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# MONTANA ADMINISTRATIVE REGISTER

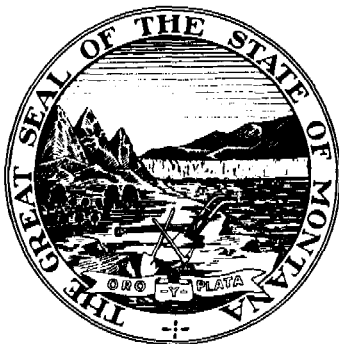
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## MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

### TABLE OF CONTENTS

#### NOTICE SECTION

##### ADMINISTRATION, Department of, Title 2

2-55-24 (State Compensation Insurance Fund) Notice of Public Hearing on Proposed Amendment - Premium Rates. 2627-2634

##### COMMERCE, Department of, Title 8

8-28-45 (Board of Medical Examiners) Notice of Proposed Adoption - Physicians - Inactive License. No Public Hearing Contemplated. 2635-2637

8-32-41 (Board of Nursing) Notice of Public Hearing on Proposed Amendment, Repeal and Adoption - Conduct of Nurses - Survey and Approval of Schools - Annual Report - Definitions - Registered Nurse's Responsibility to the Nursing Process - Standards for Schools of Nursing - Standards for IV Therapy - Charge Nurse for Licensed Practical Nurses. 2638-2653

8-36-25 (Board of Optometry) Notice of Public Hearing on Proposed Amendment, Repeal and Adoption - General Practice Requirements - Unprofessional Conduct - Fees - Disciplinary Actions - Continuing Education - Practice of Optometry. 2654-2655

8-50-23 (Board of Private Security Patrol Officers and Investigators) Notice of Public Hearing on Proposed Amendment, Repeal and Adoption - Private Security Patrol Officers and Investigators. 2656-2664

Page Number

COMMERCE, Continued

8-57-8 (Board of Real Estate Appraisers) Notice of Proposed Amendment, Adoption and Repeal - Real Estate Appraisers. No Public Hearing Contemplated. 2665-2678

8-64-21 (Board of Veterinary Medicine) Notice of Proposed Amendment - Fees - Examination for Licensure. No Public Hearing Contemplated. 2679-2681

8-70-13 (Building Codes Bureau) Notice of Public Hearing on Proposed Amendment and Adoption - Uniform and Model Codes - Plumbing and Electrical Requirements - Recreational Vehicles - Boiler Safety - Swimming Pools. 2682-2688

EDUCATION, Title 10

10-2-97 (Superintendent of Public Instruction) Notice of Public Hearing on Proposed Repeal, Amendment, and Adoption - School Transportation. 2689-2710

ENVIRONMENTAL QUALITY, Department of, Title 17

17-035 (Waste Management) Notice of Public Hearing on Proposed Amendment and Adoption - Federal Regulations for the Hazardous Waste Program. 2711-2717

LIVESTOCK, Department of, Title 32

32-3-135 (Board of Milk Control) Notice of Proposed Amendment - Quota Rules. No Public Hearing Contemplated. 2718-2721

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-43 Notice of Proposed Amendment - Minimum Standards for a Hospital -- General Requirements. No Public Hearing Contemplated. 2722-2723

37-44 Notice of Public Hearing on Proposed Amendment - General Medicaid Provider Requirements. 2724-2749

37-45 Notice of Public Hearing on Proposed Amendment - Medically Needy Assistance Standards. 2750-2751

37-46 Notice of Public Hearing on Proposed Amendment - Inpatient and Outpatient Hospital Services. 2752-2754

Page Number

PUBLIC HEALTH AND HUMAN SERVICES, Continued

37-47 Notice of Public Hearing on Proposed Adoption, Amendment and Repeal - Targeted Case Management. 2755-2776

PUBLIC SERVICE REGULATION, Department of, Title 38

38-2-131 Notice of Proposed Adoption, Amendment, Repeal, and Amendment and Transfer - Electric Safety Codes - Electric Service Standards - Pipeline Safety (Including Drug and Alcohol Testing). No Public Hearing Contemplated. 2777-2782

REVENUE, Department of, Title 42

42-2-603 Notice of Public Hearing on Proposed Amendment, Repeal and Adoption - Reappraisal Plan Property Rules. 2783-2792

42-2-604 Notice of Public Hearing on Proposed Amendment - Industrial Property Rules. 2793-2802

42-2-605 Notice of Proposed Amendment - Class 5 Classification of Property Tax Rules. No Public Hearing Contemplated. 2803-2804

42-2-606 Notice of Public Hearing on Proposed Amendment - Personal Property Rules. 2805-2828

42-2-607 Notice of Proposed Amendment - Computation of Residential Property Tax Credit. No Public Hearing Contemplated. 2829-2831

SECRETARY OF STATE, Title 44

44-2-91 Notice of Public Hearing on Proposed Amendment and Repeal - Surveys of Polling Places - Examination of Voting Devices. 2832-2837

44-2-92 Notice of Public Hearing on Proposed Repeal and Amendment - Uniform Commercial Code Rules. 2838-2839

44-2-93 Notice of Public Hearing on Proposed Adoption - Electronic Storage of Local Government Records. 2840-2841



RULE SECTION

AGRICULTURE, Department of, Title 4

REP Grain Fee Schedule of Lab Hours, Travel  
NEW Time and Fees. 2842

STATE AUDITOR, Title 6

AMD (Classification Review Committee) Updating  
References to the NCCI Basic Manual for  
Workers Compensation and Employers Liability  
Insurance, 1996 ed. 2843

COMMERCE, Department of, Title 8

AMD (Board of Chiropractors) Rules Pertaining  
REP to Chiropractors.  
NEW 2844-2847

The notice originally intended for this page  
has been removed from this publication at the  
request of the agency. 2848

AMD (Montana Lottery) Organizational Rule -  
REP Instant Tickets and Prizes.  
NEW 2849

AMD (Montana Lottery) Retailer Commission - Sales  
Staff Incentive Plan. 2850

ENVIRONMENTAL QUALITY, Department of, Title 17

AMD (Waste Management) Bringing Current Rules in  
Line with EPA Regulations in Order to  
Maintain Federal Authorization of the State  
Hazardous Waste Program. 2851

TRANS (Reclamation) Transfer from Department of  
State Lands - Reclamation. 2852-2862

TRANS (Energy) Transfer from Department of Natural  
Resources and Conservation - Major Facility  
Siting - Renewable Energy Grant and Loan  
Program. 2863-2870

LABOR AND INDUSTRY, Department of, Title 24

NEW (Human Rights Commission) Proof of  
REP Discrimination. 2871-2881

	<u>Page Number</u>
<u>LABOR AND INDUSTRY, Continued</u>	
AMD Minimum Hourly Wage Rate.	2882
<u>LIVESTOCK, Department of, Title 32</u>	
(Board of Milk Control) Emergency Amendment - Altering the Flexible Economic Formula for Producer Class I Milk.	2883-2885
<u>PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37</u>	
AMD Child Care Fee Scales. REP	2886
AMD Low Income Energy Assistance Program (LIEAP).	2887
<u>INTERPRETATION SECTION</u>	
Opinions of the Attorney General.	
24 Insurance - Applicability of Open Meeting Law to Montana Life and Health Insurance Guaranty Association Board of Directors - Open Meetings - Right to Know - State Agencies - Status of Montana Life and Health Insurance Guaranty Association.	2888-2894
<u>SPECIAL NOTICE AND TABLE SECTION</u>	
Functions of the Administrative Code Committee.	2895
How to Use ARM and MAR.	2896
Accumulative Table.	2897-2910
Boards and Councils Appointees.	2911-2920
Vacancies on Boards and Councils.	2921-2943

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

In the matter of the amendment )	NOTICE OF PUBLIC HEARING ON
of rules 2.55.321; 2.55.322; )	THE PROPOSED AMENDMENT OF
2.55.324; 2.55.325 and )	RULES 2.55.321; 2.55.322;
2.55.327 pertaining to premium )	2.55.324; 2.55.325; AND
rates )	2.55.327

TO: All Interested Persons:

1. On November 13, 1996, the State Compensation Insurance Fund will hold a public hearing at 2:00 p.m., in Room 201 of the State Compensation Insurance Fund Building, 5 South Last Chance Gulch, Helena, Montana, to consider the amendment of rules 2.55.321; 2.55.322; 2.55.324; 2.55.325; and 2.55.327.

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

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

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA; IMP: Sec. 39-71-2311, 39-71-2316 and 39-71-2330 MCA.

#### RATIONALE:

The proposed amendment achieves four distinct goals. First, each year's losses and payroll in the loss experience window are made comparable to one another with respect to factors such as inflation and benefit law changes. Second, the state fund experience rates are brought "on-level" with the current state fund manual rates. When the same adjustments are made to the advisory or rating organization rates in proposed amendments to Rule 2.55.322, all three components will then be comparable with respect to expenses and current state fund rate level. Third, the proposed amendment permits state fund rate level adjustments to respond to anticipated changes in payroll distributions within classifications. Fourth, the proposed amendment removes the construction credit program load from the current state fund manual rate and advisory or rating organization rate or substitute or comparison rate to derive a pure rate comparison.

2.55.322. CALCULATION OF CREDIBILITY WEIGHTED RATE (1) If the payroll, premium, and liabilities losses in a particular classification are not sufficient to provide a credible statistical basis for estimating an equitable distribution of costs, the state fund staff shall determine a credibility weighted rate for each classification. The credibility factors, approved by the board, may range from 0.01 0.0 through 1.00 and are based on graduated increments of expected liability. The expected liability is weighted selected payroll times the current manual rate times an expected loss rate recommended by the actuary and approved by the board. The experience rate times a credibility factor, plus the current manual the advisory or rating organization rate multiplied by the board approved overall rate level adjustment times one minus the advisory or rating organization factor plus the advisory or rating organization rate times the advisory or rating organization factor all times one minus the credibility factor yields the credibility weighted rate for a class code. For example: ER means experience rate; CF means credibility factor; MR means current state fund manual rate; RA means overall rate level adjustment; AF means advisory or rating organization factor; and AR means advisory or rating organization rate less construction credit program offsets and adjusted for state fund expenses and current state fund rate level or other rating source rate similarly adjusted. Credibility weighted rate equals  $((((MR \times RA) \times (1 - AF)) + (AR \times AF)) \times (1 - CF)) + (ER \times CF) + (AR \times (1 - CF))$ . The board will approve the advisory or rating organization factor. The state fund staff with approval of the board may substitute for an advisory or rating organization rate if another source of rates in use in Montana is more appropriate.

(2) State fund staff may, with approval of the board, apply a rate relativity stabilization factor ranging from 0.0 to

1.00. The stabilization factor shall be applied to each credibility weighted rate as follows:  $(CWR \times SF) + (MR \times (1 - SF))$  where: CWR is the credibility weighted rate; SF is the stabilization factor; and MR is the current manual rate excluding any construction credit program offsets. The result is a stabilized credibility weighted rate.

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

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

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA; IMP: Sec. 39-71-2311, 39-71-2316, and 39-71-2330 MCA.

#### RATIONALE:

The proposed amendments change the ratemaking formula and factors used in calculation of the credibility weighted rate for classifications. First, the proposed amendment sets credibility factors applied to classifications at the level indicated by generally accepted actuarial methods rather than applying the factors in rounded 0.1 increments. The proposed amendment more equitably assigns credibility based upon expected losses. Second, the proposed amendment to the ratemaking formula places the advisory or rating organization rate components "on-level" before calculation of the credibility weighted rate. Third, the proposed amendments change the order in which the components are combined. The result is a credibility weighted rate which is derived by combining the "on level" experience rate and "on level" rating or advisory organization rate. The credibility weighed rate and the current state fund manual rate are then combined. In order to mitigate significant rate movement the board may approve a stability factor to be applied to the credibility weighted rate and current state fund manual rate.

2.55.324 PREMIUM RATESETTING (1) The board shall approve an overall rate level adjustment. Except as provided in subsections (2) through (7), to establish a premium rate for a classification for the following fiscal year, state fund staff shall apply the overall rate level adjustment factor to each stabilized credibility weighted rate. State fund staff may apply an adjustment factor to the resulting rates to achieve the board-approved level. The adjustment factor shall be a multiplier which is equally applied to all

stabilized credibility weighted rates, prior to application of the limits in (4) (a).

(2) remains the same.

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

(3) (a) - (d) remain the same.

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

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

(5) remains the same.

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

(7) The board may approve for each class code a premium

rate which is a percentage of or more than the advisory or rating organization rate adjusted for state fund expenses and current state fund rate level or substitute rate similarly adjusted. The board may use these percentages based upon the credibility factor of each code, with all codes which have the same credibility factor treated alike. However, no rate generated by this percentage and applied to a class code shall be less than the state fund's experience-based rate for that class code and shall also be subject to the limitations in (4).

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA; IMP: Secs. 39-71-2211, 39-71-2311, 39-71-2316 and 39-71-2330 MCA.

#### RATIONALE:

Subsection (1) is amended to reflect changes in the ratemaking formula. The board establishes the overall rate level adjustment to the stabilized credibility weighted rate. Any deviation between the overall rate level adjustment target and the calculated stabilized credibility weighted rate must be adjusted across the board to reach the overall rate level adjustment established by the board.

The proposed amendments to subsection (3) are necessary to bring the rule in harmony with other rule changes which adjust the rating or advisory organization rate indications "on level" with current state fund manual rates. The amendment to subsection (3) achieves that objective in establishing new or changed classifications.

Subsection (4)(a) is amended to reflect changes in the ratemaking formula and procedures by removing the construction credit offset from current state fund manual rate before application of the limits provided in this rule.

Subsection (4)(b) is amended to provide flexibility of the board to adopt large loss limits based upon the hazard group designation of a classification. Certain industry classifications in higher level hazard groups may be expected to incur larger losses which may warrant differing large loss limitations.

Subsection (6) is amended to be consistent with the reordering of the credibility weighted rate process in Rule 2.55.322. The construction credit factor is applied after determination of the stabilized credibility weighted rate and after application of the limits provided in (4) (a).

Subsection (7) has been amended to conform to on-level adjustments made in other rule amendments.

#### 2.55.325 VARIABLE PRICING WITHIN A CLASSIFICATION

(1)-(4) remain the same.

(5) Notwithstanding ~~subsections~~ (1) through (4), the

state fund may at any time place an insured in a pricing category with a higher or lower premium rate based upon consideration of other relevant factors including, but not limited to:

(5) (a)-(h) remain the same.

(i) timeliness of the insured's history of submitting a first report of injury to the state fund.

(j) an employer's history and experience with any other insurer.

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA; IMP: Sec. 39-71-2311, 39-71-2316, 39-71-2330, and 39-71-2341 MCA.

#### RATIONALE:

The proposed amendment permits flexibility in placement of a policyholder in either a higher or lower rate category based upon considerations such as those contained in the current subsection. In addition, the proposed amendment allows the policyholder's history and experience with other insurer's to be considered in application of a higher or lower premium rate.

#### 2.55.327 CONSTRUCTION INDUSTRY PREMIUM CREDIT PROGRAM

(1)-(3) remain the same.

(4) (a) The following credit percentages, are to be applied to the manual premium of the insured's construction class codes during the survey period to determine the premium credit factor for the fiscal year beginning July 1, 1995:

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

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

<u>Average Hourly Wage</u>	<u>Credit Percentage</u>
<u>\$14.24 or less</u>	<u>0%</u>
<u>\$14.25 - \$14.74</u>	<u>8%</u>
<u>\$14.75 - \$15.24</u>	<u>10%</u>



\$15.25 - \$15.74	12%
\$15.75 - \$16.24	14%
\$16.25 - \$16.74	15%
\$16.75 - \$17.24	16%
\$17.25 - \$17.74	17%
\$17.75 - \$18.24	18%
\$18.25 - \$19.24	19%
\$19.25 - \$20.24	20%
\$20.25 - \$21.24	21%
\$21.25 and above	22%

(b) The following credit percentages in lieu of the table in (4)(a) will be used for the fiscal year beginning July 1, 1997.

<u>Average Hourly Wage</u>	<u>Credit Percentage</u>
<u>\$14.39 or less</u>	<u>0 %</u>
<u>\$14.40 - \$14.89</u>	<u>8 %</u>
<u>\$14.90 - \$15.39</u>	<u>10%</u>
<u>\$15.40 - \$15.89</u>	<u>12%</u>
<u>\$15.90 - \$16.39</u>	<u>14%</u>
<u>\$16.40 - \$16.89</u>	<u>15%</u>
<u>\$16.90 - \$17.39</u>	<u>16%</u>
<u>\$17.40 - \$17.89</u>	<u>17%</u>
<u>\$17.90 - \$18.39</u>	<u>18%</u>
<u>\$18.40 - \$19.39</u>	<u>19%</u>
<u>\$19.40 - \$20.39</u>	<u>20%</u>
<u>\$20.40 - \$21.39</u>	<u>21%</u>
<u>\$21.40 and above</u>	<u>22%</u>

(5) and (6) remain the same.

AUTH: Sec. 39-71-2315 and 39-71-2316 MCA; IMP: Sec. 39-71-2211, 39-71-2311, 39-71-2316, and 39-71-2330, MCA.

**RATIONALE:** Amendment is for deletion of old table except for current FY96 and FY97 tables - To amend current rules to delete table no longer in use. However, the tables in effect for the appropriate year will continue to be used for premium audit purposes.

Addition of new construction credit table - The table has remained the same as far as the credit percentage allowed, however the table has been amended to reflect the increase in the state's average weekly wage to \$384.00.

3. The State Fund's Premium Rate Setting Rule Amendments above are reasonably necessary to keep the processes, procedures, formulas and factors for rate setting as required by statute to be set forth in administrative rules, reflect changes in business operations, to implement recommendations of the state fund's actuary, and to maintain their functionality.

4. The State Compensation Insurance Fund makes reasonable accommodations for persons with disabilities who wish to participate in this public hearing. Persons needing accommodations must contact the State Fund, Attn: Ms. Rita Bird, P.O. Box 4759, Helena, MT 59604; telephone (406) 444-6480; TDD (406) 444-5971; fax (406) 444-6555, no later than 5:00 p.m., November 6, 1996, to advise as to the nature of the accommodation needed and to allow adequate time to make arrangements.

5. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to state fund attorney Nancy Butler, Legal Department, State Compensation Insurance Fund, 5 South Last Chance Gulch, P.O. Box 4759, Helena, Montana 59604-4759, and must be received no later than 5:00 p.m. November 21, 1996.

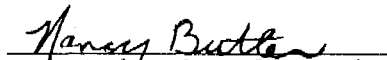
6. The State Fund Legal and Underwriting Departments have been designated to preside over and conduct the hearing.



Dal Smilie, Chief Legal Counsel  
Rule Reviewer



Rick Hill  
Chairman of the Board

  
Nancy Butler, General Counsel  
Rule Reviewer

Certified to the Secretary of State October 11, 1996.

BEFORE THE BOARD OF MEDICAL EXAMINERS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED ADOPTION  
adoption of a new rule pertain-) OF NEW RULE I INACTIVE  
ing to physicians ) LICENSE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 23, 1996, the Board of Medical Examiners proposes to adopt a new rule pertaining to inactive licenses.
2. The proposed new rule will read as follows:

"I INACTIVE LICENSE (1) If the board determines that an applicant or licensee possesses the qualifications for licensure required under Title 37, chapter 3, Montana Code Annotated, the board may instruct the department to issue licenses in the following categories:

- (a) active license;
- (b) inactive license; or
- (c) inactive-retired license.

(2) An active license is required for a physician actively practicing medicine in this state at any time during the renewal period.

(a) As used in this rule, "renewal period" means the time from April 1 of a given year through March 31 of the following year.

(b) The term "actively practicing medicine" means the exercise of any activity or process identified in 37-3-102(6), MCA.

(c) An active license must be renewed annually, as provided in 37-3-313, MCA.

(3) An inactive license may be obtained by a physician who is not actively practicing medicine in this state, and does not intend to actively practice medicine in this state at any time during the current renewal period, but may wish to reactivate in the future.

(a) An inactive license must be renewed annually by a date set by the department;

(b) To renew a license on inactive status, a physician must pay a fee prescribed by the board, and return a completed renewal form to the board office prior to April 1;

(c) If both the renewal fee and completed renewal form are not returned to the board office prior to April 1, the physician must pay a penalty fee prescribed by the board in order to renew the license.

(4) An inactive-retired license may be obtained by an applicant or licensed physician who is not actively practicing medicine in this state and does not intend ever to practice medicine in this state in the future.

(a) An inactive-retired license must be renewed annually by a date set by the department;

(b) To renew a license on inactive-retired status, a physician must pay a fee prescribed by the board, and return a completed renewal form to the board office prior to April 1.

(c) If both the renewal fee and completed renewal form are not returned to the board office prior to April 1, the physician must pay a penalty fee prescribed by the board in order to renew the license.

(5) If a physician holding an inactive or inactive-retired license fails to pay the prescribed renewal fee or fails to return the completed annual renewal form by April 1, the physician's license may be revoked by the board on 30 days' notice of the date, time and place the board will consider the revocation.

(a) A registered or certified letter sent to the last-known address of the physician, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke the inactive or inactive-retired license.

(b) If the physician pays the renewal fee and any required penalty fee and provides the completed annual renewal form before the date and time fixed for consideration of revocation, the license may not be revoked for nonpayment or failure to return the completed annual renewal form.

(6) The department may collect a renewal fee and any required penalty fee by an action at law."

Auth: Sec. 37-1-319, MCA; IMP, Section 37:1-319, MCA

**REASON:** Section 25, Chapter 429, L. 1995 repealed the specific language of the Medical Practice Act concerning inactive status, and replaced it with the generic language of 37-1-319(3), MCA (the Uniform Professional Licensing and Regulation Procedures Act), allowing each board to establish by rule both the status of inactive licensure, and the qualifications therefor. The proposed new rule will re-establish the status of inactive licensure for Montana-licensed physicians and the criteria for renewal.

3. Interested persons may submit their data, views or arguments concerning the proposed adoption in writing to the Board of Medical Examiners, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-9396, to be received no later than 5:00 p.m., November 21, 1996.

4. If a person who is directly affected by the proposed adoption wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Medical Examiners, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-9396, to be received no later than 5:00 p.m., November 21, 1996.


5. If the Board receives requests for a public hearing on the proposed adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the

proposed adoption, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 315 based on the approximately 3150 licensees in Montana.

BOARD OF MEDICAL EXAMINERS  
JAMES S. BONNET, JR., M.D.,  
PRESIDENT

BY: 

ANDY POOLE, DEPUTY DIRECTOR  
DEPARTMENT OF COMMERCE

  
CAROL GRELL, RULE REVIEWER

Certified to the Secretary of State, October 11, 1996.

BEFORE THE BOARD OF NURSING  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PUBLIC HEARING ON
amendment of rules pertaining )	PROPOSED AMENDMENT, REPEAL
to conduct of nurses, survey )	AND ADOPTION OF RULES PER-
and approval of schools, annual )	TAINING TO THE PRACTICE
report, definitions, registered )	OF NURSING
nurse's responsibility to )	
the nursing process, and the )	
repeal and adoption of rules )	
pertaining to standards for )	
schools of nursing and )	
standards for IV therapy and )	
charge nurse for licensed )	
practical nurses )	

TO: All Interested Persons:

1. On November 14, 1996, at 9:00 a.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, 111 North Jackson, Helena, Montana, to consider the proposed amendment, repeal and adoption rules pertaining to the practice of nursing, standards for schools of nursing and IV therapy, and charge nurses for licensed practical nurses.

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

"8.32.413 CONDUCT OF NURSES (1) through (2)(f) will remain the same.

(s) refusing to sign for or accept a certified mailing from the board officer;

(t) failing to participate and cooperate in a professional and occupational licensing bureau investigation."

Auth: Sec. 37-1-136, 37-1-319, 37-8-202, MCA; IMP, Sec. 37-1-136, 37-1-319, 37-8-202, MCA

**REASON:** This sub-section was inadvertently deleted in a prior rule notice. The Board proposes to reinstate the rule at this time.

"8.32.802 SURVEY AND APPROVAL OF SCHOOLS (1) will remain the same.

(2) To insure continuing compliance with the law and the board of nursing's minimum standards all approved professional nursing education programs will be surveyed and reevaluated for continued approval at least every four years ~~and all approved practical nursing education programs will be surveyed and reevaluated for continued approval at least every three years.~~

(3) will remain the same.

(4) Prior to a site visit a school will submit a self-evaluation narrative report to the board which provides evidence of compliance with the appropriate nursing education standards. The school will forward ~~12~~ six copies of the self-evaluation narrative report and six copies of the school

catalog to the board office by January 1 of the year in which a program visit is scheduled.

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

(d) Site visit reviewers ~~shall be appointed by the board,~~ and will include, but will not be limited to, the executive director of the board and an outside reviewer with expertise in relation to the type of program being reviewed.

(6) through (8) will remain the same.

(9) The procedure for conditional approval will be affected if the board determines the school does not meet all of the requirements of the law and nursing program standards. A conditionally approved school is one which fails to meet the requirements of 37-8-202, MCA, and ARM 8.32.801 through 8.32.807, and the Standards for Montana Schools of Professional Nursing or Practical Nursing. The procedure which follows will be used (in accordance with ARM 8.32.802) for placing a school on conditional approval or removing it from conditional approval:

(a) If a school does not meet the standards set for the school, the board may place that school on conditional approval.

(b) Conditional approval may be given for a specific time period. The board may require a special report and/or repeat the site visit during the period of conditional approval.

(c) The school will be notified of the conditional approval status and the time and manner in which it must correct the deficiencies.

(d) If the school does not correct the deficiencies, the board may require the school to stop admitting students until the deficiencies are corrected.

(e) For continued non-compliance of the standards, approval of the school will not be given and it will be removed from the approved school list.

(f) The school has the right to request a hearing in accordance with the Montana Administrative Procedure Act and Title 37, chapter 1, part 3, upon notification of lack of approval to admit students or removal of approval status.

(g) Once a school has corrected the deficiencies, it will be reinstated to full approval status.

(10) A program may be visited at any time within the usual ~~three~~ or four-year interval as deemed necessary by the board or at the request of the school.

(11) will remain the same."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-301, 37-8-302, MCA

**REASON:** This rule is being amended to reflect current board policy. The statute pertaining to school approval authorizes the Board to make conditional approval, yet provides no guidance to the affected school. This rule is designed to provide that guidance.

"8.32.806 ANNUAL REPORT (1) An annual report for the preceding academic year shall be submitted by October 1 of each year. ~~Twelve~~ Six copies will be submitted to the board office.

(2) through (2)(n) will remain the same.

- (o) ~~twelve~~ six current copies of the school catalog;
- (p) will remain the same."

Auth: Sec. 37-8-202, 37-8-301, MCA; IMP, Sec. 37-8-301, 37-8-302, MCA

**REASON:** This rule change is designed to relieve the amount of paperwork submitted to the board and more accurately reflects the number of copies needed to perform the board's functions.

**"8.32.1401 DEFINITIONS** As used in this sub-chapter, the following definitions apply:

- (1) through (7) will remain the same.

(8) "Strategy of care" - the goal-oriented plan developed to assist individuals or groups to achieve optimum health potential. This includes initiating and maintaining comfort measures, promoting and supporting human functions and responses, establishing an environment conducive to well being, providing health counseling and teaching, and collaborating on certain aspects of the medical regimen, including but not limited to the administration of medications and treatments."

Auth: Sec. 37-1-131, 37-8-202, MCA; IMP, Sec. 37-1-131, 37-8-202, MCA

**"8.32.1403 STANDARDS RELATED TO THE REGISTERED NURSE'S RESPONSIBILITY TO APPLY THE NURSING PROCESS** The registered nurse shall:

- (1) through (4) (a) (ii) will remain the same.

(iii) assigning and delegating care,

- (iv) through (d) will remain the same.

(5) evaluate the responses of individuals or groups to nursing interventions. Evaluation shall involve the client, family, significant others and health team members ~~of the health team~~.

- (a) through (c) will remain the same."

Auth: Sec. 37-1-131, 37-8-202, MCA; IMP, Sec. 37-1-131, 37-8-202, MCA

**REASON:** The reason for amending ARM 8.32.1401 and 8.32.1403 is to provide further guidance for registered nurses, aid in readability, and provide consistency in the language.

3. The Board is proposing to repeal ARM 8.32.805, 8.32.901 through 8.32.907, 8.32.909 through 8.32.911, 8.32.913 and 8.32.1001 through 8.32.1010, the text of which is located at pages 8-996 through 8-1012, Administrative Rules of Montana. The authority sections are 37-8-202, 37-8-301, 37-8-302, MCA, and the implementing sections are 37-8-202, 37-8-301, 37-8-302, MCA. The reason set forth after proposed new rule XVII states why the above rules are being proposed for repeal.

- 4. The proposed new rules will read as follows:

**"I. EFFECTIVE DATE OF [NEW RULES I THROUGH XVII]** (1) [New rules I through XVII] will be effective on July 1, 1997."

Auth: Sec. 37-8-202, MCA; IMP, Sec. 37-8-301, MCA



**REASON:** This rule is being proposed to allow the schools time to implement the new programs.

**"II STATEMENT OF PURPOSE** (1) These standards provide a basis for the state board of nursing to evaluate and approve nursing education programs and a format for nursing faculty and administrators to plan, implement and evaluate nursing education for the following professional and practical nursing programs:

- (a) professional baccalaureate degree education;
- (b) professional associate degree education; and
- (c) practical nursing education.

(2) The following rules must set forth general standards regarding all nursing education and specific standards regarding curricula for baccalaureate degree, associate degree and practical nurse educational programs, faculty qualifications and responsibilities, and administrative roles and functions.

(3) These rules represent minimal standards. The board shall interpret the standards to insure that minimum standards are met and to allow faculty flexibility to determine the scope, limits, and direction of the nursing education program. The board shall revise these standards periodically to meet the ever-changing health care needs of society and the continuing development of nursing education."

Auth: Sec. 37-8-202, 37-8-301, MCA; IMP, Sec. 37-8-301, MCA

**"III PHILOSOPHY, PURPOSE, ORGANIZATIONAL FRAMEWORK AND EDUCATIONAL OBJECTIVES** (1) The faculty of the nursing educational program shall develop and approve statements of philosophy, purpose, organizational framework and educational objectives that are consistent with those of the parent institution and with the laws governing the practice of nursing.

(2) The philosophy statement must include statements about nursing practice, nursing education and the graduate of the program.

(3) The statements of philosophy, purpose, organizational framework and educational objectives must be used to plan, implement and evaluate the total program.

(4) The philosophy statement must be included in the program catalog or otherwise made available to students. Students must participate in program policy development."

Auth: Sec. 37-8-202, 37-8-301, MCA; IMP, Sec. 37-8-301, MCA

**"IV CURRICULUM - GENERAL REQUIREMENTS FOR PROFESSIONAL NURSING EDUCATION: BACCALAUREATE AND ASSOCIATE DEGREE PROGRAMS**

(1) A curriculum is the content and learning experiences designed to facilitate student achievement of the educational objectives.

(2) The faculty shall develop, review, and update the curriculum on an ongoing basis. The curriculum for the professional nursing educational programs must meet the following general criteria:

(a) reflect the philosophy, organizational framework, purpose, and educational objectives of the nursing education program and be consistent with the laws governing the practice of professional nursing;

(b) contain content and learning experiences designed to facilitate student achievement of the educational objectives;

(c) contain learning experiences and instructional methods appropriate to fulfill curriculum objectives;

(d) reflect future nursing practice of the graduate;

(e) contain adequate nursing course work and clinical experiences to develop safe and effective nursing practice; and

(f) address present and future health care needs.

(3) The curriculum shall include concepts related to the promotion, maintenance and restoration of the health of clients across the lifespan. Board content areas and learning activities include, but are not limited to:

(a) healthy lifestyles and risk factors;

(b) health needs and alterations across the lifespan;

(c) acute and chronic health needs; and

(d) health needs related to social and environmental trends.

(4) The curriculum shall include non-nursing courses that provide knowledge in relevant physical sciences, social sciences and arts and humanities.

(a) Physical science course content shall include, but not be limited to:

(i) chemistry;

(ii) anatomy;

(iii) physiology;

(iv) microbiology;

(v) nutrition;

(vi) mathematics;

(vii) physics;

(viii) pharmacology; and

(ix) pathophysiology.

(b) Social sciences, and arts and humanities course content shall include, but not be limited to:

(i) human growth and development;

(ii) psychology;

(iii) sociology;

(iv) communications;

(v) ethics; and

(vi) economics.

(5) The length, organization and placement of courses must be consistent with the philosophy and objectives of the program. Course organization and sequencing shall assure that prerequisite concepts and understanding are used and further developed as the program progresses. Course instruction should focus on understanding and application of knowledge, and extend throughout the program.

(6) For each clinical credit hour, there shall be at least two hours of applied laboratory experience."

Auth: Sec. 37-8-202, 37-8-301, MCA; IMP, Sec. 37-8-301, MCA

"V CURRICULUM - SPECIFIC TO BACCALAUREATE DEGREE

(1) The baccalaureate degree nurse graduate shall be prepared to plan, deliver and coordinate care for clients including individuals, families and communities in a variety of structured and unstructured settings with an emphasis on care management, complex care situations and clients with unpredictable outcomes. The baccalaureate degree nurse functions as a change agent in the health care system and utilizes nursing research findings in the delivery of care. (Adapted from America Association of Colleges of Nursing Position Statement: Nursing Education's Agenda for the 21st Century)."

Auth: Sec. 37-8-202, 37-8-301, MCA; IMP, Sec. 37-8-301, MCA

"VI CURRICULUM - SPECIFIC TO ASSOCIATE DEGREE

(1) The role of the associate degree nurse graduate is to provide direct care to clients, individuals or groups, in a variety of structured settings with clear policies and procedures. Within this context, the curriculum must relate to the roles of the provider of the associate degree nurse as provider of care, manager of care, and member of the discipline of nursing. (Adapted from the National League for Nursing, Educational Outcomes of Associate Degree Nursing Programs: Roles and Competencies, 1990).

(a) As a provider of care, the associate degree nurse must demonstrate the following:

- (i) critical thinking;
- (ii) accountability;
- (iii) clinical decision-making through use of the nursing process;
- (iv) effective communication with clients, families, and health team members;
- (v) teaching and collaboration with the client and family;
- (vi) collaboration with members of the health care team;

and

(vii) sensitivity to individual and cultural diversity.

(b) As a manager of care, the associate degree nurse must demonstrate the following:

- (i) coordination of care for a group of clients using collaboration and consultation;
- (ii) organization and delegation of nursing care;
- (iii) information management;
- (iv) client advocacy; and
- (v) evaluation of health care delivery using client-centered outcomes.

(c) As a member of the discipline of nursing the associate degree nurse must demonstrate the following:

- (i) self-assessment and development and continuous learning;
- (ii) ethical-legal framework for nursing practice;
- (iii) advancement of nursing practice through professional activities;
- (iv) political, economic, and societal forces affecting nursing practice and health care delivery; and

(v) introductory knowledge of health care change and nursing research.

(2) Non-nursing courses must provide graduates with basic knowledge in the relevant physical sciences, social sciences, and arts and humanities."

Auth: Sec. 37-8-202, 37-8-301, MCA; IMP, Sec. 37-8-301, MCA

**"VII CURRICULUM REQUIREMENTS FOR PRACTICAL NURSING PROGRAMS** (1) The primary role of the practical nurse graduate is to provide nursing care for clients in structured health care settings who are experiencing common, well-defined health problems. In their roles as members of the discipline of nursing, practical nurses actively participate in and subscribe to the legal and ethical tenets of the discipline. The practical nurse functions under supervision as set forth in 37-8-102 MCA. (Adapted from National League for Nursing, Council of Practical Nursing Programs, 1989)

(2) The curriculum must include basic knowledge of:

- (a) nursing process;
- (b) client's physiological needs;
- (c) client's psychosocial needs; and
- (d) maintenance and promotion of health.

(3) The curriculum must provide for progressive development of knowledge, skills and professional conduct.

(4) The choice and placement of courses, selection of learning activities and the organization of these must provide continuity, sequence and integration in the total curriculum.

(5) Learning experiences must be based on written behavioral objectives which include demonstration of knowledge, comprehension and application.

(6) The program must include practical nursing theory and guided clinical practice based on the nursing process. It must include the content essential to current practice in practical nursing.

(7) The practical nurse student shall successfully complete coursework related to the role of charge nurse in the following areas to prepare the graduate practical nurse to serve as a charge nurse, upon meeting qualifications provided by ARM 8.32.1408:

- (a) leadership;
- (b) telephone orders;
- (c) transcribing orders;
- (d) documentation;
- (e) nursing process;
- (f) prioritization; and
- (g) organization.

(8) Content of the course work related to the role of charge nurse shall be developed in recognition of the role of charge nurse as supervisor of care provided as well as care needed, assessment of clients, notifying the professional nurse supervisor, notifying physicians, and the administration of medications and treatments.

(9) The practical nurse student shall successfully complete courses in the following areas to prepare the graduate practical nurse to administer intravenous therapy:

- (a) fluid and electrolytes;
- (b) intravenous solutions [of the following types]:
  - (i) isotonic;
  - (ii) hypotonic;
  - (iii) hypertonic.
- (c) infection control;
- (d) pharmacology;
- (e) technology and clinical application;
- (f) parenteral nutrition;
- (g) documentation;
- (h) nursing process in relation to IV therapy; and
- (i) institutional policies.
- (10) Content of the courses shall be developed in recognition of the role of the licensed practical nurse to perform intravenous therapy in accordance with the standards set forth at ARM 8.32.1409."

Auth: Sec. 37-8-202, 37-8-301, MCA; IMP, Sec. 37-8-301, MCA

"VIII PROGRAM EVALUATION (1) All nursing programs must have a formal evaluation plan developed by the faculty that is conducted on a regular basis and must include student participation.

(2) Evaluations must consider the following areas:

- (a) the philosophy, organizational framework, educational objectives and curriculum of the program;
- (b) policies governing recruitment, admissions, promotion, graduation and other matters affecting education, health and welfare of students;
- (c) factors contributing to faculty growth, welfare and effectiveness;
- (d) adequate clinical facilities for student practice in a variety of inpatient and community-based settings to include acute care, chronic care and primary health care settings;
- (e) adequate educational facilities including classrooms, skills labs and library/information resources; and
- (f) documentation of health policy requirements which must be accessible to the student.
- (3) The evaluation plan must include a recommendation based on evidence collected to make appropriate program revisions."

Auth: Sec. 37-8-202, 37-8-301, MCA; IMP, Sec. 37-8-301, MCA

"IX ORGANIZATION AND ADMINISTRATION OF THE NURSING EDUCATION PROGRAM (1) Parent institutions conducting a nursing program must be accredited by the appropriate accrediting bodies.

(2) All agencies with which the program maintains cooperative agreements for use as clinical laboratories must have licensure, approval or accreditation appropriate to each agency.

(a) Cooperative agreements must be current, in writing and signed by the responsible officers of each and must include the following:

(i) faculty responsibilities for teaching and clinical supervision of students, including responsibilities for planning and supervising learning experiences;

(ii) student responsibilities; and

(iii) expectations regarding the health status of students and faculty in a variety of settings.

(3) The organizational pattern of the nursing program must be comparable to similar programs of the parent institution. Organizational charts showing the administrative structure of the nursing program and its relationship to other units must be developed.

(4) Institutional policies governing the nursing program must be consistent with those policies governing other educational programs of the parent institution.

(5) Faculty and administration shall participate in governance of the parent institution and policy development, including but not limited to, matters related to appeals and grievances. Policies governing faculty employment, promotion and tenure must be in writing and consistent with those of the parent institution."

Auth: Sec. 37-8-202, 37-8-301, MCA; IMP, Sec. 37-8-301, MCA

"X. PROGRAM DIRECTOR (1) Baccalaureate and associate degree programs must be administered by a full-time program director who shall devote appropriate time to the task of administration and shall be responsible for preparation, presentation and administration of the budget of the nursing program. The directors of the professional programs shall possess the following licensure and experience qualifications:

(a) a current license to practice as a registered nurse in the state of Montana, and

(b) at least two years of experience in nursing practice and at least two years of experience in nursing education, including didactic and clinical teaching.

(2) The director of the baccalaureate program shall possess a master's degree with a major in nursing and a doctorate degree in nursing or a related field from approved programs, with preparation in education and administration.

(3) The director of the associate program shall possess a master's degree in nursing or public health with a major in nursing from an approved program, with preparation in education and administration.

(4) Practical nurse education programs must be administered by a full-time program director who shall devote a minimum of 50% time to administrative activities and shall possess the following qualifications:

(a) a current license to practice as a registered nurse in the state of Montana;

(b) a master's degree in nursing or a minimum of a baccalaureate degree in nursing from an approved program, supplemented by courses in curriculum development, principles and methods of teaching and measurement and evaluation; and

(c) at least two years of experience in nursing practice and at least two years of experience in nursing education, inclusive of teaching in didactic and clinical areas.

(5) All program directors shall have appropriate rank, position and authority to carry out the duties set forth above."

Auth: Sec. 37-8-202, 37-8-301, MCA; IMP, Sec. 37-8-301, MCA

"XI FACULTY (1) There must be a sufficient number of qualified faculty to meet the purposes and objectives of the nursing program.

(2) Faculty shall have primary responsibility for the development and conduct of the academic program(s).

(a) Faculty shall participate in program policy development.

(3) Faculty shall provide evidence of continuing professional development in areas of didactic and clinical responsibility.

(4) Faculty members who have responsibility for clinical teaching shall demonstrate clinical competence.

(5) Faculty member titles must be consistent with faculty functions and the same as or equivalent to titles of faculty of other units of the parent institution.

(6) Faculty members shall be responsible for:

(a) planning, implementing and evaluating learning experiences in the faculty member's area of assignment;

(b) participating in academic guidance of students;

(c) providing for student and peer evaluation of teaching effectiveness;

(d) evaluating student achievement in terms of curricular objectives;

(e) providing creative activities that contribute to positive changes in nursing, nursing education or health care;

(f) providing service to the parent institution, nursing program, profession and community; and

(7) Participating in the selection of new faculty and the promotion and tenure of other faculty.

(8) Faculty work loads are equitable and must allow time for classes and lab preparation, teaching, program revision, improvements of teaching methods, guidance of students, participation in faculty organization and committees, attendance at professional meetings and participation in continuing education activities.

(9) Written job specifications including responsibilities must be available for each position.

(10) Personnel policies must be in writing and must include selection, appointment, promotion, faculty development and welfare."

Auth: Sec. 37-8-202, 37-8-301, MCA; IMP, Sec. 37-8-301, MCA

"XII BACCALAUREATE AND ASSOCIATE FACULTY (1) All nursing faculty members, including part-time faculty, shall hold at least a master's degree with a major in nursing from an accredited program, or a doctorate in nursing; have preparation for teaching in their respective area of responsibility and shall be licensed as registered nurses in Montana.

(2) Faculty members hired without a master's degree will have three years from the date of hire to obtain a master's degree as set forth by the faculty qualifications in (1).

(a) The nursing director will immediately notify the board in writing of the hire of the non-master's prepared faculty member along with a plan for compliance with the requirements set forth at (1).

(b) Failure to comply with (3) constitutes non-compliance with board of nursing rules, and will subject the program to action deemed appropriate by the board, including loss of the program's approval.

(c) A maximum of 10% or two faculty members, whichever is greater based on FTE, may come under the exception at any point in time at a given school.

(3) As a general guideline for the baccalaureate and associate programs, there must be no more than 10 students per faculty member at a given time in a clinical setting. The number of students must be determined by the educational and clinical resources and faculty sufficient to meet the goals of the program and requirements of the board of nursing."

Auth: Sec. 37-8-202, 37-8-301, MCA; IMP, Sec. 37-8-301, MCA

**"XIII FACULTY - PRACTICAL NURSE PROGRAM** (1) All nursing faculty, including part-time, shall hold a master's degree in nursing or a minimum of a baccalaureate degree in nursing from an accredited program supplemented by courses in curriculum development, principles and methods of teaching, measurement and evaluation. Faculty members shall have at least two years experience in registered nursing practice within the last five years, and be currently licensed in the state of Montana.

(2) All non-nurse faculty shall have academic and professional education and experience in the field of their specialization.

(3) There must be a ratio of no more than ten students for each faculty person in the clinical area at any given time."

Auth: Sec. 37-8-202, 37-8-301, MCA; IMP, Sec. 37-8-301, MCA

**"XIV PRECEPTORS - BACCALAUREATE AND ASSOCIATE**

(1) Registered nurse preceptors may assist with course teaching provided that:

(a) faculty members are responsible for ensuring safe, accessible, and appropriate supervision based on client health status, care setting and student level of preparation;

(b) the use of preceptors is appropriate given the course objectives and the level of students in the course; and

(c) a nursing faculty member retains responsibility for lecture and laboratory portions of the course.

(2) Professional registered nurse preceptors may assist with "senior level" courses taken during the last quarters/semesters of the nursing education program."

Auth: Sec. 37-8-202, 37-8-301, MCA; IMP, Sec. 37-8-301, MCA



"XV PRECEPTORS - PRACTICAL NURSE PROGRAM (1) Licensed practical nurse preceptors who function under supervision as specified in 37-8-102(5)(a), MCA, may be utilized to assist with course teaching provided that a nursing faculty member retains responsibility of the course, and provided the use of preceptors is appropriate as defined in (2) below.

(2) The appropriate uses of preceptors is in "capstone" or summary courses taken during the last quarter/semester of the nursing education program. In these instances, faculty members are responsible for ensuring safe, accessible, and appropriate supervision based on client health status, care setting and student level of preparation."

Auth: Sec. 37-8-202, 37-8-301, MCA; IMP, Sec. 37-8-301, MCA

"XVI EDUCATIONAL FACILITIES (1) There must be safe and accessible physical facilities for students and faculty designed to meet the educational and clinical needs of the program including, but not limited to:

(a) classrooms, laboratories, offices and conference rooms of adequate size, number and type according to the number of students and purposes for which these areas are to be used;

(b) adequate supplies and equipment, including computer resources and audio visual aids;

(c) adequate and convenient access by students and faculty to library/information resources, including sufficient titles, periodicals, computer data bases and similar media resources.

(2) Institutional financial support for the program's library/information resources must be adequate to meet the program's purposes and educational objectives. Faculty and students shall provide input regarding purchases of informational resources.

(3) There must be adequate study area/space conducive to scholarly work for faculty and students.

(4) Clinical resources must be adequate to provide the learning experiences identified in the educational objectives of the program. Learning experiences in clinical settings must be under the control and supervision of the faculty.

(5) The director, with input from faculty, shall determine appropriate student faculty ratios in the clinical setting to provide safe, accessible and appropriate supervision based on client health status, care setting and student level of preparation."

Auth: Sec. 37-8-202, 37-8-301, MCA; IMP, Sec. 37-8-301, MCA

"XVII STUDENTS (1) A program must admit students without discrimination as to age, religion, national origin, marital status, race, gender, sexual preference or life style.

(2) Students must be graduates of accredited senior high schools or their equivalent as determined by the office of public instruction. The program must have on file a copy of the student's high school or equivalent transcript.

(3) Consistent with policies of the parent institution, a nursing education program must provide students with written policies regarding student rights and responsibilities, admission, readmission, refund of tuition, progression, dismissal and graduation requirements. Other policies specific to nursing students may be adopted if justified by the nature and purposes of the nursing program.

(4) The program must further provide students:

(a) a written policy regarding personal health practices designed to protect students, clients and faculty members, and requiring student compliance therewith;

(b) information regarding the process of obtaining a license; and

(c) access to the institution/program catalog and the statements regarding the program's philosophy, purpose, organizational framework, and educational objectives.

(5) Programs must maintain current records of student achievement within the program and provide students with timely evaluations based on educational objectives.

(6) Faculty members or other qualified persons shall be available to provide timely academic advice to students."

Auth: Sec. 37-8-202, 37-8-301, MCA; IMP, Sec. 37-8-301, MCA

REASON: Whereas the current rules governing nursing education program standards were last amended in 1988, the proposed new rules are necessary to reflect changes in nursing education that have occurred within the last five to seven years. The rules are further proposed to distinguish the three levels of nursing preparation as between the baccalaureate, the associate and the practical nurse graduates. The proposed rules further seek to remove redundancies in the old language and, consistent with House Joint Resolution No. 5, reduce and streamline the administrative rules of Montana.

"XVIII STANDARDS RELATING TO THE LICENSED PRACTICAL NURSE'S ROLE AS CHARGE NURSE

(1) The role of charge nurse for the practical nurse is appropriate only in the long-term care facility setting and only when a professional nurse is not available on the premises.

(a) The term "long-term care facility" as defined in 50-5-101(26)(a), MCA, refers to a facility that meets federal regulations for a waiver of the 24-hour professional nurse on-premises supervision requirement.

(2) The duties of the charge nurse in supervising clients and staff must be limited to a specific unit during specific work hours.

(3) Before acting as a charge nurse, the licensed practical nurse shall have completed work experience as a practical nurse for a period of at least one year, including not less than 2,080 hours."

Auth: Sec. 37-8-415, MCA IMP, Sec. 37-8-415, MCA

**REASON:** The proposed rule is necessary to address expectations in the practice of practical nurses that they act as charge nurses. Because of the extra degree of responsibility required to act as a charge nurse, and the public safety ramifications in carrying out that responsibility, the proposed rules in this regard set forth curricular, setting specific, and experience qualifications.

**"XIX STANDARDS RELATING TO THE LICENSED PRACTICAL NURSE'S ROLE IN INTRAVENOUS (IV) THERAPY** (1) "IV therapy" means the introduction of fluid solutions directly into the circulatory system through a venous line.

(2) "Intravenous fluids" means fluid solutions of electrolytes, nutrients, vitamins, drugs, blood and blood products.

(3) "Standard intravenous solution" means an isotonic or hypotonic solution with no additives.

(4) Any of the following IV therapy tasks may be performed by a practical nurse:

(a) initial venipuncture using a standard IV solution or intermittent infusion device;

(i) peripheral vessel only - no Peripherally Inserted Central Catheter (PICC) lines;

(ii) cannula or butterfly - no midline catheters.

(b) monitor the site;

(c) monitor and adjust flow rate;

(d) change dressing of peripheral site;

(e) hang additional standard solution;

(f) mix medication solution from a unit dose vial and add to IV solution or volutrol;

(g) hang medication solutions that are pre-mixed and properly labeled by a registered nurse or pharmacist;

(h) flush intermittent infusion devices with heparin or normal saline solution;

(i) initiate IV pumps;

(j) administer metered dose of medication by way of a PC pump;

(k) discontinue peripheral ivs except for picc;

(l) change standard solutions on continuous flow, pre-established central line system;

(m) monitor and report the client physiological and psychological response to IV therapy; or

(n) perform arteriovenous fistula needle insertion."

Auth: Sec. 37-8-415, MCA; IMP, Sec. 37-8-415, MCA

**REASON:** This rule is being proposed to address expectations in the practice of practical nurses that they perform intravenous (IV) therapy. In insuring that the practical nurse is qualified to perform IV therapy, and in the interest of public safety, the proposed rule sets forth curricular qualifications and standards to guide the practical nurse.

**"XX PROHIBITED IV THERAPIES** (1) The following IV therapy tasks may not be performed by a practical nurse:

(a) IV push medications directly into the vein except as in [new rule XVIII(4)(h)];

- (b) administration of any of the following:
  - (i) blood and blood components;
  - (ii) narcotics;
  - (iii) tranquilizers;
  - (iv) vasodilator;
  - (v) vasopressor;
  - (vi) oxytoxics;
  - (vii) pediatric medications;
  - (viii) antineoplastic drugs;
  - (ix) chemotherapy;
  - (x) investigational drugs;
  - (xi) experimental drugs;
  - (xii) colloid therapy;
  - (xiii) hyperalimentation;
  - (xiv) hypertonic solutions;
  - (xv) anticoagulants;
  - (xvi) antiarrhythmics;
  - (xvii) thrombolytic agents.
- (c) administration of injectable local anesthetics prior to venipuncture;
- (d) performance of sticks, blood draws, dressing changes, flushes of central and arterial lines; or
- (e) performance of catheter declotting with thrombolytic agents."

Auth: Sec. 37-8-415, MCA IMP, Sec. 37-8-415, MCA

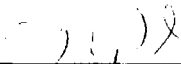
REASON: See reason for new rule XIX.

5. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., November 26, 1996, to advise us of the nature of the accommodation that you need. Please contact Dianne Wickham, Executive Director, Board of Nursing, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0517; telephone (406) 444-4279; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-7759. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Dianne Wickham.

6. 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 the Board of Nursing, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-7759, to be received no later than 5:00 p.m., November 21, 1996.

7. Perry Eskridge, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING  
JEAN BALLANTYNE, MN, RN,  
PRESIDENT

BY:   
ANDY POOLE, DEPUTY DIRECTOR  
DEPARTMENT OF COMMERCE

  
CAROL GRELL, RULE REVIEWER

Certified to the Secretary of State, October 11, 1996.

BEFORE THE BOARD OF OPTOMETRY  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
amendment, repeal and adoption ) THE PROPOSED AMENDMENT,  
of rules pertaining to the ) REPEAL AND ADOPTION OF RULES  
general practice requirements, ) PERTAINING TO THE PRACTICE OF  
unprofessional conduct, fees, ) OPTOMETRY  
disciplinary actions and )  
continuing education concerning )  
the practice of optometry )

TO: All Interested Persons:

1. On August 22, 1996, the Board of Optometry published a notice of proposed amendment, repeal and adoption of rules pertaining to the practice of optometry at page 2238, 1996 Montana Administrative Register, issue number 16.


2. The Board received a sufficient number of requests from qualifying individuals for a public hearing on the proposed amendment, repeal and adoption. The Board will hold a hearing on November 21, 1996, at 10:00 a.m. in the Professional and Occupational Licensing Conference Room, 111 N. Jackson, Helena, Montana.


3. The Department of Commerce 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., November 12, 1996, to advise us of the nature of the accommodation that you need. Please contact Donita Mariegard, Board of Optometry, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-1698; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Donita Mariegard.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Donita Mariegard, Board of Optometry, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, and must be received no later than the close of hearing on November 21, 1996.

5. Carol Grell, attorney, has been designated to preside over and conduct this hearing.

BOARD OF OPTOMETRY  
CYNTHIA JOHNSON, OD, PRESIDENT

BY:   
ANDY POOLE, DEPUTY DIRECTOR  
DEPARTMENT OF COMMERCE

  
CAROL GRELL, RULE REVIEWER

Certified to the Secretary of State, October 11, 1996.

In the matter of the proposed )	NOTICE OF PUBLIC HEARING ON
amendment, repeal and adoption )	THE PROPOSED AMENDMENT,
of rules pertaining to private )	REPEAL AND ADOPTION OF RULES
security patrol officers and )	PERTAINING TO PRIVATE
investigators )	SECURITY PATROL OFFICERS AND
)	INVESTIGATORS

1. On November 13, 1996, at 9:00 a.m., a public hearing will be held in the conference room of the Professional and Occupational Licensing Bureau, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment, repeal and adoption of rules pertaining to private security patrol officers and investigators.

### 8.50.423 DEFINITIONS

(1) "Casual employment" means employment which comes about fortuitously and is for no fixed duration of time. An engagement or employment is not "casual" where a person is employed to do a particular service or class of service recurring regularly, or with a fair expectation of continuance for a sequence or period of time, such as every Saturday night, a week, or a month.

~~(a) A peace officer engaged in casual employment desiring to be exempt from the provisions of 37-60-406, MCA, must file with the board when requested, a copy of the casual employment authorized by his sheriff or chief of police.~~

~~(b) This definition does not apply to peace officers or reserve officers performing security guard functions for another governmental agency, or to security of in custody inmates held elsewhere than at a custodial institution or jail or when private security companies are unwilling or unavailable to provide the service.~~

~~(c) All other exceptions under this "casual employment" rule shall be determined by the board based upon the facts presented.~~

(2) (1) As used in ~~section~~ 37-60-303, MCA, "dishonorable discharge" means any military discharge which specifically states that it is a dishonorable discharge.

(3) will remain the same, but will be renumbered (2).

(4) (3) For purposes of section 37-60-321(4), MCA, any crime involving moral turpitude means generally any crime enumerated in Title 45, MCA, or any other crime involving venality, dishonesty, obstruction of justice, lack of integrity, abuse of alcohol, and or use of dangerous drugs, or



a third conviction of driving under the influence over any five-year period.

(5) and (6) will remain the same, but will be renumbered (4) and (5).

(7) ~~For the purposes of applying sections 37-60-101(12), MCA, and 37-60-105(4)(b), MCA, the word "paralegal" will be interpreted to mean a paralegal employed by only one law firm. Paralegals employed by more than one firm at the same time will be required to be licensed under Title 37, chapter 60, MCA.~~

Auth: This rule is advisory only, but may be a correct interpretation of the law, Sec. 37-1-131, 37-60-202, MCA; IME, Sec. 37-60-101, 37-60-103, 37-60-105, 37-60-202, 37-60-303, 37-60-321, 37-60-406, 37-60-409, MCA

8.50.424 TEMPORARY EMPLOYMENT WITHOUT IDENTIFICATION CARD PRACTICE PERMIT (1) The board may authorize a licensee to employ an applicant for any category of licensure, other than security guards or alarm installer employees temporarily without first obtaining an identification card under guard, who has met all requirements for licensure other than passage of the licensing examination, may apply for a temporary practice permit in accordance with 37-1-305, MCA, and subject to the following conditions:

(1)(a) The licensee must employ the person permit holder may practice only under an apprenticeship or training program the direct, on-site supervision of an individual licensed in good standing, without pending or final disciplinary action, in the category for which the applicant seeks licensure.

(2) No one person may be temporarily employed on a fragmented work schedule. The individual providing supervision is personally responsible for more than 30 days total in any one calendar year conduct of the permit holder as if the conduct were the licensee's own.

(3) Any person hired by a licensee under the provisions of 37-60-308, MCA, shall be issued a temporary license by the board. Within 5 days of hiring such person, the licensee must provide the employee's name and address to the board and the licensee must submit a quarterly report to the board detailing the cumulative number of days or hours temporary employees have been employed.

(2) Upon meeting the qualifications of this section, an otherwise qualified applicant shall be issued a temporary practice permit by the board. For purposes of applying 37-1-305, MCA, the first license examination for which the applicant is eligible following issuance of the permit, is an examination that is taken by the applicant no later than 60 days following issuance of the permit. The temporary permit remains valid after issuance until the applicant either fails the license examination or passes the examination, meets all other qualifications for licensure, and is granted a license.

(4) Temporary employment will not be for more than 30 consecutive calendar days.

(5) At the end of this period of time the licensee must either terminate the person or have the person make application for an identification card.

~~(6) The licensee will notify the board within 5 days of the termination of those persons employed for the 30 consecutive calendar day period.~~

~~(7) No attempt shall be made to utilize this rule to circumvent any portion of this act.~~

~~(8) No person employed temporarily under this rule shall be armed or wear, carry, possess or have access to a firearm in the performance of his duties until the board has completed a preliminary background check.~~

(3) Permit holders shall not wear, carry, possess or have access to a firearm in the performance of duties. Permit holders shall not have unsupervised access to valuables.

Auth: Sec. 37-1-131, 37-60-202, MCA; IMP, Sec. 37-60-302, 37-60-307, 37-60-308, 37-60-309, 37-60-310, 37-60-312, 37-60-321, 37-60-322, 37-60-407, MCA

#### 8.50.425 RESIDENT MANAGER AND QUALIFYING AGENTS

~~(1) Every qualifying agent and resident manager shall satisfy all of the appropriate licensing requirements of section 37-60-303, MCA, and the rules promulgated by the board as who performs duties for those of an individual which a license is required under 37-60-301, MCA, shall obtain the appropriate license prior to engaging in such duties.~~

~~(2) When any person applying to be licensed as a qualifying agent and a resident manager who meets the definition of both, the board shall issue one license and indicate the person is licensed to do both and require the fee of only one license.~~

Auth: Sec. 37-60-202, MCA; IMP, Sec. 37-60-302, MCA

8.50.426 RULES FOR BRANCH OFFICE (1) Branch offices of any licensee, except a proprietary security organization, shall be prohibited except upon application to the board indicating the licensee, location and resident manager/qualifying agent of such No branch office shall be authorized for any category of licensure other than proprietary security organizations. Any branch office licensed for a proprietary security organization shall have at least one individual who is present during regular business hours, who has established to the board's satisfaction that he or she meets the qualifications necessary of operating the business found at ARM 8.50.428(1).

Auth: Sec. 37-60-202, MCA; IMP, Sec. 37-60-302, MCA

8.50.427 REQUIRED INFORMATION FOR APPLICATION (1) The board shall conduct or have conducted such investigation on each applicant as it deems necessary to protect the public interest health, safety, and welfare before granting any license. The board shall seek information from law enforcement officials and other interested and informed persons to determine the character, competence and integrity of the applicant before approval for examination.

~~(2) will remain the same.~~

~~(3) An Applicant must list 5 references (not related by blood or marriage) and 2 of the 5 shall be former employers or individuals or firms with which he/she had a working~~

contractual agreement if self-employed, or has knowledge of the agreement or working relationship. ~~An application will be processed when 3 of the 5 references have responded to the board. It is the applicant's responsibility to check with the board and/or the listed references to insure that responses have been made.~~

~~(4) No person convicted of a felony in this state or elsewhere shall be eligible for a license while under a federal or state jurisdiction (i.e. probation/parole).~~

~~(5) An individual who may desire licensure in more than one licensure category must pass an exam in each licensure category when required.~~

~~(4) An individual who may desire licensure in more than one licensure category must pass an exam in each licensure category when required.~~

~~(6) (5) Each person who applies for an original license shall supply with the application. In addition to other pertinent information the board may require, each person who applies for an original license shall supply 2 two passport-type photos of the applicant full face, head, and shoulder photographs of a size that may be cut to 1 1/2 inches by 1 1/2 inches and still retain the full face, head, and shoulders in the photo. Name of applicant should be typed or printed on the back side of the photo.~~

~~(7) (6) Fingerprints required under this chapter to be submitted to the board shall be submitted to the federal bureau of investigation and the Montana department of justice for examination. The board may issue a probationary or temporary license or identification card practice permit upon receipt of the criminal history report from the Montana department of justice. An original issuance of such license or identification card may be granted permit does not guarantee that the applicant will ultimately be licensed. Final license decision will be made following receipt and review of the federal bureau of investigation report and any investigations thereof.~~

Auth: Sec. 37-1-131, 37-60-202, MCA; IMP, Sec. 37-60-304, MCA

8.50.428 EXPERIENCE REQUIREMENTS (1) will remain the same.

(a) two years full-time (35 or more hours per week) lawful experience;

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

(b) ~~professionally related and relevant education or vocational training in the field to be licensed as the board may determine to be equivalent to the foregoing experience requirements of at least four, 12-credit semesters in security company operations.~~ All education and training must be verified and supplied with the application, including transcripts, diplomas, seminar certificates, course completion or other supporting evidence;

(c) will remain the same.

(2) All Applicants may use a combination of experience, education and training to meet the experience requirement, but

education and training may not exceed 1/2 the experience required.

(3) will remain the same.

Auth: Sec. 37-60-202, MCA; IMP, Sec. 37-60-303, MCA

8.50.431 INSURANCE REQUIREMENTS (1) Persons regulated by Title 37, chapter 60, MCA, and licensed as a private investigator, a security alarm installer, a contract security company or a proprietary security organization shall file with the board, a yearly certificate of insurance to run concurrent with the license year.

(a) through (1)(c)(i) will remain the same.

(2) Except as provided in ~~subsection~~ (4), all licensees must be insured by a carrier:

(a) through (4)(c) will remain the same.

Auth: Sec. 37-1-131, 37-60-202, MCA; IMP, Sec. 37-60-202, MCA

8.50.433 LICENSE RENEWAL ~~(1) Each license expires on December 1st following date of issue and to remain current must be renewed on or before each December 1st.~~

(2) through (4) will remain the same, but will be renumbered (1) through (3).

Auth: Sec. 37-60-202, MCA; IMP, Sec. 37-60-312, MCA

8.50.437 FEE SCHEDULE

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

(f) Probationary license 75

(2) will remain the same.

(a) ~~Armed~~-eContract security employee 15-00

(b) ~~Armed~~-pProprietary security employee 15-00

~~(c) Unarmed contract security employee~~ 10-00

~~(d) Unarmed proprietary security employee~~ 10-00

~~(e) (c) Unarmed Alarm installer employee~~ 10-00 15

(3) will remain the same.

(a) ~~Unarmed~~ Licensee renewals 25-00 30

~~(b) Armed licensee renewals~~ 35-00

One-half price on renewals only for each additional license for dual or multiple licenses

~~(c) Armed employee~~ 10-00

~~(d) (b) Unarmed eContract and proprietary security employee~~ 5-00 10

(c) Proprietary security employee 10

~~(e) (d) Unarmed aAlarm installer employee~~ 5-00 10

(4) and (4)(a) will remain the same.

(b) Late renewals 5-00 25

(c) and (d) will remain the same.

(e) FBI processing fee 24

(f) Department of justice processing fee 8

(5) will remain the same.

(6) Temporary ID card practice permit 10-00

(7) Process servers examination 15

~~(a) Examination~~ 15-00

~~(b) Request for refunds:~~

~~(a) No refunds will be made on any fees contained in this fee schedule except for new applicant fees.~~

~~(b) Request for refund must be in writing, postmarked within 15 calendar days of the request of the application.~~

~~(c) The board may refund any portion of the fees left after first subtracting any costs incurred in processing the application.~~

~~(8) All fees are nonrefundable."~~

Auth: Sec. 37-1-134, 37-60-202, MCA; IMP, Sec. 25-1-1104, 37-1-134, 37-60-304, 37-60-305, 37-60-306, 37-60-312, MCA

~~8.50.438 PROBATIONARY PRIVATE INVESTIGATOR (1) Any person who does not meet the requirements for age, employment experience and written examination, as required by 37-60-303(2) and (3), MCA, may be sponsored by a licensed private investigator to apply for a probationary registration or I.D. card. In addition to the information listed in an application for licensure, the sponsor shall detail the age, experience or examination qualifications which are lacking and explain how training and experience and direct supervision will be provided during the probationary period, and how long the probationary period is expected to last. A probationary private investigator shall operate only under the authority and permission of the sponsor listed on his probationary registration or I.D. card. The probationary period shall last until the statutory requirements have been met or the probationary card has been terminated by the board. Conditions of the probation shall be that, if the applicant violates the provisions of Title 37, chapter 60, MCA, or the rules of the board during probation, or fails to qualify for full licensure at the appropriate time, his probationary license shall automatically be revoked.~~

~~(1) On a form provided by the board, a person who is at least 19 years of age, but does not meet the requirements of 37-60-303(1) and (3), MCA, may apply for a probationary license as a private investigator. The application shall be accompanied by a statement from a licensed private investigator who will employ and provide direct supervision of the probationary license holder, setting forth the scope of the probationary license holder's duties and training.~~

~~(2) Direct supervision for the purposes of (1) means daily contact. A probationary license holder may not conduct an independent business or act as an independent contractor.~~

~~(3) The employment and training of the probationary license holder may not commence until the board has approved the application and the applicant has received the probationary license and identification card. The probationary license expires annually and may be renewed three times.~~

~~(4) Probationary license holders may not, in the performance of employment-related duties, carry or possess a firearm.~~

Auth: Sec. 37-60-202, MCA; IMP, Sec. 37-60-202, MCA

~~8.50.801 CODE OF ETHICS FOR A PRIVATE INVESTIGATOR UNPROFESSIONAL CONDUCT For the purpose of implementing sections 37-60-202 and 37-60-321, MCA, the term~~

"unprofessional conduct" as used in 37-1-316 and 37-1-319, MCA, is defined to include the following:

- (1) will remain the same.
- (2) ~~Providing clients with advice or counsel of a discipline in which the licensee is not qualified~~ Performing services outside of the licensee's area of training, expertise, competence, or scope of practice or licensure;
- (3) and (4) will remain the same.
- (5) ~~Not being honest, accurate, factual, timely and complete in reporting;~~
- (6) ~~Representing oneself as a member of law enforcement;~~
- (7) ~~Charging the client a fee in violation of mutual agreement;~~
- (8) ~~Not honoring verbal agreements as if they were written;~~
- (9) ~~Engaging in the unauthorized practice of law;~~
- (10) ~~Violating the laws of the United States, the state of Montana or any of its political subdivisions;~~
- (11) ~~Intermingling client's business funds with the licensee's personal funds;~~
- (12) ~~Double billing;~~
- (13) ~~Failing to cooperate with bona fide law enforcement and other criminal justice agencies;~~
- (14) ~~Not respecting and protecting the confidential and privileged information of employers and clients beyond the term of their employment except where their interests are contrary to law;~~
- (5) Failing to provide a client with an accurate and factual report within a time frame specified by mutual agreement;
- (6) Expressly or impliedly representing oneself as a member of law enforcement by conduct, dress, advertisement, or other representation;
- (7) Using a firm name, letterhead, publication, term, title, designation, or document which states or implies an ability, relationship, or qualification that does not exist;
- (8) Filing a complaint with, or providing information to the board, which the licensee knows or ought to know is false or misleading. This provision does not apply to any filing of complaint or providing information to the board when done in good faith;
- (9) Violating, or attempting to violate, directly or indirectly, or assisting or abetting the violation of, or conspiring to violate any provision of Title 37, chapter 60, MCA, or rule promulgated thereunder, or any order of the board;
- (10) Violating any state, federal, provincial, or tribal statute or administrative rule governing or affecting the professional conduct of any licensee;
- (11) Using any dangerous drug or controlled substance illegally while providing professional services;
- (12) Acting in such a manner as to present a danger to public health or safety, or to any client including, but not limited to, incompetence, negligence, or malpractice;
- (13) Accepting an assignment adverse in any way to a present client or former client if the assignment is

substantially related to the prior professional relationship with the former client;

(14) Failing to render adequate supervision, management, training or control of auxiliary staff or other persons, including licensees, practicing under the licensee's supervision or control;

(15) Discontinuing professional services unless:

(a) services have been completed,

(b) the client requests the discontinuation,

(c) alternative or replacement services are arranged, or

(d) the client is given reasonable opportunity to arrange alternative or replacement services;

(16) Delegating a professional responsibility to a person when the licensee knows or has reason to know that the person is not qualified by training, experience, license, or certification to perform the delegated task;

(17) Failing to report an incident of unsafe practice or unethical conduct of another licensee to the licensing authority;

(18) Notwithstanding any provision regarding privileged communications, failing to take reasonable steps to inform or protect a client's intended victim and inform the proper law enforcement officials in circumstances where the licensee becomes aware during the course of providing or supervising professional services, that a client intends or plans to inflict serious bodily harm to another person;

(19) Notwithstanding any provision regarding privileged communications, failing to take reasonable steps to protect a client in circumstances where licensee becomes aware during the course of providing or supervising professional services, that a client intends or plans to inflict bodily harm to himself or herself;

(20) Failing to account for funds received in connection with any services rendered or to be rendered; and

(21) Failing to put in trust or otherwise properly segregate funds in connection with a specific project for a specific purpose.

