RESPONSE: The department does not send the notice of hearing to every medicaid provider. However, interested parties, including providers, individuals and consumer groups, can receive rule notices by contacting the legal division of the department. As a professional courtesy the department does notify provider and/or professional organizations that have relation to the proposed rule. In this instance notice was sent to the Montana Association of Home Health Agencies, medicaid enrolled personal care providers, Montana Nurses' Association, Montana Board of Nursing, HCBS case management teams, Independent Living Centers and many other individuals and groups that have requested notice of rules pertaining to personal care service rules. All notices were sent as required by the Montana Administrative Procedure Act.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State December 11, 1995.

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

In the matter of the adoption of Rules I through V pertaining to medicaid estate recoveries and liens	))))	NOTICE OF THE ADOPTION OF RULES

TO: All Interested Persons

1. On June 29, 1995, the Department of Public Health and Human Services published notice of the proposed adoption of Rules I through V pertaining to medicaid estate recoveries and liens at page 1109 of the 1995 Montana Administrative Register, issue number 12.

2. The Department has adopted the following rules as proposed with the following changes:

[RULE I] 46.12.3220 MEDICAID ESTATE RECOVERIES, WAIVER OF RECOVERY BASED UPON UNDUE HARDSHIP (1) The department shall waive, in whole or in part, its claim under ~~[section 5, ch. 492, L. 1995]~~ 53-6-167, MCA, if the applicant demonstrates that recovery would result in an undue hardship to the applicant as provided in this rule.

(2) An applicant may request an undue hardship waiver of estate recovery by filing an application on the form prescribed by the department. Application forms may be obtained from and must be filed with the Department of Public Health and Human Services, Medicaid Services Division, 111 N. Sanders, P.O. Box 4210, Helena, Montana 59604-4210. APPLICATION FORMS MAY ALSO BE OBTAINED FROM COUNTY HUMAN SERVICES OR WELFARE OFFICES, BUT MUST BE FILED WITH THE MEDICAID SERVICES DIVISION OFFICE IN HELENA AT THE ABOVE ADDRESS.

(2)(a) and (3) remain as proposed.

(a) a person ~~that~~ WHO has succeeded OR WOULD SUCCEED to part or all of the decedent's assets ~~or that would succeed to all or part of the decedent's assets~~ but for recovery by the department, including a person ~~that~~ WHO HAS received or would have received a beneficial interest in the assets but not legal title; or

(b) a person who was, FOR A SUBSTANTIAL PERIOD OF TIME during the decedent's lifetime and after the decedent's death remains, dependent upon the decedent's assets for food, shelter or clothing.

(4) ~~In determining whether~~ DEPARTMENT RECOVERY WILL RESULT IN an undue hardship ~~would result from recovery, the department shall consider the following factors~~ TO THE APPLICANT IF:

~~(a) Whether the applicant would become eligible for public assistance without receipt of all or part of the proceeds of the estate or retention of all or part of the value of property received by survival or distribution;~~

~~(b) Whether the applicant would be able to discontinue eligibility for public assistance if the applicant were permitted to receive all or part of the proceeds of the estate or to retain all or part of the value of property received by survival or distribution;~~

~~(c)~~ (a) ~~When the~~ THE estate assets or property received by survival or distribution are part of a business, INCLUDING A WORKING FARM OR RANCH, UPON WHICH THE APPLICANT WAS DEPENDENT FOR APPLICANT'S LIVELIHOOD, ~~that existed~~ during the decedent's lifetime~~, including a working farm or ranch; whether~~ recovery by the department would deprive the applicant of their sole means of livelihood, and the applicant has no other means of satisfying the department's claim;

~~(d)~~ (b) The applicant is an aged (AGE 65 OR OVER), blind or disabled relative of the decedent who for one year or more before the decedent's death had been continuously and lawfully living in a residence owned by the decedent and continues to reside there, and who would have significant difficulty establishing an alternative living arrangement, obtaining financing (such as a home equity loan) to repay the department or arranging other means to repay the department;

(4)(e) remains as proposed in text but is renumbered (4)(c).

~~(f)~~ (d) Without recovery by the department, the applicant would receive or be permitted to retain property that the applicant transferred to the decedent for no consideration, AS DETERMINED BY CLEAR AND CONVINCING EVIDENCE INCLUDING APPROPRIATE TITLE DOCUMENTS, AGREEMENTS AND OTHER DOCUMENTATION; or

~~(g)~~ (e) ~~Whether the~~ THE property that applicant would receive or be permitted to retain without recovery by the department is needed by the applicant to acquire necessities of life, such as food, shelter, clothing or medical care and ~~whether~~ there are ~~any~~ NO other assets or means available to the applicant to satisfy in full or in part the department's claim.

(5) An undue hardship does not exist if:

(a) the decedent or applicant created the hardship by using estate planning, GIFTING OR OTHER methods to divert or shelter assets to avoid estate recovery~~.~~; OR

(b) THE CIRCUMSTANCES INDICATE THAT THE HARDSHIP WAS CREATED FOR PURPOSES OF AVOIDING OR DEFEATING RECOVERY.

(6) through (8) remain as proposed.

(9) An applicant aggrieved by an adverse determination on an application for an undue hardship waiver of estate recovery may assert a claim of entitlement to an undue hardship waiver as provided in ~~(section 5(7)(c), ch. 492, L. 1995). An aggrieved applicant is not entitled to~~ 53-6-167(7)(c), MCA RATHER THAN THROUGH an administrative review, fair hearing or contested case hearing ~~regarding the determination~~ UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT OR THE DEPARTMENT'S RULES.

AUTH: ~~Sections 5 and 26, ch. 492, L. 1995~~ 53-6-167 and 53-6-189, MCA

IMP: ~~Section 5, ch. 492, L. 1995~~ 53-6-167, MCA

[RULE II] 46.12.3223 MEDICAID REAL PROPERTY LIEN, NOTICE AND RIGHT TO HEARING (1) At least ~~45~~ 90 days prior to filing a lien under ~~[sections 8, ch. 492, L. 1995]~~ 53-6-171, MCA upon real property of a medicaid applicant or recipient, the department must provide the applicant or recipient notice of its determination that applicant or recipient is permanently institutionalized and that none of the exceptions provided by ~~[sections 8, ch. 492, L. 1995]~~ 53-6-171, MCA or federal law apply. The notice must inform the applicant or recipient of THE EXCEPTIONS THAT WOULD PREVENT IMPOSITION OF A LIEN AND OF the right to a fair hearing as provided in ~~subsection~~ (2).

(2) The applicant or recipient upon whose property the department proposes to impose a lien under ~~[sections 8, ch. 492, L. 1995]~~ 53-6-171, MCA is entitled to a fair hearing according to the provisions of ARM 46.2.201, et seq. The applicant or recipient must request the hearing within ~~30~~ 90 days of receipt of the notice required under ~~subsection~~ (1).

(a) THE HEARING IS LIMITED TO ISSUES REGARDING IMPOSITION OF THE LIEN AND MAY NOT ADDRESS ISSUES RELATING TO RECOVERY ON THE LIEN, UNDUE HARDSHIP, SPOUSAL EXEMPTION OR SIMILAR ISSUES.

(3) remains as proposed.

AUTH: ~~Section 26, ch. 492, L. 1995~~ 53-6-189 and 2-4-201, MCA

IMP: ~~Sections 8 and 9, ch. 492, L. 1995~~ 53-6-171, 53-6-172 and 2-4-201, MCA

[RULE III] 46.12.3224 MEDICAID REAL PROPERTY LIEN, WAIVER OF LIEN RECOVERY BASED UPON UNDUE HARDSHIP (1) The department shall waive, in whole or in part, its recovery upon a lien under ~~[sections 8 through 25, ch. 492, L. 1995]~~ 53-6-171 through 53-6-188, MCA, if the applicant demonstrates that recovery would result in an undue hardship to the applicant.

(a) A WAIVER MAY BE GRANTED UNDER THIS RULE ONLY TO FOREGO OR PREVENT RECOVERY UNDER A LIEN PREVIOUSLY IMPOSED UNDER 53-6-171, MCA. A WAIVER MAY NOT BE GRANTED UNDER THIS RULE TO FOREGO OR PREVENT IMPOSITION OF A LIEN UNDER 53-6-171, MCA.

(2) An applicant may request an undue hardship waiver of lien recovery by filing an application on the form prescribed by the department. Application forms may be obtained from and must be filed with the Department of Public Health and Human Services, Medicaid Services Division, Lien Recoveries, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210. APPLICATION FORMS MAY ALSO BE OBTAINED FROM COUNTY HUMAN SERVICES OR WELFARE OFFICES, BUT MUST BE FILED WITH THE MEDICAID SERVICES DIVISION OFFICE IN HELENA AT THE ABOVE ADDRESS.

(2)(a) and (3) remain as proposed.

(a) a person ~~that~~ who has succeeded or would succeed to part or all of the recipient's interest in the liened property ~~or that would succeed to all or part of the recipient's interest~~ but for recovery by the department, including a person ~~that~~ who has received or would have received a beneficial interest in the liened property but not legal title; or

(b) a person who is dependent upon the liened property for shelter or if the recipient is deceased, was, FOR A SUBSTANTIAL PERIOD OF TIME during the recipient's lifetime and after the decedent's death remains dependent upon the liened property for shelter.

