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MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 24

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of a new rule pertain-) ON THE PROPOSED ADOPTION
ing to watercraft identification) OF NEW RULE I WATERCRAFT
) IDENTIFICATION

TO: All Interested Persons:

1. On January 5, 1998, a public hearing will be held at 9:00 a.m., in the Division of Professional and Occupational Licensing conference room, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed adoption of a new rule pertaining to watercraft identification.

2. The proposed new rule will read as follows:

"I WATERCRAFT IDENTIFICATION (1) A person holding a valid outfitter, professional guide or guide license who utilizes any type of watercraft while providing services shall prove evidence of licensure by displaying a Montana board of outfitters issued license tag on each watercraft to be occupied by the licensee.

(2) The tag shall display the outfitter, professional guide or guide license number for identification purposes.

(3) The tag shall be effective for one calendar year.

(4) The tag shall be affixed to either side of the bow or at the oarlock or stern of the watercraft and be of a size so that it may be easily seen from another watercraft or from shore.

(5) The tag shall be affixed to the watercraft on a removable plaque or in such a way that if the craft is sold or is not being used by the licensee while the licensee is providing services, the tag may be removed or concealed to prevent misidentification of the occupant(s) as licensees.

(6) This rule shall be effective commencing with the 1998 licensing year. Licensees, depending on watercraft ownership, shall apply for sufficient tags to identify all watercraft they may utilize to provide services. Tag requests shall be made as part of the annual license and renewal applications starting with 1998 applications.

(7) The following uses of this license tag shall be misconduct under ARM 8.39.709:

(a) failure to display license tags by any licensee while providing services;

(b) display of counterfeit license tags or license numbers;

(c) offering for use by an unlicensed individual any license tag identifying another licensee as the occupant of the watercraft."

Auth: Sec. 37-47-201, MCA; IMR, Sec. 37-47-201, 37-47-302, 37-47-304, MCA

REASON: The board is receiving an increasing number of complaints regarding use of the state's watercourses by outfitters. This rule is an effort to track the complaints and determine whether the person complained of is, indeed, a licensed outfitter. By providing a mechanism by which licensees may be recognized, members of the public may refer complaints to the appropriate enforcement authority. The marking of watercraft will also aid in inspections by designating which craft an outfitter routinely utilizes.

3. 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., December 29, 1997, to advise us of the nature of the accommodation that you need. Please contact Mat Rude, Board of Outfitters, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-3738; 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 Mat Rude.

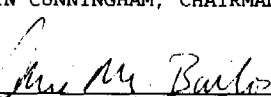
4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Outfitters, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., January 13, 1998.

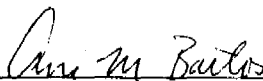
5. Carol Grell, attorney, has been designated to preside over and conduct this hearing.

6. Persons who wish to be informed of all Board of Outfitters administrative rulemaking proceedings may be placed on a list of interested persons by advising the Board at the rulemaking hearing or in writing to the Board of Outfitters, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by calling (406) 444-3738.

BOARD OF OUTFITTERS
ROBIN CUNNINGHAM, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 1, 1997.

BEFORE THE BOARD OF PLUMBERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of rules pertaining) THE PROPOSED AMENDMENT OF
to definitions and fees) ARM 8.44.402 DEFINITIONS AND
) 8.44.412 FEE SCHEDULE

TO: All Interested Persons:

1. On October 6, 1997, the Board of Plumbers published a notice of proposed amendment of rules pertaining to plumbing at page 1751, 1997 Montana Administrative Register, issue number 19.

2. The Board received a request for hearing on the rules from the Department of Commerce Building Codes Bureau, which is a governmental agency which qualifies to request a hearing.

3. The Board will conduct a public hearing on the proposed rules on Wednesday, January 21, 1998, at 10:00 a.m., in the Division of Professional and Occupational Licensing conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendments.

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., January 12, 1998, to advise us of the nature of the accommodation that you need. Please contact Pat Osterhout, administrative assistant of the Board of Plumbers, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-4390; 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 Pat Osterhout.

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 Plumbers, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than the close of hearing, January 21, 1998.

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

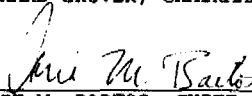
7. Persons who wish to be informed of all Board of Plumbers administrative rulemaking proceedings or other administrative proceedings may be placed on a list of

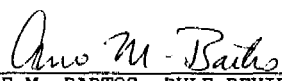
-2227-

interested persons by advising the Board at the rulemaking hearing or in writing to the Board of Plumbers, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-4390.

BOARD OF PLUMBERS
RICHARD GROVER, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 1, 1997.

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
adoption of a new rule	)	THE PROPOSED ADOPTION OF A
pertaining to administration	)	NEW RULE PERTAINING TO
of the 1998 Treasure State	)	ADMINISTRATION OF THE 1998
Endowment (TSEP) Program	)	TREASURE STATE ENDOWMENT
	)	(TSEP) PROGRAM

TO: All Interested Persons:

1. On January 20, 1998, at 1:30 p.m., a public hearing will be held in the downstairs conference room at the Department of Commerce Building, 1424 Ninth Avenue, Helena, Montana, to consider the adoption of a new rule pertaining to administration of the 1998 Treasure State Endowment (TSEP) Program.

2. The proposed new rule will read as follows:

"I INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1998 TREASURE STATE ENDOWMENT PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Treasure State Endowment Program 1998 Application Guidelines published by it as rules for the administration of the TSEP program.

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

- (a) definitions of terms;
 - (b) estimated amount of TSEP funds available in FY 1998 and 1999;
 - (c) eligible applicants and projects;
 - (d) application scoring system and ranking criteria;
 - (e) forms of financial assistance available under TSEP;
 - (f) general requirements for TSEP applications; and
 - (g) application review process.
- (3) Copies of the regulations adopted by reference in (1) of this rule may be obtained from the Department of Commerce, Local Government Assistance Division, Capitol Station, Helena, Montana 59620."

Auth: Sec. 90-6-710, MCA; IMP, Sec. 90-6-710, MCA

REASON: It is reasonably necessary to adopt the proposed rule because local government entities must have these application guidelines before the entities may apply to the department for financial assistance. The guidelines describe the types of projects that are eligible for TSEP funding and the types of assistance available. They also establish the numerical ranking structure by which the department will evaluate applications in light of statutory criteria and make funding recommendations to the legislature.

3. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Local Government Assistance Division, Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620, no later than January 26, 1998.

4. The Division will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., January 12, 1998, to advise us of the nature of the accommodation that you need. Please contact Richard M. Weddle, Local Government Assistance Division, Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620; telephone (406) 444-2781; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-2903. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Richard M. Weddle at the above-stated address.

5. Persons who wish to be informed of all Local Government Assistance Division administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Division at the rulemaking hearing or in writing to the Local Government Assistance Division, Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620.

6. Richard M. Weddle, attorney, has been designated to preside over and conduct this hearing.

LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 1, 1997.

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
repeal of the rule pertaining	)	THE REPEAL OF THE RULE
to the 1991 Federal Community	)	PERTAINING TO THE 1991
Development Block Grant	)	FEDERAL COMMUNITY DEVELOPMENT
Program and adoption of a	)	BLOCK GRANT PROGRAM AND
rule pertaining to the	)	ADOPTION OF A RULE PERTAINING
administration of the 1998	)	TO THE ADMINISTRATION OF THE
Federal Community Development	)	1998 FEDERAL COMMUNITY
Block Grant Program	)	DEVELOPMENT BLOCK GRANT
	)	PROGRAM

TO: All Interested Persons:

1. On January 20, 1998, at 1:30 p.m., a public hearing will be held in the downstairs conference room at the Department of Commerce Building, 1424 Ninth Avenue, Helena, Montana, to consider the repeal of the rule pertaining to the 1991 Federal Community Development Block Grant Program and adoption of a rule pertaining to the administration of the 1998 Federal Community Development Block Grant Program.

2. The Division is proposing to repeal ARM 8.94.3707 (authority 90-1-103, MCA and implementing 90-1-103, MCA). The text of this rule is located at page 8-3420, Administrative Rules of Montana. The rule is being proposed for repeal because all of the projects for this program year have been completed and closed out.

3. The proposed new rule will read as follows:

"I. INCORPORATION BY REFERENCE OF RULES FOR ADMINISTERING THE 1998 CDBG PROGRAM (1) The department of commerce herein adopts and incorporates by this reference the Montana Community Development Block Grant Program 1998 Application Guidelines for Housing & Public Facilities Projects, the Montana Community Development Block Grant Program 1998 Application Guidelines for Economic Development Projects, and the Montana Community Development Block Grant Program 1998 Grant Administration Manual published by it as rules for the administration of the 1998 CDBG program.

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

- (a) the policies governing the program;
- (b) requirements for applicants;
- (c) procedures for evaluating applications;
- (d) procedures for local project start up;
- (e) environmental review of project activities;
- (f) procurement of goods and services;
- (g) financial management;
- (h) protection of civil rights;
- (i) fair labor standards;

- (j) acquisition of property and relocation of persons displaced thereby;
 - (k) administrative considerations specific to public facilities, housing and community revitalization, and economic development projects;
 - (l) project audits;
 - (m) public relations;
 - (n) project monitoring; and
 - (o) technical assistance.
- (3) Copies of the regulations adopted by reference in (1) of this rule may be obtained from the Department of Commerce, Local Government Assistance Division, Capitol Station, Helena, Montana 59620."

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

REASON: It is reasonably necessary to adopt this rule because the federal regulations governing the state's administration of the 1998 CDBG program and section 90-1-103, MCA, require the Department to adopt rules to implement the program. Local government entities must have these application guidelines before the entities may apply to the Department for financial assistance under the CDBG program. The Application Guidelines describe the federal and state requirements that local governments must comply with in order to apply for CDBG funds. The Grant Administration Manual is primarily a restatement and explanation of existing federal and state statutory and regulatory requirements, as well as additional Department requirements, which local CDBG recipients must comply with in administering their CDBG projects. The Manual includes sample forms and letters, checklists, and explanatory text to help local government officials comply with the variety of requirements that apply to economic development, housing, and public facility projects.

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 the Local Government Assistance Division or Economic Development Division, Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620, no later than January 26, 1998.

5. The Division will make reasonable accommodations for persons with disabilities who wish to participate in the public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., January 12, 1998, to advise us of the nature of the accommodation that you need. Please contact Richard M. Weddle, Local Government Assistance Division, Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620; telephone (406) 444-2781; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-2903. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rulemaking process should contact Richard M. Weddle at the above-stated address.

6. Persons who wish to be informed of all Local

Government Assistance Division administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Division at the rulemaking hearing or in writing to the Local Government Assistance Division, Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620.

7. Richard M. Weddle, attorney, has been designated to preside over and conduct this hearing.

LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 1, 1997.

In the matter of the proposed) NOTICE OF THE PROPOSED
adoption of rules pertaining) ADOPTION OF RULES
to unmarked burials within the) PERTAINING TO UNMARKED
State of Montana) BURIALS WITHIN THE STATE OF
) MONTANA

TO: All Interested Persons:

1. On January 20, 1998, the Burial Preservation Board proposes to adopt rules pertaining to unmarked burials within the State of Montana.
2. The proposed new rules will read as follows:

"I ORGANIZATIONAL RULE (1) The burial preservation board was established by 22-3-804, MCA. The board administers the provisions of 22-3-801, MCA, to ensure that all burials on state and private lands be accorded equal treatment and respect for human dignity.

(2) The burial preservation board consists of 13 members appointed by the governor for a two-year term. Meetings of the board will be scheduled by the chairperson or at the request of at least four board members. The board, however, should meet in person the first Wednesday in May, if possible. Minutes shall be kept of all board meetings and copies of the minutes distributed to all board members.

(3) Written notice of regular board meetings shall be provided at least 30 days prior to the meeting.

(4) The board may meet without notice if necessary to determine the appropriate disposition of human remains or burial material discovered under 22-3-805, MCA.

(5) Seven members in attendance at a board meeting shall constitute a quorum.

(6) The chairperson is nominated from the membership of the burial preservation board.

(7) Any vacancies shall be filled in the same manner as the original appointed and only for the unexpired term."

Auth: Sec. 22-3-804, MCA; IMP, Sec. 22-3-804, MCA

"II PROTECTION OF SITE (1) After notification of a discovery, the person in charge of any survey, excavation, construction, agricultural practices or like activity on private or state lands which has disturbed or threatens to disturb human skeletal remains, a burial site or burial material, shall immediately take all reasonable steps to secure preservation of the site in situ by immediately stopping all activity destructive to it and by making a reasonable effort to secure it from vandalism, theft, erosion and other harmful disturbance."

Auth: Sec. 22-3-804, MCA; IMP, Sec. 22-3-805, 22-3-808, 22-3-809, MCA

"III NOTICE AND REPORTING REQUIREMENTS (1) If helpful, the coroner may request the assistance of a board representative or archaeologist or physical anthropologist and/or anyone else with special expertise in his original examination under 22-3-805(2), MCA. If a coroner cannot make the necessary determinations listed in 22-3-805(2), MCA, within two working days after he or she was notified of a possible discovery of human remains, he or she shall notify a board member in writing and provide an approximate time frame for his or her completion of the examination.

(2) If after taking reasonable steps to make his or her determinations listed in 22-3-805(2), MCA, the coroner cannot make his or her determination without removing or disturbing the human remains, the coroner shall provide the chairperson of the board with written report on the steps he or she took to make his or her determination and the reasons why the remains had to be disturbed or removed. The coroner must provide this report to the chairperson of the board within three days after the remains were disturbed or removed.

(3) Within 24 hours of notification by the coroner or other notification of a discovery of human skeletal remains, a burial site or burial material, or threatened disturbance of human skeletal remains, a burial site or burial material, the state historic preservation officer shall contact the landowner, agency, company and/or person, if known, conducting the activity which disturbs or threatens to disturb an unmarked burial or human skeletal remains, by phone or mail of the discovery and the procedures, liabilities and penalties established by the Human Skeletal Remains and Burial Site Protection Act. The state historic preservation officer shall also notify all board members of such discovery.

(4) If a coroner is unable to notify the state historic preservation officer pursuant to the provisions of 22-3-805(4), MCA, the coroner shall notify the chairperson of the board or the law enforcement agency of the nearest Indian reservation by telephone. The chairperson of the board or the law enforcement agency who was contacted by the coroner shall immediately notify the landowner and board member representing the nearest reservation.

(5) The board shall develop a list, which includes the phone number of the chairperson, the state historic preservation officer and all the Montana reservation law enforcement agencies and make the list available to the Montana coroners association.

(6) The board shall develop a telephone list of all board members and the state historic preservation officer and distribute it to all Montana reservation law enforcement

agencies.

(7) The coroner shall provide the name, the description of the activity that led to the discovery and the phone number of the person who has discovered or disturbed human skeletal remains.

(8) When a coroner is satisfied that the discovery of human remains are not subject to the provisions of Title 46, chapter 4, MCA, or any other related provisions of law concerning the investigation and he or she has satisfied the provisions of Title 22, chapter 3, MCA, all responsibilities for the human remains, burial material and site are the responsibility of the burial preservation board."

Auth: Sec. 22-3-804, MCA; IMP, Sec. 22-3-804, 22-3-805, MCA

"IV FIELD REVIEW (1) The board representative nearest to the discovery or a representative designated by the chairperson shall conduct a field review.

(2) With the permission of the landowner, a field review shall be conducted within 36 hours after the board received notice of a discovery of human skeletal remains, a burial site or burial material. The board representative may negotiate with the landowner for a reasonable extension of time to conduct a field review, if necessary.

(3) In conducting a field review, evidence that human remains or a burial site exists may include, but is not limited to the following:

(a) physical evidence on-site or by archeological techniques demonstrating the presence of human remains;

(b) previous grave markers;

(c) written documentation; and

(d) oral depositions, affidavits or oral histories.

(4) Subsurface testing to determine whether the property contains a burial site can only be conducted if the board determines that such testing is necessary. Such testing shall be conducted for the sole purpose of determining whether the property contains a burial site.

(5) If it is determined that human skeletal remains, a burial site or burial material exists, a determination of whether the site can be preserved in situ must be made during the field review.

(6) During the field review the board representative shall negotiate with the landowner concerning on-site reburial or disinterment and reburial. In conducting this negotiation the board representative should consider the following aspects of treatment of human remains or burial materials:

(a) avoidance of unnecessary disturbance of human remains and burial materials;

(b) avoidance of separation of human remains and burial materials; and

(c) avoidance of physical testing or modification of human remains and objects.

(7) The board representative and the landowner should attempt to reach an oral or written agreement on a time frame

concerning final treatment or disposition of human skeletal remains or burial material.

(8) If within 40 days after notification of the board, the board representative and the landowner have not agreed to the final treatment of the human skeletal remains and burial material and mediation fails, the human skeletal remains and burial material must be removed according to the provisions of these rules.

(9) The board shall develop a form in which the findings of the field reviews can be reported. All field review reports shall be submitted to the state historic preservation officer to be included in the burial registry."

Auth: Sec. 22-3-804, MCA; IMP, Sec. 22-3-804, 22-3-805, MCA

"V REMOVAL OF REMAINS OR BURIAL MATERIALS (1) If the human remains or burial material cannot be preserved in situ and it is necessary to remove them, the chairperson of the board shall designate someone to disinter the human remains or the burial material.

(2) If an agreement has been reached with the landowner providing for reburial on another site on his or her property, such reburial may be conducted by a board representative, archeologist or the landowner.

(3) The nearest board representative will monitor any disinterment of human remains or burial materials to ensure that the remains are treated with respect and dignity.