Auth: Sec. 37-60-202, MCA; IMP, Sec. 37-60-202, 37-60-321, 37-60-401, MCA

**REASON:** The Board is amending the rules to implement changes mandated by the 1995 Legislature under House Bill 518. (the Uniform Professional Licensing Regulation and Procedures Act). The amendments to the fee schedule are necessary to make the Board fees commensurate with program area costs pursuant to section 37-1-134, MCA.

3. The Board is proposing to repeal ARM 8.50.435, 8.50.436, 8.50.805, 8.50.901 and 8.50.903. The rules are located at pages 8-1383, 8-1396 and 8-1399, Administrative Rules of Montana. The authority sections are 37-1-131, 37-1-136, 37-60-202, MCA, and the implementing sections are 37-60-202, 37-60-302, 37-60-303, 37-60-304, 37-60-305, 37-60-306, 37-60-321, 37-60-401, MCA. The Board is repealing these rules because the language is currently set forth in Title 37, chapter 1 mandated by the 1995 legislature under House Bill 518

(the Uniform Professional Licensing Regulation and Procedures Act) and is currently set forth in statutes under Title 37, chapter 60.

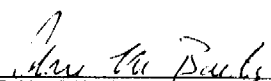
4. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., November 4, 1996, to advise us of the nature of the accommodation that you need. Please contact Terry Knerr, Board of Private Security Patrol Officers and Investigators, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-3728; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Terry Knerr.

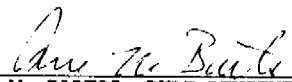
5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Private Security Patrol Officers and Investigators, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m. November 21, 1996.

6. Perry Eskridge, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PRIVATE SECURITY PATROL  
OFFICERS AND INVESTIGATORS  
GARY GRAY, PRESIDENT

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 11, 1996.



BEFORE THE BOARD OF REAL ESTATE APPRAISERS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT,  
amendment, adoption and repeal ) ADOPTION AND REPEAL OF RULES  
of rules pertaining to real ) PERTAINING TO REAL ESTATE  
estate appraisers ) APPRAISERS  
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 23, 1996, the Board of Real Estate Appraisers proposes to amend, repeal and adopt rules pertaining to real estate appraisers.

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

"8.57.403 EXAMINATION (1) ~~The board may appoint a national regional or local testing entity to process and conduct a preliminary review of applications for examination and make recommendations to the board. That testing entity must meet minimum standards established by the appraisal qualifications board and comply with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act.~~

(2) (1) A passing score on an examination shall be valid for one two years from the examination date.

(3) ~~Approval of an application for examination shall not constitute approval of an application for licensure or certification.~~

(4) ~~Violation of the following rules may result in disqualification from taking the examination, a finding of lack of good repute, and a determination of unsuccessful completion of the examination may result from violation of the following:~~

(a) ~~examinees may not refer to any notes, books, or memoranda during the course of the examination;~~

(b) ~~silent, cordless electronic calculators may be used by applicants during exam;~~

(c) ~~the examinees shall not copy questions, make notes of test content, or reveal the contents of examination to others;~~

(d) ~~examinees shall not leave the examination without permission from the examination proctor; and~~

(e) ~~examinees shall not attempt to obtain or compare answers by viewing or discussing any matter with another examinee during the course of the examination.~~

(5) ~~If an applicant for examination withdraws from, or fails to take the examination on the date scheduled, he must make application in the manner prescribed by the board.~~

(6) ~~A passing score on the examination is 70%.~~

(7) ~~The board may review and amend the examination type, format and score upon which the pass/fail determination is made.~~

(2) The applicant, within 2 years prior to submitting an application for a license or certification, shall have

successfully completed the appraiser qualifications board - endorsed uniform state licensed real property appraiser examination with the following passing scores:

(a) licensed residential - 75%.

(b) certified residential - 77%, and

(c) certified general - 79%.

(3) The examination is administered by a testing agency under contractual agreement with the board.

(4) Applicants for certification may not retake the examination for six months after having failed it a second or subsequent time."

Auth: Sec. 37-1-131, 37-54-105, MCA; IMP, Sec. 37-1-131, 37-54-105, 37-54-202, 37-54-302, 37-54-304, MCA

**REASON:** Subsection (1) is proposed for deletion because it unnecessarily repeats the statutory mandate that the board adopt minimum standards established by Title 11 of FIRREA. Subsection (2) is retained in the proposed rule. Subsection (3) is not relevant in the prescribed procedure for application. The language in subsections (4) and (4)(a) through (5) is not necessary to effectuate the purpose of the statute and is not relevant because the board does not administer an examination. Subsection (7) purports to give the board authority to review and amend the examination, type, format and score; however, this is in conflict with the mandate to adopt minimum standards pursuant to Title 11 of FIRREA. The board proposes to require the passing scores as recommended by the testing agency as a national standard. The board further found that its former requirement of 70% was lower than passing scores required in a majority of other jurisdictions. The proposed prohibition on exam retakes for six months repeats 37-54-304(5), MCA.

"8.57.404 APPLICATION REQUIREMENTS (1) Applications for licensure when properly filled out by the applicant must provide the board with that information necessary to ascertain whether or not the applicant meets the requirements of the law as to education and experience. Application forms must reflect satisfactorily the requirements of Montana law.

(a) Persons seeking licensure must apply on the board's official forms which may be obtained through the department.

(b) Completed applications shall be delivered to the department, accompanied by the application fee.

(c) Applicants will be notified in writing of the board decision on their application within 10 days of the meeting date.

(2) A completed application file shall consist of the completed and notarized application form; completed education log; attached certificates of completion and/or transcripts if appropriate; completed experience log; attached affidavits if appropriate; three sample appraisal reports; and official verification of exam score. An application file must be complete at least 30 days in advance of the next board meeting date. Applications not complete by the deadline will be held for consideration at the next following board meeting.

~~(3) All evidence of appraisal activity must be supported by written file memorandum or actual written reports.~~

~~(4) An applicant must have made a substantial contribution to the appraisal report and arrived at a conclusion of value in any appraisal report claimed as evidence of meeting the experience requirements. To determine if an applicant has made a substantial contribution, the applicant must show:~~

~~(a) applicant has signed the report or certification; or~~

~~(b) applicant's name is listed in the report or certificate as someone who provided significant professional assistance.~~

~~(5) Each applicant shall provide a signed and notarized statement, under penalty of perjury, attesting to the successful completion of the required hours appraisal experience. This statement will include an appraisal summary log to reflect the quantity and type of appraisals completed during each calendar year claimed for credit.~~

~~(6) The board reserves the right to verify evidence of appraisal experience by such means as it deems necessary, including, but not limited to, requiring the following:~~

~~(a) submission of appraisal reports, files or file memorandum;~~

~~(b) employer affidavits or interviews;~~

~~(c) client affidavits or interviews.~~

~~(7) An applicant who is unable to provide evidence of appraisal activity supported by written file memoranda or written reports must:~~

~~(a) submit an experience log for which the applicant desires credit, which indicates which reports or other items are not available for board review;~~

~~(b) submit a written explanation as to why the applicant cannot obtain copies of written reports or file memoranda;~~

~~(c) submit a letter from the specific employer/client explaining the reason the information cannot be made available to the applicant or the board;~~

~~(d) submit a written affidavit from an individual with direct knowledge (supervisor, etc.) of the applicant's work experience verifying the appraisal experience documented on the experience log is accurate. The affidavit shall be submitted on a form supplied by the board. The individual signing the affidavit shall also sign on the applicant's experience log, where appropriate, and indicate on the log which appraisal reports he/she is verifying.~~

~~(8) An applicant who becomes licensed or certified under (5) above shall submit an experience log for the first 12 months following the license or certification date.~~

(1) An application for a license or temporary practice permit must be made on a form provided by the board and completed and signed by the applicant with the signature acknowledged before a notary public.

(2) The application must be typed or legibly written in ink, accompanied by the appropriate application and license fees, and contain sufficient evidence that the applicant

possesses the qualifications set forth in Title 37, chapter 54, MCA, and rules promulgated thereunder.

(3) The applicant shall submit original or certified documents in support of the application. The board may permit such documents to be withdrawn upon substitution of a true copy.

(4) The board shall require the applicant to submit a recent, passport-type photograph of the applicant.

(5) The board shall review fully-completed applications for compliance with board law and rules and shall notify the applicant in writing of the results of the evaluation of the application. The board may request such additional information or clarification of information provided in the application as it deems reasonably necessary. Incomplete applications shall be returned to the applicant with a statement regarding incomplete portions.

(6) The applicant shall correct any deficiencies and re-submit the application. Failure to re-submit the application within 60 days shall be treated as a voluntary withdrawal of the application. After voluntary withdrawal, an applicant will be required to submit an entirely new application to begin the process again.

(7) All requests for reasonable accommodations under the Americans with Disabilities Act of 1990, at 42 U.S.C. 12101, et seq., must be made on forms provided by the board and submitted with the application prior to any application deadline set by the board.

(8) An application file must be received in the board office at least 30 days in advance of the next scheduled board meeting date."

Auth: Sec. 37-1-131, 37-54-105, MCA; IMP, Sec. 37-1-131, 37-54-105, MCA

**REASON:** The proposed amendments are necessary to clarify the application process and incorporate anti-fraud devices, and to make the rule more readable. Former subsections (3), (4), (7), and (8) refer to more specific procedures associated with reporting the experience of the applicant and will be incorporated under a different rule. The substance of subsections (1), (2), (5) and (6) are covered in the proposed new language.

"8.57.405 EXPERIENCE - NUMBER OF HOURS REQUIREMENTS

REQUIRED (1) An applicant for licensure ~~licensed appraiser~~ must present evidence of 2000 hours of appraisal experience.

(2) An applicant for certified residential certification ~~appraiser~~ must present evidence of ~~2000~~ 2500 hours of appraisal experience ~~distributed~~ obtained continuously over a minimum period of not less than 24 months. Hours may be treated as cumulative in order to achieve the necessary 2500 hours of appraisal experience.

(3) Applicants for certified general certification ~~appraiser~~ must present evidence of ~~2000~~ 3000 hours of appraisal experience, ~~distributed~~ obtained continuously over a minimum

period of not less than 24 30 months, 1000 hours of which must be experience claimed in the appraisal of non-residential real estate. Hours may be treated as cumulative in order to achieve the necessary 3000 hours of appraisal experience. The applicant must have accumulated a total of 3000 hours of appraisal experience of which at least 1500 hours must be in non-residential appraisal work."

Auth: Sec. 37-1-131, 37-54-105, MCA; IMP, Sec. 37-1-131, 37-54-105, 37-54-202, 37-54-303, MCA

**REASON:** The proposed amendments are necessary to comply with the experience requirements promulgated by the appraisal qualifications board of the appraisal foundation.

"8.57.406 COURSE QUALIFYING EDUCATION REQUIREMENTS

~~(1) All education requirements may be completed at any time prior to filing of the application for licensure or certification.~~

~~(1) (2)~~ Educational and training courses offered on or after the adoption of these rules must receive prior approval by the board. Each course shall be approved for a three-year period only, and must be resubmitted, with all updated information required in ~~(5)~~ (4) below, for re-approval at the end of the three-year period.

(3) through (6) will remain the same, but will be renumbered (2) through (5).

~~(7) In order to be approved as original licensing and certification education and training, a course must be at least 15 hours in duration and must include an examination pertinent to the material offered.~~

~~(8) (6)~~ Except as otherwise provided in ~~(9)~~ (11), an applicant must attend a minimum of 90% of the scheduled class hours, complete all required exercises and achieve a passing score on the course examination in order to receive credit for the course.

~~(9) Credit will be granted for classroom hours where the applicant received credit from the course provider by challenge examination without attending the course prior to July 1, 1990.~~

~~(10) Credit toward the classroom hour requirement may be awarded to teachers of appraisal courses. Teachers may request credit for either the classroom hours or experience requirement but not both.~~

(11) will remain the same, but will be renumbered (7).

~~(12) Each applicant shall provide a signed and notarized statement under penalty of perjury, and certificates and transcripts attesting to the successful completion of the required hours of appraisal education and training on a form prescribed by the board. The board reserves the right to require an applicant to provide additional satisfactory documentary evidence of completion of appropriate course work.~~

~~(a) If an applicant is unable to provide certificates or transcripts attesting to the successful completion of required hours of appraisal education, he must provide another form of verification, which may consist of a signed and notarized~~

affidavit from employer, supervisor, or other persons with knowledge of applicant's completion of the course work.

~~(13) Hours of appraisal education and training accepted for the education requirement of one level of licensure can be applied toward the requirement of another level and need not be repeated.~~

~~(14) If the applicant uses college credit to fulfill a portion of the education requirement for original licensure or certification, the following factors will be used to convert college credit to classroom hours:~~

~~(a) semester credits x 15 = classroom hours~~

~~(b) quarter credits x 10 = classroom hours~~

~~(15) Only 25% of the classroom hour requirements for original licensure or certification can be fulfilled by college coursework in subjects defined in ARM 8.57.407 unless the applicant can show that said coursework was specifically related to real estate appraisal.~~

~~(8) A classroom hour is defined as 50 minutes out of each 60 minute segment.~~

~~(9) Credit toward the classroom hour requirement may only be granted if the length of the educational offering is at least 15 hours and the individual successfully completes an examination pertinent to that educational offering.~~

~~(10) The board approves the following educational settings:~~

~~(a) accredited colleges or universities.~~

~~(b) accredited community or junior colleges.~~

~~(c) real estate appraisal or real estate related organizations.~~

~~(d) state or federal agencies or commissions.~~

~~(e) proprietary schools, or~~

~~(f) other providers approved by the board.~~

~~(11) Credit toward the classroom hour requirement may be awarded to teachers of appraisal courses.~~

~~(12) Qualifying education credit must have been obtained within five years prior to the application date.~~

~~(13) Instructors of the Uniform Standards of Professional Appraisal Practice Course must provide proof to the board of attending the update course provided by the appraisal standards board of the appraisal foundation."~~

Auth: Sec. 37-1-131, 37-54-105, MCA; IMP, Sec. 37-1-131, 37-54-105, 37-54-202, 37-54-203, MCA

"8.57.407 QUALIFYING EDUCATIONAL REQUIREMENTS FOR LICENSURE LICENSED APPRAISERS (1) ~~Each applicant~~ Applicants for original licensure shall complete at least 75 90 classroom hours of instruction, 15 hours of which must cover the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation at the time the educational offering was completed. ~~The remaining number of hours Applicants must cover subject matter relating to the following areas demonstrate that their education involves coverage of all topics listed below with particular emphasis on the appraisal of one- to four-unit residential properties:~~

- (a) will remain the same.
- (b) legal considerations and in appraisal;
- (c) through (p) will remain the same."

Auth: Sec. 37-1-131, 37-54-105, MCA; IMP, Sec. 37-1-131, 37-54-105, 37-54-202, 37-54-203, MCA

"8.57.408 QUALIFYING EDUCATIONAL REQUIREMENTS FOR RESIDENTIAL CERTIFICATION (1) Each applicant for original residential certification prior to January 1, 1994, shall complete at least 105 classroom hours of instruction (and after January 1, 1994, shall complete at least 120 classroom hours of instruction), 15 hours of which must cover the standards of professional appraisal practice at the time the educational offering was completed. The remaining number of hours must cover subject matter relating to the following areas with particular emphasis on the appraisal of 1 to 4 unit residential properties:

- (a) influence on real estate value;
- (b) legal considerations and appraisals;
- (c) types of value;
- (d) economic principles;
- (e) real estate markets and analysis;
- (f) evaluation process;
- (g) property description;
- (h) highest and best use analysis;
- (i) appraisal statistical concepts/methods;
- (j) sales comparison approach;
- (k) site value;
- (l) cost approach;
- (m) income approach;
- (i) gross rent multiplier;
- (iii) estimation of income and expenses;
- (iii) operating expense ratios;
- (n) evaluation of partial interests;
- (o) appraisal standards and ethics;
- (p) narrative report writing;
- (q) types of misconduct for which disciplinary proceedings may be initiated against a licensed real estate appraiser, as set forth by statute.

(1) Applicants for residential certification shall provide evidence of completion of 120 classroom hours, 15 hours of which must cover the Uniform Standards of Professional Appraisal Practice as promulgated by the Appraisal Foundation and which may include the 75 hour classroom hour requirement for the license classification.

(2) In addition to the topics listed in ARM 8.57.407, applicants for residential certification shall demonstrate that their education involved coverage of narrative report writing and direct capitalization within the income approach. The education for this classification shall place particular emphasis on the appraisal of one- to four-unit residential properties.

(3) To upgrade from licensed residential appraiser to residential certification an applicant may use education obtained for licensed residential.

Auth: Sec. 37-1-131, 37-54-105, MCA; IMP, Sec. 37-1-131, 37-54-105, 37-54-303, MCA

"8.57.409 QUALIFYING EDUCATIONAL REQUIREMENTS FOR GENERAL CERTIFICATION (1) Each applicant Applicants for original general certification shall complete at least 165 provide evidence of 180 classroom hours of instruction, 15 hours of which must cover the standards of professional practice promulgated at the time the educational offering was complete. The remaining number of hours must cover subject matter relating to the following areas with emphasis on the appraisal of non-residential properties the Uniform Standards of Professional Appraisal Practice, as promulgated by the appraisal foundation+.

(a) influences on real estate value;  
(b) legal considerations and appraisal;  
(c) types of value;  
(d) economic principles;  
(e) real estate markets and analysis;  
(f) evaluation process;  
(g) property description;  
(h) highest and best use analysis;  
(i) appraisal statistical concepts/methods;  
(j) sales comparison approach;  
(k) site value;  
(l) cost approach;  
(m) income approach;  
(i) estimation of income and expenses;  
(ii) operating statement ratios;  
(iii) direct capitalization;  
(iv) cash flow estimates;  
(v) measures of cash flow;  
(vi) discounted cash flow analysis;  
(n) evaluation of partial interests;  
(o) appraisal standards and ethics;  
(p) narrative report writing;  
(q) types of misconduct for which disciplinary proceedings may be initiated against a certified real estate appraiser, as set forth by statute.

(2) In addition to the topics listed in ARM 8.57.407, applicants for general certification shall demonstrate that the education included:

(a) narrative report writing; and  
(b) income approach, including the following:  
(i) addressing estimation of income and expenses;  
(ii) operating statement ratios;  
(iii) direct capitalization;  
(iv) cash flow estimates;  
(v) measures of cash flow; and  
(vi) discounted cash flow analysis.



(3) The education for this classification shall place particular emphasis on the appraisal of non-residential properties.

(4) To upgrade from licensed or residential certification an appraiser may use education obtained for licensing or residential certification with the additional 60 hours being obtained from non-residential courses."

Auth: Sec. ~~37-1-131~~, 37-54-105, MCA; ~~IMP~~, Sec. ~~37-1-131~~, 37-54-105, 37-54-303, MCA

**REASON:** The proposed amendments to ARM 8.57.406 through 8.57.409 are intended to further clarify the necessary course contents and requirements and improve readability so that applicants are aware of what is required for education.

"8.57.411 CONTINUING EDUCATION (1) through (3) will remain the same.

(4) A maximum of 30 continuing education hours in excess of the 45 hours needed, can be carried over to the next renewal cycle. (The Uniform Standards of Professional Appraisal Practice can not be carried over.)

(5) Instructors of the Uniform Standards of Professional Appraisal Practice must provide proof to the board of attending the update course offered by the appraisal standards board of the appraisal foundation."

Auth: Sec. ~~37-1-131~~, ~~37-1-306~~, 37-54-105, MCA; ~~IMP~~, Sec. ~~37-1-131~~, ~~37-1-306~~, 37-54-105, 37-54-303, MCA

**REASON:** The Board has determined that appraisers desire a measure of flexibility in continuing education courses and that the ability to carry excess credits forward to future cycles will enhance the educational goals. The addition of (4) will provide this flexibility. The Board intends that instructors in the Uniform Standards of Professional Appraisal Practice maintain competency and currency in the changes made to those standards. Subsection (5) will accomplish this goal by requiring those instructors to submit proof of attendance at update workshops offered by the appraisal standards board of the appraisal foundation.

"8.57.412 FEES (1) The following fees will apply to all license/certificate holders. Fees are not refundable or transferable.

(a) original license/certificate application and renewal	\$150.00
<del>(b) examination fee (payable to testing service.)</del>	<del>90.00</del>
<del>(b)</del> <del>(e)</del> address change/change of business	<del>20.00</del> 10.00
<del>(c)</del> <del>(d)</del> temporary license	150.00
<del>(d)</del> <del>(e)</del> course approval per course	<del>10.00</del> 25.00
<del>(e)</del> course renewal approval per course	10.00
(f) through (i) will remain the same.	
<del>(j) Inactive license/certification fee</del>	<del>15.00</del>

Auth: Sec. 37-1-131, 37-54-105, MCA; IMP, Sec. 37-1-131, 37-54-112, 37-54-201, 37-54-210, 37-54-211, 37-54-302, 37-54-310, 37-54-406, MCA

**REASON:** To make fees commensurate with cost and to allow licensees the option of putting their license in an inactive status rather than having it lapse and go thru the application process again.

"8.57.417 AD VALOREM TAX APPRAISAL EXPERIENCE (1) ~~The two year, 2,000 hours appraisal experience requirement may be satisfied by proper documentation of two years in an appraisal capacity of the value estimating process for mass appraisal work.~~ Experience credit may be awarded to ad valorem tax appraisers who demonstrate that they use techniques to value properties similar to those used by appraisers, and effectively use the appraisal process.

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

(a) The affidavit shall set forth the applicant's job description, duties, and/or role in the value estimating appraisal process if not included in the job description and duties.

(b) The supervising tax appraiser or other appropriate official signing the affidavit must indicate their understanding that experience credit shall only be awarded to applicants who demonstrate they use techniques to value properties similar to as those used by licensed or certified real estate appraisers.

(4) and (5) will remain the same.

(6) Experience accepted under other provisions of applicable statutes or rules may be combined with any portion of the two years' mass appraisal ad valorem experience set forth above.

(7) will remain the same."

Auth: Sec. 37-1-131, 37-54-105, MCA; IMP, Sec. 37-1-131, 37-54-105, MCA

**REASON:** The Board is proposing these amendments to provide internal consistency with the board's other rules which refer to "licensed or certified real estate appraisers."

3. The Board is proposing to repeal ARM 8.57.401 (authority 37-54-105, MCA; implementing 37-54-105, 37-54-403, MCA); 8.57.402 (authority 37-54-105, MCA; implementing 37-54-105, MCA); 8.57.414 (authority 37-54-105, MCA; implementing 37-54-401, MCA); 8.57.415 (authority 37-54-105, MCA; implementing 37-54-417, MCA); and 8.57.416 (authority 37-54-105, MCA; implementing 37-54-105, 37-54-202, 37-54-302, 37-54-303, 37-54-304, 37-54-310, MCA). The proposed deletion of the definitions found under ARM 8.57.401 are necessary to avoid contradicting the same definitions found in the Uniform Standards of Appraisal Practice (USPAP), which sets forth practice standards the Board is statutorily mandated to follow. The definition of appraisal activity in subsection (3) in effect sets forth

acceptable areas of experience. To this end, acceptable appraisal experience will be set forth under a different rule in a more concise manner. The definition of "appraisal report" as set forth in ARM 8.57.402, is not consistent with the current USPAP definition. The proposed amendments now refer the reader to USPAP for this and all other definitions used in appraisal practice. The proposed repeal of ARM 8.57.414 and 8.57.415 is necessary to comply with Title 37, Chapter 1, Part 3, MCA. It is no longer necessary to set forth the complaint process in the rules as it is covered in the previously cited statute. ARM 8.57.416 is proposed for repeal because it is not necessary to effectuate the purpose of this statute and it unnecessarily repeats the application procedure set forth in ARM 8.57.404.

4. The proposed new rules will read as follows:

"I. QUALIFYING EXPERIENCE (1) Acceptable appraisal experience includes, but is not limited to, the following:

- (a) fee and staff appraisals;
- (b) ad valorem tax appraisals, in accordance with ARM 8.57.417;

- (c) technical review appraisals;
- (d) appraisal analysis;
- (e) real estate appraisal consulting;
- (f) highest and best use analysis;
- (g) appraisal feasibility analyses or studies; and
- (h) condemnation appraisals.

(2) All applicants claiming appraisal experience shall have made a substantial contribution in arriving at a value conclusion as evidenced by the applicant's signature on the report or the applicant's name listed on the report as someone who provided significant professional assistance in the appraisal process.

(3) All evidence of appraisal activity must be supported by written file memoranda or written report.

(4) If requested, experience documentation in the form of reports or file memoranda should be available to support the experience claimed. The verification for experience credit claimed by an applicant shall be on forms prescribed by the board which shall include:

- (a) type of property;
- (b) date of report;
- (c) address of appraised property;
- (d) description of work performed; and
- (e) number of work hours.

(5) All experience submitted to the board must be done in conformance with the Uniform Standards of Professional Appraisal Practice that is current at the time the appraisal is completed.

(6) Qualifying experience must be obtained within five years prior to application date.

(7) Timber and mineral appraisal does not qualify as real estate appraisal experience.

- (8) The board will use the following hourly credit as a guide toward the crediting of experience hours:
- |  |    |
|--|----|
| (a) single family residential (one unit (dwelling))  | 12 |
| (b) multi-family residential (two-to-four units)   | 20 |
| (c) residential vacant land less than 10 acres   | 8  |
| (d) individual residential subdivision sites (per site) (not to exceed 50 hours)   | 5  |
| (e) land (undeveloped nonresidential tracts, residential multi-family sites, commercial sites, industrial sites, land in transition, etc.) | 20 |
| (f) rural/agricultural/residential   |    |
| (i) 10 to 160 acres  | 20 |
| (ii) 160 to 1,000 acres with improvements  | 50 |
| (iii) over 1,000 acres with improvements   | 60 |
| (g) residential multi-family (5-12 units) (apartments, condominiums, townhouses, mobile home parks, etc.)                                  | 35 |
| (h) residential multi-family (13+ units) (apartments, condominiums, townhouses, mobile home parks, etc.)                                   | 40 |
| (i) commercial single-tenant (office building, retail store, restaurant, service station, bank, day care center, etc.)                     | 35 |
| (j) commercial multi-tenant (office building, shopping center, hotel, etc.)  | 60 |
| (k) industrial (warehouse, manufacturing plant, etc.)  | 60 |
| (l) institutional (nursing home, hospital, school, church, government building, etc.)  | 60 |
- (9) The board may provide a variance from the hourly standards provided in (8) above. To be considered for such a variance, an applicant must submit a written request for a variance supported by documentation which demonstrates the need for additional credit hours."

Auth: Sec. 37-1-131, 37-54-105, MCA; IMP, Sec. 37-1-131, 37-54-105, 37-54-202, 37-54-303, MCA

**REASON:** The Board has determined that additional clarification is needed relative to the experience which the Board finds acceptable for appraisal qualifications. The rule accomplishes this goal by setting forth the information in a concise format enabling applicants to determine what is required and how that information is evaluated by the board.

**"II. INACTIVE LICENSE/CERTIFICATION** (1) A licensed/certified appraiser can place his/her license/certification in an inactive status by:

- (a) paying the required fee in accordance with 37-54-105, 37-54-112, MCA, and ARM 8.57.412; and

(b) indicating, in writing, "inactive at present."

(2) A licensed or certified appraiser who has placed his/her license on an inactive status with the board has the sole responsibility to keep the board informed as to any change of residency or mailing address during the period of time the license/certification remains on inactive status.

(3) A licensed/certified appraiser may remain inactive for a period not to exceed three years. After three years in an inactive status the appraiser will be required to renew his/her inactive status or become active. Failure to renew the inactive status or become active will result in the lapsing of his/her license/certification."

Auth: Sec. 37-1-131, 37-54-210, 37-54-310, MCA; IMP, Sec. 37-1-131, 37-54-210, 37-54-310, MCA

REASON: This rule will allow licensees the option of putting their license/certification in an inactive status rather than allowing their license/certification to lapse and have to reapply.

"III REACTIVATION OF LICENSE (1) For a licensed/certified real estate appraiser to become active, he/she must:

(a) file an updated application form with the board office and pay the required fee in accordance with ARM 8.57.412;

(b) submit proof of obtaining the required continuing education in accordance with ARM 8.57.411."

Auth: Sec. 37-1-131, 37-54-210, 37-54-310, MCA; IMP, Sec. 37-1-131, 37-54-210, 37-54-310

REASON: This rule will allow licensees the option of reactivating a license/certification from an inactive status without having to complete the entire application process.

5. Interested persons may submit their data, views or arguments concerning the proposed amendments, repeals and adoptions in writing to the Board of Real Estate Appraisers, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., November 21, 1996.

6. If a person who is directly affected by the proposed amendments, repeals and adoptions wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Real Estate Appraisers, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., November 21, 1996.

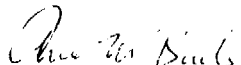
7. If the Board receives requests for a public hearing on the proposed amendments, repeals and adoptions from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, repeals and adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from

an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those person directly affected has been determined to be 40 based on the 404 licensees in the state of Montana.

BOARD OF REAL ESTATE APPRAISERS  
A. FARRELL ROSE, CHAIRMAN

BY: 

ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 11, 1996.

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

In the matter of the proposed ) NOTICE OF PROPOSED AMENDMENT  
amendment of rules pertaining ) OF 8.64.402 FEE SCHEDULE AND  
to fees and examination for ) 8.64.503 EXAMINATION FOR  
licensure ) LICENSURE

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 23, 1996, the Board of Veterinary Medicine proposes to amend the above-stated rules.
2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.64.402 FEE SCHEDULE

(1) through (1)(b) will remain the same.

(c) Application for examination 75 200

(d) through (2)(b) will remain the same."

Auth: Sec. 37-1-134, 37-18-202, MCA; IMP, Sec. 37-1-134,  
37-1-304, 37-18-302, 37-18-303, 37-18-307, 37-18-401, 37-18-  
405, MCA

**REASON:** The proposed fee amendment will reflect board costs in processing applications, administering a jurisprudence examination, scoring the examination and licensing applicants, to keep fees commensurate with program area costs.

"8.64.503 EXAMINATION FOR LICENSURE (1) The examination for licensure as a veterinarian shall consist of ~~four parts~~;

(a) ~~The first part shall consist of the national board examination pursuant to the requirements set forth in ARM 8.64.501, and shall score 30% of the total examination which must have been passed with a converted score of 70 or greater. The scores must be received by the board from the official score reporting agency;~~

(b) ~~The second part shall consist of the clinical competency test pursuant to the requirements set forth in ARM 8.64.501, and shall score 30% of the total examination which must have been passed with a converted score of 70 or greater. The scores must be received by the board from the official score reporting agency;~~

(c) ~~The third part shall consist of a practical examination as composed and corrected by the board and shall score 20% of the total examination. a jurisprudence examination as composed and corrected by the board, which measures the competence of the applicant regarding the statutes and rules governing the practice of veterinary medicine in Montana. The jurisprudence examination must be passed with a score of 70% or greater.~~

~~(d) The fourth part shall consist of an oral examination as composed and corrected by the board and shall score 20% of the total examination.~~

~~(2) An applicant must achieve an overall average of 70% or better in order to obtain a license to practice veterinary medicine in this state. All applicants must have taken the national board examination and the clinical competency test within five years prior to submission of the Montana licensure application, as per ARM 8.64.501.~~

~~(3) Any applicant who has failed the jurisprudence examination may apply to be re-examined at a subsequent examination and shall pay the proper examination fee. The applicant then must retake the practical and oral portion of the examination as given by the board. The applicant may, if he/she so desires, retake the national board examination and/or clinical competency test to bring the average up, or must retake the national board examination and/or clinical competency test if the 62-month allowance period has expired but may not retake the examination for six months."~~

~~Auth: Sec. 37-18-202, MCA; IMP, Sec. 37-18-303, MCA~~

**REASON:** The proposed amendments will eliminate the practical and oral examination previously composed and administered by the Montana Board of Veterinary Medicine members. The two national examinations (NBE and CCT) have been accepted throughout the country as an adequate measure of entry-level competency to practice veterinary medicine. The state of Montana need not continue to incur expense and liability in time and administration of its own separate examination, as the Montana public is not at risk. The Board will instead require a jurisprudence examination on Montana laws and rules in addition to the national examinations.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Veterinary Medicine, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., November 21, 1996.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Veterinary Medicine, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., November 21, 1996.

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



Administrative Register. Ten percent of those persons directly affected has been determined to be 94 based on the 945 licensees in Montana.

BOARD OF VETERINARY MEDICINE  
W. DEAN HOLMES, DVM, PRESIDENT

BY: 

ANDY POOLE, DEPUTY DIRECTOR  
DEPARTMENT OF COMMERCE

  
CAROL GRELL, RULE REVIEWER

Certified to the Secretary of State, October 11, 1996.

BEFORE THE BUILDING CODES BUREAU  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
amendment of rules pertaining	)	THE PROPOSED AMENDMENT AND
to the Uniform and Model Codes,	)	ADOPTION OF RULES
plumbing and electrical	)	ADMINISTERED BY THE BUILDING
requirements, recreational	)	CODES BUREAU
vehicles, and boiler safety	)	
and adoption of a new rule	)	
pertaining to swimming pools	)	

TO: All Interested Persons:

1. On December 6, 1996, at 9:00 a.m., a public hearing will be held in the downstairs conference room, Department of Commerce building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed amendment and adoption of rules administered by the Building Codes Bureau.

2. The proposed amendment of ARM 8.70.101, 8.70.105, 8.70.302, 8.70.303, 8.70.401, 8.70.402, 8.70.501, 8.70.601 and 8.70.907 will read as follows: (new matter underlined, deleted matter interlined)

"8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) through (24) will remain the same.

(25) Section 50-60-102(1), MCA, exempts any private garage or private storage structure used only for the owner's own use from application of the state building codes. A private garage is a building or a portion of a building, not more than 1,000 square feet in area, in which only motor vehicles used by the tenants of the building or buildings on the premises are stored or kept. A building in which vehicles are required or stored as part of commercial enterprise or business, even if on the premises of a dwelling, is not a private garage. A private storage structure used only for the owner's own use is a building used for storage of personal effects of the owner and not used for storage of equipment, vehicles, materials, supplies or products used in a commercial enterprise or business. ~~An airplane hangar, even if for private use, located at a non-private airport is not exempt as a private garage.~~

(26) Section 904.1 (Installation Requirements) is amended for the bureau by addition of the following:

"This subsection shall apply to buildings which are required by the Uniform Building Code to be provided with an automatic sprinkler system, but have an inadequate water supply.

In accordance with UBC Standard 9-1, Section 9.101 and UBC Standard 9-3, Section 9.302, the building official shall be the designated authority responsible for administering and enforcing NFPA-13 and NFPA-13R. When the available water

supply does not meet NFPA-13 and NFPA-13R requirements, it may be modified by the building official.

The modified water supply shall include sufficient storage on site to operate a minimum of four sprinkler heads for the response time of the local fire department. Response time is the time from alarm to the time the fire department can apply water to the fire. Response time shall be established by the use of the formula  $T = 0.65 + 1.7D$ , where T is response time, in minutes, and D is distance, in miles, from the fire station to the building, but shall not be less than 20 minutes.

Water supply requirements shall be established by using the area/density method. A 50% reduction in design area, to not less than four heads, is allowed. Density is not modified.

When a modified water supply is allowed, the sprinkler system must utilize quick response heads, be equipped with a flow alarm, automatic dialer and a fire department connection.

(27) Aircraft hangars, even if for private use, are not exempt as private garages or private storage structures unless located on the same parcel of private property or lot as the owner's residence. Aircraft hangars that are used in conjunction with a commercial activity of any kind are not exempt as private garages or private storage structures regardless of location. Aircraft hangars, less than 3,000 square feet in size, that are used only for parking of an aircraft and where no repair work or welding is performed and where no fuel is dispensed, will be classified as utility buildings (Group U, Division 1).

(26) through (30) will remain the same, but will be renumbered (28) through (32)."

Auth: Sec. 50-60-104, 50-60-203, MCA; IMP, Sec. 50-60-103, 50-60-104, 50-60-108, 50-60-109, 50-60-201, 50-60-203, MCA

REASON: The Bureau is proposing these amendments to provide for sprinkler system modifications, on a case-by-case basis, when the available water supply is not able to meet design criteria and to clarify that an airplane hangar is not exempt as a private garage or private storage structure and said structures will be classified as utility buildings (Group U, Division 1).

"8.70.105 INCORPORATION BY REFERENCE OF UNIFORM MECHANICAL CODE (1) through (e) will remain the same.

(i) In section 1002 change the wording of the entire section to read: "The requirements of this chapter apply to the construction and installation, as required by 50-74-101, MCA, except as provided for in the ASME publications referenced and incorporated in ARM 8-70-903 8.70.902.

(e)(ii) through (f)(i) will remain the same.

(ii) 1312.1 General. Amend to read as follows: "Pipe used for the installation, extension, alteration or repair of gas piping shall be standard weight wrought iron or steel (galvanized or black), yellow brass containing not more than 75 percent copper, or internally tinned or equivalently treated copper of iron pipe size. Corrugated stainless steel tubing

may be permitted provided that it is part of a system listed by an approved testing agency as complying with ANSI/AGA LCI-1991. Approved PE pipe may be used in exterior buried piping systems.

(g) through (7) will remain the same."

Auth: Sec. 50-60-104, 50-60-201, 50-60-203, 50-60-508, MCA; IMP, Sec. 50-60-103, 50-60-104, 50-60-201, 50-60-203, MCA

**REASON:** The Bureau is proposing these amendments to the rules to correct an ARM reference error and to incorporate the use of CSST fuel gas piping systems which were approved at the 1995 ICBO conference.

"8.70.302 INCORPORATION BY REFERENCE OF UNIFORM PLUMBING CODE

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

(ii) Delete Table No. 3-A - PLUMBING PERMIT FEES and replace with the following schedule:

--for issuing each permit	\$ 15*
--for each plumbing fixture	6
--water service - domestic or commercial	6
--for each building sewer and each trailer park sewer	10
--storm drains and storm drainage	6
--for each water heater	6
<del>--for each gas piping system of one to four outlets</del>	<del>6</del>
<del>--for each gas piping system of five or more per outlet</del>	<del>2</del>
--for each industrial water pre-treatment interceptor, including its trap and vent, excepting kitchen type grease interceptors functioning as fixture traps	7
--for installation, alteration, or repair of water piping and/or water treatment equipment	6
--for repair or alteration of drainage or vent piping	6
--for each lawn sprinkler system and fire protection system or any one meter, including backflow protection devices therefore	6
--for vacuum breakers or backflow protective devices on tanks, vats, etc., or for installation on unprotected plumbing fixtures, including necessary water piping--one to four	6
--five or more, each	2
--requested plumbing inspection fee provided that such service is not in excess of one hour in duration, and then \$25 for each 30 minutes or fractional part thereof in excess of one hour. Travel and per diem will be charged as per the state of Montana's existing rate for these items.	45
--reinspection (provided the \$30 does not exceed the original permit fee, in which	

case the original fee will be charged) 30  
\*except for replacement of water heaters  
(a)(iii) through (2) will remain the same."  
Auth: Sec. 50-60-201, 50-60-203, 50-60-504, 50-60-508,  
MCA; IMP, Sec. 50-60-203, 50-60-504, 50-60-508, MCA

**REASON:** The Bureau is proposing to delete gas piping systems from the plumbing permit since gas piping is not a portion of the plumbing system and is inspected as a portion of the mechanical system, for which a mechanical permit is required.

"8.70.303 MINIMUM REQUIRED PLUMBING FIXTURES (1) The following table will be used to determine the minimum number of plumbing fixtures to be installed in new buildings: (see chart attached)

- a. The fixtures shown are based on one fixture being the minimum required for the number of persons indicated or any fraction of the number of persons indicated. The number of occupants shall be determined by the building code.
- b. Fixtures located in adjacent buildings under the ownership or control of the church shall be made available during periods the church is occupied.
- c. Toilet facilities for employees shall be separate from facilities of inmates or patients.
- d. For attached one- and two-family dwellings, one automatic clothes washer connection shall be required per 20 dwelling units.
- e. A single-occupant toilet room with one water closet and one lavatory serving not more than two adjacent patient rooms shall be permitted where such room is provided with direct access from each patient room and with provisions for privacy.
- f. For day nurseries, a maximum of one bathtub shall be required.
- g. Food service establishments or any establishment that sells alcoholic beverages for on-site consumption requires at least one urinal for occupancy loads of 1 to 50.
- h. Contact the department of public health and human services for additional requirements for food service establishments.
- i. At the discretion of the building official, certain non-assembly buildings where food and beverages are not consumed on the premises, may be allowed to furnish only one public toilet provided it is designed for male and female use and it is suitable for use by handicapped persons.
- j. At the discretion of the building official, for small (less than 1,200 sq. ft. in floor area) convenience stores (typically gasoline sales plus convenience items and beverages) located to serve primarily neighborhood areas instead of major highways, only one public toilet is

- needed, provided it is designated for both male and female use and it is suitable for use by handicapped persons.
- k. If the total number of students plus staff exceeds 20, must provide separate male and female toilets.
- l. Keyed toilets under employee control of the type available at service stations are permitted.
- m. Where urinals are provided, notwithstanding the required urinal in footnote g. above, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases shall not be reduced to less than one half of the minimum specified.
- n. When calculating number of male and female occupants, the occupant load of the building shall be considered half male and half female, and the occupant load shall be calculated in accordance with Sec. 1002 of the Uniform Building Code.
- Auth: Sec. 50-60-203, 50-60-504, MCA; IMP, Sec. 50-60-203, 50-60-504, MCA

**REASON:** The bureau is proposing these amendments to the rules to correct errors and omissions from the minimum number of plumbing fixtures chart and footnotes.

**"8.70.401 NATIONAL ELECTRICAL CODE** (1) The department of commerce, building codes bureau, hereby adopts and incorporates herein by reference the standards adopted by the national fire protection association for electrical installations appearing in Pamphlet NFPA 70 (1993 1996), under the title of National Electrical Code 1993 1996. The National Electrical Code 1993 1996 is a nationally recognized model code setting forth minimum standards and requirements for electrical installations. A copy of the National Electrical Code 1993 1996 may be obtained from the Montana Chapter of IAEE, c/o Building Codes Bureau, Capitol Station, Helena, Montana, 59620. A copy may also be obtained by writing to the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269."

Auth: Sec. 50-60-201, 50-60-203, 50-60-603, MCA; IMP, Sec. 50-60-203, 50-60-601, 50-60-603, MCA

**"8.70.402 WIRING STANDARDS** (1) The following rules supplement or modify sections of the National Electrical Code adopted under ARM 8.70.401:

(1) and (2) will remain the same but will be renumbered (a) and (b).

(2) NEC Article 550-23(a) Exception No. 2:

(a) Delete and replace with the following: "The manufactured (mobile) home is of a construction type that is comparable to conventional frame construction for single family dwellings and is placed on a permanent perimeter foundation wall with the footings placed below frost line or the service entrance equipment is completely installed at the factory by the manufacturer of the structure."

Auth: Sec. 50-60-203, 50-60-603, MCA; IMP, Sec. 50-60-203, 50-60-603, MCA

**REASON:** The proposed amendment to ARM 8.70.401 is necessary to keep the state standard current with modern technology by adopting the latest available edition of the National Electrical Code. The proposed amendment to ARM 8.70.402 is necessary to establish when service entrance equipment may be installed on a manufactured (mobile) home.

"8.70.501 INCORPORATION BY REFERENCE OF NFPA 501C/ANSI A119.2 STANDARD FOR RECREATIONAL VEHICLES (1) The building codes bureau of the department of commerce adopts and incorporates by reference herein the NFPA 501C/ANSI A119.2, Standards for Recreational Vehicles, ~~1993~~ 1996 Edition. The NFPA 501C/ANSI A119.2, Standards for Recreational Vehicles, ~~1993~~ 1996 Edition, is a nationally recognized model code for the construction of travel trailers, camping trailers, truck campers, and motor homes. A copy of the NFPA 501C/ANSI A119.2 Standards for Recreational Vehicles, ~~1993~~ 1996 Edition may be obtained from the Department of Commerce, Building Codes Bureau, Capitol Station, Helena, Montana 59620 at cost plus postage and handling. A copy may also be obtained by writing to the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(2) will remain the same."

Auth: Sec. 50-60-201, 50-60-203, 50-60-401, MCA; IMP, Sec. 50-60-201, 50-60-203, 50-60-401, MCA

**REASON:** The Bureau is proposing this amendment to keep the state standard current with modern technology by adopting the latest available edition of NFPA 501C/ANSI A119.2, Standards for Recreational Vehicles.

"8.70.907 BOILERS EXEMPTED (1) and (1)(a) will remain the same.

(b) steam heating boilers operated at not over 15 psig in private residences or apartments of six or less families or whenever a single boiler provides heat for six or less apartment (dwelling) units;

(c) hot water heating or supply boilers operated at not over 50 psig and temperatures not over 250 degrees F. when in private residences or apartments of six or less families or whenever a single boiler provides heat for six or less apartment (dwelling) units;

(1)(d) through (1)(e) will remain the same."

Auth: Sec. 50-60-203, 50-74-101, MCA; IMP, Sec. 50-60-203, 50-74-103, MCA

**REASON:** The Bureau is proposing these amendments to clarify that boilers must provide heat for seven or more apartment (dwelling) units to be regulated by the boiler safety program and that individual boilers in individual apartment (dwelling)

"I. ADOPTION BY REFERENCE OF ARM 16.10.1503 - REVIEW OF PLANS (1) Pursuant to 50-53-103, MCA, the building codes bureau of the department of commerce hereby adopts by reference ARM 16.10.1503, regarding swimming pool licensure. Said rule, to be utilized by the department of public health and human services, will not be enforced by the building codes bureau.

(2) Copies of ARM 16.10.1503 can be obtained by contacting the Department of Public Health and Human Services, Food and Consumer Safety, 111 Sanders, P.O. Box 4210, Helena, Montana 59620."

**REASON:** The bureau is proposing to adopt this rule to fulfill the statutory requirement imposed by section 50-53-103(2), MCA.

4. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., November 26, 1996, to advise us of the nature of the accommodation that you need. Please contact Lisa Johnson, Building Codes Bureau, 1218 East Sixth Avenue, P.O. Box 200517, Helena, Montana 59620-0517; telephone (406) 444-3933; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-4240. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Lisa Johnson.

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 the Building Codes Bureau, 1218 East Sixth Avenue, P.O. Box 200517, Helena, Montana 59620-0517, or by facsimile, number (406) 444-4240, to be received no later than the close of hearing on December 6, 1996.

6. Annie M. Bartos, attorney, has been designated to preside over and conduct this hearing.

BUILDING CODES BUREAU  
JAMES BROWN, BUREAU CHIEF

**BY:**

ANDY POOLE, DEPUTY DIRECTOR  
DEPARTMENT OF COMMERCE

Carol Grell  
CAROL GRELL, RULE REVIEWER

20-10/24/96

MAR Notice No. 8-70-13



BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of the proposed )  
repeal, amendment, and ) NOTICE OF PUBLIC  
adoption of rules ) HEARING  
relating to school )  
transportation. )

TO: All interested persons.

1. On November 19, 1996, at 9:00 a.m., in Room 104, State Capitol Building, Helena, Montana, a public hearing will be held to consider the proposed repeal, amendment and adoption of rules pertaining to school transportation.

2. The rules proposed for repeal follow. Full text of the rules are found at pages 10-71 and 10-81, ARM.

10.7.103 TRANSPORTATION REIMBURSEMENT ELIGIBILITY CRITERIA  
(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-121, 20-10-145, 20-10-146, MCA)

10.7.117 SCHOOL TRANSPORTATION CALENDAR  
(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-112, 20-10-145, MCA)

3. The rules, as proposed to be amended, new material underlined, deleted material interlined, provide as follows.

10.7.101 INTRODUCTION (1) The following rules are adopted to implement ~~section~~ 20-10-112, MCA, which requires the superintendent of public instruction to prescribe such rules as may be necessary to have a uniform and equal provision of transportation by all districts in the state of Montana.

(2) The following list briefly states in chronological order the administrative steps for school transportation. This list is not a substitute for the more detailed requirements stated in these rules:

(a) By the fourth Monday in June a district must:  
(i) complete and sign transportation contracts (4 copies) for the ensuing year; and

(ii) adopt a preliminary transportation budget; and  
(iii) send the preliminary transportation budget and contracts to the county superintendent.

(b) By the fourth Monday in June a county transportation committee (CTC) must act to approve or not approve all bus routes established by districts. The CTC must also act on all applications for increased individual payments due to isolation. Approval of board of trustees for increased payments is required prior to CTC action.

(c) By July 10 the county superintendent must send one copy of all individual transportation contracts to the superintendent of public instruction.

(d) At least thirty days prior to the beginning of the first semester the Montana highway patrol must inspect all school buses used to transport students. If necessary, the buses must be reinspected before the beginning of the semester.

(e) By September 1 the county superintendent must send the final budgets for the ensuing year to the superintendent of public instruction.

(f) By September 1 the district trustees must send the new bus contracts to the superintendent of public instruction.

(g) By October 1 a district must send the county superintendent 2 copies of the TR-1 for each bus route that carries elementary students only.

(h) By October 15 the county superintendent must send the superintendent of public instruction the TR-1 for each bus route that carries elementary students only.

(i) By mid-October OPI must notify county superintendents and district clerks of the approved rates for individual and isolated contracts.

(j) Upon receipt of the approved rates required in (i) a district must provide a copy of the contract to each parent, guardian or emancipated minor with whom the district holds a contract.

(k) Sixty days after the beginning of the school year the first-aid competency requirement for new bus drivers must be completed.

(l) By November 14 or the first pupil instruction day beginning on or after November 14, a district must count the eligible high school riders who ride the bus at least one morning during the five-day counting period.

(m) By December 1 a district must send the county superintendent 2 copies of the TR-1 for each bus route carrying any high school student(s).

(n) By December 10 the county superintendent must send the superintendent of public instruction the TR-1 for each bus route carrying any high school student(s).

(o) By mid-January OPI will mail the TR-5, School District Claim for Individual Transportation, and TR-6, Claim for Reimbursement for School Bus Transportation, to districts.

(p) By January 31 buses must have passed the inspection for the second semester.

(q) By February 1 a district must send the county superintendent 2 copies of transportation claims.

(r) By February 15 the county superintendent must send the superintendent of public instruction 1 copy of each district's completed TR-5 & 6 claims for first semester transportation reimbursement.

(s) Upon receipt of claims, the state superintendent verifies the claims and disburses the approved amount of state reimbursement for first semester transportation.

(t) Upon receipt of state payment notice the county superintendent orders the disbursement of county reimbursement for first semester transportation on the basis of state reimbursement.

(u) By April 30 OPI will mail the TR-5, School District Claim for Individual Transportation, and TR-6, Claim for Reimbursement for School Bus Transportation, to districts.

(v) By May 10 a district must send the county superintendent 2 copies of completed transportation claims.

(w) By May 24 the county superintendent must send the superintendent of public instruction 1 copy of each district's completed TR-5 & 6 claims for second semester transportation reimbursement.

(x) Upon receipt of claims the state superintendent verifies the claims and disburses the approved amount of state reimbursement for second semester transportation.

(y) Upon receipt of state payment notice the county superintendent orders the disbursement of county reimbursement for second semester transportation on the basis of state reimbursement.

(z) Whenever necessary, new transportation contracts for students that become eligible after final budget adoption are completed by the board of trustees. The original contract is transmitted to the county superintendent. The county superintendent forwards the original to the superintendent of public instruction.

(aa) Whenever required, the board of trustees issues Montana school bus driver certification to bus drivers and transmits the required copies to the county superintendent and the superintendent of public instruction.

(ab) Whenever required, but no later than June 30, budget amendment proceedings must be completed to provide budget authority for any transportation the district must provide for pupils who become eligible after final budget adoption and for which the contingency item is inadequate.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: Title 20, chapter 10, part 1, MCA)

10.7.104 CLAIM PROCEDURE (1) First semester:

(a) Before By February 1, the board of trustees provides the county superintendent with two complete copies of the first semester transportation claim, using forms provided by the superintendent of public instruction. The district claims must be signed by the chairman of the board of trustees.

(b) By February 15, the county superintendent reviews each district's claim for completeness and accuracy, and submits to the superintendent of public instruction a copy of each district's first semester transportation claim. Valid claims received by the superintendent of public instruction after February 15 will be paid with the second semester transportation reimbursement.

(2) Second semester:

(a) Before By May 10, the board of trustees provides the county superintendent with two complete copies of the second semester transportation claim, using forms provided by the superintendent of public instruction. The district claims must be signed by the chairman of the board of trustees.

(b) By May 24, the county superintendent reviews each district's claim for completeness and accuracy, and submits to the superintendent of public instruction a copy of each district's second semester transportation claim. Valid claims received by the superintendent of public instruction after May 24 and by June 30 will be paid by September 30 of the following school year.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-145, MCA)

10.7.105 PUPIL TRANSPORTATION CONTRACTS (1) ~~"... and no district, county or state money shall be paid for such transportation services to any person or firm who does not hold a legal contract with the district..."~~ (Section 20-10-124, MCA)

~~(2) Section 20-10-143, MCA, prescribes the detail required for presentation of the transportation budget and includes "... the trustees shall also send copies of all completed transportation contracts for school bus transportation and individual transportation to the county superintendent ..."~~

~~(3)(1) School districts thus are required to have transportation contracts for the ensuing year signed by the time the preliminary budget is adopted fourth Monday in June.~~

~~(4) - (6) remain the same, but are renumbered (2) - (4)~~  
(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-121, 20-10-124, 20-10-143, MCA)

10.7.106 CONTRACTS WITH INDIVIDUAL FAMILIES CONTENTS AND LIMITATIONS OF PUPIL TRANSPORTATION CONTRACTS (1) Section 20-10-124, MCA, provides for contracts between individual families a school district and a parents, legal guardians or an emancipated youth minor and school districts for purposes of to fulfilling the district's obligation to furnish transportation for an eligible transportee.

(2) A school district may enter into a contract for the provision of individual transportation only if the child student being transported is an eligible transportee of the district.

(a) An eligible transportee, as defined in section 20-10-101, MCA, ~~"is deemed by law "to reside with his a parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school."~~ An emancipated minor may also be considered an eligible transportee if the other criteria of 20-10-101(2) are met.

(b) When a student attends school outside his or her district of residence under an out-of-district attendance agreement approved by the district of residence, either the district of attendance or the district of residence, but not both, may consider the student an eligible transportee for purposes of contracting to provide transportation reimbursement or to provide bus services. Transportation arrangements must conform to [NEW RULE 1].

(c) Unless a student is attending school under the mandatory provisions of 20-5-321(1)(d) or (e), MCA, or under an Individual Education Plan (IEP), the distance from the home to

the nearest operating school or bus stop will be used to calculate the reimbursement under a pupil transportation contract.

(i) The nearest operating school for purposes of (c) is the nearest elementary or high school that the student could reasonably attend, offering educational services appropriate for the grade level of the student. Whether the school is in the district of attendance or the district of residence is irrelevant to the calculation.

(ii) The nearest bus stop for purposes of (c) is the nearest bus stop where the student could board a bus to the elementary or high school offering educational services appropriate for the grade level of the student that the student could reasonably attend, regardless of whether the bus stop is provided by the district of attendance or the district of residence.

(d) If the student attends under the mandatory provisions of 20-5-321(1)(d) or (e), MCA, the distance from the home to the nearest appropriate school or bus stop will be used to calculate the amount of reimbursement under an individual contract for transportation.

(e) In accordance with 20-10-124(2), MCA, with sufficient notice, a school district may refuse to approve an individual contract that is submitted to the district after the fourth Monday in June unless the pupil is an eligible transportee who establishes residence in the district after the fourth Monday in June. The state may honor valid individual contracts which are approved by the district after that date as per ARM 10.7.107.

(f) In no case may the district honor a contract submitted after the last pupil instruction day of the school year at the school of attendance.

(3) Whenever any district or county is determined to be responsible for paying tuition for any pupil in accordance with sections 20-5-301, 20-5-302 or 20-5-311, MCA, the district paying tuition may provide transportation to the school district of attendance.

(4)(3) If an approved out-of-district attendance tuition agreement that includes terms for providing transportation does not exist between the district of residence and the district of attendance, the parent or guardian shall provide transportation at his own expense.

(5)(4) When entering making into an individual transportation contract with the district, the parent, legal guardian or emancipated minor or guardian shall must sign an affidavit attesting to the place of residence of his child or children the student. No person other than the student's parent, legal guardian or an emancipated minor may enter into an individual contract for transportation or receive the transportation reimbursement. Transportation must be provided by a licensed driver in an insured vehicle.

(6)(5) The forms for contracts between individual families and a school districts and a parent, legal guardian or emancipated minor is designated Fform TR-4. The same contract form is used for both elementary and high school pupils and

provides for contracts at the individual rate or for the increased individual rate provided by 20-10-142(3), MCA.

(6) The maximum daily reimbursement rate a parent, legal guardian or emancipated minor may receive for a mileage contract is the daily rate he or she would receive under a room and board contract, unless the contract has been approved for isolation.

(7) To be eligible to receive reimbursement for a mileage contract, transportation for the mileage reported on the contract must actually occur. The district may not claim state or county reimbursement or pay a parent, legal guardian or emancipated minor for transportation on days the student does not attend school.

(8) Contracts for students with transportation listed as a related service on their individualized education plans will receive the following state/county reimbursement:

(a) Students who live three miles or less from the school or bus stop will be eligible for the minimum state/county reimbursement rate of 25 cents per day;

(b) Contracts for students who live over three miles from the school or bus stop will receive a state/county reimbursement rate calculated with the same formula used for all other students.

(9) If the distance from the student's home to the nearest bus stop or school decreases during the term of the individual contract, the district must amend the contract to reflect the lower mileage and must notify the superintendent of public instruction of the date the lowered mileage became effective. The superintendent of public instruction will recalculate the daily reimbursement rate and will apply that rate to the number of days the student is transported after the effective date the distance changed.

(7)(10) The contract (~~in quadruplicate~~) must be completed in its entirety, signed by the parent, legal guardian, or emancipated minor or guardian, and signed by the chairman of the board of trustees and by the district clerk, on or before the fourth Monday in June preceding the school year for which the transportation is being provided. The signed contract is the authorization of the board of trustees to budget for that transportation expenditure necessary to meet the obligation imposed on the district by the contract.

(8)(11) If the contracting family party applies for increased individual transportation payments due to isolation, the contract must be completed and signed in advance of the meeting of the county transportation committee at which such applications are approved or disapproved. (The date of this meeting in any county can be obtained from the county superintendent.) Approval of any increased rates by the county transportation committee precedes budget adoption.

(9)(12) After adoption of the preliminary budget by the board of trustees, the district clerk transmits all four copies of each transportation contract to the county superintendent, with the preliminary budget. (~~Clerks of joint districts transmit all transportation contracts to the county superintendent of the county in which the school is located.~~)

The transportation contracts (and preliminary budget) must reach the county superintendent no later than July 1.

(10) remains the same, but is renumbered (13)

~~(11)~~ (14) By July 10, the county superintendent transmits ~~one the original~~ copy of each transportation contract to the superintendent of public instruction, ~~who must approve or disapprove all contracts which include application for increased individual payments due to isolation.~~ All individual contracts made between the same family parent or legal guardian and different school districts (in the same county or in different counties) are gathered by the superintendent of public instruction and allocation of district responsibility for payment is made, in compliance with the law and the board of public education policy. (See: 20-10-111 and 20-10-112, MCA.)

~~(12)~~ (15) ~~As soon as possible, and by mid-October,~~ the superintendent of public instruction provides approved contract rates to the county superintendent and the district official of the district providing the contract.

~~(13)~~ (16) The district clerk, in writing warrants for transportation payments to families ~~the parent, legal guardian or the emancipated minor,~~ is guided by the approved rates; the school district ~~may only makes payments to families the parent, legal guardian or emancipated minor only~~ in accordance with the rate established in (15) for approved contracts. (Section 20-10-124, MCA.)

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-5-321, 20-10-101, 20-10-111, 20-10-112, 20-10-121, 20-10-124, 20-10-142, MCA)

10.7.107 CONTINGENCY TRANSPORTATION AND BUDGET AMENDMENTS FOR TRANSPORTATION (1) Whenever, during the course of a school year, the district becomes obligated to provide transportation for ~~a another pupils student,~~ the board of trustees immediately must:

(a) provide bus service for the eligible transportee; or

(b) enter into a contract with the ~~family parent, legal guardian or emancipated minor,~~ and transmit ~~four copies a copy~~ of the contract to the county superintendent, who transmits one copy immediately to the superintendent of public instruction.

(2) The cost of such additional transportation is met by the contingency item in the transportation budget or non-operating budget. Valid claims against The amount budgeted as contingency ~~is~~ are reimbursable by the state and county as an on-schedule cost.

(3) If there is no contingency item (or the appropriation therein is already obligated for other pupils in the district), the district shall institute budget amendment proceedings to acquire the budget authorization necessary to provide transportation for such ~~families students.~~

~~(4) The budget amendment resolution must state:~~

~~(a) the facts constituting the need for the budget amendment;~~

~~(b) the district funds affected by the budget amendment;~~

~~(c) the estimated amount of money required for the budget amendment for each affected fund; and~~

~~(d) the anticipated sources of financing for the expenditures authorized by the budget amendment.~~

~~(5) The amount of the budget amendment for the transportation fund shall not exceed the sum of:~~

~~(a) the on-schedule costs associated with the transportation of the eligible transportee(s) in excess of the amount budgeted as contingency for the current school fiscal year; and~~

~~(b) the over-schedule costs to be incurred by the district as the result of the contingency transportation.~~

~~(6)(4) The on-schedule costs associated with the contingency transportation, in excess of the contingency amount, are reimbursable by the state and county only upon proof of district budget authorization, adoption of a budget amendment for unusual enrollment increase as provided by 20-9-161 through 20-9-168, MCA, and either county transportation committee approval of individual contracts and new or altered bus routes or district approval of new individual transportation contracts, and state approval of such transportation.~~

~~(a) The state shall pay its share of these on-schedule costs as provided in ARM 10-7-103(3) 20-10-145, MCA.~~

~~(b) The county shall pay its share of these on-schedule costs as provided in ARM 10-7-103(2) 20-10-146, MCA.~~

~~(i) The county shall include, in the levy requirement for the ensuing year, any unpaid amount of the county's obligation for contingency transportation.~~

~~(7) remains the same, but is renumbered (5)~~

~~(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-124, 20-10-143, MCA)~~

10.7.108 BUS CONTRACTS (1) Contracts between districts and bus contractors ~~must be~~ are signed, in quadruplicate, prior to the adoption of the budget by the trustees. Such contracts may run for a period of more than one year but not exceeding five years. Whenever a new contract is completed, one copy is retained by the bus contractor, one copy by the district clerk and the other two copies are transmitted to the county superintendent, who keeps one and transmits one to the superintendent of public instruction.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-124, 20-10-143, MCA)

10.7.109 BUS TRANSPORTATION REIMBURSEMENT-SCHOOL DISTRICT APPLICATION TR-1 FOR REGISTRATION OF SCHOOL BUSES AND STATE REIMBURSEMENT (1) The form used for this application, designated form TR-1, ~~must be~~ is completed in triplicate by the board of trustees for each approved bus route in the district.

~~(a) For routes carrying only elementary riders, the trustees transmit send all three copies one copy of a TR-1 for each application route to the county superintendent by October 1. No later than October 15, the county superintendent must transmits send one copy of each application a TR-1 for each routes carrying only elementary riders to the superintendent of public instruction for approval.~~

~~(b) For eligible high school riders to be included in the formula used to calculate bus route reimbursement, they must~~



ride the bus at least one morning during a five-day counting period that begins on November 14 or the first school day after November 14 and continues for a total of five consecutive pupil instruction days. A school district may record this count using a form TR-2, pupil list, provided by the office of public instruction, or a checklist of their own design.

(c) Bus routes that carry only high school riders who did not participate in the five-day count will receive the minimum daily reimbursement rate of 85 cents per mile for each route that carries at least one eligible rider if all other requirements are met.

(d) Bus routes that carry elementary riders and high school riders who did not participate in the five-day count will be reimbursed solely on the number of eligible elementary riders.

(e) The TR-1 forms for bus routes carrying one or more high school riders are due to the county superintendent on December 1. No later than December 10, the county superintendent must send one copy of each TR-1 to the state superintendent of public instruction for approval. In addition to any elementary students on the route, TR-1 forms may only include the eligible high school riders who participated in the November count as eligible riders for reimbursement purposes.

(2) State approval of the TR-1 is a prerequisite to reimbursement. A copy of the approved bus rates is sent to the county superintendent and one copy is sent to the district officials.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-112, 20-10-128, MCA)

10.7.110 STANDARDS FOR SCHOOL BUSES (1) Section 20-10-141, MCA, establishes a schedule of bus transportation expenditures reimbursable from state funds. Reimbursable bus transportation shall be made on vehicles that are in compliance with section 20-10-101, MCA. Vans that carry 9 passengers or fewer do not meet the definition of a school bus and are not eligible for route reimbursement. To be eligible for reimbursement, vans that carry 10 passengers or more must meet the school bus standards set by the board of public education for school buses in Montana and must pass inspection by the highway patrol.

(2) State and county reimbursement for bus transportation for the complete school year will be made only be paid for routes operated to districts with buses (either district-owned or contractor-owned) which that pass the Montana highway patrol's inspection at before the beginning of each semester, the school year and at such other times as determined by the patrol. The Montana highway patrol's inspection will determine if the school bus meets the Minimum Standards for School Buses in Montana as adopted by the board of public education.

(3) Section 61-9-502, MCA, provides requires that the Montana highway patrol shall perform semiannual inspections of school buses. The first semiannual inspection must be passed prior to the beginning of the first semester. The second semiannual inspection must be passed no later than January 31st, one of which is at least thirty days prior to the beginning of the school term and reinspect the buses, if necessary, before

~~the beginning of the school term. Inspections and reinspections must be certified by the Montana highway patrol. In order for a district to insure its eligibility for state reimbursement for the complete school year, it is necessary for the district to complete bus inspection requirements before the opening of school each year.~~

(4) Only school buses that pass inspection may be used to transport students and only school buses that pass inspection will receive state and county transportation reimbursement. A school bus that fails to pass inspection will not be eligible for state and county reimbursement until the bus is reinspected and approved by the inspecting officer. The school district is responsible for contacting the Montana highway patrol for bus inspections. Nothing in this rule precludes the Montana highway patrol from inspecting school buses at other times as the highway patrol sees fit.