(4) ~~In determining whether~~ DEPARTMENT RECOVERY WILL RESULT IN an undue hardship TO THE APPLICANT IF: ~~would result from recovery, the department shall consider the following factors:~~

~~(a) Whether the applicant would become eligible for public assistance as a result of lien recovery by the department;~~

~~(b) Whether the applicant would be able to discontinue eligibility for public assistance if the department were to waive lien recovery;~~

~~(c)~~ (a) ~~When the~~ THE liened property is part of a business, INCLUDING A WORKING FARM OR RANCH, UPON WHICH THE APPLICANT WAS DEPENDENT FOR APPLICANT'S LIVELIHOOD ~~that exists or existed~~ during the recipient's lifetime, ~~including a working farm or ranch, whether~~ lien recovery by the department would deprive the applicant of their sole means of livelihood, and the applicant has no other means of satisfying the department's claim;

~~(d)~~ (b) The applicant is an aged (AGE 65 OR OVER), blind or disabled relative of the recipient who for one year or more before the recipient's death had been continuously and lawfully living in the liened property and continues to reside there, and who would have significant difficulty establishing an alternative living arrangement, obtaining financing (such as a home equity loan) to repay the department or arranging other means to repay the department;

(4)(e) remains as proposed in text but is renumbered (4)(c).

~~(f)~~ (d) Without lien recovery by the department, the applicant would receive or be permitted to retain liened property that the applicant transferred to the ~~decedent~~ RECIPIENT for no consideration, AS DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE, INCLUDING APPROPRIATE TITLE DOCUMENTS, AGREEMENTS AND OTHER DOCUMENTATION; or

~~(g)~~ (e) ~~Whether the~~ THE liened property is needed by the applicant for shelter and ~~whether~~ there are ~~any~~ NO other assets or means available to the applicant to satisfy in full or in part the department's claim.

(5) An undue hardship does not exist if:

(a) the recipient or applicant created the hardship by using estate planning, GIFTING OR OTHER methods to divert or shelter assets to avoid estate recovery~~.~~; OR

(b) THE CIRCUMSTANCES INDICATE THAT THE HARDSHIP WAS CREATED FOR PURPOSES OF AVOIDING OR DEFEATING RECOVERY.

(6) through (8) remain as proposed.

(9) An applicant aggrieved by an adverse determination on an application for an undue hardship waiver of lien recovery may assert a claim of entitlement to an undue hardship waiver as provided in ~~(section 17(1)(e), ch. 492, L. 1995). An aggrieved applicant is not entitled to~~ 53-6-180(1)(c), MCA, RATHER THAN THROUGH an administrative review, fair hearing or contested case

hearing ~~regarding the determination~~ UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT OR THE DEPARTMENT'S RULES.

AUTH: ~~Sections 17 and 26, ch. 492, L. 1995~~ 53-6-180 and 53-6-189, MCA
IMP: ~~Section 17, ch. 492, L. 1995~~ 53-6-180, MCA

[RULE IV] 46.12.3227 MEDICAID REAL PROPERTY LIEN, SPOUSE'S LIMITED RECOVERY EXEMPTION (1) The department shall provide to the recipient's surviving spouse an exemption from recovery on a lien under ~~[section 8, ch. 492, L.1995]~~ 53-6-171, MCA to the extent and under the conditions specified in ~~[section 19, ch. 492, L.1995]~~ 53-6-182, MCA, according to the procedures and requirements specified in this rule.

(a) AN EXEMPTION MAY BE GRANTED UNDER THIS RULE ONLY TO FOREGO, PREVENT OR REDUCE A RECOVERY UNDER A LIEN PREVIOUSLY IMPOSED UNDER 53-6-171, MCA. AN EXEMPTION MAY NOT BE GRANTED UNDER THIS RULE TO FOREGO OR PREVENT IMPOSITION OF A LIEN UNDER 53-6-171, MCA.

(2) A recipient's spouse may request the exemption by filing an application on the form prescribed by the department. Application forms may be obtained from and must be filed with the Department of Public Health and Human Services, Medicaid Services Division, Lien Recoveries, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210. APPLICATION FORMS MAY ALSO BE OBTAINED FROM COUNTY HUMAN SERVICES OR WELFARE OFFICES, BUT MUST BE FILED WITH THE MEDICAID SERVICES DIVISION OFFICE IN HELENA AT THE ABOVE ADDRESS.

(2)(a) remains as proposed.

(3) The department must provide the applicant notice of its determination on an application for the spousal exemption. The notice must inform the applicant ~~or recipient~~ of the right to a fair hearing as provided in ~~subsection (2)~~ (4).

(4) An applicant aggrieved by the department's determination on an application for a spousal exemption under this rule is entitled to a fair hearing according to the provisions of ARM 46.2.201, et seq. The applicant or recipient must request the hearing within 30 days of receipt of the notice required under ~~subsection (1)~~ (3).

(5) remains as proposed.

AUTH: ~~Sections 19 and 26, ch. 492, L. 1995 and~~ 2-4-201, 53-6-182 and 53-6-189, MCA
IMP: ~~Section 19, ch. 492, L. 1995 and~~ 2-4-201 and 53-6-182, MCA

[RULE V] 46.12.3228 MEDICAID REAL PROPERTY LIEN, RELEASE OF LIEN AFTER RECIPIENT'S RETURN HOME (1) If a recipient upon whose real property the department has imposed a lien under ~~[section 8, ch. 492, L.1995]~~ 53-6-171, MCA has been discharged from the facility and has returned home, the department shall upon written request file a release of the lien in the clerk and recorder's office.

(2) and (3) remain as proposed.

AUTH: ~~Section 26, ch. 492, L. 1995~~ 53-6-189, MCA
IMP: ~~Section 11, ch. 492, L. 1995~~ 53-6-174, MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: Applications for undue hardship waivers should be available at local county welfare or human services offices as well as from the central office in Helena. Applicants should also be permitted to file the applications at local county offices.

RESPONSE: The department agrees that applications should be available at local offices where medicaid applications are made, and the final rule language will so provide. However, the undue hardship waiver process will be a central office function. To assure that applications are received by the appropriate staff immediately upon filing, the department will require that the applications be filed at the central office in Helena. Of course, applications may be either mailed or delivered to the Helena office at the address specified in the rule.

COMMENT: The bracketed references to the chapter laws in the notice of hearing should be changed to the Montana Code Annotated references since the code has now been printed with the 1995 session changes included.

RESPONSE: The department agrees and has changed the references as suggested.

COMMENT: If the department proposes to impose a lien on the recipient's property under 53-6-171, MCA, can the recipient request or obtain an undue hardship waiver or exception to prevent the department from imposing a lien upon the property?

RESPONSE: No. Neither state or federal law provide an undue hardship exception or waiver as to imposition of the lien. If the statutory conditions specified in section 53-6-171, MCA are met, the department may impose a lien, subject to the required notice and hearing procedures. The undue hardship exception provided in section 53-6-180, MCA and implemented by Rule III (46.12.3224) applies only where a lien has already been imposed and the conditions are otherwise met for actual recovery of medical assistance expenditures from the property secured by the lien. A subsection (1)(a) has been added to Rules III (46.12.3224) and Rule IV (46.12.3227) to clarify this point.

COMMENT: The language of Rule I(9) (46.12.3220) and Rule III(9) (46.12.3224) should be revised to indicate that the procedure for challenging denial of an undue hardship application is the remedy provided in the cited statute rather than an administrative hearing process. The current wording suggests that there is no hearing available.

RESPONSE: Sections 53-6-167(7)(c) and 53-6-180(1)(c), MCA specify the forum and procedure in which a person may challenge denial of undue hardship waiver of estate or lien recovery by the department. Section 53-6-167(7)(c), MCA provides that a person aggrieved by a department determination on an undue hardship application for estate recovery exception may assert a claim to the exception in any court proceeding on a department petition for allowance of an estate claim or for recovery of an amount due from a person who received a recipient's property by distribution or survival. Similarly, under section 53-6-180(1)(c), MCA, a person aggrieved by a department determination on an undue hardship application for lien recovery exception may assert a claim to the exception in an action under 53-6-177, MCA to challenge issuance of a writ of execution to force sale of the liened property. In any of these cases, the applicant is not entitled to a contested case hearing under MAPA or the department's rules, because the matter can be determined in district court proceedings that would occur in the normal course of resolving the issue.

If the department asserts a claim against an estate and the estate refuses to allow the claim, the department would file in the district court a petition for allowance of its claim. If the department asserted a claim against a person who received the recipient's property by distribution or survival and the person refused to pay the claim, the department would have to file suit under 53-6-167(1)(b), MCA to collect. If the department seeks to collect on a lien, certain affected persons may file an action to challenge the recovery. In any of these cases, the matter would then be heard by the district court and a determination made as to the department's right to recover. The statute provides that the issue of denial of an undue hardship application must be heard in the district court proceeding, and that there is no administrative hearing on the issue. This avoids the possibility of having multiple proceedings required to resolve the ultimate issue of entitlement to recovery.

The gist of the comment seems to be that the proposed rule language is too harsh in appearing to deny any hearing, and that the rule should be stated as an indication that the remedy is a court hearing rather than an administrative hearing. The rule is not intended to provide or suggest that a denial of the undue hardship application is not reviewable. Although the proposed rule is merely stated in the same fashion as the statute, the department has revised the language of the final rule in the manner suggested by the comment.

COMMENT: The lead-in language to Rule I(4) (46.12.3220) and Rule III(4) (46.12.3224) does not clearly specify that existence of one of the factors constitutes an undue hardship. The proposed rule merely states that the department must consider the factors. The rule should clearly state that there is an undue hardship if one of the factors is present.

RESPONSE: The department agrees and has reworded the final rule as suggested.

COMMENT: A number of the rules are worded in an awkward manner and should be reworded. The commenter made various specific rewording suggestions, which will not be repeated here in detail.

RESPONSE: The department agrees with some but not all of the rewording suggestions. The department has revised the rule language to implement appropriate changes.

COMMENT: Various suggestions were made to limit or clarify the exceptions in Rule I(4)(a) and (b) (46.12.3220) and Rule III (4)(a) and (b) (46.12.3224) concerning creating or eliminating public assistance eligibility. Some commenters believed that the rule needed to provide for weighing of the costs and benefits to the department. Some commenters expressed concern that there would be no way to assure that a person actually would use the recipient's assets to avoid the need for public assistance, and that the department might forgo recovery only to find the applicant quickly dissipating the proceeds and applying for public assistance. Others felt there should be some minimum amount of time that the applicant must be considered ineligible, and various suggestions were put forth as to how that period might be calculated.