(4) The board shall give control and make its determination of the final disposition of human remains, or burial materials according to the following priority:

- (a) the descendants, if identifiable;
- (b) the tribe or other cultural group that has the closest cultural affiliation with the human skeletal remains or burial materials;
- (c) the tribe or other cultural group recognized as having aboriginally or historically occupied the area where the remains or materials were discovered if, upon notification by the board, the tribe or cultural group state a claim for the remains or material; or
- (d) if unclaimed by any tribe or cultural group, the board, which shall determine the appropriate disposition and oversee the reinterment of the remains and materials.

(5) The board or its designated representative may assume control and safekeeping of human remains and burial materials until final disposition is determined.

(6) A report of any removal and final disposition must be filed with the state historic preservation office."

Auth: Sec. 22-3-804, MCA; IMP, Sec. 22-3-804, 22-3-805, MCA

"VI DISPOSITION OF REMAINS AND BURIAL MATERIALS (1) The board shall make reasonable attempts to notify the persons, tribe or groups identified in 22-3-805(7), MCA, of the discovery and disposition of the human remains and burial

materials.

(2) If it is necessary to disinter the human remains and burial materials at another location, the board shall consult with those persons identified in 22-3-805(7), MCA, regarding the final disposition of the remains or materials."

Auth: Sec. 22-3-804, MCA; IMP, Sec. 22-3-805, MCA

"VII PERMITS FOR SCIENTIFIC ANALYSIS (1) All petitions for scientific analysis shall include a non-refundable application fee of \$150, scientific justification for the study, qualifications of the person requesting the study, methodology and the time frame necessary to complete the study.

(2) Petitions shall be submitted to the state historic preservation officer and the physical anthropologist on the board. The state historic preservation officer and the physical anthropologist on the board shall review the proposed methodology and make a recommendation to the board.

(3) In evaluating whether a petition is scientifically justifiable the board should consider the following:

- (a) whether the study will contribute new information;
- (b) whether there is substantial public interest in the matter studied;
- (c) whether the information sought to be learned can be obtained by other methods;
- (d) qualifications of the person(s) who will conduct the study;
- (e) the methodology proposed;
- (f) the time frame proposed;
- (g) the nature of the items to be studied; and
- (h) the recommendations of lineal descendants, tribe or cultural group that has the closest cultural affiliation, if any.

(4) If the board issues a permit to conduct scientific analysis it shall prescribe the terms, conditions and procedures that the permittee must follow. This should include the time frame allowed for the study and a plan on the final disposition.

(5) If a permit is granted, the permittee shall pay all costs of excavation, study and disposition.

(6) The board has 30 working days from the time a permit petition is received by the state historic preservation office to either approve or deny a petition. If the board denies a petition, it must provide the applicant a written statement outlining its grounds for finding the petition scientifically unjustifiable.

(7) If a permittee violates any provision, term, condition or procedure of the permit the board may institute proceedings to suspend or revoke the permit pursuant to the Montana Administrative Procedure Act."

Auth: Sec. 22-3-804, MCA; IMP, Sec. 22-3-804, 22-3-806, MCA

"VIII REPORTS AND BURIAL REGISTRY (1) A report of

remains will be completed by the board or the board's representative and shall include the following:

- (a) for disinterment and removal:
 - (i) identification of the names and organizations, agency or institutional affiliations of all individuals participating in disinterment and removal;
 - (ii) date(s) of activity and the site, context and identification of remains and materials, including location from which remains were removed, identified by county and legal description and/or map showing location of site;
 - (iii) cultural identification of remains or materials and descriptions of features or information used in making any determination; and

- (v) photograph of remains or materials or inventory of remains including number of human bones and bone fragments and inventory of any associated objects;

- (b) for disposition:
 - (i) identification of names and group, agency or institutional affiliations of individuals participating in disposition;

- (ii) date(s) of disposition and type of disposition (reburial, curation or other);

- (iii) identification of remains including confirmation that remains received are as listed in the removal inventory or a complete list of remains received for disposition;

- (iv) if the location of the burial is on an Indian reservation where permanent protection is feasible or if the final disposition is curation in a repository, the reservation or repository should be identified. If disposition is reburial on state or private lands, specific location of the reburial with a legal description and a map showing the reburial location should be provided.

(2) The state historic preservation officer shall establish a burial registry that is separate and distinct from the cultural registry.

(3) The state historic preservation officer shall assign a case file number to every report, discovery or situation relating to an unmarked burial site, human skeletal remains or burial materials.

(4) All reports, field notes, maps, board action and other information regarding a reported burial site, human skeletal remains and burial materials shall be maintained in case files.

(5) Burial site records are confidential and available only to criminal justice agencies or to federal, state and tribal personnel or their appointed representatives legally charged with administering laws protecting cultural resources."

Auth: Sec. 22-3-804, MCA; IMP, Sec. 22-3-804, 22-3-807, MCA

REASON: In Montana, there are numerous statutes that protect cemeteries and interred burials, and reflect the strong public

policy that all dead bodies are entitled to be decently buried and that the sanctity of the dead not be disturbed. Unmarked burial sites located within the state, however, have not been afforded adequate protection by state laws. This resulted in unregulated excavation, looting and other forms of mistreatment of the dead.

In 1991, the Legislature enacted House Bill 131 to protect the sanctity of unmarked Indian, pioneer and early settler grave sites, much like the modern, marked cemeteries. House Bill 131 establishes clear procedures and guidelines regarding the disposition and treatment of human remains when found in unmarked graves in the future. The act applies to both state and private lands in Montana. The act establishes the preference that unmarked burials should be undisturbed and left in place if the landowner consents.

A newly created board, the Burial Preservation Board, attached to the Department of Commerce is responsible for carrying out the provisions of the act. The board will: 1) assume responsibility for determining the treatment and final disposition of human remains; 2) maintain a registry of burial sites; 3) mediate disputes between interested parties; and 4) issue permits for justifiable scientific study of remains.

The proposed rules are necessary to comply with the requirements of House Bill 131 reasonably, which required the board to adopt rules to implement the bill. The rules are also necessary to provide landowners, agencies and archaeologists with specific guidelines regarding discovery procedures, notification requirements, application fees and reporting requirements.

3. Interested persons may present their data, views or arguments, concerning the proposed adoption in writing to the Burial Preservation Board, P.O. Box 278, Pablo, Montana 59855, no later than 5:00 p.m., January 20, 1998.

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 a written request for a hearing and submit the request along with any comment he has to the Burial Preservation Board, P.O. Box 278, Pablo, Montana 59855, or by facsimile to (406) 675-2629, to be received no later than 5:00 p.m., January 20, 1998.

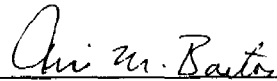
5. Persons who wish to be informed of all Burial Preservation Board administrative rulemaking proceeding or other administrative proceedings may be placed on a list of interested persons by advising the Board at the rulemaking hearing or in writing to the Burial Preservation Board, P.O. Box 278, Pablo, Montana 59855.

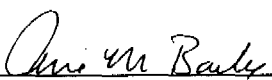
6. If the Board receives requests for a public hearing on the proposed adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed adoption, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or 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 hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25 based on the number of remains previously encountered.

BURIAL PRESERVATION BOARD
GERMAINE WHITE, CHAIRPERSON

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 1, 1997.

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

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of rule I and the amendment	)	OF PROPOSED ADOPTION AND
of 46.12.102, 46.12.702 and	)	AMENDMENT
46.12.703 pertaining to)	
medicaid outpatient drugs)	

TO: All Interested Persons

1. On January 6, 1998, 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 N. Sanders, Helena, Montana to consider the proposed adoption of rule I and the amendment of 46.12.102, 46.12.702 and 46.12.703 pertaining to medicaid outpatient drugs.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on December 29, 1997, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

RULE I OUTPATIENT DRUGS. DEFINITIONS (1) "Outpatient drugs" means drugs which are obtained outside of a hospital.

(2) "Legend drugs" means drugs that federal law prohibits dispensing without a prescription.

(3) "Maximum allowable cost (MAC)" means 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 (1996). The maximum allowable cost for multi-source drugs will not exceed the total of the dispensing fee established by the department and an amount that is equal to 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 Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, Montana, 59620-2951.

(4) "Estimated acquisition cost (EAC)" means the cost of drugs for which no MAC price has been determined. The EAC is the department's best estimate of what price providers are generally paying in the state for a drug in the package size providers buy most frequently. The EAC for a drug is the direct price (DP) charged by manufacturers to retailers. If there is no available DP for a drug or the department determines that the DP is not available to providers in the state, the EAC is the average wholesale price (AWP) less 10%.

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

3. The rules as proposed to be amended provide as follows. Material to be added is underlined. Material to be deleted is interlined.

46.12.102 MEDICAL ASSISTANCE, DEFINITIONS (1) through (18) remain the same.

~~(19) Outpatient drug means drug which are obtained outside of a hospital.~~

~~(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% 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 Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, Montana, 59620-2951.~~

~~(21) Estimated acquisition cost (EAC) is the cost of drugs for which no MAC price has been determined. The EAC is the department's best estimate of what price providers are generally paying in the state for a drug in the package size providers buy most frequently. The EAC for a drug is the direct price (DP) charged by manufacturers to retailers. If there is no available DP for a drug or the department determines that the DP is not available to providers in the state, effective January 1, 1988, the EAC is the average wholesale price (AWP) less 10%.~~

~~The department uses the DP and AWP as weekly reported or calculated by the American druggist blue book data center or any other industry accepted data center under contract with the department or its fiscal agent.~~

(22) through (37) remain the same in text, but are renumbered (19) through (34).

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 and 53-6-141, MCA

46.12.702 OUTPATIENT DRUGS, REQUIREMENTS (1) and (2) remain the same.

(3) ~~The department will participate only in the payment of drugs which require a prescription and those over the counter drugs which are included in the department drug formulary. Over the counter drugs include, but are not limited to insulin, antacids or laxatives. The department will participate only in the payment of legend drugs and those over the counter drugs which are included in the department drug formulary.~~

(4) remains the same.

(5) Each prescription shall be dispensed in the quantity ordered by the physician except that:

~~(a) Prescriptions for chronic conditions for which a physician has not ordered a specific quantity shall be dispensed in quantities of 100 dosages or a minimum of one month's supply of medication.~~

~~(b)(a)~~ Prescriptions for acute conditions for which a physician specific quantity has not been ordered a specific quantity shall be dispensed in sufficient quantities to cover the period of time for which the condition is being treated except for injectable antibiotics, which may be dispensed in sufficient quantities to cover a three day period.

~~(b)(b)~~ Notwithstanding the above, prescriptions for all conditions may not be dispensed in quantities greater than 100 dosages or a 34-day supply, whichever is greater.

(6) The department will not participate in the payment of prescription drugs:

(6)(a) remains the same.

(b) ~~effective April 1, 1991~~, of a manufacturer with which the secretary of HHS has not signed a drug rebate agreement as required by ~~section 4401 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508 42 USC 1396r-8 (1997).~~

(c) subject to prior authorization as determined by the medicaid drug formulary committee, established and operating in accordance with the Federal Omnibus Budget Reconciliation Act of 1993 42 USC 1396r-8 (1997), without the existence of a prior authorization request approved by the department or its designated representative. A copy of drugs subject to prior authorization will be provided to interested medicaid providers. A copy of this listing may be obtained by writing to the Department of Social and Rehabilitation Public Health and Human

Services, Medicaid Services Division Bureau, Health Policy and Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(d) The department hereby adopts and incorporates by reference 42 USC 1396r-8 (1997) as a part of these rules. A copy of 42 USC 1396r-8 (1997) can be obtained by writing to the Department of Public Health and Human Services, Medicaid Services Bureau, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, 53-6-113, and 53-6-141, MCA

46.12.703 OUTPATIENT DRUGS, REIMBURSEMENT (1) remains the same.

~~(2) The dispensing fee for filling prescriptions shall be determined for each pharmacy provider annually. The dispensing fee shall include the average sum of the individual provider's direct and indirect costs which can be allocated to the filling of prescriptions, plus an additional sum as an incentive factor, which shall be 7 1/2% of the average of all Montana pharmacy prescription charges for the year the cost survey is conducted. If the individual provider's usual and customary average dispensing fee for filling prescriptions is less than the foregoing method of determining the dispensing fee, then the lesser dispensing fee shall be applied in the computation of the payment to the pharmacy provider. The cost of filling a prescription shall be determined from the Montana dispensing cost survey. A copy of the Montana dispensing cost survey form is available upon request from the department. This Montana dispensing cost survey shall outline the information used in determining the actual average cost of filling a prescription for each pharmacy. A provider's failure to submit the cost survey form properly completed will result in the assignment of the minimum dispensing fee offered. The average cost of filling a prescription will be established on the basis of a determination of all direct and indirect costs that can be allocated to the cost of the prescription department and that of filling a prescription. The dispensing fees assigned shall range between a minimum of \$2.00 and a maximum of \$4.00. Out-of-state providers will be assigned a \$3.50 dispensing fee.~~

(2) The dispensing fee for filling prescriptions shall be determined for each pharmacy provider annually.

(a) The dispensing fee is based on the pharmacy's average cost of filling a prescription. The average cost of filling a prescription will be based on the direct and indirect costs that can be allocated to the cost of the prescription department and that of filling a prescription, as determined from the Montana dispensing fee questionnaire. A provider's failure to submit, upon request, the dispensing fee questionnaire properly completed will result in the assignment of the minimum

dispensing fee offered. A copy of the Montana dispensing fee questionnaire is available upon request from the department.

(b) The dispensing fees assigned shall range between a minimum of \$2.00 and a maximum of \$4.14.

(c) Out-of-state providers will be assigned a \$3.50 dispensing fee.

(d) If the individual provider's usual and customary average dispensing fee for filling prescription is less than the foregoing method of determining the dispensing fee, then the lesser dispensing fee shall be applied in the computation of the payment to the pharmacy provider.

(3) Notwithstanding (2) above, effective July 1, 1990, all in-state pharmacies which became or become providers after November 30, 1986, In-state pharmacy providers that are new to the Montana medicaid program will be assigned an interim \$3.50 dispensing fee until a dispensing fee survey questionnaire, as provided for in (2) above, can be completed for 6 months of operation. At that time, a new dispensing fee will be assigned which will be the lower of the dispensing fee calculated in accordance with (2) for the pharmacy or the ~~\$4.00~~ \$4.14 dispensing fee. Failure to comply with the 6 months dispensing fee survey questionnaire requirement will result in assignment of a dispensing fee of \$2.00 being assigned.

(4) "Unit dose" prescriptions will be paid by a separate dispensing fee assigned to that pharmacy of \$0.75. This "unit dose" dispensing fee will be based upon the average offset the additional cost of packaging supplies and materials which are directly related to filling "unit dose" prescriptions by the individual pharmacy and is in addition to, and are documented by each individual pharmacy, plus the regular dispensing fee allowed. Only one unit dose dispensing fee will be allowed each month for prescriptions for chronic conditions each prescribed medication. A dispensing fee will not be paid for a unit dose prescription packaged by the drug manufacturer.

(5) Reimbursement for outpatient drugs provided to medicaid recipients in state institutions shall conform with provisions of the state contract for pharmacy services. Such reimbursement shall not exceed, in the aggregate, reimbursement under (1).

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, 53-6-113 and 53-6-141, MCA

4. The definitions at ARM 46.12.102(19), (20), and (21) apply specifically to outpatient drugs and should therefore be located within subchapter 7, Outpatient Drugs, rather than subchapter 1 which pertains to general requirements of the Medicaid program. Moving the definitions pertaining to outpatient drugs and drug costs from subchapter 1 to subchapter 7 requires the deletion of ARM 46.12.102 (19), (20), and (21) and the adoption of RULE I OUTPATIENT DRUGS, DEFINITIONS.

The definition of maximum allowable cost (MAC) in RULE I has been changed from the version at ARM 46.12.102(20) by deleting "150% of." This deletion is necessary to accurately price MAC drugs. Since the MAC price defined in 42 CFR 447.331 and 447.332 is equal to "150% of" the calculated price, the MAC price cannot be 150% of 150% of the calculated price. To retain the current language would mean that we would overprice MAC drugs in violation of federal rule.

Adopting a definition of "legend drugs" is necessary in Rule I and because the changes in ARM 46.12.702(3) are necessary to convey clearly which drugs will be reimbursed by Medicaid. The phrase "drugs which require a prescription" in ARM 46.12.702(3) is unnecessarily confusing in that Medicaid requires recipients to have prescriptions for all drugs that are reimbursed. The distinction intended in the rule is between legend drugs (drugs that federal law prohibits dispensing without a prescription) and over-the-counter drugs (drugs that federal law allows to be dispensed without a prescription). Medicaid reimburses for very few over-the-counter drugs and those drugs are listed in the department's formulary.

The deletion of "physician" in ARM 46.12.702(5) and (5)(a) is necessary because other licensed practitioners also may prescribe medications and the limitations on dispensing quantity apply regardless of who prescribes. This change is to correct the internal inconsistency in the rule as written which in some parts may be interpreted to limit licensed practitioners who can prescribe drugs.

Limiting the dispensing quantity through reference to "chronic conditions" and "acute conditions" in ARM 46.12.702(5) has been changed because of disputes with pharmacists over the meaning of these terms. Some pharmacists contend that the distinction between chronic and acute conditions is not valid since patients can have acute episodes of chronic diseases. Some pharmacists also argue that prescribers do not indicate on prescriptions whether a drug is for a chronic or acute condition. The proposed rule changes remove the contentious language.