~~(4)(5) Buses which that are placed in operation after the school term semester has begun must be inspected and approved by the Montana highway patrol before the vehicle is operated on the established route.~~

~~(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-101, 20-10-102, 20-10-104, 20-10-111, 61-9-502, MCA)~~

10.7.111 QUALIFICATION OF BUS DRIVERS (1) School bus drivers must be fully qualified in order for a district to receive state reimbursement for the bus. Qualifications for bus drivers are prescribed by ~~section~~ 20-10-103, MCA, and by the board of public education. These require that the driver:

- (a) have five years of licensed driving experience;
- (b) is not less than 18 years of age;
- (c) be of good moral character;
- (d) hold a driver's license with a commercial vehicle operator's endorsement;
- (e) have filed with the board of trustees a satisfactory report of a physical examination, signed by a licensed physician in the state of Montana, on a federal department of transportation (DOT) form provided by the superintendent of public instruction or the department of transportation (depending on whether the driver is applying for a Type 1 or Type 2 endorsement);
- (f) hold a valid basic first-aid certificate; and
- (g) hold a valid certificate (form TR-35) as evidence of meeting the above qualifications.

~~(2) The holding of a first aid certificate is of no less importance than the other legally prescribed qualifications. Section 20-10-103, MCA, requires that "....he has completed a basic first aid course and holds a valid basic first aid certificate from an authorized instructor."~~

~~(3)(2) State reimbursement for bus transportation for the full school year term will be made only when a new driver of the bus has completed the first-aid requirement within two months sixty days from the employment date. Any bus operated by a driver not so qualified will not be eligible for state reimbursement for that portion of the year term that the driver~~

is not qualified. Drivers who have driven the previous year must have the first-aid requirement completed before the expiration date on their certificate.

~~(4)(3)~~ In the event a district (or contractor) is obligated to employ a driver as a replacement for a driver employed at the beginning of the school year, or must employ an additional driver, a period of ~~two months~~ sixty days will be permitted for the new driver to acquire the first-aid certificate. If after ~~two months~~ sixty days following the date of first employment of the additional or replacement driver, the first-aid requirement has not been met, the bus operated by the driver will not qualify for state reimbursement for that portion of the year that the driver is not qualified, including the ~~two-month~~ sixty-day grace period.

~~(5) Districts may obtain information about the offering of first aid courses from the American red cross or the office of public instruction.~~

(6) & (7) remain the same, but are renumbered (4) & (5).

~~(8)(6)~~ The qualifications of all bus drivers are reviewed at the time the state audit verification of transportation claims is made, as the qualifications of the bus driver are one of the criteria for eligibility for reimbursement.

~~(a) With the exception of subsections (3)(2) and (4)(3), OPI will not reimburse for routes driven by drivers without a current certificate on file with the office of public instruction at the time the state reimbursement is paid TR-6 claim for reimbursement is due.~~

~~(b) The office of public instruction will verify that all qualifications have been renewed upon expiration. If any license, certificate, or examination was expired for any period of time, the office of public instruction will withhold transportation reimbursement funding for the number of days the driver was not qualified.~~

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-103, 20-10-112, MCA)

10.7.112 SUMMARY OF REQUIREMENTS FOR BUS TRANSPORTATION FOR ELIGIBILITY FOR STATE REIMBURSEMENT (1) remains the same.

(2) The route must be approved by the county transportation committee. (Section 20-10-132, MCA.)

(3) remains the same.

(4) The vehicle operating on the route must be inspected and approved semiannually by the Montana highway patrol as stated in ARM 10.7.110.

(5) The driver of the vehicle must be qualified according to law. (Section 20-10-103, MCA.)

(6) Reimbursement is not authorized for bus transportation provided for a pupile student who lives less than three miles from school unless transportation is listed as a related service on the student's individualized education plan or the student is a preschool student with disabilities.

(7) State and county reimbursement is not authorized for routes operated outside the term of the regular school year for days in excess of 180 days per school year or for days the route was not operated.

(8) When the board of trustees changes a route's mileage per day, the trustees must amend the TR-1 bus route form, show the effective date of the change, submit it first to the county transportation committee for approval and then to the superintendent of public instruction. When the claims for payments are submitted, the district will report the number of days the route operated at each mileage amount. The superintendent of public instruction will adjust the reimbursement for the route and will pay the adjusted rate for days the route operates after the date the change in mileage became effective, subject to constraints of the budget or budget amendments.

(9) When routes are extended it is up to the district to determine if a budget amendment is required to cover the additional costs of the route.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-103, 20-10-112, 20-10-132, 20-10-141, 20-10-145, MCA)

10.7.113 "TWO CONTRACT AMOUNT" REGULATION (1) The law which establishes the schedule governing payments to families prohibits paying more than one contract amount to any family. (An exception is noted in See, 20-10-142, MCA). To comply with this law, the following rules have been adopted:

(a) If two {2} or more eligible transportees are transported by a parent or guardian to two {2} or more schools located within three {3} miles of one another, and if such schools are operated by different school districts, the total amount of the reimbursement, calculated using the distance to the furthest school, shall be divided equally between the districts.

(i) The reimbursement paid to each district may be less than 25 cents per day, but the combined payment for the contract shall not be less than 25 cents per day.

(b) If two {2} or more eligible transportees are transported by a parent or guardian to two {2} or more schools located more than three {3} miles from one another, the parent or guardian shall be separately reimbursed for transporting the eligible transportee or transportees to each school.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-142, MCA)

10.7.114 SCHEDULE FOR TRANSPORTATION PAYMENTS (1) Schedule for Individual and Isolated ("Increased") Transportation Payments:

(a) The schedule for paying for individual and isolated (or "increased") transportation or for room and board in lieu of bus transportation is found in section 20-10-142, MCA. This section establishes the amount of individual payments to parents for transporting their children to school (if they reside in an area not served by a school bus) or to bus (if they reside in an area served by a school bus).

(b) Section 20-10-142, MCA, authorizes the board of trustees and the county transportation committee, subject to written approval by the superintendent of public instruction, to alter or increase the payments to a family if, because of

isolation, the schedule is inadequate. This "increased" payment (also called "isolated" transportation) is 50% of the authorized amount. All isolated ("increased") transportation must be approved by the county transportation committee prior to approval by the superintendent of public instruction.

(c) In cases where the family must move and maintain two households or where the family must board the ~~pupil student~~ near the school, the family may be eligible for the room and board rate of ~~\$5.31~~ \$8.00 per day ~~(\$106.20 per month)~~ for the first child and ~~\$3.19~~ \$5.00 per day for each additional child. (Section 20-10-142, MCA). All contracts for room and board reimbursement must be approved by the county transportation committee prior to approval by the superintendent of public instruction. ~~A guide for determining the degree of isolation and the allowable increase of the individual schedule rate follows.~~

(i) If there is more than one eligible transportee of the same household, and the eligible transportees attend schools operated by more than one school district, the rate of ~~\$5.31~~ \$8.00 per day shall be ~~applied paid to the district enrolling the student with transportee enrolled at the highest grade level, for purposes of determining the distribution of reimbursement to each school district. The remaining amount of the reimbursement shall be allocated proportionately to each school district based on the number of additional children in the household enrolled in each district. Additional reimbursement will be at the rate of \$5.00 per student.~~ (AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-142, MCA)

10.7.115 SCHEDULE FOR BUS TRANSPORTATION (1) Determine the total weighted eligible riders on a route by assigning passenger points as described in 20-10-127, MCA, and by performing the high school passenger count described in 20-10-128, MCA. As long as there is at least one weighted eligible rider, the rate per bus mile traveled shall be determined in accordance with the following schedule when the number of weighted eligible transportees that board a school bus on an approved route is not less than at least one-half of its rated capacity:

(a) ~~85 cents in fiscal year 1992 and each year thereafter per bus mile for a school bus with a rated capacity of not less than 12 but not more than 45 children; and~~

(b) ~~when the rated capacity is more than 45 children, an additional 2.13 cents per bus mile for each additional child seating position in the rated capacity in excess of 45 shall be added to a base of 85 cents.~~

(2) Reimbursement is not authorized for bus transportation provided for pupils who live less than 3 miles from school unless the pupils have transportation listed as a related service on individualized education plans.

(3) When the number of eligible transportees boarding a school bus on an approved route is less fewer than one-half of its rated capacity, the rate per bus mile traveled shall be computed as follows:

(a) determine the number of eligible transportees that board the school bus on the route;

(b) ~~weight the riders according to 20-10-127, MCA;~~

~~(b)(c) multiply that number, determined in subsection (3)(a)(b), by two; and~~

~~(e)(d) use the adjusted rated capacity determined in subsection (3)(b)(c) as the rated capacity of the bus to determine the rate per bus mile traveled.~~

(4) Nonbus mileage is reimbursable for a vehicle driven by a bus driver to and from an overnight location of a school bus when the location is more than 10 miles from the school. Reimbursement for nonbus mileage ~~is 43 cents per mile may not exceed 50% of the maximum reimbursement determined under subsection (1)(a).~~

(5) If a bus route is made up of a series of legs where one set of students get off the bus and another set of students get on, the riders must be reported on more than one TR-1 bus route form. The district must report the legs as separate parts of a single route (e.g., Route 1A, 1B and 1C) by submitting a separate form for each section of the route ending where students get off to board another bus or to attend school before the bus continues to another destination.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-127, 20-10-141, 20-10-142, MCA)

10.7.116 GUIDE FOR DETERMINING DEGREE OF ISOLATION ALLOWED TO INCREASE THE INDIVIDUAL TRANSPORTATION RATE (1) remains the same.

(2) The board of trustees and the county transportation committee, in acting on applications for increased individual payments due to isolation, should judge each application in relation to all others in the district and county. ~~To assist the board and committee in making fair and consistent decisions, a Guide for Determining Degree of Isolation is provided by the superintendent of public instruction. (Section 20-10-112, MCA.). The guide is reproduced below.~~

GUIDE FOR DETERMINING DEGREE OF ISOLATION  
ALLOWABLE INCREASE IN INDIVIDUAL TRANSPORTATION RATE

<u>Transportation Reimbursement Rate</u>	<u>Distance of Residence</u>	<u>Road Conditions</u>	<u>Other Factors</u>
Individual rate increased 50% for isolation.	At least 7 miles from school and no bus; or at least 7 miles from bus route.	Roads are not graded for at least one-half of the distance which must be traveled to school or bus route, and	District trustees and county transportation committee determine that hardship (physical

		<del>roads present considerable difficulty in bad weather, and special equipment ordinarily is required.</del>	<del>and/or financial exist.</del>
<del>Maximum isolation</del>	<del>Pupil must leave home and board near school, or family must move from home, rent a house near school, and maintain two separate households.</del>	<del>Impassable roads most of the school term, and/or extreme distances, make it impractical to transport pupils to school or bus regularly.</del>	<del>Same as above.</del>
<del>*boarding rate* (Sec. 20-10-142, MCA).</del>			

(3) The following factors are suggested to be considered by the county transportation committee in determining if increased payments for isolated conditions are appropriate:

(a) student lives at least 7 miles from school and no school bus is provided, or lives at least 7 miles from the bus stop; and

(b) roads are not graded for at least one-half of the distance from home to the school or bus stop, and roads present considerable difficulty in bad weather, and special equipment ordinarily is required; and

(c) county transportation committee determines that hardship (physical and/or financial) exists.

(3)(4) The guide does not require the board of trustees is not required to approve requests for to pay increased rates because of isolation, nor does and the guide require the county transportation committee is not required to approve increased payments because of isolation. Since state approval is required of for all increases in rates granted locally, the guide does indicate the maximum increase which is state approvable for a given set of circumstances.

(5) The capping of mileage reimbursement rates at the room and board rate does not apply to isolation contracts.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: 20-10-112, 20-10-142, MCA)

#### 10.7.118 SCHOOL TRANSPORTATION FORMS LISTED BY FORM NUMBER

(1) Form TR-1, Combined School District Application for Registration of School Bus and State Reimbursement:

(a) Forms supplied by the superintendent of public instruction;

(b) Copies of forms mailed to county superintendents by September 10 of each year;

(c) Forms completed by district officials, due in county superintendent's office by October 1 for bus routes carrying only elementary students and by December 1 for bus routes carrying any high school students;

(d) Completed forms transmitted by county superintendent to superintendent of public instruction by October 15 for bus routes carrying only elementary students and by December 10 for bus routes carrying any high school students:-

(e) Forms processed, rated and approved by the superintendent of public instruction. ~~The district officials and county superintendent are informed of the bus rate by January 1.~~

(2) Form TR-2, Additional Pupil List:

(a) Additional pupil list for Form TR-1;

(b) Forms supplied by the superintendent of public instruction:-

(c) Copies of forms mailed to district officials by September 10 of each year:-

(d) Forms completed by district officials, due ~~to~~ in county superintendent's office by October 1 for bus routes carrying only elementary students and by December 1 for bus routes carrying any high school students:-

(e) County superintendent uses form to verify accuracy of information submitted on TR-1.

(3) Form TR-4, Elementary and High School Individual Transportation Contract:

(a) Forms supplied by the superintendent of public instruction;

(b) Provided only for contracts entered into by a district and an eligible transportee of the district:-

(c) Copies of forms mailed to district officials by April 15 of each year;

(d) Forms completed by families and district officials by fourth Monday in June;

(e) Completed forms due in the county superintendent's office by July 1;

(f) Original copy of each contract transmitted by the county superintendent to the superintendent of public instruction by July 10;

(g) The contracts are processed, rated and approved by the superintendent of public instruction and the approved rates sent to the county superintendent and district by mid-October.

(4) Form TR-5, School District Claim for State Reimbursement for Individual and Isolated Transportation:

(a) Forms supplied by the superintendent of public instruction;

(b) Copies of forms mailed to district officials:-

(i) First semester by ~~mid~~ January 15:-

(ii) Second semester by ~~May 10~~ April 30;

(c) Forms completed by district officials and due in the county superintendent's office:-

(i) First semester by February 1:-

(ii) Second semester by May 10;

(d) Completed forms transmitted by the county superintendent to the superintendent of public instruction:-



(i) First semester by February 15<sup>th</sup>;

(ii) Second semester by May 24.

(e) Forms are audited verified by the superintendent of public instruction. After claims are audited verified, each district official and county superintendent receives from the superintendent of public instruction a notification of the amount of reimbursement to be received by the district. The county treasurer receives from the superintendent of public instruction a state warrant payment with a list of districts and the amount each district is to receive.

(5) Form TR-6, School District Claim for Reimbursement for School Bus Transportation:

(a) Forms supplied by the superintendent of public instruction;

(b) Copies of forms mailed to district officials<sup>7</sup>;

(i) First semester by mid January 15<sup>th</sup>;

(ii) Second semester by mid May 10;

(c) Forms completed by district officials and due in the county superintendent's office:

(i) First semester by February 1<sup>st</sup>;

(ii) Second semester by May 10;

(d) Completed forms transmitted by the county superintendent to the superintendent of public instruction<sup>7</sup>;

(i) First semester by February 15<sup>th</sup>;

(ii) Second semester by May 24;

(e) Forms are audited verified by the superintendent of public instruction. After claims are audited verified, each district official and the county superintendent receives from the superintendent of public instruction a notification of the amount of reimbursement to be received by the district. The county treasurer receives from the superintendent of public instruction a state warrant payment with a list of districts and the amount each district is to receive.

(6) Form TR-8, School Bus Accident Report to the ~~superintendent of public instruction~~ Montana department of transportation:

(a) Forms supplied by the ~~superintendent of public instruction~~ Montana department of transportation;

(b) Forms supplied upon request;

(c) Forms used only to report accidents (those investigated by a law enforcement agency) involving school buses.

(7) ~~Form TR-9, Physical Examination Report for School Bus Drivers~~:

(a) Forms supplied by the ~~superintendent of public instruction~~ federal department of transportation;

(b) Forms supplied upon request;

(c) Forms used by school bus drivers for physical examination purposes<sup>7</sup>;

~~(d) School bus drivers may choose to use the physical examination form approved by the department of transportation;~~

~~(i) The physical examination form approved by the department of transportation must be used by bus drivers wishing to obtain a Type-1 endorsement.~~

(8) Form TR-13, Montana Highway Patrol School Bus Inspection (and reinspection):

(a) Forms supplied by the superintendent of public instruction;

(b) Forms supplied to school districts by June 1 of the previous year for the first semester, by November 20 for the second semester and upon request;

(c) Form also used when a bus did not pass first inspection by the highway patrol;

(d) Completed forms after inspection/reinspection transmitted by Montana highway patrol to:

(i) superintendent of public instruction;

(ii) county superintendent of schools;

(iii) district official;

(iv) Montana highway patrol official;

(9) remains the same.

(AUTH: 20-3-106, 20-10-112, MCA; IMP: Title 20, chapter 10, part 1, MCA)

10.16.2503 TRANSPORTATION FUNDING BUS CAPACITY (1) For the purposes of capacity rating, the capacity of the bus prior to alteration for special education shall be the capacity used for reimbursement.

~~(2) A school bus will be deemed full for the purposes of the reimbursement load requirements if it transports at least one student whose individualized education plan requires specialized transportation as a related service.~~

(AUTH: 20-10-112, MCA; IMP: 20-10-141, MCA)

4. The rules, as proposed to be adopted, provide as follows:

RULE 1 TRANSPORTATION COSTS ALLOCATED BY OUT-OF-DISTRICT ATTENDANCE AGREEMENTS

(1) If trustees of a student's districts of residence and attendance sign an out-of-district attendance agreement that includes transportation, either district may provide bus transportation or a pupil transportation contract under the conditions of ARM 10.7.105. The student may be the eligible transportee of the district providing transportation. A waiver of tuition does not affect the eligibility of the student for transportation.

(2) On-schedule costs of transporting the eligible transportee may be claimed for transportation aid in accordance with 20-10-141 and 142, MCA. On-schedule costs may not be charged to any person or entity who is a party to the out-of-district attendance agreement.

(3) Pursuant to 20-5-323, MCA, a school district transporting a student under an out-of-district attendance agreement may charge for over-schedule costs of transportation if stated in the attendance agreement. Over-schedule costs of transporting an out-of-district student, as limited by 20-5-323(5), MCA, may be charged to:

(a) the district of residence or county of residence that could be held responsible for paying tuition under a mandatory attendance agreement required by 20-5-321, MCA; or

(b) the parent/guardian or district of residence under a discretionary attendance agreement allowed by 20-5-320, MCA. The district of residence may refuse to accept responsibility for the over-schedule costs of transportation at the time the attendance agreement is signed by indicating so on the agreement form.

(4) In accordance with 20-5-323, MCA, the over-schedule costs charged under an attendance agreement for the school year 199X may not exceed the lesser of:

(a) the transportation fund expenditures reported by the district of residence on the Trustees' Financial Summary for 199X-2, divided by the total October 1 enrollment for the school year 199X-2; or

(b) the number of miles added to a bus route or routes to accommodate students attending under attendance agreements, divided by the number of students riding the buses under the attendance agreement(s), times \$0.2125, times the number of days the route or routes are conducted for the year of attendance.

(5) A party being charged over-schedule costs of transportation on an attendance agreement may request and receive written documentation from the district of residence showing the calculation in (4) before signing the attendance agreement, agreeing to pay over-schedule costs of transportation.

(6) The district or other party being charged for over-schedule costs is responsible for verifying that the charges do not exceed the calculation in (4) before approving the attendance agreement, thereby accepting responsibility for charges.

(7) Transportation charges must be prorated based on the number of days the student was enrolled compared to 180 days.

(8) The district providing transportation must bill the party responsible for paying transportation obligations of an attendance agreement.

(9) In accordance with 20-5-324, MCA, the school district trustees or county superintendent will pay costs of transportation listed on an attendance agreement for school year 199X along with tuition due on that contract in the year following the school year of attendance, which is school year 199X+1. Parents/guardians may be charged in the year of attendance.

(AUTH: 20-10-112, IMP: 20-5-320, 20-5-321, 20-5-323, 20-10-141, 20-10-142, MCA)

RULE II COUNTY TRANSPORTATION COMMITTEE'S DISCRETION TO APPROVE A DISTRICT'S BUS ROUTES (1) A county transportation committee (CTC) has discretion to approve or disapprove any bus route within a district's boundaries.

(2) The CTC's discretion to approve District A's bus route through District B's territory is limited to the following situations:

(a) District B has consented to the inclusion of territory within its district in a transportation service area (TSA); or,

(b) District B has consented, in writing, to District A's bus route.

(3) A CTC has discretion to disapprove any district's bus route that extends into another district.

(AUTH: 20-10-112, MCA; IMP: 20-10-101, 20-10-126, 20-10-132, MCA)

**RULE III EFFECT OF COUNTY TRANSPORTATION COMMITTEE APPROVAL OR DISAPPROVAL OF A ROUTE** (1) If a county transportation committee (CTC) approves a bus route and all other eligibility criteria are met, the district is eligible for state and county transportation reimbursement for the route.

(2) If the bus is operating on an approved route and districts of residence and attendance have signed an attendance agreement that includes a provision for transportation, a nonresident student may be an eligible transportee of the district operating the route.

(3) If a CTC does not approve a route, the district operating the route is not eligible for state and county transportation reimbursement for the non-approved route. If a district operates an approved bus route and travels additional, non-approved miles, the district cannot:

(a) include the non-approved miles in its calculation of state and county transportation reimbursement; or,

(b) include as eligible transportees students picked up or dropped off on the non-approved portion of the route.

(4) Examples:

(a) District A operates a bus route within its boundaries that is approved by the CTC. The route is eligible for transportation reimbursement and the passengers may be eligible transportees.

(b) District A operates a bus route within its boundaries that is not approved by the CTC. The route is not eligible for transportation reimbursement and the issue of eligible transportees is irrelevant. If District A's trustees choose to fund the route, District A may operate the route.

(c) District A operates a route that extends into District B's territory with district B's written approval. The CTC may approve the route. All the miles travelled on the route may be included in the calculation of transportation reimbursement. If signed attendance agreements exist that address transportation, and the other requirements for eligible transportees are satisfied, District B residents may be eligible transportees on the route.

(d) District A operates a route that extends into District B's territory, but District B objects. The CTC may not approve the portion of the route that extends into district B. The CTC has discretion to approve any portion of the route within District A's boundaries and District A is eligible for transportation reimbursement for those miles. Students picked up or dropped off on the approved route may be eligible transportees if all other criteria are met. Students picked up or dropped on

the non-approved route will be residents of District B and cannot be included as eligible transportees of District A.  
(AUTH: 20-10-112, MCA; IMP: 20-10-101, 20-10-126, 20-10-132, 20-10-141, MCA)

RULE IV DISTRICT TRANSPORTATION SERVICE AREAS (1) A district's transportation service area (TSA) is defined in 20-10-101 (6), MCA, as the district's geographic area of responsibility for school bus transportation. Absent any action by a county transportation committee (CTC), the district's area of responsibility is the territory of the district.

(2) A CTC may establish a TSA that extends beyond district boundaries if the trustees of the affected districts do not object. District trustees who object to a CTC decision may request a transfer to another bus route or TSA. The CTC may transfer the territory of the district to an adjacent TSA or the approved bus route of another district if the districts consent.

(3) The trustees of two or more districts may agree to provide transportation services among their TSAs. If so, the provisions of 20-10-126 (3), MCA, apply. A district may not extend its bus route for reimbursement beyond its TSA unless it has a written agreement with the district where it is operating the route.

(4) If a transportation committee has erroneously approved one district's bus route through another district's territory, the objecting district must notify the county superintendent, in writing, of the objection and the number of miles of the route that cannot be approved.

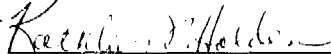
(5) If the adjacent district is willing to provide transportation service and 20% of a district's electors petition, the district trustees must conduct an election on the proposition that the territory of the district be transferred to the adjacent district's TSA for pupil transportation purposes. The election must be conducted on the next regular school election day that the school election laws can be complied with. If a majority of those voting at the election approve the transfer, the transfer is effective on July 1 of the ensuing school fiscal year.

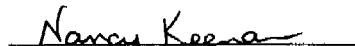
(AUTH: 20-10-112, MCA; IMP: 20-10-126, MCA)

5. Revision of the transportation rules is necessary to implement the requirements of Ch 298, L. 1995 (SB 112); concerning weighted ridership, passenger count for high schools, criteria for county transportation committee approval of a bus route and effect of non-approval, and individual transportation contracts.

6. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to the Office of Public Instruction, Kathleen F. Holden, P.O. Box 202501, Helena, MT 59620-2501, no later than 5:00 p.m. on December 2, 1996.

7. An official of the Legal Services Unit, Office of Public Instruction, has been designated to preside over and conduct the hearing.

  
Kathleen F. Holden  
Rule Reviewer  
Office of Public Instruction

  
Nancy Keenan  
Superintendent  
Office of Public Instruction

Certified to the Secretary of State October 11, 1996

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING  
rules 17.54.102, 17.54.201, ) FOR PROPOSED AMENDMENT  
17.54.351, 17.54.404, and the ) AND ADOPTION OF RULES  
adoption of new rule I, which )  
adopts new federal regulations for )  
the hazardous waste program. )

(Waste Management)

To: All Interested Persons

1. On November 14, 1996, at 9:30 a.m., the department will hold a public hearing in the Lewis Room of the Phoenix Building, 2209 Phoenix Ave., Helena, Montana, to consider the amendment and adoption of the above-captioned rules.

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

17.54.102 INCORPORATIONS BY REFERENCE (1)-(2) Remain the same.

(3) Where the department has adopted a federal regulation by reference, the following shall apply:

(a) ~~References Except where indicated otherwise, references~~ in the federal regulations to "administrator", "regional administrator", or US environmental protection agency, or the like, should be read to mean "department".

(b) Remains the same.

(4) Remains the same.

(5) ~~As of September 29, 1995~~ [the effective date of these rules], all of the incorporations by reference of federal agency rules listed below within the specific state agency rules listed below shall refer to federal agency rules as they have been codified in the July 1, 1994~~5~~ edition of Title 40 of the CFR. References in the state rules to federal rules contained in Titles 49 and 33 are updated to the extent that they have been updated by the federal rules which also incorporate these rules by reference. For the proper edition of these rules in Titles 49 and 33, see the reference in Title 40 of the CFR (1994~~5~~ edition), provided in parentheses. A short description of the amendments to incorporated federal rules which have occurred since the last incorporation by reference is contained in the column to the right. This rule supersedes any specific references to editions of the CFR contained in other rules in this chapter.

<u>State Rule</u>	<u>Federal Rule Incorporated</u>	<u>Notation of Most Recent Changes to Federal Rules</u>
<u>17.54. ....</u>	<u>40 CFR .....</u>	
(a) 105	264.17(b), 264.96, 264.117, 264.171, 264.172	<u>NE Post-closure care, container standards.</u>
(b) 111	264.72, 264.73(b) (9), 264.76	<u>NE Manifesting and operating record requirements.</u>
(c) 112	Parts 264 (except subpart H) and 266 (except subpart H)	<u>NE General facility standards; standards for specific wastes and facilities.</u>
(d) 126	264.98, 264.99, 264.100, 264.112, 264.113, 264.117(a), 264.118, 264.147	NC
(e) 131	270.14 - 270.26	<u>NE Permit application requirements.</u>
(f) 136	264.343, 264.345	NC
(g) 137	Part 264, Subpart M	NC
(h) 140	Parts 264 (except subpart H) and 266 (except subpart H)	<u>NE General facility standards; standards for specific wastes and facilities.</u>
(i) 150	Part 268, (except sections 268.5, 268.6, 268.42(b), and 264.44) as well as Appendices I through IX	<u>NE Land disposal restrictions.</u>
(j) 201	Parts 264 and 266, Appendix to Part 262	<u>NE General facility standards; standards for specific wastes and facilities.</u>



(k) 309	Part 264, Subpart O; Part 265, Subpart O; Part 266, Subparts C-G; 265.71, 265.72; Part 279	<u>NE Standards for specific wastes and facilities.</u>
<u>(l) Rule I</u>	<u>Part 273, Subparts A-F</u>	<u>Universal waste management.</u>
<del>(i)</del> <u>(m)</u> 321	<u>49 CFR</u> ..... 173.300 (40 CFR 261.21)	<u>NE Definition of ignitable compressed gas.</u>
<del>(m)</del> <u>(n)</u> 323	173.51, 173.53, 173.88 (40 CFR 261.23)	<u>NE Classification of explosives.</u>
<del>(n)</del> <u>(o)</u> 331	<u>40 CFR</u> ..... 261.31	<u>NE Hazardous wastes from non-specific sources.</u>
<del>(o)</del> <u>(p)</u> 332	261.32	<u>NE Hazardous wastes from non-specific sources.</u>
<del>(p)</del> <u>(q)</u> 333	261.33(e) and (f)	<u>NE Discarded chemical products, residue.</u>
<del>(q)</del> <u>(r)</u> 334	Part 265, Appendix V	NC
<del>(r)</del> <u>(s)</u> 351	Part 261, Appendices I, II, and III, <del>and X</del>	NC
<del>(s)</del> <u>(t)</u> 352	Part 261, Appendices VII and VIII	<u>NE Basis for listing hazardous waste, hazardous constituents.</u>
<del>(t)</del> <u>(u)</u> 408	Part 262, the Appendix	NC
<del>(u)</del> <u>(v)</u> 415	<u>49 CFR</u> ..... Parts 173, 178, and 179 (40 CFR 262.30)	<u>NE Shipping and packaging of hazardous materials.</u>
<del>(v)</del> <u>(w)</u> 416	Part 172, Subpart E (40 CFR 262.31)	<u>NE Labeling requirements for hazardous materials transportation.</u>

(w)(x) 417	Part 172, Subpart D (40 CFR 262.32)	<u>NE Marking requirements for hazardous materials transportation.</u>
(x)(y) 418	Part 172, Subpart F (40 CFR 262.33)	<u>NE Placarding requirements for hazardous materials transportation.</u>
(y)(z) 421	<u>40 CFR . . . .</u> Part 265, Subparts C and D, 265.111, 265.114, Part 265, Subpart I, Part 265, Sub- part J, (except 265.197(c) and 265.200)	<u>NE Air emission standards.</u>
(z)(aa) 435	262.58	NC
(aa)(ab) 511	<u>49 CFR . . . . / 33 CFR . . . .</u> 171.15, 171.16 / 153.203 (40 CFR 263.30)	<u>NE Notice requirements for discharges of hazardous waste.</u>
(ab)(ac) 603	<u>40 CFR . . . .</u> 264.250(c), 265.352, 265.383	NC
(ac)(ad) 609	Part 265, Subparts B - Q, excluding Subpart H and 265.75	<u>Containment buildings- Interim status standards.</u>
(ad)(ae) 702	Part 264, Subparts B - BB, excluding Subpart H and 264.75; Part 264, Appen- dices I, IV, V, VI, and IX	<u>Containment buildings- Facility standards.</u>
(ae)(af) 802	264.197, 264.228, 264.258, 265.197, 265.228, and 265.258	NC
(af)(ag) 803	264.112, 264.117 - 264.120, 265.112, 265.117 - 265.120	NC

<del>(ag)</del> (ahl)	807	264.111 - 264.115, 264.143(f)(3), 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.601 - 264.603, 265.111- 265.115, 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, and 265.404	NE Environmental performance standards for miscellaneous units.
<del>(ah)</del> (ail)	808	264.117 - 264.120, 264.145(f)(5), 264.228, 264.258, 264.280, 264.310, 264.603, 265.117 - 265.120, 265.228, 265.258, 265.280, 265.310	NC
<del>(ai)</del> (ajl)	814	264.143(f) and 264.145(f)	NC
<del>(aj)</del> (ak)	823	264.147(f), 264.147(g)	NC
<del>(ak)</del> (al)	833	264.151(a)-(j)	NC
<del>(al)</del> (aml)	1118	Part 266, Appendices I through XII	NE Exempt mercury bearing wastes.

NC - Refers to no change in the material which is being incorporated by reference from the time of the last formally noticed incorporation by reference.

(6) Remains the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

17.54.201 DEFINITIONS In this chapter, the following terms shall have the meanings or interpretations shown below:

(1)-(31) Remain the same.

(32) "Electric lamp" means the bulb or tube portion of a lighting device specifically designed to produce radiant energy, most often in the ultraviolet (UV), visible, and infra-red (IR) regions of the electromagnetic spectrum. Examples of common electric lamps include, but are not limited to, incandescent, florescent, high intensity discharge, and neon lamps.

(32)-(142) Remain the same but are renumbered (33)-(143).

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

17.54.351 REPRESENTATIVE SAMPLING METHODS; TOXICITY CHARACTERISTIC LEACHING PROCEDURE; CHEMICAL ANALYSIS TEST METHODS; AND TESTING METHODS (1) For the purposes of this chapter, the department hereby adopts and incorporates herein by reference the following (the correct CFR edition is listed in ARM 17.54.102):

(a)-(c) Remain the same.

~~(d) Appendix X of 40 CFR Part 261 which sets forth analytical procedures for chlorinated dibenzo-p-dioxins and dibenzofurans;~~

- (e)-(n) Remain the same but are renumbered (d)-(m).  
 (2) Remains the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

17.54.404 MAINTENANCE OF REGISTRATION AND REGISTRATION FEES

- (1)-(3) Remain the same.  
 (4) The size classes for determining the annual registration fee amount are defined in Table 1 below:

TABLE 1

<u>Size Class</u>	<u>Annual Generation Rate (in tons)</u>	<u>Annual Reg. Fee</u>	<u>Relationship to the Three Generator Categories Defined in ARM 17.54.401</u>
I	<del>1-3 &lt; X 13</del> X 13	\$ 75	Small generators/ Large generators
II	13 < X 100	\$ 200	Large generators
III	100 < X 1000	\$ 600	Large generators
IV	1000 < X 2500	\$1000	Large generators
V	2500 < X	\$1500	Large generators

- (5)-(8) Remain the same.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA

RULE 1 UNIVERSAL WASTE MANAGEMENT (1)(a) The department hereby adopts and incorporates by reference 40 CFR Part 273, subparts A-F. The correct CFR edition is listed in ARM 17.54.102. These federal agency rules refer to standards for the management of universal wastes. A copy of these provisions or any portion thereof may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

(b) As used in 40 CFR 273.20(b) and (c), 273.40(b) and (c), and 273.56, the term "EPA" will remain the same and is not replaced by the term "department" in accordance with ARM 17.54.102(3).

(2) Electric lamps that are hazardous waste are universal wastes, and handlers of electric lamps that are hazardous waste are subject to the requirements of 40 CFR Part 273 (adopted by reference in (1)(a) of this rule). Electric lamps that are hazardous waste and that are not managed in compliance with the requirements of 40 CFR and this rule must be managed in accordance with the hazardous waste regulations in subchapters 1 through 9 of this chapter.

(3)(a) The date a used electric lamp becomes a waste is the date the generator permanently removes it from its fixture. The date an unused lamp becomes a waste is the date the generator decides to discard it.

(b) A handler of hazardous waste electric lamps must:

- (i) contain unbroken lamps in packaging that will minimize breakage during normal handling conditions;

(ii) contain broken lamps in packaging that will minimize releases of lamp fragments and residues; and

(iii) label or mark lamps, or a container in which the lamps are contained, with any one of the following phrases: "universal waste--electric lamp(s)", "waste electric lamp(s)", or "used electric lamp(s)".

AUTH: 75-10-405; IMP: 75-10-404, 75-10-405

3. The department is proposing the amendments to these rules in order to maintain federal authorization of the state hazardous waste program, thereby authorizing the state to enforce its program in place of the federal program.

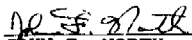
In addition, the proposed rule promulgates streamlined hazardous waste management regulations governing the collection and management of certain widely generated wastes, known as "universal wastes." This rule covers hazardous waste batteries (e.g., nickel cadmium), certain hazardous waste pesticides, mercury-containing thermostats, and electric lamps, (e.g., fluorescent light tubes). By reducing certain current regulatory requirements in accordance with recent federal RCRA Subtitle C amendments, this rule will encourage local governments and generators and handlers of those wastes to establish environmentally sound collection programs, and retailers to participate in them. Although households and small businesses produce much of these wastes, retailers were previously reluctant to accept them because of concerns that some of the wastes might be from regulated hazardous waste generators. If that were the case, all of the collected wastes would be subject to full regulation under state rules to implement RCRA Subtitle C.

In contrast, under the streamlined system, retailers and others who generate or handle these wastes would not have to comply with paperwork requirements and certain technical standards contained in state rules that implement RCRA Subtitle C. Despite this regulatory reduction, however, this rule is actually expected to increase environmental protection by increasing the availability of collection and recycling programs that will subsequently ensure that these wastes go to hazardous waste recycling and disposal facilities rather than to less regulated municipal solid waste landfills and incinerators.

4. Interested persons may submit their data, views, or arguments concerning the proposed actions, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Mark Stahly, Department of Environmental Quality, Metcalf Building, PO Box 200901, Helena, MT 59620-0901, no later than November 22, 1996.

5. Mark Stahly has been designated to preside over and conduct the hearing.

Reviewed by:

  
JOHN F. NORTH,  
Rule Reviewer

  
CURT CHISHOLM, Deputy Director

Certified to the Secretary of State October 11, 1996.

BEFORE THE BOARD OF MILK CONTROL  
OF THE STATE OF MONTANA

In the matter of amendments ) NOTICE OF PROPOSED  
to rules 32.24.501, 32.24.504,) AMENDMENTS  
32.24.505 and 32.24.506 as )  
they relate to quota rules. ) NO PUBLIC HEARING  
 ) CONTEMPLATED  
 )  
 ) DOCKET #4-96

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

1. On November 23, 1996, the board of milk control  
proposes to amend rules 32.24.501, 32.24.504, 32.24.505 and  
32.24.506 which is at the request of Neil McAlpin, chairman of  
the producer committee and on behalf of the producer  
committee.

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

"32.24.501 QUOTA DEFINITIONS

~~(1)~~ The following definitions apply to ARM 32.24.502,  
32.24.503, 32.24.504, 32.24.505 and 32.24.506 unless the  
context otherwise requires:

(a)-(i)(v) Remain the same but renumbered (1)-(1)(e).

~~(b)~~(2) "Immediate family" includes spouses, ancestors,  
lineal descendants and their spouses, brothers or sisters.  
The term also includes a corporation, partnership, or other  
entity of which at least a one-half interest therein is owned  
by one or more members spouses, ancestors, lineal descendants  
and their spouses, brothers or sisters of the immediate same  
family.

~~(c)~~(3) "Quota" is a daily figure expressed in pounds of  
milk as computed in accordance with ARM 32.24.502~~(1)~~ and ~~(2)~~  
and adjusted thereafter pursuant to ARM 32.24.505~~(1)~~(a) and  
~~(d)~~.

(d)-(e) Remain the same but renumbered (4)-(5).

~~(f)~~(6) "Quota transfer" is defined as a transfer of all  
or a minimum portion of an eligible producer's production  
history quota. Quota transfers must be made in increments of  
at least 100 pounds per day or for the entire amount of quota;  
whichever is less a minimum of 100 pounds a day. If the  
eligible producer is going out of business and his daily  
balance amount is less than 100 pounds, then that amount may  
be transferred.

~~(g)~~(7) "Administrator" is the bureau chief of the milk  
control bureau.

(h)-(i)(c) Remains the same but renumbered (8)-(9)(c)."

AUTH: 81-23-104, MCA

IMP: 81-23-103, MCA

"32.24.504 TRANSFER OF QUOTA

(1) Remain the same.

(a) A quota transfer is defined as a transfer of the ownership of all or a portion of an eligible producer's quota; leasing of quota is prohibited. Quota transfers must be made in increments of at least 100 pounds per day or for the entire amount of quota, whichever is less a minimum of 100 pounds a day. If the eligible producer is going out of business and his daily balance amount is less than 100 pounds, then that amount may be transferred.

(b) The producer committee, the pool plants, and the administrator milk control bureau must be notified in writing by the proposed quota transferor at least ten 10 days prior to the first day of the month during which the transfer is contemplated. Such notice must include the name of the prospective transferee, the effective date of the proposed transfer, and the amount of quota to be transferred. The producer must also notify his pool plant of his transfer. The bureau will notify the quota committee of any proposed transfers.

(c)-(e) Remain the same.

(f) Intrafamily quota transfer is defined as a transfer of quota from an eligible producer to the eligible producer's immediate family as defined in ARM 32.24.501, or from one nonprofit religious entity or corporation which is currently an eligible producer (such as a Hutterite colony) to a substantially similar and affiliated nonprofit religious entity, or to a closely held corporation controlled by the same immediate family.

(g)-(h) Remain the same.

(i) An entire transfer of quota to a producer who does not hold quota shall be effective on the date of the transfer of the herd and farm, or on the first day of the month following the date of transfer if both herd and farm were not included in the transfer, provided in either case that a quota transfer request must be made to and approved by the producer committee before the first day of the month of the transfer. In the event the transferor is not substantially standing in the shoes of the seller, then the transfer can only take effect on the first day of the month. In either case the request for transfer must be received by mail or in person in the bureau office 10 days prior to the date the transfer is to take effect."

AUTH: 81-23-104, MCA

IMP: 81-23-103, MCA

"32.24.505 READJUSTMENT AND MISCELLANEOUS OF QUOTA RULES

(1) Eligible producers whose marketings of milk during the months of seasonally low production fall below the level specified herein forfeit quota in accordance with the following computations:

~~(a) On or before January 20th after this plan has been in effect for at least six months, and on or before each succeeding January 20th thereafter, the administrator shall:~~

~~(i) compute the total pounds of milk marketed by each eligible producer during the immediately preceding months of September, October, November and December;~~

~~(ii) compute the pounds of quota held by each eligible producer on the first day of each of the same four months; multiply the quota pounds so determined by the number of days in the respective months, and combine the results into one figure and multiply this figure by 0.90;~~

~~(iii) in the case of each eligible producer for whom the figure computed under (ii) hereof exceeds that computed under (i) hereof, compute the difference and divide the resulting figure by 122;~~

~~(iv) reduce each eligible producer's quota for whom a figure was computed under (iii) hereof by the number so computed effective on March 1 next following. However, quota will be reduced only if there was less than 20% quota milk in class III for the preceding month of May. In addition, if quota milk is to be reduced pursuant to this rule, each producer whose quota milk is to be reduced shall have until, but not including, March 1 to sell or otherwise transfer the underproduced quota before such reduction is effective.~~

~~(b)(1) No additional quota will be issued until there is less than 20% 16.5% in class III quota milk. If the quota to be assigned is less than 5/10 of 1% of the quota held by all eligible producers, the entire quota pounds to be assigned shall be carried over until the following year and combined with any other quota for assignment at that time.~~

~~(c)-(c)(iii) Remain the same but renumbered (a)-(a)(iii).~~

~~(iv) determine the total pounds of quota that has been forfeited during the preceding twelve 12 month period pursuant to ARM 32.24.502(7), (8), and 32.24.504(1)(g) and 32.24.505(1)(a)(iv) hereof or for any other reason;~~

~~(v)-(vi) Remain the same.~~

~~(d)-(e) Remain the same but are renumbered (b) and (c)."~~

AUTH: 81-23-104, MCA

IMP: 81-23-103, MCA

#### "32.24.506 PRODUCER COMMITTEE

~~(1) Remain the same.~~

~~(2) The producer committee shall consist of one eligible producer for each ten-percentage (10%) points 10% of the total August pool raw milk represented by each pool plant with a minimum of at least one committee representative per pool plant. Calculation is done by using the total August pool milk receipts, divided by each pool plant's receipts, rounded to the nearest 10%, and divided by 1.~~

~~(3)-(14) Remain the same."~~

AUTH: 81-23-104, MCA

IMP: 81-23-103, MCA

3. Rules 32.24.501, 32.24.504, and 32.24.506 are being amended to clarify and/or make more workable certain provisions of the rules governing the statewide quota plan



(ARM 32.24.501 through 32.24.506). Rule 32.24.505 is being amended to eliminate the requirement of having to prove quota because the requirement is no longer needed and under the present language it is forcing producers to lose assets which could cause legal problems in the future; and to lower the trigger point of reassignment of quota to a realistic level so that additional quota will not be introduced into the system until it is needed.

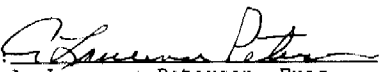
4. Persons known to have an interest in this proposal are all Montana licensed milk producers and all dairy product processors operating in Montana.

5. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to the Milk Control Bureau, 301 N. Roberts St. - RM 236, PO Box 202001, Helena, MT 59620-2001. Any comments must be received no later than November 21, 1996.

6. If a person who is directly affected by the proposed amendments 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 the Milk Control Bureau, 301 N. Roberts St. - RM 236, PO Box 202001, Helena, MT 59620-2001. Any comments must be received no later than November 21, 1996.

7. 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 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 17 persons based on 166 licensed producers and in-state distributors in Montana.

MONTANA BOARD OF MILK CONTROL  
MILTON J. OLSEN, Chairman

By:   
A. Laurence Petersen, Exec.  
Officer, Board of Livestock

By:   
Lon Mitchell, Rule Reviewer  
Livestock Chief Legal Counsel

Certified to the Secretary of State October 11, 1996.

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

In the matter of the amendment	)	NOTICE OF THE PROPOSED
of 16.32.320 pertaining to the	)	AMENDMENT OF A RULE
minimum standards for a	)	
hospital -- general	)	NO PUBLIC HEARING
requirements	)	IS CONTEMPLATED

TO: All Interested Persons

1. On November 25, 1996, the Department of Public Health and Human Services proposes to amend ARM 16.32.320 pertaining to the minimum standards for a hospital -- general requirements.

2. The rule as proposed to be amended provides as follows: New language that is to be added is underlined. Language that is being deleted is interlined.

16.32.320 MINIMUM STANDARDS FOR A HOSPITAL--GENERAL REQUIREMENTS (1) A hospital shall comply with the Conditions of Participation for Hospitals ~~as set forth in 42 CFR 405, Subpart J 42 CFR 482.2 through 482.66, subpart A through E.~~ A copy of the cited rule is available at the department. The department hereby adopts and incorporates by reference 42 CFR 482.2 through 482.66, subpart A through E. A copy of the regulation may be obtained from the Department of Public Health and Human Services, Licensing Bureau, Cogswell Building, P.O. Box 202951, 1400 Broadway, Helena, Montana 59620-2951.

AUTH: Sec. 50-5-101 and 50-5-404, MCA

IMP: Sec. 50-5-103, 50-5-204 and 50-5-404, MCA

3. Hospitals are certified to participate in the Medicare program based upon their compliance with the federal conditions of participation for hospitals (formerly set forth in 42 CFR 405, subpart J). State licensure of hospitals has also been based on those same federal regulations detailing conditions of participation so that hospitals are not subject to two different sets of standards for certification and licensure. The federal regulation (42 CFR 405, subpart J) referenced in ARM 16.2.320 has been replaced by 42 CFR 482.2 through 482.66, subpart A through E. The adoption of the new regulation will incorporate the most current conditions of participation for hospitals.

4. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Laura Harden, Office of Legal Affairs,

Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620, no later than November 21, 1996.

5. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date. Ten percent of those directly affected has been determined to be 6 based on the number of individuals affected by rules pertaining to the minimum standards for a hospital -- general requirements.

James Sliva  
Rule Reviewer

Michael B. Billings for  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 11, 1996.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of rules	)	ON THE PROPOSED AMENDMENT
46.12.101, 46.12.102,	)	OF RULES
46.12.301, 46.12.302,	)	
46.12.303, 46.12.304,	)	
46.12.306, 46.12.307,	)	
46.12.308, 46.12.407,	)	
46.12.501, 46.12.502,	)	
46.12.593, 46.12.1235,	)	
46.12.1260, 46.12.1705 and	)	
46.12.1919 pertaining to	)	
general medicaid provider	)	
requirements	)	

TO: All Interested Persons

1. On November 13, 1996, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.101, 46.12.102, 46.12.301, 46.12.302, 46.12.303, 46.12.304, 46.12.306, 46.12.307, 46.12.308, 46.12.407, 46.12.501, 46.12.502, 46.12.593, 46.12.1235, 46.12.1260, 46.12.1705 and 46.12.1919 pertaining to general medicaid provider requirements.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on November 4, 1996, to advise us of the nature of the accommodation that you need. Providing an interpreter for the deaf or hearing impaired may require more time. 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. New language that is being added is underlined. Language that is to be deleted is interlined.

46.12.101 MEDICAL ASSISTANCE. PURPOSE (1) Subject to applicable laws, regulations, rules and policies, the ~~The~~ Montana medicaid program pays for covered medically necessary ~~medical~~ services for persons determined eligible by the department or its agents. low income persons. ~~Necessary medical services are those provided for by law and in the rules governing the medicaid program. Eligible low income persons include those categories of persons provided for by law and described in this chapter, Title 46, chapter 12, ARM~~

~~46.12.309, 46.12.4101 and 46.12.4102, and Title 46, chapter 17.~~

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

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

46.12.102 MEDICAL ASSISTANCE, DEFINITIONS

(1) Department means the Montana department of ~~social and rehabilitation services~~ public health and human services.

(2) Medically necessary service, ~~or services~~, means a service or item reimbursable under ARM, Title 46, chapter 12, subchapters 5, 7, 8, 9 and 20 or any service listed separately on a hospital claim the Montana medicaid program, as provided in these rules:

(a) which is reasonably calculated to prevent, diagnose, correct, cure, alleviate, or prevent the worsening of conditions in a patient which:

(a) (i) endanger life, ~~or;~~

(b) (ii) cause suffering or pain, ~~or;~~

(c) (iii) result in illness or infirmity, ~~or;~~

(d) (iv) threaten to cause or aggravate a handicap; or

(e) (v) cause physical deformity or malfunction, and;

(b) A service or item is not medically necessary if there is no other another medically appropriate treatment for the recipient that is equally safe and effective, more conservative, or substantially and less costly source of treatment more suitable for the recipient requesting the service or including, when appropriate, no treatment at all.

(c) Experimental services or services which are generally regarded by the medical profession as unacceptable treatment ~~will~~ are not be considered medically necessary for the purposes of the medical assistance Montana medicaid program.

(2) (e) (i) (A) remains the same in text but is renumbered

(2) (c) (i).

(ii) ~~Emergency service means inpatient and outpatient hospital services that are necessary to prevent the death or serious impairment of the health of a recipient.~~

(3) Montana medicaid program means the Montana medical assistance program authorized by ~~sections 53-6-101 through 53-6-144, 53-6-201 and 53-6-202 et seq.~~ Title 53, chapter 6, MCA and 42 USC-1396 et seq. Title XIX of the Federal Social Security Act.

(4) ~~Provider means a natural person, firm, corporation, association or institution which is providing and has been approved to provide medical assistance to a recipient pursuant to the state medical assistance program.~~

(5) ~~Third party means an individual, institution, corporation, or a public or private agency which may be or is liable to pay all or part of the medical cost of injury, disease, or disability of an applicant for or a recipient of services provided by the Montana medicaid program.~~

(4) Provider means an individual, company, partnership, corporation, institution, facility, or other entity or business association that has enrolled or applied to enroll as a provider of services or items under the Montana medicaid program.

(5) Emergency service means inpatient and outpatient hospital services that are necessary on an immediate basis to prevent the death or serious impairment of the health of a recipient.

(6) Valid and proper claim means a claim which has been completed, signed and submitted according to all applicable requirements signed and submitted on a department approved billing form with all the requested required information supplied, and for which no further written information or substantiation is required for payment.

(7) and (8) remain the same.

(9) Provider agreement means an agreement that continues for a specific period of time not to exceed twelve months and which must be renewed in order for the provider to continue to participate in the medicaid program.

(10) through (20) remain the same in text but are renumbered (9) through (19).

(21) (20) Maximum allowable cost (MAC) is the upper limit the department will pay for multi-source drugs. In order to establish base prices for calculating the maximum allowable cost, the department hereby adopts and incorporates by reference the methodology for limits of payment set forth in 42 CFR 447.331 and 447.332 (1988). The maximum allowable cost for multiple source drugs will not exceed the total of the dispensing fee established by the department and an amount that is equal to 150 percent of the price established under the methodology set forth in 42 CFR 447.331 and 447.332 for the least costly therapeutic equivalent that can be purchased by pharmacists in quantities of 100 tablets or capsules or, in the case of liquids, the commonly listed size. If the drug is not commonly available in quantities of 100, the package size commonly listed will be the accepted quantity. A copy of the above-cited regulations may be obtained from the Department of Social and Rehabilitation Services Public Health and Human Services, Medicaid Services Division Health Policy and Services Division, 1400 Broadway, P.O. Box 4210 202951, Helena, Montana, 59604 59620-2951.

(22) through (37) remain the same in text but are renumbered (21) through (36).

(38) (37) Electronic media claims means claims submitted to the Montana medicaid program via magnetic tape or another acceptable electronic media approved by the department in accordance with ARM 46.12.303(1)-(4).

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-106, 53-6-107,  
53-6-111, 53-6-113, 53-6-131, 53-6-141 and

53-6-155, MCA

46.12.301 PROVIDER PARTICIPATION (1) As a condition of participation in the Montana medicaid program all providers of service shall abide by must comply with all applicable state and federal statutes, rules, and regulations and policies, including but not limited to federal regulations and statutes found in Title 42 of the Code of Federal Regulations and the United States Code governing the medicaid program, and all pertinent applicable Montana statutes and rules governing licensure and certification.

AUTH: Sec. 53-6-113, MCA

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

46.12.302 CONTRACTS PROVIDER ENROLLMENT AND AGREEMENTS

(1) Providers shall enter into a written contract with the department delineating the services to be provided and reimbursement to be paid for duration, and referral. Natural persons who are providers need not enter such a contract.

(a) Providers under written contract may not obtain reimbursement for services which are not reimbursable to providers who are natural persons unless the services are unique to the specific provider. Reimbursement for these unique services shall be in accordance with the rules of the department.

(b) Providers under written contract shall not receive higher reimbursement rates for similar services than the rates allowed by the Montana medicaid program to providers, who are natural persons.

(c) Waivers of this written contract requirement may be granted to specific type providers at the discretion of the department if the provision of services and reimbursement rates for such services are governed specifically by the rules of the department.

(1) Providers must enroll in the Montana medicaid program for each category of services to be provided. As a condition of granting enrollment approval or of allowing continuing enrollment, the department may require the provider to:

(a) complete and submit an enrollment application or form;

(b) complete and submit agreements or other forms applicable to the provider's category of service;

(c) provide information and documentation regarding ownership and control of the provider entity and regarding the provider's ownership interest or control rights in other providers that bill medicaid;

(d) provide information and documentation regarding any sanctions, suspensions, exclusions or civil monetary penalties imposed by medicare or any state medicaid program or criminal

charges brought against the provider or persons or entities associated with the provider; and

(e) submit documentation and information demonstrating compliance with participation requirements applicable to the provider's category of service.

(2) Providers shall provide the department's fiscal agent with 30 days advance written notice of any change in the provider's name, address, tax identification number, group practice arrangement, business organization or ownership.

(3) An approved enrollment is effective on the later of:

(a) one year prior to the date the completed enrollment application is received by the department's fiscal agent; or

(b) the date as of which all required licenses and certifications are effective.

(2) through (3)(a) remain the same in text but are renumbered (4) through (5)(a).

††(6) Providers shall not discriminate illegally in the provision of service to eligible medicaid recipients or in employment of persons on the grounds of race, creed, religion, color, sex, national origin, political ideas, marital status, age or handicap disability. Providers shall comply with the department of health, education, and welfare regulations under Title VI and Title IX of the Civil Rights Acts, Public Law 93-112 (sections 504 and 505) and 49-1-101, 102 MCA, 49-2-101, 102 MCA, 49-2-202 MCA, 49-2-301 through 49-2-308 MCA, 49-2-401 through 49-2-404 MCA, 49-2-501 through 49-2-505 MCA, 49-2-601 MCA, Civil Rights Act of 1964 (42 USC 2000d, et seq.), The Age Discrimination Act of 1975 (42 USC 6101, et seq.), The Americans With Disabilities Act of 1990 (42 USC 12101, et seq.), section 504 of the Rehabilitation Act of 1973 (29 USC 794), and the applicable provisions of Title 49, MCA, as amended, and all requirements imposed by or pursuant to the regulation regulations, rules and policies implementing the statutes.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113,  
53-6-131 and 53-6-141, MCA

#### 46.12.303 BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND

PAYMENT (1) Providers shall submit clean claims to medicaid within 12 months from the latter of:

(a) the date of the service;

(b) the date retroactive eligibility was determined; or

(c) the date disability was determined.

(1) Providers must submit clean claims to medicaid within the latest of:

(a) 12 months from the latest of:

(i) the date of service;

(ii) the date retroactive eligibility is determined; or

(iii) the date disability was determined;



(b) 6 months from the date on the medicare explanation of benefits approving the service, if the medicare claim was timely filed and the recipient was medicare eligible at the time the medicare claim was filed; or

(c) 6 months from the date on an adjustment notice from a third party payor, where the third party payor has previously processed the claim for the same service and the adjustment notice is dated after the periods described in (1)(a) and (b).

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

(b) For ~~for~~ inpatient hospital services, date of service is the date of discharge;

(c) ~~The~~ the date of submission to the medicaid program is the date the claim is stamped "received" by the department or ~~its~~ its designee; and

(d) The claim submission deadline specified in (1) applies regardless of whether or not a third party has allowed or denied a provider's claim. If a third party has not allowed or denied a provider's claim, the provider may submit a claim to medicaid according to the requirements of ARM 46.12.304(4)(6)(c) and subject to the claim submission deadline specified in (1) a provider may submit a bill to medicaid after 90 days of a prior submission to another third party insurer.

(3) Claims must be submitted in accordance with this rule to be valid. In processing claims, the department or its agent may deny payment of or pend a claim upon determining that a basis exists for denial of payment or pending the claim, and no further review or processing of the claim is required until resubmission of the claim by the provider. The department or its agent is not required to list or identify all possible grounds for denial or pending of the claim. The fact that a particular basis for denial or pending of a claim for a service or item was not identified on an earlier statement of remittance or other similar statement does not preclude denial or pending of the claim on that basis on a later submission of the claim.

(4) through (8)(b) remain the same.

(9) If the department pays a claim but subsequently discovers that the provider was not entitled to payment for any reason, the department is entitled to recover the resulting overpayment as provided in (10). The program shall pay 90 percent of all valid and proper claims within 30 days after receipt of said claim. Should the bureau contend that a claim is not valid or proper, the bureau shall inform the provider of the details of the contention within 30 days after receipt of the claim.

(a) The program shall pay 90 percent of all valid and proper claims within 90 days of receipt of the claims.

(b) The program shall make payment on all claims within 180 days of the receipt of the claim unless it determines payment to be improper under this chapter or applicable federal regulations.

~~(e)~~ (10) The department ~~shall be~~ is entitled to promptly recover from the provider and the provider is obligated to repay to the department all medicaid payments erroneously or improperly made to ~~a~~ which the provider was not entitled under applicable state and federal laws, regulations, rules or policies. At the option of the department, recoveries ~~shall~~ may be accomplished by a direct payment to the department or by automatic deductions from future payments due the provider. Notice of overpayment ~~shall~~ must be made in accordance with ARM 46.12.407.

(a) The department is entitled to recover under (10) any payment to which the provider was not entitled, regardless of whether the payment was the result of department or provider error, or other cause, and without proving that the provider submitted an improper or erroneous claim knowingly, intentionally, or with intent to defraud.

(b) The department is entitled to recover an overpayment from the provider in whose name the erroneous or improper claim was submitted, even if the provider was an employee of another individual or entity and was required as a condition of the provider's employment to turn over all fees received by the provider to the employer.

~~(10)~~ (11) Providers are required to accept, as payment in full, the amount paid by the Montana medicaid program for a service or item provided to an eligible medicaid recipient in accordance with the rules of the department. Providers shall not seek any payment in addition to or in lieu of the amount paid by the Montana medicaid program from a recipient or his representative, except as provided in these rules.

~~(a)~~ A provider may bill a recipient for the co-payments specified in ARM 46.12.204 and ARM 46.17.121- and

~~(b)~~ A provider may bill a recipient for services not covered by the medicaid program.

~~(c)~~ A provider may bill certain recipients for amounts above the medicare deductibles and coinsurance as allowed in ARM 46.17.119.

(a) A provider may bill a recipient for non-covered services if the provider has informed the recipient in advance of providing the services that medicaid will not cover the services and that the recipient will be required to pay privately for the services, and if the recipient has agreed to pay privately for the services. For purposes of (11)(a), non-covered services are services that may not be covered for the recipient by the Montana medicaid program under any circumstances.

(b) Except as provided in this rule, a provider may not bill a recipient after medicaid has denied payment for covered services because the services are not medically necessary for the recipient.

(i) A provider may bill a recipient after medicaid has denied payment for lack of medical necessity if the provider specifically informed the recipient in advance of providing

the services that the services are not medically necessary under medicaid criteria, that medicaid will not pay for the services and that the recipient will be required to pay privately for the services, and the recipient has agreed to pay privately for the services. The agreement to pay privately must be based upon definite and specific information given by the provider to the recipient indicating that the service will not be paid by medicaid. The provider may not bill the recipient under this exception when the provider has informed the recipient only that medicaid may not pay or where the agreement is contained in a form that the provider routinely requires recipients to sign.

(ii) An ambulance service provider may bill a recipient after medicaid has denied payment for lack of medical necessity.

(c) A provider may not bill a recipient for services as a private pay patient if, prior to provision of the services, the recipient informed the provider of medicaid eligibility, unless, prior to provision of the services, the provider informed the recipient of its refusal to accept medicaid and the recipient agreed to pay privately for the services.

(d) In service settings where the recipient is admitted or accepted as a medicaid recipient by a provider, facility, institution or other entity that arranges provision of services by other or ancillary providers, all other or ancillary providers will be deemed to have accepted the individual as a medicaid recipient and may not bill the recipient for the services unless, prior to provision of services, the particular provider informed the recipient of its refusal to accept medicaid and the recipient agreed to pay privately for the services.

(e) The provider may not bill a recipient for services when medicaid does not pay as a result of the provider's failure to comply with applicable enrollment, prior authorization, billing or other requirements necessary to obtain payment.

(f) Acceptance of a recipient as a medicaid recipient applies to all services provided by the provider to the recipient, except as provided in (11) (a) or (b). A provider may not accept medicaid payment for some covered services but refuse to accept medicaid for other covered services. Subject to the requirements of ARM 46.12.302(4), a provider may terminate acceptance of medicaid for a recipient in accordance with the provider's professional responsibility, by informing the recipient of the termination and the effect of the termination on provision of and payment for any further services.

(g) If an individual has agreed prior to receipt of services that payment will be made from a source other than medicaid but later is determined retroactively eligible for medicaid, the provider may choose to accept the individual as

a medicaid recipient with respect to the services or to seek payment in accordance with the original payment agreement.

(h) A provider that bills medicaid for services rendered will be deemed to have accepted the individual as a medicaid recipient.

(i) Nothing in this rule is intended to permit a provider to refuse to accept an individual as a medicaid recipient where the provider is otherwise required by law to accept an individual as a medicaid recipient.

(11) remains the same in text but is renumbered (12).

~~(12)~~ (13) The Montana medicaid program shall make payments directly to the individual provider of service unless the individual provider is required, as a condition of his the provider's employment, to turn his all fees over to his the employer and the provider executes an assignment to the employer in a form acceptable to the department.

(12)(a) through (14)(b) remain the same in text but are renumbered (13)(a) through (15)(b).

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113,  
53-6-131 and 53-6-141, MCA

46.12.304 THIRD PARTY LIABILITY (1) No payment shall be made by the department for any medical service for which there is a known third party who has a legal liability to pay for that medical service except for those services specified in ~~subsection~~ (6) below.

(2) through (6) remain the same.

(a) The primary diagnosis on the claim is for certain prenatal and preventive pediatric care as specified in the medicaid provider manual, copies of which may be obtained from the Montana Department of ~~Social and Rehabilitation Services~~ Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 4210 202951, 111 Sanders, Helena, MT 59604-4210 59620-2951. The provider may bill the third party or the department in this circumstance.

(6)(b) through (6)(b)(iv) remain the same.

(c) The provider has billed the third party and has not received a reply from the third party either allowing or denying payment, if the following provisions are met:

(6)(c)(i) through (7)(c) remain the same.

(8) For inpatient hospital claims where medicare part A benefits have been paid, the department's sole obligation shall be to pay the medicare part A deductible. For nursing home facility service claims where medicare part A benefits have been paid, the department's sole obligation shall be to pay in accordance with ARM ~~46.12.1205(1)(a)~~ 46.12.1226.

(9) remains the same.

(a) The refund shall be made ~~as described in ARM 46.12.303(2)(e)~~ payable to Montana medicaid and submitted to

the department's fiscal office, and shall indicate the name of the third party payor.

(9)(b) and (10) remain the same.

(11) For any service where an identified third party has only a potential liability as a tort-feasor, the provider may file a medical lien against that third party. The provider may bill the department prior to determination of liability of the third party if the provider notifies the TPL unit of the identity of the third party and its name and address if known. The provider may keep its lien in place and receive payment from the third party. If payment is received from the third party, the provider must refund to the department as described in ~~subsection (9)~~ (9).

(12) remains the same.

AUTH: Sec. 53-6-113, MCA

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

46.12.306 DETERMINATION OF MEDICAL NECESSITY (1)  
remains the same.

(2) In determining medical necessity the department or designated review organization ~~shall~~ may consider the type or nature of the service, the provider of the service, and the setting in which the service is provided and any additional requirements applicable to the specific service or category of service.

~~(3) Experimental procedures are not a benefit of the program.~~

(3) The department may review the medical necessity of services or items at any time either before or after payment. If the department determines that services or items were not medically necessary or otherwise in compliance with applicable requirements, the department may deny payment or may recover any overpayment in accordance with applicable requirements. The department is not precluded by an earlier screening, prior authorization, certification or similar process from reviewing and determining medical necessity of any service or item, or from denying payment or recovering any overpayment based upon any such review or determination. This rule does not require the department to notify a provider or recipient of a medical necessity determination until and unless the department completes its review and takes an adverse action against the provider based upon the determination.

(4) The provider must upon request provide to the department or its designated review organization without charge any records related to services or items provided to a recipient.

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

the overpayment or imposition of the sanction, but the department may be required to provide a new notice in compliance with this rule.

(4) This rule shall not be construed to require that the department investigate, complete an investigation, make a determination or take any other action regarding a potential fraud, abuse or overpayment within any particular time.

(5) While this rule does not require the department to act within any particular time, if any governmental agency or entity is conducting an investigation of a provider, the department shall not in any event be required to notify the provider of a violation or overpayment until the investigation is concluded and enforcement proceedings, if any, have been completed, if in the sole discretion of the department or the governmental agency or entity conducting the investigation, earlier notification would interfere with or jeopardize the investigation, recovery of an overpayment or imposition of a sanction.

AUTH: Sec. 53-6-111 and 53-6-113, MCA

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

46.12.501 SERVICES PROVIDED (1) The following medical or remedial care and services ~~shall be available~~ are covered by the Montana medicaid program in accordance with applicable state and federal laws, regulations and rules to all persons who are ~~certified~~ determined eligible for medicaid benefits under this chapter (including deceased persons, categorically related, who would have been eligible had death not prevented them from applying). However, only those medical or remedial care and services also covered by medicare shall be available to a person who is certified eligible for medicaid benefits as a qualified medicare beneficiary under ARM 46.12.4101 and 46.12.4102.

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

(d) ~~skilled and intermediate nursing facility services in long term care facilities;~~

(e) early and periodic screening, diagnosis and treatment services;

(1)(f) through (1)(h) remain the same.

(i) speech therapy, audiology and hearing aids services;

(1)(j) through (1)(l) remain the same.

(m) home dialysis services;

(1)(n) through (1)(y) remain the same.

(z) ~~inpatient psychiatric services residential treatment services;~~

(1)(aa) and (1)(ab) remain the same.

(ac) ~~hospice services until June 30, 1991, as specified by the sunset clause set by the enacting legislation; and~~

(1)(ad) remains the same.

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

(a) eyeglasses and routine eye exams, whether provided by an optometrist, ophthalmologist or other provider and optometric services;

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

(e) durable medical equipment and supplies.

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

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-103, 53-6-111,  
53-6-113, 53-6-131 and 53-6-141, MCA

#### 46.12.502 SERVICES NOT PROVIDED BY THE MEDICAID PROGRAM

(1) Items or medical services not specifically included within defined these rules as covered benefits of the Montana medicaid program are not reimbursable.

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

(e) physical therapy aide services, except as provided in ARM 46.12.525A through 46.12.529;

(f) nonphysician surgical assistance services surgical technicians who are not physicians or mid-level practitioners;

(2)(g) through (2)(k) remain the same.