RESPONSE: After consideration of the comments, the department has entirely deleted these exceptions from the rule. The proposed exceptions essentially would require the department to gamble that the applicant would use the recipient's assets appropriately to avoid the need for public assistance. Under sections 53-6-167(6) and 53-6-180(2), MCA, the department may in its discretion consider the effect on existing or future eligibility in determining whether recovery would be cost effective. If the department believed that recovery was not cost effective because the applicant would end up on public assistance, the department could consider whether to waive recovery on grounds of cost effectiveness. However, the department will not make the fact that the recipient's assets may avoid eligibility for public assistance grounds for automatic waiver of recovery.

COMMENT: The dependency referred to in Rule I(3)(b) (46.12.3220) and Rule III(3)(b) (46.12.3224) should be required to exist for a substantial period of time during the decedent's lifetime. Otherwise, apparent dependence could be concocted at the last minute in an effort to avoid recovery.

RESPONSE: The department agrees and has added language to require that the person was dependent on the decedent for a substantial period of time during the decedent's lifetime. In addition the department has added a subsection (b) to Rule I(5) (46.12.3220) and Rule III(5) (46.12.3224) to provide that an

undue hardship does not exist if the circumstances indicate that the hardship was created for purposes of avoiding or defeating recovery. The department does not intend that any of the circumstances defined as undue hardship become methods that can be used in planned efforts to avoid recovery. If the circumstances suggest that the circumstances were created with the purpose of avoiding recovery, no exception will be granted.

COMMENT: The department should add a specific time period in which notice of a determination must be provided under Rule I(8) (46.12.3220) and Rule III(8) (46.12.3224).

RESPONSE: The department does not believe a specific period is necessary. The department, as a practical matter, will be required to determine the application before it can proceed to recover further. The need to move forward with recovery will serve to encourage completion and notice of determinations.

COMMENT: In Rule II(2) (46.12.3223), the proposed rule would allow a recipient only 30 days to request a hearing after notice that the department intends to impose a lien. This period should be 90 days for consistency with other hearing rules and to assure that there is adequate time for interested persons to find out about the lien and take action. Further, appeals ought to be accepted at any time prior to actual filing of the lien.

RESPONSE: The department will adopt a 90-day rather than a 30-day appeal period. Appeals will not be timely if filed after the 90-day period. A specific deadline is necessary, so that the department can be sure there is no appeal before it goes ahead with imposition of the lien.

COMMENT: The commenter appreciates the provision in Rule V (46.12.3228) that provides that the lien dissolves if the recipient is discharged from a facility and returns home. It is the commenter's understanding that he can demand that, for example, his mother be discharged from a nursing facility and then immediately request a release of the lien, regardless of the department's previous determination that the mother was permanently institutionalized.

RESPONSE: Federal law requires that the lien dissolve if the recipient is discharged from the facility and returns home. If this occurs, then the lien, as a matter of law dissolves, and upon request as provided in Rule V (46.12.3228) the department will file a lien release. The comment implies that this would be done just prior to death. The department does not believe that the federal law provision was intended to encourage or allow relatives to demand inappropriate death-bed discharges in order to return the recipient home, transfer title to the home and thereby evade the operation of the lien. The department will monitor the use of this provision to observe whether it is used to improperly avoid the lien. If it appears in any case that discharge has been demanded under medically inappropriate

circumstances, the case will be referred for investigation and review under applicable protective laws.

COMMENT: Under Rule V(2) (46.12.3228), the proposed rule requires that a request for lien release must be accompanied by a copy of the legal description of the property subject to the lien. This puts an undue burden of proof on the personal representative and heirs of the recipient. The department will have a very clear and precise set of records of the individuals and properties subject to liens.

RESPONSE: The dissolving of the lien would occur during the recipient's lifetime, not after death when a personal representative would be appointed. It is possible that the release could be sought after the recipient's death. The recipient, and presumably the personal representative, would have ready access to a deed or other document containing a legal description of the property. The proposed rule does not establish a burden of proof upon the recipient or upon the recipient's personal representative or heirs. The purpose of requiring a legal description is to provide a point of reference to make sure the name and property description match. This is designed to protect the recipient from errors that could result in releasing the wrong property and failing to release the correct property. The department will retain the requirement. If a recipient or their representative simply cannot obtain a copy of the legal description, the department will work with the recipient or their representative to assure the identity and correct description and provide the appropriate release.

COMMENT: In Rule I(4)(c) (46.12.3220) and Rule III(4)(c) (46.12.3224), the applicant must be dependent upon the property for their sole means of livelihood. The rule should require that the business existed during the recipient's lifetime and that the applicant was dependent upon the property for their sole means of livelihood during the recipient's lifetime. Without such a requirement, this exception could be used as a post-death planning tool to avoid recovery. A business could be started and the applicant could shelter other assets and quit other employment to gain the exemption.

RESPONSE: The department agrees and has added the proposed requirements.

COMMENT: In Rule I(4)(d) (46.12.3220) and III(4)(d) (46.12.3224), "aged" is not defined.

RESPONSE: The term means age 65 or over and language is added to so provide.

COMMENT: In Rule I(4)(f) (46.12.3220) and III(4)(f) (46.12.3224), an undue hardship occurs where the applicant had previously given the property to the recipient for no

consideration. What proof of the previous transfer for no consideration is required to obtain this exception?

RESPONSE: The department has added language to the final rule to specify that clear and convincing evidence is required. This may include documents of title, agreements and/or other appropriate documentation. Such claims could easily be made but would be hard to disprove. The applicant must clearly and convincingly demonstrate that the property was owned by the applicant, that it was given to the recipient and that no consideration was given or required for the transfer.

COMMENT: What issues may be heard in a hearing under Rule II (46.12.3223)? Can claims of undue hardship be raised?

RESPONSE: The hearing provided in Rule II (46.12.3223) relates only to the issues regarding imposition of the lien, for example whether the recipient has a spouse residing in the home, whether the recipient is permanently institutionalized, whether the recipient in fact owns an interest in the property, etc. Issues regarding recovery on the lien, including issues regarding undue hardship or the spousal exemption under Rule IV (46.12.3227), cannot be raised or heard in this hearing.

Dawn Sliva
Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State December 11, 1995.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of New Rule I (ARM 42.15.406) relating to Itemized Deductions for Health Insurance	NOTICE OF ADOPTION of Itemized Deductions for Health Insurance Rule

TO: All Interested Persons:

1. On October 12, 1995, the department published notice of the proposed adoption of New Rule I (ARM 42.15.406) relating to itemized deductions for health insurance at page 2100 of the 1995 Montana Administrative Register, issue no. 19.

2. Written comments received from the law firm of Worden, Thane & Haines, P.C. are summarized as follows along with the response of the department:

COMMENT: There is no need for subsections 2 and 3 under Rule I, which affects how a self-employed person computes the allowable 50% health insurance itemized deduction. The logic used for this is that shareholders of an "S" corporation, and partners of a partnership and sole proprietors, can presently deduct 100% of their health insurance in arriving at Montana adjusted gross income. The 100% deduction is arrived at through two separate deductions. First, thirty percent (30%) is deducted in arriving at the federal adjusted gross income under IRC 162(l) and secondly, the remaining seventy percent (70%) is deducted under 15-30-111(2)(h), MCA in arriving at Montana adjusted gross income. It was also stated that another class of individuals who could be eligible are employees whose employer pays for their premiums out of the employee's wages.

RESPONSE: IRC 162(l) was enacted by Congress in the Tax Reform Act of 1986 and was effective for tax years beginning after December 31, 1986. Section 15-30-111(2)(h), MCA was enacted by the 1995 Legislature to apply to tax years beginning after December 31, 1994. The federal definition contained in IRC 1623(l) treating self-employed people as employees is only for purposes of qualifying for the federal 30% self-employed health insurance deduction.

To deduct health insurance premiums under 15-30-111(2)(h), MCA, the department agrees that there is a two part test. First, the health insurance premiums must be paid by an employer on behalf of the employee. Secondly, the premiums must be attributable as income to the employee under federal law. The department's position is that there must exist an employee-employer relationship, and the employer must have paid the

employee's premiums as a benefit with no out-of-pocket cost to the employee.

Employees whose employer pays for the cost of their health insurance out of the wages of the employee do not qualify for the deduction under 15-30-111(2)(h), MCA. This is because the payment of the health insurance premium is not a benefit, but is an out-of-pocket expense to the employee.

Under ARM 42.17.101(2), persons who are in business for themselves are not considered employees. Thus, since partners of a partnership and sole proprietors are not employees there is no employee-employer relationship, and they do not qualify for the deduction under 15-30-111(2)(h), MCA. Shareholders of an "S" corporation meet the first and second tests of eligibility under 15-30-111(2)(h), MCA if they are employees of the "S" corporation, and if the cost of the health insurance premiums are included in their federal adjusted gross income.

In summary, it is more advantageous for a person to be able to deduct 100% of their health insurance premiums in arriving at their Montana adjusted gross income if they are eligible. However, because of the reasons presented above, the department feels that sections 2 and 3 in Rule I are necessary to determine the allowable amount of health insurance premiums a self-employed person can deduct in arriving at the 50% health insurance deduction.

3. The department has adopted the rule as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State December 11, 1995

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.15.416, 42.15.507, 42.15.508 and 42.15.509 relating to Recycling Credit	)))))	NOTICE OF AMENDMENT of Recycling Credit Rules

TO: All Interested Persons:

1. On October 12, 1995, the department published notice of the proposed amendment of ARM 42.15.416, 42.15.507, 42.15.508 and 42.15.509 relating to recycling credit at page 2109 of the 1995 Montana Administrative Register, issue no. 19.