Some aspects of the methodology for determining the provider's dispensing fee described in ARM 46.12.703(2) are now obsolete and have been revised in the proposed rule. For example, when the rule was first written, the cost of filling a prescription was less than the dispensing fee cap and therefore a pharmacy could qualify for an incentive factor of 7.5% of the average of all Montana pharmacy prescription charges for the year. The incentive factor is no longer used because the cost of the filling a prescription is greater than the allowed dispensing fee cap. Therefore, the incentive factor has been deleted in the proposed rule. The current rule also has redundant language. For instance, using the direct and indirect costs of

filling a prescription is mentioned twice within the same rule. The revised language more clearly and succinctly describes the current methodology used in determining the dispensing fee.

The increase in the dispensing fee cap in ARM 46.12.703 to \$4.14 is required to implement the 1.5% provider increase allowed for the pharmacy program in the 1997 General Appropriations Act (Chapter 551, Laws of Montana, 1997). The cap increase became effective July 1, 1997 in order to coincide with the state fiscal year.

Deletion of the phrase "prescriptions for chronic conditions" in ARM 46.12.703(4) is required to correspond with changes made to ARM 46.12.702(5). With this change, the pharmacy clearly may not charge the department the additional fee more than once per month even if the medication is dispensed more frequently. The other revisions are required because the unit dose fee is no longer assigned to pharmacies but is paid to any pharmacy which incurs the expense of preparing a unit dose prescription. The department also recognizes that the unit dose fee of \$0.75 does not exceed the cost of preparing a unit dose prescription and therefore has removed the documentation requirement. Note that some medications are distributed in unit dose packages by manufacturers and pharmacies are not allowed to charge a unit dose fee for such medications.

The proposed rule change in ARM 46.12.703(5) is necessary because the Medicaid pharmacy program participates in the state's contract for pharmacy services for people in the state institutions. The reimbursement methodology under the state contract differs from the methodology described elsewhere in the rules because the state participates in a multi-state cooperative to buy medications and the state-contracted pharmacy provider is limited to billing the state's cost. Thus, the dispensing fee is the only avenue for the pharmacy provider to recover the cost of providing the service and this fee exceeds the cap set for other pharmacies. Analysis by the department prior to entering into the contract showed that the two reimbursement methodologies resulted in comparable costs to the outpatient drug program.

Other revisions in the proposed rules are necessary to update legal references, dates, and addresses that are no longer valid.

In revising the Medicaid outpatient drug rules, the Department's primary purpose is to implement the 1.5% provider increase passed in the 1997 Montana General Appropriations Act. The Department realized, however, that the current rules had developed over a period of years and included redundant language, outdated references, and provisions that were no longer applicable or caused confusion. Thus, the Department has taken this opportunity to correct these problems. The four

substantive changes in the proposed rules are the provider increase, deletion of the incentive factor in the dispensing fee calculation, deletion of references to acute and chronic conditions, and the adoption of a reimbursement methodology for state-contracted pharmacy services. In making these changes, the Department consulted the Montana Pharmaceutical Association and considered a number of options.

As an alternative, the 1.5% provider increase could have been applied to the product component rather than the dispensing fee. For example, the Department could have altered its method of calculating product cost to pay average wholesale price (AWP) less 8.5%. The decision not to apply the increase in this way was based on several factors. First, federal regulations require that the State pay the estimated acquisition cost of the drug. Studies of the AWP suggest that it overstates pharmacies' acquisition costs by 10 to 20%. Thus, in order to meet federal assurance requirements, the State cannot pay more than AWP less 10%. Second, the current methodology provides an automatic provider increase by paying pharmacies more as drug prices increase. Since the 10% discount does not vary with drug price increases, pharmacies receive a relatively larger reimbursement as prices increase. Third, applying the increase to the dispensing fee provides the most equitable compensation for services since it applies to each prescription dispensed. In this way, the Department ensures that a pharmacy dispensing a low cost generic drug receives a provider increase.

As an alternative to eliminating the incentive factor, the Department could have considered incorporating an incentive factor in the calculation of the dispensing fee in the proposed rule. Since almost all pharmacies already qualify for the dispensing fee cap, however, including an incentive factor would have required a significant increase (more than 1.5%) in the cap. Additionally, the Department realizes that because of the competitive nature of the healthcare marketplace, the proposed dispensing fee is competitive with that paid in other states and by other third-party payers, and no incentive factor is needed to enroll an adequate network of Medicaid pharmacy providers.

Rather than deleting references to acute and chronic conditions, the Department could have adopted operational definitions for these terms. For example, a chronic condition could have been defined as a condition for which the same medication has been prescribed for 90 days. Such a definition would be arbitrary and have no medical basis. It would also assume that the pharmacy knew how long the patient had been on a medication. By expecting the pharmacist to fill a prescription in sufficient quantity to cover the treatment period, the Department is relying on pharmacists' professional requirements which include conferring with prescribers and counseling patients on appropriate drug use.

As an alternative to adopting a different reimbursement methodology for state-contracted pharmacy services, the Medicaid program could have refused to participate in the state contract. Such refusal, however, would have been detrimental to the state institutions and would not have benefitted the Medicaid program. The proposed option recognizes the uniqueness of state institutional providers in comparison with individual pharmacy dispensed drugs to an individual medicaid recipient. The adoption of a different methodology for state institutions is not more costly in the aggregate to the medicaid program.

The changes as proposed will increase payments by an estimated \$60,000 per year.

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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than January 12, 1998. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

John C. Smith
Director, Public Health and
Human Services

Certified to the Secretary of State December 1, 1997.

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

In the matter of the transfer	)	NOTICE OF PROPOSED
of rules 11.7.105 through	)	TRANSFER, AMENDMENT
11.7.306 and 11.7.315 through	)	AND REPEAL
11.7.901, with the exception of)	
any repealed rules, and the)	
transfer and amendment of)	
11.7.103 and the repeal of	)	NO PUBLIC HEARING
11.7.310, pertaining to foster	)	CONTEMPLATED
care services)	

TO: All Interested Persons

1. On January 14, 1998, the Department of Public Health and Human Services proposes to transfer rules 11.7.105 through 11.7.306 and 11.7.315 through 11.7.901, with the exception of any repealed rules, and transfer and amend 11.7.103 and repeal 11.7.310, pertaining to foster care services.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on December 29, 1997, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

OLD	NEW	
11.7.105	<u>37.50.105</u>	General Requirements
11.7.106	<u>37.50.106</u>	Voluntary Placement
11.7.301	<u>37.50.301</u>	Foster Care Maintenance Payments
11.7.305	<u>37.50.305</u>	Foster Care Overpayments and Underpayments
11.7.306	<u>37.50.306</u>	<u>Foster Care</u> Right to Fair Hearing
11.7.311	<u>37.50.310</u>	<u>Foster Care</u> Payments to Facilities
11.7.313	<u>37.50.315</u>	<u>Foster Care</u> Classification Model
11.7.316	<u>37.50.316</u>	<u>Foster Care</u> Classification Procedures
11.7.319	<u>37.50.320</u>	<u>Foster Care</u> Facility Contracts
11.7.501	<u>37.50.401</u>	Foster Care Review Committee
11.7.502	<u>37.50.402</u>	Subject of Foster Care Reviews
11.7.504	<u>37.50.405</u>	Reports of Foster Care Review Committee

11.7.510	<u>37.50.410</u>	Reduction of the Number of Children in Foster Care
11.7.601	<u>37.50.501</u>	Foster Care Support Services, Purpose
11.7.602	<u>37.50.502</u>	Foster Care Support Services, Definitions
11.7.603	<u>37.50.505</u>	Foster Care Support Services, Diaper Allowance
11.7.604	<u>37.50.506</u>	Foster Care Support Services, Clothing Allowance
11.7.608	<u>37.50.510</u>	Foster Care Support Services, Supplemental Services Allowance
11.7.609	<u>37.50.511</u>	Foster Care Support Services, Respite Care Allowance
11.7.610	<u>37.50.512</u>	Foster Care Support Services, Diet Support Allowance
11.7.615	<u>37.50.520</u>	Foster Care Support Services, Application Process
11.7.616	<u>37.50.521</u>	Foster Care Support Services, Availability of Funds
11.7.617	<u>37.50.525</u>	Foster Care Support Services, Hearing
11.7.701	<u>37.50.801</u>	Placement of Children with Multiagency Service Needs with Out-of-State Providers, Definitions
11.7.703	<u>37.50.804</u>	Limitations on Placement of Children with Multiagency Service Needs with Out-of-State Providers
11.7.901	<u>37.50.901</u>	Interstate Compact on the Placement of Children.

3. The Department is transferring and amending 11.7.103 as follows. Material to be added is underlined. Material to be deleted is interlined.

11.7.103 [37.50.101] DEFINITIONS The following definitions apply to the rules contained in this sub-chapter.

(1) "Daily rate" means the rate the department will pay to facilities for supervision and treatment services. The daily rate is a percentage of the model rate and is based upon the department's appropriation for foster care services.

~~(1) (2)~~ "Department" means the department of public health and human services.

(3) "Facility" means child care agencies and youth group homes as defined in ARM 11.12.101 and child placing agencies as defined in ARM 11.11.101.

~~(2) (4)~~ "Foster care" or "substitute care" means full-time care of a child in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction and, if necessary, treatment to children who are removed from or without the care and supervision of their parents or guardian.

(5) "Model rate" means the rate established by the department for the essential programmatic costs of the supervision and

treatment services the department requires for each classification level.

(6) "Professional staff" means staff employed by the facility who have a bachelor's, master's or doctorate degree in social work, counseling, psychology or a related field.

(+) (7) "Voluntary placement" means an out-of-home placement of a child by the department after the parents or guardians have requested the assistance of the agency and signed a voluntary placement agreement.

(++) (8) "Voluntary placement agreement" means a written agreement between the department and the parents or guardians of a child which contains the consent of the parents or guardians to placement in foster care and the rights and obligations of the parents or guardians, and the department while the child is in placement.

(9) "Youth" means any person under the age of 18.

(+) (10) "Youth care facility (YCF)" means a licensed facility in which foster care is provided and includes youth foster homes, youth group homes and child care agencies.

AUTH: Sec. 41-3-1103 and 52-1-103, MCA

IMP: Sec. 41-3-1103 and 52-1-103, MCA

4. The rule 11.7.310 as proposed to be repealed is on page 11-305 of the Administrative Rules of Montana.

AUTH: Sec. 41-3-1103 and 52-1-103, MCA

IMP: Sec. 41-3-1103 and 52-1-103, MCA

5. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the foster care program is transferred from the Department of Family Services to the Department of Public Health and Human Services. In order to implement that legislation, ARM 11.7.105 through 11.7.306 and 11.7.315 through 11.7.901, inclusive, with the exception of any repealed rules, are transferred to the Department of Public Health and Human Services ARM 37.50.101 through 37.50.901.

The transfer of rules is necessary because the Department of Family Services was eliminated by Chapter 546, Laws of Montana 1995 and the foster care services program functions exercised by that agency were assumed by the Department of Public Health and Human Services.

ARM 11.7.103 is being amended to add the definitions found in ARM 11.7.310, and is also being transferred to Title 37, Chapter 50, as ARM 37.50.101. ARM 11.7.310 is being repealed in this notice. The definitions contained in both rules are general in nature and apply to foster care in general. The Department could have transferred these rules as separate rules into the new title and chapter, but has chosen to exercise the option of combining the rules instead, in the interest of

eliminating unnecessary rules as was requested by the 1995 Legislature.

6. Interested persons may submit their data, views or arguments concerning the proposed action in writing 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 January 12, 1998. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

7. 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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than January 12, 1998.

8. 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 who are directly affected by the proposed action, 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 and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be more than 25 based on the number of individuals affected by rules covering foster care services.

Dawn Sliva
Rule Reviewer

Dawn Sliva
Director, Public Health and
Human Services

Certified to the Secretary of State December 1, 1997.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING OF
amendment of rule 16.24.414	)	PROPOSED AMENDMENT
pertaining to health)	
supervision and maintenance)	
for day care centers)	

TO: All Interested Persons

1. On January 6, 1998, at 3:00 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services building, 111 North Sanders, Helena, Montana, to consider the proposed amendment pertaining to health supervision and maintenance for day care centers.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on December 29, 1997, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

2. The rule as proposed to be amended provides as follows. Material to be added is underlined. Material to be deleted is interlined.

16.24.414 HEALTH SUPERVISION AND MAINTENANCE (1) remains the same.

(2) A day care center must exclude from enrollment any child whose parent or guardian has not provided the center, within 30 days after admission, with a health record form documenting the results of a current health assessment performed by one of the following:

(a) a physician licensed to practice medicine in Montana;

(b) a physician assistant-certified licensed to practice in Montana and practicing under a utilization plan approved by the board of medical examiners; or

(c) a person licensed in Montana as a professional nurse and recognized by the Montana board of nursing as a nurse practitioner or clinical nurse specialist.

(3) through (8) remain the same.

AUTH: Sec. 52-2-735 and 53-4-506, MCA

IMP: Sec. 52-2-735 and 53-4-506, MCA

3. The proposed amendments of ARM 16.24.414(2) are necessary to allow parents needing to use a day care center for care of their children easier access to a health care professional qualified to do the health assessment required as a condition of admission to the center. The current rules require such assessments to be performed by a physician, but there are many rural or remote areas in Montana which are not currently served by licensed physicians but do have other types of health care professionals whose lawful scope of practice also allows them to conduct children's health assessments.

The types of health care providers added to the rule are those who, through their scope of practice, can perform health assessments and that can, in addition, prescribe, dispense, or administer legend drugs (i.e., those prohibited by federal law from being dispensed without a prescription). The department chose to require the health assessments to be done by those professionals who can also dispense any legend drug in order that they be able to treat adverse health conditions that may be diagnosed during the health assessment in accordance with the department's communicable disease control rules and to administer vaccinations necessary to complete day care center enrollment requirements.

One alternative to the proposed amendments would be to leave the rule as it stands. This alternative was rejected as unjustifiably restricting access to providers qualified to do the assessments.

The second alternative would be to add all of the categories of health care professionals qualified in Montana to do health assessments, including naturopathic physicians and acupuncturists. This alternative was rejected for two primary reasons. First, these health professionals cannot prescribe, dispense, or administer legend drugs, with the exception of a limited group of drugs specified in Section 37-26-301, MCA, none of which are accepted in the department's communicable disease rules as control measures. For the reasons outlined above, it is important that the professionals doing the health assessment have the authority to prescribe any legend drug. Second, low-income parents who qualify for Medicaid and need the services of a day care center would, to their detriment, have to pay for the health assessments out of their own already limited resources because Medicaid does not reimburse for the services of alternative health care providers such as naturopaths and acupuncturists.

A third alternative, including nurse practitioners that are recognized by the board of nursing as either nurse midwives or

nurse anesthetists, was rejected because the lawful scope of their practice does not include health assessments.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Debbie G. Allen, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2941, no later than January 12, 1998. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Shinn
Rule Reviewer

Michael B. Billings Jr.
Director, Public Health and
Human Services

Certified to the Secretary of State December 1, 1997.

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

In the matter of the) NOTICE OF PUBLIC HEARING
amendment of rules 46.12.802) OF PROPOSED AMENDMENT
and 46.12.806 pertaining to)
medicaid durable medical)
equipment)

TO: All Interested Persons

1. On January 6, 1998, at 10:30 a.m., a public hearing will be held in auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.802 and 46.12.806 pertaining to medicaid durable medical equipment.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on December 29, 1997, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, 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. Material to be added is underlined. Material to be deleted is interlined.

46.12.802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT,
AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) through
(2)(a)(i) remain the same.

~~(b) Claims for oxygen must reflect the actual amount used by the patient.~~

(b) Medical necessity for oxygen is determined in accordance with the medicare criteria set forth in the Medicare Durable Medical Equipment Regional Carrier (DMERC) Region D Supplier Manual as of December 1, 1997, which is hereby adopted and incorporated by reference. A copy of the medicare criteria may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(c) Reimbursement for oxygen is made on a monthly basis. Only one unit may be billed per month regardless of the actual amount used by the patient.

(2)(c) through (2)(f) remain the same in text but are renumbered (2)(d) through (2)(g).

(3) and (4) remain the same.

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

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

46.12.806 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) Providers must bill for prosthetic devices, durable medical equipment, medical supplies and related maintenance, repair and services using the procedure codes and modifiers set forth, and according to the definitions contained, in the health care financing administration's common procedure coding system (HCPCS). Information regarding billing codes, modifiers and HCPCS is available upon request from the Department of Public Health and Human Services, Medicaid Health Policy and Services Division, 111 N. Sanders 1400 Broadway, P.O. Box 4210 202951, Helena, MT 59604-4210 59620-2951.

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

(d) The department's fee schedule for all oxygen and oxygen-related items shall be set and maintained as follows:

(i) ~~For all oxygen and oxygen-related items for which a fee was set prior to July 1, 1993 under the provisions of (2)(b), the department's fee shall be as specified in the department's oxygen fee schedule dated July 1, 1993. The department hereby adopts and incorporates herein by reference the department's oxygen fee schedule dated July 1, 1993 systems, portable and stationary, reimbursement will be made in accordance with the department's oxygen fee schedule dated December 1, 1997, which is hereby adopted and incorporated by reference.~~ A copy of the oxygen fee schedule may be obtained from the Department of Public Health and Human Services, Medicaid Health Policy and Services Division, 111 N. Sanders 1400 Broadway, P.O. Box 4210 202951, Helena, MT 59604-4210 59620-2951.