(1) delivery services not provided in a licensed health care facility unless as an emergency service. Delivery services means services necessary to protect the health and safety of the woman and fetus from the onset of labor through delivery. Emergency service is defined in ARM 46.12.102(2)(c)(ii), and;

(m) treatment services for infertility, including sterilization reversals; and

(n) experimental services.

(3) through (3)(d) remain the same.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-103,  
53-6-131, 53-6-141 and 53-6-402, MCA

#### 46.12.592 RESIDENTIAL TREATMENT SERVICES, COST REPORTING AND AUDITS (1) through (1)(d)(iv) remains the same.

(e) Records of financial and statistical information supporting cost reports must be maintained by the provider and the department for 3 years 6 years, 3 months after the date a

cost report is filed, the date the cost report is due or the date upon which a disputed cost report is finally settled, whichever is later.

(1)(e)(i) through (2) 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

46.12.1235 OBRA COST REIMBURSEMENT (1) and (2) remain the same.

(a) Acceptable documentation will be any documentation that adequately supports the costs claimed on the reporting form and includes all records and documentation as defined in ARM 46.12.1260, such as invoices, contracts, canceled checks and time cards. This documentation is subject to desk review and audit in accordance with ARM 46.12.1260. This documentation must be maintained by the facility for ~~three years~~ 6 years, 3 months from the date the form is filed with the department or until any dispute or litigation regarding the costs supported by such documentation is finally resolved, whichever is later.

(2)(b) through (3)(b)(v) remain the same.

AUTH: Sec. 53-6-113, MCA

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

46.12.1260 COST REPORTING, DESK REVIEW AND AUDIT (1) through (4)(e) remains the same.

(5) A provider must maintain records of financial and statistical information which support cost reports for ~~three years~~ 6 years, 3 months after the date a cost report is filed, the date the cost report is due, or the date upon which a disputed cost report is finally settled, whichever is later.

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

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

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

46.12.1705 FEDERALLY QUALIFIED HEALTH CENTERS, RECORD KEEPING AND REPORTS (1) An FQHC must maintain adequate financial and statistical records, in the form and containing the information required by the department, to allow the department and its agents to determine payment for FQHC services provided to medicaid recipients and to provide a record that is auditable through the application of generally accepted audit procedures. Financial data must be maintained on an accrual basis. Such records must be maintained for a period of ~~three years~~ 6 years, 3 months after a cost report is



filed with respect to the period covered by such records or until such cost report is finally settled, whichever is later.

(2) 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

46.12.1919 CASE MANAGEMENT SERVICES FOR HIGH RISK PREGNANT WOMEN. FINANCIAL RECORDS AND REPORTING (1) and (2) remain the same.

(3) Financial records must be maintained for a period of three years 6 years, 3 months after a cost report is filed with respect to the period covered by the records or until the cost report is finally settled, whichever is later.

(4) through (8) 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 are necessary to revise the rules specifying requirements generally applicable to medicaid providers. These proposed changes principally are for "housekeeping" purposes to revise the language of rules that have become outdated, which are unclear, which do not contain a complete statement of policy in the area addressed and/or which have been interpreted in ways contrary to department intent and policy. The proposed changes update portions of the rules for consistency with current department practice, to reword various provisions to improve clarity, and to codify in rule several longstanding medicaid policies.

ARM 46.12.101 is reworded to more accurately state the purpose of the medicaid program. The proposed change removes the description of "necessary medical services," which is unnecessary because "medically necessary services" is defined in ARM 46.12.102. The proposed change removes the description of "eligible low income persons," which is unnecessary because eligibility is defined more completely and accurately in other rules.

In ARM 46.12.102, the definition of "medically necessary service" is reworded to remove unnecessary wording and to state the definition more clearly and accurately. The definition of "provider" is revised to reflect the statutory definition adopted by the 1995 Montana legislature in Senate Bill 293 (53-6-155, MCA). The definition of "valid and proper claim" is revised for consistency with the billing requirements in ARM 46.12.303. The definition of "third party" is deleted because it is redundant with the definition of the term contained in ARM 46.12.304. The definition of

"provider agreement" is deleted because it no longer reflects medicaid policy and practice, and because it is unnecessary. Provider agreements are addressed in the proposed changes to ARM 46.12.302. The definition of "emergency service" is revised to more accurately reflect department intent and policy that the emergency services must be necessary on an immediate basis.

The proposed changes to ARM 46.12.301 reword the rule for clarity. The proposed changes to ARM 46.12.302 delete antiquated provisions that no longer reflect medicaid policy and practice. The proposed language specifies the enrollment requirements generally applicable to providers and the information and documentation that providers may be required to submit for enrollment determination purposes. The proposed rule also makes clear that providers must enroll specifically for each category of services they wish to provide. The proposed rule also specifies the effective date of enrollment and requires providers to give the department's fiscal agent advance notice of changes that may affect their enrollment or payments. This requirement is necessary to assure that the department is provided with current information, so that payments are reported properly for tax purposes and providers can be notified if changes in organization or ownership require a new enrollment application. Providers should be aware that it is important that they maintain their enrollment status by assuring that the department's fiscal agent has the most up to date information.

The antidiscrimination provision of the rule is revised to provide a more complete statement of the requirements and to update and correct statutory citations. It should be noted that the department is not the agency charged with enforcement of the various statutes cited in the rule, and as such generally does not engage in investigations and determinations of violations of these laws by medicaid providers. If an agency with enforcement authority determines that a medicaid provider is in violation of any of these laws, the department may deny or terminate enrollment in the medicaid program or impose an appropriate sanction against the provider under ARM 46.12.401, et seq. The department does reserve the right to take independent action in appropriate cases.

The proposed changes to ARM 46.12.303 address issues that have arisen in processing claims and collecting overpayments. (1) is revised to address claims for dually eligible recipients, when claims are submitted to medicare in a timely manner prior to submission to medicaid. Medicare may take up to 18 months or more to process and pay claims. The proposed rule allows providers to submit a clean claim to medicaid within 6 months after the date on an explanation of benefits that approves the medicare claim, if the medicare claim was timely filed and the

recipient was medicare eligible at the time the claim was filed with medicare, or within the same 12-month period allowed under the current rule, whichever is later. The proposed change is necessary to allow providers sufficient opportunity to bill and receive medicare payment before billing medicaid. If the provider has billed medicare in a timely manner, it will not need to submit the claim to medicaid under ARM 46.12.304(6)(c) simply to avoid missing the 12-month medicaid filing deadline. The provider may bill medicare in a timely manner and will be allowed to meet the medicaid claim filing deadline by filing a clean claim within 6 months after receiving notice of disposition on the medicare claim.

The proposed rule also allows a provider 6 months to submit a clean claim to medicaid after a third party payor adjusts a previous determination on the claim, if the adjustment is made after the medicaid timely filing deadline has expired. This provision is necessary to protect providers that forego billing of medicaid because a third party payor has allowed their claim, only to later have payment rescinded after the opportunity for billing medicaid has passed.

Current (2)(d) was intended to advise providers that the 12-month claim submission deadline will not be extended if a third party fails to respond to the provider's claim. In such cases the provider may seek payment from medicaid 90 days after billing the third party, as provided in ARM 46.12.304(6)(c), as long as a clean claim is submitted to medicaid within the deadline specified in (1). Again, providers are reminded that it is important to begin billing early and to diligently monitor the claim and pursue payment. The department proposes to revise ARM 46.12.303(2)(d) to more accurately reflect department intent.

Subsection (3) is expanded to specify that claims may be denied or pended once it is determined that a basis exists for denial or pending of the claim. The department need not review every aspect of a claim that has been found wanting in one respect. To require such review would result in a waste of resources. A claim denial generally indicates problems that must be addressed by the provider, such as lack of recipient eligibility, a contradiction between department and provider records, inaccurate or missing information or documentation or other problems. The proposed changes to (3) state longstanding and current policy that the department is required only to state the basis upon which the claim is actually denied or pended, not every possible basis on which the claim could be denied or pended. This requirement is consistent with the policy of the department expressed when the 12-month timely filing rule was adopted. That is, it is the provider's responsibility to submit claims early and to

follow up promptly on denials, lost claims and other problem claims. A provider that diligently pursues this responsibility will have sufficient opportunity to obtain payment. It is the provider's responsibility to assure that the claim is complete and correct.

The proposed changes to ARM 46.12.303(9) specify that payment of claims which appear correct on their face does not prevent the department from later recovery of the payment upon discovery that the provider was not entitled to payment. The department processes a vast number of claims monthly. These claims are processed through the use of an automated claims processing system, which allows providers to receive payment in a relatively short time. Information on the claim is keypunched into the system and if all requirements appear to be met, the claim will be paid.

However, the department may later discover through retrospective review of records, volunteered information or other means that the provider was not entitled to payment. For example, the provider may have claimed payment for one service for which a certain payment is available, while actually providing another service for which a lesser payment or no payment is available. There often is no way to determine from the claim itself that the provider is not entitled to payment, and it is not practical to manually review every claim before payment. The program relies greatly upon voluntary compliance by providers. The automated processing system and general compliance by providers allows the program to pay providers on a much more timely basis than otherwise would be possible. The alternative would be an extremely cumbersome and slow manual process. However, the less cumbersome and faster process does mean that in some cases payments made must later be recovered when problems are discovered.

To prohibit the department from recovering an overpayment where the department had paid claims that appeared to be correct, but more than 30 days later discovered that the provider was not entitled to payment would be contrary to department intent, policy and practice. The proposed rule revises the rule language to prevent this erroneous interpretation by making it clear that payment of claims that the department believes to be valid and proper does not prevent the department from recovery of the payments if the department later discovers that the provider was not entitled to payment.

The proposed changes to ARM 46.12.303 also specify, in accordance with the 1995 statutory amendments codified in 53-6-111, MCA, that the department is entitled to recover payments to which a provider was not entitled, regardless of

whether the erroneous payment was caused by department or provider error or other cause. Also, the department is entitled to recover by showing only that the provider was not entitled to the payment, without being required to prove that the provider submitted an improper or erroneous claim knowingly, intentionally or with intent to defraud. A particular mental state may be relevant to a particular sanction or criminal prosecution, but need not be proven to allow overpayment recovery. These changes are consistent with longstanding department interpretation of Montana and federal law, which now has been more specifically codified in 53-6-111, MCA.

The proposed changes to ARM 46.12.303 specify in rule longstanding department policy regarding medicaid as payment in full and the circumstances under which providers may or may not bill medicaid recipients. The department receives numerous inquiries regarding issues in this area, and the department's policy occasionally affects the determination of other related issues. Adoption of this policy as rule will inform all providers and recipients of requirements and protections provided by the federal payment in full law. The proposed rule is based in part upon the principle that the provider who wishes to assure that it will receive payment for its services reasonably can be expected to establish the source of payment prior to delivery of services. These provisions are necessary to protect recipients from being billed after receiving services under circumstances that reasonably gave rise to an understanding that the provider will look to medicaid to pay for the services, and to provide guidance to providers as to the circumstances under which they may bill recipients.

If an individual informs a provider of medicaid eligibility prior to receipt of services, the provider will be deemed to have accepted the individual as a medicaid recipient and will not be permitted to bill the recipient for the services. However, if the provider refuses to accept medicaid and the recipient agrees to pay privately, the provider may bill the recipient according to the private pay agreement.

Many medical services are provided in settings where the patient is admitted by a facility or entity, such as a hospital, that coordinates the delivery of various services to the patient. Normally, the patient does not apply or register separately for each individual service or enter into separate payment agreements with the respective providers of the services received. Typically, the facility arranges the provision of the various services through the extension of practice privileges, employment of staff, procurement of contracted services and other methods. A number of cases have arisen where physicians or other providers have treated

recipients in a hospital or similar setting to which the recipient was admitted after informing the facility of medicaid eligibility, and the physician or other provider later claimed they had not accepted the recipient as a medicaid patient and sought to collect private charges from the recipient. The proposed rule is necessary to specify that under such circumstances it is the responsibility of the admitting entity to inform physicians and other providers that serve the patient that the recipient is a medicaid recipient, or for the physician or other provider to inquire of the payment source before serving the recipient. The recipient may not be billed privately unless the provider informed the recipient of refusal to accept medicaid and the recipient agreed to pay privately.

Acceptance of a medicaid recipient applies to all services provided by the provider to the recipient, except as to non-covered or medically unnecessary services as provided in ARM 46.12.303(11)(a) or (b). The provider may not accept medicaid for some services provided to a recipient and refuse to accept medicaid for other services as to the same recipient. If the provider does not wish to serve the recipient, the provider may terminate the recipient as a patient to the extent consistent with the provider's professional responsibility, as long as termination is not done for an illegal reason (race, for example). This rule is necessary to protect recipients from being unfairly pressured to pay privately for particular services provided by their usual providers.

Frequently, recipients receive services before applying or being determined eligible for medicaid, but later are determined medicaid eligible with a retroactive effective date that precedes the date of service. Unless the provider agreed at the time to accept medicaid, the provider is entitled to either accept medicaid or to rely upon the original payment agreement.

If the provider accepts an individual as a medicaid recipient, the provider then has an obligation to take the required steps to obtain medicaid payment for the service. This includes provider enrollment, compliance with prior authorization procedures, submission of clean claims, making and maintaining records and other applicable requirements. Moreover, if a provider submits claims to medicaid, they are deemed to have accepted the patient as a medicaid recipient. If, for example, claims are denied because the claims are not submitted timely or the claims are not complete, the provider may not bill the recipient for the services.

Moreover, the provider generally is in the best position to know what services are covered by medicaid and what services will not meet medicaid medical necessity and other criteria.

This determination often involves the exercise of professional medical judgment or experience with and knowledge of medicaid coverage policy and rules. Therefore, before the provider may bill a recipient, the provider generally has a responsibility to inform the patient that medicaid will not cover the procedure and to obtain the recipient's informed agreement to pay privately for the service.

The proposed rule provides an exception to the prohibition on billing recipients after medical necessity denials of payment for ambulance services. The department believes it is not sound public policy to require ambulance providers to choose between the risk of non-payment for lack of medical necessity or the risk of liability to the recipient if the provider declines service on an erroneous belief that emergency transportation is not required. Ambulance providers are not in a position to make the same thorough medical assessment of the patient's condition that can be made after the patient has been transported to a properly staffed and equipped health care facility. Moreover, most cases of medically unnecessary ambulance services involve circumstances where the recipient has reason to know that emergency transportation is not necessary but requests the transportation anyway. If the provider reasonably believes that the recipient requires emergency transportation, the provider should be permitted to transport the patient with an expectation of payment. A policy prohibiting ambulance providers from billing recipients after medical necessity denials could lead to a lack of access to ambulance services for medicaid recipients.

The proposed change to ARM 46.12.304(6)(c) specifies that a provider may request payment through the third party liability unit (TPL) if the third party has not replied to a claim either with a denial or allowance of the claim. This proposed change will specify in the rule what has been department policy. If an insurer or other third party replies to a claim, for example to request information or to indicate the claim is being reviewed, but neither denies or allows the claim within the required time period, the provider may submit the claim through the TPL unit for medicaid payment. Under such circumstances the provider is not required to wait indefinitely for a definite answer from the third party. If the insurer denies payment, the claim can be submitted to medicaid with a copy of the insurance denial. If the insurer pays the claim, a claim may be submitted to medicaid for any allowable difference, with the claim form reporting the amount of payment received from the insurer.

The proposed changes to ARM 46.12.306 adopt as rule the longstanding department policy that medical necessity may be reviewed at any time before or after payment. The department operates certain screening, prior authorization and similar

processes as advance or initial screening tools to reduce unnecessary utilization of services. However, these processes do not constitute final or conclusive determinations of medical necessity. For example, some prior authorization processes rely primarily upon providers to submit information and documentation that supports the need for a service. In some cases, it later is found that the complete record contains information that supports a different conclusion. The department does not routinely re-review earlier determinations and does not have plans to increase such reviews. However, in appropriate cases the department may do so and is not precluded by an earlier determination on incomplete information from later conducting a review based upon complete information. This rule is necessary to address provider arguments that prior authorization screenings or similar processes constitute final and binding determinations of medical necessity and that the department cannot later review medical necessity.

The proposed rule clarifies that in determining medical necessity, requirements applicable to the particular service category apply in addition to the general definition in ARM 46.12.102 and the factors specified in ARM 46.12.306. Some medicaid service categories have rules addressing particular aspects of medical necessity for the particular service, and these requirements are intended to be considered in the medical necessity determination. Also, proposed ARM 46.12.306(4) specifies current policy that requires providers to provide records without charge, except as the charges or costs may be reimbursable under the particular reimbursement methodology provided in the rules relating to the provider's category of service, for example, in the case of cost-based providers where such costs may be allowed in setting reimbursement rates.

The proposed changes to ARM 46.12.307(1) and (2) delete unnecessary rule language. To some extent, these subsections repeat the provisions of 53-6-104, MCA and are unnecessary for that reason. Moreover, the medicaid program rules specifically describe the limits and requirements for medicaid coverage and reimbursement of services. These subsections establish undefined provider rights that are too vague to be enforceable. It is sufficient to provide, as the other medicaid rules and laws do, the specific requirements and limits for medicaid coverage and reimbursement of services and the department's authority to take particular actions.

The other proposed changes to ARM 46.12.307 specify the applicable hearing rules that apply to provider hearings. The proposed language refers to ARM Title 46, chapter 2, subchapter 2. Currently, ARM Title 46, chapter 12 contains some provisions relating to provider hearings. The department



intends at a future date to delete these provisions from chapter 12 and to include in chapter 2 a single provider hearing process. However, under the present rule, the reference to ARM Title 46, chapter 2, subchapter 2 is adequate because ARM 46.2.202 specifies the various rule provisions applicable to provider hearings, including the provisions presently contained in ARM 46.12.509A, 46.12.1268, etc. The proposed changes to ARM 46.12.307 also delete (4)(a), which purports to deny nursing home and hospital providers the right to appeal medical necessity denials. This provision is contrary to department policy and practice. Proposed ARM 46.12.307(3) is necessary to negate any implication or argument that, because the rule grants a provider a right to a hearing, that the rule also grants a provider a right to be notified by the department of an action taken in relation to a recipient, such as a determination on the recipient's application for medicaid eligibility. The department intends that no such right is granted by the rule.

The proposed changes to ARM 46.12.308 reword the provision to more accurately state the requirements for record keeping. In addition, the changes to ARM 46.12.308, 46.12.593, 46.12.1235, 46.12.1260, 46.12.1705 and 46.12.1919 are necessary to expand the length of time providers are required to retain records. The proposed rule would expand the period from 3 years to 6 years and 3 months from the date of service or until any dispute or litigation concerning the services is resolved, whichever is later. The proposed rule is necessary to make the rule consistent with the period of time records must be retained for the medicare program and to assure that records are retained for an adequate period of time to complete reviews and resolve disputes that arise in the course of program administration. Several recent overpayment cases have demonstrated that overpayments are not necessarily discovered within the current 3-year record retention period. This makes it difficult to determine whether overpayments occurred or to collect overpayments that occurred.

Proposed ARM 46.12.308(3) is necessary to add the medicaid fraud control unit established by Senate Bill 293, 1995 Legislature (53-6-156 through 53-6-159, MCA) to the list of agencies that are authorized to inspect or review records or services. Proposed ARM 46.12.308(4) is necessary to negate any implication or argument that the record retention period is also intended as a limitation on the period in which the department may recover overpayments or impose sanctions. The department does not intend that the rule impose any such limitation.

The proposed changes to ARM 46.12.407 are necessary to correct erroneous interpretations of the rule. It has been argued by providers that the rule requires the department to notify a

provider as soon as the department suspects that an overpayment may have occurred and before the department actually determines that an overpayment occurred, the amount of the overpayment or that an adverse action will be taken in the matter. This interpretation is contrary to longstanding department interpretation of the rule, and to department policy and practice.

The proposed change to ARM 46.12.407 requires the department to notify a provider only when a determination has been made that the provider has engaged in fraud or abuse or that an overpayment occurred and the amount of overpayment has been determined, and when the department has determined to take a specific adverse action in response to the overpayment, fraud or abuse. The proposed change does not require the department to notify the provider when it merely suspects or has information suggesting that a provider has been overpaid or has engaged in fraud or abuse. The proposed rule deletes the current requirement that a notice include the method of computing the dollar value of an overpayment. The information will always be available to a provider, but it is unnecessary and may be unduly cumbersome in many cases to include an explanation in the initial notice letter. If the department does not notify the provider as required by the rule, the failure is not a defense to recovery or imposition of sanctions, but the department may be required to provide a proper notice before proceeding.

The rule is not intended to establish any limit on the time within which the department may investigate, determine or act in regard to any possible overpayment, fraud or abuse. For example, in cases where a governmental agency is conducting an investigation of the provider, the department may delay notification until the investigation and any related enforcement proceedings are completed. In some cases, the best enforcement method may involve immediate notification to the provider. However, in other cases, it may be essential to the integrity of an investigation or prosecution that a suspect not be informed prematurely of the investigation, because premature notification may, for example, provide an opportunity for the alteration of evidence. It is within the discretion of the department to determine in each case the particular combination of methods best suited to enforcement of the statutory requirements.

The proposed changes to ARM 46.12.501 are necessary to accurately specify the services covered by the medicaid program. In ARM 46.12.501(2)(a), the change is necessary to correct an inaccurate description of the services unavailable to participants in the FAIM project. The current rule provides that eyeglasses and optometric services will not be provided to FAIM participants. Eyeglasses and routine eye


exams are not basic benefits provided to FAIM participants. Also, in (2)(e) the description is expanded to correct the reference to durable medical equipment to include a reference to supplies.

The proposed changes to ARM 46.12.502 update the list of services excluded from medicaid coverage to recognize the recently adopted rules permitting coverage of physical therapy aide services when provided in accordance with state practice act requirements. Physical therapy aides, however, are not permitted to enroll or bill separately for their services. Their services are covered only as physical therapy services when billed by enrolled physical therapists in accordance with rules in ARM 46.12.525A through 46.12.529. Also, the changes revise the exclusion of non-physician surgical assistance services to specify more accurately that the exclusion applies to surgical technicians that are not physicians or mid-level practitioners. The current rule would exclude mid-level practitioner services, which is not the department's intent.

The proposed changes to the various rules being amended also include miscellaneous "housekeeping" provisions necessary to reflect the change in the name of the agency administering the medicaid program, to update terminology, to update and make complete the citations to federal and state statutes, to correct erroneous internal citations, to reword the rule language for clarity, to insert missing words and to omit unnecessary verbiage.

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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604, no later than November 21, 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 October 11, 1996.

In the matter of the ) NOTICE OF PUBLIC HEARING ON  
amendment of 46.12.3803 ) THE PROPOSED AMENDMENT OF A  
pertaining to medically ) RULE  
needy assistance standards )

1. On November 13, 1996 at 9:30 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of ARM 46.12.3803 pertaining to medically needy assistance standards.

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

(3) The adjusted income for individuals and families is compared to the following income table to determine medically needy assistance eligibility.

MEDICALLY NEEDY INCOME LEVELS  
FOR SSI and AFDC-RELATED INDIVIDUALS  
AND FAMILIES

<u>Family Size</u>	<u>One Month Net Income Level</u>
1	\$ <del>450</del> <u>466</u>
2	<del>450</del> <u>466</u>
3	<del>485</del> <u>497</u>
4	<del>511</del> <u>527</u>
5	<del>597</del> <u>615</u>
6	<del>684</del> <u>703</u>
7	<del>771</del> <u>792</u>
8	<del>857</del> <u>880</u>

9	900	923
10	941	966
11	977	1,003
12	1,013	1,040
13	1,046	1,073
14	1,176	1,104
15	1,106	1,134
16	1,132	1,161

AUTH: Sec. 53-6-113, MCA

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

3. The income standards to determine eligibility for medically needy assistance are based on the standards used in the most closely related cash assistance program, which is the Aid to Families with Dependent Children (AFDC) program. The AFDC payment standards are set at 40.5% of the federal poverty level and were increased effective July 1, 1996 to reflect recently published increases in the federal poverty levels for 1996. It is therefore necessary to amend ARM 46.12.3803 to increase the medically needy standards also. These standards will be applied retroactive to July 1, 1996.

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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than November 21, 1996.

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

Dawn Sliva  
Rule Reviewer

Michael B. Billings  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 11, 1996.

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

In the matter of the amendment	)	NOTICE OF PUBLIC HEARING
of rules 46.12.503 and	)	ON THE PROPOSED AMENDMENT
46.12.508 pertaining to	)	OF RULES
inpatient and outpatient	)	
hospital services	)	

TO: All Interested Persons

1. On November 13, 1996 at 11:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.503 and 46.12.508 pertaining to inpatient and outpatient hospital services.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on November 4, 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. New language that is being added is underlined. Language that is to be deleted is interlined.

46.12.503 INPATIENT HOSPITAL SERVICES, DEFINITION (1) through (10) remain the same.

(11) "Disproportionate share hospital" means a hospital which meets the following criteria:

(a) it has a medicaid inpatient utilization rate of at least one standard deviation above the mean medicaid inpatient utilization rate for all hospitals receiving medicaid payments in the state or a low income utilization rate exceeding 25%; and

(b) it has a medicaid inpatient utilization rate of at least one percent (1%); and

~~(b)~~ (c) urban hospitals must have at least 2 obstetricians with staff privileges who have agreed to provide obstetric services to medicaid patients. Rural hospitals must have at least 2 physicians with staff privileges to perform nonemergency obstetric procedures who have agreed to provide obstetric services to medicaid recipients.

~~(c)~~ (d) paragraph ~~(b)~~ (c) does not apply to hospitals which:

(11) (d) (i) through (18) 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

46.12.508 OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT

(1) through (5) (a) (i) (A) remain the same.

(ii) Emergency visits are emergency room visits for which the ICD-9-CM diagnosis code chiefly responsible for the services provided is a diagnosis designated as an emergency diagnosis in the medicaid passport program Emergency Diagnosis List. For purposes of this rule, the department hereby adopts and incorporates by reference the Passport Emergency Diagnosis List ~~(September 1995)~~ (January 1997). The passport program emergency diagnoses list is available upon request from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(5) (a) (i) (A) (iii) through (12) remain the same.

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

3. The proposed changes to ARM 46.12.503 are necessary to comply with federal law relating to medicaid reimbursement of inpatient hospital services. Section 13621(a)(1)(D) of Public Law 103-66, known as OBRA 1993, added to the disproportionate share hospital (DSH) provisions a requirement that to be considered a disproportionate share hospital, the hospital must have a medicaid inpatient utilization rate of at least 1%. This requirement is in addition to the other requirements contained in current ARM 46.12.503(11)(a) and (b). The Health Care Financing Administration has recently informed the department that this requirement must be added to Montana's medicaid state plan and enforced by the department. This change has no fiscal impact on the hospitals that currently qualify for DSH payments, because all of these hospitals already meet the 1% medicaid inpatient utilization rate requirement.

The proposed changes to ARM 46.12.508 adopt an updated emergency diagnosis list, which identifies emergency diagnoses for purposes of reimbursing emergency visits under the medicaid outpatient hospital services program. The ICD-9-CM codes for diagnostic coding are updated annually on October 1st. The emergency diagnosis list must be updated to account for the most recent ICD-9-CM diagnosis code updates. Managed care medicaid maintains an emergency diagnoses list to identify codes that are exempt from PASSPORT. The listed codes were reviewed by managed care medicaid staff, the department's coding consultant and the six physicians on the PERC advisory committee for the Passport program. The proposed new list will add the following codes to the exemption list:

079.81	hantavirus infection
453.3	vetebrobasilar artery syndrome
458.2	latrogenic hypotension
466.11	acute bronchiolitis due to RVS
466.19	acute bronchiolitis due to other infectious organisms
483.1	pneumonia due to chlamydia
569.60-569.69	colostomy & enterostomy complication
574.61	calculus of gallbladder and bile duct with acute cholecystitis with obstruction
574.70	calculus of gallbladder and bile duct with other cholecystitis without mention of obstruction
574.91	calculus of gallbladder and bile duct without cholecystitis with obstruction
728.86	necrotizing fasciitis

After review of existing codes by the Peer Education and Review Committee, the following codes were proposed to be deleted. This decision was based on the non-emergent nature of code 708.0 and the opinion of the committee that the primary care physicians want to be notified if their patients present with the diagnosis represented by codes 346.90 and 346.91. The proposed new list will delete the following codes from the exemption list:

346.90, 346.91	migraine, unspecified
708.0	allergic urticaria

A copy of the complete emergency diagnosis list is available from the department's Health Policy and Services Division upon request.

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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604, no later than November 21, 1996.

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

Dawn Sliva  
Rule Reviewer

Mike Bellamy Jr  
Director, Public Health and Human Services

Certified to the Secretary of State October 11, 1996.



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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of rules I through	)	THE PROPOSED ADOPTION,
X, the amendment of rules	)	AMENDMENT AND REPEAL OF
46.12.1901 through	)	RULES
46.12.1903, 46.12.1915,	)	
46.12.1916, 46.12.1918,	)	
46.12.1925 through	)	
46.12.1927, 46.12.1929,	)	
46.12.1935 through	)	
46.12.1937, 46.12.1939,	)	
46.12.1940, 46.12.1945	)	
through 46.12.1947,	)	
46.12.1949 and the repeal of	)	
rules 46.12.1928, 46.12.1938	)	
and 46.12.1950 pertaining to	)	
targeted case management	)	

TO: All Interested Persons

1. On November 13, 1996, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.1901 through 46.12.1903, 46.12.1915, 46.12.1916, 46.12.1918, 46.12.1925 through 46.12.1927, 46.12.1929, 46.12.1935 through 46.12.1937, 46.12.1939, 46.12.1940, 46.12.1945 through 46.12.1947, 46.12.1949 and the repeal of rules 46.12.1928, 46.12.1938 and 46.12.1950 and adoption of rules I through X pertaining to targeted case management.

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 November 4, 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 adopted and amended provide as follows:

RULE I CASE MANAGEMENT SERVICES FOR CHILDREN AT RISK OF ABUSE AND NEGLECT. DEFINITIONS The definitions of case management services for children at risk of abuse and neglect are as follows:

(1) "Assessment" means an evaluation of a child's physical, medical, nutritional, psychological, social, developmental and educational status in the context of the

child's caretakers to determine if the child meets the "at risk" criteria stated in [Rule III] and to document the child's needs for resources and services. The assessment is updated at each contact.

(2) "Care coordination and referral" means helping a child and child's caretakers to access services by establishing and maintaining a referral process for needed and appropriate services and by avoiding duplication of services.

(3) "Case plan" means a written service plan based on an assessment reflecting a child's needs and strengths. The plan provides goals of intervention, objectives and activities in context of the child's caretakers, and identifies the resources and services available to meet the child's needs in a coordinated and integrated fashion.

(4) "Monitoring" means regular contacts to encourage cooperation, to identify and resolve problems which may create barriers to services, and to assure the receipt of services as indicated in the case plan.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

RULE II CASE MANAGEMENT SERVICES FOR CHILDREN AT RISK OF ABUSE AND NEGLECT. COVERAGE (1) The following services are reimbursable case management services for children at risk of abuse or neglect:

- (a) assessment;
- (b) case plan development;
- (c) care coordination and referral; and
- (d) monitoring.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

RULE III CASE MANAGEMENT SERVICES FOR CHILDREN AT RISK OF ABUSE AND NEGLECT. ELIGIBILITY (1) A child is eligible for case management services for children at risk of abuse or neglect if the child is:

- (a) 12 years or younger;
- (b) at risk of abuse or neglect but is not at risk of immediate removal from the home; and
- (c) not receiving case management services from any other case management providers.

(2) A child is at risk of abuse or neglect if:

- (a) a provider of children at risk of abuse or neglect case management services determines the child to be at risk of abuse or neglect; and
- (b) the child:
  - (i) has been referred to the child protective services program of the department based on the determination; or
  - (ii) even though not referred to the department has high potential for abuse as indicated by the standardized partnership

to strengthen families' risk referral (form PSF-01) and as verified by a partnership provider through the standardized assessment process utilizing the family life survey (form PSF-20), the life experiences survey (form PSF-21), and the basic family needs survey (PSF-23).

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

RULE IV CASE MANAGEMENT SERVICES FOR CHILDREN AT RISK OF ABUSE OR NEGLECT. PROVIDER REQUIREMENTS (1) These requirements are in addition to those requirements contained in the rule and statutory provisions generally applicable to medicaid providers.

(2) To be qualified as a provider of case management services for children at risk of abuse or neglect, an entity must:

(a) be approved by the department;  
(b) have the capacity to provide the full range of case management services;

(c) have a signed collaborative agreement with the child protective services program of the department and other key child and family services organizations in the county or counties where case management is being provided such as the county health department, county extension services, the community mental health programs, county public schools, and private child and family service organizations in order to avoid duplication of services and to promote effective community level networking;

(d) be available to clients in crisis on a 24-hour basis and be able to identify a crisis situation and respond accordingly;

(e) employ case managers who have a 2 year degree in human services from an accredited institution or 2 years experience in a related field;

(f) employ a case management supervisor who:

(i) holds a masters degree, bachelor's degree, or relevant professional certification in a related health or human service field; and

(ii) has at least 5 years of relevant experience; and

(g) to accommodate special agency and geographic needs and circumstances, exceptions to the staffing requirements may be allowed if approved by the department.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

RULE V CASE MANAGEMENT SERVICES FOR CHILDREN AT RISK OF ABUSE AND NEGLECT. REIMBURSEMENT (1) Case management services for children at risk of abuse and neglect are reimbursed at the lower of the following:

(a) the providers customary charge to the general public for the service; or

(b) \$ 6.72 for each 15 minutes of service.

AUTH: Sec. 53-6-113, MCA  
IMP: Sec. 53-6-101, MCA

RULE VI CASE MANAGEMENT SERVICES FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS. DEFINITIONS The definitions of case management services for children with special health care needs are as follows:

(1) "Assessment" means an evaluation of a child's physical, medical, nutritional, psychological, social, developmental, and educational status in the context of the child's caretakers to determine if the child meets the "at risk" criteria stated in [Rule VIII] or if the child has diagnosed special health care needs, and to document the child's needs for resources and services.

(2) "Case plan" means a written, individualized, family-centered, culturally competent and coordinated case management service plan reflecting a child's needs and strengths. The plan provides goals of intervention, objectives, activities in context of the child's caregivers, and the resources and services available to meet the child's needs in a coordinated and integrated fashion.

(3) "Care coordination and referral" means assisting a child and child's caregivers to access resources and services, including children's special health services, specialty clinics, other needed services, and to establish and maintain eligibility for services other than medicaid. For those children for whom the Developmental Disabilities Family Education and Support Services Program (DDFESS) retains lead status, care coordination activities are determined at the community level.

(4) "Developmental disabilities family education and support services (DDFESS)" means the developmental disabilities family education and support services program comprised of the federally authorized and funded part H services, state funded family education and support services.

(5) "Monitoring" means regular contacts through ongoing home visitation and other means to assure appropriateness of services provided to the child and the child's caregivers, to identify and address concerns which may create barriers to services, and to assure the receipt of services as indicated in the case plan. Health and medical services for children served by DDFESS may be monitored by the children with special health care needs. Program monitoring functions include:

(a) utilizing information obtained from assessments of the child/family's needs and status; and

(b) modifying the case management service plan as needed in coordination with all involved providers in order to promote positive outcomes for a child and the child's caregivers.

AUTH: Sec. 53-6-113, MCA  
IMP: Sec. 53-6-101, MCA

RULE VII CASE MANAGEMENT SERVICES FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS, COVERAGE

(1) The following services are reimbursable case management services for children with special health care needs:

- (a) assessment;
- (b) case planning;
- (c) care coordination and referral; and
- (d) monitoring.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

RULE VIII CASE MANAGEMENT SERVICES FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS, ELIGIBILITY

(1) A child is eligible for case management services for children with special health care needs if:

- (a) the child:
  - (i) is birth through eighteen years of age;
  - (ii) is diagnosed with special health care needs or at risk for chronic physical, developmental, behavioral, or emotional conditions; and
  - (iii) requires health and related services of a type or amount beyond that required by children of the same age; or
- (b) the child is born to a woman who received case management services as a high risk pregnant woman.

(2) For a child who is eligible for developmental disabilities part H services or for developmental disabilities family and educational support general fund services and who is eligible for children with special health care needs case management, the developmental disabilities services program provides lead case management. For a child with case management services from both the developmental disabilities program and the children's special health care needs program, the case management services provided by children with special health care needs case management providers are limited to the coordination of health and medical activities only. Children with special health care needs case management providers must incorporate the health and medical care plan within the individual family service plan and provide services in accordance with ARM 46.8.1701 through 46.8.1910. Under these circumstances, children with special health care needs case management providers may bill medicaid for health and medical case management activities only.

(3) Initial assessment of children covered by these special health care needs case management services may occur in the hospital following the infant's birth. This assessment must be followed by a referral to appropriate service providers in the community. Assessments by all professionals will be accepted, shared, and integrated into planning for all children covered by these services.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

RULE IX CASE MANAGEMENT SERVICES FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS, PROVIDER REQUIREMENTS (1) These

requirements are in addition to those contained in rule and statutory provisions generally applicable to medicaid providers.

(2) To be qualified as a provider of case management services for children with special health care needs, an entity must:

(a) be a provider of public health nursing or social work services;

(b) be approved by the department's health policy and services division;

(c) have knowledge and experience in the delivery of home and community services to children with special health care needs;

(d) demonstrate an understanding of service coordination for young children up to 18 years of age;

(e) have developed collaborative working relationships with health care and other providers in the area to be served;

(f) have access to multi-disciplinary providers; and

(g) have on file with the department's health policy and services division, a signed collaborative agreement with community providers of services for children with special health care needs that includes at a minimum:

(i) public health nursing;

(ii) social work;

(iii) nutrition;

(iv) primary care providers;

(v) subspecialty providers;

(vi) dental providers;

(vii) Part H early intervention providers;

(viii) paraprofessional home visitor program; and

(ix) others deemed appropriate by the contractor.

(3) Requirements for professional public health providers include:

(a) for a registered nurse: a minimum of a bachelor's degree in nursing including course work in public health; and

(b) for a social worker: a master's or bachelor's degree in behavioral sciences or related field with one year experience in community social services or public health.

(4) The case management provider must be able to directly provide services of at least one of the professional disciplines listed in (5) of this rule.

(5) A case management provider must:

(a) deliver care coordination services appropriate to the child and caregiver's level of need;

(b) respond promptly to requests and referrals of children for targeted case management;

(c) perform assessments and develop care plans for the appropriate level of care and document the services provided;

(d) schedule services to accommodate the child's situation;

(e) inform a child and the child's caregivers regarding whom and when to call for health care emergencies;

(f) assure ongoing communication and coordination of the child's care occurs within the case management team and among the child's care providers;

(g) provide services primarily in the home setting and additionally in office or clinic settings with telephone contacts as appropriate. Home visiting, particularly by the public health nurse, is an integral part of targeted case management for children with special health care needs. To accommodate unusual circumstances or the safety of home visitors, exceptions to home visiting as the primary location of service delivery may be allowed and should be documented in the child's case record;

(h) have a system for handling grievances; and

(i) maintain an adequate and confidential client record system. All services provided must be documented in this system.

(6) A case manager must have knowledge of:

(a) federal, state and local programs for children such as WIC, immunizations, perinatal health care, children's special health care needs, family planning, genetic services, hepatitis B screening, EPSDT, DDFESS, and other health care related programs in Montana;

(b) individual health care systems, plan development, and evaluation;

(c) community health care systems and resources; and

(d) nationally recognized early childhood health care and well child health supervision standards.

(7) A case manager must have the ability to:

(a) interpret medical findings;

(b) develop or participate in the development of an individual case management plan based on assessment of a child's health, nutritional and psychosocial status, and personal and community resources;

(c) inform a child and the child's caregivers regarding health conditions and implications of risk factors;

(d) foster the ability of a child's caregivers to assume responsibility for the child's health care;

(e) assist the child and the child's caregivers to establish linkages among service providers;

(f) coordinate access to multiple provider services to benefit the child and the child's caregivers; and

(g) evaluate a child and the child's caregivers success in obtaining appropriate medical care and other needed services.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

RULE X CASE MANAGEMENT SERVICES FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS, REIMBURSEMENT (1) Case management services for children with special health care needs are reimbursed at the lower of the following:

(a) the provider's customary charge to the general public for the service; or

(b) \$10.00 for each 15 minutes of service.

(2) No cost shall be allowable unless the department determines that it has been incurred and that it is reasonable and necessarily related to the provision of case management services. Profit is not an allowable cost.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

46.12.1901 CASE MANAGEMENT SERVICES, GENERAL PROVISIONS

(1) Case management services assure healthy outcomes by assisting recipients to access needed services and by coordinating between all agencies and providers responsible for service delivery. A case management plan sets goals for meeting a client's needs and where appropriate the needs of the client's caregivers and identifies the means for implementing those goals with emphasis on the self-sufficiency of the client and caregivers in obtaining services.

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

~~(4)~~ (5) Case management services must be delivered by a case manager whose primary responsibility is the delivery of case management services to one or more of the populations identified in ARM 46.12.1902. Exceptions to this requirement may be approved by the department or its designee.

~~(5)~~ (6) Except as otherwise provided for in this subchapter, a client may select a case management service provider and other service providers whose services are received with the assistance of case management.

(7) A client in accordance with the following criteria may temporarily receive case management services from more than one case management service provider:

(a) there is need for more than one case manager to manage the provision of services to the client;

(b) there is a single coordinated individualized plan for case management of the provision of services;

(c) there is a lead case management provider;

(d) there is an agreement as to which case management services provider will bill medicaid; and

(e) the plan of care contains the following:

(i) designation of the lead case management service provider;

(ii) justification for the use of more than one case management service provider;

(iii) specification of roles and responsibilities each case management service provider is to undertake;



(iv) documentation of all the case management services provided on behalf of the client, including those not reimbursed by medicaid;

(v) assurances of nonduplication of case management services; and

(vi) strategies for reducing case management to a single service provider.

(8) Medicaid reimbursement for case management services except as provided in Rule VIII, is only available for the case management services provided by the lead case management provider.

(9) Decisions as to which case management provider is to be a lead case management provider for a client, except as provided in Rule VIII, are made locally except as noted in Rule VIII (2). If there is disagreement that can not be resolved locally, the department contacts for each program involved are to make the necessary decision.

(6) (10) A case management plan must be developed jointly by the case manager and the client and where appropriate the client's caregivers.

(a) The plan should be signed by the client and where appropriate the client's caregivers. If the client does not sign the plan is not signed, the reason for the lack of signature should must be documented.

(b) A client's refusal to sign the plan will not result in a denial of case management services.

(c) A case management plan for a minor or for an adult who is subject to full guardianship must be signed by the parents or guardian.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

#### 46.12.1902 CASE MANAGEMENT SERVICES, GENERAL ELIGIBILITY

(1) Persons who are medicaid recipients and are from the following groups are eligible for case management services:

- (a) high risk pregnant women;
- (b) adults with severe and disabling mental illness;
- (c) persons age 16 and over with developmental disabilities; and
- (d) youth with severe emotional disturbance;
- (e) children at risk for abuse and neglect; and
- (f) children with special health care needs.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

#### 46.12.1903 CASE MANAGEMENT SERVICES, GENERAL DEFINITIONS

(1) "Case management" means the process of planning and coordinating care and services to meet individual needs of a client and to assist the client in obtaining necessary medical, social, nutritional, educational and other services. Case

management includes assessment, case plan development, monitoring and service coordination. Case management provides coordination among agencies and providers in the planning and delivery of services.

(2) "Caregiver" means a parent, family member, foster parent, or guardian with legal responsibility for the well-being of the client.

(2) through (4) remain the same in text but are renumbered (3) through (5).

(6) "Presumptive eligibility" means the process of determining eligibility for pregnant women to receive ambulatory prenatal care services under the medicaid presumptive eligibility program as provided at ARM 46.12.3401.

(7) "Department" or "DPHHS" means the department of public health and human services.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

46.12.1915 CASE MANAGEMENT SERVICES FOR HIGH RISK PREGNANT WOMEN, ELIGIBILITY (1) through (3) remain the same in text.

~~(4) Case management services may be delivered to the newborn through the month of the first birthday if:~~

~~(a) the newborn continues to reside with the biological mother;~~

~~(b) the mother received case management services as a high risk pregnant woman; and~~

~~(c) the newborn receives medicaid.~~

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

46.12.1916 CASE MANAGEMENT SERVICES FOR HIGH RISK PREGNANT WOMEN, DEFINITIONS The definitions of case management services for high risk pregnant women are as follows; (1) through (4) remain the same in text.

~~(5) "Presumptive eligibility" means, as provided at ARM 46.12.3401, the process of determining eligibility for pregnant women to receive ambulatory prenatal care services under the medicaid presumptive eligibility program.~~

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

46.12.1918 CASE MANAGEMENT SERVICES FOR HIGH RISK PREGNANT WOMEN, PROVIDER REQUIREMENTS (1) These requirements are in addition to those requirements provided in ARM 46.12.301 through 46.12.309 contained in rule and statutory provisions generally applicable to medicaid providers.

(2) through (7) (b) (vii) remain the same.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

46.12.1925 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS, ELIGIBILITY (1) A person is eligible for case management as an adult with severe and disabling mental illness if the person:

~~(a) is receiving medicaid;~~  
~~(b) is at least 18 years old; and~~  
~~(c) has both severe mental illness and ongoing functional difficulties because of the mental illness.~~

~~(2) A person has a severe mental illness if the person:~~

~~(a) has been hospitalized at least once for a minimum of 30 consecutive days because of a mental disorder;~~

~~(b) has a DSM III-R diagnosis of schizophrenic disorder (295), major mood disorder (296.2, 296.3, 296.4, 296.5, 296.6, 296.7, 301.13), paranoid disorder (297.10), organic disorder (293.81, 293.82, 293.83, 294.00, 294.80, 310.10), other psychotic disorder (295.40, 295.70, 297.30, 298.90), pervasive developmental disorder (299.80) when not accompanied by mental retardation; or~~

~~(c) has a DSM III-R diagnosis of personality disorder (301.00, 301.20, 301.22, 301.40, 301.50, 301.60, 301.81, 301.82, 301.83, 301.84, or 301.90) which causes the person to be unable to work competitively on a full time basis or to be unable to maintain a residence without assistance and support by family or a public agency.~~

~~(3) A person has ongoing functional difficulties because of mental illness if the person:~~

~~(a) has a physician's prescription for medication to control the symptoms of mental illness;~~

~~(b) is unemployed or does not work in a full time competitive situation because of mental illness;~~

~~(c) receives supplemental security income (SSI) or social security disability income (SSDI) payments because of mental illness; or~~

~~(d) because of mental illness maintains or could maintain a living arrangement only with the ongoing supervision and assistance of family or a public agency.~~

~~(a) is 18 years of age or over; and~~

~~(b) has a severe and disabling mental illness.~~

(2) A person has a severe and disabling mental illness if the person:

(a) presents an imminent risk of suicide; or

(b) meets the criteria in both criterion I and criterion

## II.

(3) Criterion I, severe mental illness indicated by one of the following:

(a) hospitalization at the Montana state hospital on at least one occasion for at least 30 consecutive days due to a mental disorder;

(b) a DSM-IV diagnosis of one of the following disorders:

(i) schizophrenic disorder (295);

(ii) other psychotic disorders (295.40, 295.70, 297.1, 297.3, 298.9, 293.81, 293.82);

(iii) mood disorder (296.2x, 296.3x, 296.4x, 296.5x, 296.6x, 296.7, 296.80, 296.82, 296.90, 301.13, 193.83);

(iv) amnestic disorder (294.0, 294.8);

(v) disorder due to a general medical condition (301.1);

or

(vi) pervasive developmental disorder not otherwise specified (299.80) when not accompanied by mental retardation;  
or

(c) a DSM-IV diagnosis of personality disorder (301.00, 301.81, 301.22, 301.4, 301.50, 301.6, 301.81, 301.82, 301.83, or 301.90) which causes the person to be unable to work competitively on a full-time basis or to be unable to maintain a residence without assistance and support by family or a public entity.

(4) Criterion II, ongoing functional difficulties due to mental illness, is indicated by one of the following:

(a) prescription of medication to control symptoms of mental illness;

(b) unemployment or inability of working in a full-time competitive situation due to mental illness;

(c) receipt of SSI or SSDI payments due to mental illness;

or

(d) a living arrangement is maintained or could be maintained only with ongoing supervision and assistance of family or a service agency.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

46.12.1926 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS, DEFINITIONS The definitions of case management services for adults with severe and disabling mental illness are as follows:

(1) through (5) remain the same in text.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

46.12.1927 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS, COVERAGE (1) Reimbursable case management services for adults with severe and disabling mental illness are:

(a) assessment;

(b) case planning;

(c) crisis intervention and stabilization;

(d) assistance in daily living; and

(e) care coordination, referral and advocacy.

(2) Case management services for adults with severe and disabling mental illness are available only in the following

counties of the community health regions designated by the department:

(a) region I: Custer, Dawson, Daniels, Phillips, Roosevelt, Sheridan, Valley and Richland counties;

(b) region II: Blaine, Cascade, Glacier, Hill, Pondera, Teton and Toole counties;

(c) region III: Yellowstone county;

(d) region IV: Beaverhead, Deer Lodge, Gallatin, Lewis and Clark, Park, and Silverbow counties; and

(e) region V: Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders counties.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

46.12.1929 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS, PROVIDER REQUIREMENTS

(1) These requirements are in addition to those requirements ~~provided in ARM 46.12.301 through 46.12.309 contained in rule and statutory provisions generally applicable to medicaid providers.~~

(2) Case management services for adults with severe and disabling mental illness must be provided by a licensed mental health center as specified in ARM 46.12.571 that is contracting with the ~~Montana department of corrections and human services~~ to provide mental health services or in cases where a mental health center is unwilling or unable to provide the required case management services, the services may be provided by a provider designated by and under contract with the department ~~of corrections and human services.~~

(3) remains the same.

(4) Objectives in a case management plan must have an identified date of review no more than ~~ninety~~ 90 days after the plan date. Plans ~~will~~ must be reviewed and revised to reflect changes in client goals and needs, and the services provided to the client. The initial review must take place no more than 90 days after the plan date.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

46.12.1935 CASE MANAGEMENT SERVICES FOR PERSONS AGE 16 AND OVER WITH DEVELOPMENTAL DISABILITIES, DEFINITIONS The definitions of case management services for persons with developmental disabilities age 16 years of age and over are as follows:

(1) remains the same in text.

(2) "Developmental disabilities program" means the program of services administered by the department for persons with developmental disabilities.

(2) through (5)(f) remain the same in text but are renumbered (3) through (6)(f).

AUTH: Sec. 53-6-113, MCA  
IMP: Sec. 53-6-101, MCA

46.12.1936 CASE MANAGEMENT FOR PERSONS AGE 16 AND OVER WITH DEVELOPMENTAL DISABILITIES, ELIGIBILITY (1) A person is eligible for case management as a person with developmental disabilities if the person:

- (a) is receiving medicaid;
  - (b) is ~~at least~~ 16 years ~~old of age or over~~; and
  - (c) has a developmental disability.
- (2) Case management services are not available to:
- (a) a person residing in an intermediate care facility for the mentally retarded (ICF/MR) or in a medicaid certified nursing facility except as provided for in ~~subsection~~ (3); or
  - (b) a person receiving case management services under a home and community-based waiver program authorized under Section 1915 (c) of the Social Security Act.
  - (3) A person residing in a medicaid certified nursing facility or intermediate care facility for the mentally retarded (ICF/MR) may receive case management services during the 30 day period immediately preceding the scheduled discharge from a nursing facility in order to coordinate post-discharge services in a non-institutional setting.

AUTH: Sec. 53-6-113, MCA  
IMP: Sec. 53-6-101, MCA

46.12.1937 CASE MANAGEMENT FOR PERSONS AGE 16 AND OVER WITH DEVELOPMENTAL DISABILITIES, COVERAGE (1) through (1)(d)(iii) remain the same in text.

(2) Case management services for persons age 16 and over with developmental disabilities are available without geographic limitation.

AUTH: Sec. 53-6-113, MCA  
IMP: Sec. 53-6-101, MCA

46.12.1939 CASE MANAGEMENT FOR PERSONS WITH DEVELOPMENTAL DISABILITIES, PROVIDER REQUIREMENTS (1) These requirements are in addition to those contained in ~~ARM 46.12.301 through 46.12.309~~ rule and statutory provisions generally applicable to medicaid providers.

(2) The case management provider for persons age 16 and over with developmental disabilities is the developmental disabilities division program of the department of ~~social and rehabilitation services~~. The division program may contract for the delivery of case management services.

(3) Contractors with the division program for the provision of case management services must be either accredited by one of the national accreditation agencies for developmental disabilities services specified in ARM 46.8.901 or licensed

under ~~section 50-5-201, MCA as a health care facility by the Montana state department of health and environmental sciences.~~

(4) A case manager must be employed by the developmental disabilities division program of the department of ~~social and rehabilitation services~~ or by a case management provider contracting with the division program.

(5) A case manager must meet the following criteria:

(a) A case manager, except as otherwise provided for in ~~subsection (5)(b)~~, must:

(i) have a bachelor's degree in social work or a related field from an accredited college; and

(ii) one year experience in developmental disabilities or other human services;

(A) if the experience is in a human service other than developmental disabilities, the case manager must have completed at least 40 hours of training in the delivery of services to persons with developmental disabilities under a training curriculum ~~approved~~ reviewed by the developmental disabilities division program of the department of ~~social and rehabilitation services~~ within no more than 3 months of hire or designation as a case manager.

~~(b) A case manager currently employed by the developmental disabilities division of the department of social and rehabilitation services who has provided case management services to persons with developmental disabilities for at least 5 years but who does not meet the criteria in (5)(a) may serve as a case manager.~~

(6) All services provided to the client will be monitored by the case manager and the case manager's supervisor. The IP will be reviewed and revised according to the client's needs at least annually, or when major changes are needed.

(7) A provider of direct care services to persons with developmental disabilities may not act as the case management provider for clients for whom the provider delivers services.

(8) A case manager must participate in a minimum of 20 hours of advanced training in services to persons with developmental disabilities each year under a training curriculum reviewed and approved by the developmental disabilities division program of the department of ~~social and rehabilitation services~~. On-going documentation of the qualifications of case managers and completions of mandated training ~~will~~ must be maintained by the employer of the case manager.

(9) A case management provider must:

(a) have a system for handling client grievances; and

(b) protect the confidentiality of client records.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

46.12.1940 CASE MANAGEMENT FOR PERSONS WITH DEVELOPMENTAL DISABILITIES, REIMBURSEMENT (1) Reimbursement for targeted case management services for persons with developmental

disabilities is provided to the developmental disabilities ~~division program~~ of the department of ~~social and rehabilitation services~~ in accordance with ~~subsections~~ (2) through (4).

(a) This rule does not govern reimbursement provided to contract providers of case management services for the developmental disabilities ~~division program~~ of the department of ~~social and rehabilitation services~~.

(2) through (4) remain the same in text.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

46.12.1945 CASE MANAGEMENT SERVICES FOR YOUTH WITH SEVERE EMOTIONAL DISTURBANCE. DEFINITIONS The definitions of case management services for youth with severe emotional disturbance are as follows:

(1) remains the same in text.

(2) "Assistance in daily living" means the ongoing monitoring of how a client is coping with life on a day-to-day basis and the provision of assistance by a case manager which supports a client in daily life. Assistance ~~with in~~ daily living ~~skills~~ includes but is not limited to:

(a) assistance with shopping and budgeting;

(b) teaching use of public transportation and other resources;

(c) monitoring and tutoring with regard to health maintenance; and

(d) monitoring contact with family members.

(2)(a) through (5)(g) remain the same in text.

(6) "Human services systems" means the following services:

(a) mental health services including outpatient therapy, home-based therapy, school-based therapy, day treatment, and intensive case management;

(b) specialized residential services including psychiatric, residential, and hospital treatment, therapeutic group home, or therapeutic foster care;

(c) child protective services;

(d) specialized education supports including special education placement, services by school counselor, or other support services provided by the school; and

(e) juvenile corrections or probation.

(7) "Managing resources Montana" means the program providing coordinated management of state programs and resources directed at the mental health of youth.

(8) "Specialized services" means therapy services provided for the purposes of:

(a) assisting in the management of the emotional disturbance or its effects;

(b) supporting retention of the youth in the community or home; or

(c) treatment of the illness.



AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

46.12.1946 CASE MANAGEMENT SERVICES FOR YOUTH WITH SEVERE EMOTIONAL DISTURBANCE, ELIGIBILITY (1) A person is eligible for case management as a youth with severe emotional disturbance if the person:

~~(a) is receiving medicaid; and~~  
~~(b) has been determined by the regional managed care entity or its designee to be in need of case management for youth with severe emotional disturbance.~~

~~(2) A person with severe emotional disturbance is a person who meets one of the following definitions:~~

~~(a) the person is under 18 years of age and presents a danger of suicide;~~

~~(b) the person is under 21 years of age, is emotionally disturbed as defined by 20-7-401(8), MCA and is being served by an education agency;~~

~~(c) the person is under 22 years of age, is emotionally disturbed as defined by 20-7-401(8), MCA, is being served by an education agency, and is completing a school year which began before the person turned age 21; or~~

~~(d) the person is under 18 years of age, demonstrates a need for specialized services from two or more human service systems because of emotional disturbance; and~~

~~(i) has a mental disorder diagnosed under DSM III R or revision thereof by a certified or licensed mental health professional; and~~

~~(ii) consistently and persistently demonstrates for a period of at least six months or is expected to continue for a period over six months one of the following characteristics:~~

~~(A) failure to establish or maintain interpersonal relationships relevant to his appropriate developmental stage(s) and cultural environment;~~

~~(B) displays inappropriate behavior relevant to his developmental stage and culture;~~

~~(C) failure to demonstrate a range or appropriateness of emotion or mood relevant to his developmental stage and culture;~~

~~(D) displays behavior sufficiently disruptive to lead to isolation in or from school, home, therapeutic or recreational settings; or~~

~~(E) displays behavior sufficiently intense or severe to be considered seriously detrimental to his growth, development or welfare, or to the safety or welfare of others.~~

~~(3) DSM III R diagnoses necessary for categorization of severe emotional disturbance include:~~

~~(a) childhood schizophrenia (295);~~

~~(b) mood disorders (296.2, 296.3, 296.4, 296.5, 296.6, 300.40, 301.1, 301.13);~~

~~(c) pervasive developmental disorder not otherwise specified (299.00);~~

~~(d) multiple personality disorder (300.14);~~

~~(c) personality disorders (301.40, 301.50, 301.81, 301.84);~~  
~~(f) sexual disorders (302.2, 302.3, 302.84, 302.89);~~  
~~(g) life threatening anorexia nervosa (307.10) and bulimia nervosa (307.51);~~  
~~(h) separation anxiety disorder (309.21);~~  
~~(i) posttraumatic stress disorder (309.89);~~  
~~(j) kleptomania (312.32);~~  
~~(k) pyromania (312.33);~~  
~~(l) impulse control disorder (312.34);~~  
~~(m) trichotillomania (312.39);~~  
~~(n) overanxious disorder (313.00);~~  
~~(o) oppositional defiant disorder (313.81);~~  
~~(p) identity disorder (313.82);~~  
~~(q) reactive attachment disorder (313.89); or~~  
~~(r) severe attention deficit hyperactivity disorder (314.01).~~

~~(4) Human service systems are the following:~~  
~~(a) mental health services including outpatient therapy home based therapy, school based therapy, day treatment, and intensive case management;~~  
~~(b) specialized residential services including residential treatment, therapeutic group home, or therapeutic foster care;~~  
~~(c) child protective services;~~  
~~(d) specialized education supports including special education placement, services by school counselor, or other support services provided by the school; and~~  
~~(e) juvenile corrections or probation.~~  
~~(5) Unless behavior results from emotional disturbance or a youth is dually diagnosed, a youth does not meet the definition of severe emotional disturbance if the youth has a primary problem of:~~  
~~(a) developmental disability;~~  
~~(b) substance abuse or chemical dependency;~~  
~~(c) sexual or physical abuse/victimization; or~~  
~~(d) character and personality disorders characterized by lifelong and deeply ingrained anti social behavior patterns including sexual behaviors which are abnormal and prohibited by statute.~~

(a) is either under 18 years of age or is 18 through 20 years of age and is currently receiving special education services;

(b) is severely emotionally disturbed; and

(c) is determined by managing resources Montana to be in need of case management.

(2) A person has a severe emotional disturbance if the person:

(a) has an emotional disturbance as defined at 20-7-401(8), MCA and is currently receiving special education services;

(b) is under 18 years of age and presents a danger of suicide; or

(c) is under 18 years of age and meets the criteria in both criterion I and criterion II.

(3) Criterion I, severe emotional disturbance is indicated by the need for specialized services from two or more human services systems.

(4) Criterion II, mental disorder is indicated by a DSM-IV diagnosis from a licensed mental health professional.

(a) The diagnosis must be within the past 12 calendar months unless otherwise specified by the diagnostic code and apply to the youth's current presentation.

(b) There must be consistent and persistent demonstration for a period of at least 6 months or an expectation of continuation for a period over 6 months of one of the following characteristics:

(i) failure to establish or maintain interpersonal relationships relevant to appropriate developmental stage and cultural environment;

(ii) display of inappropriate behavior relevant to developmental stage and cultural environment;

(iii) failure to demonstrate a range or appropriateness of emotion or mood relevant to developmental stage and cultural environment;

(iv) display of behavior sufficiently disruptive to lead to isolation in or from school, home, therapeutic or recreational settings; or

(v) display of behavior sufficiently intense or severe to be considered seriously detrimental to growth, development or welfare, or to the safety or welfare of others.

(c) The DSM-IV diagnosis for the majority of disorders should have a severity index of moderate or severe.

(d) The DSM-IV diagnoses under Criterion II are:

(i) attention deficit hyperactivity disorder (314.00, 314.01, 314.9)

(ii) childhood schizophrenia (295.10, 295.20, 295.30, 295.60, 295.90);

(iii) oppositional defiant disorder (313.81);

(iv) pervasive developmental disorder not otherwise specified (299.80);

(v) separation anxiety disorder (309.21);

(vi) reactive attachment disorder (295.70);

(vii) mood disorders (296.0x, 296.2x, 296.3x, 296.4x, 296.5x, 296.6x, 296.7, 296.80, 296.89, 296.90);

(viii) dysthymic disorder (300.4);

(ix) depressive disorder not otherwise specified (311);

(x) cyclothymic disorder (301.13);

(xi) generalized anxiety or overanxious disorder (300.02);

(xii) posttraumatic stress disorder (309.81);

(xiii) dissociative identity disorder (300.14);

(xiv) sexual and gender identity disorders (302.2, 302.3, 302.4, 302.6, 302.82, 302.83, 302.84, 302.85, 302.89);

(xv) severe anorexia nervosa (307.1);

(xvi) severe bulimia nervosa (307.51);

- (xvii) kleptomania (312.32);
- (xviii) pyromania (312.33);
- (xix) trichotillomania (312.39);
- (xx) intermittent explosive disorder (312.34);
- (xxi) personality disorders (301.4, 301.5, 301.81).
- (5) A person does not have severe emotional disturbance when the person has a primary diagnosis or problem of:
  - (a) cognitive delay;
  - (b) substance abuse or chemical dependency;
  - (c) sexual or physical abuse victimization; or
  - (d) character and personality disorders characterized by repetitive and persistent pattern of behavior in which the basic rights of others or major age-appropriate societal norms are violated (DSM-IV conduct disorders), unless the behavior results from emotional disturbance.
- (6) Severe emotional disturbance includes persons who:
  - (a) are cognitively delayed and emotionally disturbed;
  - (b) are sexually abused and emotionally disturbed;
  - (c) exhibit conduct disorder and are emotionally disturbed.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

46.12.1947 CASE MANAGEMENT SERVICES FOR YOUTH WITH SEVERE EMOTIONAL DISTURBANCE. SERVICE COVERAGE (1) Reimbursable case management services for youth with severe emotional disturbance are:

- (a) assessment;
- (b) case planning;
- (c) crisis intervention and stabilization;
- (d) assistance in daily living; and
- (e) care coordination, referral and advocacy.
- (2) Case management services for youth with severe emotional disturbance are available on a statewide basis.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

46.12.1949 CASE MANAGEMENT SERVICES FOR YOUTH WITH SEVERE EMOTIONAL DISTURBANCE. PROVIDER REQUIREMENTS (1) These requirements are in addition to those requirements provided in ARM 46.12.301 through 309 contained in rule and statutory provisions generally applicable to medicaid providers.

(2) Case management services for youth with severe emotional disturbance must be provided by a licensed mental health center that is under contract with the ~~Montana~~ department of ~~corrections and human services~~ to provide mental health services, or in cases where the community mental health center is unwilling or unable to provide the required case management services, the service may be provided by a provider designated

by and under contract with the department of ~~corrections and human services~~.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

3. The rules 46.12.1928 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE AND DISABLING MENTAL ILLNESS, GEOGRAPHICAL COVERAGE, 46.12.1938 CASE MANAGEMENT FOR PERSONS AGE 16 AND OVER WITH DEVELOPMENTAL DISABILITIES, GEOGRAPHICAL COVERAGE and 46.12.1950 CASE MANAGEMENT SERVICES FOR YOUTH WITH SEVERE EMOTIONAL DISTURBANCE, GEOGRAPHICAL, as proposed to be repealed are on pages 46-2421, 46-2431 and 46-2441, respectively of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

4. In 1986, the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272, COBRA) was enacted. Section 9508(a)(1) allows states to provide case management services that will assist targeted groups of Medicaid recipients in gaining access to medical, social, educational, and other services. Adoption of these rules are necessary to provide a coordination of services and to maximize federal reimbursement.

Currently Targeted Case Management for Children at Risk for Abuse or Neglect and Targeted Case Management for Children with Special Health Care Needs are funded by 100% general fund. By implementing these services under the Medicaid program, each program will be able to receive federal matching funds to support and expand current case management activities.

The Children Special Health Service program will continue to administer Targeted Case Management for Children with Special Health Care Needs and supply the general fund for all services under this type of case management service.

The Family Services program will continue to administer Targeted Case Management for Children at Risk of Abuse or Neglect and supply the general fund for all services under this type of case management service.

Implementing Targeted Case Management for Children at Risk of Abuse or Neglect and Targeted Case Management for Children with Special Health Care Needs under Medicaid will help improve access to medical and nonmedical services provided to children of this targeted population. Additionally, improved coordination should result in more effective service delivery to Medicaid children and their families.

Only those providers approved by the Children's Special Health Services program or by the Family Services program in their respective case management programs will be allowed to receive Medicaid reimbursement. Medicaid reimbursement will be available for Medicaid eligible children who meet the criteria of each program as specified in the rule.

Proposed amendments will generally revise current Targeted Case Management rules to include two new types of case management services and to edit current rules to take out unnecessary or duplicated information. References to department divisions and programs have been changed as the result of recent department reorganization.

Case management for adults with severe and disabling mental illness is limited to the counties listed in 46.12.1927 as providers are required to provide the general fund portion of their contract monies with the department. The counties listed in this rule are the ones who have agreed to this requirement and have met all provider requirements.

46.12.1946 was changed to reflect the current diagnosis listing in the DSM IV manual.

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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604, no later than November 21, 1996.

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

Dawn Sliva  
Rule Reviewer

Michael B. Billings for  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 11, 1996.

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

In the Matter of Proposed	)	NOTICE OF PROPOSED ADOPTION
Adoption, Amendment, Repeal	)	OF NEW RULE 1, AMENDMENT OF
and Transfer of Rules Per-	)	RULES 38.5.1010, 38.5.2102,
taining to Electric Safety	)	38.5.2201, 38.5.2202,
Codes, Electric Service	)	38.5.2204 & 38.5.2301,
Standards, and Pipeline	)	REPEAL OF RULES 38.5.2220 &
Safety (including Drug and	)	38.5.2303 through 38.5.2325
Alcohol Testing).	)	AND AMENDMENT AND TRANSFER
	)	OF RULE 38.5.2327
	)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On November 23, 1996, the Department of Public Service Regulation proposes to adopt, amend, repeal and transfer rules identified in the above title and described in the following paragraphs, all related to electric safety codes, electric service standards, and pipeline safety.