2. No public comments were received regarding these rules.

3. The department has adopted the rules as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State December 11, 1995

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.15.506 relating to Computation of Residential Property Tax Credit for Elderly	NOTICE OF AMENDMENT of Computation of Residential Property Tax Credit for Elderly Rule

TO: All Interested Persons:

1. On September 28, 1995, the department published notice of the proposed amendment of ARM 42.15.506 relating to the computation of residential property tax credit for elderly at page 1925 of the 1995 Montana Administrative Register, issue no. 18.

2. Written comments received from the accounting firm of Junkermier, Clark, Campanella, Stevens, P.C. are summarized as follows along with the response of the department:

COMMENT: Under the present rule, a taxpayer who lives in a rest home is allowed the lesser or the actual rent paid or $20 per day. The firm requested that this amount be reviewed because it has been a number of years since the rent cap was in effect and there has been no adjustment for the cost of living.

RESPONSE: During the next year, the department will review the cost associated with staying in a rest home to see if the $20 per day figure needs adjustment by using data from the Department of Public Health and Human Services.

3. Therefore, the department adopts the rule as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State December 11, 1995

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) of ARM 42.23.302 and 42.23.421) relating to Corporate Tax) Returns and Deductions)	NOTICE OF AMENDMENT to Corporate Tax Returns and Deductions Rules

TO: All Interested Persons:

1. On October 26, 1995, the Department published notice of the proposed amendment of ARM 42.23.302 and 42.23.421 relating to corporate tax returns and deductions at page 2226 of the 1995 Montana Administrative Register, issue no. 20.

2. No public comments were received regarding these rules.

3. The Department amends the rules as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State December 11, 1995.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.31.101, 42.31.102, 42.31.108, 42.31.111, 42.31.131, 42.31.202, 42.31.204, 42.31.205, 42.31.211, 42.31.212, 42.31.213, 42.31.302, 42.31.309, 42.31.331, 42.31.335, and 42.31.345 relating to Cigarette and Tobacco	NOTICE OF AMENDMENT to Cigarette and Tobacco Rules

TO: All Interested Persons:

1. On October 12, 1995, the department published notice of the proposed amendment of ARM 42.31.101, 42.31.102, 42.31.108, 42.31.111, 42.31.131, 42.31.202, 42.31.204, 42.31.205, 42.31.211, 42.31.212, 42.31.213, 42.31.302, 42.31.309, 42.31.331, 42.31.335, and 42.31.345 relating to cigarette and tobacco rules at page 2114 of the 1995 Montana Administrative Register, issue no. 19.

2. A Public Hearing was held on November 8, 1995, to consider the proposed amendment. Mark Huelstamp with Core-Mark International appeared in support of the rules. No written comments were received.

3. The department amends ARM 42.31.203 to remove 35-1-1001 and 35-1-1002, MCA, which were repealed by the 1993 legislature, and replaced by 35-1-1026, MCA, as follows:

42.31.203 OUT-OF-STATE WHOLESALERS (1) All out-of-state wholesalers meeting the conditions of "transacting business in this state" as provided in ~~35-1-1001 and 35-1-1002~~ 35-1-1026, MCA, and all out-of-state wholesalers doing intrastate business within Montana are subject to all of the provisions of Title 16, chapter 11, part 2, MCA, and these regulations as Montana wholesalers.

4. Therefore, the department adopts ARM 42.31.203 with the amendments listed above and ARM 42.31.101, 42.31.102, 42.31.108, 42.31.111, 42.31.131, 42.31.202, 42.31.204, 42.31.205, 42.31.211, 42.31.212, 42.31.213, 42.31.302, 42.31.309, 42.31.331, 42.31.335, and 42.31.345 as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State December 11, 1995

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.31.2101, 42.31.2121, 42.31.2122, 42.31.2131, 42.31.2132, 42.31.2133, 42.31.2141, 42.31.2142, and 42.31.2143 and ADOPTION of New Rule I (ARM 42.31.2134) relating to Contractor Gross Receipts	NOTICE OF AMENDMENT and ADOPTION of Contractor Gross Receipts Rules

TO: All Interested Persons:

1. On October 12, 1995, the department published notice of the proposed amendment of ARM 42.31.2101, 42.31.2121, 42.31.2122, 42.31.2131, 42.31.2132, 42.31.2133, 42.31.2141, 42.31.2142, and 42.31.2143 and adoption of New Rule I (ARM 42.31.2134) relating to Contractor Gross Receipts at page 2103 of the 1995 Montana Administrative Register, issue no. 19.

2. No public comments were received regarding these rules.

3. In order to reduce paper in state government, the department further amends ARM 42.31.2141, 42.31.2142, and 42.31.2143 as follows:

42.31.2141 PERSONAL PROPERTY TAX ~~CREDIT~~ REFUND (1) remains the same.

(2) These refunds ~~shall~~ will only be allowed, after all necessary reports are filed and copies of paid personal property tax and motor vehicle fee receipts are submitted to the department of revenue. Contractors claiming this credit must ~~submit~~ PROVIDE ~~a~~ THE current ~~copy of their~~ CONTRACTOR'S certificate of registration NUMBER as required by 39-9-204, MCA, ~~with~~ ON their refund request. Failure to provide ~~the necessary documents~~ THIS REGISTRATION NUMBER will result in denial of the credit. ~~until such time as their current registration certificate is provided~~.

(3) remains the same.

42.31.2142 CORPORATION LICENSE TAX CREDIT (1) and (2) remain the same.

(3) Contractors claiming this credit must ~~submit~~ HAVE a current ~~copy of their~~ CONTRACTOR'S certificate of registration NUMBER as required by 39-9-204, MCA, ~~with their corporation tax return. Failure to provide the necessary documents will result in denial of the credit until such time as their current registration certificate is provided~~.

42.31.2143 STATE INCOME TAX CREDIT (1) and (2) remain the same.

(3) Contractors claiming this credit must ~~submit~~ HAVE a current ~~copy of their~~ CONTRACTOR'S certificate of registration NUMBER as required by 39-9-204, MCA, ~~with their income tax return. Failure to provide the necessary documents will result in denial of the credit until such time as their current registration certificate is provided~~.

4. Therefore, the department adopts ARM 42.31.2141, 42.31.2142, and 42.31.2143 with the amendments listed above and ARM 42.31.2101, 42.31.2121, 42.31.2122, 42.31.2131, 42.31.2132, 42.31.2133, and New Rule I (ARM 42.31.2134) as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State December 11, 1995

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of ARM 42.34.101; 42.34.102; 42.34.103; 42.34.104; 42.34.105; 42.34.106; 42.34.107; 42.34.108; 42.34.109; 42.34.110; and 42.34.111 relating to Dangerous Drug Taxes	) NOTICE OF REPEAL of) Dangerous Drug Tax Rules)))))))

TO: All Interested Persons:

1. On October 26, 1995, the department published notice of the proposed repeal of ARM 42.34.101 through 42.34.111 relating to dangerous drug taxes at page 2228 of the 1995 Montana Administrative Register, issue no. 20.

2. No public comments were received regarding these rules.

3. The department has repealed the rules as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State December 11, 1995

VOLUME NO. 46 OPINION NO. 10

COUNTY ATTORNEY - Ethical requirements for part-time county attorneys with respect to office space and equipment;
COUNTY ATTORNEY - Use of office space provided by county for private practice;
COUNTY ATTORNEY - Use of equipment provided by county for private practice;
COUNTY ATTORNEY - Use of secretarial support provided by county for private practice;
COUNTY COMMISSIONERS - Duty to provide office space, equipment, and secretarial support for county attorney;
COUNTY COMMISSIONERS - Statutory authority to enter into contracts with county attorney for private use of office space, equipment, and secretarial support provided by county;
COUNTY OFFICERS AND EMPLOYEES - Performance by secretary employed by county of private practice work for county attorney;
ETHICS - Application of prohibition against use of public time, facilities, equipment, supplies, personnel, or funds for private business purposes;
MONTANA CODE ANNOTATED - Sections 2-2-102(6), 2-2-105(2), 2-2-121(2)(a), 2-2-125, 7-1-2103(3), 7-4-102, 7-4-2211, 7-4-2402, 7-4-2503(3), 7-4-2704(2), 7-4-2706, 7-4-2712, 7-4-2716, 7-5-2101(1), 7-5-2108, 7-8-2101, 7-8-2112, 7-8-2231;
OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 27 (1983), 28 Op. Att'y Gen. No. 42 (1959), 28 Op. Att'y Gen. No. 13 (1959), 23 Op. Att'y Gen. No. 20 (1949), 21 Op. Att'y Gen. No. 32 (1945), 16 Op. Att'y Gen. No. 212 (1935), 11 Op. Att'y Gen. No. 62 (1924), 10 Op. Att'y Gen. 167, 9 Op. Att'y Gen. 277, 8 Op. Att'y Gen. 96 (1919), 5 Op. Att'y Gen. No. 275 (1913), 3 Op. Att'y Gen. 64.

HELD: 1. The county governing body may satisfy its obligation to provide office space for a part-time county attorney by providing space in a county building, or if no suitable space is available by renting office space, provided that use of the space for the county attorney's private practice occurs only through an agreement between the county and the county attorney leasing the use of the space for the county attorney's private business purposes.

2. In the alternative, the governing body can allow a claim by the county attorney for the rental of office space needed to conduct the county's business, provided suitable office space is not available in county buildings.

3. The county governing body may satisfy its obligation to provide necessary equipment for a part-time county attorney by providing the use of equipment owned by the county, or if no suitable equipment is available by renting equipment, provided that use of the equipment for the county attorney's private practice

occurs only through an agreement between the county and the county attorney leasing the use of the equipment for the county attorney's private business purposes.

4. A secretary employed by the county to assist the county attorney may work on the county attorney's private business during time when the secretary's services are not needed on county business, provided the county attorney accounts for the time of the secretary spent on private business and reimburses the county for any county-compensated time spent on the county attorney's private business.