~~((ii) For all oxygen and oxygen-related items for which a fee was not set prior to July 1, 1993 under the provisions of (2)(b), the department's fee shall be the amount determined according to the provisions of (2)(a) through (c), less 15% of such amount, and subsequent increases shall be as provided in (4)).~~

(e) For all diapers and diaper-related supplies, the department's fee schedule shall be the diaper fee schedule dated October 1, 1995, which the department hereby adopts and incorporates by reference. A copy of the department's October 1, 1995 diaper fee schedule may be obtained from the Department of Public Health and Human Services, Medicaid Health Policy and Services Division, 111 N. Sanders 1400 Broadway, P.O. Box 4210 202951, Helena, MT 59604-4210 59620-2951.

(2)(f) through (4)(b) remain the same.

AUTH: Sec. 53-6-113, MCA

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

3. The rules pertaining to payments for oxygen services

in the Montana Medicaid program are being revised in order to make more specific the term "medical necessity" and to modify the payment methodology. ARM 46.12.802 specifies the conditions under which the Department will pay for durable medical equipment (DME), including oxygen, furnished to Medicaid recipients. Subsection (2) provides that Medicaid will pay only for DME items that are medically necessary. The Department is now proposing to amend ARM 46.12.802(2) to state that medical necessity for oxygen will be determined in accordance with criteria used by the Medicare program as set forth in the Medicare Durable Medical Equipment Regional Carrier (DMERC). The DMERC specifies that oxygen is medically necessary only for patients with significant hypoxemia in the chronic stable state who meet specific blood gas evidence requirements. Additionally, the DMERC specifies that the patient must have tried other alternative treatment measures without complete success.

The Medicare criteria for medical necessity are more stringent than the criteria which Medicaid now uses. Thus the Department projects that oxygen use will be reduced by 5% due to the application of the stricter Medicare standards, resulting in reduced expenditures for oxygen. An additional reason for adopting the Medicare criteria is for consistency with the Medicare program. It is less confusing for providers when the criteria in Medicare and Medicaid are the same, because many Medicaid recipients are also covered by Medicare, and claims for oxygen are filed with both programs.

ARM 46.12.806 sets forth the department's fee schedule for oxygen and other DME items. The Department is proposing to amend ARM 46.12.806(2)(d) to provide that oxygen will be reimbursed in accordance with a new fee schedule. The revised fee schedule will reduce the fees paid to oxygen providers. The fees provided in the new fee schedule for stationary oxygen systems provided in nursing facilities represent a reduction of 23% from the current fees. The new fees for stationary oxygen systems provided by all providers other than nursing facilities represent a 12% reduction below the current fees.

There are several reasons why the fees for stationary oxygen systems in nursing facilities are being reduced more than fees for other stationary oxygen providers. The cost of providing oxygen services is approximately 30% product and 70% service. Nursing home residents generally require less servicing from the oxygen provider and are provided with duplicate services as part of their nursing home per diem rate. Nursing home personnel usually are trained in oxygen care and require little if any training on patient and equipment care. In addition, providers' delivery time is reduced because most nursing facilities are located in well-populated areas, and nursing homes have many patients using oxygen who can be taken care of in one trip, as

opposed to patients in a community setting, where each patient requires a separate delivery.

Fees for portable oxygen systems remain unchanged under the new fee schedule because it was determined that a fee reduction for portable oxygen may restrict mobility for Medicaid recipients. Over 50% of Medicaid recipients using oxygen receive it while in a nursing home. Recipients using stationary oxygen systems in their own homes can often use additional tubing to move around enough to perform their daily activities, while nursing home residents generally do not have this ability. Nursing home residents must use portable oxygen to maintain their mobility. For example, a nursing home resident must use portable oxygen to get to the dining hall. Therefore, a reduction in fees for portable oxygen might have the undesirable effect of limiting the mobility of nursing home residents.

The adoption of stricter medical necessity criteria and a new fee schedule with reduced rates is expected to result in total savings of approximately \$630,000 to the Montana Medicaid program in Fiscal Years 1998 and 1999.

The Department has been considering how to reduce Medicaid expenditures for oxygen services since prior to 1993. In 1993, the Department explored the possibility of purchasing oxygen services for all Medicaid recipients from a sole vendor. The idea was rejected at that time because it was felt that one vendor could not service the needs of all Medicaid recipients in Montana. Instead, the Department established a new fee schedule for oxygen services in July, 1993 which reduced fees by 15%.

In 1996 the issue of a sole vendor for oxygen services was again raised by legislative auditors who suggested there was potential for substantial savings if the Department implemented a plan of buying oxygen concentrators and contracting with one company to service and maintain the concentrators. After studying the proposed plan and reviewing the Veterans' Administration's experience with a sole vendor contract, the Department again rejected the idea of using a sole vendor for oxygen services. The Department determined that a one vendor system would prove unsatisfactory for a number of reasons. It would delay setup and delivery of services; cause increased response time because of longer distances the vendor would have to travel and lack of personnel to respond in a timely manner; and, impair freedom of choice of Medicaid recipients and health care professionals. It is anticipated that the lack of competition inherent in a sole vendor system would limit service and erode quality of care. With a single vendor problems suffered by the provider, such as loss of personnel, may adversely affect recipients because there are no other providers to step in when the sole vendor is unable to service clients.

The Department's concern about potential problems with a sole vendor contract were shared by the Big Sky Association of Medical Equipment Suppliers (AMES) and numerous health care professionals. Only two companies have the ability to provide oxygen services throughout the entire state, and it is not known whether these companies would submit a bid for a statewide contract. Many companies surveyed expressed interest in providing services only in regions where the greatest profits could be realized and not in less lucrative regions of the state.

The Department has also considered, and continues to consider, other options to control oxygen costs. The Department has hired a contractor to study whether needed cost savings could be effected by including oxygen services provided in a nursing home setting in the nursing home per diem rate. However, at the present time the Department has concluded that the best alternative is to adopt the proposed fee schedule. This is expected to generate savings approximately equivalent to the savings which would be realized by implementing a sole vendor contract for oxygen services, without the disadvantages of a sole vendor contract. Additionally, the proposed fee schedule establishes fees for oxygen services that correspond with fees in surrounding states with similar geographic makeup. The new fee schedule was designed after discussion with AMES, other oxygen providers and health care professionals and in consultation with Medicaid agencies in surrounding states.

The Department also proposes to amend ARM 46.12.802 to provide that oxygen must be billed at the rate of one unit per month, regardless of the actual amount of oxygen the Medicaid recipient uses. This is consistent with Medicare policy and also reduces expenditures for oxygen services.

Finally, the Department is amending 46.12.802 and 46.12.806 to change references to the Department's Medicaid Services Division to the Health Policy and Services Division. In 1995, when the former Department of Social and Rehabilitation Services (SRS) became a part of the newly created Department of Public Health and Human Services, SRS' Medicaid Services Division was reorganized and renamed the Health Policy and Services Division.

The proposed changes to ARM 46.12.802 and 46.12.806 are necessary to implement the new oxygen fee schedule and medical necessity criteria, clarify policy on billing units of units, and correct the name of the division which administers Medicaid in the rules.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human

Services, P.O. Box 4210, Helena, MT 59604-4210, no later than January 12, 1998. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dana Hill
Rule Reviewer

Wini Cunniff
Director, Public Health and
Human Services

Certified to the Secretary of State December 1, 1997.

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

In the Matter of the Proposed)	
Adoption of Rules Implementing)	
SB396 (Natural Gas Utility)	
Restructuring and Customer Choice)	
Act, Title 69, chapter 3, part 14,	)	NOTICE OF PUBLIC HEARING
MCA) and Pertaining to Standards	)	ON THE ADOPTION OF NEW
of Conduct, Anticompetitive and	)	RULES I THROUGH XIII
Abusive Practices, Supplier)	
Licensing, and Universal System)	
Benefits)	

TO: All Interested Persons

1. On Thursday, January 22, 1998, at 9:00 a.m., in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, the PSC will hold a hearing to consider the proposals identified in the above titles and described in the following paragraphs, all related to natural gas utility restructuring and customer choice. Anyone needing accommodations for physical, hearing, or sight impairment in order to attend and participate in the hearing should contact the PSC secretary at (406) 444-6199 at least one week prior to hearing.

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

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

RULE I. CONTEXT AND DEFINITIONS (1) These rules implement Montana's Natural Gas Utility Restructuring and Customer Choice Act, 69-3-1401 through 69-3-1409, MCA, and shall be construed in that context. Unless otherwise provided through rule or through order of the commission, these rules shall apply in all gas utility restructurings, including in periods of transition to customer choice and pilot programs which may be a part of a restructuring plan.

(2) Words used in these rules shall have the meanings assigned in 69-3-1402, MCA, and, if not defined there, shall have their common meanings in the context of gas utility and gas pipeline regulation and restructuring. Words used in these rules also have the meanings assigned by this rule, unless the context otherwise clearly demands:

(a) "affiliate" means a parent, subsidiary, division, or the like, regardless of designation, owning or controlling, owned or controlled by, under common ownership, or under common control;

(b) "provider" means a system services provider;

(c) "service" generally includes all incidents to service (e.g., applying for service, communicating in regard to service);

(d) "supplier" means "natural gas supplier," as defined at 69-3-1402, MCA, and (advisory only) includes any person offering to sell gas to end-use customers but not if the offering is a sale for resale or by a public utility as a public utility and in accordance with commission-approved tariffs;

(e) "supply service" means providing natural gas for end-use, whether or not regulated by the commission;

(f) "system services" includes gas transmission services, distribution services, storage services, and all other gas services regulated by the commission, directly or indirectly, excluding supply services;

(g) "utility" means a "public utility" as defined at 69-3-101, MCA.

AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-103, 69-3-1402, 69-3-1404, 69-3-1405, 69-3-1408, MCA.

RULE II. GENERAL (1) These rules are intended to supplement, not displace, laws of the United States and the state of Montana which pertain to business, business structure, antitrust, trade, contracts, truth in labeling, consumer protection, and like laws which are applicable, generally or specifically, to the provision of gas system services or gas supply.

AUTH: Sec. 69-3-103, MCA; IMP: Secs. 69-3-103, 69-3-1402, 69-3-1404, 69-3-1405, 69-3-1408, MCA.

RULE III. GENERAL -- PROCEDURES IN GENERAL -- PROPRIETARY INFORMATION (1) Compliance, enforcement, and other administrative proceedings before the commission which may result from implementation of these rules or the statutes upon which they are based shall be in accordance with applicable statutes (e.g., Title 2, chapter 4, MCA (Montana Administrative Procedure Act)) and rules (e.g., ARM Title 38, chapter 2) governing proceedings before the commission.

(2) In accordance with 69-3-105, MCA, supplier license applicants, supplier licensees, and others who may be participating in any procedure before the commission arising from these rules, may request that qualifying trade secret information submitted to the commission (e.g., through licensing, annual report, compliance, or investigation procedures, or other requirements of statute, rule, or order) be protected by the commission from public disclosure through protective order. Requests for a protective order must clearly identify the information to be protected and, in detail, identify the factual and legal basis upon which the information is asserted to qualify as trade secret and be entitled to protection.

AUTH: Secs. 69-3-103, 69-3-1405, MCA; IMP, Secs. 69-3-105, 69-3-1405, MCA.

RULE IV. SERVICES PROVIDERS -- STANDARDS OF CONDUCT

- (1) A commission-regulated system services provider shall:
- (a) apply all discretionary tariff provisions in the same manner to all persons to whom the tariff provisions apply;
 - (b) process all similar requests for service in the same manner and period of time;
 - (c) strictly enforce all mandatory tariff provisions;
 - (d) prevent any discrimination in favor of its own supply, other services, divisions, or affiliates;
 - (e) prevent all forms of self-dealing that could result in noncompetitive prices to consumers;
 - (f) grant others (e.g., consumers, suppliers) access to retail transmission, storage, and distribution on a nondiscriminatory basis at rates, terms, and conditions comparable to that which it and its affiliates have;
 - (g) disclose no service or market information received from a non-affiliate to an affiliate (information received from an affiliate may be treated in the same fashion, unless otherwise required by these rules);
 - (h) disclose at the same time to all non-affiliates all service and market information disclosed to an affiliate (a non-affiliate may agree to limit the scope of information to be provided by the system services provider and may agree that information need be provided only on request);
 - (i) for customers requesting information on available supply, identify all licensed gas suppliers serving in the service area in which the customer resides;
 - (j) make known to non-affiliates at the same time any discounts offered to an affiliate, the terms and conditions under which the discount is offered, and the means through which the non-affiliates can obtain a comparable offer (affiliates may be advised in the same fashion, unless otherwise prohibited by these rules); and
 - (k) function independently of its affiliate suppliers and cause its employees and employees of its affiliate suppliers to function independently, to the maximum extent practicable.

AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-3-1404, MCA.

RULE V. SERVICES PROVIDERS -- STANDARDS OF CONDUCT -- REVIEW OF SERVICE POLICIES

- (1) Through application by the system services provider, or complaint by any other provider, supplier, customer, or other interested person, or on its own motion, the commission may review the application of a system service provider's service rule or policy, tariffed or otherwise, to determine whether the application is just and reasonable under the circumstances, including in regard to whether the application is abusive or anticompetitive.

AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-3-1404, MCA.

RULE VI SUPPLIERS -- ANTICOMPETITIVE AND ABUSIVE PRACTICES

- (1) Suppliers shall not engage in anticompetitive and abusive practices. The commission will monitor and may investigate whether anticompetitive and abusive practices are occurring.

- (2) A competitive market is characterized by:
- (a) a competitive market structure, which is evidenced by, but not limited to:
 - (i) widely distributed market power, as typified by the four most dominant firms equally possessing not more than two-fifths of the market;
 - (ii) rapidly declining market power;
 - (iii) entry in the market by competitors, including entry by firms with more than two percent market share; and
 - (iv) minor market entry and exit barriers.
 - (b) prices that are not discriminatory, which are evidenced by, but not limited to:
 - (i) commodity prices for customer classes that differ by equal percentages from the underlying costs for each customer class;
 - (ii) minimal restrictions on resale; and
 - (iii) minimal restrictions on purchases.
 - (c) competitive prices, which are evidenced by, but not limited to:
 - (i) minimal price leadership from the dominant firm or firms;
 - (ii) frequent price changes;
 - (iii) frequently changing price discount percentages; and
 - (iv) declining commodity prices when demand is weak.
 - (d) innovation and good service quality, which are evidenced by, but not limited to:
 - (i) good, or improving service quality and reliability;
 - (ii) robust advertising and marketing;
 - (iii) attempts to differentiate products from competitors' products; and
 - (iv) increasing productivity and declining costs.
- (3) The commission may order corrective action if it finds a supplier is engaging in anticompetitive or abusive practices or conduct that impedes competition in the gas market place. Engaging in anticompetitive or abusive practices is also grounds for revocation of a gas supplier's license.
- AUTH: Secs. 69-3-103, 69-3-1404, MCA; IMR, Sec. 69-3-1404, MCA.

RULE VII. GAS SUPPLIERS -- APPLICATION FOR LICENSE

- (1) The application to the commission for a natural gas supplier license shall include the following provisions, complete and in detail:
- (a) the business name of the applicant;
 - (b) the street address and the mailing address of the applicant;
 - (c) the telephone number of the applicant;
 - (d) a description of the applicant's business organization (e.g., sole proprietorship, partnership, corporation), an identification of the state in which organized, and a statement as to whether the applicant owns or operates gas distribution, transmission, or storage facilities, where those facilities are located, and whether those facilities are open and accessible on a nondiscriminatory basis to all gas suppliers;

(e) the name, address, and telephone number of the supplier representative to be contacted regarding the application;

(f) the name, address, and toll-free telephone number of the supplier representative or office that may be contacted by consumers in regard to supply;

(g) the name, mailing address, street address, and telephone number of the applicant's agent for service of process in Montana;

(h) information demonstrating the gas supply offered or to be offered by the applicant will be provided as offered;

(i) information demonstrating the gas supply offered or to be offered by the applicant will be adequate in terms of quality, safety, and reliability;

(j) information demonstrating the applicant's financial integrity as a gas supplier, including a current and detailed balance sheet, income and profit and loss statement, statement of projected cash flows, and the most recent of the applicant's annual reports to owners (e.g., stockholders);

(k) information demonstrating adequate firm deliverability (including supply, pipeline capacity, and interconnection agreements) to meet load requirements;

(l) information identifying all distribution, transmission, and storage service providers affiliated with the applicant;

(m) a description of the applicant's marketing plan for Montana, including intended marketing methods and training of sales persons;

(n) a brief description of all federal and state judicial and administrative actions pending against the applicant (including on appeal) in which judgment is sought in an amount of 10 percent or more of the applicant's net worth;

(o) identification of all federal and state judicial and administrative actions, if any, whether pending at the time of application (including on appeal) or concluded within 5 years prior to the time of application, which involve approval of the applicant's authority to supply, market, and broker natural gas;

(p) a description of the business activities and purposes of the applicant, including a description of customer segments served or to be served (e.g., residential, commercial, industrial), products offered or to be offered to each customer segment including any time differentiated pricing, and the principal geographic areas, including a list of Montana cities within those areas, served or to be served; and

(q) a corporate (or other business) organization diagram, including a list of the applicant's affiliates, a description of each affiliate's business activities and purposes, a statement as to whether any affiliate owns or operates gas distribution, transmission, or storage facilities, and an explanation of where those facilities are located and whether the facilities are open and accessible on a nondiscriminatory basis to all gas suppliers.

(2) Applicants shall also file a sample of each type of contract intended to be used in the providing of supply to residential and small commercial consumers.

(3) At the time of making application to the commission for a supplier license, applicants shall notify and provide a copy of the application to all suppliers licensed by the commission.

(4) If a supplier license is issued by the commission all information provided by the applicant in regard to the application shall be updated by the licensee each time any change in that information occurs.

AUTH: Secs. 69-3-103, 69-3-1405, MCA; IMP, Sec. 69-3-1405, MCA.