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

38.5.1010 INCORPORATION BY REFERENCE OF NATIONAL ELECTRICAL SAFETY CODE (1) ~~The public service Pursuant to 69-4-501, MCA, the commission is empowered to implement and enforce construction standards for utility lines and facilities and for that purpose the commission hereby adopts and incorporates by reference the 1993 1997 edition of the National Electrical Safety Code (NESC), published by the Institute of Electrical and Electronics Engineers August 3, 1992 and approved by the American National Standards Institute July 10, 1992 (accredited standards committee C2-1993), and the correction sheet (errata) dated February 26, 1993. A copy of the 1993 edition of the National Electrical Safety Code and the errata sheet NESC may be obtained from the American National Standards Institute, 1430 Broadway 11 West 42nd Street, 13th Floor, New York, New York 10018 10036, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. AUTH: Sec. 69-4-201, MCA; IMP, Sec. 69-4-201, MCA~~

38.5.2102 ELECTRIC UTILITY NOMINAL VOLTAGE AND PERMISSIBLE RANGE OF VARIANCE (1) The standards of product and service for each public utility providing electric service subject to the jurisdiction of the commission shall, whether established by ordered tariff provision or administrative rule, allow for a nominal voltage and permissible range of variation as specified in the American National Standards Institute

(ANSI) C84.1, ~~1989~~ 1995. A copy of ANSI C84.1 may be obtained from the American National Standards Institute, 11 West 42nd Street, 13th Floor, New York, New York 10036, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

(2) This rule shall not apply:

(a) to transmission systems not used to directly serve customers;

(b) where customers specifically request a voltage other than standard nominal system voltages as specified in ANSI C84.1, ~~1989~~; or

(c) in instances where voltage is in excess of 34,500 volts. AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-3-108, MCA

38.5.2201 STATEMENT OF GENERAL POLICY (1) ~~The Montana legislature has Pursuant to 69-3-207, MCA, the commission is empowered the public service commission to enforce the safety regulations and provisions adopted under the Natural Gas Pipeline Safety Act of 1968 (NGPSA), as well as any amendments thereto. The rules of this subchapter 22 as well as the rules in subchapter 23 adopt regulations and provisions by reference where deemed necessary, identify the exceptions and qualifications applicable in Montana where deemed necessary, and describe the procedures and enforcement authority exercised by the commission for achieving and maintaining pipeline safety.~~ AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The ~~public service~~ commission hereby adopts and incorporates by reference the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, Code of Federal Regulations (CFR), Title 49, chapter 1, subchapter D, parts 191, 192, and 193, including all revisions and amendments enacted by the ~~department of transportation DOT~~ on or before August 14, 1995 October 11, 1996. A copy of CFR Title 49, Chapter 1, Subchapter D, Parts 191, 192, and 193 the referenced regulations may be obtained from the U.S. Department of Transportation DOT, Research and Special Programs Administration, Western Region, Pipeline Safety, 12600 W. Colfax Ave., Suite A-250, Lakewood, Colorado 80215-3736, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, ~~P.O. Box 262601~~, Helena, Montana 59620-2601. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

38.5.2204 INSPECTIONS, INVESTIGATIONS, AND REPORTING

(1) The commission, its employees, or authorized agents, have the power to investigate all methods and practices of pipeline owners and operators; to require the maintenance and filing of reports, records and other information in the form and detail as the commission may prescribe; to enter upon and to inspect the property, buildings, plants, and offices of pipeline owners and operators; and to inspect books, records,



papers and documents relevant to enforcement responsibilities under the NGPSA.

(2) The commission, a staff member thereof, or some person appointed by it, may investigate and make inquiry into every incident occurring in the operation of any intrastate gas pipeline located in this state. The commission, in its discretion, may also investigate any other accident or event involving the operation of a pipeline.

(3) Upon the occurrence of any incident involving the operation of an intrastate gas pipeline located in this state, each pipeline owner or operator subject to commission safety jurisdiction shall, in addition to reporting at the federal level as required by 49 CFR 191.5 through 191.9, report to the commission by telephone as soon as possible after an occurrence, not to exceed two hours, and report to the commission in writing within 20 days of the occurrence, which report shall include the time and place of the incident, the names of persons killed or injured, the names of owners of damaged property, and in concise form the nature, cause, and circumstances of the incident. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

38.5.2301 SCOPE AND COMPLIANCE (1) This subchapter requires pipeline facilities subject to 49 Code of Federal Regulations (CFR), parts 192 and 193 to test employees for the presence of prohibited drugs and prohibited alcohol misuse and provide an employee assistance program. ~~However, this subchapter does not apply to "master meter systems" defined in 49 CFR § 191.3 or to liquefied petroleum gas (LPG) operators.~~

(2) ~~Nothing contained in this subchapter shall be construed or applied in a manner inconsistent with the provisions and requirements of 39-2-304, MCA, as amended by Ch. 445, L. 1995.~~

(3) ~~This subchapter shall not apply to any person for whom compliance with this subchapter would violate the domestic laws or policies of another country.~~

(4) ~~This subchapter is not effective until January 2, 1992, with respect to any person for whom a foreign government contends that application of this subchapter raises questions of compatibility with that country's domestic laws or policies. On or before December 2, 1991, the administrator will issue any necessary amendment resolving the applicability of this subchapter to such person on and after January 2, 1992.~~ AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

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

38.5.2220 INVESTIGATION AND REPORTS OF INCIDENTS OF INTRASTATE GAS PIPELINE OPERATORS The complete text is found at ARM page 38-717. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

38.5.2303 DEFINITIONS The complete text is found at ARM page 38-721. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

38.5.2305 DOT PROCEDURES The complete text is found at ARM page 38-722. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

38.5.2307 ANTI-DRUG PLAN The complete text is found at ARM page 38-722. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

38.5.2309 USE OF PERSONS WHO FAIL OR REFUSE A DRUG TEST The complete text is found at ARM page 38-723. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

38.5.2311 DRUG TESTS REQUIRED: PRE-EMPLOYMENT, POST-ACCIDENT, REASONABLE CAUSE AND RETURN TO DUTY The complete text is found at ARM page 38-724. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

38.5.2313 DRUG TESTING LABORATORY The complete text is found at ARM page 38-725. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

38.5.2315 REVIEW OF DRUG TESTING RESULTS: MEDICAL REVIEW OFFICER The complete text is found at ARM page 38-725. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

38.5.2317 RETENTION OF SAMPLES AND RETESTING The complete text is found at ARM page 38-726. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

38.5.2319 EMPLOYEE ASSISTANCE PROGRAM The complete text is found at ARM page 38-727. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

38.5.2321 CONTRACTOR EMPLOYEES The complete text is found at ARM page 38-727. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

38.5.2323 RECORDKEEPING The complete text is found at ARM page 38-729. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

38.5.2325 SCOPE AND COMPLIANCE -- ALCOHOL MISUSE PREVENTION PROGRAM The complete text is found at ARM page 38-731. AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

4. The rule proposed to be amended and transferred to a new rule in Title 38, Chapter 5, Subchapter 23 provides as follows:

38.5.2327 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND MISUSE PRE-

VENTION PROGRAMS (1) ~~Subject to ARM 38.5.2325(1) and (2)~~  
~~Except as otherwise provided in this subchapter the commission~~  
~~hereby adopts and incorporates by reference the U.S. Department~~  
~~of Transportation DOT Pipeline Safety Regulations, Drug~~  
~~and Alcohol Testing, Code of Federal Regulations, Title 49,~~  
~~Part 199, subpart B (199.200 through 199.245) 49 CFR 199.~~ A  
copy of the referenced CFR's is available from the U.S. ~~De-~~  
~~partment of Transportation DOT~~, Research and Special Programs  
Administration, Western Region, Pipeline Safety, 12600 W.  
Colfax Ave., Suite A-250, Lakewood, Colorado 80215-3736, or  
may be reviewed at the Public Service Commission Offices, 1701  
Prospect Avenue, ~~P.O. Box 202601~~, Helena, Montana 59620-2601.  
AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

5. The rule proposed to be adopted provides as follows:

RULE I. DRUG AND ALCOHOL TESTING -- EXCEPTIONS

(1) This subchapter does not apply to any pipeline or  
transportation activity to which the commission has not ac-  
cepted jurisdiction.

(2) For there to be an "incident" based on being judged  
"significant" by the operator pursuant to 49 CFR 191.3, prop-  
erty damage must be in excess of \$1,500.

(3) Nothing contained in this subchapter shall be con-  
strued or applied in a manner inconsistent with the provisions  
and requirements of 39-2-304, MCA. Random drug testing is  
prohibited.

(4) Any testing procedure must provide for the verifica-  
tion of test results by two or more different testing proce-  
dures before judging a test positive.

(5) A copy of all drug test results shall be provided to  
the person tested.

(6) Each person tested must be provided the opportunity,  
at the expense of the operator, to obtain a confirmatory re-  
test by an independent laboratory selected by the person  
tested.

(7) Each person tested must be given the opportunity to  
rebut or explain the results of drug tests and retests.

(8) In all federal rules pertaining to recordkeeping,  
"positive test" shall mean "failed a drug test."

(9) Any release of name-specific information shall only  
be by written consent of the named individual or by order of a  
court, but statistical data related to drug testing and  
rehabilitation that is not name-specific and training records  
must be made available to the administrator or the representa-  
tive of a state agency upon request.

(10) In the event of any conflict in law, the substantive  
and procedural provisions of the commission in this subchapter  
shall prevail over any federal provision adopted by reference.  
AUTH: Sec. 69-3-207, MCA; IMP, Sec. 69-3-207, MCA

6. Rationale: Amendment to 38.5.1010 is reasonably  
necessary to update to the most recent version of ANSI C84.1,

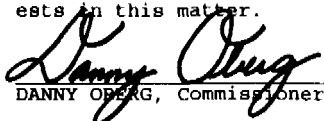
reflect the change in ANSI's address, where a copy may be obtained, and to simplify the rule. Amendment to 38.5.2102 is reasonably necessary as update to the most recent version of the NESC is required by law. The remaining amendments to the rule are reasonably necessary to reflect the ANSI address change and to clarify and simplify the rule. Amendment to pipeline safety rules, 38.5.2201, 2202, 2204, and 2301, is reasonably necessary to simplify and clarify the rules and to facilitate a reduction in state rules through adoption of federal rules by reference. The repeal of rules identified is reasonably necessary as adoption of new rules and amendment to existing rules have rendered them duplicative and eliminated the need for them. Transfer of 38.5.2327 with minor amendments is reasonably necessary for organizational purposes. New rule I is reasonably necessary to preserve important existing state exceptions in the state version of federal drug and alcohol testing rules being repealed above in an effort to reduce the number of rules through adoption by reference.


7. Interested parties may submit their data, views or arguments concerning the proposed actions in writing (original and 10 copies) to Martin Jacobson, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601 no later than November 23, 1996.

8. If a person who is directly affected by the proposed actions wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has (original and 10 copies) to Martin Jacobson, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than November 23, 1996.

9. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; 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 in excess of 25 persons based upon the number of utilities, pipelines, employees, consumers, and public in general affected by these rules.

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

  
DANNY OBERG, Commissioner

  
Robin McHugh, Rule Reviewer

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 4, 1996.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT ) NOTICE OF PUBLIC HEARING ON THE  
of ARM 42.18.106; 42.18.109; ) PROPOSED AMENDMENT, REPEAL AND  
42.18.112; 42.18.115; 42.18. ) ADOPTION OF PROPERTY RULES  
118; 42.18.124; 42.18.126; 42. )  
18.201 through 42.18.203; and )  
42.18.211 and REPEAL of ARM )  
42.18.105; 42.18.108; 42.18. )  
111; 42.18.114; 42.18.117; and )  
42.18.123 and ADOPTION OF NEW )  
RULES I through VI relating to)  
Reappraisal Plan Property Rules)

TO: All Interested Persons:

1. On November 20, 1996, at 3:00 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.18.106; 42.18.109; 42.18.112; 42.18.115; 42.18.118; 42.18.124; 42.18.126; 42.18.201 through 42.18.203; and 42.18.211 and repeal of ARM 42.18.105; 42.18.108; 42.18.111; 42.18.114; 42.18.117; and 42.18.123 and adoption of New Rules I through VI relating to Reappraisal Plan Property Rules.

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

42.18.106 1997 MONTANA REAPPRAISAL PLAN (1) and (2) remain the same.

(3) ~~The results of this plan apply~~ This rule applies to tax years beginning from January 1, 1997, and thereafter through December 31, 1999.

AUTH: Sec. 15-1-201 MCA; IMP, Secs. 15-7-111 and 15-7-133 MCA

42.18.109 RESIDENTIAL REAPPRAISAL PLAN (1) through (9) remain the same.

(10) ~~The results of this rule apply~~ This rule applies to tax years beginning from January 1, 1997, and thereafter through December 31, 1999.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

42.18.112 COMMERCIAL REAPPRAISAL PLAN (1) through (9) remain the same.

(10) ~~The results of this rule apply~~ This rule applies to tax years beginning from January 1, 1997, and thereafter through December 31, 1999.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

42.18.115 AGRICULTURAL/FOREST LAND AND IMPROVEMENTS REAPPRAISAL PLAN (1) through (7) remain the same.

(8) ~~The results of this rule apply~~ This rule applies to tax years beginning from January 1, 1997, and thereafter through December 31, 1999.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

42.18.118. INDUSTRIAL PROPERTY REAPPRAISAL (1) remains the same.

(2) The reappraisal plan provides for industrial property to be valued as an entity. For valuation methodology, the department will rely upon ARM 42.22.1304 through 42.22.1310. ~~The industrial appraisal centralized assessment~~ bureau will be responsible for valuing industrial property as that concept is defined in ARM 42.22.1301, 42.22.1302, and 42.22.1303.

(3) ~~The results of this rule apply~~ This rule applies to tax years beginning from January 1, 1997, and thereafter through December 31, 1999.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

42.18.124. CLARIFICATION OF VALUATION PERIODS (1) In compliance with 15-7-103(5), MCA:

(a) through (c) remains the same.

(d) For the taxable years from January 1, 2000 through December 31, 2002, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of January 1, 1999.

AUTH: Sec. 15-1-201 MCA; IMP, Secs. 15-6-134, 15-7-103, and 15-7-111 MCA

42.18.126. PROGRESS REPORTING (1) Work progress reports will be completed and submitted monthly by each ~~county regional appraisal/assessment~~ office. The work progress reports will assess planned performance against actual accomplishments, and identify those factors that directly affect the appraisal performance in any given month. Movement of staff between counties or permanent reallocation of staff will be considered to ensure work is completed on schedule. ~~The work progress reporting forms will be provided to the offices by the department.~~

(2) County Regional progress report information is summarized each month and shall be available by the third week of the following month for use in making presentations before the revenue oversight committee.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

42.18.201. RESIDENTIAL PROPERTY CERTIFICATION REQUIREMENTS

(1) Training and testing criteria shall be as follows:

(a) Training sessions will be offered ~~in March and August of each year annually~~ if funding is available and if there are sufficient numbers of field staff who require the courses.

(b) remains the same.

(2) and (3) remain the same.

(4) Criteria set forth in ~~paragraphs~~ (1), (2), or (3) above, may be waived by the property assessment division if sufficient proof is presented that the employee has previously fulfilled such criteria.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

42.18.202 COMMERCIAL PROPERTY CERTIFICATION REQUIREMENTS

(1) The employee must be previously certified in the appraisal of residential property.

(2) Training and testing criteria shall be as follows:

(a) Training sessions will be offered ~~in March and August of each year~~ annually if funding is available and if there are sufficient numbers of field staff who require the courses.

(b) remains the same.

(3) remains the same.

(4) Upon successful attainment of the criteria set forth in ~~paragraphs~~ (1), (2), and (3), the employee shall undertake a one-year period of on-the-job commercial appraisal work. The commencement of the year experience requirement will coincide with the employee's notification of being assigned commercial appraisal responsibilities. All work will be supervised by the department of revenue. Failure to perform the appraisal work satisfactorily shall result in immediate termination or demotion to a residential appraisal position or an agricultural/timber classifier position, if the positions are available and the individual is certified to perform in that position.

(5) Criteria set forth in ~~paragraphs~~ (1), (2), (3), and (4) above, may be waived by the property assessment division if sufficient proof is presented that the employee has previously fulfilled such criteria.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

42.18.203 AGRICULTURAL PROPERTY CERTIFICATION REQUIREMENTS

(1) remains the same.

(2) Training and testing criteria shall be as follows:

(a) Training sessions will be offered ~~in January and September of each year~~ annually if funding is available and if there are sufficient numbers of field staff who require the courses.

(b) remains the same.

(3) remains the same.

(4) Upon successful attainment of the criteria set forth in ~~paragraphs~~ (1), (2), and (3), the employee shall undertake a one-year period of on-the-job agricultural/timber classification work. The commencement of the year experience requirement will coincide with the employee's notification of being assigned agricultural/timber classification responsibilities. All work will be supervised by the department of revenue. Failure to perform the classification work satisfactorily at any time during the one-year period shall result in immediate termination or demotion to a residential appraisal position, if the position is available and the individual is certified to perform in that position.

(5) Criteria set forth in ~~Paragraph~~ (1), (2), (3), and (4) above, may be waived by the property assessment division if sufficient proof is presented that the employee has previously

fulfilled such criteria.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

42.18.211 CERTIFICATION SEQUENCE (1) Specific positions within the property assessment division require multiple certifications: (Example 1: Commercial appraiser position requires residential certification and commercial certification; Example 2: Agricultural appraiser position requires residential certification and agricultural certification; Example 3: ~~Appraisal supervisor~~ Regional manager position requires residential certification, agricultural certification, and commercial certification).

(2) and (3) remain the same.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

3. The Department proposes to repeal the following rules:

42.18.105 MONTANA REAPPRAISAL PLAN found at page 1805 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201 MCA; IMP, Secs. 15-7-111, 15-7-133 and 15-7-134 MCA

42.18.108 RESIDENTIAL APPRAISAL PLAN found at page 1806 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

42.18.111 COMMERCIAL APPRAISAL PLAN found at page 1809 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

42.18.114 AGRICULTURAL/FOREST LAND APPRAISAL PLAN found at page 1812 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

42.18.117 INDUSTRIAL PROPERTY APPRAISAL found at page 1815 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

42.18.123 MANUALS found at page 1818 of the Administrative Rules of Montana.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

4. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The rules as proposed to be adopted provide as follows:

NEW RULE I 2000 MONTANA REAPPRAISAL PLAN (1) The 2000 Montana reappraisal plan consists of seven parts: residential appraisal, commercial appraisal, agricultural and forest land appraisal, industrial appraisal, certification and training requirements, manuals, and progress reporting. The Montana reappraisal plan implements the legislature's cyclical



reappraisal program set forth in 15-7-111, MCA.

(2) The Montana reappraisal plan provides for the valuation of residential property, commercial property, agricultural and forest land property, and industrial property. A computer assisted mass appraisal system (CAMAS) is used to assist in the valuation process. The department's plan is to determine a new appraised value for each parcel of land, each residential improvement, each commercial improvement, each agricultural improvement, and each industrial improvement. The department will enter the new appraised values on the tax rolls for tax year 2000.

(3) The results of this plan apply to tax years beginning January 1, 2000, and thereafter.

AUTH: Sec. 15-1-201 MCA; IMP, Secs. 15-7-111 and 15-7-133 MCA

NEW RULE II 2000 RESIDENTIAL REAPPRAISAL PLAN (1) The reappraisal of residential property consists of field reviews; the collection, verification and analysis of sales information; the data entry of missing or updated information, new improvements, and sales information; the development and review of computer assisted land pricing (CALP) models; the development of market models/benchmarking; the use of door hangers where appropriate; the generation and review of inventory contents sheet; and final determinations of value. Multiple field reviews of each property will be kept to an absolute minimum. Work plans must reflect that position.

(2) The reappraisal plan provides for field reviews to be conducted. Field reviews of residential property consist of an internal or external observation to determine accuracy of existing information on the inventory content sheet and property record card; to observe condition; to review grade and depreciation assignment; and collect additional data. No call-backs will be made to the property unless specifically requested by the taxpayer, the field supervisor, or regional manager.

(3) Residential property data entry consists of correcting; updating, and adding residential property data on the department of revenue's computer assisted mass appraisal system (CAMAS). The process will also include the review of edit reports; the addition of supplementary data to CAMAS; and sketch vectoring.

(4) The collection, verification, analysis and data entry of sales information is an important component of CAMAS. Accuracy of sales information is critical to the development of accurate, land valuation; benchmarking; the development of accurate market models; individual property final value determinations; and the defense of final value estimates.

(5) Residential lots and tracts are valued through the use of computer assisted land pricing (CALP) models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, 1999, land market values.

(6) The development of market models using CAMAS is a

requirement for property valuation during the reappraisal cycle. The key components that influence value and the appropriate level of influence are determined through use of multiple regression analysis. Staff may develop separate market models for each neighborhood.

(7) Inventory contents sheets are generated and reviewed by appraisal staff. These sheets include physical characteristics and component information; sales, basic ownership, and valuation information. The review will consist of analyzing and collecting component information such as condition, desirability and utility (CDU) factors and style of improvements. This review will allow the appraiser to compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review will result in the update of CAMAS data.

(8) Final determinations of value are conducted once all required field and program needs of CAMAS are met. The appraised value for residential property may include indicators of value using: the cost approach and the sales comparison approach. The appraised value supported by defensible market data, when available, serves as the value for ad valorem tax purposes.

(9) The results of this rule apply to tax years beginning January 1, 2000, and thereafter.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

NEW RULE III 2000 COMMERCIAL REAPPRAISAL PLAN (1) The reappraisal of commercial property consists of field reviews; collection, verification and analysis of sales and income information; data entry of sales and income information; development and review of computer assisted land pricing (CALP) models; development of income models/benchmarking; generation and review of inventory contents sheets; and final determinations of market value. Multiple field reviews will be kept to an absolute minimum. Work plans must reflect that position.

(2) The reappraisal plan provides for field reviews. A field review of commercial property consists of an internal or external observation to determine accuracy of existing information on the inventory content sheet and property record card; to observe condition; to review depreciation assignment; and to collect additional data. No call-backs will be made to the property unless specifically requested by the taxpayer, the field supervisor, or regional manager.

(3) Commercial property data consists of correcting, updating and adding commercial property data on the department of revenue computer assisted mass appraisal system (CAMAS).

(4) The collection, verification, analysis and data entry of sales and income information is an important component of CAMAS. Accuracy of sales information and income information is critical to accurate land valuation; to benchmarking; to the development of accurate income models; to individual property

final value determinations; and to the defense of final value estimates.

(5) Commercial lots and tracts are valued through the use of computer assisted land pricing (CALP) models. Homogeneous areas within each county are geographically defined as neighborhoods. The CALP models will reflect January 1, 1999, land market values.

(6) The development of income models using CAMAS is a component for property valuation during the reappraisal cycle. Staff may develop separate income models for each neighborhood.

(7) Inventory contents sheets are generated and reviewed by appraisal staff. These sheets include physical characteristics and component information, income information, sales information, basic ownership information, and valuation information. The review will consist of analyzing and collecting component information. This review will allow the appraiser to review and compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review will result in the update of CAMAS data.

(8) Final determinations of value are conducted once all required field and program needs of CAMAS are met. The appraisal value for commercial property may include indicators of value using: the cost approach, the income approach; and, when possible, the sales comparison approach. The appraisal value supported by the most defensible valuation information serves as the value for ad valorem tax purposes.

(9) The results of this rule apply to tax years beginning January 1, 2000, and thereafter.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

NEW RULE IV 2000 AGRICULTURAL/FOREST LAND AND IMPROVEMENTS REAPPRAISAL PLAN

(1) Agricultural and forest lands are valued in accordance with administrative rules adopted by the department of revenue in chapter 20. Use changes are updated annually on both agricultural and forest lands. For agricultural land the valuation methodology and agricultural land valuation schedules are developed in accordance with 15-7-201, MCA. For forest lands the valuation methodology and forest lands valuation schedules are developed in accordance with 15-44-103, MCA. The agricultural and forest lands values will reflect productivity values in accordance with 15-7-201 and 15-44-103, MCA.

(2) The reappraisal of agricultural/forest lands consists of comprehensive field reviews of agricultural/forest lands improvements; agricultural/forest lands property data collection and analysis; the data entry of agricultural/forest lands information; the generation and review of inventory contents sheets; and final determinations of value. The plan provides for multiple field reviews of each property to be kept to an absolute minimum. Work plans must reflect that position.

(3) The reappraisal plan provides for field reviews. A

field review consists of an internal or external observation to determine accuracy of existing information on the inventory content sheet and property record card; to observe condition; to review grade and depreciation assignment; to review agricultural and forest lands classification; and to collect additional data required to implement CAMAS. No call-backs will be made to the property unless specifically requested by the taxpayer, the field supervisor or the regional manager.

(4) Agricultural/forest lands property data entry consists of correcting, updating, and adding agricultural/forest lands property data to the department of revenue's computer assisted mass appraisal system (CAMAS). The correction, updating and addition process also consists of reviewing edit reports which result from that process, the manual entry of agricultural/forest lands information to CAMAS, the addition of improvement data (outbuildings and residences) to CAMAS; and sketch vectoring.

(5) Inventory contents sheets are generated and reviewed by appraisal staff. The inventory contents sheets include physical characteristic and component information for agricultural/forest lands improvements; productivity information for agricultural/forest lands; basic ownership information; and valuation information. The review consists of analyzing; collecting component information on improvements; and reviewing productivity information on agricultural/forest lands. This review allows the appraiser to compare property information to an estimate of value. Discrepancies in data or the collection of additional information required by the review will result in the update of data on CAMAS. The addition or refinement of existing data results in a more accurate valuation estimate.

(6) Final determinations of value are conducted once all required field and program needs of CAMAS are met. The appraised value for agricultural/forest lands property improvements includes an estimate of market value using the cost approach and, when possible, the market data approach.

(7) The results of this rule apply to tax years beginning January 1, 2000 and thereafter.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

#### NEW RULE V 2000 INDUSTRIAL PROPERTY REAPPRAISAL

(1) Approximately 1,000 industrial properties are appraised by industrial appraisers and the resulting appraised values are distributed to the appropriate county appraisal/assessment offices. Each industrial property will be reappraised.

(2) The reappraisal plan provides for industrial property to be valued as an entity. For valuation methodology, the department will rely upon ARM 42.22.1304 through 42.22.1310. The centralized assessment bureau will be responsible for valuing industrial property as that concept is defined in ARM 42.22.1301, 42.22.1302, and 42.22.1303.

(3) The results of this rule apply to tax years beginning January 1, 2000, and thereafter.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

NEW RULE VI REVALUATION MANUALS (1) For residential, and agricultural/forest lands new construction, the January 1, 1996 Montana Appraisal Manual will be used through tax year 1999.

(2) For the reappraisal cycle ending December 31, 1999, the 1999 Montana Appraisal Manual will be used for valuing residential and agricultural/forest lands real property. The cost base schedules will reflect January 1, 1999 cost information.

(3) For commercial and industrial new construction the January 1, 1996 Montana Appraisal Manual will be used through tax year 1999. If the property is not listed, other construction cost manuals such as Marshall Valuation Service, Boeckh or Means will be used with a publication date as close to the Montana Appraisal Manual as possible.

(4) For the reappraisal cycle ending December 31, 1999, the 1999 Montana Appraisal Manual will be used for valuing commercial and industrial real property if the property is listed. If not, other construction cost manuals such as Boeckh; Marshall Valuation Service Manual; Richardson Engineering Services, Inc., entitled "Process Plant Construction Estimating Standards"; or R.S. Means Company, Inc., entitled "Building Construction Cost Data" will be used with a publication date as close as possible to the Montana Appraisal Manual. The cost base schedules will reflect January 1, 1999 cost information.

(5) Copies of the valuation manuals used by the department of revenue may be reviewed in the county appraisal/assessment offices or purchased from the department at the Property Assessment Division, Helena, Montana 59620.

(6) The results of this rule apply to tax years beginning January 1, 1997, and thereafter.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-7-111 MCA

5. The Department is proposing the amendments of these rules because the Department of Revenue administers and supervises a reappraisal program for the revaluation of all taxable property in the state of Montana. The current reappraisal cycle will end on December 31, 1996. New values will be used for the 1997 tax year. A new reappraisal cycle will begin on January 1, 1997 and end on December 31, 1999. The new values associated with that reappraisal cycle will be used for tax year 2000. Current law, 15-7-111, MCA, requires the Department to promulgate and adopt a written reappraisal plan that identifies how the Department will complete reappraisal. The Department is proposing the amendments to existing rules and the adoption of new rules consistent with that statutory requirement.

The Department is also proposing amendments and new rules pertaining to valuation manuals and valuation time periods. These changes will help eliminate confusion regarding reappraisal valuation dates and the time period for use of the

new reappraisal values for property tax purposes.

The Department proposes to make minor changes to existing rules on certification requirements and progress reporting. The changes regarding certification reflect the Department's current practice in the area of training.

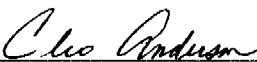
The department is repealing ARM 42.18.108; 42.18.111; 42.18.114; 42.18.117; and 42.18.123 because these rules become inoperative after December 31, 1996.


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

Cleo Anderson  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, Montana 59620

no later than November 22, 1996.

7. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

  
CLEO ANDERSON  
Rule Reviewer

  
MICK ROBINSON  
Director of Revenue

Certified to Secretary of State October 11, 1996

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT ) NOTICE OF PUBLIC HEARING ON THE  
of ARM 42.22.101; 42.22.116; ) PROPOSED AMENDMENT OF RULES  
42.22.1304; 42.22.1305; and )  
42.22.1311 relating to )  
Industrial Property Rules )

TO: All Interested Persons:

1. On November 20, 1996, at 9:30 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.22.101; 42.22.116; 42.22.1304; 42.22.1305; and 42.22.1311 relating to Industrial Property Rules.

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

42.22.101 DEFINITIONS (1) through (17) remain the same.

(18)(a) through (d) remain the same.

(e) Situs property for a railroad normally consists of property in the following accounts in Schedules 330 and 200 of the Annual Report R1 to the ICC surface transportation board:

(i) and (ii) remain the same.

(f) Situs property for a railroad normally consists of a portion of the property in the following accounts in Schedule 330 of the Annual Report R1 to the ~~ICC~~ surface transportation board:

(i) remains the same.

(19) through (21) remain the same.

AUTH: Sec. 15-23-108 MCA; IMP, Title 15, chapter 23, part 1 and 15-23-211 MCA

42.22.116 DETERMINATION OF TAX RATE FOR CLASS 12 PROPERTY

(1) remains the same.

(2) The department of revenue has developed a form which will be employed in order to solicit information regarding the taxable value and the market value for all commercial and industrial property from the county ~~assessor~~ appraisal/assessment office. That form will be dispatched annually to the county ~~assessor~~ appraisal/assessment office on May 1. The county ~~assessor~~ appraisal/assessment office shall have up to and including the 15th day of May of each taxable year in which to return the form to the property assessment division. A copy of the form is available to taxpayers upon request.

(3) The department of revenue will obtain the taxable value for centrally assessed property from its ~~intercounty~~ property centralized assessment bureau each year.

(4) Remains the same.

(5) In the event that a county ~~assessor~~ appraisal/assessment office should fail to return the solicited information form to the department of revenue by the 15th day of May of each taxable year, the department of revenue will

estimate the taxable value for all commercial and industrial property within that particular county. This estimation process will take place only if the county ~~assessor~~ appraisal/assessment office should fail to return the form by the deadline referred to hereinabove.

(a) The department of revenue will use the reported taxable and market value for all commercial and industrial property for the previous tax year in estimating the total taxable and market value of all commercial and industrial property for the present tax year for nonreporting counties.

(b) This estimation will be a disputable one, and it may be ~~attacked~~ challenged by the taxpayer in the event of litigation or in the event of an assessment appeal.

(c) If the department of revenue should receive the information which was initially solicited from the county ~~assessors~~ appraisal/assessment office relating to the total taxable and the total market value of all commercial and industrial property within that county after May 15th of the tax year, the department of revenue will recompute the overall tax rate set forth in 15-6-145, MCA. In the event that the total tax rate should be determined to be not less than nor more than 5% of the estimated rate, no further adjustment of the tax rate will be made for that particular tax year. In the event that the recomputed tax rate should be less than or greater than 5% of the estimated tax rate, the department of revenue will recompute the overall tax rate for the state of Montana and it will issue revised assessments to the affected property taxpayers pursuant to 15-8-601, MCA.

AUTH: Sec. 15-1-201 MCA; IMP, 15-6-145 MCA

42.22.1304 VALUATION OF INDUSTRIAL IMPROVEMENTS (1) All property determined by the department to be an improvement to the land shall be valued by the use of the ~~1992~~ 1996 Montana Appraisal Manual, developed by the firm Cole-Layer-Trumble Company.

(2) Remains the same.

(3) Upon the determination of the property's effective age, it shall be depreciated on an age/life basis according to the internal program schedules of the ~~1992~~ 1996 Montana Appraisal Manual.

(4) If the reproduction cost of the property is not listed, or is not accurately listed in the ~~1992~~ 1996 Montana Appraisal Manual for the specific property being appraised, then the department may use other appropriate cost manuals such as "Means" or "Marshall Valuation Service" to obtain the best estimate of reproduction cost. This reproduction cost would be depreciated on an age/life basis to arrive at market value for assessment purposes.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-134 MCA

42.22.1305 INDUSTRIAL PROPERTY OTHER THAN LAND

(1) through (2) remain the same.



(3) All property which has been certified by the department of ~~health~~ environmental quality to control air or water pollution shall be placed in Class 5.

(4) Remains the same. AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-8-111 MCA

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) The department of revenue will utilize the machinery and equipment trend factors which are set forth on the following tables. The trend factors will be used to value industrial machinery and equipment for ad valorem tax purposes pursuant to ARM 42.22.1306. The department uses annual cost indexes from Marshall Valuation Service. The current index is divided by the annual index for each year to arrive at a trending factor. Each major industry has its own trend table. Where no index existed in the Marshall Valuation Service for a particular industry, that industry was grouped with other industries using similar equipment.

1996 1997 INDUSTRIAL MACHINERY & EQUIPMENT TREND FACTORS

Trend table, description and life column data remain the same.

Note: 1. Lab equipment is to be included in its related industry's table at 10-year life expectancy.

YEAR	TABLE 1	TABLE 2	TABLE 3	TABLE 4	TABLE 5
1995	1.000	1.000	1.000	1.000	1.000
1994	1.035	1.037	1.035	1.033	1.037
1993	1.062	1.069	1.063	1.057	1.069
1992	1.079	1.089	1.080	1.074	1.089
1991	1.086	1.104	1.091	1.086	1.104
1990	1.104	1.129	1.112	1.110	1.131
1989	1.128	1.160	1.140	1.141	1.164
1988	1.184	1.224	1.206	1.209	1.231
1987	1.238	1.278	1.264	1.263	1.287
1986	1.252	1.300	1.281	1.279	1.310
1985	1.258	1.323	1.289	1.290	1.334
1984	1.274	1.348	1.306	1.309	1.361
1983	1.309	1.380	1.340	1.341	1.392
1982	1.334	1.400	1.359	1.361	1.410
1981	1.392	1.467	1.419	1.424	1.479
1980	1.534	1.622	1.563	1.575	1.639
1979	1.699	1.793	1.727	1.744	1.816
1978	1.864	1.964	1.886	1.897	1.988
1977	2.001	2.111	2.030	2.040	2.137
1976	2.107	2.225	2.134	2.146	2.254
1975	2.238	2.369	2.260	2.269	2.394

1996	1.000	1.000	1.000	1.000	1.000
1995	1.013	1.013	1.014	1.017	1.014
1994	1.053	1.055	1.054	1.055	1.056
1993	1.080	1.087	1.082	1.080	1.088
1992	1.097	1.108	1.100	1.097	1.108
1991	1.105	1.123	1.111	1.109	1.123
1990	1.122	1.148	1.132	1.134	1.151
1989	1.147	1.179	1.160	1.166	1.185
1988	1.204	1.244	1.228	1.235	1.253
1987	1.259	1.300	1.287	1.290	1.310
1986	1.274	1.322	1.304	1.306	1.333
1985	1.280	1.345	1.312	1.318	1.357
1984	1.296	1.371	1.329	1.337	1.385
1983	1.331	1.403	1.364	1.370	1.417
1982	1.357	1.423	1.384	1.390	1.435
1981	1.416	1.491	1.444	1.455	1.505
1980	1.560	1.650	1.591	1.609	1.668
1979	1.728	1.823	1.759	1.782	1.849
1978	1.826	1.998	1.920	1.938	2.023
1977	2.035	2.147	2.067	2.084	2.175
1976	2.143	2.263	2.173	2.192	2.294

YEAR	TABLE 6	TABLE 7	TABLE 8	TABLE 9	TABLE 10
1995	1.000	1.000	1.000	1.000	1.000
1994	1.031	1.032	1.030	1.025	1.037
1993	1.054	1.053	1.054	1.050	1.066
1992	1.071	1.067	1.073	1.079	1.083
1991	1.079	1.075	1.084	1.099	1.096
1990	1.101	1.098	1.107	1.125	1.123
1989	1.130	1.126	1.140	1.162	1.155
1988	1.187	1.190	1.199	1.217	1.225
1987	1.229	1.242	1.242	1.257	1.282
1986	1.241	1.255	1.258	1.275	1.303
1985	1.250	1.261	1.268	1.285	1.323
1984	1.268	1.279	1.289	1.301	1.347
1983	1.298	1.313	1.327	1.328	1.378
1982	1.320	1.332	1.352	1.356	1.396
1981	1.391	1.402	1.428	1.434	1.463
1980	1.546	1.559	1.584	1.599	1.619
1979	1.701	1.729	1.742	1.766	1.799
1978	1.857	1.880	1.899	1.935	1.962
1977	1.998	2.025	2.039	2.084	2.104
1976	2.112	2.133	2.166	2.199	2.215
1975	2.241	2.255	2.314	2.344	2.349

1996	1.000	1.000	1.000	1.000	1.000
1995	1.017	1.018	1.017	1.014	1.016
1994	1.053	1.056	1.052	1.042	1.058
1993	1.076	1.077	1.077	1.068	1.087
1992	1.093	1.091	1.096	1.097	1.104
1991	1.102	1.099	1.107	1.118	1.118
1990	1.124	1.123	1.130	1.145	1.145

1989	1.154	1.152	1.164	1.182	1.178
1988	1.212	1.218	1.224	1.238	1.249
1987	1.255	1.270	1.269	1.279	1.307
1986	1.267	1.284	1.284	1.296	1.329
1985	1.276	1.290	1.295	1.307	1.349
1984	1.294	1.308	1.316	1.323	1.373
1983	1.326	1.343	1.355	1.350	1.405
1982	1.347	1.362	1.380	1.379	1.424
1981	1.421	1.434	1.458	1.458	1.492
1980	1.578	1.595	1.617	1.626	1.651
1979	1.736	1.769	1.780	1.796	1.835
1978	1.896	1.923	1.940	1.968	2.001
1977	2.040	2.072	2.083	2.120	2.145
1976	2.156	2.182	2.212	2.237	2.258

YEAR	TABLE 11	TABLE 12	TABLE 13	TABLE 14	TABLE 15
1995	1.000	1.000	1.000	1.000	1.000
1994	1.040	1.043	1.037	1.036	1.035
1993	1.069	1.068	1.070	1.064	1.071
1992	1.077	1.080	1.091	1.081	1.096
1991	1.073	1.081	1.107	1.091	1.116
1990	1.079	1.093	1.133	1.114	1.141
1989	1.098	1.114	1.165	1.142	1.174
1988	1.165	1.178	1.231	1.205	1.240
1987	1.240	1.246	1.287	1.258	1.295
1986	1.249	1.259	1.309	1.275	1.318
1985	1.256	1.265	1.330	1.289	1.340
1984	1.268	1.281	1.356	1.309	1.364
1983	1.300	1.317	1.389	1.339	1.397
1982	1.316	1.337	1.410	1.354	1.421
1981	1.359	1.383	1.478	1.417	1.485
1980	1.487	1.517	1.632	1.567	1.636
1979	1.668	1.694	1.803	1.736	1.802
1978	1.836	1.863	1.977	1.898	1.978
1977	1.945	1.986	2.130	2.036	2.137
1976	2.040	2.086	2.249	2.143	2.258
1975	2.164	2.206	2.389	2.271	2.396

1996	1.000	1.000	1.000	1.000	1.000
1995	1.009	1.011	1.013	1.014	1.011
1994	1.062	1.059	1.054	1.055	1.049
1993	1.085	1.085	1.088	1.084	1.086
1992	1.092	1.097	1.110	1.101	1.111
1991	1.088	1.098	1.126	1.111	1.131
1990	1.095	1.110	1.152	1.134	1.157
1989	1.113	1.132	1.184	1.163	1.190
1988	1.181	1.197	1.251	1.228	1.257
1987	1.257	1.266	1.309	1.282	1.313
1986	1.266	1.279	1.331	1.298	1.337
1985	1.273	1.285	1.353	1.313	1.359
1984	1.286	1.301	1.379	1.334	1.383
1983	1.319	1.337	1.413	1.364	1.417

1982	1.334	1.358	1.434	1.379	1.441
1981	1.379	1.405	1.503	1.443	1.505
1980	1.508	1.541	1.660	1.596	1.659
1979	1.692	1.721	1.833	1.768	1.827
1978	1.862	1.892	2.011	1.933	2.005
1977	1.973	2.017	2.166	2.074	2.167
1976	2.069	2.119	2.287	2.182	2.289

YEAR	TABLE 16	TABLE 17	TABLE 18	TABLE 19	TABLE 20
1995	1.000	1.000	1.000	1.000	1.000
1994	1.029	1.032	1.029	1.034	1.034
1993	1.066	1.060	1.058	1.064	1.060
1992	1.098	1.080	1.081	1.084	1.075
1991	1.122	1.091	1.098	1.100	1.085
1990	1.147	1.114	1.121	1.128	1.108
1989	1.181	1.144	1.151	1.163	1.138
1988	1.245	1.205	1.204	1.227	1.194
1987	1.294	1.255	1.247	1.276	1.246
1986	1.315	1.274	1.263	1.297	1.262
1985	1.331	1.285	1.273	1.318	1.270
1984	1.351	1.304	1.289	1.345	1.293
1983	1.387	1.342	1.321	1.379	1.328
1982	1.415	1.365	1.348	1.400	1.359
1981	1.475	1.429	1.422	1.472	1.421
1980	1.623	1.573	1.581	1.632	1.575
1979	1.776	1.727	1.738	1.799	1.750
1978	1.946	1.881	1.906	1.962	1.919
1977	2.110	2.016	2.055	2.105	2.065
1976	2.230	2.117	2.170	2.217	2.176
1975	2.409	2.239	2.319	2.357	2.313

1996	1.000	1.000	1.000	1.000	1.000
1995	1.009	1.014	1.012	1.015	1.016
1994	1.041	1.050	1.045	1.053	1.055
1993	1.079	1.079	1.074	1.085	1.082
1992	1.111	1.099	1.098	1.105	1.098
1991	1.135	1.111	1.115	1.122	1.107
1990	1.161	1.134	1.138	1.150	1.131
1989	1.195	1.165	1.169	1.185	1.162
1988	1.260	1.227	1.223	1.251	1.219
1987	1.310	1.278	1.267	1.301	1.272
1986	1.331	1.297	1.283	1.322	1.288
1985	1.347	1.308	1.292	1.344	1.297
1984	1.367	1.327	1.309	1.371	1.320
1983	1.403	1.366	1.341	1.406	1.356
1982	1.432	1.389	1.369	1.427	1.387
1981	1.492	1.454	1.444	1.501	1.450
1980	1.643	1.601	1.605	1.663	1.608
1979	1.797	1.758	1.764	1.834	1.786
1978	1.970	1.914	1.935	2.000	1.959
1977	2.135	2.052	2.087	2.146	2.108
1976	2.257	2.155	2.203	2.260	2.221

YEAR	TABLE 21	TABLE 22	TABLE 23	TABLE 24	TABLE 25
1995	1.000	1.000	1.000	1.000	1.000
1994	1.028	1.034	1.032	1.033	1.030
1993	1.056	1.059	1.053	1.058	1.062
1992	1.079	1.077	1.063	1.074	1.086
1991	1.097	1.086	1.071	1.078	1.101
1990	1.122	1.108	1.099	1.094	1.122
1989	1.157	1.137	1.127	1.111	1.151
1988	1.220	1.201	1.185	1.172	1.214
1987	1.259	1.254	1.234	1.228	1.264
1986	1.269	1.270	1.238	1.248	1.281
1985	1.276	1.277	1.239	1.260	1.290
1984	1.291	1.295	1.252	1.277	1.304
1983	1.317	1.332	1.275	1.320	1.341
1982	1.348	1.354	1.287	1.344	1.365
1981	1.422	1.419	1.373	1.396	1.429
1980	1.579	1.568	1.538	1.532	1.576
1979	1.733	1.732	1.710	1.694	1.732
1978	1.896	1.890	1.868	1.860	1.886
1977	2.050	2.031	2.016	2.000	2.036
1976	2.171	2.140	2.133	2.109	2.147
1975	2.324	2.263	2.254	2.239	2.284

1996	1.000	1.000	1.000	1.000	1.000
1995	1.014	1.016	1.019	1.013	1.011
1994	1.045	1.055	1.056	1.051	1.045
1993	1.074	1.081	1.078	1.077	1.077
1992	1.097	1.099	1.088	1.093	1.102
1991	1.115	1.109	1.097	1.097	1.117
1990	1.141	1.131	1.125	1.113	1.139
1989	1.176	1.161	1.154	1.131	1.168
1988	1.240	1.226	1.213	1.193	1.232
1987	1.279	1.279	1.263	1.249	1.283
1986	1.290	1.296	1.267	1.269	1.300
1985	1.297	1.304	1.268	1.282	1.308
1984	1.312	1.322	1.282	1.300	1.323
1983	1.339	1.359	1.305	1.343	1.360
1982	1.370	1.382	1.318	1.368	1.384
1981	1.445	1.449	1.405	1.420	1.450
1980	1.605	1.601	1.575	1.558	1.599
1979	1.761	1.768	1.750	1.724	1.757
1978	1.927	1.929	1.912	1.893	1.914
1977	2.084	2.073	2.063	2.035	2.066
1976	2.207	2.184	2.183	2.145	2.178

YEAR	TABLE 26	TABLE 27	TABLE 28	TABLE 29	TABLE 30
1995	1.000	1.000	1.000	1.000	1.000
1994	1.033	1.031	1.035	1.027	1.026
1993	1.061	1.055	1.057	1.053	1.060
1992	1.081	1.076	1.069	1.074	1.085
1991	1.094	1.086	1.074	1.087	1.100

1990	1.118	1.111	1.092	1.111	1.120
1989	1.148	1.142	1.121	1.139	1.146
1988	1.211	1.201	1.187	1.197	1.198
1987	1.261	1.248	1.243	1.247	1.236
1986	1.279	1.268	1.257	1.268	1.253
1985	1.289	1.278	1.263	1.282	1.262
1984	1.309	1.301	1.282	1.301	1.276
1983	1.347	1.342	1.324	1.338	1.306
1982	1.372	1.369	1.342	1.361	1.321
1981	1.443	1.446	1.402	1.425	1.380
1980	1.596	1.610	1.550	1.572	1.527
1979	1.760	1.772	1.720	1.721	1.663
1978	1.916	1.940	1.867	1.872	1.812
1977	2.054	2.095	1.996	2.012	1.952
1976	2.157	2.204	2.098	2.115	2.060
1975	2.281	2.340	2.227	2.252	2.227

1996	1.000	1.000	1.000	1.000	1.000
1995	1.016	1.017	1.015	1.012	1.007
1994	1.054	1.053	1.056	1.043	1.036
1993	1.082	1.078	1.078	1.070	1.070
1992	1.103	1.099	1.091	1.091	1.095
1991	1.116	1.110	1.096	1.104	1.110
1990	1.140	1.135	1.114	1.128	1.130
1989	1.171	1.167	1.143	1.157	1.157
1988	1.236	1.227	1.211	1.215	1.209
1987	1.287	1.275	1.268	1.266	1.247
1986	1.305	1.296	1.282	1.287	1.264
1985	1.315	1.306	1.288	1.302	1.274
1984	1.335	1.330	1.308	1.321	1.288
1983	1.375	1.371	1.351	1.359	1.317
1982	1.400	1.399	1.369	1.382	1.333
1981	1.472	1.477	1.430	1.447	1.392
1980	1.629	1.644	1.582	1.596	1.541
1979	1.795	1.811	1.755	1.748	1.678
1978	1.954	1.982	1.905	1.901	1.829
1977	2.096	2.141	2.037	2.043	1.970
1976	2.201	2.252	2.141	2.147	2.079

YEAR      TABLE 31      TABLE 32

1995	1.000	1.000
1994	1.027	1.036
1993	1.062	1.060
1992	1.098	1.075
1991	1.120	1.081
1990	1.139	1.100
1989	1.169	1.127
1988	1.234	1.190
1987	1.283	1.244
1986	1.301	1.258
1985	1.309	1.264
1984	1.327	1.281

1983	1.363	1.315
1982	1.395	1.333
1981	1.454	1.394
1980	1.595	1.536
1979	1.750	1.701
1978	1.913	1.856
1977	2.075	1.993
1976	2.196	2.100
1975	2.358	2.229

1996	1.000	1.000
1995	1.007	1.016
1994	1.036	1.057
1993	1.072	1.081
1992	1.108	1.097
1991	1.130	1.103
1990	1.149	1.122
1989	1.180	1.150
1988	1.245	1.214
1987	1.295	1.269
1986	1.313	1.284
1985	1.321	1.290
1984	1.339	1.306
1983	1.376	1.341
1982	1.407	1.360
1981	1.468	1.422
1980	1.610	1.567
1979	1.766	1.735
1978	1.931	1.894
1977	2.094	2.033
1976	2.216	2.143

AUTH: Sec. 15-1-201 MCA; IMP, Secs. 15-6-138 and 15-8-111 MCA

3. The Department is proposing the amendments of these rules for the following reasons:

ARM 42.22.1304 Update to replace old manual with the new appraisal manual. The rule makes reference to the 1992 Montana appraisal manual. This manual is being replaced by the 1996 Montana appraisal manual.

ARM 42.22.101 - Name change only. The rule makes reference to the ICC. The ICC has been replaced by the Surface Transportation Board.

ARM 42.22.116 - Name change only. The rule makes reference to the county assessor. The county assessors have been replaced by the county appraisal\assessment office. The rule also references the intercounty property bureau. This bureau has been replaced by the centralized assessment bureau. In section (5)(b) changed attacked to challenged, to more

appropriately reflect the taxpayers position.

ARM 42.22.1305 - Name change only. The rule makes reference to the Department of Health. The Department of Health has been replaced by the Department of Environmental Quality.


ARM 42.22.1311 - The Department of Revenue will utilize the industrial trend factors to update historic industrial machinery and equipment costs to present day reproduction/replacement cost new (RCN) for ad valorem tax purposes pursuant to ARM 42.22.1306. The department uses annual cost indexes from Marshall Valuation Service. The current index is divided by the annual index for each year to arrive at a trending factor. Each major industry has its own trend table. Where no index existed in the Marshall Valuation Service for a particular industry, that industry was grouped with other industries using similar equipment.


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

Cleo Anderson  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, Montana 59620

no later than November 22, 1996.

5. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

  
CLEO ANDERSON  
Rule Reviewer

  
MICK ROBINSON  
Director of Revenue

Certified to Secretary of State October 11, 1996



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF THE PROPOSED AMENDMENT  
of ARM 42.19.1203; 42.19. )  
1222; and 42.19.1223 relating)  
to Class 5 Classification of )  
Property Tax Rules ) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 20, 1996, the Department of Revenue proposes to amend ARM 42.19.1203; 42.19.1222; and 42.19.1223 relating to Class 5 Classification of Property Tax Rules.

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

42.19.1203 TREATMENT OF AIR AND WATER POLLUTION CONTROL EQUIPMENT (1) Remains the same.

(2) In order to receive taxable class 5 classification under 15-6-135(1)(b), MCA, a new industry installing pollution control plant property and equipment must apply to and receive pollution control certification from the department of ~~health and environmental sciences~~ environmental quality.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-135 MCA

42.19.1222 APPLICATION FOR SPECIAL CLASSIFICATION

(1) through (3) remain the same.

(4) In addition, all applicants shall attach to the application and as an exhibit thereto, the following:

(a) a current assessment sheet on the form prescribed and used by the county ~~assessor~~ appraisal/assessment office in each county in which such property is located or to be located, showing all of the properties in that county which are the subject of such application;

(b) ~~an undertaking~~ a statement that the applicant will immediately furnish to the department of revenue and each affected county ~~assessor~~ appraisal/assessment office a detailed written report of any change of a material nature in either its operations or the extent or nature of its properties at any time during the 3-year special classification period, should such classification be granted, or any other information or matter the department shall, in writing, request.

(5) Remains the same.

AUTH: Sec. 15-1-201 MCA; IMP, Secs. 15-6-135, 15-6-152, 15-24-1401 and 15-24-1402 MCA

42.19.1223 PROCESSING OF APPLICATION (1) and (2) remain the same.

(3) The department's final decision on the application is sent to all each affected county ~~assessors~~ appraisal/assessment office.

AUTH: Sec. 15-1-201 MCA; IMP, Secs. 15-6-135 and 15-6-152 MCA

3. The rules are proposed to be amended for the following reasons:

ARM 42.19.1203 - Name change only. The rules reference the department of health and environmental sciences. This department has been replaced by the department of environmental quality.

ARM 42.19.1222 and 42.19.1223 - Name change only. The rules make reference to the county assessor. The county assessors have been replaced by the county appraisal\assessment office.

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


Cleo Anderson  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, Montana 59620

no later than November 22, 1996.

5. If a person who is directly affected by the proposed amendments 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 Cleo Anderson at the above address no later than November 22, 1996.

6. If the agency receives requests for a public hearing on the proposed action 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 no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25.

  
CLEO ANDERSON  
Rule Reviewer

  
MICK ROBINSON  
Director of Revenue

Certified to Secretary of State October 11, 1996

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT ) NOTICE OF PUBLIC HEARING ON THE  
of ARM 42.21.106; 42.21.107; ) PROPOSED AMENDMENT OF RULES  
42.21.113; 42.21.122; 42.21. )  
123; 42.21.131; 42.21.137; )  
42.21.138; 42.21.139; 42.21. )  
140; 42.21.151; 42.21.153; )  
42.21.155; 42.21.158 and )  
42.21.305 relating to Personal) )  
Property Rules )

TO: All Interested Persons:

1. On November 20, 1996, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.21.106; 42.21.107; 42.21.113; 42.21.122; 42.21.123; 42.21.131; 42.21.137; 42.21.138; 42.21.139; 42.21.140; 42.21.151; 42.21.153; 42.21.155; 42.21.158 and 42.21.305 relating to Personal Property Rules.

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

42.21.106 TRUCKS (1) Market value for trucks rated over 1 ton is 80% of the average retail value for trucks, as shown in the "Truck Bluebook Official Used Truck Valuation," January 1 edition of the year of assessment. This guide may be reviewed in the department or purchased from the publisher Maclean Hunter Market ~~Reports~~ Reports, 29 North Wacker Drive, Chicago, Illinois 60606.

(2) remains the same.

(3) If the methods mentioned in ~~subsections~~ (1) and (2) cannot be used to ascertain 80% of the average retail value of a truck, the owner or applicant must certify to the department of revenue the year acquired and the acquired price before that value can be applied to the schedule in ~~subsection~~ (4).

(4) The trended depreciation schedule referred to in ~~subsections~~ (2) and (3) is listed below and shall be used for the ~~1995~~ 1997 tax year. The percentages approximate 80% of the average retail value of all trucks over 1 ton as calculated from the guidebook listed in ~~subsection~~ (1).

TRUCK TRENDED DEPRECIATION SCHEDULE

<del>1996</del>	<del>80%</del>
<del>1995</del>	<del>46%</del>
<del>1994</del>	<del>40%</del>
<del>1993</del>	<del>36%</del>
<del>1992</del>	<del>31%</del>
<del>1991</del>	<del>28%</del>
<del>1990</del>	<del>24%</del>
<del>1989</del>	<del>22%</del>

<u>1988</u>	<u>19%</u>
<u>1987</u>	<u>17%</u>
<u>1986</u>	<u>15%</u>
<u>1985</u>	<u>13%</u>
<u>1984</u>	<u>11%</u>
<u>1983 and before</u>	<u>10%</u>

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
<u>1997</u>	<u>80%</u>
<u>1996</u>	<u>43%</u>
<u>1995</u>	<u>38%</u>
<u>1994</u>	<u>32%</u>
<u>1993</u>	<u>30%</u>
<u>1992</u>	<u>25%</u>
<u>1991</u>	<u>25%</u>
<u>1990</u>	<u>20%</u>
<u>1989</u>	<u>19%</u>
<u>1988</u>	<u>16%</u>
<u>1987</u>	<u>15%</u>
<u>1986</u>	<u>13%</u>
<u>1985</u>	<u>11%</u>
<u>1984 and before</u>	<u>10%</u>

(5) and (6) remain the same.

(7) This rule is effective for tax years beginning after December 31, ~~1995~~ 1996.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-138, 15-6-139, 15-6-140, and 61-3-321, MCA

42.21.107 TRAILERS (1) The market value for trailers up to and including 18,000 pounds maximum gross loaded weight, except those subject to a fee in lieu of property tax, will be the wholesale value as ascertained by the following methods:

(a) and (b) remain the same.

(c) For all trailers which cannot be valued under ~~subsections~~ (1)(a) and (b), the department of revenue shall try to ascertain the original FOB through old valuation guidebooks. If an original FOB cannot be ascertained, the department of revenue may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation schedule in ~~subsection~~ (1)(e) to arrive at a value which approximates wholesale market value.

(d) If the methods mentioned in ~~subsections~~ (1)(a), (b), and (c) cannot be used to ascertain a wholesale market value for a trailer, the owner or applicant must certify to the department of revenue the year acquired and the acquired price before that value can be applied to the schedule in ~~subsection~~ (1)(e).

(e) The trended depreciation schedule referred to in ~~subsections~~ (1)(b), (c), and (d) is listed below and shall be used for the ~~1996~~ 1997 tax year.

TRAILERS 0 - 18,000 LBS. G.V.W.

<u>YEAR NEW/ACQUIRED</u>	<u>% GOOD</u>
1996	80%
1995	59%
1994	57%
1993	54%
1992	51%
1991	48%
1990	45%
1989	42%
1988	41%
1987	39%
1986	38%
1985	36%
1984	34%
1983	32%
1982	30%
1981	28%
1980	26%
1979	24%
1978	22%
1977	20%
1976 and before	15%

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
1997	80%
1996	61%
1995	57%
1994	54%
1993	51%
1992	48%
1991	45%
1990	42%
1989	40%
1988	39%
1987	36%
1986	34%
1985	32%
1984	30%
1983	28%
1982	26%
1981	24%
1980	22%
1979	20%
1978	18%
1977 and before	15%

(2) The wholesale value for all trailers 18,001 - 25,999 GVW is:

(a) remains the same.

(b) The acquired cost as certified by the owner or

applicant to the department of revenue, as applied to the depreciation schedule in ~~subsection~~ (2)(e).

(c) Values as derived from department of revenue developed supplementary schedules. These schedules will be used in conjunction with the depreciation schedule in ~~subsection~~ (2)(e). The purpose of the department developed schedules will be to arrive at a value which approximates wholesale value. Supplemental schedules have been developed and are included in the department of revenue trailer manual. They are hereby incorporated by reference. Copies are available to taxpayers at a reasonable cost for copying.

(d) remains the same.

(e) The trended depreciation schedule mentioned in ~~sub-sections~~ (2)(b) and (c) is listed below and shall be used for the 1996 1997 tax year. It is the same schedule as used in ARM 42.21.106.

TRAILERS 18,001 - 25,999 LBS. G.V.W.

<u>1996</u>	<u>80%</u>
<u>1995</u>	<u>46%</u>
<u>1994</u>	<u>40%</u>
<u>1993</u>	<u>36%</u>
<u>1992</u>	<u>31%</u>
<u>1991</u>	<u>28%</u>
<u>1990</u>	<u>24%</u>
<u>1989</u>	<u>22%</u>
<u>1988</u>	<u>19%</u>
<u>1987</u>	<u>17%</u>
<u>1986</u>	<u>15%</u>
<u>1985</u>	<u>13%</u>
<u>1984</u>	<u>11%</u>
<u>1983 and before</u>	<u>10%</u>

YEAR NEW/ACQUIRED

TRENDED % GOOD

<u>1997</u>	<u>80%</u>
<u>1996</u>	<u>43%</u>
<u>1995</u>	<u>38%</u>
<u>1994</u>	<u>32%</u>
<u>1993</u>	<u>30%</u>
<u>1992</u>	<u>25%</u>
<u>1991</u>	<u>25%</u>
<u>1990</u>	<u>20%</u>
<u>1989</u>	<u>19%</u>
<u>1988</u>	<u>16%</u>
<u>1987</u>	<u>15%</u>
<u>1986</u>	<u>13%</u>
<u>1985</u>	<u>11%</u>
<u>1984 and before</u>	<u>10%</u>

(3) This rule is effective for tax years beginning after December 31, 1995 1996.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-138, 15-6-139, and 15-6-201, MCA

42.21.113 LEASED AND RENTED EQUIPMENT (1) remains the same.

(2) The trended schedules will be the same as ARM 42.21.155, categories 1, 2 and 6. The taxpayer must report the acquired cost, year acquired and an itemized description of each piece of equipment. The acquired cost will be applied to the schedule in subsection (3) to arrive at market value.

(3) The trended depreciation schedule referred to in subsections (1) and (2) is listed below and shall be used for tax year ~~1996~~ 1997.

Year				
New/Acquired	\$0 - 500	\$501 - 1,500	\$1,501 or Greater	
1995	70%	85%	85%	
1994	43%	69%	70%	
1993	19%	52%	50%	
1992	9%	34%	34%	
1991 and older	9%	20%	21%	

Year				
New/Acquired	\$0 - 500	\$501 - 1,500	\$1,501 or Greater	
1996	70%	85%	85%	
1995	43%	69%	71%	
1994	18%	52%	54%	
1993	9%	34%	34%	
1992 and older	9%	20%	21%	

(4) remains the same.

(5) For rental video tapes the following schedule shall be used:

Year Acquired	Trended % Good
1995	25%
1994	15%
1993	10%

Year New/Acquired	Trended % Good
1996	25%
1995	15%
1994	10%

(6) This rule is effective for tax years beginning after December 31, ~~1995~~ 1996.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-136, MCA

42.21.122 LIVESTOCK (1) and (2) remain the same.

(3) The average market value for horses shall be determined by multiplying the average price per 1,000 pounds for horses used for canning (killer horses), marketed in Montana

during the preceding 12 month period, December through November, by established factors for each of the five categories of horses. The established factors are:

(a) mules, asses, shetland ponies, donkeys and ~~burrows~~ burros - 24 months and older (.75);

(b) through (f) remain the same.

(4) through (6) remain the same.

(7) This rule is effective for tax years beginning after December 31, ~~1995~~ 1996.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-136, 15-6-137, and 15-6-207, MCA

42.21.123 FARM MACHINERY AND EQUIPMENT (1) The market value for farm machinery and equipment shall be the "loan" value as shown in the "Official Guide Tractors and Farm Equipment", Fall Edition, for the year previous to the year of the assessment. For purposes of 15-8-111(3)(a), MCA, "loan" value is best represented by the "average wholesale value" listed in the above publication. This guide may be reviewed in the department or purchased from the publisher: North American Equipment Dealers Association, 10877 Watson Road, St. Louis, Missouri 63127-1081.

(2) For all farm machinery and equipment which cannot be valued under ~~subsection~~ (1), the department of revenue ~~may develop~~ has developed a manual to value the equipment. This manual will be used in conjunction with the depreciation schedule in ~~subsection~~ (5) in the valuation of farm equipment and machinery. The purpose of the department developed manual will be to arrive at values which approximate average loan value. The department of revenue's farm machinery manual is hereby incorporated by reference. Copies are available to taxpayers at a reasonable cost for copying at the Department of Revenue, Property Assessment Division, Helena, Montana 59620.

(3) For all farm machinery and equipment which cannot be valued under ~~subsection~~ (1) and (2), the department of revenue shall try to ascertain the original FOB through old farm machinery and equipment valuation guidebooks. If an original FOB cannot be ascertained, the department of revenue may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation schedule in ~~subsection~~ (5) to arrive at a value which approximates average loan value. The trend factors shall be the same as those mentioned in ARM 42.21.106.

(4) If the methods mentioned in ~~subsections~~ (1) through (3) cannot be used to ascertain average loan value for farm machinery and equipment, the owner or applicant must certify to the department of revenue the year acquired and the acquired price before that value can be applied to the schedule in ~~subsection~~ (5).

(5) The trended depreciation schedule referred to in ~~subsections~~ (2) through (4) is listed below and shall be used for tax year ~~1996~~ 1997. The schedule is derived by using the



guidebook listed in subsection (1) and the Western Official Guide, North American Equipment Dealers Association, 10877 Watson Road, St. Louis, Missouri 63127, as the data base. The trended depreciation schedule will approximate average loan value.

<u>YEAR</u>	<u>TRENDED % GOOD AVERAGE LOAN</u>
1996	65%
1995	52%
1994	49%
1993	46%
1992	43%
1991	40%
1990	39%
1989	36%
1988	34%
1987	34%
1986	33%
1985	32%
1984	30%
1983	31%
1982	31%
1981	32%
1980	32%
1979	31%
1978	29%
1977	27%
1976	25%
1975	24%
1974	23%
1973	22%
1972 and before	20%

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD AVERAGE LOAN</u>
1997	65%
1996	63%
1995	60%
1994	56%
1993	48%
1992	45%
1991	44%
1990	40%
1989	40%
1988	34%
1987	31%
1986	29%
1985	26%
1984	26%
1983	25%
1982	25%

1981	26%
1980	28%
1979	31%
1978	28%
1977	26%
1976	25%
1975	23%
1974	22%
1973 and before	20%

(6) remains the same.

(7) This rule is effective for tax years beginning after December 31, ~~1995~~ 1996.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-138, MCA

42.21.131 HEAVY EQUIPMENT (1) remains the same.

(2) For all heavy equipment which cannot be valued under ~~subsection~~ (1), the department of revenue or its agent shall try to ascertain the original FOB through old heavy equipment valuation guidebooks. If an original FOB cannot be ascertained, the department of revenue may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation schedule in ~~subsection~~ (5) to arrive at a value which approximates wholesale value. The trend factors are the most recent available in the Marshall Valuation Service Manual for the year of assessment. The Marshall Valuation Service Manual published by Marshall and Swift Publication Company, 911 Wilshire Boulevard, 16th floor, P.O. Box 26307, Los Angeles, California 90026, is herein adopted by reference.

(3) For equipment that cannot be valued under ~~subsections~~ (1) and (2), the value for heavy equipment shall be ascertained by trending the quick sale as found in the guide in ~~subsection~~ (1), for the same make and model. The trend factors are the same as those mentioned in ~~subsection~~ (2).

(4) The wholesale market value of heavy equipment that cannot be valued under ~~subsections~~ (1), (2) or (3) shall be the acquired cost, as certified by the owner or applicant to the department of revenue, applied to the depreciation schedule in ~~subsection~~ (5). The department may require proof from the taxpayer to certify the accuracy of the acquired cost.

(5) The trended depreciation schedule referred to in ~~subsections~~ (2), (3) and (4) is listed below and shall be used for tax year ~~1996~~ 1997. The percentages approximate the "quick sale" values as calculated in the guidebooks listed in ~~subsection~~ (1).

HEAVY EQUIPMENT TRENDED DEPRECIATION SCHEDULE

<u>YEAR</u>	<u>% GOOD WHOLESALE</u>
1996	80%
1995	65%

1994	51%
1993	45%
1992	43%
1991	40%
1990	34%
1989	33%
1988	33%
1987	30%
1986	27%
1985	26%
1984	25%
1983	24%
1982	25%
1981	26%
1980	24%
1979	25%
1978	26%
1977	25%
1976	25%
1975	25%
1974 and before	21%

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD WHOLESALE</u>
1997	80%
1996	65%
1995	49%
1994	50%
1993	45%
1992	42%
1991	39%
1990	33%
1989	32%
1988	31%
1987	30%
1986	26%
1985	27%
1984	25%
1983	24%
1982	25%
1981	25%
1980	24%
1979	25%
1978	25%
1977	26%
1976 and before	25%

(6) This rule is effective for tax years beginning after December 31, ~~1995~~ 1996 and applies to all heavy equipment.  
AUTH: Sec. 15-1-201, MCA; IMP. Sec. 15-6-135, 15-6-138, and 15-6-140, MCA

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT

(1) Seismograph units and allied equipment shall be valued using the cost approach to market value. The taxpayer must provide to the department the acquired cost, the year acquired, and an itemized description of each piece of equipment. The acquired cost will be trended to current replacement cost and then depreciated according to the schedules mentioned in subsection (2).