5. A claim by a county attorney for secretarial services reasonably required for the conduct of the county attorney's official duties is a legitimate claim against the county. The reasonableness of the claim is a question of fact vested in the sound discretion of the county governing body.

6. A part-time county attorney may conduct private practice using office space, equipment, or support staff provided by the county without violating Mont. Code Ann. § 2-2-121(2)(a) if the county governing body has agreed in writing to the arrangement in compliance with applicable statutes and common law rules governing the county governing body's authority over county property.

December 1, 1995

Mr. Blair Jones
Stillwater County Attorney
P.O. Box 179
Columbus, MT 59019

Dear Mr. Jones:

You have requested my opinion on issues arising from the enactment by the 1995 legislature of 1995 Mont. Laws ch. 562, a sweeping reform of the laws relating to ethical behavior by public officers and employees. As amended by chapter 562, Mont. Code Ann. § 2-2-121(2)(a) provides in pertinent part that "[A] public officer . . . may not . . . use public time, facilities, equipment, supplies, personnel, or funds for the officer's . . . private business purposes." You inquire whether this provision prohibits arrangements which have existed, in some cases for decades, in counties employing a part-time county attorney under which the county furnishes office space, equipment, or support staff which the part-time county attorney uses in both the

official capacity as county attorney and for purposes of a private law practice.

In Montana, the office of county attorney is a full-time position in counties with populations in excess of 30,000, and in any county with a lesser population in which the commissioners adopt a resolution, with the consent of the county attorney, making the position full-time. Mont. Code Ann. §§ 7-4-2704(2), -2706. In all other counties, the county attorney is authorized by law to engage in the private practice of law in addition to the official duties of the office. See 40 Op. Att'y Gen. No. 27 at 104, 107 (1983); 21 Op. Att'y Gen. No. 32 at 36, 37 (1945). As of July 1, 1995, 31 counties in Montana employed part-time county attorneys.

The law sets forth no requirement that a part-time county attorney work a particular number of hours on county business, nor does it limit the amount of time a part-time county attorney may spend on private practice matters. The law sets forth numerous specific duties of the office of county attorney. The county attorney undertakes to perform these duties, but does not undertake to expend a specific number of hours of time on county business each week. Many part-time county attorneys report that they give priority to county business (including representation of the State and its agencies in some cases, see Mont. Code Ann. §§ 7-4-2712, -2716), and conduct their private practices only to the extent that the time demands of the county's business allow. As a result, they report spending significantly more time on county business in any given month than on their private practice matters.

The county attorneys who serve part-time have entered into arrangements, in varying degrees of formality, with their respective counties under which the county attorney performs the duties of the office, receiving the statutory salary, see Mont. Code Ann. § 7-4-2503(3). In many cases, these arrangements provide additional support for the county attorney as well. For example, in some counties the county attorney is afforded office space in the county courthouse or other county building. In others, the county attorney receives an allowance to defray, in whole or in part, the cost of renting suitable office space, or the county attorney presents a claim for all or part of office rental expense, or the county and the county attorney otherwise share the rent obligation. In some counties, the county attorney is provided one or more full-time secretaries. In others, the county attorney receives an allowance from the county to defray, in whole or in part, the cost of hiring secretarial help. In some counties, the county attorney receives the use of office equipment, furniture, or office supplies provided by the county. Finally, in at least two counties the county attorney occupies two separate offices, one from which to conduct county business and the other for the conduct of private practice matters. In short, there appear to

be as many different models for the relationship between part-time county attorneys and their counties as there are part-time county attorneys.

Formal written agreements between county attorneys and their respective counties governing all the terms and conditions under which the county attorney receives these perquisites are the exception rather than the rule. In some cases, it appears that at most the commissioners have passed a resolution providing certain benefits or the use of certain property for the county attorney. In some cases, the county attorney and the commissioners enter into several written agreements covering the sharing of specific costs or the use of specific items of office equipment. In some cases, the arrangement is not documented at all, but has proceeded as a matter of custom developed over many years of experience.

The enactment of chapter 562 has called the legality of these arrangements into question. To understand how this occurred, it is necessary to review Montana's pre-1995 government ethics laws and compare them to certain changes made by the enactment of chapter 562. Prior to 1995, Montana's ethics in government laws provided three separate sets of rules of conduct: one governing state officers and employees, one governing legislators, and one governing local government officers and employees. The provisions governing local government officers and employees, Mont. Code Ann. § 2-2-125 (1993), did not prohibit use of government property for private business purposes by local officers and employees. Such a prohibition was found in Mont. Code Ann. § 2-2-121, but that statute applied by its terms only to "[a] state officer or employee."

Chapter 562 made a structural change in the ethics laws which changed that situation. The term "public officer" has been defined in the ethics laws since their adoption to include "any elected officer of a political subdivision of the state." Mont. Code Ann. § 2-2-102(6) (1993). Chapter 562 amended the coverage of § 2-2-121(2), changing the identification of the persons to whom it applies from "[a] state officer or employee" to "a public officer or public employee," a term which includes a county attorney by definition. By virtue of this change, § 2-2-121(2)(a) now prohibits a county attorney from using "public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purpose."

It is clear that the amendment to Mont. Code Ann. § 2-2-121 described in the preceding paragraph was adopted without consideration of its effect on part-time county attorneys. Nothing in the legislative history of the new ethics laws suggests that the change in the statute was prompted by concerns about the existing arrangements between part-time county attorneys and the counties they serve. Thus, if a consequence of the adoption of the amendment is to outlaw the existing arrangements between part-time county attorneys and their

counties, that consequence clearly was unintended by the legislature.

The amendment to Mont. Code Ann. § 2-2-121 was adopted for the salutary purpose of extending to local governments the laws precluding the conduct of private business by a government employee on government time or using the equipment that the government agency provided for the government employee's use in completing the employee's normal government job duties. While this rule has obvious and appropriate applicability to full-time state employees and elected officials, the rationale for its application to elected officials who are authorized by law to engage in "private business" during ordinary working hours, without being required to account for the officials' time on an hour-for-hour basis, is less clear. While at least two part-time county attorneys in Montana keep separate offices for county and private business, the fact that the vast majority do not suggests that a part-time county attorney must, as a matter of practical necessity in most counties, conduct a single law practice from a single location encompassing both county and private practice matters.

The 1995 amendment to Mont. Code Ann. § 2-2-121 has potential application to a variety of aspects of the part-time county attorney's practice, calling into question (1) those arrangements under which the county attorney is provided an office in the courthouse, or receives an allowance from the county to defray the cost of renting office space outside the courthouse, from which both county and private legal work is done; (2) arrangements under which the county provides, or contributes to the rental of, equipment, such as office furniture, word processing equipment, or photocopiers, which the county attorney uses for both county and private business; and (3) arrangements under which the county provides secretarial assistance which the county attorney uses for both county and private business.

In my opinion, the legislature did not intend by its enactment of the 1995 amendments to modify the discretion of county governing bodies in determining how to provide for the needs of county officials for office space, equipment, and support staff, nor was it the legislative objective to change in a fundamental way the traditional relationships, grown over a century of experience, between part-time county attorneys and the counties. A review of the laws governing the powers of county commissioners with reference to the three areas of the part-time county attorney's practice noted in the preceding paragraph will demonstrate that under proper conditions arrangements can be entered into between the part-time county attorneys and the counties which do not violate Mont. Code Ann. § 2-2-121(2)(a).

It is a fundamental rule of statutory interpretation that all statutes dealing with a subject are to be read together, with effect given to each if reasonably possible. Crist v. Segna,

191 Mont. 210, 212, 622 P.2d 1028, 1029 (1981). Repeals by implication are not favored, and it should not be lightly assumed that the legislature silently amended or repealed existing law while passing legislation on a related subject. State v. Gafford, 172 Mont. 380, 388, 563 P.2d 1129, 1134 (1977). In this case, an existing body of statutory and common law governs the duties of county commissioners to provide equipment and other support for county officers, the power of the commissioners to exercise discretion in that regard, and their power to contract with relation to county property.

In State ex rel. Taylor v. County Commissioners, 128 Mont. 102, 270 P.2d 994 (1954), the Montana Supreme Court considered the appeal of the Missoula County Commissioners from a district court order directing them to provide suitable office space for the county auditor. The Court affirmed the district court's order, observing that if suitable office space was not available in the courthouse the commissioners had the power to lease suitable space. 128 Mont. at 111. The Court's decision implicitly recognizes that the commissioners have a duty to provide office space and equipment for county officers, id. ("The office of county auditor is an important one with many duties and its proper fulfillment requires proper housing, help, and equipment"), and the decision holds that the commissioners must exercise sound discretion in deciding what office space and equipment to provide. Several early opinions of this office express the same rule. See, e.g., 8 Op. Att'y Gen. 96 (1919) (commissioners have duty to provide office for county surveyor).

Other early opinions of this office recognize that expenses incurred by the county attorney in the exercise of official duties are appropriate charges against the county. A series of opinions dealing with the issue of the payment by the county of the charges for a "stenographer" for the county attorney can be found, culminating in the decision of the Montana Supreme Court in In re Hyde, 73 Mont. 363, 236 P. 248 (1925), in which the Court held that the county attorney could retain a stenographer to provide necessary assistance in the performance of official duties, and that charges for the stenographer's services were properly payable by the commissioners. No fewer than five prior opinions of this office had reached the same conclusion. 11 Op. Att'y Gen. No. 62 (1924); 10 Op. Att'y Gen. 167; 9 Op. Att'y Gen. 277; 5 Op. Att'y Gen. 275 (1913); 3 Op. Att'y Gen. 64.