RULE VIII GAS SUPPLIER -- ELECTRONIC REGISTRATION

(1) All applicants and licensed suppliers must complete and maintain an electronic registration established by the commission on its internet web site as a condition of becoming and remaining licensed. Applicants and suppliers must provide the following information electronically:

(a) a complete business name, and all other names (complete) that may be used when marketing natural gas and other unregulated energy services to consumers;

(b) the complete street address and mailing address of the principal office;

(c) the name, address, direct telephone number, fax number, and e-mail address of the supplier representative or office to be contacted regarding the license application and the license;

(d) a toll-free customer service telephone number; and

(e) a listing of the customer segments served and the principal geographic areas served, including a list of Montana cities where service is provided.

AUTH: Secs. 69-3-103, 69-3-1405, MCA; IMP, Sec. 69-3-1405, MCA.

RULE IX. GAS SUPPLIER -- LICENSES (1) Except as otherwise allowed or required by operation of law or order of the commission, gas suppliers may commence operations in the Montana service areas of restructured utilities, and those areas otherwise allowing a competitive supply, upon issuance of a license by the commission.

(2) Upon issuance of a license, the gas supplier shall notify all distribution, transmission, and storage service providers serving in the area of the gas supplier's intended operations and all other licensed gas suppliers serving in that area.

AUTH: Sec. 69-3-103, 69-3-1405, MCA; IMP, Sec. 69-3-1405, MCA.

RULE X. GAS SUPPLIER -- ANNUAL REPORTS (1) Annual reports must be filed by each licensee at calendar year end. Annual reports will be used to monitor supplier activities, the development of a competitive market, and to determine whether anticompetitive and abusive practices are occurring, as well as for other purposes.

(2) Annual reports shall be on a form approved by the commission and include the following information (the commission may require that information from suppliers be filed more frequently, if deemed necessary):

(a) a descriptive list of all services offered during the year and at the end of the year;

(b) a table with market areas (e.g., cities, counties) listed on one axis and services listed on the other (each cell must contain for each customer class the date on which the service was first offered, the average number of customers billed, and the average revenue per therm);

(c) quality and reliability-of-service reports (e.g., Btu content, outages, customer complaints), itemized by month;

(d) an audited balance sheet;

(e) an audited operating statement that includes revenues by service categories and operating ratios for each service category;

(f) an organization chart showing ownership and control relationships among any holding companies and subsidiaries;

(g) a statement of relationships with other suppliers, including purchases, leases, billings, other contracts, and indicating the services involved;

(h) a schedule of sales in units and revenues by service category, itemized by month;

(i) a schedule of price changes and discounts, with date and itemized by month;

(j) a summary schedule of facilities owned by others, by account number, and the capacity of the itemized facilities;

(k) a summary schedule of facilities provided to others, by account number, and date provided, and the capacity of the itemized facilities; and

(l) a summary schedule of facilities acquired from others, by account number, and date acquired, and the capacity of the itemized facilities.

(3) In addition, information submitted with an application must be updated each time a change in that information occurs (See [Rule VII].)

AUTH: Sec. 69-3-103, 69-3-1405, MCA; IMP, Sec. 69-3-1405, MCA.

RULE XI. GAS SUPPLIER -- LICENSE REVOCATION (1) The commission may revoke the license of a gas supplier if the gas supplier:

(a) violates any federal or state law which has as its purpose, directly or indirectly, fair competition among suppliers;

(b) violates any federal or state law which has as its purpose, directly or indirectly, protection of consumers;

(c) violates any rule of the commission;

(d) provides false information or materially incomplete information to the commission in regard to licensing or reporting;

(e) fails to file an annual report;

(f) otherwise fails to abide by the laws of the United States and the state of Montana which pertain to business, business structure, antitrust, trade, contracts, truth in labeling, consumer protection, privacy, and like laws which are applicable, generally or specifically, to the provision of gas system services or gas supply;

(g) fails to supply gas in accordance with its agreements with customers and representations to the commission; and

(h) engages in anticompetitive or abusive practices.

AUTH: Secs. 69-3-103, 69-3-1405, MCA; IMP, Sec. 69-3-1405, MCA.

RULE XII. UNIVERSAL SYSTEM BENEFITS PROGRAM (1) Pursuant to 69-3-1408, MCA, gas utilities shall implement a universal system benefits program (USBP), a public purpose program for cost-effective local energy conservation, low-income weatherization, and low-income energy bill assistance (69-3-1402, MCA), funded through a universal systems benefit charge (USBC), a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of the universal system benefits program costs (69-3-1402, MCA).

(2) The USBC shall be an amount, per dekatherm of natural gas delivered to each end user, whether by utility, distribution services provider, or transmission services provider (if for end use), collected through a rate or charge (per dekatherm) to each end user established so as to generate, system-wide, an annual amount no less than 1.42 percent of the utility's, distribution services provider's, or transmission services provider's annual revenues derived from natural gas services to end-users. From the amount collected system-wide an amount at least equal to .42 percent of the annual revenues must be applied to low-income weatherization and bill assistance.

(3) The USBP may be administered by each utility, distribution services provider, or transmission services provider implementing a USBP or by another on its behalf. A USBP may be done in coordination with a federal, state, or local government agency or otherwise. Examples of acceptable USBPs include energy share and low income energy assistance program.

AUTH: Secs. 69-3-103, 69-3-1408, MCA; IMP, Sec. 69-3-1408, MCA.

RULE XIII. UNIVERSAL SYSTEM BENEFITS PROGRAM -- PROCEDURE

(1) Each utility, distribution services provider, and transmission service provider (if delivering gas for end-use) shall file with the commission a USBP plan no later than May 2, 1998.

(2) The filing shall include a description of the provider's USBP, formal or informal, in place for the period May 2, 1997, to May 2, 1998, identify the amount (in percent of annual revenues) at which the program was funded, and identify the amount (in percent of annual revenues) which was applied to low-income weatherization and bill assistance.

(3) Utilities and providers not having a program in place on May 2, 1997, and thereafter, funded to at least .42 percent

of annual revenues and from which at least .42 percent of annual revenues was applied to low-income weatherization and bill assistance shall, in the USBP filing and in addition to establishing a USBC to generate, system-wide, an annual amount no less than 1.42 percent of annual revenues derived from natural gas services to end-users, establish USBP accounting reserve computed by applying .42 percent of annual revenues from May 2, 1997, to May 2, 1998. The reserve will be allocated to approved ongoing USBPs, one time USBPs, USBP start-up expenses for new programs, and like expenses. At such time as these are implemented recovery of the reserve will be allowed over a one year period.

AUTH: Secs. 69-3-103, 69-3-1408, MCA; IMP, Sec. 69-3-1408, MCA.

4. RATIONALE: The general provisions (rules I through III) are reasonably necessary to establish a context for the rules and to generally inform interested persons of the procedures which will apply in implementation and compliance with the rules. The rules pertaining to standards of conduct (rules IV and V) are reasonably necessary to protect the public and competitors from anticompetitive and abusive practices of the restructured gas utility, including in its dealings with its affiliates, in the restructured gas utility environment and are required by the Natural Gas Utility Restructuring and Customer Choice Act (Act), at 69-3-1404(1)(b), MCA. The rule on anticompetitive and abusive practices (rule VI) is reasonably necessary to protect all suppliers, including the supplier affiliate of the restructured utility, from supplier anticompetitive and abusive practices, and is also required by the Act, at 69-3-1404(2), MCA. (The customer protection rules required by this same statute will be proposed separately in consolidation with the PSC's electric restructuring customer protection rules.) The licensing rules (rules VII through XI) are reasonably necessary to protect the customers in the competitive gas supply environment and are also required by the Act, at 69-3-1405(5), MCA. The universal system benefits rules (rules XII and XIII) are reasonably necessary in the public interest and to implement the universal system benefits program as required by the Act, at 69-3-1408, MCA.

5. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than Thursday, January 22, 1998. However, the PSC requests that written comments be submitted no later than Wednesday, January 14, 1998, to assist the PSC in preparing for hearing. (PLEASE NOTE: When filing written data, views, or arguments pursuant to this notice please reference "Docket No. L-97.1-RUL.")

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

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

8. Both bill sponsor notice requirements of section 2-4-302, MCA, apply and have been complied with.

9. The Public Service Commission maintains a list of persons interested in Commission rulemaking proceedings and the subject or subjects in which each person on the list is interested. Any person wishing to be on the list must make a written request to the Commission, providing a name, address and description of the subject or subjects in which the person is interested. Direct the request to the Public Service Commission, Legal Division, 1701 Prospect Avenue, PO Box 202601, Helena, MT 59620-2601. In addition, persons may be placed on the list by completing a request form at any rules hearing held by the Public Service Commission.


NANCY MCGAFFREY, Vice Chair

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 24, 1997.


Reviewed By Robin A. McHugh

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF PROPOSED AMENDMENT
of rules 42.15.601, 42.15.602,)
42.15.603, and 42.15.604)
relating to Medical Care)
Savings Account) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 16, 1998, the Department of Revenue proposes to amend ARM 42.15.601, 42.15.602, 42.15.603, and 42.15.604 relating to the Medical Care Savings Account Act of 1995.

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

42.15.601 MEDICAL SAVINGS ACCOUNT ADMINISTRATOR REGISTRATION (1) Every account administrator except self-administered account holders is required to register on a form provided by the department.

(2) through (4) remain the same.

(5) Each registered account administrator may be assigned an identification number by the department.

(6) Nothing in these rules should be construed as to exempt an account administrator from the applicable requirements of Title 33, MCA. (AUTH: Sec. 15-30-305, MCA; IMP, Sec. 15-61-201, MCA)

42.15.602 MEDICAL SAVINGS ACCOUNT ADMINISTRATOR REPORTING AND PAYMENTS (1) Every self-administered account holder or account administrator is required to annually submit the following information regarding each medical savings account: the name of the account holder, the address of the account holder, the taxpayer identification number of the account holder, deposits made during the tax year by the account holder, amount of withdrawals made during the tax year by the account holder, dates of any withdrawals, interest earned on the proceeds of the medical savings account and the amount of penalties withheld and remitted. The self-administered account holder must also include the name and address of where the account is established and the account number.

(2) Both the contributions and any interest earned on the account of a medical savings account are to be segregated by the self-administered account holder or account administrator from all other accounts.

(3) Each self-administered individual account holder must establish a separate medical savings account with a financial or other approved institution and be segregated by the account holder from all other accounts. Jointly held accounts do not qualify, although each spouse, regardless of income tax filing status, may each be an account holder. They then would be allowed, within certain limitations, to each

reduce federal adjusted gross income by the maximum reduction allowed of \$3,000.

(3) (4) Any year end reporting of interest earned to the taxing authorities and to the account holder of interest earned must be done so that any interest earned on that account can be separately identified.

(4) (5) On or before January 31, an account administrator must file the information required under (1) on forms provided by or authorized by the department.

(6) Each self-administered individual account holder must file the information required in (1) on forms provided by or authorized by the department and be remitted with the individual income tax form for the corresponding tax year.

(5) (7) Self-administered account holders or account administrators who withhold penalties on monies used for items other than eligible medical expenses or long term care expenses must submit the penalties to the department.

(a) Self-administered account holders and Account administrators must remit the penalties monthly by the 15th day of the following month when the total amount of penalties exceed \$500.

(b) Self-administered account holders and Account administrators whose total penalties withheld during the calendar year are less than \$500 must remit the penalties annually on or before January 31 of the following year to the department.

(c) Each self-administered individual account holder or account administrator must remit penalties and file the information required under (7) (a) and (b) on forms provided by or authorized by the department.

(6) (8) Failure to remit any withheld penalties within the time provided is considered to be an unlawful conversion of trust money. Penalties provided in 15-30-321, MCA, apply to any violation of the requirement to collect, truthfully account for, and pay amounts required to be withheld from ineligible withdrawals of the account holder. (AUTH: Sec. 15-30-305, MCA; IMP, Sec. 15-61-204, MCA)

42.15.603 MEDICAL SAVINGS ACCOUNT - WITHDRAWALS (1) The funds held in a medical savings account may be withdrawn by the account holder at any time for eligible medical expenses. Withdrawals for the purpose of paying eligible medical expenses shall not be subject to the 10% penalty.

(2) Requests made by account holders from account administrators for withdrawals to pay for eligible medical expenses must be supported by an itemized statement of expenses that were either paid or charged by the account holder and the signature of the account holder attesting that these expenses are "eligible medical expenses". An eligible medical expense means any medical expense that is deductible for purposes of section 213(d) of the Internal Revenue Code.

(3) The burden of proving that a withdrawal from a

medical savings account was made for an eligible medical expense is upon the account holder and not upon the account administrator. Each account holder must maintain documentation of eligible medical expenses.

(4) There shall be a penalty for withdrawal of funds by the account holder for purposes other than the payment of eligible medical expenses except upon the death of the account holder. The penalty shall be ~~ten percent~~ 10% of the amount of the withdrawal from the account and, in addition, the amount withdrawn shall be taxed as ordinary income.

(5) remains the same.

(6) Withdrawals made on the last business day weekday in December are not subject to the ~~ten percent~~ 10% penalty but shall be taxed as ordinary income.

(7) through (9) Remain the same. (AUTH: Sec. 15-30-305, MCA; IMP, Sec. 15-61-203, MCA)

42.15.604 INDIVIDUAL LIABILITY (1) Remains the same.

(2) Each self-administered account holder is individually responsible for the withholding and remitting of penalties.

~~(2)~~ (3) In the case of a bankruptcy by an account administrator, the liability for the penalties remain unaffected and the individual or owners remain liable for the amount of penalties withheld but unpaid. (AUTH: Sec. 15-30-305, MCA; IMP, Sec. 15-61-203, MCA)

3. Senate Bill 55 amended the laws 15-61-102, 15-61-203 and 15-61-204, MCA, with regard to the Montana Medical Care Savings Account Act of 1995. The bill increased the list of qualified account administrators, one of which is the account holder. This means a taxpayer may administer their own medical savings account. The main impact to the rules is the inclusion of a self administered account holder. The proposed rules reflect the proper reporting and filing requirements for the self administered account holders and the criteria regarding penalties of these same accounts. They also clarify that the account holder is responsible for maintaining records of the account and that the account must be segregated from all other accounts. The amendments define the account holder must be an individual, in other words the account cannot be used as a joint account. This would simplify the reduction to income on an individual tax return if the taxpayer chooses to file either joint or separate.


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

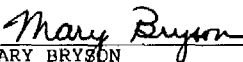
Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620
no later than January 13, 1998.

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 January 13, 1998.

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.

7. All parties interested in receiving notification of any change in rules pertaining to this subject should contact the Rule Reviewer in writing at the address shown in section 4 above.


CLEO ANDERSON
Rule Reviewer


MARY BRYSON
Director of Revenue

Certified to Secretary of State December 1, 1997

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of ARM 2.21.1412	)	ARM 2.21.1412 THROUGH
through 2.21.1414,	)	2.21.1414, 2.21.1422
2.21.1422 through	)	THROUGH 2.21.1425,
2.21.1425, 2.21.1427	)	2.21.1427 THROUGH
through 2.21.1429, and	)	2.21.1429, AND 2.21.1432
2.21.1432, and the repeal	)	AND REPEAL OF ARM
of ARM 2.21.1417,	)	2.21.1417, 2.21.1418, AND
2.21.1418, and 2.21.1421	)	2.21.1421 RELATED TO
related to employment	)	EMPLOYMENT PREFERENCE FOR
preference for persons	)	PERSONS WITH DISABILITIES
with disabilities)	

TO: All Interested Persons.

1. On October 20, 1997, the Department of Administration published notice of the proposed amendment of ARM 2.21.1412 through 2.21.1414, 2.21.1422 through 2.21.1425, 2.21.1427 through 2.21.1429, and 2.21.1432, and the repeal of ARM 2.21.1417, 2.21.1418, and 2.21.1421 related to employment preference for persons with disabilities at page 1845 of the 1997 Montana Administrative Register, issue number 20.

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

3. No comments were received.

BY:


Dal Smilie
Rule Reviewer


Lois Menzies
Director

Certified to the Secretary of State December 1, 1997.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF ADOPTION OF
adoption of rules I	)	RULES I THROUGH VI (ARM
through VI (ARM	)	2.21.3101 THROUGH
2.21.3101 through	)	2.21.3106) RELATED TO
2.21.3106) related to	)	PAYROLL ADMINISTRATION
payroll administration	)	AND REPEAL OF ARM
and repeal of ARM	)	2.21.3001 THROUGH
2.21.3001 through	)	2.21.3006 RELATED TO
2.21.3006 related to	)	DECEDENT'S WARRANTS
decendent's warrants)	

TO: All Interested Persons.

1. On October 20, 1997, the Department of Administration published notice of the proposed adoption of rules I through VI (ARM 2.21.3101 through 2.21.3106) related to payroll administration and repeal of ARM 2.21.3001 through 2.21.3006 related to decedent's warrants at page 1855 of the 1997 Montana Administrative Register, issue number 20.

2. The department has adopted and repealed the rules as proposed.

3. No comments were received.

BY:


Dal Smilie
Rule Reviewer


Lois Menzies
Director

Certified to the Secretary of State December 1, 1997.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of ARM	)	ARM 2.21.3704, 2.21.3708,
2.21.3704, 2.21.3708,	)	2.21.3715, 2.21.3718,
2.21.3715, 2.21.3718,	)	2.21.3719, 2.21.3723, AND
2.21.3719, 2.21.3723, and	)	2.21.3726 RELATED TO
2.21.3726 related to	)	RECRUITMENT AND SELECTION
recruitment and selection)	

TO: All Interested Persons.