(2) The department of revenue shall prepare a five-year trended depreciation schedule for seismograph units and a five-year trended depreciation schedule for all other allied seismograph equipment. These trended depreciation schedules will be derived by using trend factors and depreciation factors published by "Marshall and Swift Publication Company". The trend factors shall be the most recent available from the "Chemical Industry Cost Indexes" listed in the above publication. The "% good" for seismograph units and other allied seismograph equipment less than one year old shall be 100% and the "% good" for equipment more than 5 years old shall be 5%.

(3) remains the same.

(4) The trended depreciation schedules referred to in subsections (1) through (3) are listed below and shall be used for tax year 1996 1997.

SEISMOGRAPH UNITS

TRENDED		TREND		TRENDED		WHOLESALE		WHOLESALE	
YEAR NEW/ ACQUIRED	% GOOD	FACTOR	% GOOD	FACTOR	% GOOD	FACTOR	% GOOD	FACTOR	% GOOD
1996	100%	1.000	100%	80%	80%	80%	80%	80%	80%
1995	85%	1.000	85%	80%	68%	80%	68%	80%	68%
1994	69%	1.032	71%	80%	57%	80%	57%	80%	57%
1993	52%	1.053	55%	80%	44%	80%	44%	80%	44%
1992	34%	1.067	36%	80%	29%	80%	29%	80%	29%
1991	20%	1.074	21%	80%	17%	80%	17%	80%	17%
1990 & older	5%	1.098	5%	80%	4%	80%	4%	80%	4%
1997	100%	1.000	100%	80%	80%	80%	80%	80%	80%
1996	85%	1.000	85%	80%	68%	80%	68%	80%	68%
1995	69%	1.018	70%	80%	56%	80%	56%	80%	56%
1994	52%	1.056	55%	80%	44%	80%	44%	80%	44%
1993	34%	1.077	37%	80%	29%	80%	29%	80%	29%
1992	20%	1.091	22%	80%	17%	80%	17%	80%	17%
1991 & older	5%	1.099	5%	80%	4%	80%	4%	80%	4%

<del>1994</del>	<del>69%</del>	<del>1.032</del>	<del>71%</del>
<del>1993</del>	<del>52%</del>	<del>1.053</del>	<del>55%</del>
<del>1992</del>	<del>34%</del>	<del>1.067</del>	<del>36%</del>
<del>1991</del>	<del>20%</del>	<del>1.075</del>	<del>21%</del>
<del>1990 &amp; older</del>	<del>5%</del>	<del>1.098</del>	<del>5%</del>
1997	100%	1.000	100%
1996	85%	1.000	85%
1995	69%	1.018	70%
1994	52%	1.056	55%
1993	34%	1.077	37%
1992	20%	1.091	22%
1991 & older	5%	1.099	5%

(5) This rule is effective for tax years beginning after December 31, ~~1995~~ 1996.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-138, MCA

#### 42.21.138 OIL AND GAS FIELD MACHINERY AND EQUIPMENT

(1) Oil and gas field machinery and equipment shall be valued using the cost approach to market value. The taxpayer must provide to the department the acquired cost, the year acquired, and an itemized description of each piece of machinery and equipment. The acquired cost will be trended to current replacement cost and then depreciated according to the schedule mentioned in ~~subsection~~ (2).

(2) remains the same.

(3) The trended depreciation schedule referred to in ~~subsections~~ (1) and (2) is listed below and shall be used for tax year ~~1996~~ 1997.

<u>OIL AND GAS FIELD PRODUCTION</u>			
<u>EQUIPMENT TRENDED DEPRECIATION SCHEDULE</u>			
<u>YEAR</u>		<u>TREND</u>	<u>TRENDED</u>
<u>ACQUIRED</u>	<u>% GOOD</u>	<u>FACTOR</u>	<u>% GOOD</u>
1996	100%	1.000	100%
1995	95%	1.000	95%
1994	89%	1.032	92%
1993	83%	1.053	87%
1992	77%	1.067	82%
1991	71%	1.075	76%
1990	65%	1.098	71%
1989	58%	1.126	65%
1988	51%	1.190	61%
1987	45%	1.242	56%
1986	39%	1.256	49%
1985	33%	1.261	42%
1984	28%	1.279	36%
1983	23%	1.313	30%
1982 & older	20%	1.332	27%

#### OIL AND GAS FIELD PRODUCTION

EQUIPMENT TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1997	100%	1.000	100%
1996	95%	1.000	95%
1995	89%	1.018	91%
1994	83%	1.056	88%
1993	77%	1.077	83%
1992	71%	1.091	77%
1991	65%	1.099	71%
1990	58%	1.123	65%
1989	51%	1.152	59%
1988	45%	1.218	55%
1987	39%	1.270	50%
1986	33%	1.284	42%
1985	28%	1.290	36%
1984	23%	1.308	30%
1983 & older	20%	1.343	27%

(4) remains the same.

(5) This rule is effective for tax years beginning after December 31, 1995 1996.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-138, MCA

42.21.139 WORKOVER AND SERVICE RIGS (1) Each tax year bids for new rigs will be solicited from manufacturers of workover and service rigs to determine current replacement costs based on the depth rating listed below. For each depth rating listed below of workover and service rigs, there will be two replacement cost categories. One category will represent current replacement cost of a service rig and the second category will represent current replacement cost of a workover rig. Each rig, as it is assessed, will be placed in one category or another based on its depth.

DEPTH CATEGORIES

<u>Class</u>	<u>Depth Capacity</u>
1	0 to 3,000 ft.
2	3,001 ft. to 5,000 ft.
3	5,001 ft. to 8,000 ft.
4	8,001 ft. to 10,000 ft.
5	10,001 ft. to 14,000 ft.
6	14,001 ft. and over

DEPTH CATEGORIES AND REPLACEMENT COST NEW

<u>MANUFACTURER'S DEPTH RATING</u>	<u>SERVICE RIG R.C.N.</u>	<u>WORKOVER RIG R.C.N.</u>
0 - 3,000'	\$146,788	\$186,788
3,001' - 5,000'	187,336	227,336
5,001' - 8,000'	245,572	305,572
8,001' - 10,000'	293,325	393,325
10,001' - 14,000'	322,918	472,918
14,001' and over	405,426	555,426

Pole rigs and cable tool rigs, regardless of depth, are \$60,000 R.C.N. These replacement costs will then be depreciated to arrive at market value according to the schedule mentioned in subsection (2).

(2) The department of revenue shall prepare a 10-year trended depreciation schedule for workover and service rigs. The trended depreciation schedule shall be derived from depreciation factors published by "Marshall and Swift Publication Company". The "% good" for workover and service rigs less than one year old shall be 100%.

(3) In any year that the information required in subsection (1) is not available for use by the department, workover and service rigs shall be valued by using the schedule from the previous year.

(4) remains the same.

(5) The trended depreciation schedule referred to in subsections (2) and (4) is listed below and shall be used for tax year 1996 1997.

SERVICE AND WORKOVER RIG % GOOD SCHEDULE

<u>YEAR</u>	<u>% GOOD</u>	<u>WHOLESALE FACTOR</u>	<u>TRENDED WHOLESALE % GOOD</u>
1996	100%	80%	80%
1995	92%	80%	74%
1994	84%	80%	67%
1993	76%	80%	61%
1992	67%	80%	54%
1991	58%	80%	46%
1990	49%	80%	39%
1989	35%	80%	28%
1988	30%	80%	24%
1987	24%	80%	19%
1986 & older	20%	80%	16%

SERVICE AND WORKOVER RIG TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ ACQUIRED</u>	<u>TRENDED % GOOD</u>	<u>WHOLESALE FACTOR</u>	<u>TRENDED WHOLESALE % GOOD</u>
1997	100%	80%	80%
1996	92%	80%	74%
1995	84%	80%	67%
1994	76%	80%	61%
1993	67%	80%	54%
1992	58%	80%	46%
1991	49%	80%	39%
1990	35%	80%	28%
1989	30%	80%	24%
1988	24%	80%	19%
1987 & older	20%	80%	16%

(6) This rule is effective for tax years beginning after December 31, ~~1995~~ 1996.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-138, MCA

42.21.140 OIL DRILLING RIGS (1) Each tax year bids for new rigs will be solicited from manufacturers of oil drilling rigs to determine current replacement costs based on the depth rating listed below. For each depth rating listed below for oil drilling rigs, there will be two replacement cost categories. One category will represent current replacement cost of a mechanical rig and the second category will represent current replacement cost of an electric rig. Each rig as it is assessed will be placed in a value category based on its depth.

DEPTH CATEGORIES

<u>Class</u>	<u>Depth Capacity</u>
1 .....	0 to 3,000 ft.
2 .....	3,001 ft. to 5,000 ft.
3 .....	5,001 ft. to 7,500 ft.
4 .....	7,501 ft. to 10,000 ft.
5 .....	10,001 ft. to 12,500 ft.
6 .....	12,501 ft. to 15,000 ft.
7 .....	15,001 ft. to 20,000 ft.
8 .....	20,001 ft. and over

<u>MANUFACTURER'S DEPTH RATING</u>	<u>ELECTRICAL RIG R.C.N.</u>	<u>MECHANICAL RIG R.C.N.</u>
0 - 3,000	\$	\$ 285,209
3,001 - 5,000		432,135
5,001 - 7,500	868,250	654,750
7,501 - 10,000	1,167,210	998,750
10,001 - 12,500	1,265,500	1,130,600
12,501 - 15,000	1,720,400	1,538,500
15,001 - 20,000	1,990,100	
20,001 and over	2,036,047	



The depth capacity for drilling rigs will be based on the "Manufacturers Depth Rating". These replacement costs will then be depreciated to arrive at market value according to the schedule mentioned in ~~subsection~~ (2).

(2) The department of revenue shall prepare a 10-year trended depreciation schedule for oil drilling rigs. The trended depreciation schedule shall be derived from depreciation factors published by Marshall and Swift Publication Company. The "% good" for all drill rigs less than one year old shall be 100%. The trended depreciation schedule for tax year ~~1995~~ 1997 is listed below.

<u>DRILL RIG % GOOD SCHEDULE</u>	
<u>YEAR</u>	<u>TRENDED % GOOD</u>
<u>1996</u>	<u>100%</u>
<u>1995</u>	<u>92%</u>
<u>1994</u>	<u>84%</u>
<u>1993</u>	<u>76%</u>
<u>1992</u>	<u>67%</u>
<u>1991</u>	<u>58%</u>
<u>1990</u>	<u>49%</u>
<u>1989</u>	<u>35%</u>
<u>1988</u>	<u>30%</u>
<u>1987</u>	<u>24%</u>
<u>1986 and older</u>	<u>20%</u>

<u>DRILL RIG TRENDED DEPRECIATION SCHEDULE</u>	
<u>YEAR NEW/ ACQUIRED</u>	<u>TRENDED % GOOD</u>
<u>1997</u>	<u>100%</u>
<u>1996</u>	<u>92%</u>
<u>1995</u>	<u>84%</u>
<u>1994</u>	<u>76%</u>
<u>1993</u>	<u>67%</u>
<u>1992</u>	<u>58%</u>
<u>1991</u>	<u>49%</u>
<u>1990</u>	<u>35%</u>
<u>1989</u>	<u>30%</u>
<u>1988</u>	<u>24%</u>
<u>1987 and older</u>	<u>20%</u>

(3) remains the same.

(4) This rule is effective for tax years beginning after December 31, ~~1995~~ 1996.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-138, MCA

42.21.151 TELEVISION CABLE SYSTEMS (1) through (3) remain the same.

(4) The trended depreciation schedules referred to in ~~subsections~~ (2) and (3) are listed below and shall be in effect for tax year ~~1996~~ 1997.

TABLE 1: 5-YEAR "DISHES"

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1995	85%	1.000	85%
1994	69%	1.032	71%
1993	52%	1.061	55%
1992	34%	1.082	37%
1991 & older	20%	1.095	22%

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1996	85%	1.000	85%
1995	69%	1.013	70%
1994	52%	1.050	55%
1993	34%	1.079	37%
1992 & older	20%	1.100	22%

TABLE 2: 10-YEAR "TOWERS"

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1995	92%	1.000	92%
1994	84%	1.032	87%
1993	76%	1.061	81%
1992	67%	1.082	72%
1991	58%	1.095	64%
1990	49%	1.117	55%
1989	39%	1.147	45%
1988	30%	1.208	36%
1987	24%	1.260	30%
1986 & older	20%	1.278	26%

YEAR NEW/ ACQUIRED	% GOOD	TREND FACTOR	TRENDED % GOOD
1996	92%	1.000	92%
1995	84%	1.013	85%
1994	76%	1.050	80%
1993	67%	1.079	72%
1992	58%	1.100	64%
1991	49%	1.114	55%
1990	39%	1.136	44%
1989	30%	1.166	35%
1988	24%	1.229	29%
1987 & older	20%	1.282	26%

(5) This rule is effective for tax years beginning after December 31, 1995 1996.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-138 and 15-6-140, MCA

42.21.153 SKI LIFT EQUIPMENT (1) The average market value of ski lift equipment, which is classified as aerial

lifts, surface lifts, portable lifts and tows and which include the towers, cables, ropes, sheave assemblies, the conveying devices, power units, and all accessories, shall be determined ~~using depreciation schedules and procedures established by the department of revenue by trending and depreciating the original installed cost on an age/life basis to compensate for ordinary physical deterioration and/or functional obsolescence.~~

(2) ~~The depreciation schedules reflect the average remaining life of these properties. The "average of all" industry trend factors as indicated by the Marshall Valuation Service shall be used.~~

(3) ~~The installation cost of these properties can be determined by applying the designated percentage, by life classification, to the invoice cost. The depreciation schedules shall be determined by the life expectancy of the equipment and will normally compensate for the loss in value due to ordinary wear and tear, offset by reasonable maintenance, and ordinary functional obsolescence due to the technological changes during the life expectancy period.~~

#### DEPRECIATION TABLE FOR SKI LIFT EQUIPMENT

Installed Cost X Trended Percent Good = Average Market Value

<u>YEAR</u>	<u>TREND FACTOR</u>	<u>PERCENT GOOD</u>	<u>TRENDED % GOOD</u>
1996	1.000	92%	92%
1995	1.013	84%	85%
1994	1.050	76%	80%
1993	1.079	67%	72%
1992	1.100	58%	64%
1991	1.114	49%	55%
1990	1.136	39%	44%
1989	1.166	30%	35%
1988	1.229	24%	29%
1987 & older	1.282	20%	26%

(a) The taxpayer must initially list with the department:

(i) all equipment by year of installation; and

(ii) installed costs of that equipment.

(b) Each year thereafter, the taxpayer must list with the department:

(i) all additions or deletions from the previous year's list, with installed cost.

(4) The minimum average market values for the lift equipment shall be 25% of its installed cost. This methodology is effective for tax years beginning after December 31, 1996.

(5) remains the same.

(6) This rule would be is effective for tax years beginning after December 31, 1990.

AUTH: Sec. 15-1-201 MCA; IMP, Sec. 15-6-138 MCA

42.21.155 DEPRECIATION SCHEDULES (1) remains the same.

(2) The trended depreciation schedules for tax year 1996 1997 are listed below. The categories are explained in ARM 42.21.156. The trend factors are derived according to ARM 42.21.156 and 42.21.157.

CATEGORY 1

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1995	70%	1.000	70%
1994	45%	0.957	43%
1993	20%	0.964	19%
1992 and older	10%	0.936	9%

CATEGORY 2

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1995	85%	1.000	85%
1994	69%	0.998	69%
1993	52%	1.002	52%
1992	34%	1.003	34%
1991 and older	20%	1.010	20%

CATEGORY 3

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1995	85%	1.000	85%
1994	69%	0.970	67%
1993	52%	0.978	51%
1992	34%	0.974	33%
1991 and older	20%	0.960	19%

CATEGORY 4

YEAR	% GOOD	TREND FACTOR	TRENDED % GOOD
1995	85%	1.000	85%
1994	69%	0.989	68%
1993	52%	0.981	51%
1992	34%	0.993	34%
1991 and older	20%	1.008	20%

CATEGORY 5

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND</u> <u>FACTOR</u>	<u>TRENDED</u> <u>% GOOD</u>
1995	85%	1.000	85%
1994	69%	1.017	70%
1993	52%	1.036	54%
1992	34%	1.045	36%
1991 and older	20%	1.057	21%

CATEGORY 6

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND</u> <u>FACTOR</u>	<u>TRENDED</u> <u>% GOOD</u>
1995	85%	1.000	85%
1994	69%	1.012	70%
1993	52%	0.969	50%
1992	34%	0.998	34%
1991 and older	20%	1.038	21%

CATEGORY 7

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND</u> <u>FACTOR</u>	<u>TRENDED</u> <u>% GOOD</u>
1995	92%	1.000	92%
1994	84%	1.023	86%
1993	76%	1.044	79%
1992	67%	1.068	72%
1991	58%	1.100	64%
1990	49%	1.144	56%
1989	39%	1.192	46%
1988	30%	1.238	37%
1987	24%	1.263	30%
1986 and older	20%	1.283	26%

CATEGORY 8

<u>YEAR</u>	<u>% GOOD</u>	<u>TREND</u> <u>FACTOR</u>	<u>TRENDED</u> <u>% GOOD</u>
1995	92%	1.000	92%
1994	84%	1.025	86%
1993	76%	1.049	80%
1992	67%	1.067	71%
1991	58%	1.081	63%
1990	49%	1.111	54%
1989	39%	1.154	45%
1988	30%	1.207	36%
1987	24%	1.250	30%
1986 and older	20%	1.283	26%

CATEGORY 1

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1996	70%	1.000	70%
1995	45%	0.945	43%
1994	20%	0.907	18%
1993 and older	10%	0.913	9%

CATEGORY 2

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1996	85%	1.000	85%
1995	69%	1.007	69%
1994	52%	1.005	52%
1993	34%	1.010	34%
1992 and older	20%	1.010	20%

CATEGORY 3

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1996	85%	1.000	85%
1995	69%	0.997	69%
1994	52%	0.957	50%
1993	34%	0.956	33%
1992 and older	20%	0.953	19%

CATEGORY 4

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1996	85%	1.000	85%
1995	69%	0.991	68%
1994	52%	0.981	51%
1993	34%	0.972	33%
1992 and older	20%	0.984	20%

CATEGORY 5

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1996	85%	1.000	85%
1995	69%	1.018	70%
1994	52%	1.035	54%
1993	34%	1.054	36%
1992 and older	20%	1.063	21%

CATEGORY 6

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1996	85%	1.000	85%
1995	69%	1.030	71%
1994	52%	1.043	54%
1993	34%	0.998	34%
1992 and older	20%	1.028	21%

CATEGORY 7

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1996	92%	1.000	92%
1995	84%	1.026	86%
1994	76%	1.049	78%
1993	67%	1.071	72%
1992	58%	1.096	64%
1991	49%	1.128	55%
1990	39%	1.174	46%
1989	30%	1.222	37%
1988	24%	1.270	30%
1987 and older	20%	1.296	26%

CATEGORY 8

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
1996	92%	1.000	92%
1995	84%	1.028	86%
1994	76%	1.054	80%
1993	67%	1.079	72%
1992	58%	1.097	64%
1991	49%	1.112	54%
1990	39%	1.143	45%
1989	30%	1.187	36%
1988	24%	1.242	30%
1987 and older	20%	1.286	26%

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-6-139, MCA

42.21.158. PROPERTY REPORTING TIME FRAMES (1) remains the same.

(2) If the taxpayer shall fail to respond to the department request for information during the time frames set forth in subsection (1), the department shall assess the property under the provisions of 15-1-303, MCA.

(3) remains the same.

(4) If the taxpayer shall fail to respond to the department request for information during the time frames set forth in subsection (3), the department shall assess the

property under the provisions of 15-1-303, MCA.

(5) remains the same.

(6) This rule is effective for tax years beginning after December 31, ~~1995~~ 1996.

AUTH: Sec. 15-1-201, MCA; IMP, Sec. 15-8-303, 15-24-902, 15-24-903, 15-24-905, and 15-24-920, MCA

42.21.305. TRENDED DEPRECIATION SCHEDULES (1) ~~1995~~ 1997 trended percent depreciation schedule for licensed quadricycles:

<u>Year</u>	<u>Trended % Good</u>
<del>1996</del>	<del>80%</del>
<del>1995</del>	<del>64%</del>
<del>1994</del>	<del>58%</del>
<del>1993</del>	<del>55%</del>
<del>1992</del>	<del>49%</del>
<del>1991</del>	<del>45%</del>
<del>1990</del>	<del>43%</del>
<del>1989</del>	<del>41%</del>
<del>1988</del>	<del>41%</del>
<del>1987</del>	<del>34%</del>
<del>1986</del>	<del>33%</del>
<del>1985</del>	<del>29%</del>
<del>1984</del>	<del>26%</del>
<del>1983</del>	<del>23%</del>
<del>1982</del>	<del>23%</del>
<del>1981 and older</del>	<del>21%</del>
<u>1997</u>	<u>80%</u>
<u>1996</u>	<u>64%</u>
<u>1995</u>	<u>58%</u>
<u>1994</u>	<u>55%</u>
<u>1993</u>	<u>49%</u>
<u>1992</u>	<u>45%</u>
<u>1991</u>	<u>43%</u>
<u>1990</u>	<u>41%</u>
<u>1989</u>	<u>41%</u>
<u>1988</u>	<u>34%</u>
<u>1987</u>	<u>33%</u>
<u>1986</u>	<u>29%</u>
<u>1985</u>	<u>26%</u>
<u>1984</u>	<u>23%</u>
<u>1983</u>	<u>23%</u>
<u>1982 and older</u>	<u>21%</u>

(2) ~~1995~~ 1997 trended depreciation schedule for automobiles and trucks with a rated capacity of 1 ton and less:



<u>Year</u>	<u>Trended % Good</u>
<u>1996</u>	<u>80% of FOB</u>
<u>1995</u>	<u>80%</u>
<u>1994</u>	<u>77%</u>
<u>1993</u>	<u>67%</u>
<u>1992</u>	<u>58%</u>
<u>1991</u>	<u>48%</u>
<u>1990</u>	<u>39%</u>
<u>1989</u>	<u>32%</u>
<u>1988</u>	<u>26%</u>
<u>1987</u>	<u>23%</u>
<u>1986</u>	<u>18%</u>
<u>1985</u>	<u>15%</u>
<u>1984</u>	<u>12%</u>
<u>1983</u>	<u>9%</u>
<u>1982</u>	<u>8%</u>
<u>1981</u>	<u>7%</u>
<u>1980</u>	<u>7%</u>
<u>1979 and older</u>	<u>7%</u>

<u>1997</u>	<u>80%</u>
<u>1996</u>	<u>80%</u>
<u>1995</u>	<u>77%</u>
<u>1994</u>	<u>67%</u>
<u>1993</u>	<u>61%</u>
<u>1992</u>	<u>54%</u>
<u>1991</u>	<u>47%</u>
<u>1990</u>	<u>37%</u>
<u>1989</u>	<u>29%</u>
<u>1988</u>	<u>26%</u>
<u>1987</u>	<u>22%</u>
<u>1986</u>	<u>18%</u>
<u>1985</u>	<u>15%</u>
<u>1984</u>	<u>11%</u>
<u>1983</u>	<u>9%</u>
<u>1982</u>	<u>7%</u>
<u>1981</u>	<u>7%</u>
<u>1980 and older</u>	<u>7%</u>

AUTH: Sec. 15-1-201 and 61-3-506, MCA; IMP, Sec. 15-8-202, MCA

3. The Department is proposing the amendments because 15-8-111, MCA, requires the Department to assess all property at 100% of its market value except as provided in 15-7-111, MCA. The statute does not address in detail how the Department is to arrive at market value.

To determine the market value of certain property the Department has historically used and adopted the concept of trending and depreciation. The method by which trended depreciation schedules are derived is described in the existing rules, and that method is not being changed. However, the method does result in annual changes to the schedules. The

First Judicial District Court has determined that those schedules must be a part of the rules.

ARM 42.21.153 was modified to reflect the Department's intent to value that equipment by trending and depreciating the original installed cost on an age/life basis. That process was accepted by the Montana Ski Areas Association. It's the same valuation methodology used on other personal property.

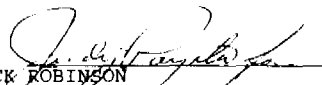
4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

Cleo Anderson  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, Montana 59620

no later than November 22, 1996.

5. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

  
CLEO ANDERSON  
Rule Reviewer

  
MICK ROBINSON  
Director of Revenue

Certified to Secretary of State October 11, 1996

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENTS) NOTICE OF THE PROPOSED  
of ARM 42.15.506 and 42.15.507 ) AMENDMENTS  
relating to Computation of )  
Residential Property Tax Credit ) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 20, 1996, the Department of Revenue proposes to amend ARM 42.15.506 and 42.15.507 relating to Computation of Residential Property Tax Credit.

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

42.15.506 COMPUTATION OF RESIDENTIAL PROPERTY TAX CREDIT FOR ELDERLY (1) When the taxpayer owns the dwelling but rents the land or owns the land and rents the dwelling, he shall add the rent-equivalent tax paid on the rented property to the property tax paid on the owned property. The total shall then be reduced as provided by 15-30-176 ~~+~~, MCA. The tax credit will be the reduced amount or \$400, whichever is less. Effective for taxable years beginning after December 31, 1982 and before January 1, 1995, the maximum allowable credit is \$400. For tax years beginning after December 31, 1994, the maximum allowable credit is \$1,000.

(2) A taxpayer shall not be entitled to rent-equivalent tax paid on either a rented dwelling or rented land which is not subject to ad valorem taxes in Montana during the claim period except for those units rented from a state, county or city housing authority.

(3) When a taxpayer lives in a ~~rest-home~~ health care facility, long-term care facility, personal care facility, or a residential care facility as defined in 50-5-101, MCA, the rent allowed in calculation of the property tax credit is the ~~lesser~~ greater of \$20 per day or the actual rent paid.

(4) Where one spouse lives in a ~~rest-home~~ health care facility, long-term care facility, personal care facility, or a residential care facility as defined in 50-5-101, MCA, and the other lives at a different address, they are only allowed to take the rent at the ~~rest-home~~ facility or the rent/taxes of the other house but not both. Married taxpayers who are living apart are entitled to file and receive only one claim per year.

(5) General property taxes paid on property held in a revocable trust which are paid by an eligible claimant are allowable. The grantor(s) of the property or their spouse must be a trustee of the revocable trust.

(6) Property taxes on property held in an irrevocable or trust paid by an eligible claimant are allowed as rent paid.

(7) General property taxes paid by an eligible claimant who has a living trust or a life estate are allowable.

(8) If a claimant does not provide an adequate breakdown between "rent" and "amenities" paid, the rent allowed will be limited to \$20 a day.

AUTH: Sec. 15-30-305, MCA; IMP, Sec. 15-30-176, MCA

42.15.507 DEFINITIONS (1) "Amenities" are items that enhance the pleasantness or desirability of rental or retirement homes, or contribute to the pleasure and enjoyment of the occupant(s), rather than to their indispensable needs.

(2) "Beneficial interest" is a taxpayer who has a beneficial interest in a business when he/she is either a sole proprietor, partner or shareholder in a an S corporation.

~~(2)~~(3) "Finished product" means a marketable product that has economic value and is ready to be used by a consumer.

~~(3)~~(4) "Machinery or equipment" is property having a depreciable life of more than one year, whose primary purpose is to collect or process reclaimable material or is depreciable property used in the manufacturing of a product from reclaimed material.

~~(4)~~(5) "Primarily" means over fifty percent (50%) of time, usage, or other appropriate measure.

~~(5)~~(6) "Process or processing" means preparation, treatment, including treatment of hazardous waste as defined in 75-10-403, MCA, or conversion of a product or material by an action, change or function or a series of actions, changes, or functions that bring about a desired end result.

~~(6)~~(7) "Reclaimed material" is post-consumer material that has been collected and used in a process designed to produce recycled material.

~~(7)~~(8) "Recycled material" means a material that can be readily utilized without further processing in place of raw or virgin material in manufacturing a product and consists of materials derived from post consumer waste, industrial scrap, material derived from agricultural wastes and other items, all of which can be used in the manufacture of new products.

(9) "Rent" is the amount of money charged to a tenant for the occupying of a dwelling. "Rent" does not include amenities such as meals, housekeeping, nursing care, etc.

AUTH: Sec. 15-32-611, MCA; IMP, Secs. 15-32-601 through 15-32-610, MCA

3. The department is proposing to amend the present rules to allow taxpayers, whose house is in a revocable trust, to be eligible for the Elderly/Renter Credit. The reason that the property held in a revocable trust is being considered eligible for the credit is that under the IRS code and regulations trustees of such trusts are considered owners of the property under certain conditions. Further, lending institutions continue to treat the property as being in the ownership of the grantor of the trust. In addition, ARM 42.15.507 is being amended to define "amenities" and "rent".

4. Interested parties may submit their data, views, or

arguments concerning the proposed action in writing to:


Cleo Anderson  
Department of Revenue  
Office of Legal Affairs  
Mitchell Building  
Helena, Montana 59620

no later than November 22, 1996.

5. If a person who is directly affected by the proposed amendments 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 Cleo Anderson at the above address no later than November 22, 1996.

6. If the agency receives requests for a public hearing on the proposed action 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 no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25.

  
CLEO ANDERSON  
Rule Reviewer

  
MICK ROBINSON  
Director of Revenue

Certified to Secretary of State October 11, 1996

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PUBLIC
amendment of 44.3.105 and )	HEARING
44.3.106 pertaining to surveys )	
of polling places, 44.3.1701, )	
44.3.1703, 44.3.1704, 44.3.1706, )	
and 44.3.1708 pertaining to )	
the examination of voting )	
devices, and the repeal of )	
44.3.1001, 44.3.1705, 44.3. )	
1709, and 44.3.1730 pertaining )	
to the examination of voting )	
devices )	

TO: All Interested Persons.

1. On November 19, 1996 at 10:00 a.m., a public hearing will be held at the Secretary of State's Office Conference Room in Room 225 of the Capitol Building in Helena, Montana, to consider the amendment of rules 44.3.105, 44.3.106, 44.3.1701, 44.3.1703, 44.3.1704, 44.3.1706, and 44.3.1708; and the repeal of 44.3.1001, 44.3.1705, 44.3.1709 and 44.3.1730.

The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Secretary of State by no later than 5:00 p.m., November 6th, to advise us of the nature of the accommodations that you need. Please contact Faira Sheppard, P.O. Box 202801, Helena, Montana 59620-2801, (phone number 406-444-5346; fax 406-444-3976; TDD 406-444-9068). Persons with disabilities who need an alternative accessible format of this document in order to participate in this rulemaking process should contact Faira Sheppard.

2. The rules proposed to be amended provide as follows with the matter to be stricken interlined and new matter added, then underlined:

44.3.105 SURVEY PROCEDURE TO DETERMINE ACCESSIBILITY  
Subsection(1) remains the same.

~~(2) During the 1996 election cycle, the election administrator may implement the survey procedure in 50% of the polling places in his jurisdiction 45 days prior to the June primary election and the remaining 50% of the polling places 45 days prior to the November general election.~~

~~(a) An election administrator shall be exempt from the requirements of section (2) if he requests an exemption in writing, from the secretary of state 50 days prior to the election for which the exemption is intended.~~

~~(b) Such request shall specify the reasons for non-compliance.~~

Subsections (3) and (4) remain the same but renumbered as (2) and (3).

~~(4)(5)~~ A form prescribed by the secretary of state shall be used as a checklist for each polling place surveyed. Copies of the survey shall be made available for public inspection and to the secretary of state upon request, except as provided in ~~section (5)(6)~~ of this rule.

Subsection (6) remains, but renumbered as (5).

~~(6)(7)~~ A copy of all survey forms for polling places having the designation "~~inaccessible~~" and "~~technically inaccessible but usable~~" shall be forwarded to the secretary of state 45 days prior to the election for which the survey was conducted, ~~as provided in section (2) of this rule.~~

Subsection (8) and (9) remain the same, but renumbered as (7) and (8).

(History: This rule is advisory only, but may be considered a correct interpretation of the law. AUTH: Sec. 13-1-202, MCA; IMP, Sec. 13-1-202, MCA.)

#### 44.3.106 EXEMPTION PROCEDURE

Subsections (1), (2), and (3) remain the same.

(4) A separate request for exemption shall be submitted for each polling place not in compliance. The request shall ~~identify the polling place, how it is not in compliance, the efforts being made to bring it into compliance, and the efforts to locate an alternate site.~~

~~(i) identify the polling place for which the exemption is requested;~~

~~(ii) identify the provisions of the guidelines for accessibility with which the existing site is not in compliance;~~

~~(iii) describe the efforts made to locate a site in compliance with these rules;~~

~~(iv) describe what continuing efforts will be made to achieve compliance during the period the exemption is in effect; and~~

~~(v) bear the signature of the election administrator.~~

Subsections (5), (6), (7), and (8) remain the same.

(History: This rule is advisory only, but may be considered a correct interpretation of the law. AUTH: Sec. 13-1-202, MCA; IMP, Sec. 13-1-202, MCA.)

#### 44.3.1701 EXAMINATION OF VOTING MACHINES AND DEVICES

Subsection (1) remains the same.

(2) ~~DEFINITIONS.~~ Unless the context clearly requires otherwise, the following terms shall have the following meanings:

(a) "Applicant" means any person or business entity which has applied for inspection of a voting machine or device under these rules. ~~The term includes an agent or agents of the applicant.~~

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

(3) Such examination shall be conducted by the office of

secretary of state, who may choose up to two Montana electors to assist with the examination, or, with his authority, by one or more deputy secretaries of state. The secretary of state or his deputy or deputies may be assisted by not more than two qualified electors of the state of Montana in such examination.

(4) The examination shall be held on a day to be agreed upon by the applicant and the secretary of state, and shall commence not earlier than 9:00 a.m. or later than 2:00 p.m. on such day.

Subsection (5) remains the same.

(6) Examination of voting machines and devices shall be made only upon application to the secretary of state. Such application shall be in writing and shall contain the information prescribed by the secretary of state, following information and statements:

(a) The name and address of the applicant. If applicant is a corporation, the state of incorporation shall be stated.

(b) A statement that the applicant thereby applies for an examination of a voting machine or device pursuant to the provisions of the Montana Code Annotated and of these rules.

(c) A description of the system to be presented for examination, including the common name of the system, as well as a statement or description of the trademark or other mark used to identify the system.

(d) The proposed time, including the day and hour, at which such examination shall be held.

(e) The proposed place, including street and number, if known, at which such examination shall be held.

(f) A statement that the applicant will pay a reasonable fee for the services of not more than two qualified electors of the state of Montana, if called to assist the secretary of state or his deputy or deputies under ARM 44.3.1701(3), at a rate not to exceed \$10.00 per day or fraction thereof, plus per diem as set by section 2-10-501, MCA, for the time actually spent in such assistance.

(g) Such application need not be acknowledged or verified by the applicant.

(7) Such application shall be submitted to the secretary of state not less than ten days prior to the day proposed therein for examination of the system. An application shall be deemed to be submitted when it has actually been received in the office of the secretary of state. Upon receipt of such application, the secretary of state shall confirm in writing that the examination will be held at the time and place proposed, or at such other time or place, or both, as he may indicate in his reply, in which case the applicant shall indicate his agreement in writing to the new time or place or both. If applicant and secretary of state do not agree upon the time or place of examination proposed by the secretary of state, the application shall be re-submitted not earlier than 30 days after such failure to agree.

Subsection (8) remains the same, but renumbered as (7).

AUTH: Sec. 13-17-107(1) MCA; IMP, Sec. 13-17-107 MCA



#### 44.3.1703 CRITERIA OF CONSTRUCTION

Subsections (1), (2), (3), (4), and (5) remain the same.

(6) Automatic tabulating equipment shall provide a visible or audible signal to the operator thereof in the following cases. ~~The purpose of this rule is to permit isolation and identification of ballots rejected by the tabulating equipment, so that they may be examined for evidence of the intent of the elector.~~

Subsections (6) (a), (6) (b), and (7) remain the same.

AUTH: Sec. 13-17-107(1) MCA; IMP, Sec. 13-17-103 MCA

#### 44.3.1704 CRITERIA OF EXAMINATION

(1) The examination of a mechanical voting machine shall be conducted by the examiner or examiners ~~to ensure that the machine meets the criteria set out in ARM 44.3.1703(1) as well as: as follows.~~

~~(a) It shall be determined that an elector is permitted and required to vote in secret. This shall mean only that the voting shall be done under the conditions of secrecy which are recognized in elections as presently conducted with paper ballots.~~

~~(b) It shall be determined that an elector is prevented from voting for any candidate or upon any ballot issue more than once and is also prevented from voting on any office or ballot issue for which he is not entitled to vote.~~

~~(c) It shall be determined that an elector may secretly select the party for which he wishes to vote in a primary election and the machine will count only those votes for the candidates of that party by the elector in the primary election.~~

~~(d) It shall be determined that an elector is permitted to vote a split ticket in a general election if he desires.~~

~~(e) It shall be determined that every valid vote cast is registered and recorded.~~

~~(f) It shall be determined that the system is constructed so it cannot be tampered with for a fraudulent purpose.~~

~~(g) It shall also be constructed so that during the progress of the voting no individual can see or know the number of votes registered for any candidate or on any ballot issue.~~

~~(h) It shall be determined that an elector may write in his vote.~~

~~(i) It shall be determined that the system will allow for rotation of the ballot without substantially impairing the efficiency or accuracy of the tabulation of such rotated ballots.~~

~~(j) It shall be determined that a guarantee to provide training and assistance to election officials is included in each contract for purchase of a mechanical voting machine.~~

Subsections (1) (k) through (m) renumbered as (1) (a) through (c).

(2) The examination of a voting device shall be conducted by the examiner or examiners as follows:

(a) It shall be determined that the criteria in ARM 44.3.1704(a) through (k) are met.

Subsections (2) (b) and (2) (c) remain the same.

(d) At least two of the ballots marked or pierced under ~~ARM 44.3.1704(1)(b)~~ ARM 44.3.1703(1)(b) shall contain a vote for one office in excess of the number of votes which an elector would be entitled to cast for such office. Failure of the machine to reject such ballot shall be deemed a material cause for rejection of the system.

Subsections (2)(e), (2)(f), and (2)(g) remain the same.

AUTH: Sec. 13-17-107(1) MCA; IMP, Sec. 13-17-101 MCA

44.3.1706 NOTIFICATION TO APPLICANT (1) Within 30 days after completion of such examination, the secretary of state or his deputy or deputies shall prepare and file in his office a report of his findings with respect to the system examined, which report shall include the following:

- ~~(a) A statement of the name and address of the applicant.~~
- ~~(b) A description of the system, which shall be the description provided by the applicant in his application.~~
- ~~(c) A brief statement of the time, place and manner of conducting the examination.~~
- ~~(d) A statement that the system is approved or disapproved.~~

~~(e) If the system is disapproved, a statement of the reasons therefor, including a specification of the provisions of the MCA and these rules affecting such findings.~~

(2) A copy of such report shall be forwarded by certified mail, return receipt requested, to the applicant at the address shown in his application for such examination. ~~The applicant shall be deemed to have been notified until the return receipt has been delivered to the secretary of state by the postal authorities.~~

(3) If the report approves the system, the secretary of state shall mail a copy of said report to each election administrator of the state of Montana. ~~Such mailing shall be by first class mail. Such report shall be mailed no later than five days after receipt of the return receipt from the applicant under ARM 44.3.1706(2).~~

AUTH: Sec. 13-17-107(1) MCA; IMP, Sec. 13-17-101 MCA

44.3.1708 WAIVER OF CONDITIONS (1) The secretary of state may ~~wave the ten day notice of time and place of examination of a system under ARM 44.3.1701(7)~~, may vary the time and place of examination fixed by ARM 44.3.1701(4) and (5) and may waive any informality in the form of application or procedure followed in examination, if, in his opinion, such informality does not substantially affect the validity of his conclusions with respect to the system examined. AUTH: Sec. 13-17-107(1) MCA; IMP, Sec. 13-17-101 MCA

3. The rules proposed to be repealed are as follows:

Rule 44.3.1001 is on page 44-67 of the Administrative Rules of Montana.

AUTH: 13-1-202, MCA

IMP: 13-10-502(3), MCA

Rule 44.3.1705 is on page 44-99 of the Administrative Rules of Montana.

AUTH: 13-17-107(1), MCA                      IMP: 13-17-102, MCA

Rule 44.3.1709 is on page 44-101 of the Administrative Rules of Montana.

AUTH: 13-17-107(1), MCA                      IMP: 13-17-105, MCA

Rule 44.3.1730 is on page 44-137 of the Administrative Rules of Montana.

AUTH: 13-17-107(2), MCA                      IMP: 13-17-101, MCA

4. The rules are being amended to clarify language and delete inconsistencies. The rules are being repealed because they are no longer necessary or repeat statute, and is an effort to comply with HJR 5.

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 Faira Sheppard, Secretary of State's Office, P. O. Box 202801, Helena, MT 59620-2801 and must be received no later than November 21, 1996.

6. Joe Kerwin, Secretary of State's office has been designated to preside over and conduct the hearing.

  
By: Secretary of State Mike Cooney

  
Angela Fultz, Rule Reviewer

Dated this 11th day of October, 1996.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PUBLIC
repeal of ARM rule 44.6.106 )	HEARING
and amendment of ARM rules )	
44.6.104, 44.6.105, 44.6.107 )	
and 44.6.110 pertaining to UCC )	

TO: All Interested Persons.

1. On November 13, 1996 at 10:30 a.m., a public hearing will be held at the Secretary of State Office Conference Room in Room 225 of the Capitol Building in Helena, Montana, to consider the repeal of rule 44.6.106 and the amendments of 44.6.104, 44.6.105, 44.6.107 and 44.6.110.

The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Secretary of State by no later than 5:00 p.m., October 31, to advise us of the nature of the accommodations that you need. Please contact Rose Ann Crawford, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801, telephone (406) 444-5372, fax (406) 444-3976. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rulemaking process should contact Rose Ann Crawford.

2. The rules proposed to be amended provide as follows with the matter to be stricken interlined and new matter added, then underlined:

44.6.104 FEES FOR FILING NOTICE OF FEDERAL TAX LIEN (1) through (1)(d) remain the same. Auth: Sec. 71-3-206, MCA; IMP, Sec. 30-9-403, MCA.

44.6.105 FEES FOR FILING DOCUMENTS -- UNIFORM COMMERCIAL CODE (1) The secretary of state and the county clerk and recorder shall charge and collect for:

- (a) filing a financing statement, \$7.00;
- (b) filing a termination statement, no fee;
- (c) filing a continuation statement, \$5.00;
- (d) filing a financing statement indicating an assignment, \$5.00;
- (e) filing a statement of partial release, \$5.00;
- (f) filing a statement adding to or changing collateral, \$5.00;
- (g) filing any amendment changing debtor name, ~~secured~~

party name and/or addresses, \$5.00;

(h) filing any amendment changing secured party name, and/or addresses, \$5.00;

(h) through (m) remain the same but are renumbered (i) through (n).

Auth: Sec. 30-9-403, MCA; IMP, Sec. 30-9-403, 71-3-125, MCA.

44.6.107 FEES FOR FILING NOTICE OF AGRICULTURAL LIENS

(1) through (1)(b) remain the same. Auth: Sec. 30-9-403, MCA; IMP, Sec. 71-3-125, MCA.

44.6.110 REQUIREMENTS OF THE FORMAT FOR THE NOTICE FILING OF AGRICULTURAL LIEN (1) through (1)(c)(ii) remain the same.

(d) notation by the ~~county clerk and recorder~~ secretary of state of the date of filing.

(1)(e) remains the same.

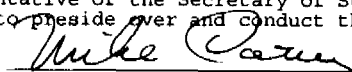
Auth: Sec. 71-3-125, MCA; IMP, Sec. 71-3-125, MCA

REASON: The purpose of the proposed amendments are to change or eliminate words no longer being used by the Secretary of State and correct the requirement that the secured party name and/or address change is also a \$5.00 fee.

3. The rule proposed to be repealed is ARM 44.6.106 and is located on page 44-239, Administrative Rules of Montana. The authority section is 30-9-422(a), MCA and IMP, Sec 30-9-422(a), MCA. The Secretary of State is repealing this rule because Section 30-9-422, MCA was repealed by the legislature.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments and repeals, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Rose Ann Crawford, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801. Any comments must be received no later than November 21, 1996.

5. A representative of the Secretary of State's office will be designated to ~~preside over~~ and conduct the hearing.

  
By: Secretary of State Mike Gooney

  
Rule Reviewer

Dated this 4th day of October, 1996.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PUBLIC
adoption of new rules )	HEARING
pertaining to electronic )	
storage of local government )	
records.	

TO: All Interested Persons.

1. On Thursday, November 14, 1996 at 10:00 a.m. a public hearing will be held in Room 225 of the Capitol Building at Helena, Montana, to consider the adoption of new rules pertaining to the electronic storage of local government records.

The Office of the Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Secretary of State by no later than 5:00 p.m., November 8, 1996 to advise us of the nature of the accommodation that you need. Please contact Lynn Keller, P.O. Box 202805, Helena, MT 59620-2805, 406-444-9000 phone, 406-444-9002 fax, 406-444-9068 TDD. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rulemaking process should contact Lynn Keller.

2. The proposed new rules provide as follows:

Rule I. USE OF ELECTRONIC RECORDS STORAGE SYSTEMS FOR LOCAL GOVERNMENT DOCUMENTS (1) Electronic records storage systems may be used for the daily management, storage and retrieval of documents with a retention schedule of 10 years or more (long-term documents) or records with a retention schedule of less than 10 years (short or medium-term documents).  
Auth: 2-6-404, MCA Imp: 2-6-403, MCA

Rule II. STORAGE REQUIREMENT FOR ELECTRONICALLY STORED DOCUMENTS WITH GREATER THAN 10 YEAR RECORD RETENTION SCHEDULE (1) Original long-term documents that are electronically stored must either be maintained in paper form or they may be destroyed or otherwise disposed of if copies are maintained on archival quality microfilm.  
Auth: 2-6-404, MCA Imp: 2-6-403, MCA

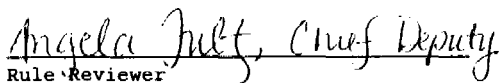
Rule III. STORAGE REQUIREMENT FOR ELECTRONICALLY STORED DOCUMENTS WITH LESS THAN 10 YEAR RECORD RETENTION SCHEDULE (1) Original short or medium-term documents that are electronically stored may be destroyed or otherwise disposed of without maintaining a copy in another medium.  
Auth: 2-6-404, MCA Imp: 2-6-403, MCA

3. The rationale for the proposed rules is to identify which records must be maintained or may be destroyed when stored on electronic records storage systems. The local government records committee established in 2-6-402, MCA, has determined that due to the changing technology of electronic records storage systems and the uncertainty of the duration of electronically stored records, it is necessary to require long-term records be maintained either in hard copy or on microfilm.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Lynn Keller, P.O. Box 202805, Helena, MT 59620-2805 and must be received no later than Thursday, November 21, 1996.

5. A representative from the Secretary of State's office will be designated to preside over and conduct the hearing.

  
Secretary of State Mike Cooney

  
Rule Reviewer

Dated this 11th day of October 1996.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

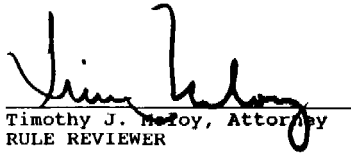
In the matter of the repeal        ) NOTICE OF REPEAL  
of ARM 4.13.1001 in its entirety) AND ADOPTION  
and the adoption of new rule I    )  
ARM 4.13.1001A relating to the    )  
Grain Fee Schedule of lab hours,) travel time and fees        )

TO: All interested persons:

1. On September 5, 1996 the Department of Agriculture published a notice of proposed repeal and adoption of the above-stated Grain Laboratory rules at page 2343, 1996 Montana Administrative Register, issue number 17.
2. The Department has repealed ARM 4.13.1001 in its entirety as proposed and adopted the new rule ARM 4.13.1001A as a replacement.
3. No comments were received.



W. Ralph Peck, Director  
DEPARTMENT OF AGRICULTURE



Timothy J. Mozy, Attorney  
RULE REVIEWER

Certified to the Secretary of State October 11, 1996



BEFORE THE CLASSIFICATION REVIEW COMMITTEE  
OF THE STATE OF MONTANA

In the matter of the amendment                    ) NOTICE OF AMENDMENT  
of rule 6.6.8301, concerning                    )  
updating references to the NCCI                    )  
Basic Manual for Workers                    )  
Compensation and Employers                    )  
Liability Insurance, 1996 ed.                    )

TO: All Interested Persons.

1. On September 5, 1996, the classification review committee published a notice of proposed amendment to rule 6.6.8301 concerning updating references to the NCCI Basic Manual for Workers Compensation and Employers Liability. The notice was published at page 2349, of the 1996 Montana Administrative Register, issue number 17.

2. The classification review committee has amended the rule as proposed.

3. No comments or requests for hearing were received regarding the proposed amendment.

4. The proposed changes to the NCCI Basic Manual for Workers Compensation and Employers Liability become effective as follows:

B-1333 - Revisions of Basic Manual                    January 1, 1997  
Classifications and Related Rules

Establish new Basic Manual Rule IV-D-14                   January 1, 1997  
to clarify the classification procedure  
for recycling operations

CHRISTY WEIKART, CHAIRPERSON  
CLASSIFICATION REVIEW COMMITTEE

By: Christy Weikart  
Christy Weikart  
Chairperson

By: Gary L. Spaeth  
Gary L. Spaeth  
Rules Reviewer

Certified to the Secretary of State this 11th day of October, 1996.

BEFORE THE BOARD OF CHIROPRACTORS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment, ) NOTICE OF AMENDMENT, REPEAL  
repeal and adoption of rules ) AND ADOPTION OF RULES PER-  
pertaining to chiropractors ) TAINING TO CHIROPRACTORS

TO: All Interested Persons:

1. On April 25, 1996, the Board of Chiropractors published a notice of proposed amendment, repeal and adoption of rules pertaining to chiropractors at page 974, 1996 Montana Administrative Register, issue number 8.

2. The Board has amended ARM 8.12.603, 8.12.606, 8.12.615 and 8.12.901 and repealed ARM 8.12.605, 8.12.609, 8.12.612, 8.12.613, 8.12.801 through 8.12.804 exactly as proposed. The Board is not repealing ARM 8.12.607 and not adopting new rule I as proposed. ARM 8.12.607 will remain in the rules as it currently appears. The Board has amended ARM 8.12.601, 8.12.604, 8.12.611 and 8.12.902 as proposed but with the following changes: (authority and implementing sections will be the same as in the original notice)

"8.12.601 APPLICATIONS (1) through (4) will remain the same as proposed.

(5) ~~An applicant shall have 60 days to correct deficiencies and to re-submit the application. Failure to resubmit the a complete application shall be treated as a within one year will indicate voluntary withdrawal of the application. After voluntary withdrawal, an entirely new application will be required to initiate a new application.~~

(6) through (9) will remain the same as proposed.

(a) official transcripts sent directly from the appropriate educational institution, including the applicant's CCE-accredited chiropractic college;

~~(b) verification from the chiropractic college that it has maintained its accreditation from the council on chiropractic education (CCE) during the applicant's entire course of study;~~

(c) and (d) will remain the same as proposed, but will be renumbered (b) and (c).

(10) will remain the same as proposed."

"8.12.604 TEMPORARY PERMIT (1) Temporary permit applicants must show evidence of having completed parts I through III of the NBCE and may be issued a permit under 37-1-305(2), MCA, while waiting to take part IV or the state practical examination. The permit requires the permit holder to practice under the on-premises supervision of a chiropractor licensed in the state of Montana.

(2) and (3) will remain the same as proposed."

"8.12.611 INACTIVE STATUS (1) through (2)(a) will remain the same as proposed.

(b) ~~that the applicant has received in the 24 months preceding the application for reactivation, 12 continuing education credits for every year that the license has remained inactive beyond two years, or proof of completion of 12 hours of approved continuing education in the year preceding reinstatement.~~

~~(c) passage of the special purposes examination for chiropractic."~~

"8.12.902 MINIMUM REQUIREMENTS FOR BOARD-APPROVED PROGRAMS TO QUALIFY FOR CERTIFICATION AS IMPAIRMENT EVALUATORS

(1) In order to qualify for board approval, programs shall include a minimum of 36 hours of classroom course work ~~comprised of the following subject areas: consisting of~~

~~(a) 24 hours of education in impairment rating from a college certified by the council on chiropractic education, and~~

~~(b) 12 hours of education prepared by a medical doctor who specializes in a course on impairment rating utilizing the current edition of the Journal of American Medical Association (JAMA) Guidelines."~~

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

ARM 8.12.601 APPLICATIONS

Comment No. 1: Commentator stated that the first sentence in subsection (5) should be deleted as the language in the second sentence is sufficient.

Response: The board agrees with commentator and amends the rule by deleting the first sentence and amending the second sentence to read, "Failure to submit a complete application within one year will indicate voluntary withdrawal of the application."

Comment No. 2: Commentator suggested that the board delete (9)(b) as the board may verify CCE accreditation using CCE's list of accredited colleges.

Response: The board agrees with commentator and deletes (9)(b) and adds "including the applicant's CCE accredited chiropractic college" to the end of subsection (9)(a).

Comment No. 3: Commentator suggests that (10) be deleted as national organizations have too much control over the profession and the board is in the best position to examine license applicants.

Response: The board believes that the task of examining license applicants is best left to professionals who are capable of developing, administering, and grading examinations. Moreover, the board determined that Part IV of the exam

administered by the National Board of Chiropractic Examiners is an important part of the application process. Therefore, the comment is rejected.

#### ARM 8.12.603 EXAMINATION REQUIREMENTS

Comment No. 4: Commentator suggested that subsection (1) be deleted as anything pertaining to the National Board of Chiropractic Examiners is against the best interests of the state.

Response: Same response as that to comment number 3.

#### ARM 8.12.604 TEMPORARY PERMIT

Comment No. 5: Commentator suggested that the word "examination" be inserted at the end of the first sentence in subsection (1) following the word "practical."

Response: The board agrees with Commentator and adds the word "examination."

Comment No. 6: Commentator suggested that subsection (1) be deleted as anything pertaining to the National Board of Chiropractic Examiners is against the best interests of the state.

Response: Same response as that to comment number 3.

#### ARM 8.12.606 RENEWALS CONTINUING EDUCATION REQUIREMENTS

Comment No. 7: Commentator stated that anything administered by a national organization takes away any need for a state board and reduces its credibility and/or ability to administer an appropriate examination specific to the state of Montana.

Response: Same response as that to comment number 3.

#### ARM 8.12.611 INACTIVE STATUS

Comment No. 8: Commentators stated that the proposed rule seemed discriminatory, exceeded the legislative intent for inactive licensees, created an overburdensome requirement, penalized the licensees by requiring an examination, and required the board to develop a special examination rather than requiring the passage of the practical examination already administered.

Response: The board determined that no problems exist with the original wording contained in the current rule and will replace the proposed subsection (2)(b) with the language previously found in subsection (4)(b). Additionally, the board had accepted the Commentators' comment relative to the special purposes examination and deleted proposed (2)(c).

ARM 8.12.901 APPLICATIONS FOR CERTIFICATION OF IMPAIRMENT EVALUATORS AND ARM 8.12.902 MINIMUM REQUIREMENTS FOR BOARD-APPROVED PROGRAMS TO QUALIFY FOR CERTIFICATION AS IMPAIRMENT EVALUATORS

Comment No. 9: Commentator states that the language in these two rules, as proposed, creates a conflict relative to the necessity of materials prepared by a medical doctor.

Response: The board agrees and has amended the language as proposed in ARM 8.12.902 to resolve the conflict.

ARM 8.12.605 RECIPROCITY

Comment No. 10: Commentator states that it is unrealistic to expect a chiropractor in practice for many years to pass the national boards.

Response: The board notes that this rule has been repealed and, therefore, no response is necessary.

ARM 8.12.607 UNPROFESSIONAL CONDUCT AND PROPOSED NEW RULE I

Comment No. 11: The board received numerous comments to the proposed unprofessional conduct rule, all of them advocating a different approach to the content of such a rule.

Response: The board agrees with the commentators and has determined that it will not adopt the proposed unprofessional conduct rule. Instead, the board will not repeal ARM 8.12.607 until such time as a new conduct rule may be adopted.

BOARD OF CHIROPRACTORS  
MARVIN HARRIS, D.C., 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, October 11, 1996.

The notice originally intended for this page has been removed from this publication at the request of the agency.

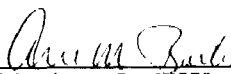
BEFORE THE MONTANA LOTTERY  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment, ) NOTICE OF AMENDMENT, REPEAL  
repeal and adoption of rules ) AND ADOPTION OF RULES  
pertaining to the organizational ) PERTAINING TO THE MONTANA  
rule, instant tickets and prizes ) STATE LOTTERY

TO: All Interested Persons:

1. On August 8, 1996, the Montana Lottery published a notice of proposed amendment, repeal and adoption of rules pertaining to the Montana State Lottery at page 2110, 1996 Montana Administrative Register, issue number 15.
2. The Division has amended rules 8.127.101, 8.127.1004, 8.127.1005, and 8.127.1201 and repealed rule 8.127.1003 exactly as proposed. New Rule 1 (8.127.1202) was adopted as proposed.
3. No comments or testimony were received.

MONTANA LOTTERY  
JERRY LACHERE, DIRECTOR

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

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 11, 1996.

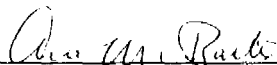
BEFORE THE MONTANA LOTTERY  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

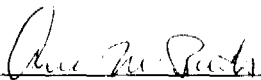
In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules pertaining to retailer	)	8.127.407 RETAILER
commission and sales staff	)	COMMISSION AND 8.127.1007
incentive plan	)	SALES STAFF INCENTIVE PLAN

TO: All Interested Persons:

1. On June 6, 1996, the Montana Lottery published a notice of proposed amendment of the above-stated rules at page 1479, 1996 Montana Administrative Register, issue number 11.
2. The Board has amended the rules exactly as proposed.
3. No comments or testimony were received.

MONTANA LOTTERY  
JERRY LACHERE, DIRECTOR

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

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 11, 1996.



BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of )  
rules 17.54.102, 106, 107, 309, and )  
333, bringing current rules in line )  
with EPA regulations in order to )  
maintain federal authorization of )  
the state hazardous waste program. )

NOTICE OF  
AMENDMENT OF RULES

(Waste Management)


To: All Interested Persons

1. On September 5, 1996, the department published notice of proposed amendment of the above-captioned rules at page 2357 of the Montana Administrative Register, Issue No. 17.

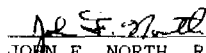
2. The rules were amended as proposed, with no changes.

3. No comments were received.

DEPARTMENT OF ENVIRONMENTAL QUALITY

  
CURT CHISHOLM, Deputy Director

Reviewed by:

  
JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State October 11, 1996.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the transfer of ) NOTICE OF TRANSFER  
rules 26.4.101A through 26.4.1830, )  
pertaining to reclamation, with )  
the exception of any repealed )  
rules. )

(Reclamation)

To: All Interested Persons

1. Pursuant to Chapter 418, Laws of Montana 1995, effective July 1, 1995, the reclamation functions of the Department of State Lands were transferred to the Department of Environmental Quality. In order to implement that legislation, ARM 26.4.101A through 26.4.1830, inclusive with the exception of any repealed rules, are transferred to the Department of Environmental Quality, ARM 17.24.101 through 17.24.1826. (Refer to 2-15-133, MCA).