It is also clear that the commissioners have the discretion to hire employees to assist county officers in the performance of their duties. In Spotorno v. Board of Commissioners, 212 Mont. 253, 687 P.2d 720 (1984), the Court rejected the claim by the county auditor that she had inherent authority to hire as many deputies as she saw fit, holding that by statute the commissioners had the power to determine how many deputies or assistants could be hired as employees of the county to serve a county officer. 212 Mont. at 255-56, citing Mont. Code Ann. § 7-4-2402. The commissioners also have the discretion to make

other expenditures of county funds to provide necessary space and equipment for county officers. 28 Op. Att'y Gen. No. 42 (1959) (commissioners may expend county funds to provide housing for sheriff and his family at the county jail facility); 28 Op. Att'y Gen. No. 13 (1959) (commissioners may expend public funds for sheriff's and deputies' uniforms).

In exercising these powers and duties, the commissioners may follow the statutes generally defining their authority in the conduct of county business. All counties have the power to make such contracts as are necessary to the exercise of their powers and duties. Mont. Code Ann. § 7-1-2103(3).

> The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to represent the county and have the care of the county property and the management of the business and concerns of the county in all cases where no other provision is made by law.

Mont. Code Ann. § 7-5-2101(1). Among the powers granted to the commissioners is the power to lease county equipment to private entities. Mont. Code Ann. § 7-8-2112 provides:

> **7-8-2112. Written agreements for loan or lease of county tools and equipment.** Whenever county tools, machinery, or equipment are loaned or leased to private individuals, firms, associations, organizations, or corporations, they shall execute a written agreement stating the purpose of such loan or lease, the compensation to be paid the county, and that such tools, machinery, and equipment will be returned in good condition.

The commissioners also have the power to lease space in county buildings for private use. 16 Op. Att'y Gen. No. 212 (1935).

Applying these rules to the questions at hand, I conclude that the 1995 amendments to Mont. Code Ann. § 2-2-121 do not erect an insurmountable barrier to the use by a part-time county attorney of the same office space, equipment, and administrative support personnel for both county business and private law practice business.

1. **Office Space.** The commissioners clearly have the power to provide office space for the county attorney in the courthouse, or, if no suitable space is available in the courthouse, to lease space outside the courthouse for the county attorney's use. Mont. Code Ann. § 7-8-2101; cf. 23 Op. Att'y Gen. No. 20 (1949) (claim for rent of county attorney office improper when suitable office space available in county building).

In my opinion, it is not unlawful for the county attorney to conduct both private and county business from office space

provided by the county in the courthouse if the county attorney enters into a written agreement with the county commissioners leasing the use of the space for the county attorney's private law practice. The statutes governing the use of county buildings give the county commissioners the power to lease space in them for private use. 16 Op. Att'y Gen. No. 212 (1935); Mont. Code Ann. § 7-8-2231. If the commissioners and the county attorney enter into a contract in which the commissioners let the space for the use of the county attorney's private practice, the county attorney is not using public facilities for private business purposes, but rather is using space to which the county attorney, in the capacity of a private party, has a contract right for which valuable consideration has been furnished to the county. The adequacy of the consideration for the contract is a matter left to the discretion of the commissioners, subject to judicial review for abuse of that discretion.

As an alternative, it is clearly allowable for the commissioners to rent private office space for the county attorney if suitable office space is not available in the courthouse. Under the authorities cited earlier in this opinion, the commissioners have a duty to provide office space for the county attorney. See, e.g., Taylor, 128 Mont. at 111. If suitable space is not available in county buildings, the commissioners clearly can meet this obligation by paying for the rental of suitable office space from which the county attorney conducts both private and county business. 23 Op. Att'y Gen. No. 20 (1949) holds that the commissioners cannot approve payment of a claim for office space for the county attorney "when suitable quarters are available in the Court House," but is silent as to how the determination is to be made that "suitable quarters" are available. In my opinion that is a matter left to the discretion of the county commissioners, subject to review only for abuse of discretion. See Taylor, 128 Mont. at 111-12. Under such an arrangement, the county attorney can avoid a violation of Mont. Code Ann. § 2-2-121(2)(a) by leasing back a portion of the office space provided by the county for the conduct of the county attorney's private practice.

When the commissioners share the cost of office space for the county attorney, with both the county attorney and the county paying a portion of the cost, in my opinion the provisions of Mont. Code Ann. § 2-2-121(2)(a) do not come into play. Under this scenario, the county attorney pays a portion of the office rent for the privilege of conducting a private business there.

Under any of these scenarios, it is certainly advisable for the county attorney and the commissioners to enter into a written agreement setting forth the terms under which the county attorney makes use of office space provided by the county. While no statute requires the county and county attorney to reduce the details of their relationship to writing, a written contract is the best evidence that the use being made of office

space for private practice purposes is pursuant to contract and not a violation of Mont. Code Ann. § 2-2-121(2)(a).

2. **Office equipment and supplies.** Much of what is said above applies with respect to office equipment as well. The commissioners have a duty to provide necessary office equipment for the county attorney's use in conducting county business. Taylor, 128 Mont. at 111. They also have the power to lease county personalty for private use, provided the lease agreement is in writing. Mont. Code Ann. § 7-8-2112. For the reasons expressed above, in my opinion the commissioners can enter into written agreements with the county attorney under which the commissioners purchase office equipment for the county attorney's use and then lease a portion of the use of that equipment to the county attorney for the county attorney's private practice purposes. As an option, the commissioners have the power to satisfy their duty to provide equipment for the county attorney by agreeing to provide an allowance to the county attorney to defray part of the cost of necessary equipment, or by paying a claim submitted by the county attorney for equipment expenses reasonably incurred. Finally, the commissioners can lease for county business purposes the partial use of equipment owned by the county attorney's private practice.

In none of these instances is the county attorney making use of public property for private business purposes in violation of Mont. Code Ann. § 2-2-121(2)(a). In each case, the use made by the county attorney of the property for private purposes is pursuant to either the county attorney's ownership of the equipment or the contract right to use it.

The above discussion applies to durable goods such as furniture, photocopiers, data processing equipment and the like. With respect to consumable supplies such as paper, the county attorney and the county should enter into an agreement prorating the cost of any items which the county attorney does not provide out of the overhead of the private practice.

3. **Administrative support staff.** Perhaps the most difficult issues in the application of the 1995 amendments to Mont. Code Ann. § 2-2-121(2)(a) arise with respect to the shared use of support staff. In some counties, the county provides a full-time county employee to serve as secretary for the county attorney. This employee performs duties with respect to both county business and the county attorney's private practice. Such an arrangement seems to violate the express terms of Mont. Code Ann. § 2-2-121(2)(a) in that the secretary is performing work on private business while being compensated by the county. It also may violate Mont. Code Ann. § 7-5-2108, which requires full-time county employees to work a 40-hour week.

If a secretary does not in fact work a 40-hour week on county business, a better arrangement, and one which clearly does not

violate the statute, would be for the county to hire the secretary part-time, for a portion of the 40-hour week corresponding to a reasonable estimate of the division of the secretary's time between private and county business. The county should then enter into an agreement with the county attorney to reimburse the county attorney for the cost of any secretarial services provided by the secretary in excess of the amount for which the county is paying the secretary, and, conversely, for the county attorney to reimburse the county for the cost of any secretarial services when the secretary works less than that amount on county business. This arrangement is already in place in some counties in Montana, and appears to be working satisfactorily. By accounting for the secretary's time with respect to county and private practice business, the secretary avoids conflict with the requirement that county time not be used for private business purposes.

The county attorney can also avoid violating the statute by hiring a secretary and then presenting a claim to the county for that portion of the secretary's time each month spent on county business. The Montana Supreme Court held in Hyde that the costs of necessary administrative support services are a legitimate charge against the county. A properly documented claim for these charges must be paid by the commissioners.

I recognize that certain items of the secretary's time may not be accountable with precision. Time spent in general office management activities, described in an earlier opinion of this office as time spent "keeping the office open," 10 Op. Att'y Gen. 167 at 168, may be an appropriate charge against the county if the commissioners find that the time was reasonably necessary to the conduct of the county's business by the county attorney. The opinion cited suggests that time spent simply "keeping the office open" is not a legitimate charge against the county, but I am not inclined to agree with that position. First, county attorneys are obligated by statute to keep their offices open during office hours established by the commissioners. Mont. Code Ann. §§ 7-4-102, 7-4-2211. Moreover, the opinion cited above was issued at a time when attorneys frequently practiced without administrative support personnel, and at that time the expenditure of time to "keep the office open" may well have been found to be an extravagance. In today's law office environment, the assistance of secretarial personnel, at a minimum, to handle correspondence, answer telephones, and perform other general office management tasks is a necessity, particularly for a government office that must remain open to the public. I hold that reasonable charges therefor against the county must be paid. The cited opinion holds that the commissioners exercise sound discretion in determining whether such charges are reasonable, and that the reasonableness of the charges is a question of fact.

I recognize that it may be impossible, or at least impracticable, for a support staff employee to allocate certain

tasks as county work or private practice work. To address this problem, the county attorney and the county may agree in advance on an allocation of the cost of the time of the secretary between the county and the county attorney's private practice. Such an agreement, if reasonable, would avoid violation of Mont. Code Ann. § 2-2-121(2)(a).

Although not presented directly by your opinion request, the question could arise whether these agreements between the county commissioners and the part-time county attorney violate Mont. Code Ann. § 2-2-105(2), which provides in pertinent part:

> [A] public officer or public employee may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency.

In my opinion, this provision has no application where the official action in question is an agreement between the county and a part-time county attorney to allocate expenses for office space, office equipment, support staff, and other items required for the county attorney's law practice.

The part-time county attorney is specifically authorized to "acquire an interest" in a private practice by the statutes governing the practice of law by county attorneys. See, e.g., Mont. Code Ann. § 7-4-2704(2). Decisions made by the county governing body with respect to allowance of claims for expenses incurred by the part-time county attorney in the performance of official duties will always have the potential to have an effect on the county attorney's economic interests with respect to the private practice, since any expenses not allowed by the county will, in the ordinary course of things, be borne by revenues produced by the private practice. In practical effect, it would be unlikely that a part-time county attorney could engage in private practice without having reason to believe that at some point the county would have to take official action on a matter affecting the county attorney's financial interests.