1. On October 20, 1997, the Department of Administration published notice of the proposed amendment of ARM 2.21.3704, 2.21.3708, 2.21.3715, 2.21.3718, 2.21.3719, 2.21.3723, and 2.21.3726 related to recruitment and selection at page 1861 of 1997 Montana Administrative Register, issue number 20.

2. The department has amended rules 2.21.3704, 2.21.3708, 2.21.3715, 2.21.3718, 2.21.3719, and 2.21.3723 exactly as proposed. The department has amended rule 2.21.3726 as proposed, but with the following change:

2.21.3726 DOCUMENTATION (1) - (1)(b)(i) Same as proposed.
(2) ~~It is recommended that the items listed in this rule must be maintained for a minimum of 2 years after the materials are last used, in case of litigation. The materials must be retained for at least 2 years after last use.~~
(Auth. 2-18-102, MCA; Imp. 2-18-102 and 49-3-201, MCA)

3. One comment was received.

COMMENT: The section about documentation is confusing. Please clarify the length that materials should be kept. We suggest two years as the records retention schedule permits disposal of documents after fiscal year end.

RESPONSE: Language of the rule has been changed to clarify the length. Two years is a reasonable period of time to keep materials, provided they are disposed of pursuant to the records retention schedule.

BY:


Dal Smilie
Rule Reviewer


Lois Menties
Director

Certified to the Secretary of State December 1, 1997.

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

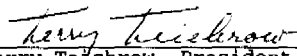
In the matter of adoption of Rule I) NOTICE OF
concerning members of retirement) ADOPTION
systems who may elect coverage under)
the Guaranteed Annual Benefit)
Adjustment.)

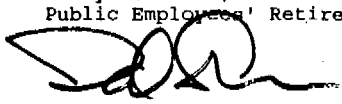
TO: All Interested Persons.


1. On October 20, 1997, the Public Employees' Retirement Board published a notice of proposed adoption of Rule I about members of retirement systems who may elect coverage under the Guaranteed Annual Benefit Adjustment at page 1843 of the 1997 Montana Administrative Register, Issue Number 20.

2. The Board has adopted new Rule I (2.43.520) as proposed:

3. No written or oral comments were received.


Terry Telchrow, President
Public Employees' Retirement Board


Dal Smilie, Chief Legal Counsel and
Rule Reviewer


Kelly Jenkins, General Counsel and
Rule Reviewer

Certified to the Secretary of State on December 1, 1997.

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF RULES
of rules pertaining to trainee-) PERTAINING TO THE PRACTICE
ship requirements and standards,) OF HEARING AID DISPENSING
examinations, definitions and)
transactional document require-)
ments)

TO: All Interested Persons:

1. On October 6, 1997, the Board of Hearing Aid Dispensers published a notice of public hearing on the proposed amendment of rules pertaining to traineeship requirements and standards, examinations, definitions and transactional document requirements at page 1743, 1997 Montana Administrative Register, issue number 19. The hearing was held on October 31, 1997, in Helena, Montana.

2. The Board has amended ARM 8.20.401 and 8.20.403 exactly as proposed. The Board has amended ARM 8.20.417 and 8.20.418 as proposed, but with the following changes:
(authority and implementing remain the same as proposed)

"8.20.417 DEFINITIONS (1) through (5) will remain the same as proposed.

(6) "Dispensing fee" means costs associated with fitting, delivery and counseling.

(7) and (8) will remain the same as proposed."

"8.20.418 TRANSACTIONAL DOCUMENT REQUIREMENTS - FORM AND CONTENT (1) through (4) will remain the same as proposed.

(5) Notice of cancellation must be given to the seller in writing within 30 days of the date of delivery of the hearing aid or related device. The notice of cancellation may be delivered by mail or in person, and must indicate the purchaser's intent not to be bound by the sale. The purchaser shall return the hearing aid or related device in substantially the same condition as it was received. Under this provision, the hearing aid dispenser shall refund to the purchaser the amount paid, minus a dispensing fee, within ~~30~~ 10 days of receipt of the written notice of cancellation. The dispensing fee may not exceed 15% of the total cost of the hearing aid or related device. All fees to be retained by the dispenser, in the event the hearing aid(s) is returned, shall be prominently displayed in a dollar amount on all transactional documents."

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

8.20.417

COMMENT NO. 1: One comment was received from the Montana Hearing Society pertaining to subsection (6). The Montana

Hearing Society felt the language proposed conflicts with 37-16-304(3), MCA, and that the language discriminates against dispensers who service most of rural Montana and provide in-home service.

RESPONSE: The Board concurred and added the language "costs associated with" to the definition of "dispensing fees" as shown above.

COMMENT NO. 2: One comment was received from Reg McCutcheon. Mr. McCutcheon stated that he felt the proposed amendments would conflict with 37-16-304(3), MCA, governing "dispensing fees" and would allow a dispenser to recover little, if any of, their real costs.

RESPONSE: See response to Comment No. 1.


8.20.418

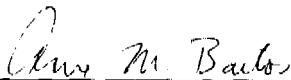
COMMENT NO. 3: The Montana Hearing Society made one comment pertaining to subsection (5). The Society felt that the proposed language conflicts with 37-16-304(3) in that it does not reflect the change in the law that reduces the time that a dispenser has to make a refund from 30 days to 10 days. The Society also felt that the language, as proposed, would deny dispensers their rights under the law by attempting to impose requirements that are unreasonable.

RESPONSE: The Board concurred with that part of the comment pertaining to the refund time lines and amended the rule as shown above. The Board rejected the second part of the comment pertaining to dispenser rights. The Board feels the only cost needing to be delineated is the dispensing fee.

BOARD OF HEARING AID DISPENSERS
DUDLEY ANDERSON, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL,
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 1, 1997.

BEFORE THE DIVISION OF BANKING AND FINANCIAL INSTITUTIONS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption)	NOTICE OF ADOPTION OF RULES
of rules pertaining to annual)	PERTAINING TO ANNUAL FEES,
fees, examinations and reports)	EXAMINATIONS AND REPORTS BY
by Foreign Capital)	FOREIGN CAPITAL
Depositories)	DEPOSITORIES

TO: All Interested Persons:

1. On September 8, 1997, the Division of Banking and Financial Institutions published a notice of public hearing on the proposed adoption of rules pertaining to Foreign Capital Depositories at page 1534, 1997 Montana Administrative Register, issue number 17. Comments were received from the Montana Legislative Services Division indicating concerns with the publication of the rules. The Legislative Services Division advised the Department that the rules were published under the Division, but should have been published separately under the State Banking Board and the Division. After consultation with the Montana Legislative Services Division and the State Banking Board, it was determined that the Division would hold a hearing as originally proposed on October 7, 1997.

2. On October 20, 1997, the Division of Banking and Financial Institutions published a notice of public hearing on the proposed adoption of rules pertaining to annual fees, examinations and reports by Foreign Capital Depositories, at page 1871, 1997 Montana Administrative Register, issue number 20.

3. The Division conducted a hearing on the proposed rules on November 18, 1997. No oral testimony was provided at the administrative rulemaking hearings on October 7, 1997, or November 18, 1997. Written comments were received pertaining to the initial rules that were published September 8, 1997, from the Montana Legislative Services Division Staff Attorney, David Niss, dated September 19, 1997. These comments were used in preparing the notice of hearing published October 20, 1997. The record from the October 7, 1997, hearing has been fully incorporated into the administrative rulemaking hearing dated November 18, 1997.

4. The Division has adopted Rule I (8.80.801), Rule II (8.80.802), Rule III (8.80.803), Rule IV (8.80.804), Rule V (8.80.805), Rule VI (8.80.806), Rule VII (8.80.807), and Rule VIII (8.80.808) exactly as proposed. The comments and the Division's responses thereto, are as follows:

COMMENT NO. 1: The staff of the Montana Legislative Services Division advises that the rules were published under the Division, but should have been published separately under the State Banking Board and the Division. After consultation with the Montana Legislative Services Division, it was determined that the Department of Commerce would hold a

hearing as originally proposed on October 7, 1997. The Legislative Services Division agreed that the Division and Board would republish the rules under the proper authority as new proposed rules, following the requirements of MAPA.

RESPONSE: The Division concurs and republished the rules under the Division and the State Banking Board as new proposed rules. The publication occurred on October 20, 1997 and a hearing was held before the Division on November 18, 1997.

COMMENT NO. 2: The Legislative Services Division advises that much of the language contained in proposed rule I(2) (8.80.801(2)) is taken from section (3) of SB 83. The Legislative Services Division recommended that the definitions in proposed rule I(2) (8.80.801(2)) which do not differ from the definitions provided in section 32-8-103, MCA, be eliminated in favor of some language in rule I (8.80.801) that cautions the reader to refer to the definitions in section 32-8-103, MCA.

RESPONSE: The Division rejects the comment. The definitions fully describe the requirements of the Act and regulations regarding a Foreign Capital Depository. The regulations faithfully follow the statutory definitions except where some definitions have been amplified in order to clarify the scope of the regulations for the benefit of Foreign Capital Depositories and others. The repeat of statutory definitions makes the definitions in the administrative rules "user friendly." Definitions within the administrative rules enable the reader to understand the rules in a more concise manner.

COMMENT NO. 3: The Legislative Services Division advises that several places in the proposed rules have purported to adopt federal law "as amended" by incorporation by reference. The Legislative Services Division understands that the Division's reference to federal law "as amended" to mean that the federal laws is adopted as it may be amended in the future. The Legislative Services Division maintains that amendments to federal law must be adopted again by using the procedure set forth in section 2-4-307, MCA.

RESPONSE: The Division rejects the comment. The Depository will be required to comply with all amendments to applicable federal law. Section 32-8-501(4), MCA, provides that the purpose of the act is not to avoid the application of the Bank Secrecy Act, the Right to Financial Privacy Act of 1978, the Money Laundering Control Act of 1986 and the Annunzio-Wylie Money Laundering Act, which are intended to prevent or deter money laundering and other financial crimes, but rather to apply state law in those areas unregulated by other relevant federal laws. It is the intent of the Legislature that if there is a clear and direct conflict between the Act and the applicable federal law that cannot be resolved by other means, then the state law should be preempted in order to maintain the efficacy and integrity of United States laws.


The reference to federal banking laws in the Act does not constitute an impermissible delegation of legislative and administrative rule authority comparable to that addressed by the Supreme Court of Montana in Lee v. State of Montana, 635 P.2d 1282 (Mont. 1981). The Act requires that Foreign Capital Depositories comply with federal laws to which all such financial institutions must comply. It is not a delegation of the state's sovereign power to the federal government.


COMMENT NO 4: The Legislative Services Division maintains that a well-stated rationale for a rule should not just address the legal authority or requirements for rules generally, but should address the reasons why the agency chose the particular rule language that it did. The Legislative Services Division suggested that when the Board and Division republishes the notice of proposed rulemaking, the Division and Board also include an expanded rationale in the new notice that complies with the amended version of section 2-4-305(6), MCA.

RESPONSE: The Division concurs. The republished rules included an expanded rationale in the new notice that complied with section 2-4-301(6), MCA.

DIVISION OF BANKING AND
FINANCIAL INSTITUTIONS

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 1, 1997.

BEFORE THE STATE BANKING BOARD
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF ADOPTION OF RULES
of rules pertaining to	)	PERTAINING TO THE FOREIGN
application procedure for a	)	CAPITAL DEPOSITORIES
charter, notice of hearing,)	
grounds for denial, procedural)	
rules for determination,)	
procedural rules for discovery)	
and hearing, application)	
charter fee for Foreign Capital)	
Depositories)	

TO: All Interested Persons:

1. On September 8, 1997, the Division of Banking and Financial Institutions published a notice of public hearing on the proposed adoption of rules pertaining to Foreign Capital Depositories at page 1534, 1997 Montana Administrative Register, issue number 17. Comments were received from the Montana Legislative Services Division indicating concerns with the publication of the rules. The Montana Legislative Services Division advised the Division that the rules were published under the Division, but should have been published separately under the State Banking Board and the Division. After consultation with the Montana Legislative Services Division and the Division of Banking and Financial Institutions, it was determined that the Division would hold a hearing as originally proposed on October 7, 1997.

2. On October 20, 1997, the State Banking Board published a notice of public hearing on the proposed adoption of rules pertaining to application procedure for a charter, notice of hearing, grounds for denial, procedural rules for determination, procedural rules for discovery and hearing, application charter fee for Foreign Capital Depositories at page 1882, 1997 Montana Administrative Register, issue number 20.

3. The Board has adopted Rule I (8.87.801), Rule IV (8.87.804), Rule VI (8.87.806), Rule VII (8.87.807), Rule VIII (8.87.808), Rule IX (8.87.809), Rule X (8.87.810) and Rule XI (8.87.811) exactly as proposed. Rule II (8.87.802), Rule III (8.87.803) and Rule V (8.87.805) are adopted as proposed, with the following changes: (authority and implementing sections will remain the same as proposed)

"8.87.802 APPLICATION PROCEDURE FOR A CHARTER (1) will remain the same as proposed.

(2) Applicant shall be required to disclose to all customers by written notice at the time of deposit the following:

(a) "neither deposits of currency, tangible personal property, any other property, business transactions nor the foreign capital depository is insured by any governmental

entity such as the United States or the state of Montana";

(b) the notice shall be acknowledged in English in writing by the customer; and

(c) the notice shall be provided to the customer in the English language.

(2) through (4) will remain the same as proposed, but will be renumbered (3) through (5)."

"8.87.803 EVIDENCE OF GOOD CHARACTER AND PROSPECTIVE COMPLIANCE WITH FEDERAL LAW (1) An application under ARM 8.87.802 shall be accompanied by:

(a) documents certifying that the identity of each ~~incorporator,~~ director, executive officer and controlling person of the proposed foreign capital depository has been verified by means of a background check. Such background check, which shall be in addition to any background check that the commissioner or designated personnel of the division of banking and financial institutions shall conduct pursuant to ARM 8.87.808(2), shall be conducted by a reputable and licensed private investigative service and include inquiry into each individual's financial means, employment history, credit history, criminal record and record of tax delinquencies, if any;

(b) and (c) will remain the same as proposed."

"8.87.805 CAPITAL ADEQUACY (1) An application under ARM 8.87.802 shall be accompanied by:

(a) an audited financial statement from a certified public accountant confirming that the applicant has ~~financial~~ available assets in excess of liabilities in an amount sufficient to ~~secure~~ provide the services ~~that~~ the applicant ~~intends to provide as will~~ set forth in ~~the~~ a business plan; and

(b) evidence that the applicant's initial paid-in capital is ~~sufficient~~ available to establish an undivided profits account in an amount ~~great~~ large enough to absorb ~~any~~ initial all operating losses ~~under~~ in the business plan and pro forma statement submitted by the applicant pursuant to ARM 8.87.804 ~~and foreseeable business conditions.~~

(2) The division, in consultation with the state banking board, shall determine the appropriate initial level of capitalization of an applicant prior to the issuance of the certificate of authorization. In no event shall such capital be less than \$2,000,000 of which at least 50% shall be comprised of United States currency and no more than 50% shall be comprised of tangible personal property."

4. The board conducted a hearing on the proposed rules on November 18, 1997. No oral testimony was provided at the administrative rulemaking hearings on October 7, 1997, or November 18, 1997. Written comments were received pertaining to the initial rules that were published September 8, 1997, from the Montana Legislative Services Division Staff Attorney, David Niss, dated September 19, 1997. These comments were

used in preparing the notice of hearing published October 20, 1997. The record from the October 7, 1997, hearing has been fully incorporated into the administrative rulemaking hearing dated November 18, 1997. The comments and the Board's responses thereto, are as follows:

COMMENT NO. 1: The staff of the Montana Legislative Services Division advises that the rules were published under the Division, but should have been published separately under the State Banking Board and the Division. After consultation with the Montana Legislative Services Division, it was determined that the Department of Commerce would hold a hearing as originally proposed on October 7, 1997. The staff of the Administrative Code Committee agreed that the Division and Board would republish the rules under the proper authority as new proposed rules, following the requirements of MAPA.

RESPONSE: The Board concurs and republished the rules under the Division and the State Banking Board as new proposed rules. The publication occurred on October 20, 1997, and two separate hearings were held before the Board and the Division on November 18, 1997.

COMMENT NO. 2: The Legislative Services Division advises that much of the language contained in proposed rule I(2) (8.87.801(2)) is taken from section (3) of SB 83. The Legislative Services Division recommended that the definitions in proposed rule I(2) (8.87.801(2)) which do not differ from the definitions provided in section 32-8-103, MCA, be eliminated in favor of some language in rule I (8.87.801) that cautions the reader to refer to the definitions in section 32-8-103, MCA.

RESPONSE: The Board rejects the comment. The definitions fully inform charter applicants of the requirements of the Act and regulations for eligibility of an application for a depository. The regulations faithfully follow the statutory definitions except where some definitions have been amplified in order to clarify the scope of the regulations for the benefit of charter applicants and others. The repeat of statutory definitions makes the definitions in the administrative rules "user friendly." Definitions within the administrative rules enable the reader to understand the rules in a more concise manner.

COMMENT NO. 3: The Legislative Services Division comments that proposed rule II (8.87.802) appears to limit the persons who must apply for a charter to only incorporators, while section 32-8-201, MCA, contains no such limitation.

RESPONSE: The Board rejects this comment. "Incorporators" is defined because section 32-8-201(1)(b), MCA, of the Act requires applicants to "make and file articles of incorporation in accordance with section 32-1-301, MCA," which under Montana law is a function performed by incorporators.