2. The Department of Environmental Quality has determined that the transferred rules will be numbered as follows:

OLD	NEW	
26.4.101A	17.24.101	General Provisions
26.4.101B	17.24.102	Definitions
26.4.102	17.24.103	Exploration License--Application and Conditions
26.4.103	17.24.104	Exploration (Temporary) Roads
26.4.104	17.24.105	Conduct of Exploration Operations
26.4.104A	17.24.106	Exploration Drill Hole Plugging
26.4.105	17.24.107	Reclamation Requirements--Exploration
26.4.105A	17.24.108	Exploration Reclamation Deferred
26.4.106	17.24.115	Reclamation Plans
26.4.107	17.24.116	Operating Permit: Application Requirements
26.4.107A	17.24.117	Permit Conditions
26.4.107B	17.24.118	Annual Report
26.4.107C	17.24.119	Permit Amendments
26.4.107D	17.24.120	Permit Revisions
26.4.107E	17.24.121	Permit Reviews
26.4.107F	17.24.122	Permit Assignment
26.4.107G	17.24.123	Permit Consolidation
26.4.107K	17.24.128	Inspections: Frequency, Method, and Reporting
26.4.107L	17.24.129	Inspections: Response to Citizen Complaints
26.4.107M	17.24.132	Enforcement: Processing of Violations and Penalties
26.4.107N	17.24.133	Enforcement: Abatement of Violations and Permit Suspension
26.4.107O	17.24.134	Enforcement: Assessment and Waiver of Penalties
26.4.107P	17.24.136	Notices and Orders: Issuance and Service
26.4.107Q	17.24.137	Notices and Orders: Effect

26.4.107T	17.24.140	Bonding: Determination of Bond Amount
26.4.107U	17.24.141	Bonding: Adjustment of Amount of Bond
26.4.107V	17.24.142	Bonding: Replacement of Bond
26.4.107W	17.24.143	Bonding: Form of Bond
26.4.107X	17.24.144	Bonding: Surety Bonds
26.4.107Y	17.24.145	Bonding: Certificates of Deposit
26.4.107Z	17.24.146	Bonding: Letters of Credit
26.4.108	17.24.150	Abandonment or Completion of Operation
26.4.109	17.24.151	Abandoned Pits: Objectionable Effluents
26.4.110	17.24.152	Disclosure of Information
26.4.111	17.24.153	General Compliance
26.4.141	17.24.157	Blasting Operations: Complaint Procedure
26.4.142	17.24.158	Blasting Operations: Participation and Cooperation of Persons Using Explosives
26.4.143	17.24.159	Blasting Operations: Orders of the Department
26.4.160	17.24.165	Mills and Reprocessing Operations: Definitions
26.4.161	17.24.166	Mills: Applicability of Rules to Mills
26.4.162	17.24.167	Mills: Operating Permit Application
26.4.163	17.24.168	Mills: Operating Plans
26.4.164	17.24.169	Mills: Reclamation Plans
26.4.167	17.24.170	Mills: Cessation or Completion of Operation
26.4.168	17.24.171	Reprocessing of Waste Rock and Tailings
26.4.180	17.24.180	Definitions
26.4.181	17.24.181	Small Miner Placer and Dredge Bonding (Interpretive Rule) Operational
26.4.182	17.24.182	Recommendations for Small Miners
26.4.183	17.24.183	Comparable Utility and Stability of Reclaimed Areas--Standards for Bond Release for Small Miners
26.4.184	17.24.184	Small Miner Bond Forfeiture and SMES Revocation
26.4.190	17.24.185	Small Miner Cyanide Applications
26.4.191	17.24.186	Small Miner Cyanide Baseline Information
26.4.192	17.24.187	Small Miner Cyanide Operating Plans
26.4.193	17.24.188	Small Miner Cyanide Reclamation Plans
26.4.194	17.24.189	Small Miner Cyanide Processing Facilities Performance Standards and Bonding
26.4.201	17.24.201	Applicability
26.4.202	17.24.202	Definitions
26.4.203A	17.24.203	Bond or Other Security
26.4.203B	17.24.204	Site Information
26.4.203C	17.24.205	Mining and Reclamation Plan
26.4.203D	17.24.206	Landowner's Consent to Reclamation
26.4.203E	17.24.207	Additional Requirements for Bentonite Mines
26.4.204	17.24.212	Approval or Disapproval of an Application for a Contract

26.4.205	17.24.213	Amendment and Revision of Contracts
26.4.206	17.24.214	Annual Progress Report
26.4.207	17.24.215	Penalties
26.4.301	17.24.301	Definitions
26.4.302	17.24.302	Format and Supplemental Information
26.4.303	17.24.303	Legal, Financial, Compliance and Related Information
26.4.304	17.24.304	Baseline Information: Environmental Resources
26.4.305	17.24.305	Maps
26.4.306	17.24.306	Baseline Information: Prime Farmland Investigation
26.4.308	17.24.310	Operations Plan
26.4.310	17.24.311	Blasting Plan
26.4.311	17.24.312	Air Pollution Control Plan
26.4.312	17.24.313	Fish and Wildlife Plan
26.4.313	17.24.314	Reclamation Plan
26.4.314	17.24.315	Plan for Protection of the Hydrologic Balance
26.4.315	17.24.316	Plan for Ponds and Embankments
26.4.316	17.24.317	Strip or Underground Mining Near Underground Mining
26.4.317	17.24.318	Diversions
26.4.318	17.24.319	Protection of Public Parks and Historic Places
26.4.319	17.24.320	Relocation or Use of Public Roads
26.4.320	17.24.321	Plans for Disposal of Excess Spoil
26.4.321	17.24.322	Transportation Facilities Plan
26.4.322	17.24.323	Coal Conservation Plan
26.4.323	17.24.324	Grazing Plan
26.4.324	17.24.325	Prime Farmlands: Special Application Requirements
26.4.325	17.24.330	Coal Mining Operations on Areas or Adjacent to Areas Including Alluvial Valley Floors: Special Application Requirements
26.4.326	17.24.331	Auger Mining: Special Application Requirements
26.4.327	17.24.332	Coal Processing Plants and Support Facilities Not Located Within the Mine Permit Area: Special Application Requirements
26.4.401	17.24.401	Filing of Application and Notice
26.4.402	17.24.402	Submission of Comments and Written Objections
26.4.403	17.24.403	Informal Conference
26.4.404	17.24.404	Review of Application
26.4.405	17.24.405	Findings and Notice of Decision
26.4.405A	17.24.406	Improvidently Issued Permits: General Procedures
26.4.405B	17.24.407	Improvidently Issued Permits: Revocation
26.4.406	17.24.412	Extension of Time to Commence Mining
26.4.407	17.24.413	Conditions of Permit
26.4.408	17.24.414	Review of Existing Permits
26.4.409	17.24.415	Permit Revisions

26.4.410	17.24.416	Permit Renewal
26.4.411	17.24.417	Permit Amendment
26.4.412	17.24.418	Transfer of Permits
26.4.413	17.24.425	Administrative Review
26.4.414	17.24.426	Records Retention
26.4.415	17.24.427	Change of Contractor
26.4.501	17.24.501	General Backfilling and Grading Requirements
26.4.501A	17.24.502	Final Grading Requirements
26.4.502	17.24.503	Cut-and-Fill Terraces
26.4.503	17.24.504	Small Depressions
26.4.504	17.24.505	Permanent Impoundments
26.4.505	17.24.506	Burial and Treatment of Waste Materials
26.4.507	17.24.507	Storage and Final Disposal of Garbage and Other Debris
26.4.510	17.24.510	Disposal of Offsite-Generated Waste and Fly Ash
26.4.514	17.24.511	Contouring
26.4.515	17.24.512	Highwall Reduction
26.4.516	17.24.513	Adjacent Strip and Underground Mining Operations
26.4.517	17.24.514	Slides and Other Damage
26.4.518	17.24.515	Buffer Zones
26.4.519	17.24.516	Monitoring for Settlement
26.4.519A	17.24.517	Thick Overburden and Excess Spoil
26.4.520	17.24.518	Disposal of Excess Spoil
26.4.521	17.24.526	Temporary Cessation of Operations
26.4.522	17.24.527	Permanent Cessation of Operations
26.4.523	17.24.528	Coal Fires
26.4.524	17.24.529	Signs and Markers
26.4.601	17.24.601	General Requirements For Road and Railroad Loop Construction
26.4.602	17.24.602	Location of Roads and Railroad Loops
26.4.603	17.24.603	Embankments
26.4.604	17.24.604	Soil Removal
26.4.605	17.24.605	Hydrologic Impact of Roads and Railroad Loops
26.4.606	17.24.606	Surfacing of Roads
26.4.607	17.24.607	Maintenance of Roads
26.4.608	17.24.608	Impacts of Other Transport Facilities
26.4.609	17.24.609	Other Support Facilities
26.4.610	17.24.610	Permanent Roads
26.4.621	17.24.621	General Requirements for Use of Explosives
26.4.622	17.24.622	Preblasting Survey
26.4.623	17.24.623	Blasting Schedule
26.4.624	17.24.624	Surface Blasting Requirements
26.4.625	17.24.625	Seismograph Measurements
26.4.626	17.24.626	Records of Blasting Operations
26.4.631	17.24.631	General Hydrology Requirements
26.4.632	17.24.632	Permanent Sealing of Drilled Holes
26.4.633	17.24.633	Water Quality Performance Standards
26.4.634	17.24.634	Reclamation of Drainages
26.4.635	17.24.640	General Requirements for Temporary and

		Permanent Diversion of Overland Flow, Through Flow, Shallow Ground Water Flow, and Ephemeral, Intermittent and Perennial Streams
26.4.636	17.24.641	Special Requirements for Temporary Diversions
26.4.637	17.24.642	Special Requirements for Permanent Diversions
26.4.638	17.24.643	Sediment Control Measures
26.4.639	17.24.644	Sedimentation Ponds and Other Treatment Facilities
26.4.640	17.24.645	Discharge Structures
26.4.641	17.24.646	Acid- and Toxic-Forming Spoils
26.4.642	17.24.647	Permanent and Temporary Impoundments
26.4.643	17.24.650	Ground Water Protection
26.4.644	17.24.651	Protection of Ground Water Recharge
26.4.645	17.24.652	Ground Water Monitoring
26.4.646	17.24.653	Surface Water Monitoring
26.4.647	17.24.654	Transfer of Wells
26.4.648	17.24.655	Water Rights and Replacement
26.4.649	17.24.656	Discharge of Water into Underground Mines
26.4.650	17.24.657	Postmining Rehabilitation of Sedimentation Ponds, Diversions, Impoundments, and Treatment Facilities
26.4.651	17.24.658	Stream Channel Disturbances and Buffer Zones
26.4.652	17.24.659	Wells and Underground Openings: Safety
26.4.701	17.24.701	Removal of Soil
26.4.702	17.24.702	Redistribution and Stockpiling of Soil
26.4.703	17.24.703	Substitution of Other Materials for Soil
26.4.711	17.24.704	Establishment of Vegetation
26.4.713	17.24.705	Timing of Seeding and Planting
26.4.714	17.24.706	Cover Crops and Mulching
26.4.716	17.24.707	Method of Revegetation
26.4.717	17.24.708	Planting of Trees
26.4.718	17.24.709	Soil Amendments and Other Management Techniques
26.4.719	17.24.710	Livestock Grazing
26.4.720	17.24.715	Annual Inspections for Revegetated Areas
26.4.721	17.24.716	Eradication of Rills and Gullies
26.4.723	17.24.717	Monitoring
26.4.724	17.24.719	Use of Revegetation Comparison Standards
26.4.725	17.24.720	Periods of Responsibility
26.4.726	17.24.721	Vegetation Production, Cover, Diversity, Density and Utility Requirements
26.4.728	17.24.722	Composition of Vegetation
26.4.730	17.24.730	Season of Use
26.4.731	17.24.731	Analysis for Toxicity
26.4.732	17.24.732	Vegetation Requirements for Previously Cropped Areas
26.4.733	17.24.733	Measurement Standards for Trees, Shrubs, and Half-Shrubs

26.4.751	17.24.740	Protection and Enhancement of Fish, Wildlife, and Related Environmental Values
26.4.761	17.24.741	Air Resources Protection
26.4.762	17.24.742	Postmining Land Use
26.4.763	17.24.743	Coal Conservation
26.4.801	17.24.801	Alluvial Valley Floors: Preservation of Essential Hydrologic Functions and Protection of Farming
26.4.802	17.24.802	Alluvial Valley Floor: Protection of Farming and Prevention of Material Damage
26.4.804	17.24.803	Alluvial Valley Floors: Monitoring
26.4.805	17.24.804	Alluvial Valley Floors: Significance Determination
26.4.806	17.24.805	Alluvial Valley Floors: Material Damage Determination
26.4.811	17.24.810	Prime Farmland: Soil Handling
26.4.815	17.24.811	Prime Farmlands: Revegetation
26.4.821	17.24.816	Alternate Reclamation: Submission of Plan
26.4.823	17.24.817	Alternate Reclamation: Approval of Plan and Review of Operation
26.4.824	17.24.818	Alternate Reclamation: Alternate Postmining Land Uses
26.4.825	17.24.819	Alternate Reclamation: Alternate Revegetation
26.4.831	17.24.825	Auger Mining: General Requirements
26.4.832	17.24.826	Auger Mining: Specific Performance Standards
26.4.833	17.24.827	Auger Mining: Requirements for Permit
26.4.834	17.24.834	Remining: Applicability
26.4.835	17.24.835	Remining: Application and Operating Requirements
26.4.836	17.24.836	Remining: Eligibility for Abandoned Mine Land Status
26.4.837	17.24.837	Remining: Bonding
26.4.901	17.24.901	General Application and Review Requirements
26.4.902	17.24.902	Application Requirements for In-Situ Coal Processing Operations
26.4.903	17.24.903	General Performance Standards
26.4.904	17.24.904	In Situ Coal Processing Operation Performance Standards
26.4.907	17.24.905	In Situ Uranium Processing Operation Performance Standards
26.4.911	17.24.906	Subsidence Control
26.4.912	17.24.907	Buffer Zones
26.4.920	17.24.915	Placement and Disposal of Underground Development Waste: Special Application Requirements
26.4.924	17.24.916	Disposal of Underground Development Waste: General Requirements
26.4.925	17.24.917	Disposal of Underground Development Waste: Valley Fill
26.4.926	17.24.918	Disposal of Underground Development

26.4.927	17.24.919	Waste: Head-of-Hollow Fill
26.4.930	17.24.920	Disposal of Underground Development
		Waste: Durable Rock Fills
		Placement and Disposal of Coal
		Processing Waste: Special Application
		Requirements
26.4.932	17.24.921	Disposal of Coal Processing Waste
26.4.1001	17.24.1001	Permit Requirement
26.4.1001A	17.24.1002	Notice of Intent to Prospect
26.4.1002	17.24.1005	Information and Monthly Reports
26.4.1003	17.24.1006	Renewal of Permits
26.4.1004	17.24.1007	Environmental Monitoring
26.4.1005	17.24.1008	Drill Holes
26.4.1006	17.24.1009	Roads and Other Transportation
		Facilities
26.4.1007	17.24.1010	Grading, Soil Salvage, Storage and
		Redistribution
26.4.1008	17.24.1011	Revegetation
26.4.1009	17.24.1012	Diversions
26.4.1010	17.24.1013	Removal of Equipment
26.4.1011	17.24.1014	Hydrologic Balance
26.4.1012	17.24.1015	Toxic- or Acid-Forming Materials
26.4.1013	17.24.1016	Drilling
26.4.1014	17.24.1017	Test Pits: Application Requirements,
		Review Procedures, Bonding, and
		Additional Performance Standards
26.4.1016	17.24.1020	Bond Requirements for Drilling
		Operations
26.4.1017	17.24.1021	Bond Release Procedures for Drilling
		Operations
26.4.1101	17.24.1101	Bonding: Definitions
26.4.1102	17.24.1102	Bonding: Determination of Bond Amount
26.4.1103	17.24.1103	Bonding: Period of Responsibility for
		Alternate Revegetation
26.4.1104	17.24.1104	Bonding: Adjustment of Amount of Bond
26.4.1105	17.24.1105	Bonding: Form of Bond
26.4.1106	17.24.1106	Bonding: Terms and Conditions of Bond
26.4.1107	17.24.1110	Bonding: Incapacity of Surety
26.4.1108	17.24.1111	Bonding: Certificates of Deposit
26.4.1109	17.24.1112	Bonding: Letters of Credit
26.4.1110	17.24.1113	Bonding: Replacement of Bond
26.4.1111	17.24.1114	Bonding: Bond Release Application
		Contents
26.4.1112	17.24.1115	Bonding: Advertisement of Release
		Applications and Receipt of Objections
26.4.1113	17.24.1116	Bonding: Inspection of Site and Public
		Hearing or Informal Conference
26.4.1114	17.24.1117	Bonding: Departmental Review and
		Decision on Bond Release Application
26.4.1115	17.24.1118	Bonding: Hearing on Bond Release
		Decision
26.4.1116	17.24.1119	Bonding: Criteria and Schedule for
		Release of Bond
26.4.1116A	17.24.1125	Reassertion of Jurisdiction
26.4.1117	17.24.1126	Bonding: Procedure for Forfeiture
26.4.1118	17.24.1127	Bonding: Effect of Forfeiture




26.4.1119	17.24.1128	Bonding: Criteria for Forfeiture
26.4.1120	17.24.1129	Bonding: Determination of Forfeiture Amount
26.4.1121	17.24.1135	Bonding: State Agencies and Political Subdivisions
26.4.1122	17.24.1136	Notice of Action on Collateral Bond
26.4.1125	17.24.1137	Liability Insurance
26.4.1129	17.24.1138	Annual Report
26.4.1131	17.24.1140	Protection of Parks and Historic Sites
26.4.1132	17.24.1141	Areas Upon Which Coal Mining is Prohibited: Definitions and Standard for Measurement of Distances
26.4.1133	17.24.1142	Areas Upon Which Coal Mining is Prohibited: Procedures for Determination
26.4.1134	17.24.1143	Areas Upon Which Coal Mining is Prohibited: Permission to Mine Near Public Road
26.4.1135	17.24.1144	Areas Upon Which Coal Mining is Prohibited: Relocation or Closure of Public Road
26.4.1136	17.24.1145	Areas Upon Which Coal Mining is Prohibited: Waiver to Mine Near Dwelling
26.4.1137	17.24.1146	Areas Upon Which Coal Mining is Prohibited: Consultation with Other Agencies
26.4.1138	17.24.1147	Areas Upon Which Coal Mining is Prohibited: Designation Process Not Affected
26.4.1141	17.24.1151	Designation of Lands Unsuitable: Definition
26.4.1142	17.24.1152	Designation of Lands Unsuitable: Exemptions
26.4.1143	17.24.1153	Designation of Lands Unsuitable: Prospecting on Designated Lands
26.4.1144	17.24.1154	Designation of Lands Unsuitable: Petition for Designation or Termination of Designation
26.4.1145	17.24.1155	Designation of Lands Unsuitable: Notice and Action on Petition
26.4.1146	17.24.1156	Designation of Lands Unsuitable: Hearings on Petition
26.4.1147	17.24.1157	Designation of Lands Unsuitable: Decision on Petition
26.4.1148	17.24.1158	Designation of Lands Unsuitable: Data Base and Inventory System
26.4.1201	17.24.1201	Frequency of Inspections
26.4.1202	17.24.1202	Method of Inspections
26.4.1203	17.24.1203	Availability of Inspection Reports
26.4.1204	17.24.1204	Inspections in Response to Citizen Complaints
26.4.1205	17.24.1205	Inspections in Response to Notification by the Federal Coal Regulatory Authority
26.4.1206	17.24.1210	Notices, Orders of Abatement and

		Cessation Orders: Issuance and Service
26.4.1207	17.24.1211	Notices of Noncompliance and Cessation Orders: Informal Hearings
26.4.1208	17.24.1212	Notices of Noncompliance and Cessation Orders: Effect of Inability to Comply
26.4.1209	17.24.1213	Notices of Noncompliance and Cessation Orders: Continuation of Health and Safety Related Activities
26.4.1210	17.24.1214	Cessation Orders: Additional Affirmative Obligations
26.4.1211	17.24.1215	Procedure for Assessment and Waiver of Civil Penalties
26.4.1212	17.24.1216	Point System for Civil Penalties and Waivers
26.4.1213	17.24.1217	Suspension and Revocation of Permits: Determination of Pattern of Violations
26.4.1214	17.24.1218	Suspension and Revocation of Permits: Public Notice of Show Cause Order
26.4.1215	17.24.1219	Suspension and Revocation of Permits: Service of Process
26.4.1216	17.24.1220	Suspension and Revocation of Permits: Effect of Suspension or Revocation
26.4.1217	17.24.1225	Individual Civil Penalties: When Assessed
26.4.1218	17.24.1226	Individual Civil Penalties: Amount
26.4.1219	17.24.1227	Individual Civil Penalties: Procedure for Assessment
26.4.1220	17.24.1228	Individual Civil Penalties: Payment
26.4.1221	17.24.1235	Small Operator Assistance Program: Program Services
26.4.1222	17.24.1236	Small Operator Assistance Program: Eligibility for Assistance
26.4.1223	17.24.1237	Small Operator Assistance Program: Filing for Assistance
26.4.1224	17.24.1238	Small Operator Assistance Program: Application Approval and Notice
26.4.1225	17.24.1239	Small Operator Assistance Program: Data Requirements
26.4.1226	17.24.1240	Small Operator Assistance Program: Qualification of Laboratories
26.4.1227	17.24.1241	Small Operator Assistance Program: Assistance Funding
26.4.1228	17.24.1242	Small Operator Assistance Program: Applicant Liability
26.4.1246	17.24.1251	Restrictions on Employee Financial Interests: Responsibilities of the Commissioner
26.4.1247	17.24.1252	Restriction on Employee Financial Interests: Responsibilities of Employees
26.4.1248	17.24.1253	Restrictions on Employee Financial Interests: Definitions
26.4.1249	17.24.1254	Restrictions on Employee Financial Interests: Filing of Statement
26.4.1250	17.24.1255	Restrictions on Employee Financial

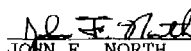
26.4.1251	17.24.1256	Interests: Contents of Statement Restrictions on Employee Financial Interests: Effect of Failure to File Statement
26.4.1252	17.24.1257	Restrictions on Employee Financial Interests: Gifts and Gratuities
26.4.1253	17.24.1258	Restrictions on Employee Financial Interests: Resolution of Prohibited Interests of Employees
26.4.1254	17.24.1259	Restrictions on Employee Financial Interests: Resolution of Prohibited Financial Interests of the Commissioner
26.4.1255	17.24.1260	Restrictions on Financial Interests: Multiple Interest Advisory Boards
26.4.1260	17.24.1265	Requirements for the Conduct of Blasting Operations
26.4.1261	17.24.1266	Certification of Blasters
26.4.1262	17.24.1267	Blaster Training Courses
26.4.1263	17.24.1268	Suspension or Revocation of Blaster Certification
26.4.1301	17.24.1301	Modification of Existing Permits
26.4.1301A	17.24.1302	Modification of Existing Permits: Issuance of Revisions and Permits
26.4.1302	17.24.1303	Nonconforming Structure
26.4.1303	17.24.1304	Rules Applicable to Coal Operations Only
26.4.1304	17.24.1305	Applicability of Federal Law
26.4.1307	17.24.1308	Litigation Expenses: When Department May Award
26.4.1308	17.24.1309	Litigation Expenses: Filing of Petition
26.4.1309	17.24.1310	Litigation Expenses: Content of Petition and Answer
26.4.1801	17.24.1801	Definitions
26.4.1802	17.24.1802	Applicability Determination
26.4.1803	17.24.1803	Application for Permit: General Requirements and Procedures
26.4.1804	17.24.1804	Contents of Application: Map
26.4.1805	17.24.1805	Contents of Application: Compliance Information
26.4.1806	17.24.1806	Contents of Application: Mineral and Overburden Information
26.4.1807	17.24.1807	Contents of Application: Studies and Inventories
26.4.1808	17.24.1808	Contents of Application: Blasting Information
26.4.1809	17.24.1809	Contents of Application: Mining and Reclamation Plans
26.4.1810	17.24.1810	Contents of Application: Mine-Site Location Information
26.4.1815	17.24.1815	Performance Standards
26.4.1816	17.24.1816	Reclamation Plan: Addition and Specific Requirements
26.4.1817	17.24.1817	Water Quality: Other Laws, Non- Degradation

26.4.1818	17.24.1818	Water Quality: Impoundment
26.4.1819	17.24.1819	Water Quality: Treatment
26.4.1820	17.24.1820	Water Quality: Drainage
26.4.1824	17.24.1824	Topsoiling
26.4.1827	17.24.1825	Planting and Revegetation
26.4.1830	17.24.1826	Forms

3. The transfer of rules 26.4.101A through 26.4.1830 is necessary because the Department of State Lands was eliminated by Chapter 418, Laws of Montana 1995 and the reclamation functions exercised by that agency were assumed by the Department of Environmental Quality.

  
CURT CHISHOLM, Deputy Director  
Department of Environmental Quality

Reviewed by:

  
JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State October 11, 1996.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the transfer of ) NOTICE OF TRANSFER  
rules 36.7.901 through 36.7.5502, )  
pertaining to major facility )  
siting, and 36.8.101 through )  
36.8.134, pertaining to the )  
renewable energy grant and loan )  
program, with the exception of any )  
repealed rules. )

(Energy)

To: All Interested Persons

1. Pursuant to Chapter 418, Laws of Montana 1995, effective July 1, 1995, the functions exercised by the energy division of the Department of Natural Resources and Conservation were transferred to the Department of Environmental Quality. In order to implement that legislation, ARM 36.7.901 through 36.7.5502, inclusive with the exception of any repealed rules, are transferred to the Department of Environmental Quality, ARM 17.20.101 through 17.20.1902, and ARM 36.8.101 through 36.8.134, inclusive with the exception of any repealed rules, are transferred to the Department of Environmental Quality, ARM 17.84.101 through 17.84.134. (Refer to 2-15-133, MCA).

2. The Department of Environmental Quality has determined that the transferred rules will be numbered as follows:

OLD	NEW	
Sub-Chapter 9	1	- Transmission Line Exemption
36.7.901	17.20.101	General Provisions
36.7.902	17.20.102	Eligible Exemptions for Upgrades
36.7.903	17.20.103	Eligible Exemptions for Relocations
36.7.904	17.20.104	Eligible Exemptions for Reconstruction
36.7.905	17.20.105	Notice of Intent to Construct an Exempt Facility
36.7.906	17.20.106	Board Action
36.7.907	17.20.107	Construction Monitoring by Department
36.7.908	17.20.108	Local, State, and Federal Permits

Sub-Chapter 12	2	- Geothermal Investigation Reports
36.7.1201	17.20.201	Definitions
36.7.1202	17.20.202	Long-Range Plans
36.7.1203	17.20.203	Initial Field Reports
36.7.1204	17.20.204	Periodic Field Reports
36.7.1205	17.20.205	Final Field Reports
36.7.1206	17.20.206	Geological Reports
36.7.1207	17.20.207	Confidentiality

Sub-Chapter 15	3	- General Provisions
36.7.1501	17.20.301	Definitions
36.7.1502	17.20.302	Public Record--Confidentiality
36.7.1503	17.20.303	Format

Sub-Chapter 16 5 - Long-Range Plans

36.7.1601	17.20.501	General Requirements
36.7.1602	17.20.502	Identification of Facilities and Expected Application Dates
36.7.1603	17.20.503	Service Area Utilities, Forecasted Energy Demand and Supply
36.7.1604	17.20.504	Service Area Utilities, Pooling, Interconnection, Exchange, Purchase and Sale Agreements
36.7.1605	17.20.505	Service Area Utilities, Negotiations Over Resource Acquisition or Sale, Pooling, Interconnection, Transmission, Exchange, Purchase or Sale of Energy
36.7.1606	17.20.506	Competitive Utilities and Non-utilities, Projected Demand
Sub-Chapter <del>18</del> 6 - Waivers		
36.7.1801	17.20.601	Waiver of Provisions of Certification Proceedings
36.7.1802	17.20.602	Notification of Request for Waiver
36.7.1803	17.20.603	Contents of Notice of Request for Waiver Pursuant to 75-20-304(1), MCA
36.7.1804	17.20.604	Contents of Notice of Request for Waiver Pursuant to 75-20-304(2), MCA
36.7.1805	17.20.605	Contents of Notice of Request for Waiver of Requirements Relating to Consideration of Alternative Sites Pursuant to 75-20-304(3), MCA
36.7.1806	17.20.606	Board Action on Request for Waiver
36.7.1807	17.20.607	Content of an Application Following Receipt of Waiver Pursuant to 75-20-304(3), MCA
Sub-Chapter <del>19</del> 7 - Notice of Intent to File an Application		
36.7.1901	17.20.701	Purpose of Notice
36.7.1902	17.20.702	Content of Notice of Intent
36.7.1903	17.20.703	Changes or Additions to Notice
36.7.1904	17.20.704	Filing Fee Reduction
Sub-Chapter <del>21</del> 8 - General Requirements for Applications		
36.7.2101	17.20.801	Requirements of the Department of Health and Board of Health
		<u>Environmental Quality and the Board of Environmental Review</u>
36.7.2102	17.20.802	Application, Number of Copies
36.7.2103	17.20.803	Application, Format
36.7.2104	17.20.804	Documentation of Information Sources and Omission of Certain Information Requirements
36.7.2105	17.20.805	Supplemental Material
36.7.2106	17.20.806	Changes in an Application
36.7.2107	17.20.807	Amendment to Application--New Application
36.7.2108	17.20.810	Related Projects--Single Facility
36.7.2109	17.20.811	All Facilities, Estimated Cost of Facility

36.7.2110	17.20.812	Energy Generation and Conversion Facilities, Estimated Cost of Energy or Product
36.7.2113	17.20.815	Linear Facilities: Estimated Annual Costs
36.7.2114	17.20.816	All Facilities, Service Area Utilities, Copies of Contracts for Purchase of Materials or Sale of Energy from the Proposed Facility
36.7.2115	17.20.817	All Facilities, Pricing Policy
36.7.2116	17.20.818	All Facilities, Evaluation of Economic Costs and Benefits

Sub-Chapter 22 2 - Application Requirements for Service Area Utilities Explanation of Need for Generation, Conversion and Linear Facilities

36.7.2201	17.20.901	Generation and Conversion Facilities, Explanation of Need
36.7.2202	17.20.902	Generation and Conversion Facilities, Resource Forecast
36.7.2203	17.20.903	Generation and Conversion Facilities, Pooling, Interconnection, Exchange, Purchase and Sale Agreements
36.7.2204	17.20.904	Generation and Conversion Facilities, Data Requirements for Energy and Peak Demands
36.7.2205	17.20.905	Generation and Conversion Facilities, Assessment of the Role of the Proposed Facility in Meeting Energy Needs
36.7.2206	17.20.906	Generation and Conversion Facilities, Uncertainty Analysis
36.7.2207	17.20.907	All Facilities, Reliability Criteria
36.7.2208	17.20.908	Generation and Conversion Facilities, Interruptible and Curtailable Load Data
36.7.2209	17.20.909	Generation and Conversion Facilities, Destination and Distribution Patterns of Energy to be Produced
36.7.2210	17.20.910	Generation and Conversion Facilities, Energy Conservation Programs
36.7.2211	17.20.911	Generation and Conversion Facilities, Categories for Reporting Customer End-Use Data
36.7.2212	17.20.920	Electric Transmission Lines, Explanation of Need
36.7.2213	17.20.921	Electric Transmission Lines, Transient Stability Considerations
36.7.2214	17.20.922	Electric Transmission Lines, Power Transfer Capacity, Voltage Drop
36.7.2215	17.20.923	Electric Transmission Lines, Reliability of Service
36.7.2216	17.20.924	Electric Transmission Lines, Economy Considerations
36.7.2217	17.20.928	Other Linear Facilities, Explanation of Need
36.7.2218	17.20.929	All Facilities, Pooling,

Interconnection, Exchange, Purchase,  
and Sale Agreements

Sub-Chapter ~~23~~ 12 - Application Requirements for Competitive  
Utilities Explanation of Need for Generation and Conversion  
Facilities

36.7.2301	17.20.1201	Market Analysis
36.7.2302	17.20.1202	Marketability Forecasts
36.7.2303	17.20.1203	Uncertainty Analysis

Sub-Chapter ~~24~~ 13 - Application Requirements--Evaluation of  
Alternatives

36.7.2401	17.20.1301	Service Area Utilities, Generation and Conversion Facilities, Evaluation of Alternatives
36.7.2402	17.20.1302	Service Area Utilities, Generation and Conversion Facilities, Criteria for Evaluation of Alternatives to the Proposed Facility
36.7.2403	17.20.1303	Service Area Utilities, Generation and Conversion Facilities, Evaluation of Alternative Load-Resource Balances
36.7.2404	17.20.1309	Competitive Utilities and Nonutilities, Generation and Conversion Facilities, Evaluation of Alternatives
36.7.2405	17.20.1310	Competitive Utilities and Nonutilities, Generation and Conversion Facilities, Criteria for Evaluation of Alternatives to the Proposed Facility
36.7.2410	17.20.1304	Service Area Utilities, Electric Transmission Lines, Evaluation of Alternatives
36.7.2411	17.20.1305	Service Area Utilities, Electric Transmission Lines, Criteria For Evaluation of Alternatives
36.7.2417	17.20.1311	Pipeline Facilities, Evaluation of Alternatives

Sub-Chapter ~~25~~ 14 - Application Requirements: Alternative  
Siting Study and Baseline Data Requirements

36.7.2501	17.20.1401	Energy Generation and Conversion Facilities, General Requirements of the Alternative Siting Study
36.7.2502	17.20.1402	Energy Generation and Conversion Facilities, Preferred Site Criteria
36.7.2503	17.20.1403	Energy Generation and Conversion Facilities, Exclusion Areas
36.7.2504	17.20.1404	Energy Generation and Conversion Facilities, Sensitive Areas
36.7.2505	17.20.1405	Energy Generation and Conversion Facilities, Areas of Concern
36.7.2506	17.20.1408	Energy Generation and Conversion Facilities, Delineation of the Study Area



36.7.2507	17.20.1409	Energy Generation and Conversion Facilities, Analysis of Delivered Cost of Energy in the Study Area
36.7.2508	17.20.1410	Energy Generation and Conversion Facilities, Identification of Economically Feasible Siting Areas
36.7.2509	17.20.1411	Energy Generation and Conversion Facilities, Reconnaissance
36.7.2510	17.20.1412	Energy Generation and Conversion Facilities, Selection of Candidate Siting Areas
36.7.2511	17.20.1415	Energy Generation and Conversion Facilities, Inventory, General Requirements
36.7.2512	17.20.1416	Energy Generation and Conversion Facilities, Inventory, Environmental Information
36.7.2513	17.20.1417	Energy Generation and Conversion Facilities, Selection of Alternative Sites
36.7.2514	17.20.1418	Energy Generation and Conversion Facilities, Baseline Study, General Requirements
36.7.2515	17.20.1419	Energy Generation and Conversion Facilities, Baseline Data Requirements and Impact Assessment
36.7.2516	17.20.1420	Energy Generation and Conversion Facilities, Comparison of Alternative Sites
36.7.2517	17.20.1421	Energy Generation and Conversion Facilities, Selection of the Preferred Site
36.7.2530	17.20.1426	Linear Facilities, General Requirements of the Alternative Siting Study
36.7.2531	17.20.1427	Linear Facilities, Preferred Route Criteria
36.7.2532	17.20.1428	Linear Facilities, Exclusion Areas
36.7.2533	17.20.1429	Linear Facilities, Electric Transmission Lines, Sensitive Areas
36.7.2534	17.20.1430	Linear Facilities, Electric Transmission Lines, Areas of Concern
36.7.2535	17.20.1431	Linear Facilities, Pipelines, Sensitive Areas and Areas of Concern
36.7.2536	17.20.1434	Linear Facilities, Delineation of the Study Area
36.7.2537	17.20.1435	Linear Facilities, Reconnaissance
36.7.2538	17.20.1436	Linear Facilities, Selection of Study Corridors
36.7.2539	17.20.1437	Linear Facilities, Inventory, General Requirements
36.7.2540	17.20.1438	Linear Facilities, Inventory, Environmental Information
36.7.2541	17.20.1439	Linear Facilities, Selection of Alternative Routes
36.7.2543	17.20.1440	Linear Facilities, Baseline Study,

		General Requirements
36.7.2544	17.20.1444	Linear Facilities, Electric Transmission Lines, Baseline Data Requirements and Impact Assessment
36.7.2545	17.20.1445	Linear Facilities, Pipelines, Baseline Data Requirements and Impact Assessment
36.7.2546	17.20.1446	Linear Facilities, Comparison of Alternative Routes
36.7.2547	17.20.1447	Linear Facilities, Selection of the Preferred Route

Sub-Chapter ~~30~~ 15 - Application Requirements--Facility Description and Design

36.7.3001	17.20.1501	Energy Generation and Conversion Facilities, General Requirements of the Facility Description and Design
36.7.3002	17.20.1502	Energy Generation and Conversion Facilities, Design Characteristics
36.7.3003	17.20.1503	Energy Generation and Conversion Facilities, Construction Description
36.7.3004	17.20.1504	Energy Generation and Conversion Facilities, Operation and Maintenance Analysis
36.7.3005	17.20.1505	Energy Generation and Conversion Facilities, Decommissioning Methods
36.7.3009	17.20.1509	Linear Facilities, Design Characteristics
36.7.3010	17.20.1510	Linear Facilities, Electric Transmission Facilities, Construction Description
36.7.3011	17.20.1511	Linear Facilities, Pipeline Facilities, Construction Description
36.7.3012	17.20.1512	Linear Facilities, Operation and Maintenance Description

Sub-Chapter ~~35~~ 16 - Decision Standards

36.7.3502	17.20.1601	Energy Generation and Conversion Facilities, Service Area Utilities, Need Standard
36.7.3503	17.20.1602	Energy Generation and Conversion Facilities, Competitive Utilities, Need Standard
36.7.3504	17.20.1603	Energy Generation and Conversion Facilities, Minimum Impact Standard
36.7.3505	17.20.1604	All Facilities, Utilities, Public Interest, Convenience and Necessity Standard
36.7.3506	17.20.1606	Electric Transmission Lines, Service Area Utilities, Need Standard
36.7.3507	17.20.1607	Linear Facilities, Minimum Impact Standard
36.7.3508	17.20.1608	Linear Facilities, Minimum Impact Standard for Centerlines

Sub-Chapter ~~40~~ 17 - Centerlines for Linear Facilities and

Associated Facilities

36.7.4001	17.20.1701	Conditional Approval of Routes or Corridors
36.7.4002	17.20.1702	Centerline Evaluation in an Approved Route or Corridor--General Requirements
36.7.4003	17.20.1703	Electric Transmission Lines, Centerline Evaluation in an Approved Route, Information Requirements
36.7.4004	17.20.1704	Pipelines, Centerline Evaluation in an Approved Route, Information Requirements
36.7.4005	17.20.1705	Linear Associated Facilities, Centerline Evaluation in An Approved Corridor, Information Requirements
36.7.4006	17.20.1706	Final Centerline Approval

Sub-Chapter 50 18 - Amendments to Certificates

36.7.5001	17.20.1801	Notification of Proposed Change or Addition to a Facility or Associated Facility for Which a Certificate has been Granted
36.7.5002	17.20.1802	Contents of Notice to Amend A Certificate
36.7.5003	17.20.1803	Certificate Amendment Pursuant to Change in Department of Environmental Quality or Board of Environmental Review Permit
36.7.5004	17.20.1804	Decisions on Certificate Amendments

Sub-Chapter 55 19 - Facility Monitoring

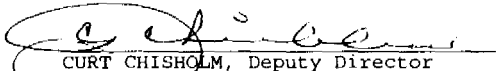
36.7.5501	17.20.1901	Monitoring Required by Certificate
36.7.5502	17.20.1902	Electric Transmission Lines, Monitoring Requirements

Sub-Chapter 1 - Renewable Energy Grant and Loan Program

36.8.101	17.84.101	Policy and Purpose of Rules
36.8.102	17.84.102	Definitions
36.8.103	17.84.103	Eligible Projects
36.8.104	17.84.104	Eligible Applicants
36.8.105	17.84.105	Renewable Energy Advisory Council
36.8.108	17.84.106	Size of Awards
36.8.109	17.84.107	Type of Award
36.8.111	17.84.111	Application
36.8.113	17.84.112	Supplemental Material
36.8.114	17.84.113	Changes or Additions
36.8.115	17.84.114	Application Submittal Deadlines
36.8.116	17.84.115	Application Evaluation Procedure
36.8.117	17.84.116	Environmental Feasibility and Compliance with Statutes and Rules
36.8.121	17.84.121	Conditions on Grants
36.8.122	17.84.122	Grant Contract
36.8.123	17.84.123	Payment of Grants
36.8.124	17.84.124	Reports and Accounting
36.8.128	17.84.125	Solicited Grant Proposals
36.8.130	17.84.130	Applications and Results Public
36.8.131	17.84.131	Loan Conditions

36.8.132	17.84.132	Authorization for Loan Consideration
36.8.133	17.84.133	Evaluation of Loan Requests
36.8.134	17.84.134	Interest Rates

3. The transfer of rules 36.7.901 through 36.7.5502, and 36.8.101 through 36.8.134, is necessary because the energy division of the Department of Natural Resources and Conservation was transferred to the Department of Environmental Quality by Chapter 418, Laws of Montana 1995 and the functions exercised by that agency in regards to energy were assumed by the Department of Environmental Quality.

  
CURT CHISHOLM, Deputy Director  
Department of Environmental Quality

Reviewed by:

  
JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State October 11, 1996.

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

In the matter of the	)	
ADOPTION of A.R.M. 24.9.601 through	)	
24.9.612 regarding proof of	)	NOTICE OF ADOPTION
discrimination and REPEAL of	)	AND REPEAL OF RULES
Rules 24.9.801, 24.9.803, 24.9.804,	)	
24.9.1101, 24.9.1102, 24.9.1103,	)	
24.9.1104, 24.9.1105, 24.9.1106,	)	
24.9.1401, 24.9.1402, 24.9.1403,	)	
24.9.1404, and 24.9.1405.	)	

TO: All Interested Persons.

1. On July 3, 1996, the Montana Human Rights Commission published notice at page 1790 of the Montana Administrative Register, Issue No. 13, of its intent to consider the adoption of new rules and the repeal of certain existing rules regarding proof of discrimination.

2. A public hearing was held on August 5, 1996, in Helena, Montana. Written comments were also received prior to the closing date of July 31, 1996.

3. After consideration of the comments received on proposed new rules III, VI, VII, VIII, and X, the commission has adopted new rules III, VI, VII, VIII, and X, with the following changes (deletions indicated by ~~strikeout~~, new additions underlined):

RULE III (24.9.603) RETALIATION AND COERCION PROHIBITED

(1) and (2) (as proposed)

(3) When a respondent or agent of a respondent has actual or constructive knowledge that proceedings are or have been pending with the commission or in court to enforce a provision of the act or code, ~~the commission will presume that~~ significant adverse action taken by respondent or the agent of respondent against a charging party or complainant ~~was in retaliation for protected activity, if the adverse action occurs~~ while the proceedings were pending or within six months following the final resolution of the proceedings will create a disputable presumption that the adverse action was in retaliation for protected activity.

AUTH: 49-2-204, MCA; 49-3-106, MCA

IMP: 49-2-301, MCA; 49-3-209, MCA

RULE VI (24.9.606) FAILURE TO MAKE REASONABLE ACCOMMODATION - EMPLOYMENT DISCRIMINATION BECAUSE OF A DISABILITY (1) and (2) (as proposed)

(3) "Reasonable accommodation" to a person with a physical or mental disability for the purposes of enabling the person to perform the essential functions of an employment position may include:

(a) making existing facilities used by employees readily accessible to and usable by individuals with physical or mental disabilities; and

(b) job restructuring, part-time or modified work schedules, reassignment to vacant positions which the employee is qualified to hold, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations or training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with physical or mental disabilities.

(4) (as proposed)

(5) For purposes of determining whether an accommodation to a physical or mental disability is reasonable, "undue hardship" means an action requiring significant difficulty or extraordinary cost when considered in light of:

(a) the nature and expense of the accommodation needed;

(b) the overall financial resources of the facility or facilities involved in the provision of the accommodation, the number of persons employed at the facility, the effect on expenses and resources of the facility, and other impacts of the accommodation on the operation of the facility;

(c) the overall financial resources of the employer business, the overall size of the business of the employer with respect to the number of employees, and the number and type and location of the facilities of the employer; and

(d) the type of operation or operations of the employer, including composition, structure, and functions of the work force of the employer, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the employer.

(6) (as proposed)

(7) If an employer defends an adverse employment action against a person with a physical or mental disability on the grounds that an accommodation would endanger the health or safety of a person, but the employer did not the employer's failure to independently assess whether the accommodation would create a reasonable probability of substantial harm, the commission will presume will create a disputable presumption that the employer's justification is a pretext for discrimination on the basis of disability.

~~(a) (8) Independent assessment of the risk of substantial harm is evaluation by the employer of the probability and severity of potential injury in the circumstances, taking into account all relevant information regarding the work and medical history of the person with the disability before taking the adverse employment action in question.~~

~~(b) Except in cases where the danger posed is obvious, an independent assessment cannot be based entirely on medical reports or the employer's subjective evaluation.~~

AUTH: 49-2-204, MCA; 49-3-106, MCA

IMP: 49-2-101(15), MCA; 49-3-101(3), MCA; 49-3-210, MCA; 49-3-202, MCA.

RULE VII (24.9.607) PROHIBITED MEDICAL EXAMINATIONS AND INQUIRIES - EMPLOYMENT DISCRIMINATION BASED ON DISABILITY

(1) - (3) (as proposed)

(4) An employer, agent of an employer, employment agency or labor organization may require a medical examination of a person after an offer of employment has been made and prior to the commencement of the employment duties and may condition the offer of employment on the results of the examination if:

(a) all entering employees or union members in the same job category are subjected to the same examination regardless of disability;

(b) information obtained regarding the medical condition or history of a person is treated as a confidential medical record; and

(c) information obtained is collected and maintained in accordance with the requirements of the Americans with Disabilities Act (ADA) where the employer, employment agency or labor organization is subject to ADA requirements.

(5) (as proposed)

(6) An employer, after a conditional offer of employment to a prospective employee, may inquire whether the prospective employee is certified or eligible to be certified as vocationally handicapped for the purposes of the subsequent injury fund, pursuant to Title 39, Chapter 71, Part 9 of the Montana Workers' Compensation Act.

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

IMP: 49-2-303, MCA; 49-3-201, MCA; 49-3-202, MCA.

RULE VIII (24.9.608) FAILURE TO ACCOMMODATE - EMPLOYMENT DISCRIMINATION BASED ON RELIGION (1) and (2) (as proposed)

(3) For purposes of providing equal employment opportunities, an employer has a duty to accommodate an employee's religion unless to do so would cause a more than de minimis hardship on the conduct of the business.

(a) An employee whose religion conflicts with an employment requirement has a duty to inform the employer of the conflict in a timely manner.

(b) Once informed of a religion based conflict, an employer has a duty to initiate good faith efforts to accommodate the conflict. An employer can demonstrate that an accommodation to an employee's religious belief or practice is not reasonable would cause a more than de minimis hardship with proof that the accommodation would require a significant cost to the business, would violate contract obligations which cannot be reconciled, or would otherwise cause a more than de minimis hardship to the employer.

(c) The employer and the employee have a mutual obligation to engage in bilateral cooperation in a search for a reasonable resolution of conflicts which may arise between an employer's business and an employee's religion.

(4) (as proposed)

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

IMP: 49-2-303, MCA; 49-3-201, MCA; 49-3-202, MCA.

RULE X (24.9.610) BURDEN OF PROOF - DISPARATE TREATMENT

(1) (as proposed)

(2) A prima facie case of discrimination or retaliation based on disparate treatment means evidence from which the trier of fact can infer that adverse action against the charging party was motivated by respondent's consideration of charging party's membership in a protected class, protected activity, or association with or relation to a person who is a member of a protected class or who has engaged in protected activity.

(a) The elements of a prima facie case will vary according to the type of charge and the alleged violation, but generally consist of proof:

(i) That charging party is a member of a protected class or engaged in protected activity;

(ii) That charging party was subjected to adverse action sought and was qualified for an employment, housing, service, credit or other opportunity made available by the respondent; and

(iii) That there is a causal connection between the adverse action and the membership in the protected class or the protected activity charging party was denied the opportunity, or otherwise subjected to adverse action by respondent in circumstances raising a reasonable inference that charging party was treated differently because of membership in a protected class or because of protected activity.

(b) Circumstantial evidence of a causal connection is sufficient if it raises a reasonable inference that the alleged discriminatory act was done because of a person's membership in a protected class or protected activity.

Examples of evidence establishing a reasonable inference that charging party was treated differently because of membership in a protected class or because of protected activity include:

(i) proof that respondent continued to make the employment, housing, service, credit, or other opportunity available to persons who are not members of the same protected class as charging party;

(ii) proof that similarly situated persons outside the protected class were treated more favorably;

(iii) proof that there was a close proximity in time between protected activity of the charging party and adverse action by the respondent;

(iv) proof that respondent intended to discriminate against persons of the protected class; or

(v) other proof that there is a causal connection between adverse action by the respondent and the charging party's membership in a protected class or protected activity.

(3) - (5) (as proposed)

AUTH: 49-2-204, MCA; 49-3-106, MCA

IMP: 49-2-101, MCA, 49-2-303, MCA, 49-2-304, MCA, 49-2-305, MCA, 49-2-306, MCA, 49-2-307, MCA, 49-2-308, MCA, 49-2-403, MCA, 49-3-101, MCA, 49-3-103, MCA, 49-3-104, MCA, 49-3-201, MCA, 49-3-202, MCA, 49-3-203, MCA, 49-3-204, MCA, 49-3-205, MCA, 49-3-206, MCA, 49-3-207, MCA, and 49-3-208, MCA.



4. After consideration of the comments received on the proposed rules, the Commission has adopted the following rules as proposed:

RULE I (24.9.601) PURPOSE OF THESE RULES REGARDING PROOF OF UNLAWFUL DISCRIMINATION

AUTH: 49-2-204, MCA; 49-3-106, MCA  
IMP: 49-2-301, MCA through 49-2-404, MCA; 49-3-103, MCA, 49-3-104, MCA, and 49-3-201 through 49-3-209, MCA

RULE II (24.9.602) MEMBERSHIP IN A PROTECTED CLASS

AUTH: 49-2-204, MCA; 49-3-106, MCA  
IMP: 49-2-101, MCA, 49-2-303, MCA, 49-2-304, MCA, 49-2-305, MCA, 49-2-306, MCA, 49-2-307, MCA, 49-2-308, MCA, 49-2-403, MCA, 49-3-101, MCA, 49-3-103, MCA, 49-3-104, MCA, 49-3-201, MCA, 49-3-202, MCA, 49-3-203, MCA, 49-3-204, MCA, 49-3-205, MCA, 49-3-206, MCA, 49-3-207, MCA, and 49-3-208, MCA.

RULE IV (24.9.604) DISCRIMINATION PROHIBITED - EMPLOYMENT

AUTH: 49-2-204, MCA; 49-3-106, MCA  
IMP: 49-2-303, MCA; 49-2-308, MCA; 49-3-201, MCA; 49-2-202, MCA.

RULE V (24.9.605) EMPLOYMENT DISCRIMINATION: REASONABLE DEMANDS/BONA FIDE OCCUPATIONAL QUALIFICATION EXCEPTIONS

AUTH: 49-2-204, MCA; 49-3-106, MCA  
IMP: 49-2-101(1), MCA; 49-2-101(15), MCA; 49-2-303, MCA; 49-3-101(1), MCA; 49-3-101(3), MCA; 49-3-101(5), MCA; 49-3-201, MCA; 49-3-202, MCA.

RULE IX (24.9.609) DISCRIMINATION PROHIBITED - PUBLIC ACCOMMODATION

AUTH: 49-2-204, MCA; 49-3-106, MCA  
IMP: 49-2-101(15), MCA; 49-2-304, MCA; 49-2-101(3), MCA; 49-3-208, MCA.

RULE XI (24.9.611) BURDEN OF PROOF - MIXED MOTIVE CASE

AUTH: 49-2-204, MCA; 49-3-106, MCA  
IMP: 49-2-101, MCA, 49-2-303, MCA, 49-2-304, MCA, 49-2-305, MCA, 49-2-306, MCA, 49-2-307, MCA, 49-2-308, MCA, 49-2-403, MCA, 49-3-101, MCA, 49-3-103, MCA, 49-3-104, MCA, 49-3-201, MCA, 49-3-202, MCA, 49-3-203, MCA, 49-3-204, MCA, 49-3-205, MCA, 49-3-206, MCA, 49-3-207, MCA, and 49-3-208, MCA.

RULE XII (24.9.612) BURDEN OF PROOF - DISPARATE IMPACT

AUTH: 49-2-204, MCA; 49-3-106, MCA  
IMP: 49-2-101, MCA; 49-2-303, MCA; 49-2-304, MCA; 49-2-305, MCA; 49-2-306, MCA; 49-2-307, MCA; 49-2-308, MCA; 49-2-403, MCA; 49-3-101, MCA; 49-3-103, MCA; 49-3-104, MCA; 49-3-201, MCA; 49-3-202, MCA; 49-3-203, MCA; 49-3-204, MCA; 49-3-205, MCA; 49-3-206, MCA; 49-3-207, MCA; and 49-3-208, MCA.

5. The Commission has repealed rules 24.9.801, 24.9.803, 24.9.804, 24.9.1101, 24.9.1102, 24.9.1103, 24.9.1104, 24.9.1105, 24.9.1106, 24.9.1401, 24.9.1402, 24.9.1403, 24.9.1404, and 24.9.1405, as proposed.

6. The Commission has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received, with the Commission's responses to those comments:

Comment 1: Many persons with disabilities and organizations representing persons with disabilities, including Michael Regnier, Peter Leech, Carol Hovland and Megan Piedade, all members and representatives of the Coalition of Montanans Concerned with Disabilities, Mike Mayer, director of Summit Independent Living Project, and James Meldrum, executive director of Montana Independent Living Project, expressed support for the rules which detail requirements for accommodation of disabilities in the work place and in public accommodations. These commenters described in detail how their lives and the lives of those they serve have been impacted by disability, and how the new rules will assist business owners with understanding and implementing accommodations statewide, and improve the enforcement process so that they and those they represent can take full advantage of the resources of their communities. These commenters urged the Commission to adopt the proposed rules without substantial amendments.

Response 1: The Commission agreed with the need for rules, based in part on these comments. Although some amendments have been made in response to other comments, the substantive provisions of the proposed rules are adopted without major changes.

Comment 2: The Montana Department of Commerce Building Codes Bureau commented that proposed Rule VI, "Failure To Make a Reasonable Accommodation - employment discrimination because of a disability" might be utilized to impose building construction requirements on owners which might not otherwise be required under the state's building construction standards.

Response 2: It is true that the Montana Human Rights Act may impose different requirements on an employer doing business in a building from those applied to the owner or builder of the building. The state building code is designed to govern construction, while the Montana Human Rights Act governs the uses made of a particular building. Owners or building contractors should be aware of the uses to be made of the particular building during the planning and construction process to avoid unnecessary remodeling and retrofitting expenses. However, the Commission emphasizes that only a reasonable accommodation is required; extensive remodeling or retrofitting which create an undue hardship on the employer are not required. The proposed rule does not change existing interpretations of

the Montana Human Rights Act and similar provisions of the Americans with Disabilities Act. No change has been made in response to this comment.

Comment 3: The Montana Department of Commerce Building Codes Bureau commented that proposed Rule IX, "Discrimination Prohibited - Public Accommodations" might require building owners to alter or modify existing buildings to achieve compliance, and that it uses undefined terms, "architectural barriers" and "readily achievable."

Response 3: It is true that the Montana Human Rights Act may require public accommodations to alter or modify existing buildings to achieve compliance. However, this is only required where the removal of architectural barriers is readily achievable. The term "architectural barrier" has been extensively interpreted in federal case law, and is used frequently in other statutes including the Americans with Disabilities Act, see, e.g., 42 USC § 12182(b)(2)(A)(iv). It is also the subject of a specific federal law, the Architectural Barriers Act of 1968, 42 USC §§ 4151, *et seq.* The term "readily achievable" is extensively defined in the Americans with Disabilities Act, see 42 USC § 12181(9), and has been construed in federal case law applying its provisions. The proposed rule does not change existing interpretations of the Montana Human Rights Act and similar provisions of the Americans with Disabilities Act. No change has been made in response to this comment.

Comment 4: The Montana Department of Commerce Building Codes Bureau requested that a provision be included in the rules which specifies that the Commission's rules do not impose any enforcement duties on the Bureau.

Response 4: The Commission cannot impose by rule any enforcement obligation on the Bureau. However, the Governmental Code of Fair Practices, at §49-3-205, MCA, does prohibit a state or local facility from being used in the furtherance of any discriminatory practice, or a governmental agency from becoming party to a plan that has the effect of sanctioning discriminatory practices. The proposed rule does not change existing law. The requested provision is not included.

Comment 5: Several commenters, including State Farm Insurance Companies, the Montana Chamber of Commerce, the Montana School Boards Association, and the Montana Department of Administration, State Personnel Division, commented on two proposed rules in which presumptions arise. The presumptions arise in proposed Rule III, from significant adverse action against a charging party or complainant when a respondent has actual or constructive knowledge that proceedings under the act or code are pending with the Commission or in court, and in proposed Rule IV, from an employer's failure to independently assess whether accommodation of a disability would create a

reasonable probability of substantial harm. The comments suggest that these presumptions should be described as rebuttable or disputable.

Response 5: Although existing law makes all presumptions disputable unless otherwise stated, the Commission agrees that a specific reminder of the disputability of presumptions would be helpful. All references to presumptions have therefore been amended to include the modifier "disputable."

Comment 6: The Montana Department of Administration, State Personnel Division, commented that proposed Rule II contains a reference to discrimination because of "political beliefs or ideas as set forth in the act or code." The comment suggested that the rule limit the reference to "political beliefs" as described in the Montana Human Rights Act, §49-2-308(1)(c), MCA.

Response 6: Proposed Rule II is designed to implement both the Montana Human Rights Act, which refers to "political beliefs" as cited above, and the Governmental Code of Fair Practices, which refers to "political ideas" instead. See, e.g. § 49-3-201(1), MCA. The rule does not substitute either term for the other, but simply uses both terms, so that both statutes are clearly implemented. The rule contains a clear explanation that the terms are "as set forth in the act or code." The proposed rule does not change existing interpretations of the Montana Human Rights Act or the Governmental Code of Fair Practices. No change has been made in response to this comment.

Comment 7: The Montana School Boards Association requested that the Commission clarify that proposed Rule VI(2)(b) only requires reassignment of a person to a vacant position "for which they are qualified."

Response 7: This clarification has been adopted.

Comment 8: The Montana School Boards Association requested that the Commission supply additional examples of evaluation tools for assessing the safety and welfare of individuals, in proposed Rule VI, section (7)(b), and to clarify the meaning of "medical reports."

Response 8: After a review of the rule as a whole, the Commission has decided that this section is unnecessary, and may tend to confuse employers and others attempting to conduct an independent analysis of safety issues in seeking job accommodations. Therefore, this section has been eliminated.

Comment 9: The Montana School Boards Association requested that the Commission remove the provisions of proposed Rule VII, section (2), which prohibit the use of an employment application form which inquires about potential physical or mental disability or states a requirement for a pre-offer medical examination during the application process. The MSBA asserts

that although the use of application forms containing such inquiries or statements are "certainly suspect," they should not lead to strict liability.

Response 9: The proposed rule implements §49-2-303(1)(c), MCA, which specifically prohibits the use of an employment application which expresses a limitation, specification or discrimination, or an intent to make a limitation based on physical or mental disability, unless based on a bona fide occupational requirement. An employment application which inquires about disability, requests medical information, or states an intent to require a medical examination as a condition of the initial application for employment is clearly expressing such a limitation or intent. Section (2) must be read in conjunction with section (1) of the proposed rule, which permits a disability inquiry or medical examination requirement when it is shown to be job-related and consistent with business necessity. Where it is not, employers should be required to correct non-conforming applications accordingly. The proposed rule does not change existing interpretations of the Montana Human Rights Act and similar provisions of the Americans with Disabilities Act, see, e.g. 42 USC § 12112(d)(2). The requested changes have not been adopted.

Comment 10: The Montana School Boards Association requested that the Commission clarify in proposed Rule VIII that a person claiming religious discrimination has the burden of proving an observance, practice or belief based on established tenets of a firmly held religious belief. The association also expressed concern that the rule requires an employer to "articulate an accommodation for a 'nebulous religious belief' without definition of what the religious belief might be."

Response 10: The Commission concludes that the proposed language adequately reflects the purpose of the religious discrimination provisions of the Act, and is well-grounded in the state and federal constitutions. The proposed addition of a requirement that a religious belief be well-established and firmly held invites a dissection and attack on the worthiness of an individual's religious belief system, and implies that some religious observances, practices or beliefs may be of less value than others, a judgment that the state and federal constitutions prohibit. The proposed rule does not extend an employer's duty beyond that required by the Act. The requested change has not been adopted.

Comment 11: The Montana School Boards Association commented that Proposed Rule VIII uses inconsistent terms to limit the employer's requirement to accommodate a religious belief, using "more than de minimis hardship" in one paragraph and "not reasonable" in another.

Response 11: The Commission agrees with this comment. Proposed Rule VIII has been modified to use the phrase "more than a de minimis hardship" in both paragraphs.

Comment 12: The Montana School Boards Association requested that the Commission address the issue of attorney fees in a mixed motive case described in proposed Rule XI, where the respondent engaged in unlawful discrimination but the same action would have been taken in any event, and there is therefore no award of damages to the charging party. The association recommended that the Commission adopt language providing that in this case the charging party is not eligible for attorney fees.

Response 12: The Commission does not have jurisdiction over awards of attorney fees. Pursuant to §49-2-505(4), MCA, an action for attorney fees must be brought in district court. The requested modifications have not been adopted.

Comment 13: The Montana School Boards Association commented that in its opinion the Commission has not identified a reasonable necessity for the proposed repeal and amendment of rules as required by §2-4-305(6)(b), MCA, and that many of the proposed rules are interpretive rules under §2-4-308, MCA, and therefore must contain a disclaimer that the rules are merely interpretive, and a party cannot be charged with a substantive violation of such a rule.

Response 13: The Commission identified in its proposal for rulemaking the necessity for repealing old and outdated rules and substituting new rules to clarify the requirements of the Montana Human Rights Act and the Governmental Code of Fair Practices. Many of the repealed rules are outdated in view of current case law and do not adequately define the duties of employers, public accommodations, and others. The new rules also more clearly reflect the intent of the act and code to make Montana discrimination law consistent with federal law, particularly in the area of accommodation of disability, so that Montana citizens are not held to different and confusing standards.

Section 2-4-308, MCA, which requires a disclaimer for interpretive regulations, applies only to interpretive rules adopted pursuant to an agency's implied rulemaking authority. The Montana Human Rights Commission has express rulemaking authority under §§49-2-204 and 49-3-106, MCA. These rules are not subject to the disclaimer requirement.

No modifications of the proposed rules have been made in response to this comment.

Comment 14: The Montana Chamber of Commerce commented that if one of the purposes of the rules is to interpret and apply

current case law, that citations to the specific case law would be helpful additions to the text of the rules.

Response 14: The Commission recognizes a need to balance the public's interest in the case law which has interpreted and applied the act and code with the need for simple rules which will remain relatively intact over time. Any listing of case precedents is destined to become outdated almost immediately, and keeping such a list up to date would be a major effort and require almost continuous rulemaking. The Commission prefers the approach it has taken in these rules, which is to update them periodically to reflect new developments in statutes, state or federal administrative decisions or court cases, related regulatory guidelines, or other interpretative developments, without citing specific sources in the rules themselves. No changes have been made in response to this comment.


Comment 15: After hearing comments and reviewing the rule as a whole, Commission staff believed that portions of proposed Rule X, Burden of Proof - Disparate Treatment, describing the means of establishing a prima facie case, were not a clear statement of the case law in this area. Staff recommended amendments to more clearly address the proof required to establish a prima facie case.

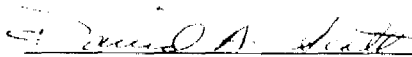
Response 15: The Commission has adopted the staff recommendation as proposed.

7. The amendments, adoptions and repeals are effective October 25, 1996.

Jane Lopp, Chair  
Montana Human Rights Commission

By:

  
Anne L. MacIntyre, Administrator  
Montana Human Rights Commission

  
David A. Scott, Rule Reviewer  
Department of Labor

Certified to the Secretary of State October 11, 1996

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

In the matter of the ) NOTICE OF AMENDMENT OF  
amendment of rules related to ) ARM 24.16.1509 AND 24.16.1510  
the minimum hourly wage rate )

TO ALL INTERESTED PERSONS:

1. On September 5, 1996, the Department published notice at pages 2363 through 2365 of the Montana Administrative Register, Issue No. 17, to consider the amendment of ARM 24.16.1509 and 24.16.1510, related to the minimum hourly wage rate.

2. On September 27, 1996, a public hearing was held in Helena concerning the proposed amendments at which oral comments were received. No written comments were received prior to the closing date of October 4, 1996.

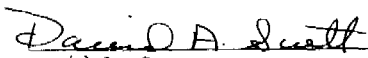
3. After consideration of the comments received on the proposed rules, the Department has amended the rules exactly as proposed.

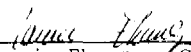
4. The Department has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received, along with the Department's response to those comments:

Comment: Don Judge of the Montana AFL-CIO made comments in support of the proposed amendments.

Response: The Department has made the amendments exactly as proposed.

5. As explained in the Notice of Public Hearing, the amendments are effective as of October 25, 1996, but are applicable to work performed on or after October 1, 1996.

  
David A. Scott  
Rule Reviewer

  
Laurie Ekanger, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 11, 1996.



BEFORE THE BOARD OF MILK CONTROL  
OF THE STATE OF MONTANA

In the matter of amendment of ) NOTICE OF EMERGENCY  
a rule to alter the flexible ) AMENDMENT TO ARM  
economic formula for producer ) 32.24.301  
class I milk. )

TO: All Interested Persons:

1. Reasons for the emergency action are:

a) That the milk industry has recently agreed on pricing concession and compromises, all of which were tied and predicated upon the basic formula price plus \$2.55 and not upon the flexible economic formula. Through board hearing in August 1996, new rules were adopted to implement these changes. The emergency order gives the milk industry up to 120 days to approach the board with a means to solve the problem with the economic formula.

b) That the board has recently had cause to believe that if the settlement agreement should fall apart because the economic formula, causes too low a price to be paid to producers, then welfare conditions are in imminent peril by putting more Montana dairy farmers at a higher risk of going out-of-business, as well as the possibility of dairy processors also going out-of-business.

c) That if the board did not act immediately to preclude the activation of the flexible economic formula, the result would be to seriously jeopardize or interfere with the Montana consumer's right to an adequate supply of wholesome class I milk and to otherwise disrupt and injure the milk industry. Such welfare conditions are in imminent peril.

d) That the flexible economic formula was established in 1976, has not been updated since, and is woefully outdated.

e) That because of the exceedingly high cost of cattle feed and a dwindling supply of milk nationwide, it appears the flexible economic formula may be triggered and that result would mean substantial injury to the milk industry in the state of Montana.

f) Therefore, the board intends to adopt the following emergency rule. The rule as adopted will be mailed to all licensed producers, processors and commenting parties and published as an emergency rule in the next issue of the Register.

2. The emergency amendment will be effective November 1, 1996.

3. The text of the emergency amendment is as follows:

(text of present rule with matter to be stricken interlined and new matter added, then underlined)

32.24.303 PRICING RULES

(1)-(3) Remain the same.

(a) The minimum prices which shall be paid to producers by distributors in the state of Montana shall be calculated by either applying the flexible economic formula described below or the basic formula price plus two dollars and fifty-five cents, whichever price is lower. The flexible economic formula utilizes a November 1969 base equalling 100, an interval of 4.5 and consists of seven factors. The factors and their assigned weights are as follows:

FACTOR	WEIGHT	CONVERSION FACTOR
(i) Unemployment US (6.67 (3.8 C) + 100)	.05	5%
(ii) Unemployment MT. (6.67 (6.1 C) + 100)	.10	10%
(iii)* Weekly Wages Total private (Revised and seasonally adjusted)	15%	13297873
(iv) Prices Received by Farmers MP ('47 '49 = 100)	15%	22960139
(v) Mixed Dairy Feed	20%	32258065
(vi) Alfalfa Hay	12%	48000000
(vii) Prices Paid by Farmers US ( '90 '92 = 100)	23%	78879040
	100%	

\*Note: The reported revised weekly wage total private is seasonally adjusted by dividing each month's revised figures by the following factors: Jan. .9867; Feb. .9832; March .9809; April .9822; May .9911; June 1.0053; July 1.0165; August 1.0261; Sept. 1.0136; Oct. 1.0192; Nov. 1.0047; Dec. .9905.

The following table will be used in computing producer prices:

TABLE I

Producer price determination using above formula with November, 1969 = 100 and an interval 4.5

FORMULA INDEX	PRICE PER CWT
201.5 205.1	\$13.01
206.0 209.6	13.24
210.5 214.1	13.47
215.0 218.6	13.70
219.5 223.1	13.93
224.0 227.6	14.16
228.5 232.1	14.39
233.0 236.6	14.62
237.5 241.1	14.85
242.0 245.6	15.08
246.5 250.1	15.31
251.0 254.6	15.54

255.5	259.1	15.77
260.0	263.6	16.00
264.5	268.1	16.23
269.0	272.6	16.46
273.5	277.1	16.69
278.0	281.6	16.92
282.5	286.1	17.15
287.0	290.6	17.38

(b) The class I butterfat differential will be calculated by multiplying the most recent Chicago area butterfat price (grade A 92 score) as reported by the United States department of agriculture, by a factor of .118 and the resulting answer will be rounded to the nearest half cent. When milk does not test 3.5 percent butterfat, the price per CWT will be adjusted by the above resulting calculation for each .1 percent the butterfat test moves up or down.

~~(c) Detailed information on converting the above factors in the producer formula (3)(a) to a current weighted value can be obtained by contacting the milk control bureau.~~

~~(d) The factors in the producer formula will be converted to a weighted value as soon as practicable after the first of each month.~~

~~(e) For each 4.5 points that the weighted index advances or retreats, prices paid to producers will increase or decrease \$0.23 per hundredweight.~~

(4) - (8) (b) Remain the same."

AUTH: 81-23-302, MCA

IMP: 81-23-302, MCA

4. The rationale for the emergency amendment is set forth in paragraph 1.

5. A standard rulemaking procedure will be undertaken prior to the expiration of this emergency rule.

6. Interested persons are encouraged to submit their comments during the upcoming standard rulemaking process. If interested persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to the Milk Control Bureau, 301 N. Roberts Street - Room 236, PO Box 202001, Helena, MT 59620-2001.

MONTANA BOARD OF MILK CONTROL  
MILTON J. OLSEN, Chairman

By: 

A. Laurence Petersen, Exec.  
Officer, Board of Livestock  
Department of Commerce

By: 

Lon Mitchell, Rule Reviewer  
Livestock Chief Legal Counsel

Certified to the Secretary of State October 11, 1996.

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

In the matter of the amendment	)	NOTICE OF THE
of rules 46.10.409, 46.10.410,	)	AMENDMENT AND
46.18.502 and 46.18.505 and the	)	REPEAL OF RULES
repeal of 46.18.507 pertaining		
to child care fee scales		

TO: All Interested Persons

1. On September 5, 1996, the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.10.409, 46.10.410, 46.18.502 and 46.18.505 and the repeal of 46.18.507 at page 2372 of the 1996 Montana Administrative Register, issue number 17.

2. The Department has amended rules 46.10.409, 46.10.410, 46.18.502 and 46.18.505 and repealed rule 46.18.507 as proposed.

3. No comments or testimony were received.

*Dawn Shira*  
Rule Reviewer

*Michael S. Billings Jr.*  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 11, 1996.

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

In the matter of the amendment	)	NOTICE OF THE AMENDMENT
of rules 46.13.302, 46.13.303,	)	OF RULES
46.13.304, 46.13.401 and	)	
46.13.502 pertaining to the low	)	
income energy assistance	)	
program (LIEAP)	)	

TO: All Interested Persons

1. On August 8, 1996, the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.13.302, 46.13.303, 46.13.304, 46.13.401 and 46.13.502 pertaining to the low income energy assistance program (LIEAP) at page 2136 of the 1996 Montana Administrative Register, issue number 15.

2. The Department has amended rules 46.13.302, 46.13.303, 46.13.304, 46.13.401 and 46.13.502 as proposed.

3. No comments or testimony were received.

*Dawn Elvira*  
Rule Reviewer

*Michael G. Billings*  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 11, 1996.

VOLUME NO. 46

OPINION NO. 24

INSURANCE - Applicability of open meeting law to Montana Life and Health Insurance Guaranty Association board of directors;  
OPEN MEETINGS - Applicability of open meeting law to Montana Life and Health Insurance Guaranty Association board of directors;  
RIGHT TO KNOW - Applicability of open meeting law to Montana Life and Health Insurance Guaranty Association board of directors;  
STATE AGENCIES - Status of Montana Life and Health Insurance Guaranty Association;  
MONTANA CODE ANNOTATED - Title 2, chapter 3, part 2; sections 2-3-102, -201, -203(1), 33-10-201, -203(3), -204 to -207, -209, -216, -217, -228, 39-71-2610;  
MONTANA CONSTITUTION - Article II, section 9;  
OPINIONS OF THE ATTORNEY GENERAL - 46 Op. Att'y Gen. No. 1 (1995).

HELD: The proceedings of the Montana Life and Health Insurance Guaranty Association (MLHIGA) board of directors are subject to the Open Meeting Law, Mont. Code Ann. tit. 2, ch. 3, pt. 2. Thus, the MLHIGA may close a meeting only when and to the extent that the demands of individual privacy clearly exceed the merits of public disclosure.

October 10, 1996

Mr. Mark O'Keefe  
State Auditor and  
Commissioner of Insurance  
Mitchell Building, Room 270  
P.O. Box 4009  
Helena, MT 59604-4009

Dear Mr. O'Keefe:

You have requested my opinion on the following question:

Are the proceedings of the Montana Life and Health Insurance Guaranty Association (MLHIGA) board of directors subject to the Open Meeting Law, Mont. Code Ann. tit. 2, ch. 3, pt. 2?

You state that because the MLHIGA has many attributes of both a private and a public entity, questions have arisen concerning whether it is subject to the open meeting law. Specifically, the MLHIGA is required by statute to submit to the insurance commissioner a plan of operation and any amendments thereto. Mont. Code Ann. § 33-10-216. The plan and any amendments become effective upon approval in writing by the commissioner. *Id.* On

February 29, 1996, the MLHIGA submitted an amended plan of operation to you for approval. You denied approval, determining that the MLHIGA is a public board and therefore required to provide a procedure for public participation. The MLHIGA disagrees and asserts that it is not a public board and therefore is not required to set forth in its plan of operation procedures to notify the public of its meetings.

The Montana Life and Health Insurance Guaranty Association Act was enacted

to protect policy owners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment of the insurer issuing the policies or contracts.

Mont. Code Ann. § 33-10-201(2). Members of the association, a class which generally includes all insurers authorized to transact life and health insurance business in Montana, are subject to assessment to provide funds to carry out this purpose and the association is authorized to assist the insurance commissioner in the detection and prevention of insurer impairments. Mont. Code Ann. § 33-10-201(3).

Article II, section 9 of the Montana Constitution sets forth the right of individuals to know the proceedings of their government:

No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

The Montana Constitution is to be given a broad and liberal interpretation. SJL of Montana v. City of Billings, 263 Mont. 142, 146, 867 P.2d 1084, 1086 (1993). The provisions of article II, section 9 are implemented by the open meeting law. Id. The Montana open meeting law states in part:

All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds must be open to the public.

Mont. Code Ann. § 2-3-203(1). The provisions of the open meeting law, like the constitutional right to know, are to be liberally construed. Mont. Code Ann. § 2-3-201.

There is no consensus among other jurisdictions which have addressed the question of whether an insurance guaranty association is a public body. In Greenfield v. Pennsylvania Insurance Guaranty Association, 353 A.2d 918 (1976), the Commonwealth Court of Pennsylvania ruled that the Pennsylvania Insurance Guaranty Association is not an agency of the Commonwealth within the meaning of a statute giving the Commonwealth Court original jurisdiction of civil actions or proceedings against the Commonwealth, which includes departments, departmental administrative boards and commissions, officers, independent boards or commissions, authorities and other agencies of the Commonwealth. The Court reviewed several attributes of the association which are similar to the MLHIGA in making its determination that the Pennsylvania association is not an agency of the Commonwealth. The Court noted that the association is entirely funded by assessments made upon its members and that it has the power to employ persons necessary to perform its functions, to borrow money, to enter into contracts, to develop its own plan of operation and select its own board of directors, and to hire its own counsel. 353 A.2d at 919-20.