The purpose of the agreement between the part-time county attorney and the county is not, however, to confer an economic benefit on the county attorney. To the contrary, the agreement should serve to ensure that the county pays only for those expenses that are reasonably required by the county attorney for performance of the official duties of the office, and that the county attorney's private practice pays its own way without subsidy from the taxpayers. Viewed in this light, in my opinion the county does not take an action for the economic benefit of the county attorney when it reaches such an agreement, provided the agreement reasonably allocates costs between the county and the county attorney. Such an agreement does not violate Mont. Code Ann. § 2-2-105(2).

Because of the proliferation of different arrangements between part-time county attorneys and the counties they serve, it is not possible in this opinion to address every issue presented by the 1995 amendments to Mont. Code Ann. § 2-2-121(2)(a). However, from the foregoing it is clear that in order to avoid conflict with the statute, the arrangement between the county attorney and the county must be documented in writing. Any allowance by the county of use of county property not otherwise available for use by the public, whether office space or equipment, for private practice purposes should be documented by an appropriate lease agreement between the county and the county attorney's private practice. Any arrangement for the shared use of support staff between county business and the county attorney's private practice should likewise be documented in such a way as to demonstrate that the county attorney is defraying the cost of any time spent on private practice matters.

Clearly, the 1995 amendments to the ethics laws did not address the effects that these changes would have on the established practices of part-time county attorneys. In every case, the arrangements between the part-time county attorneys and the counties have been established with the blessings of the elected county commissioners, and the arrangements have existed for decades without any hint that they involve unethical conduct by part-time county attorneys. The 1997 legislative session may wish to consider amendments to the ethics law to clarify this area. I conclude, however, that so long as the arrangements are approved by the governing body in writing as outlined above, a part-time county attorney may avoid violating the provisions of Mont. Code Ann. § 2-2-121(2)(a), as amended by chapter 562.

THEREFORE, IT IS MY OPINION:

1. The county governing body may satisfy its obligation to provide office space for a part-time county attorney by providing space in a county building, or if no suitable space is available by renting office space, provided that use of the space for the county attorney's private practice occurs only through an agreement between the county and the county attorney leasing the use of the space for the county attorney's private business purposes.

2. In the alternative, the governing body can allow a claim by the county attorney for the rental of office space needed to conduct the county's business, provided suitable office space is not available in county buildings.

3. The county governing body may satisfy its obligation to provide necessary equipment for a part-time county attorney by providing the use of equipment owned by the county, or if no suitable equipment is available

by renting equipment, provided that use of the equipment for the county attorney's private practice occurs only through an agreement between the county and the county attorney leasing the use of the equipment for the county attorney's private business purposes.

4. A secretary employed by the county to assist the county attorney may work on the county attorney's private business during time when the secretary's services are not needed on county business, provided the county attorney accounts for the time of the secretary spent on private business and reimburses the county for any county-compensated time spent on the county attorney's private business.

5. A claim by a county attorney for secretarial services reasonably required for the conduct of the county attorney's official duties is a legitimate claim against the county. The reasonableness of the claim is a question of fact vested in the sound discretion of the county governing body.

6. A part-time county attorney may conduct private practice using office space, equipment, or support staff provided by the county without violating Mont. Code Ann. § 2-2-121(2)(a) if the county governing body has agreed in writing to the arrangement in compliance with applicable statutes and common law rules governing the county governing body's authority over county property.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/cdt/brf

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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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in November, 1995, appear. Vacancies scheduled to appear from January 1, 1996, through March 31, 1996, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of December 8, 1995.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER, 1995

Appointee	Appointed by	Succeeds	Appointment/End Date
AIDS Advisory Council (Public Health and Human Services)			
Ms. Alison James Clancy	Governor	Miller	11/8/1995 8/18/1996
Qualifications (if required): being a student representative			
Aging Advisory Council (Governor)			
Mr. Irvin Hutchison Chester	Governor	Bardanouve	11/30/1995 7/18/1998
Qualifications (if required): representing Region III			
Appellate Defenders Commission (Administration)			
Ms. Beverly Kolar Geyser	Governor	Holden	11/27/1995 1/1/1998
Qualifications (if required): public member			
Board of Clinical Laboratory Science Practitioners (Commerce)			
Dr. J. David Walker Kalispell	Governor	Rizza	11/6/1995 4/16/1997
Qualifications (if required): being a physician qualified to direct a high complexity laboratory			
Board of Radiologic Technologists (Commerce)			
Dr. Daniel Alzheimer Helena	Governor	Becker	11/6/1995 7/1/1998
Qualifications (if required): being a physician who employees a radiologic technologist			
Mr. Jim Winter Great Falls	Governor	reappointed	11/6/1995 7/1/1998
Qualifications (if required): being a radiologic technologist			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER, 1995

Appointee	Appointed by	Succeeds	Appointment/End Date
Concealed Weapon Advisory Council (Justice)			
Ms. Kim Christopher Polson Qualifications (if required): law enforcement official	Governor	new appointment	11/13/1995 11/13/1997
Rep. Bob Clark Ryegate Qualifications (if required): law enforcement official	Governor	new appointment	11/13/1995 11/13/1997
Chief Robert Jones Great Falls Qualifications (if required): law enforcement official	Governor	new appointment	11/13/1995 11/13/1997
Rep. Rick Jore Ronan Qualifications (if required): legislator	Governor	new appointment	11/13/1995 11/13/1997
Mr. Gary Marbut Missoula Qualifications (if required): gun owner	Governor	new appointment	11/13/1995 11/13/1997
Sheriff Bill Slaughter Bozeman Qualifications (if required): law enforcement official	Governor	new appointment	11/13/1995 11/13/1997
Ms. Judy Wooley Plains Qualifications (if required): gun owner	Governor	new appointment	11/13/1995 11/13/1997

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER, 1995

Appointee	Appointed by	Succeeds	Appointment/End Date
Family Services Advisory Council (Public Health and Human Services)			
Rep. Betty Lou Kasten Brockway	Governor	Cobb	11/2/1995 12/31/1996
Qualifications (if required): being a legislator			
Family Support Services Advisory Council (Public Health and Human Services)			
Ms. Gwen Beyer Polson	Governor	not listed	11/6/1995 9/9/1996
Qualifications (if required): being a parent representative			
Ms. Millie Kindle Malta	Governor	not listed	11/6/1995 9/9/1996
Qualifications (if required): being a parent representative			
Mr. Phil Mattheis Florence	Governor	not listed	11/6/1995 9/9/1996
Qualifications (if required): being a medical/health care representative			
Ms. Georgia Rutherford Browning	Governor	not listed	11/6/1995 9/9/1996
Qualifications (if required): being a parent representative			
Interagency Coordinating Council for State Prevention Program (Public Health and Human Services)			
Ms. Marilyn Chakos Billings	Governor	reappointed	11/2/1995 7/1/1997
Qualifications (if required): being involved in a prevention program			
Ms. Robin Morris Havre	Governor	reappointed	11/2/1995 7/1/1997
Qualifications (if required): being involved in a prevention program			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER, 1995

Appointee	Appointed by	Succeeds	Appointment/End Date
Youth Justice Advisory Council (Justice)			
Ms. Majel Dominguez Harlem	Governor	Aragon	11/8/1995 6/16/1997
Qualifications (if required): public member			

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1996 through March 31, 1996

Board/current position holder	Appointed by	Term end
Appellate Defender Commission (Administration)		
Mr. Daniel Donovan, Great Falls Qualifications (if required): public defender	Governor	1/1/1996
Ms. Randi Hood, Helena Qualifications (if required): public defender	Governor	1/1/1996
Mr. Michael J. Reardon, Victor Qualifications (if required): public defender	Governor	1/1/1996
Board of Architects (Commerce)		
Mr. Keith Eugene Rupert, Billings Qualifications (if required): architect	Governor	3/27/1996
Board of Chiropractors (Commerce)		
Dr. Christopher Buzan, Missoula Qualifications (if required): chiropractor	Governor	1/1/1996
Board of Dentistry (Commerce)		
Dr. Scott D. Erler, Missoula Qualifications (if required): dentist	Governor	3/29/1996
Board of Horse Racing (Commerce)		
Dr. Sheldon John "Skip" Score, Helena Qualifications (if required): resides in the fourth district	Governor	1/20/1996
Board of Passenger Tramway Safety (Commerce)		
Mr. Bill Flechsenhar, Cascade Qualifications (if required): skiing member of the public	Governor	1/1/1996
Mrs. Helen Nelson, Kalispell Qualifications (if required): represents skiing public	Governor	1/1/1996

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1996 through March 31, 1996

Board/current position holder	Appointed by	Term end
Board of Passenger Tramway Safety (Commerce)		
Mr. Kevin Taylor, Marysville	Governor	1/1/1996
Qualifications (if required): ski area operator		
Board of Public Education (Education)		
Mr. Storrs Bishop, Ennis	Governor	2/1/1996
Qualifications (if required): represents southwest quadrant of the state		
Board of Regents of Higher Education (Education)		
Mr. Cordell Johnson, Helena	Governor	2/1/1996
Qualifications (if required): Republican from Western Congressional District		
Board of Respiratory Care Practitioners (Commerce)		
Dr. Richard Dyer Blevins, Great Falls	Governor	1/1/1996
Qualifications (if required): doctor member		
Capitol Finance Advisory Council (Administration)		
Mr. Marvin Dye, Helena	Governor	3/30/1996
Qualifications (if required): Director of the Department of Transportation		
Sen. Delwyn Gage, Cut Bank	Governor	3/30/1996
Qualifications (if required): represents legislature		
Mr. Leo Giacometto, Helena	Governor	3/30/1996
Qualifications (if required): Director of the Department of Agriculture		
Mr. Jim Kaze, Havre	Governor	3/30/1996
Qualifications (if required): represents Board of Regents		
Mr. David Lewis, Helena	Governor	3/30/1996
Qualifications (if required): Director of the Office of Budget and Program Planning		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1996 through March 31, 1996