COMMENT NO. 4: The Legislative Services Division advises that under rule II(1)(k) (8.87.802(1)(k)) the Division may collect unspecified "other information" from the applicant. The Legislative Services Division maintains that the law does not grant the Commissioner or Division the authority to collect other information as they may consider necessary.

RESPONSE: The Board rejects this comment. Following careful consideration of the law regarding additional information that may be requested, and due to the unique nature of the Act, the Board determined that unspecified "other information" from the applicant is a necessary provision. Additional information from the applicant may be necessary for the Board to make a thorough analysis and review of the application. During the administrative hearing before the Board relative to the granting of a charter for a Foreign Capital Depository, the Board may request further information that is not fully explained by the applicant in the application.

COMMENT NO. 5: The Legislative Services Division advises that proposed rule III(1)(a) (8.87.803(1)(a)) includes "incorporator" as one of the list of persons for whom papers verifying background checks must be submitted for a charter. Incorporator is the only person who is not included in the nearly identical section 32-8-201(1)(c)(i), MCA.

RESPONSE: The Board concurs. The Board accepted the comment and amended the rule as shown above in rule III (8.87.803).

COMMENT NO. 6: The Legislative Services Division maintains that proposed rule V (8.87.805) as originally published on September 8, 1997, at page 1534, 1997 Montana Administrative Register, issue number 17, on capital adequacy is not an amount established by the Board or by a formula by which that amount may be determined. The Legislative Services Division questions how an applicant will know when enough capital is sufficient.

RESPONSE: The Board concurs. Under the republished rules, the capital adequacy has been redefined to require a statement from a certified public accountant that the applicant has financial assets in excess of liabilities in an amount sufficient to secure the services that the applicant intends to provide as set forth in the business plan, and provides evidence that the applicant's paid-in capital is sufficient to establish an undivided profits account in an amount great enough to absorb all operating losses under the business plan and pro forma statement submitted by the applicant pursuant to rule IV (8.87.804) and foreseeable business conditions. A specific minimum amount of capital has been set forth in the rules.

COMMENT NO. 7: The Legislative Services Division advises that several places in the proposed rules have purported to adopt federal law "as amended" by incorporation by reference.

The Legislative Services Division understands that the Board's reference to federal law "as amended" to mean that the federal laws is adopted as it may be amended in the future. The Legislative Services Division maintains that amendments to federal law must be adopted again by using the procedure set forth in section 2-4-307, MCA.

RESPONSE: The Board rejects the comment. The Depository will be required to comply with all amendments to applicable federal law. Section 32-8-501(4), MCA, provides that the purpose of the act is not to avoid the application of Bank Secrecy Act, the Right to Financial Privacy Act of 1978, the Money Laundering Control Act of 1986 and the Annunzio-Wylie Money Laundering Act, which are intended to prevent or deter money laundering and other financial crimes, but rather to apply state law in those areas unregulated by other relevant federal laws. It is the intent of the Legislature that if there is a clear and direct conflict between the Act and the applicable federal law that cannot be resolved by other means, then the state law should be preempted in order to maintain the efficacy and integrity of United States laws.

The reference to federal banking laws in the Act does not constitute an impermissible delegation of legislative and administrative rule authority comparable to that addressed by the Supreme Court of Montana in Lee v. State of Montana, 635 P.2d 1282 (Mont. 1981). The Act requires that Foreign Capital Depositories comply with federal laws to which all such financial institutions must comply. It is not a delegation of the state's sovereign power to the federal government.

COMMENT NO. 8: The Legislative Services Division maintains that a well-stated rationale for a rule should not just address the legal authority or requirements for rules generally, but should address the reasons why the agency chose the particular rule language that it did. The Legislative Services Division suggested that when the Board and Division republishes the notice of proposed rulemaking, the Division and Board also include an expanded rationale in the new notice that complies with the amended version of section 2-4-305(6), MCA.

RESPONSE: The Board concurs. The republished rules included an expanded rationale in the new notice that complied with section 2-4-301(6), MCA.

COMMENT NO. 9: The Board determined that a written disclosure to customers was necessary stating that neither deposits of currency, tangible personal property, any other property, business transactions nor the Foreign Capital Depositories are insured by any federal or state entity. This disclosure notice will assure that customers are fully informed that a Foreign Capital Depository is not an insured institution.

RESPONSE: The Board amended rule II (8.87.802) to include the disclosure notice requirement in the application process.

STATE BANKING BOARD
LOREN TUCKER, CHAIRPERSON

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 1, 1997.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of new rules providing)
for the valuation and taxation of)
light motor vehicles and for the)
imposition of fees in lieu of tax)
on buses, heavy trucks, truck)
tractors and trailers.)
)

TO: All Interested Persons.

1. On October 20, 1997, the Department of Justice published a notice of proposed adoption of new rules I to VII pertaining to the valuation, taxation and imposition of fees in lieu of taxes on vehicles. The notice was published at pages 1901 to 1909 of the 1997 Montana Administrative Register, issue number 20.

2. The department has adopted Rules I (ARM 23.3.801), II (ARM 23.3.802), III (ARM 23.3.803), IV (ARM 23.3.804), VI (ARM 23.3.806) and VII (ARM 23.3.807) exactly as proposed.

3. The department has adopted Rule V (23.3.805) with the following change (text of the rule with stricken matter interlined, new matter underlined):

Rule V (23.3.805) COMPUTATION OF TAX FOR LIGHT VEHICLES

(1) remains the same as proposed.

(2) The department will depreciate light vehicles that are more than 16 years of age by multiplying .90 by the vehicle's depreciated value for the preceding registration period, as calculated in accordance with ~~61-3-502(2)~~ 61-3-503(2), MCA, until the vehicle arrives at a depreciated value of \$500.00 or less, in which case its depreciated value shall be deemed to be \$500.00 thereafter.

AUTH: 61-3-506, MCA; IMP: 61-3-101, 61-3-503, 61-3-504, MCA.

Reason: This amendment is necessary because, as proposed, the statutory reference in Rule V was incorrect. It is 61-3-503(2), MCA, not 61-3-502(2), MCA, that prescribes the manner in which light vehicles are to be valued if more than sixteen years old.

4. A public hearing on the proposed rules was held on November 12, 1997 at 10:00 a.m., in the main floor auditorium of the Scott Hart Building, at 303 North Roberts, Helena, Montana. Approximately ten people attended the hearing, four of whom submitted testimony in support of the new rules.

Mr. Bud Schoen, chief of the Title and Registration Bureau of the Department of Justice, testified that the proposed rules are vital to the Department of Justice's implementation, conversion and administration of the new vehicle taxation system enacted by the 55th Montana legislature.

Mr. Dave Galt, administrator of the Motor Carrier Services Division of the Department of Transportation, testified that he had worked in tandem with the Department of Justice on the development and presentation of the new vehicle taxation system to the legislature, as well as on the development of the proposed rules. In the process of developing the subject rules, Mr. Galt stated the importance of the consistency in all vehicle taxation concerning the use of the term "manufacturer's suggested retail price" and advised that the department of transportation had proposed to amend its rules to clarify use of "manufacturer's suggested retail price" with respect to the new vehicle sales tax, which is administered by the department of transportation. The Department of Transportation's draft rule amendments, to be reviewed in a public hearing on December 1, 1997, are considered by interested parties to be companion rules to those proposed by the Department of Justice.

Mr. Ben Havdahl, executive vice president of the Montana Motor Carriers Association, testified in support of the proposed rules as they affect vehicles over 1 ton. He also stated, as a matter of information, that the association supported the rule amendments proposed by the Department of Transportation as they define "f.o.b. factory list price" and "f.o.b. port of entry price" as an adjunct to the Department of Justice's proposed new rules.

Mr. Jim Dusenberry, representing the Montana Tow Truck Association, testified that he concurred with Ben Havdahl's comments concerning the proposed rules.

No one testified in opposition to the proposed rules during the public hearing. No written comments were submitted to the department outside the hearing or before the comment deadline date of November 17, 1997.

MONTANA DEPARTMENT OF JUSTICE

By: 

JOSEPH P. MAZUREK

Attorney General


CHRIS D. TWEETEN

Chief Counsel/Rule Reviewer

Certified to the Secretary of State December 1, 1997.

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

In the matter of the transfer) NOTICE OF TRANSFER
of rules 11.5.401 through)
11.5.410 pertaining to)
supplemental security income)
payments, with the exception of)
any repealed rules)

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the supplemental security income payments program is transferred from the Department of Family Services to the Department of Public Health and Human Services. In order to implement that legislation, ARM 11.5.401 through 11.5.401, inclusive, with the exception of any repealed rules, are transferred to the Department of Public Health and Human Services ARM 37.43.101 through 37.43.104.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

OLD	NEW	
11.5.401	<u>37.43.101</u>	Purpose
11.5.402	<u>37.43.102</u>	Individual Eligibility for State Supplement
11.5.407	<u>37.43.103</u>	Eligibility Based on Living Arrangement
11.5.410	<u>37.43.104</u>	Payment Standards

3. The transfer of rules is necessary because the Department of Family Services was eliminated by Chapter 546, Laws of Montana 1995 and the supplemental security income payment functions exercised by that agency were assumed by the Department of Public Health and Human Services.

Dawn Gloria
Rule Reviewer

Travis Hanger
Director, Public Health and Human Services

Certified to the Secretary of State December 1, 1997.

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

In the matter of the transfer) NOTICE OF TRANSFER
of rules 11.9.101 through)
11.9.115, pertaining to)
residential alcohol and drug)
treatment for indigent)
juveniles, with the exception)
of repealed rules)

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the residential alcohol and drug treatment for indigent juveniles program is transferred from the Department of Family Services to the Department of Public Health and Human Services. In order to implement that legislation, ARM 11.9.101 through 11.9.115, inclusive, with the exception of any repealed rules, are transferred to the Department of Public Health and Human Services ARM 37.25.101 through 37.25.215.

2. The Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

OLD	NEW	
11.9.101	<u>37.25.101</u>	Residential Alcohol and Drug Treatment for Indigent Juveniles
11.9.102	<u>37.25.102</u>	Definitions
11.9.105	<u>37.25.105</u>	Eligibility for Services
11.9.106	<u>37.25.106</u>	Application for Services
11.9.107	<u>37.25.107</u>	Determination of Indigency
11.9.108	<u>37.25.201</u>	Billing, Reimbursement and Processing
11.9.110	<u>37.25.205</u>	Erroneous or Improper Payments
11.9.113	<u>37.25.210</u>	Rates
11.9.115	<u>37.25.215</u>	Unavailability of Funds

3. The transfer of rules is necessary because the Department of Family Services was eliminated by Chapter 546, Laws of Montana 1995 and the indigent juveniles program functions exercised by that agency were assumed by the Department of Public Health and Human Services.

Dawn Elia
Rule Reviewer

Mark J. Hines
Director, Public Health and
Human Services

Certified to the Secretary of State December 1, 1997.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of rules 46.13.303,)
46.13.304, 46.13.401 and)
46.13.501 pertaining to low)
income energy assistance)

TO: All Interested Persons

1. On September 22, 1997, the Department of Public Health and Human Services published notice of the proposed amendment of rules 46.13.303, 46.13.304, 46.13.401 and 46.13.501 pertaining to low income energy assistance at page 1649 of the 1997 Montana Administrative Register, issue number 18.

2. The Department has amended rules 46.13.303, 46.13.304, 46.13.401 and 46.13.501 as proposed.

3. No comments or testimony were received.

Dawn Olson
Rule Reviewer

Michael B. Bellamy for
Director, Public Health and
Human Services

Certified to the Secretary of State December 1, 1997.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF AMENDMENT and
of ARM 42.19.1203, 42.19.1222,) REPEAL
42.19.1235, 42.21.113, 42.21.)
122, 42.21.123, 42.21.124,)
42.21.131, 42.21.137, 42.21.)
138, 42.21.139, 42.21.140,)
42.21.151, 42.21.153, 42.21.)
155, 42.21.156, 42.22.1311,)
42.22.1312, and the REPEAL)
of ARM 42.21.106, 42.21.107,)
42.21.301, 42.21.302, 42.21.)
303, 42.21.305, 42.21.307,)
42.21.308, 42.21.310, and 42.)
21.314 relating to Industrial)
Property Trend, New Industrial)
Property, and Personal)
Property Trended Depreciation)
Schedules)

TO: All Interested Persons:

1. On October 6, 1997, the Department published notice of the proposed amendment of ARM 42.19.1203, 42.19.1222, 42.19.1235, 42.21.113, 42.21.122, 42.21.123, 42.21.124, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, 42.21.156, 42.22.1311, 42.22.1312, and the repeal of ARM 42.21.106, 42.21.107, 42.21.301, 42.21.302, 42.21.303, 42.21.305, 42.21.307, 42.21.308, 42.21.310, and 42.21.314 relating to Industrial Property Trend, New Industrial Property, and Personal Property Trended Depreciation Schedules at page 1782 of the 1997 Montana Administrative Register, issue no. 19.

2. A public hearing was held on October 27, 1997 where written comments were received.

3. After further review, the Department offered additional amendments to the proposed rules on industrial property at the hearing. At the request of the Department's legal staff, ARM 42.19.1203(3) should be further amended to clarify which state agency should receive the pollution control application before January 1. The amendment which was proposed for ARM 42.22.1311 was incorrect when it was changed to 12 years. That portion of the rule will be corrected to reflect 10 years as the age life of sawmill equipment. An additional amendment to ARM 42.22.1312 is necessary to reflect the correct age life of sawmill equipment used in the example for that rule.

4. The oral and written comments received during and subsequent to the hearing are summarized as follows along with the response of the Department:

COMMENT: The proposed amendment to ARM 42.21.124 (1)(i) reads

"All llamas;". Mr. John Northey suggested that pursuant to 15-24-921, MCA, the amendment should read "All llamas and alpacas 9 months and older."

RESPONSE: The Department accepts the comments on the proposed amendment to ARM 42.21.124(1)(i). As a result of that change, the Department will also be required to change ARM 42.21.122.

5. The Department amends the rules as follows:

42.19.1203 TREATMENT OF AIR AND WATER POLLUTION CONTROL EQUIPMENT (1) and (2) remain the same.

(3) To be eligible to receive pollution control status for the current tax year, the application must be received BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY on or before January 1 of that year.

42.21.122 LIVESTOCK (1) through (5) remain the same.

(6) Miscellaneous livestock shall be valued as follows:

(a) male elk, yaks and ~~buffalo~~ BISON shall be valued the same as purebred bulls;

(b) female elk, yaks and ~~buffalo~~ BISON shall be valued the same as purebred cattle, 33 months and older;

(c) male llamas AND ALPACAS shall be valued the same as horses, 15 years and older;

(d) neutered llamas AND ALPACAS and deer shall be valued the same as mules, shetland ponies, etc.;

(e) female llamas AND ALPACAS shall be valued the same as work and pack horses, riding and pack mules;

(f) remains as proposed.

(g) through (h) remain the same.

(7) remains as proposed.

42.21.124 PER CAPITA LIVESTOCK TAX REPORTING PROCEDURE

(1) For purposes of assessing the per capita tax on livestock, poultry and bees to pay the expense of enforcing the livestock, poultry, and bee laws, the following categories of livestock, poultry, and bees shall be used by the producer to report the number of animals within each category. The established categories are:

(a) remains the same.

(b) through (d) remain as proposed.

(e) All ~~buffalo~~ BISON - 9 months and older;

(f) remains as proposed.

(g) and (h) remain the same.

(i) All llamas AND ALPACAS - 9 MONTHS AND OLDER;

(j) remains the same.

(2) THIS RULE IS EFFECTIVE FOR TAX YEARS BEGINNING AFTER DECEMBER 31, 1997.

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS (1) remains the same.

1998 INDUSTRIAL MACHINERY & EQUIPMENT TREND FACTORS

Trend

<u>Table</u>	<u>Description</u>	<u>Life</u>
The table	remains the same except:	
(18)	Sawmill Equipment	12 10

42.22.1312 INDUSTRIAL MACHINERY AND EQUIPMENT DEPRECIATION SCHEDULE (1) remains the same.

(2) The department will utilize the depreciation schedules set forth above as reflected in the following example:

EXAMPLE

The Trending/Depreciation Procedure

In order to use the economic age-life method to value machinery and equipment, several steps must be followed.

(1) through (5) remain the same.

Example:

Industry - Sawmill
Economic life - ~~12~~ 10 years
1998 Table - Table 18

Case	I	II
Equipment - Motor		
Original Installed Cost	\$200	\$ 100
Year Installed	1995	1974

Case I

Cost	\$ 200
x Trend	1.303 1.061
RCN	261 212
x % Good	24 .76
Sound Value	\$ 60 161

Case II

Cost	\$ 100
x Trend	2.238* 1.303*
RCN	224 130
x % Good	.20
Sound Value	\$ 25 26

*The trending factor is applied only to the last year of the economic life. Although the equipment is 24 years old, it is trended by the 10th year trend.

6. As a result of the comments received the Department has amended ARM 42.19.1203, 42.21.122, 42.21.124, 42.22.1311, and 42.22.1312.

7. Therefore, the Department adopts ARM 42.19.1203, 42.21.122, 42.21.124, 42.22.1311, and 42.22.1312 with the amendments listed above and adopts ARM 42.19.1222, 42.19.1235, 42.21.113, 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 and 42.21.156 as proposed. The Department repeals ARM 42.21.106,

42.21.107, 42.21.301, 42.21.302, 42.21.303, 42.21.305,
42.21.307, 42.21.308, 42.21.310, and 42.21.314 as proposed.