In contrast, in A. S. Abell Publishing Co. v. Mezzanote, 464 A.2d 1068 (1983), the Maryland Court of Appeals held that the Maryland Insurance Guaranty Association was an agency or instrumentality of the state within the scope of the Maryland Public Information Act. The Maryland court noted that the Public Information Act was to be broadly construed in every instance with the view toward public access to the records of "any agency or instrumentality" of the state. 464 A.2d at 1071. The Maryland court held that there is no single test for determining whether a statutorily-established entity is an agency or instrumentality of the state for a particular purpose and all aspects of the interrelationship between the state and the statutorily-established entity must be examined in order to determine its status. 464 A.2d at 1072. The court held that the Maryland Insurance Guaranty Association was an agency or instrumentality of the state because of the degree of control exercised by the State over its operation and because its existence depended upon the General Assembly; it served a public purpose; its management was selected by the commissioner; it did not independently manage its affairs or enforce its regulations; its decisions were subject to reversal by the insurance commissioner; and it enjoyed a special tax and liability status. 464 A.2d at 1074.<sup>1</sup> The Maryland association was in many ways similar to the MLHIGA. The MLHIGA is "under the immediate

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<sup>1</sup> In 1986, the Maryland legislature changed the name of the Maryland Insurance Guaranty Association to the Property and Casualty Insurance Guaranty Corporation, designated it as a private, nonprofit corporation, and declared it was not an agency or instrumentality of the state and changed the method of selection of the board of directors. McMichael v. Robertson, 549 A.2d 1157, 1159 n.2 (Md. Ct. Spec. App. 1988).



supervision of the commissioner." Mont. Code Ann. § 33-10-203(3). The insurance commissioner appoints two of the seven members of the MLHIGA board of directors and, while other members of the board are selected by member insurers, the appointments are subject to approval by the commissioner. Mont. Code Ann. § 33-10-204(1). The actions of the MLHIGA board are subject to reversal by the insurance commissioner. Mont. Code Ann. § 33-10-228(2). The MLHIGA also enjoys special tax and liability status. Mont. Code Ann. §§ 33-10-207, -209. Application of the reasoning in Abell would lead to the conclusion that the MLHIGA is a public body subject to the open meeting law.

In my opinion, the Abell decision is more in concert with the rulings of the Montana Supreme Court than the Greenfield decision. Our court has consistently followed the requirement that the constitutional right to know and the open meeting law be liberally construed. In Common Cause v. Statutory Committee, 263 Mont. 324, 330, 868 P.2d 604, 607-08 (1994), the Court held that a statutorily created committee required to provide the governor with a list of names of possible candidates for the position of commissioner of political practices was a "public or governmental body" subject to requirements of the open meeting statute. The Court stated:

[T]he common understanding of the phrase "public or governmental body" would include a group of individuals organized for a governmental or public purpose.

263 Mont. at 330, 868 P.2d at 608. Application of this broad definition to the MLHIGA leads to the conclusion that it is a public body. The MLHIGA has a clear public purpose--to protect insured members of the public from the extraordinary event of insurance company insolvency. The MLHIGA is statutorily organized for that specific purpose.

In 46 Op. Att'y Gen. No. 1 (1995), I held that the Montana Self-Insurers Guaranty Fund (MSIGF) was a public agency subject to the Montana Open Meeting Law. I concluded in that opinion that the MSIGF met two of the criteria found in the definition of "agency" in Mont. Code Ann. § 2-3-102, in that it had statutory authority to adopt rules and enter into contracts. In reaching that conclusion I specifically reserved judgment on the question presented here, noting that the opinion request before me at that time was limited to the MSIGF and that there were potentially significant statutory differences between the statutes creating the MSIGF and those creating the MLHIGA. Id. at 6. Having now studied the question presented here, I conclude that the Montana Open Meeting Law applies to the MLHIGA.

MLHIGA suggests that the open meeting law cannot be applied to it because it spends no public funds and has no rulemaking

authority. In 46 Op. Att'y Gen. No. 1, I relied on the express grant of rulemaking power in the statutes creating the MSIGF to hold that its board of directors met the statutory definition of "agency" under Mont. Code Ann. § 2-3-102(1). See Mont. Code Ann. § 39-71-2610. While the statutes creating the MLHIGA do not contain an express grant of rulemaking authority, they do require the board of directors to adopt an "operating plan," and provide that in the event of the board's failure to do so the commissioner may accomplish the same objective through the adoption of rules. Mont. Code Ann. § 33-10-216.

It is not necessary, however, to resolve here the issue of whether the adoption of the "operating plan" constitutes rulemaking under MAPA. The provisions authorizing the MSIGF to enter into contracts are practically identical to those applicable to the MLHIGA. Compare Mont. Code Ann. § 39-71-2610(2) ("The [MSIGF] may carry out its responsibilities directly or by contract") with Mont. Code Ann. § 33-10-205(1)(a) ("The association may . . . enter into such contracts as are necessary and proper to carry out the purposes and provisions of this part"). Since rulemaking and contracting are listed in the disjunctive in Mont. Code Ann. § 2-3-102, either will suffice to bring an entity within the definition of "agency."

In discussing this issue in 46 Op. Att'y Gen. No. 1, I noted that the factor that distinguishes entities such as the MSIGF from ordinary business corporations is that the MSIGF "is a public organization because it has a public purpose, . . . because its powers to compel membership and assess members derive from the police powers of the state, and because it has been granted specific statutory authority to adopt public rules and enter into public contracts." For the most part, these observations apply with equal force to the MLHIGA. I need not decide the issue of whether the adoption of an "operation plan" constitutes rulemaking under MAPA, because, following the reasoning of 46 Op. Att'y Gen. No. 1, the contracting power coupled with the public purpose is sufficient to bring the MLHIGA within the reach of Mont. Code Ann. § 2-3-102(1). Upon review of the applicable statutory and case law, it is my opinion that under Montana law the MLHIGA is a public body subject to the provisions of the open meeting law.

My opinion is not changed by the inclusion in the MLHIGA Act of certain provisions indicating a legislative intent to limit public access to meetings of the association. Mont. Code Ann. § 33-10-203(3) provides that meetings or records of the association "may be opened to the public upon majority vote of the board of directors of the association." Mont. Code Ann. § 33-10-206 states that records of meetings and negotiations in which the association is discussing the activities of the association in carrying out its powers and duties

shall be made public only upon the termination of a liquidation, rehabilitation, or supervision proceeding

involving the impaired insurer, upon the termination of the impairment of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this section shall limit the duty of the association to render a report of its activities under 33-10-209.

Finally, Mont. Code Ann. § 33-10-217 contains a provision that the national association of insurance commissioners' insurance regulatory information system (IRIS) ratios and listings of companies not included in the ratios must be kept confidential by the board until made public by the commissioner or other lawful authority and a provision that reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or supervision of any member insurer are not considered public documents. Mont. Code Ann. § 33-10-217(1)(d), (5). In my opinion these statutory provisions evidence a legislative determination that the business of the association in many instances involves issues where the demands of individual privacy rights or the privacy rights of insurance companies clearly exceed the merits of public disclosure.

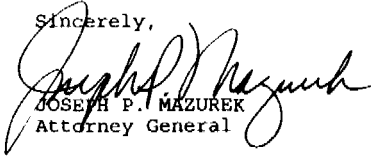
In Belth v. Bennett, 227 Mont. 341, 740 P.2d 638 (1987), the Montana Supreme Court recognized that the insurance commissioner, when faced with a request for access to such reports in the commissioner's possession, could assert the privacy rights of insurance companies listed in the IRIS reports. To effect a constitutional interpretation of a statute allowing the commissioner to withhold certain reports from public inspection where such withholding was necessary for the protection of the person examined against unwarranted injury or was in the public interest, the Court held that the section, Mont. Code Ann. § 33-1-412(5) (since repealed), contained an exception to public inspection identical to and coextensive with the right to privacy exception to the constitutional right to know. 227 Mont. at 346, 740 P.2d at 641. The general rule is that whenever there are differing possible interpretations of a statute, a constitutional interpretation is favored over one that is not. Belth, 227 Mont. at 345-46, 740 P.2d at 641. In my opinion, the provisions of the MLHIGA Act which may be construed to limit public access to meetings of the association must be construed as coextensive with the ability of the board to determine that, in certain instances, the privacy interests of insurance companies or others outweigh the need for public disclosure. While it is beyond the scope of this opinion to question the constitutionality of these sections, this construction of the Act is consistent with the Supreme Court's expressions of the reach of article II, section 9.

THEREFORE, IT IS MY OPINION:

The proceedings of the Montana Life and Health Insurance Guaranty Association (MLHIGA) board of directors are subject to the Open Meeting Law, Mont. Code Ann. tit. 2,

ch. 3, pt. 2. Thus, the MLHIGA may close a meeting only when and to the extent that the demands of individual privacy clearly exceed the merits of public disclosure.

Sincerely,



JOSEPH P. MAZUREK  
Attorney General

jpm/kcs/dm

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      | 1. Consult ARM topical index.                 |
| Subject    | Update the rule by checking the accumulative  |
| Matter     | table and the table of contents in the last   |
|            | Montana Administrative Register issued.       |
| Statute    | 2. Go to cross reference table at end of each |
| Number and | title which lists MCA section numbers and     |
| Department | 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 June 30, 1996. This table includes those rules adopted during the period July 1, 1996 through September 30, 1996 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 June 30, 1996, 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 1995 and 1996 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.

### GENERAL PROVISIONS, Title 1

- 1.2.419 Filing, Compiling, Printer Pickup and Publication of the Montana Administrative Register, p. 2574

### ADMINISTRATION, Department of, Title 2

- 2.6.101 Insurance Requirements for Independent Contractors, p. 705  
2.21.1201 and other rules - Personnel Policy, p. 945, 1635

(State Tax Appeal Board)

- 2.51.307 Orders of the Board, p. 703, 1295

(State Compensation Insurance Fund)

- 2.55.408 Retrospective Rating Plans, p. 1770, 2278

### AGRICULTURE, Department of, Title 4

- I Emergency Adoption - Imposing a Quarantine on the Importation of Grain Into Montana, p. 898

- I and other rule - Spread of Late Blight Disease of Potatoes - Civil Penalties - Matrix, p. 3, 900
- I-XVI Preventing the Introduction of Noxious Weed Seeds from Forage in the State, p. 830, 1361
- 4.3.401 and other rules - Registration Requirements - Applicator Classifications and Requirements - Student Loans - Wheat and Barley Food and Fuel Grants - Restriction of Pesticide Rules - Endrin - 1080 Livestock Protection Collars - Registration and Use of M-44 Sodium Cyanide Capsules and M-44 Devices - Rodenticide Surcharge and Grants - Montana Agricultural Loan Authority - Agriculture Incubator Program, p. 2714, 545, 667
- 4.5.102 and other rules - Projects, Procedures and Updates and Repeal of Requirements to the Noxious Weed Trust Fund, p. 2473
- 4.9.101 and other rules - Wheat and Barley Committee Rules, p. 1343, 1826
- 4.13.1001 and other rule - Grain Fee Schedule of Lab Hours, Travel Time and Fees, p. 2343

STATE AUDITOR, Title 6

- I Securities Regulation on the Internet, p. 1346, 1828
- I-X Actuarial Opinion, p. 842, 1371
- I-XIV Medicare Select Policies and Certificates, p. 9, 907, 1645
- 6.2.103 and other rules - Procedural Rules of the State Auditor's Office, p. 1227, 1636
- 6.6.1101 and other rules - Credit Life - Disability Insurance, p. 955, 1646, 2157
- 6.6.1104 Limitation of Presumption of Reasonableness of Credit Life - Disability Rates, p. 7, 746, 1131
- 6.6.2001 and other rules - Unfair Trade Practices on Cancellations, Non-renewals, or Premium Increases of Casualty or Property Insurance, p. 2720, 414, 2158
- 6.6.2007 and other rules - Unfair Trade Practices on Cancellations, Non-renewals, or Premium Increases of Casualty or Property Insurance, p. 869, 1370, 2159
- 6.6.4102 and other rules - Fee Schedules - Continuing Education Program for Insurance Producers and Consultants, p. 963, 1661
- 6.10.102 and other rules - Securities Regulation, p. 2724, 1133
- 6.10.122 Securities Regulation - Broker-Dealer Books and Records, p. 15, 1136
- (Classification Review Committee)
- 6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 ed., p. 2349
- 6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 ed., p. 1348, 1827



- 6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 ed., p. 866, 1372

COMMERCE, Department of, Title 8

- 8.2.208 Renewal Dates, p. 346, 1373

(Board of Alternative Health Care)

- I Vaginal Birth After Cesarean (VBAC) Delivery, p. 348, 1829

- 8.4.301 and other rules - Fees - Renewal - Unprofessional Conduct - Licensing of Out-of-State Applicants - Certification for Speciality Practice of Naturopathic Physician Continuing Education - Direct Entry Midwife Apprenticeship Requirements, p. 2230, 2576

(Board of Architects)

- 8.6.405 and other rules - Practice of Architecture, p. 2060, 2476

(Board of Athletics)

- 8.8.2804 and other rules - Athletic Events - Participants, p. 969, 1664

(Board of Barbers)

- 8.10.403 and other rules - Barbers, Barber Shops and Barber Schools, p. 1432

(Board of Chiropractors)

- 8.12.601 and other rules - Chiropractors, p. 974

(Board of Clinical Laboratory Science Practitioners)

- 8.13.304 and other rules - Practice of Clinical Laboratory Science, p. 350, 1296

(Board of Cosmetologists)

- 8.14.802 License Examinations, p. 871

(Board of Dentistry)

- 8.16.402 and other rules - Dentists - Dental Hygienists - Denturists - Practice of Dentistry and Denturistry, p. 2478

(State Electrical Board)

- 8.18.401 and other rules - Electrical Industry, p. 2065

(Professional and Occupational Licensing Bureau)

- 8.19.101 and other rules - Transfer from the Department of Justice - Fire Prevention and Investigation, p. 1825, 2087, 748

(Board of Horse Racing)

- 8.22.501 and other rules - Definitions - General Provisions -  
Claiming, p. 217, 763  
8.22.703 and other rule - Exercise Persons - Pony Persons,  
p. 1350, 1964

(Board of Medical Examiners)

- 8.28.911 and other rule - Nutritionists, p. 616, 2279

(Board of Funeral Service)

- 8.30.101 and other rules - Morticians - Mortuaries -  
Crematories - Crematory Operators - Crematory  
Technicians, p. 2073, 2425

(Board of Nursing)

- 8.32.413 Conduct of Nurses, p. 353, 1489

(Board of Occupational Therapists)

- 8.35.401 and other rules - Practice of Occupational Therapy,  
p. 1448, 1586, 2379

(Board of Optometry)

- 8.36.406 and other rules - General Practice Requirements -  
Unprofessional Conduct - Fees - Disciplinary Actions  
- Continuing Education concerning the Practice of  
Optometry, p. 2238

(Board of Outfitters)

- 8.39.202 and other rules - Outfitting Industry, p. 2327, 668,  
909  
8.39.518 and other rules - Fees - Moratorium - Operations  
Plan Review, p. 1761, 2388, 2797, 145, 765

(Board of Pharmacy)

- 8.40.1601 and other rules - Out-of-State Mail Service  
Pharmacies, p. 2339, 220, 1297

(Board of Physical Therapy Examiners)

- 8.42.402 and other rules - Licensure of Physical Therapists -  
Physical Therapist Assistants - Foreign-Trained  
Physical Therapists, p. 2245

(Board of Plumbers)

- 8.44.402 and other rules - Plumbing Industry, p. 2081, 2426,  
2577

(Board of Professional Engineers and Land Surveyors)

- 8.48.401 and other rules - Practice of Professional Engineers  
and Land Surveyors, p. 2085

(Board of Public Accountants)

- 8.54.402 and other rules - Examinations - Out-of-State  
Candidates for Examination - Education Requirements  
- Fees, p. 1460, 2280

- 8.54.402 and other rules - Emergency Amendment - Examinations  
- Out-of-State Candidates for Examination -  
Education Requirements - Fees, p. 1490

(Board of Radiologic Technologists)

- 8.56.402 and other rules - Radiologic Technologists, p. 618,  
1138

(Board of Respiratory Care Practitioners)

- 8.59.402 and other rules - Respiratory Care Practitioners,  
p. 1464

(Board of Sanitarians)

- 8.60.401 and other rules - Sanitarians, p. 626, 985, 1965,  
2578

(Board of Speech-Language Pathologists and Audiologists)

- 8.62.413 and other rules - Practice of Speech-Language  
Pathology and Audiology, p. 2103

(Board of Passenger Tramway Safety)

- 8.63.504 and other rule - Registration of New, Relocated or  
Major Modification of Tramways - Conference Call  
Meetings, p. 633, 1299

(Board of Veterinary Medicine)

- 8.64.402 and other rules - Fees - Application Requirements -  
Temporary Permits - Examinations - Annual Renewals -  
Continuing Education - Unprofessional Conduct -  
Applications for Certification of Embryo Transfer -  
Unprofessional Conduct for Embryo Transfer -  
Disciplinary Actions - Advisory Committee, p. 2253,  
2579

(Building Codes Bureau)

- 8.70.101 Incorporation by Reference of Uniform Building Code,  
p. 707  
8.70.101 Emergency Amendment - Building Permit Fees, p. 676  
8.70.108 and other rules - Incorporation by Reference of CABO  
One and Two Family Dwelling Code - Funding of Code  
Enforcement Programs - Extension of Municipal  
Jurisdictional Area - Incorporation by Reference of  
Safety Code for Elevators and Escalators, p. 1475,  
2160  
8.70.208 and other rule - Emergency Amendment - Funding of  
Code Enforcement Programs - Extension of Municipal  
Jurisdictional Area, p. 1494

(Consumer Affairs Office)

- 8.78.202 and other rules - Repair and Servicing of  
Automobiles - Consumer Reporting Agencies -  
Operation of Proprietary Schools, p. 1352, 2284

(Banking and Financial Institutions Division)

- 8.80.108 Limitations on Loans, p. 355, 2161
- 8.80.307 Dollar Amounts to which Consumer Loan Rate are to be Applied, p. 986, 2165

(Local Government Assistance Division)

- I & II and other rules - 1996 Federal Community Development Block Grant Program - 1996 Treasure State Endowment (TSEP) Program - 1987 and 1988 Federal Community Development Block Grant Programs, p. 2454, 1300
- 8.83.401 and other rules - State Grants to Counties for District Court Assistance, p. 988, 1665

(Board of Investments)

- 8.97.715 and other rules - Municipal Finance Consolidation Program - Montana Cash Anticipation Financing Program, p. 360, 766, 910

(Economic Development Division)

- 8.99.401 and other rules - Microbusiness Advisory Council, p. 636, 2166, 2580

(Board of Housing)

- 8.111.305 and other rules - Lending Institutions - Loan Servicers, p. 2577, 679

(Board of Science and Technology Development)

- 8.122.102 and other rules - Award and Administration of Loans by the Montana Board of Science and Technology Development, p. 2351
- 8.122.601 Application Procedures for a Seed Capital Technology Loan - Submission and Use of Executive Summary, p. 2204, 548, 912

(Montana Lottery)

- 8.127.101 and other rules - Organizational Rule - Instant Tickets - Prizes, p. 2110
- 8.127.407 and other rule - Retailer Commission - Sales Staff Incentive Plan, p. 1479

EDUCATION, Title 10

(Office of Public Instruction)

- 10.20.201 and other rules - School Finance - Budgeting and Funding, p. 1230, 2168

(Board of Public Education)

- 10.57.211 and other rule - Test for Certification - Minimum Scores on the National Teacher Examination Core Battery, p. 2416
- 10.57.211 Test for Certification, p. 2457, 680
- 10.57.301 Endorsement Information, p. 990, 1666, 1835

(Montana Historical Society)

- I-XIV Procedures that State Agencies Must Follow to Protect Heritage Properties and Paleontological Remains - Providing General Procedures which the State Historic Preservation Office Must Follow in Implementing Its General Statutory Authority, p. 1920

(State Library Commission)

- 10.102.5102 and other rule - Allocation of Funding Between Federations and Grant Programs - Arbitration of Disputes Within Federations, p. 18, 1374

FISH, WILDLIFE, AND PARKS, Department of, Title 12

- I Application Process and Criteria for a Scientific Collectors Permit, p. 373, 1148, 2171  
12.6.1604 and other rules - Regulation of Roadside Zoos - Game Bird Farms - Fun Farms - Migratory Game Bird Avicultural Permits - Tattooing of Certain Captive Predators, p. 1002, 1839

(Fish, Wildlife, and Parks Commission)

- 12.4.102 Stream Access Definitions in Rules, p. 994, 1838  
12.6.901 Water Safety on Johnson and South Sandstone Reservoirs, p. 710, 1375  
12.6.901 Restriction of Motor-Propelled Water Craft on the Clark Fork River, p. 712, 1376  
12.9.105 and other rules - Wild Turkey Policy - 10-80 Baits - Reintroduction of Peregrine Falcon, p. 1014, 1842

(Fish, Wildlife, and Parks Commission and Department of Fish, Wildlife, and Parks)

- 12.2.304 and other rules - Natural Resources Policies - Public Participation, p. 997, 1836  
12.3.104 and other rules - Licensing, p. 221, 768  
12.3.107 and other rules - Issuance of Hunting, Fishing and Trapping Licenses, p. 991, 1837  
12.4.202 and other rules - Hunter Access and Landowner Incentives Under the Block Management Program, p. 483, 1139  
12.7.401 and other rules - Fish Ladders - River Restoration Program, p. 1007, 1840  
12.8.101 and other rules - State Park System - State Recreational Waterway System - Cultural Resources, p. 1011, 1841

ENVIRONMENTAL QUALITY, Department of, Title 17

- 16.2.101 and other rules - MEPA - Transfer of Department of Health and Environmental Sciences and Department of State Lands Procedural Rules for the Montana Environmental Policy Act, p. 1497  
16.40.101 and other rules - Occupational Health - Transfer from Department of Health and Environmental Sciences

- Radiation Control - Occupational Health, p. 433, 681
- 17.54.102 and other rules - Updating Federal Incorporations by Reference, p. 20, 1382
- (Board of Environmental Review)
- I Water Quality - Temporary Water Standards for Daisy Creek, Stillwater River, Fisher Creek, and the Clark's Fork of the Yellowstone River, p. 1652, 1872, 2211, 1049, 2502
- I-IX Air Quality - Incorporating Federal Transportation Conformity Rules - Adopting Interagency Consultation Procedures, p. 1775, 2299
- 16.8.701 and other rules - Air Quality - Adopting the Current Federal Definition of Volatile Organic Compounds, p. 1019, 1843
- 16.8.704 and other rules - Air Quality - Updating the Incorporations by Reference and References to the MCA to the Most Recent Regulations and Statutes - Combining Certain Provisions of the Air Quality Rules, p. 1034, 1844
- 16.8.1101 and other rules - Air Quality - Adding Human Health Risk Assessment to the Preconstruction Permit Application Requirements for Incineration Facilities Subject to 75-2-215, MCA, p. 1026, 2291
- 16.8.1102 and other rules - Air Quality - Allowing Existing Facilities Flexibility to make Minor Changes without Revising their Air Quality Preconstruction Permits, p. 1772, 2293
- 16.8.1107 Air Quality - Public Review of Air Quality Preconstruction Permit Applications, p. 488, 1149
- 16.8.1419 Air Quality - Fluoride Emissions - Phosphate Processing, p. 1017, 1852
- 16.8.1429 and other rule - Air Quality - Adopting Federal Regulations for the Administration of Maximum Achievable Control Technology Standards, p. 1024, 2298
- 16.8.1903 and other rule - Air Quality - Air Quality Operation Fees - Air Quality Permit Application Fees, p. 1928, 2581
- 16.8.1906 and other rules - Air Quality - Rules Regarding Air Quality, p. 2260
- 16.8.2026 Air Quality - Acid Rain, p. 1022, 1853
- 17.30.640 and other rules - Water Quality - Water Quality, p. 1047, 1854
- 17.30.1501 and other rules - Water Quality - Permitting of In-Situ Uranium Mining, p. 2263
- 17.54.102 and other rules - Waste Management - Bringing Current Rules in Line with EPA Regulations in Order to Maintain Federal Authorization of the State Hazardous Waste Program, p. 2357
- 26.2.641 and other rules - MEPA - Montana Environmental Policy Act for the Department of State Lands, p. 491, 1150

- 26.4.107M and other rules - Hard Rock - Enforcement - Penalties, p. 1786, 2586  
26.4.301 and other rules - Abandoned Mines - Abandoned Mine Reclamation Program, p. 2265

(Department of Environmental Quality and Board of Environmental Review)

- 16.8.101 and other rules - Air Quality - Transfer from Department of Health and Environmental Sciences - Air Quality - Air and Water Quality Tax Certification, p. 2285  
16.16.101 and other rules - Water Quality - Transfer from Department of Health and Environmental Sciences - Water Quality, p. 493, 1499

(Petroleum Tank Relief Compensation Board)

- 16.47.101 and other rules - Petroleum Tank Release Compensation Board, p. 1587

TRANSPORTATION, Department of, Title 18

- I and other rules - Establishing Refund Percentages for PTO or Auxiliary Engines - Motor Fuels, p. 2733, 913  
18.8.101 and other rules - Motor Carrier Services Program, p. 714, 1971  
18.12.501 and other rules - Aeronautical Powers and Duties, p. 1943

(Transportation Commission)

- 18.6.202 and other rules - Outdoor Advertising Regulations, p. 39, 1855

(Department of Transportation and Transportation Commission)

- I-VII Debarment of Contractors Due to Violations of Department Requirements - Determination of Contractor Responsibility, p. 1930

JUSTICE, Department of, Title 23

- Notice of Proposed Amendments to the Certificate of Public Advantage and Approving the Merger of Columbus Hospital and Montana Deaconess Medical Center, p. 1481A  
I-III Handling, Collection, Transportation, Sampling and Storage of Blood Samples for DNA Indexing, p. 1605, 2172  
I-VIII Operation, Inspection, Classification, Rotation and Insurance of Tow Trucks, p. 503  
I-IX Operation, Inspection, Classification, Rotation, and Insurance of Commercial Tow Trucks, p. 2267  
23.5.102 Emergency Amendment - Hours-of-Service Requirements for Certain Industries to Conform with Changes in Federal Law Presently Incorporated by Reference

- Pertaining to Motor Carrier and Commercial Vehicle  
Safety Standard Regulations, p. 2177  
23.16.101 and other rules - Public Gambling, p. 2504

(Board of Crime Control)

- 23.14.401 and other rules - Peace Officers Standards and  
Training - DARE Trust Fund, p. 1260

LABOR AND INDUSTRY. Department of. Title 24

- I and other rules - Unemployment Insurance Case  
Procedures - Employment Status [Independent  
Contractor] Issues, p. 1051, 1667  
I and other rules - Procedure in Workers' Compensation  
Matters - Employment Status [Independent  
Contractor], p. 1061, 1673  
I-III and other rules - Wage Claim Procedures - Employment  
Status [Independent Contractor] Issues, p. 1056,  
1668  
I-V Workers' Compensation Administrative Assessment,  
p. 1609  
I-V and other rule - Exemption of Independent  
Contractors from Workers' Compensation Coverage,  
p. 725, 1303  
I-XI Creating One Process for Determining All Employment  
Status Issues, Including that of Independent  
Contractor, p. 1070, 1676  
I-XVII and other rules - Workers' Compensation Plan Number  
One [Plan 1] Requirements and Eligibility, p. 512,  
1151, 2427  
24.16.1509 and other rule - Minimum Hourly Wage Rate, p. 2363  
24.16.9007 Prevailing Wage Rates - Building Construction,  
p. 873, 1669  
24.21.414 Adoption of Wage Rates for Certain Apprenticeship  
Programs, p. 875  
24.29.706A and other rules - Transfer of Independent Contractor  
Rules to ARM Title 24, Chapter 35, p. 1863

(Human Rights Commission)

- 24.9.801 and other rules - Proof of Discrimination, p. 1790

LIVESTOCK. Department of. Title 32

(Board of Livestock)

- 32.3.121 and other rules - Disease Control - Animal Feeding,  
Slaughter, and Disposal - Fluid Milk and Grade A  
Milk Products - General Licensing and Provisions -  
Marketing of Livestock - Branding and Inspection,  
p. 376, 1864  
32.3.201 and other rules - Importation of Animals and Semen  
into Montana - Brucellosis - Tuberculosis - Poultry  
- Animal Identifications - Control of Biologics -  
Rendering Plants - Vehicles and Equipment - Animal  
Health Requirements for Livestock Markets - Official  
Tuberculin Tests, p. 1803, 2300



(Board of Milk Control)

- I-IV and other rule - Milk Utilization - Marketing of Class III Milk, p. 2114, 2428
- 8.86.301 Wholesale Prices for Class I, II and III Milk, p. 641, 2181
- 32.8.103 Circumstances Under Which Raw Milk May be Sold for Human Consumption, p. 2222, 769

MILITARY AFFAIRS. Department of. Title 34

- 34.3.101 and other rules - Emergency and Disaster Relief Policy, p. 1482

NATURAL RESOURCES AND CONSERVATION. Department of. Title 36

- I Reject, Modify, or Condition Permit Applications in the Houle Creek Basin, p. 1952, 2432
- I-VII Resolution of Disputes over the Administration of the Yellowstone River Compact, p. 1078, 1866
- 26.2.201 and others rules - Leasing or Other Use of State Lands - Sale of State Lands - Schedule of Fees - Homesite and Farmyard Leases - Antiquities on State Lands - Ownership Records for Non School Trust Land, p. 225, 771
- 36.2.401 and other rules - Minimum Standards and Guidelines for the Streambed and Land Preservation Act, p. 1946, 2366
- 36.6.101 and other rules - Referendums for Creating or Changing Conservation District Boundaries - Conservation District Supervisor Elections, p. 2755, 772
- 36.12.102 and other rule - Forms - Application and Special Fees, p. 1954, 2430
- 36.19.101 and other rules - Reclamation and Development Grants Program, p. 228, 775
- 36.20.102 and other rules - Weather Modification, p. 381, 1159

(Board of Land Commissioners)

- I-X All Activities on Classified Forest Lands Within Montana during the Legal Forest Fire Season - Debris Disposal - Fire Prevention on Forest Lands, p. 877, 1502, 2183
- 26.2.301 and other rules - Rental and Royalty Charges on State Land - Surface Management - Sale of State Land - Oil and Gas Leases - Geothermal Resources - Uranium Leasing - Coal Leasing on State Land, p. 2753, 916
- 26.2.502 Rental Royalty and Other Charges on State Land - Transfer from Department of State Lands, p. 1157
- 36.2.803 Categorical Exclusions to Consultation with the State Historic Preservation Office, p. 1820
- 36.10.115 and other rules - Fire Management, p. 2760, 773
- 36.11.102 and other rules - Christmas Tree Cutting - Control of Timber Slash and Debris, p. 59, 379, 774, 1865

(Board of Land Commissioners and Department of Natural Resources and Conservation)

- 26.3.128 and other rules - Transfer of State Lands Rules - Surface Management - Issuance of Oil and Gas Leases - Coal Leasing - Geothermal Resources - Metalliferous Leasing, p. 2384
- 26.7.703 and other rules - Citizen Participation in Agency Decisions, p. 1262
- 36.25.115 and other rules - State Land Leasing, p. 2368

(Board of Water Well Contractors)

- 36.21.410 and other rules - Water and Monitoring Well Licensing - Construction Standards, p. 2120

(Board of Oil and Gas Conservation)

- 36.22.305 and other rules - Naming of Pools - Illegal Production - Restoration of Surface - Regulations to Implement the Natural Gas Policy Act, p. 232, 1160
- 36.22.1401 and other rules - Underground Injection, p. 649, 1308

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- I Families Achieving Independence in Montana (FAIM), p. 1357, 2194
- I Release of Confidential Records for State Mental Health Facilities, p. 1264, 2187
- I Emergency Adoption - Families Achieving Independence in Montana (FAIM), p. 917
- I Conditions for Contracts Funded with Federal Maternal and Child Health Block Grant Funds, p. 525, 2184
- I-IV Medicaid Coverage and Reimbursement of Home Infusion Therapy Services, p. 2131, 2599
- I-V and other rules - Chemical Dependency Educational Courses, p. 391, 1312
- I-VI Criteria for Patient Placement at the Montana Chemical Dependency Center, p. 1958, 2596
- I-IX and other rules - Medicaid Coverage - Reimbursement of Physical Therapy, Speech Therapy, Occupational Therapy and Audiology Services, p. 1089, 1687
- I-XIII Retirement Home Licensing Requirements, p. 734, 1867
- I-XVII Home Infusion Therapy, p. 883, 2587
- 11.2.101 and other rules - Departments of Family Services, Health and Environmental Sciences, and Social and Rehabilitation Services Procedural Rules, p. 2423
- 11.7.401 and other rules - Transfer to Department of Corrections - Juvenile Corrections, p. 1385
- 11.7.510 Goal for Reducing the Percentage of Children in Foster Care for Two or More Years, p. 2224, 2792, 1388
- 11.14.105 Licensure of Day Care Facilities, p. 656, 1311
- 11.14.605 Income Eligibility and Copayments for Day Care, p. 1824, 2302

- 11.16.128 and other rule - Licensure of Adult Foster Care Homes, p. 529, 921
- 11.22.101 and other rules - Purchased Services through Title XX Block Grants, p. 743, 1390
- 16.10.1501 and other rules - Swimming Pool Licensing Requirements, p. 2642, 1505
- 16.32.101 and other rules - Procedures, Criteria and Reporting of the Certificate of Need Program, p. 1267, 1975
- 16.32.399K Utilization Review in Medical Assistance Facilities, p. 234, 682
- 20.14.104 and other rules - Mental Health Nursing Care Centers, p. 658, 1391
- 46.2.101 and other rules - Transfer of Department of Social and Rehabilitation Services Procedural Rules, p. 2433
- 46.6.405 and other rules - Vocational Rehabilitation Financial Needs Standards, p. 2779, 1320
- 46.8.109 and other rules - Developmental Disabilities, p. 1614, 2188
- 46.10.403 AFDC Assistance Standards, p. 1290, 2192
- 46.10.409 and other rules - Child Care Fee Scales, p. 2372
- 46.12.505 Medicaid Coverage - Reimbursement of Inpatient and Outpatient Hospital Services, p. 1102, 1682
- 46.12.506 and other rule - Medicaid Reimbursement for Outpatient Hospital Emergency, Clinic and Ambulatory Surgery Services, p. 237, 1539
- 46.12.590 and other rules - Medicaid Reimbursement for Residential Treatment Services, p. 243, 776
- 46.12.1222 and other rules - Nursing Facilities, p. 1081, 1698
- 46.12.1919 and other rule - Targeted Case Management for High Risk Pregnant Women, p. 532, 1566, 1997
- 46.12.1930 and other rules - Targeted Case Management for the Mentally Ill, p. 535, 1998
- 46.12.4804 and other rules - Health Maintenance Organizations, p. 2418
- 46.12.5002 and other rules - Passport to Health Program, p. 1484, 2193
- 46.13.302 and other rules - Low Income Energy Assistance Program (LIEAP), p. 2136
- 46.14.401 Low Income Weatherization Program, p. 731, 1713
- 46.30.507 and other rules - Child Support Enforcement Distribution of Collections - Non-AFDC Services, p. 2765, 1714

PUBLIC SERVICE REGULATION, Department of, Title 38

- I Recovery of Abandonment Costs in Electric Utility Least-Cost Resource Planning and Acquisition, p. 1962
- I Content of Certain Motor Carrier Receipts, p. 896, 1567
- I-LVIII Local Exchange Competition and Dispute Resolution in Negotiations between Telecommunications Providers for Interconnection, Services and Network Elements, p. 2528

- 38.3.1101 and other rules - Motor Carriers of Property,  
p. 663, 1568

REVENUE, Department of, Title 42

- I and other rules - Real Property, p. 107, 1172  
I-III Infrastructure User Fee Credit, p. 538, 1178  
I-XIII and other rules - Oil and Gas Rules for the Natural  
Resources Tax Bureau, p. 1107, 2001  
42.11.103 and other rules - Liquor Privatization Rules, p. 66,  
1161  
42.11.243 and other rules - Liquor Regulations for Golf Course  
and Moveable Devices, p. 2564  
42.15.101 and other rules - Biennial Review of Chapter 15 -  
Composite Returns, p. 2142, 2605  
42.15.401 and other rules - Medical Savings Account, p. 61,  
1162  
42.17.101 and other rules - Withholding and Old Fund Liability  
Taxes, p. 97, 1169  
42.17.103 General Withholding Taxes, p. 2276, 2610  
42.19.401 and other rules - Low Income Property Rules - Income  
and Property Tax Relief Rules, p. 87, 1171  
42.19.501 Property Tax Exemption for Disabled Veterans,  
p. 2568  
42.21.106 and other rules - Personal Property, p. 2653, 1174  
42.23.111 and other rules - General and Special Provisions for  
Corporation License Tax, p. 68, 1177  
42.25.1810 Oil and Gas Rules, p. 2151, 2435  
42.35.101 and other rules - Inheritance Tax Rules, p. 91, 1179  
42.36.101 and other rules - Inheritance Taxes, p. 70, 1181

SECRETARY OF STATE, Title 44

- 1.2.419 Filing, Compiling, Printer Pickup and Publication of  
the Montana Administrative Register, p. 2574

(Commissioner of Political Practices)

Notice of Public Hearing to Consider Whether New or  
Amended Rules that Address Lobbying Activities are  
Necessary Pursuant to the Petition Submitted by  
Montana Common Cause, p. 2570

- I Overlapping Work Hours - Multiple Salaries from  
Multiple Public Employees, p. 125, 789  
I-III Designation of Contributions - Aggregate  
Contribution Limits for Write-in Candidates, p. 129,  
784  
I-VIII Code of Ethics Complaint Procedures, p. 540, 922  
44.10.331 and other rule - Contribution Limitations, p. 127,  
787  
44.10.411 Incidental Political Committee, Filing Schedule,  
Reports, p. 1126, 2153  
44.12.109 Personal Financial Disclosure by Elected Officials,  
p. 1128, 2195

## 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 September 1996, appear. Vacancies scheduled to appear from November 1, 1996, through January 31, 1997, 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 October 1, 1996.

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 SEPTEMBER, 1996

Appointee	Appointed by	Succeeds	Appointment/End Date
<b>Alternative Health Care Board (Commerce)</b>			
Dr. Michael Bergkamp	Governor	reappointed	9/9/1996
Helena			9/1/2000
Qualifications (if required): naturopath			
<b>Board of Medical Examiners (Commerce)</b>			
Dr. Terence Calderwood	Governor	Beighle	9/1/1996
Missoula			9/1/2000
Qualifications (if required): doctor of medicine			
<b>Board of Real Estate Appraisers (Commerce)</b>			
Mr. Roger Jacobson	Governor	Asay	9/23/1996
Kalispell			5/1/1999
Qualifications (if required): real estate appraiser			
<b>Community Services Advisory Council (Governor)</b>			
Ms. Norma Bixby	Governor	reappointed	9/10/1996
Lame Deer			7/1/1999
Qualifications (if required): representative of tribal government			
Mr. Charles McCarthy	Governor	reappointed	9/10/1996
Helena			7/1/1999
Qualifications (if required): representative of the Department of Public Health and Human Services			

**BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1996**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Family Services Advisory Council (Public Health and Human Services)</b>			
Mr. Rye Sorenson	Governor	McCall	9/27/1996
Billings			4/15/1998
Qualifications (if required):	public member		
<b>Food and Nutrition Advisory Council (Public Health and Human Services)</b>			
Mr. Ralph Kroon	Governor	Watt	9/10/1996
Helena			8/30/1999
Qualifications (if required):	representing the Office of Public Instruction		
<b>Ms. Lynn Paul</b>			
Governor		reappointed	9/10/1996
Bozeman			8/30/1999
Qualifications (if required):	representing MSU Extension Office		
<b>Mr. David Thomas</b>			
Governor		reappointed	9/10/1996
Helena			8/30/1999
Qualifications (if required):	representing the Department of Public Health and Human Services		
<b>Indian Burial Preservation Board (Commerce)</b>			
Dr. Ken Deaver	Governor	not listed	9/4/1996
Billings			8/22/1998
Qualifications (if required):	representing the Montana Archaeological Association		

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1996

Appointee	Appointed by	Succeeds	Appointment/End Date
<b>Indian Burial Preservation Board (Commerce) Cont.</b>			
Mr. Gilbert Horn	Governor	not listed	9/4/1996
Harlem			8/22/1998
Qualifications (if required): representing the Gros Ventre Tribe			
Mr. Mickey Nelson	Governor	reappointed	9/4/1996
Helena			8/22/1998
Qualifications (if required): representing the Montana Coroner's Association			
Mr. John Pretty On Top	Governor	not listed	9/4/1996
Crow Agency			8/22/1998
Qualifications (if required): representing the Crow Tribe			
Mr. Duncan Standing Rock, Sr.	Governor	not listed	9/4/1996
Box Elder			8/22/1998
Qualifications (if required): representing the Chippewa-Cree Tribe			
Mr. Germaine White	Governor	not listed	9/4/1996
Pablo			8/22/1998
Qualifications (if required): representing the Little Shell band of Chippewa Indians			
<b>Montana Family Support Services Advisory Council (Public Health and Human Services)</b>			
Ms. Gwen Beyer	Governor	not listed	9/11/1996
Polson			9/11/1998
Qualifications (if required): parent representative			



BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1996

Appointee	Appointed by	Succeeds	Appointment/End Date
<b>Montana Family Support Services Advisory Council (Public Health and Human Services) Cont.</b>			
Ms. Linda Botten Bozeman	Governor	not listed	9/11/1996
Qualifications (if required):	service provider		9/11/1998
Ms. Sylvia Danforth Miles City	Governor	not listed	9/11/1996
Qualifications (if required):	service provider		9/11/1998
Ms. Sue Forest Missoula	Governor	not listed	9/11/1996
Qualifications (if required):	representative of personnel preparation		9/11/1998
Ms. Christine Gutschenritter Great Falls	Governor	not listed	9/11/1996
Qualifications (if required):	related agency representative		9/11/1998
Ms. Lynda Hart Helena	Governor	not listed	9/11/1996
Qualifications (if required):	state agency representative		9/11/1998
Mr. John Holbrook Helena	Governor	not listed	9/11/1996
Qualifications (if required):	State Insurance Governance Representative		9/11/1998

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1996

Appointee	Appointed by	Succeeds	Appointment/End Date
<b>Montana Family Support Services Advisory Council (Public Health and Human Services) Cont.</b>			
Ms. Jackie Jandt Helena	Governor	not listed	9/11/1996
Qualifications (if required): state agency representative			
Ms. Beth Kenney Helena	Governor	not listed	9/11/1996
Qualifications (if required): parent representative			
Ms. Millie Kindie Malta	Governor	not listed	9/11/1996
Qualifications (if required): parent representative			
Mr. Ted Maloney Missoula	Governor	not listed	9/11/1996
Qualifications (if required): representative at large			
Ms. Saadi Marisdotter Helena	Governor	not listed	9/11/1996
Qualifications (if required): service provider			
Mr. Phil Matteis Florence	Governor	not listed	9/11/1996
Qualifications (if required): health/medical services representative			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1996

Appointee	Appointed by	Succeeds	Appointment/End Date
<b>Montana Family Support Services Advisory Council (Public Health and Human Services) Cont.</b>			
Rep. Matt McCann	Governor	not listed	9/11/1996
Harlem			9/11/1998
Qualifications (if required): state legislator			
Mr. Dan McCarthy	Governor	not listed	9/11/1996
Helena			9/11/1998
Qualifications (if required): state agency representative			
Ms. Maria Pease	Governor	not listed	9/11/1996
Lodge Grass			9/11/1998
Qualifications (if required): parent representative			
Ms. Georgia Rutherford	Governor	not listed	9/11/1996
Browning			9/11/1998
Qualifications (if required): parent representative			
Ms. Barbara Stefanic	Governor	not listed	9/11/1996
Laurel			9/11/1998
Qualifications (if required): related services agency representative			
Mr. Pete Surdock	Governor	not listed	9/11/1996
Helena			9/11/1998
Qualifications (if required): state agency representative			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1996

Appointee	Appointed by	Succeeds	Appointment/End Date
<b>Montana Family Support Services Advisory Council (Public Health and Human Services) Cont.</b>			
Ms. Colleen Thompson Glasgow	Governor	not listed	9/11/1996
Qualifications (if required):	related agency representative		9/11/1998
Ms. Chris Volinkaty Missoula	Governor	not listed	9/11/1996
Qualifications (if required):	service provider		9/11/1998
Ms. Sharon Wagner Helena	Governor	not listed	9/11/1996
Qualifications (if required):	state agency representative		9/11/1998
<b>Montana Historical Records Advisory Council (Historical Society)</b>			
Mr. Timothy Bernardis Crow Agency	Governor	reappointed	9/24/1996
Qualifications (if required):	public member		9/24/1998
Mr. Robert M. Clark Helena	Governor	reappointed	9/24/1996
Qualifications (if required):	public member		9/24/1998
Mr. Brian Cockhill Helena	Governor	reappointed	9/24/1996
Qualifications (if required):	representative of the Historical Society		9/24/1998

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1996

Appointee	Appointed by	Succeeds	Appointment/End Date
<b>Montana Historical Records Advisory Council (Historical Society) Cont.</b>			
Ms. Ellen Crane	Governor	reappointed	9/24/1996
Butte			9/24/1998
Qualifications (if required):	public member		
Ms. Connie Erickson	Governor	reappointed	9/24/1996
Helena			9/24/1998
Qualifications (if required):	public member		
Ms. Peggy Lamberson Bourne	Governor	Governor	reappointed 9/24/1996
Great Falls			9/24/1998
Qualifications (if required):	public member		
Ms. Kathryn Otto	Governor	reappointed	9/24/1996
Helena			9/24/1998
Qualifications (if required):	state archivist		
Ms. Marie L. Torosian	Governor	reappointed	9/24/1996
St. Ignatius			9/24/1998
Qualifications (if required):	public member		
<b>Montana Library Services Advisory Council (State Library)</b>			
Ms. Peggy Bloom	Director	not listed	9/19/1996
Missoula			6/1/1997
Qualifications (if required):	public library users		

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1996

Appointee	Appointed by	Succeeds	Appointment/End Date
<b>Montana Library Services Advisory Council (State Library) Cont.</b>			
Ms. Delores Drennen	Director	Heckel	9/19/1996
Miles City			6/1/1997
Qualifications (if required): none specified			
<b>State Electrical Board (Commerce)</b>			
Mr. Gene Kolstad	Governor	not listed	9/27/1996
Billings			7/1/2001
Qualifications (if required): public member			
<b>Tourism Advisory Council (Commerce)</b>			
Mr. Clark Whitehead	Governor	O'Day	9/23/1996
Lewistown			7/1/1997
Qualifications (if required): representing a federal agency and residing in Russell Country			

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Agricultural Advisory Council (Revenue)</b>		
Ms. Beth Murphy, Great Falls	Governor	1/23/1997
Qualifications (if required):	representing urban interests	
Ms. Nancy Espy, Broadus	Governor	1/23/1997
Qualifications (if required):	representing local government	
Mr. Mike Murphy, Helena	Governor	1/23/1997
Qualifications (if required):	representing irrigation interests	
Mr. Myles Watts, Bozeman	Governor	1/23/1997
Qualifications (if required):	representing Montana State University, College of Agriculture	
Mr. Mark Rasmussen, Hogeland	Governor	1/23/1997
Qualifications (if required):	representing non-irrigated cropland interests	
Rep. Linda J. Nelson, Medicine Lake	Governor	1/23/1997
Qualifications (if required):	State Senator and a Democrat	
Mr. Tim Gill, Helena	Governor	1/23/1997
Qualifications (if required):	representing financial interests	
Rep. John 'Sam' Rose, Choteau	Governor	1/23/1997
Qualifications (if required):	State Representative and a Republican	

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<u>Agricultural Advisory Council</u> (Revenue) Cont.		
Mr. Don Jenni, Lewistown	Governor	1/23/1997
Qualifications (if required):	representing grazing interests	
<u>Alfalfa Seed Committee</u> (Agriculture)		
Mr. Jack Delp, Hardin	Governor	12/21/1996
Qualifications (if required):	represents Alfalfa Seed Growers Association	
Mr. Tom Helm, Toston	Governor	12/21/1996
Qualifications (if required):	represents Montana Seed Growers Association	
Mr. Kenneth M. Sagmiller, Ronan	Governor	12/21/1996
Qualifications (if required):	represents Montana Seed Trade Association	
<u>Appellate Defender Commission</u> (Administration)		
Mr. Mark Parker, Billings	Governor	1/1/1997
Qualifications (if required):	attorney	
<u>Blue Ribbon Telecommunications Task Force</u> (Administration)		
Ms. Cheryl Beatty, Anaconda	Governor	1/1/1997
Qualifications (if required):	public member	
Mr. Mike Strand, Helena	Governor	1/1/1997
Qualifications (if required):	public member	
Mr. Bill Cochran, Billings	Governor	1/1/1997
Qualifications (if required):	public member	



VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Blue Ribbon Telecommunications Task Force</b> (Administration) Cont.		
Mr. Jeff Tabor, Billings	Governor	1/1/1997
Qualifications (if required): public member		
 Ms. Dixie Swenson, Bozeman	Governor	1/1/1997
Qualifications (if required): ex-officio member		
 Mr. Jim Hayhurst, Helena	Governor	1/1/1997
Qualifications (if required): public member		
 Mr. Jim Pool, Helena	Governor	1/1/1997
Qualifications (if required): public member		
 Mr. Patrick Hogan, Butte	Governor	1/1/1997
Qualifications (if required): ex-officio member		
 Ms. Doris Barta, Billings	Governor	1/1/1997
Qualifications (if required): public member		
 Mr. Tony Herbert, Helena	Governor	1/1/1997
Qualifications (if required): ex-officio member		
 Mr. Fred Lark, Lewistown	Governor	1/1/1997
Qualifications (if required): ex-officio member		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Blue Ribbon Telecommunications Task Force</b> (Administration) Cont.		
Ms. Joan Mandeville, Great Falls	Governor	1/1/1997
Qualifications (if required): public member		
Mr. Jim Ereaux, Pablo	Governor	1/1/1997
Qualifications (if required): public member		
Ms. Cathy Brightwell, Helena	Governor	1/1/1997
Qualifications (if required): public member		
Mr. Danny Oberg, Helena	Governor	1/1/1997
Qualifications (if required): ex-officio member		
Dr. John Cleveland, Missoula	Governor	1/1/1997
Qualifications (if required): ex-officio member		
Mr. David Owen, Helena	Governor	1/1/1997
Qualifications (if required): ex-officio member		
Ms. Cynthia Denton, Hobson	Governor	1/1/1997
Qualifications (if required): public member		
Mr. Tim Sweeney, Helena	Governor	1/1/1997
Qualifications (if required): ex-officio member		
Mr. Marc Wilson, Bigfork	Governor	1/1/1997
Qualifications (if required): ex-officio member		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Blue Ribbon Telecommunications Task Force</b> (Administration) Cont.		
Lieutenant Billi Heigh, Helena	Governor	1/1/1997
Qualifications (if required): ex-officio member		
 Mr. Edward Van Tighem, Great Falls	Governor	1/1/1997
Qualifications (if required): ex-officio member		
 Ms. B.J. Hawkins, White Sulphur Springs	Governor	1/1/1997
Qualifications (if required): ex-officio member		
 <b>Board of Aeronautics</b> (Transportation)		
Mr. Byron Bayers, Twin Bridges	Governor	1/1/1997
Qualifications (if required): represents County Commissioners Association		
 Mr. Joel Fenger, Chester	Governor	1/1/1997
Qualifications (if required): represents Montana Chamber of Commerce		
 Mr. Douglas Freeman, Hardin	Governor	1/1/1997
Qualifications (if required): represents Montana League of Cities and Towns and an attorney		
 Mr. Fred Booth, Highwood	Governor	1/1/1997
Qualifications (if required): represents Montana Pilots' Association		
 Mr. Ronald S. Mercer, Helena	Governor	1/1/1997
Qualifications (if required): represents Montana Airport Management Association		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Chiropractors (Commerce)</b>		
Dr. Karlene Berish, Billings	Governor	1/1/1997
Qualifications (if required): chiropractor		
<b>Board of Crime Control (Justice)</b>		
Mr. Don Bjertness, Billings	Governor	1/1/1997
Qualifications (if required): public member		
Mr. Rick Day, Helena	Governor	1/1/1997
Qualifications (if required): represents Department of Corrections and Human Services		
Ms. Elaine Allestad, Big Timber	Governor	1/1/1997
Qualifications (if required): county commissioner		
Chief Mike Shortell, Havre	Governor	1/1/1997
Qualifications (if required): represents Chief of Police		
Mr. John Flynn, Townsend	Governor	1/1/1997
Qualifications (if required): represents county attorneys		
Sheriff Bill Slaughter, Bozeman	Governor	1/1/1997
Qualifications (if required): represents sheriffs		
Mr. John Pfaff Jr., Whitefish	Governor	1/1/1997
Qualifications (if required): private citizen		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Housing (Commerce)</b>		
Mr. William H. Oser, Billings	Governor	1/1/1997
Qualifications (if required): public member		
<b>Mr. Paul Bankhead, Heron</b>		
Qualifications (if required): public member	Governor	1/1/1997
<b>Mr. Michael E. McKee, Hamilton</b>		
Qualifications (if required): public member	Governor	1/1/1997
<b>Mr. Robert J. Savage, Sidney</b>		
Qualifications (if required): attorney	Governor	1/1/1997
<b>Board of Investments (Commerce)</b>		
Mr. James E. Cowan, Seeley Lake	Governor	1/1/1997
Qualifications (if required): represents Teachers' Retirement Board		
<b>Mr. Bill Price, Lewistown</b>		
Qualifications (if required): public member	Governor	1/1/1997
<b>Mr. Troy W. McGee, Jr., Helena</b>		
Qualifications (if required): represents public employee retirement	Governor	1/1/1997
<b>Ms. Sharon Walker, Helena</b>		
Qualifications (if required): public member	Governor	1/1/1997

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

Board/current position holder	Appointed by	Term end
<b>Board of Investments (Commerce) Cont.</b>		
Mr. Warren Vaughan, Billings	Governor	1/1/1997
Qualifications (if required): public member		
<b>Board of Labor Appeals (Labor and Industry)</b>		
Mr. Daniel Johns, Kalispell	Governor	1/1/1997
Qualifications (if required): member not an employee of state government		
<b>Mr. Joseph E. Thares, Helena</b>		
Qualifications (if required): member not an employee of state government	Governor	1/1/1997
<b>Board of Natural Resources and Conservation (Natural Resources and Conservation)</b>		
Ms. Mary Ann Sharon, Dillon	Governor	1/1/1997
Qualifications (if required): attorney		
<b>Mr. Barton Cooper, Boulder</b>		
Qualifications (if required): public member	Governor	1/1/1997
<b>Dr. John Brower, Butte</b>		
Qualifications (if required): public member	Governor	1/1/1997
<b>Ms. Mary Hinebauch, Rosebud</b>		
Qualifications (if required): public member	Governor	1/1/1997
<b>Board of Occupational Therapy Practice (Commerce)</b>		
Ms. Linda Botten, Bozeman	Governor	12/31/1996
Qualifications (if required): occupational therapist		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

Board/current_position_holder	Appointed by	Term_end
<b>Board of Oil and Gas Conservation</b> (Natural Resources and Conservation)		
Ms. Judy Feland, Shelby	Governor	1/1/1997
Qualifications (if required): represents public at large		
<b>Mr. David Ballard, Billings</b>		
Qualifications (if required): represents oil and gas industry	Governor	1/1/1997
<b>Mr. Stanley Lund, Reserve</b>		
Qualifications (if required): represents public at large	Governor	1/1/1997
<b>Mr. George Galuska, Billings</b>		
Qualifications (if required): represents oil and gas industry	Governor	1/1/1997
<b>Board of Pardons</b> (Corrections and Human Services)		
Ms. Julene P. Kennerly, Browning	Governor	1/2/1997
Qualifications (if required): has knowledge of Native American issues		
<b>Mr. John G. Thomas, Helena</b>		
Qualifications (if required): none specified	Governor	1/2/1997
<b>Ms. Mary Jo Fox, Billings</b>		
Qualifications (if required): auxiliary member	Governor	1/1/1997
<b>Board of Passenger Tramway Safety</b> (Commerce)		
Mr. Kevin Taylor, Marysville	Governor	1/1/1997
Qualifications (if required): ski area operator		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

Board/current position holder	Appointed by	Term end
<b>Board of Passenger Tramway Safety</b> (Commerce) Cont.		
Ms. Helen Nelson, Kalispell	Governor	1/1/1997
Qualifications (if required): skiing public member		
<b>Board of Personnel Appeals</b> (Labor and Industry)		
Mr. Brad Talcott, Great Falls	Governor	1/1/1997
Qualifications (if required): represents general labor-management		
Mr. Thomas Schneider, Helena	Governor	1/1/1997
Qualifications (if required): represents labor		
Mr. Steven R. Henry, Billings	Governor	1/1/1997
Qualifications (if required): represents labor		
<b>Board of Physical Therapy Examiners</b> (Commerce)		
Mr. John Delano, Helena	Governor	1/1/1997
Qualifications (if required): public member		
Dr. Allen Weinert, Jr., Helena	Governor	1/1/1997
Qualifications (if required): medical doctor		
Ms. Christine Jensen, Clinton	Governor	1/1/1997
Qualifications (if required): public member		
<b>Board of Public Education</b> (Education)		
Mr. Ronald N. Fernelius, Missoula	Governor	1/1/1997
Qualifications (if required): resident of Western Congressional District		



VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Respiratory Care Practitioners (Commerce)</b>		
Mr. John H. Gildersleeve, Helena	Governor	1/1/1997
Qualifications (if required): respiratory care practitioner		
<b>Mr. Paul A. Bergman, Miles City</b>		
Qualifications (if required): public member	Governor	1/1/1997
<b>Ms. Iris L. Bungay, Cut Bank</b>		
Qualifications (if required): respiratory care practitioner	Governor	1/1/1997
<b>Board of Science and Technology Development (Commerce)</b>		
Mr. Loren Smith, Great Falls	Governor	1/1/1997
Qualifications (if required): public sector representative		
<b>Board of Social Work Examiners and Professional Counselors (Commerce)</b>		
Mr. Ervin Booth, Roundup	Governor	1/1/1997
Qualifications (if required): licensed professional counselor		
<b>Ms. Mary Meis, Conrad</b>		
Qualifications (if required): licensed professional social worker	Governor	1/1/1997
<b>Mr. Patrick Wolberd, Billings</b>		
Qualifications (if required): licensed social worker	Governor	1/1/1997
<b>Mr. C. James Armstrong, Fort Harrison</b>		
Qualifications (if required): licensed professional social worker	Governor	1/1/1997

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

Board/current position holder	Appointed by	Term and
<b>Board of Speech Pathologists and Audiologists</b> (Commerce)		
Ms. Lynn Harris, Miles City	Governor	12/31/1996
Qualifications (if required): audiologist		
<b>Ms. Linda Solem, Kalispell</b>	Governor	12/31/1996
Qualifications (if required): speech pathologist		
<b>Children's Trust Fund Board</b> (Family Services)		
Ms. Karen Ortman, Glasgow	Governor	1/1/1997
Qualifications (if required): public member		
<b>Ms. Gail Flack, Hardin</b>	Governor	1/1/1997
Qualifications (if required): public member		
<b>Coal Board</b> (Commerce)		
Mr. Roger Knapp, Hysham	Governor	1/1/1997
Qualifications (if required): resides in impact area		
<b>Mr. Alan Evans, Roundup</b>	Governor	1/1/1997
Qualifications (if required): resides in impact area		
<b>Mr. Gerald Feda, Glasgow</b>	Governor	1/1/1997
Qualifications (if required): public member		
<b>Commission for Human Rights</b> (Labor and Industry)		
Ms. S. Jane Lopp, Kalispell	Governor	1/1/1997
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

Board/current position holder	Appointed by	Term end
<b>Commission for Human Rights</b> (Labor and Industry) Cont. Ms. Evelyn Stevenson, Pablo Qualifications (if required): attorney	Governor	1/1/1997
Ms. Gloria Pattison Etchart, Glasgow Qualifications (if required): public member	Governor	1/1/1997
<b>Developmental Disabilities Planning and Advisory Council</b> (Social and Rehabilitation Services) Mrs. Othelia Schulz, Butte Qualifications (if required): represents Region IV	Governor	1/1/1997
Ms. Joyce Curtis, Choteau Qualifications (if required): represents of Region II	Governor	1/1/1997
Mr. Kenneth Kaline, Ashland Qualifications (if required): Native American with disabled family member	Governor	1/1/1997
Mr. Thomas Price, Eureka Qualifications (if required): represents Region V	Governor	1/1/1997
Mr. Kenneth J. Kronebusch, Conrad Qualifications (if required): none specified	Governor	1/1/1997
Rep. Roger Somerville, Lakeside Qualifications (if required): state representative	Governor	1/1/1997

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Developmental Disabilities Planning and Advisory Council (Social and Rehabilitation Services) Cont.</b>		
Mr. Peyton Terry, Glasgow	Governor	1/1/1997
Qualifications (if required): represents Region I		
<b>Mr. James W. Royan, Missoula</b>		
Qualifications (if required): represents Region III and a consumer	Governor	1/1/1997
<b>Mr. Bob Anderson, Helena</b>		
Qualifications (if required): represents Region III and a consumer	Governor	1/1/1997
<b>Ms. Mary Lynn Donnelly, Helena</b>		
Qualifications (if required): represents Region III and a consumer	Governor	1/1/1997
<b>Ms. Florence Massey, Billings</b>		
Qualifications (if required): represents Region III and a consumer	Governor	1/1/1997
<b>Mr. Randy Cochran, Billings</b>		
Qualifications (if required): represents Region III and a consumer	Governor	1/1/1997
<b>Mr. Cary Lund, Helena</b>		
Qualifications (if required): represents Region III and a consumer	Governor	1/1/1997
<b>Family Services Advisory Council (Family Services)</b>		
Sen. James H. Burnett, Luther	Governor	12/31/1996
Qualifications (if required): chairman of a legislative committee		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term and</u>
<b>Family Services Advisory Council</b> (Family Services) Cont.		
Rep. John Cobb, Augusta	Governor	12/31/1996
Qualifications (if required): chairman of a legislative committee		
Rep. Duane Grimes, Clancy	Governor	12/31/1996
Qualifications (if required): chairman of a legislative committee		
Rep. Betty Lou Kasten, Brockway	Governor	12/31/1996
Qualifications (if required): legislator		
<b>Fish, Wildlife, and Parks Commission</b> (Fish, Wildlife, and Parks)		
Mr. Stanley F. Meyer, Great Falls	Governor	1/1/1997
Qualifications (if required): represents District III		
Mr. Charles R. Decker, Libby	Governor	1/1/1997
Qualifications (if required): represents District I		
<b>Fish, Wildlife and Parks Commission</b> (Fish, Wildlife, and Parks) Cont.		
Mr. David Simpson, Hardin	Governor	1/1/1997
Qualifications (if required): represents District V		
<b>Hard Rock Mining Impact Board</b> (Commerce)		
Mr. Roger W. Kornder, Lincoln	Governor	1/1/1997
Qualifications (if required): represents major financial institution in Montana		
Mr. Dick Heineman, Wibaux	Governor	1/1/1997
Qualifications (if required): county commissioner		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

Board/current position holder	Appointed by	Term end
<b>Hard Rock Mining Impact Board</b> Ms. Carol Kienenberger, Malta Qualifications (if required):	(Commerce) Cont. Governor	1/1/1997
represents major financial institution in Montana		
<b>Mr. James McCauley, Boulder</b> Qualifications (if required):	Governor	1/1/1997
public member residing in an impact area		
<b>Hazardous Materials Transportation Advisory Council (Transportation)</b> Mr. David A. Galt, Helena Qualifications (if required):	Governor	12/13/1996
none specified		
<b>Mr. Curt Laingen, Helena</b> Qualifications (if required):	Governor	12/13/1996
none specified		
<b>Mr. Ben Havdahl, Helena</b> Qualifications (if required):	Governor	12/13/1996
none specified		
<b>Mr. Thomas Ellerhoff, Helena</b> Qualifications (if required):	Governor	12/13/1996
none specified		
<b>Mr. Dale Link, Lewistown</b> Qualifications (if required):	Governor	12/13/1996
none specified		
<b>Mr. Jim Greene, Helena</b> Qualifications (if required):	Governor	12/13/1996
none specified		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

Board/current position holder	Appointed by	Term end
<b>Hazardous Materials Transportation Advisory Council (Transportation) Cont.</b>		
Mr. Pat Keim, Helena	Governor	12/13/1996
Qualifications (if required): none specified		
Mr. Bill Reed, Missoula	Governor	12/13/1996
Qualifications (if required): none specified		
Mr. Joel Marshik, Helena	Governor	12/13/1996
Qualifications (if required): none specified		
Ms. Pamela Langley, Helena	Governor	12/13/1996
Qualifications (if required): none specified		
Ms. Rona Alexander, Bozeman	Governor	12/13/1996
Qualifications (if required): none specified		
Colonel Craig Reap, Helena	Governor	12/13/1996
Qualifications (if required): none specified		
<b>Milk Control Board (Commerce)</b>		
Mr. Jesse Russell Gleason, Fairfield	Governor	1/1/1997
Qualifications (if required): Republican from Congressional District 2		
Ms. Dixie S. Hertel, Moore	Governor	1/1/1997
Qualifications (if required): Republican from Congressional District 2		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

Board/current_position_holder	Appointed by	Term and
<b>Milk Control Board (Commerce) Cont.</b>		
Mr. Milton Olson, Whitewater	Governor	1/1/1997
Qualifications (if required): Republican from Congressional District 2		
<b>Montana Health Facility Authority Board (Commerce)</b>		
Ms. Gayle Carpenter, Helena	Governor	1/1/1997
Qualifications (if required): public member		
<b>Mr. Michael P. Varone, Helena</b>	Governor	1/1/1997
Qualifications (if required): expert in banking		
<b>Dr. Amos R. Little, Jr., Helena</b>	Governor	1/1/1997
Qualifications (if required): public member		
<b>Ms. Joyce Asay, Forsyth</b>	Governor	1/1/1997
Qualifications (if required): expert in hospital administration		
<b>Montana Highway Commission (Transportation)</b>		
Mr. Thom R. Forseth, Billings	Governor	1/1/1997
Qualifications (if required): Independent from District V		
<b>Ms. Patricia Abelin, Bozeman</b>	Governor	1/1/1997
Qualifications (if required): Republican from District 2		
<b>Mr. Wally R. Bell, Helena</b>	Governor	1/1/1997
Qualifications (if required): Republican from District 3		



VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

Board/current position holder	Appointed by	Term end
<b>Montana State Lottery Commission</b> (Commerce)		
Ms. Becky Erickson, Glasgow	Governor	1/1/1997
Qualifications (if required): public member		
<b>Sheriff Cliff Brophy, Columbus</b>		
Qualifications (if required): law enforcement officer	Governor	1/1/1997
<b>Science and Technology Development Board</b> (Commerce)		
Mr. Will Brooke, Bozeman	Governor	1/1/1997
Qualifications (if required): from private sector and an attorney		
<b>Social and Rehabilitation Appeals Board</b> (Social and Rehabilitation Services)		
Ms. Gloria Paladichuk, Sidney	Governor	1/1/1997
Qualifications (if required): public member		
<b>Tax Policy Task Force</b> (Revenue)		
Ms. Candace Torgerson, Helena	Governor	1/1/1997
Qualifications (if required): public member		
<b>Mr. Dennis Burr, Helena</b>		
Qualifications (if required): public member	Governor	1/1/1997
<b>Rep. Jerry L. Driscoll, Billings</b>		
Qualifications (if required): public member	Governor	1/1/1997
<b>Ms. Susan Good, Great Falls</b>		
Qualifications (if required): public member	Governor	1/1/1997

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Tax Policy Task Force (Revenue) Cont.</b>		
Ms. Delores Storm, Forsyth	Governor	1/1/1997
Qualifications (if required): public member		
<b>Mr. Jerry Pederson, Butte</b>	Governor	1/1/1997
Qualifications (if required): public member		
<b>Mr. John Shepherd, Portland</b>	Governor	1/1/1997
Qualifications (if required): ex-officio member		
<b>Ms. Sue Olson, Roundup</b>	Governor	1/1/1997
Qualifications (if required): public member		
<b>Mr. Bill Chapman, Cut Bank</b>	Governor	1/1/1997
Qualifications (if required): public member		
<b>Virginia City/Nevada City Preservation Task Force (Montana Historical Society)</b>		
Rep. Francis Bardonoue, Harlem	Governor	11/30/1996
Qualifications (if required): public member		
<b>Ms. Edythe McCleary, Hardin</b>	Governor	11/30/1996
Qualifications (if required): public member		
<b>Mr. Ed Henrich, Anaconda</b>	Governor	11/30/1996
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1996 through January 31, 1997

Board/current position holder	Appointed by	Term end
Virginia City/Nevada City Preservation Task Force (Montana Historical Society) Cont. Sen. Antoinette R. Hagener, Havre Qualifications (if required): public member	Governor	11/30/1996
Rep. Jeanette S. McKee, Hamilton Qualifications (if required): public member	Governor	11/30/1996
Rep. Karl Ohs, Harrison Qualifications (if required): public member	Governor	11/30/1996
Mr. Ward Shanahan, Helena Qualifications (if required): public member	Governor	11/30/1996