Board/current position holder	Appointed by	Term end
Capitol Finance Advisory Council (Administration) cont.		
Dr. Amos R. Little, Jr., Helena	Governor	3/30/1996
Qualifications (if required): represents Montana Health Facilities Authority		
Ms. Lois A. Menzies, Helena	Governor	3/30/1996
Qualifications (if required): Director of the Department of Administration		
Mr. Jon Noel, Helena	Governor	3/30/1996
Qualifications (if required): Director of the Department of Commerce		
Rep. Ray Peck, Havre	Governor	3/30/1996
Qualifications (if required): legislator		
Mr. Mark A. Simonich, Helena	Governor	3/30/1996
Qualifications (if required): Director of the Department of Natural Resources and Conservation		
Mr. Bob Thomas, Stevensville	Governor	3/30/1996
Qualifications (if required): represents Board of Housing		
Mr. Warren Vaughan, Billings	Governor	3/30/1996
Qualifications (if required): represents Board of Investments		
Developmental Disabilities Planning and Advisory Council (Social and Rehabilitation Services)		
Ms. Kris Bakula, Helena	Governor	1/1/1996
Qualifications (if required): Director of the Montana Advocacy Program		
Dr. Frank Clark, Missoula	Governor	1/1/1996
Qualifications (if required): representative of social work		
Sen. Ethel Harding, Polson	Governor	1/1/1996
Qualifications (if required): Senator		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1996 through March 31, 1996

Board/current position holder	Appointed by	Term end
Developmental Disabilities Planning and Advisory Council (Social and Rehabilitation Services) cont.		
Mr. J. Cort Harrington, Jr., Helena Qualifications (if required): attorney representative	Governor	1/1/1996
Dr. Allen Hartman, Billings Qualifications (if required): physician representative	Governor	1/1/1996
Rep. Betty Lou Kasten, Brockway Qualifications (if required): Representative	Governor	1/1/1996
Ms. Lavonne "Vonnie" Koenig, Kalispell Qualifications (if required): consumer representative	Governor	1/1/1996
Mr. Harold Lorenz, Sidney Qualifications (if required): consumer	Governor	1/1/1996
Mr. Wallace Melcher, Helena Qualifications (if required): consumer	Governor	1/1/1996
Ms. Darcy Miller, Helena Qualifications (if required): special education representative	Governor	1/1/1996
Ms. Judy Rolfe, Helena Qualifications (if required): consumer	Governor	1/1/1996
Mr. Robert Tallon, Bozeman Qualifications (if required): service provider representative	Governor	1/1/1996
Dr. Timm Vogelsberg, Missoula Qualifications (if required): represents university program	Governor	1/1/1996

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1996 through March 31, 1996

Board/current position holder	Appointed by	Term end
Human Rights Advisory Council (Governor)		
Ms. Jean Bearcrane, Browning	Governor	1/12/1996
Qualifications (if required): represents ethnic and business groups		
Reverend Phillip Caldwell, Great Falls	Governor	1/12/1996
Qualifications (if required): represents ethnic and religious groups		
Mr. Gary Conti, Bozeman	Governor	1/12/1996
Qualifications (if required): represents education groups		
Ms. Angelina Vallejo Cormier, Billings	Governor	1/12/1996
Qualifications (if required): represents ethnic and business groups		
Ms. Bonnie Craig, Missoula	Governor	1/12/1996
Qualifications (if required): represents ethnic groups and education groups		
Ms. Kathleen Fleury, Helena	Governor	1/12/1996
Qualifications (if required): represents elected officials		
Mr. Bob Fourstar, Poplar	Governor	1/12/1996
Qualifications (if required): represents ethnic groups		
Reverend Bob Freeman, Billings	Governor	1/12/1996
Qualifications (if required): represents ethnic and religious groups		
Dr. Frederick Gilliard, Great Falls	Governor	1/12/1996
Qualifications (if required): represents education groups		
Mr. Bill Jones, Great Falls	Governor	1/12/1996
Qualifications (if required): represents human rights groups		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1996 through March 31, 1996

Board/current position holder	Appointed by	Term end
Human Rights Advisory Council (Governor) (cont.)		
Ms. Kay Maloney, Great Falls	Governor	1/12/1996
Qualifications (if required): represents human rights groups		
Ms. Christina Medina, Helena	Governor	1/12/1996
Qualifications (if required): represents ethnic and human rights groups		
Mr. Harold Monteau, Great Falls	Governor	1/12/1996
Qualifications (if required): represents ethnic and human rights groups		
Ms. Gretchen Naomi Rohr, Billings	Governor	1/12/1996
Qualifications (if required): represents ethnic and youth groups		
Ms. Donna Ruff, Fairview	Governor	1/12/1996
Qualifications (if required): represents labor and ethnic groups		
Rep. Angela Russell, Lodge Grass	Governor	1/12/1996
Qualifications (if required): represents ethnic groups and elected officials		
Mr. Brian Schnitzer, Billings	Governor	1/12/1996
Qualifications (if required): represents religious and business groups		
Ms. Michelle Wilkerson, Great Falls	Governor	1/12/1996
Qualifications (if required): represents religious and business groups		
Judicial Nomination Commission (Justice)		
Mr. Jim Mockler, Helena	Governor	1/1/1996
Qualifications (if required): lay member		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1996 through March 31, 1996

Board/current position holder	Appointed by	Term end
Montana Consensus Council (Governor)		
Mr. Larry Anderson, Chester Qualifications (if required): none specified	Governor	1/22/1996
Mr. Tad Dale, Basin Qualifications (if required): none specified	Governor	1/22/1996
Ms. Janet Ellis, Helena Qualifications (if required): none specified	Governor	1/22/1996
Ms. Molly M. Hobgood, Whitefish Qualifications (if required): none specified	Governor	1/22/1996
Mr. Ted Kober, Billings Qualifications (if required): none specified	Governor	1/22/1996
Ms. Lisa Lewis Pearce, Roundup Qualifications (if required): none specified	Governor	1/22/1996
Governor Marc Racicot, Helena Qualifications (if required): none specified	Governor	1/22/1996
Lt. Governor Dennis Rehberg, Helena Qualifications (if required): none specified	Governor	1/22/1996
Mr. James R. Scott, Billings Qualifications (if required): none specified	Governor	1/22/1996
Mr. Caleb Shields, Poplar Qualifications (if required): none specified	Governor	1/22/1996
Mr. Donald Snow, Missoula Qualifications (if required): none specified	Governor	1/22/1996

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1996 through March 31, 1996

Board/current position holder	Appointed by	Term end
Montana Consensus Council (Governor) cont.		
Dr. Lawrence Susskind, Cambridge Qualifications (if required): none specified	Governor	1/22/1996
Ms. Monica Switzer, Richey Qualifications (if required): none specified	Governor	1/22/1996
Mr. Mike Zimmerman, Butte Qualifications (if required): none specified	Governor	1/22/1996
Montana Health Facility Authority Board (Commerce)		
Mr. Sidney K. Brubaker, Terry Qualifications (if required): public member	Governor	1/1/1996
Ms. Dalyce K. Flynn, Townsend Qualifications (if required): public member	Governor	1/1/1996
Mr. Greg Hanson, Missoula Qualifications (if required): attorney	Governor	1/1/1996
Multistate Tax Commission Advisory Council (Revenue)		
Ms. Lynn Chenoweth, Helena Qualifications (if required): none specified	Director	3/1/1996
Ms. Judy Paynter, Helena Qualifications (if required): none specified	Director	3/1/1996
Mr. Neil Peterson, Helena Qualifications (if required): none specified	Director	3/1/1996
Mr. David W. Woodgerd, Helena Qualifications (if required): none specified	Director	3/1/1996

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1996 through March 31, 1996

Board/current position holder	Appointed by	Term end
Petroleum Tank Release Compensation Board (Health and Environmental Sciences) Mr. Bob Robinson, Helena Qualifications (if required): Director of Department of Health and Environmental Sciences	Governor	3/12/1996
State Lands Advisory Council (State Lands) Sen. Chet Blaylock, Laurel Qualifications (if required): public member	Governor	3/1/1996
Dr. Charles E. Buehler, Butte Qualifications (if required): public member	Governor	3/1/1996
Sen. William Crismore, Libby Qualifications (if required): public member	Governor	3/1/1996
Ms. Kelly Flaherty, Canyon Creek Qualifications (if required): public member	Governor	3/1/1996
Mr. Kenneth Greslin, Broadus Qualifications (if required): public member	Governor	3/1/1996
Mr. Rick Hartz, Dillon Qualifications (if required): public member	Governor	3/1/1996
Ms. Lois Hill, Geyser Qualifications (if required): public member	Governor	3/1/1996
Ms. Dorothy Laird, Whitefish Qualifications (if required): public member	Governor	3/1/1996
Ms. Marilynn Laughery, Lewistown Qualifications (if required): public member	Governor	3/1/1996

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1996 through March 31, 1996

Board/current position holder	Appointed by	Term end
State Lands Advisory Council (State Lands) cont.		
Mr. Thomas Loftsgaard, Peerless Qualifications (if required): public member	Governor	3/1/1996
Dr. Susan Mast, Bozeman Qualifications (if required): public member	Governor	3/1/1996
Sen. Ken Mesaros, Cascade Qualifications (if required): public member	Governor	3/1/1996
Mr. Richard L. Miller, Missoula Qualifications (if required): public member	Governor	3/1/1996
Mr. Dave Moore, Big Timber Qualifications (if required): public member	Governor	3/1/1996
Mr. Mark Rasmussen, Hogeland Qualifications (if required): public member	Governor	3/1/1996
Whirling Disease Task Force (Fish, Wildlife and Parks)		
Mr. Roger Nelson, Livingston Qualifications (if required): public member	Governor	1/1/1996