CLEO ANDERSON
Rule Reviewer


MARY BRYSON
Director of Revenue

Certified to Secretary of State December 1, 1997

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT OF
amendment of ARM 1.2.419	)	ARM 1.2.419 FILING,
regarding scheduled dates	)	COMPILING, PRINTER PICKUP
for the Montana	)	AND PUBLICATION OF THE
Administrative Register	)	MONTANA ADMINISTRATIVE
	)	REGISTER

TO: All Interested Persons.

1. On October 20, 1997, the Secretary of State published notice of the proposed amendment of ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register for 1998 at page 1913 of the 1997 Montana Administrative Register, issue no. 20.

2. Rule 1.2.419 is amended as proposed.

3. No comments or testimony were received.


MIKE COONEY
Secretary of State


DAN WHYTE
Rule Reviewer

Dated this 1st day of December 1997.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE
MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|-------------------------------------|---|
| Known
Subject
Matter | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1997. This table includes those rules adopted during the period October 1, 1997 through December 31, 1997 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1997, 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 1996 and 1997 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.

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in November 1997, appear. Vacancies scheduled to appear from January 1, 1998, through March 31, 1998, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of December 2, 1997.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
Plathead Reservation Fish and Wildlife Board (Fish, Wildlife and Parks)			
Mr. Ray Aylesworth	Governor	Gilleard	11/3/1997
Ronan			0/0/0
Qualifications (if required):	public member		
Missouri River Basin Advisory Council (Natural Resources and Conservation)			
Mr. John Foster	Governor	not listed	11/21/1997
Lewistown			2/25/1999
Qualifications (if required):	public member		
Mr. Boone Whitmer	Governor	not listed	11/21/1997
Wolf Point			2/25/1999
Qualifications (if required):	public member		
Montana Children's Trust Fund Board (Public Health and Human Services)			
Ms. Roxanne Gorneau	Governor	Ahneman	11/20/1997
Wolf Point			1/1/2000
Qualifications (if required):	public member		
Montana Public Safety Communications Council (Administration)			
Mr. John Blacker	Governor	not listed	11/13/1997
Helena			11/13/1999
Qualifications (if required):	representative of state government		
Mr. Mike Brown	Governor	not listed	11/13/1997
Bozeman			11/13/1999
Qualifications (if required):	representative of the 9-1-1 community		
Mr. Drew Dawson	Governor	not listed	11/13/1997
Helena			11/13/1999
Qualifications (if required):	representative of the emergency medical services community		

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER, 1997

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Public Safety Communications Council (Administration) Cont.			
Mr. Larry Fasbender	Governor	not listed	11/13/1997
Helena			11/13/1999
Qualifications (if required):	representative of state government		
Mr. Mike Griffith	Governor	not listed	11/13/1997
Helena			11/13/1999
Qualifications (if required):	representative of county government operations of Montana		
Mr. Lloyd Jackson	Governor	not listed	11/13/1997
Pablo			11/13/1999
Qualifications (if required):	tribal representative		
Mr. William Jameson	Governor	not listed	11/13/1997
Bozeman			11/13/1999
Qualifications (if required):	representative of citizens at large		
Mr. Bob Jones	Governor	not listed	11/13/1997
Great Falls			11/13/1999
Qualifications (if required):	representative of law enforcement and Association of Chiefs of Police		
Mr. Mike Meldahl	Governor	not listed	11/13/1997
Butte			11/13/1999
Qualifications (if required):	representative of Montana Power Company and other private utilities		
Ms. Lois A. Menzies	Governor	not listed	11/13/1997
Helena			11/13/1999
Qualifications (if required):	Director of the Department of Administration		

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER, 1997			
<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Public Safety Communications Council (Administration) Cont.			
Sheriff Bill Slaughter	Governor	not listed	11/13/1997
Bozeman			11/13/1999
Qualifications (if required):	representative of law enforcement and Sheriffs and Peace Officers Association		
Mr. William S. Strizich	Governor	not listed	11/13/1997
Great Falls			11/13/1999
Qualifications (if required):	representative of the federal government		
Mr. Dennis M. Taylor	Governor	not listed	11/13/1997
Helena			11/13/1999
Qualifications (if required):	representative of local government		
Mr. Scott Waldron	Governor	not listed	11/13/1997
Frenchtown			11/13/1999
Qualifications (if required):	representative of fire protection services		
Public Employees' Retirement Board (Administration)			
Ms. Jean Thompson	Governor	Pratt	11/10/1997
Billings			4/1/1999
Qualifications (if required):	active member of Public Employees' Retirement System		
State Emergency Response Commission (Military Affairs)			
Mr. Larry Barton	Governor	Laingen	11/14/1997
Helena			8/10/1999
Qualifications (if required):	representing motor carriers		
Lt. Randy Yaeger	Governor	Barry	11/10/1997
Helena			8/10/1999
Qualifications (if required):	representative of state law enforcement		

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER, 1997

Appointee	Appointed by	Succeeds	Appointment/End Date
SummitNet Executive Council (Administration)			
Mr. William Salisbury	Governor	Taylor	11/10/1997
Helena			7/1/1999
Qualifications (if required):	representative of a state agency		
Yellowstone River Task Force (Fish, Wildlife and Parks)			
Mr. Roy Aserlind	Governor	not listed	11/5/1997
Livingston			7/1/1999
Qualifications (if required):	representative of property owners.		
Mr. Mike Atwood	Governor	not listed	11/5/1997
Livingston			7/1/1999
Qualifications (if required):	representative of local businesses		
Mr. John Bailey	Governor	not listed	11/5/1997
Livingston			7/1/1999
Qualifications (if required):	representative of local businesses		
Ms. Michelle Goodwine	Governor	not listed	11/5/1997
Livingston			7/1/1999
Qualifications (if required):	representative of local businesses		
Ms. Shaunda Hildebrand	Governor	not listed	11/5/1997
Livingston			7/1/1999
Qualifications (if required):	representative of the local conservation district		
Mr. Ken Kastelitz	Governor	not listed	11/5/1997
Livingston			7/1/1999
Qualifications (if required):	representative of the City of Livingston		
Mr. Tom Lane	Governor	not listed	11/5/1997
Livingston			7/1/1999
Qualifications (if required):	rancher who lives along the river		

Appointee	Appointed by	Succeeds	Appointment/End Date
Yellowstone River Task Force	(Fish, Wildlife and Parks) Cont.		
Mr. Stuart Lehman	Governor	not listed	11/5/1997
Helena			7/1/1999
Qualifications (if required):	representative of the Department of Environmental Quality		
Mr. Joel Marshnik	Governor	not listed	11/5/1997
Helena			7/1/1999
Qualifications (if required):	representative of the Department of Transportation		
Mr. Doug McDonald	Governor	not listed	11/5/1997
Helena			7/1/1999
Qualifications (if required):	representative of the Corp of Engineers and an ex-officio member		
Mr. Jerry O'Haire	Governor	not listed	11/5/1997
Livingston			7/1/1999
Qualifications (if required):	rancher who lives along the river		
Mr. Brant Oswald	Governor	not listed	11/5/1997
Livingston			7/1/1999
Qualifications (if required):	representative of conservation groups		
Mr. Rod Siring	Governor	not listed	11/5/1997
Livingston			7/1/1999
Qualifications (if required):	representative of property owners		
Mr. Laurence Siroky	Governor	not listed	11/5/1997
Helena			7/1/1999
Qualifications (if required):	representative of the Department of Natural Resources and Conservation		

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER, 1997

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeded</u>	<u>Appointment/End Date</u>
Yellowstone River Task Force	(Fish, Wildlife and Parks) Cont.		
Mr. Joel Tohtz	Governor	not listed	11/5/1997
Helena			7/1/1999
Qualifications (if required):	representative of the Department of Fish, Wildlife and Parks		
Mr. Bob Wiltshire	Governor	not listed	11/5/1997
Livingston			7/1/1999
Qualifications (if required):	representative of the angling community		
Ms. Ellen Woodbury	Governor	not listed	11/5/1997
Livingston			7/1/1999
Qualifications (if required):	representative of Park County		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 1998 through MARCH 31, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<u>Appellate Defender Commission</u> (Administration) Ms. Beverly Kolar, Geyser Qualifications (if required): public member	Governor	1/1/1998
<u>Board of Architects</u> (Commerce) Mr. Thomas Geelan, Havre Qualifications (if required): public member	Governor	3/27/1998
<u>Ms. Pamela J. Hill, Bozeman</u> Qualifications (if required): architect on staff at a state university of architecture	Governor	3/27/1998
<u>Board of Chiropractors</u> (Commerce) Dr. Marvin S. Harris, Great Falls Qualifications (if required): practicing chiropractor	Governor	1/1/1998
<u>Board of Dentistry</u> (Commerce) Dr. Donald O. Nordstrom, Missoula Qualifications (if required): dentist	Governor	3/29/1998
<u>Board of Horse Racing</u> (Commerce) Mr. Joe Erickson, Cascade Qualifications (if required): horse racing industry in District 3	Governor	1/20/1998
<u>Board of Public Education</u> (Education) Ms. Sarah Listerud, Wolf Point Qualifications (if required): member	Governor	2/1/1998
<u>Board of Regents of Higher Education</u> (Education) Mr. Paul F. Boylan, Bozeman Qualifications (if required): democrat residing in First Congressional District	Governor	2/1/1998

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 1998 through MARCH 31, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Capital Finance Advisory Council (Administration)		
Mr. Marvin Dye, Helena	Governor	2/27/1998
Qualifications (if required): director of the Department of Transportation		
Mr. Jim Kaze, Havre	Governor	2/27/1998
Qualifications (if required): member of the Board of Regents		
Mr. Dave Lewis, Helena	Governor	2/27/1998
Qualifications (if required): director of the Office of Budget and Program Planning		
Dr. Amos R. Little, Jr., Helena	Governor	2/27/1998
Qualifications (if required): member of the Montana Health Facilities Authority		
Ms. Lois A. Menzies, Helena	Governor	2/27/1998
Qualifications (if required): director of the Department of Administration		
Rep. Ray Peck, Havre	Governor	2/27/1998
Qualifications (if required): state representative		
Mr. Bob Thomas, Stevensville	Governor	2/27/1998
Qualifications (if required): member of the Montana Board of Housing		
Mr. W. Ralph Peck, Helena	Governor	2/27/1998
Qualifications (if required): director of the Department of Agriculture		
Capitol Advisory Council (Administration)		
Mr. Bob Frazier, Missoula	Director	1/25/1998
Qualifications (if required): none specified		
Mr. Fredric L. Quivik, Froid	Director	1/25/1998
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 1998 through MARCH 31, 1998

Board/current position holder	Appointed by	Term end
Capitol Advisory Council (Administration) Cont. Mr. Allan Mathews, Missoula Qualifications (if required): none specified	Director	1/25/1998
Ms. Madalyn Quinlan, Helena Qualifications (if required): none specified	Director	1/25/1998
Mr. Mark Reavis, Butte Qualifications (if required): none specified	Director	1/25/1998
Children's Trust Fund Board (Family Services) Mr. Kirk Astroth, Bozeman Qualifications (if required): public member	Governor	1/1/1998
Ms. Judy Garrity, Helena Qualifications (if required): representative of Department of Family Services	Governor	1/1/1998
Ms. Barbara Campbell, Deer Lodge Qualifications (if required): public member	Governor	1/1/1998
Judge Gary Acevedo, Pablo Qualifications (if required): public member	Governor	1/1/1998
Ms. Judy Birch, Helena Qualifications (if required): representative of Office of Public Instruction	Governor	1/1/1998
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) Sen. Ethel Harding, Polson Qualifications (if required): state senator	Governor	1/1/1998
Sen. Sharon Estrada, Billings Qualifications (if required): state senator	Governor	1/1/1998

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 1998 through MARCH 31, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<u>Judicial Nomination Commission</u> (Justice) Judge Diana Barz, Billings Qualifications (if required): district judge	Governor	1/1/1998
Ms. Pam Rein, Big Timber Qualifications (if required): public member	Governor	1/1/1998
<u>Low Income Energy Advisory Council</u> (Public Health and Human Services) Mr. Peter Blouke, Helena Qualifications (if required): representing the Department of Public Health and Human Services	Governor	2/13/1998
Mr. Jay T. Downen, Great Falls Qualifications (if required): representing an energy-related enterprise	Governor	2/13/1998
Mr. Mark A. Simonich, Helena Qualifications (if required): representing the Department of Environmental Quality	Governor	2/13/1998
Mr. Wayne Fox, Bismark, ND Qualifications (if required): representing an energy-related enterprise	Governor	2/13/1998
Mr. Jack Haffey, Butte Qualifications (if required): representing an energy-related enterprise	Governor	2/13/1998
Rep. Royal C. Johnson, Billings Qualifications (if required): member of the Montana State Legislature	Governor	2/13/1998
Ms. Nancy McCaffree, Helena Qualifications (if required): representing the Montana Public Service Commission	Governor	2/13/1998
Rep. Sheila Rice, Great Falls Qualifications (if required): representing an energy-related enterprise	Governor	2/13/1998

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 1998 through MARCH 31, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Low Income Energy Advisory Council (Public Health and Human Services) Cont.		
Mr. Carl Visser, Billings	Governor	2/13/1998
Qualifications (if required): representing non-energy-related enterprises		
Martin Luther King, Jr., Holiday Commemorative Commission	(Commerce)	
Ms. Carol Murray, Browning	Governor	1/12/1998
Qualifications (if required): public member		
Mr. Robert Fourstar, Wolf Point	Governor	1/12/1998
Qualifications (if required): representing ethnic groups		
Reverend Bob Freeman, Billings	Governor	1/12/1998
Qualifications (if required): representing ethnic and religious groups		
Mr. Bill Jones, Great Falls	Governor	1/12/1998
Qualifications (if required): representing human rights groups		
Ms. Kay Maloney, Great Falls	Governor	1/12/1998
Qualifications (if required): representing human rights groups		
Ms. Cristina Medina, Helena	Governor	1/12/1998
Qualifications (if required): representing ethnic and human rights groups		
Mr. Benjamin Pease, Jr., Billings	Governor	1/12/1998
Qualifications (if required): public member		
Mr. Brian Schnitzer, Billings	Governor	1/12/1998
Qualifications (if required): representing religious and business groups		
Ms. Angelina Vallejo Cormier, Billings	Governor	1/12/1998
Qualifications (if required): representing ethnic and business groups		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 1998 through MARCH 31, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Martin Luther King, Jr., Holiday Commemorative Commission (Commerce) Cont.		
Ms. Michelle Wikerson, Great Falls	Governor	1/12/1998
Qualifications (if required): representing ethnic and human rights groups		
Ms. Bonnie Craig, Missoula	Governor	1/12/1998
Qualifications (if required): representing ethnic and education groups		
Ms. Donna Ruff, Fairview	Governor	1/12/1998
Qualifications (if required): representing labor and ethnic groups		
Mr. Anthony Caldwell, Great Falls	Governor	1/12/1998
Qualifications (if required): public member		
Dr. Frederick Gilliard, Great Falls	Governor	1/12/1998
Qualifications (if required): representing education groups		
Mrs. Pat Ojo, Missoula	Governor	1/12/1998
Qualifications (if required): public member		
Montana Arts Council (Education)		
Ms. Ann Cogswell, Great Falls	Governor	2/1/1998
Qualifications (if required): public member		
Mr. Rick Halmes, Great Falls	Governor	2/1/1998
Qualifications (if required): public member		
Ms. Jackie Parsons, Browning	Governor	2/1/1998
Qualifications (if required): public member		
Ms. Diane M. Davies, Polson	Governor	2/1/1998
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 1998 through MARCH 31, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Arts Council (Education) Cont. Ms. Sody Jones, Billings Qualifications (if required): public member	Governor	2/1/1998
Montana State Lottery Commission (Commerce) Mr. Larry O'Toole II, Plentywood Qualifications (if required): attorney	Governor	1/1/1998
Ms. Carol Thomas, Great Falls Qualifications (if required): public member	Governor	1/1/1998
Multistate Tax Commission Advisory Council (Revenue) Ms. Judy Paynter, Helena Qualifications (if required): none specified	Director	3/1/1998
Ms. Lynn Chenoweth, Helena Qualifications (if required): none specified	Director	3/1/1998
Mr. David W. Woodgerd, Helena Qualifications (if required): none specified	Director	3/1/1998
Old West Trail Association (Commerce) Mr. John Rabenberg, Fort Peck Qualifications (if required): public member	Governor	1/1/1998
Peace Officers Standards and Training Advisory Council (Justice) Mr. Dennis McCave, Billings Qualifications (if required): jail administrator	Governor	2/15/1998
Mr. Gary Boyer, Great Falls Qualifications (if required): educator	Governor	2/15/1998

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 1998 through MARCH 31, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Peace Officers Standards and Training Advisory Council	(Justice) Cont.	2/15/1998
Mr. Christopher Miller, Deer Lodge	Governor	
Qualifications (if required): county attorney		
Sen. Delwyn Gage, Cut Bank	Governor	2/15/1998
Qualifications (if required): representing the Board of Crime Control		
Sheriff Lee Edmisten, Virginia City	Governor	2/15/1998
Qualifications (if required): sheriff		
Mr. Donald R. Houghton, Bozeman	Governor	2/15/1998
Qualifications (if required): deputy sheriff		
Chief Robert Jones, Great Falls	Governor	2/15/1998
Qualifications (if required): police chief		
Mr. Thomas Blivins,	Governor	2/15/1998
Qualifications (if required): representative of Department of Fish, Wildlife and Parks		
Ms. Surry Latham, Missoula	Governor	2/15/1998
Qualifications (if required): dispatcher		
Mr. Greg Noose, Bozeman	Governor	2/15/1998
Qualifications (if required): administrator of the Law Enforcement Academy		
Commissioner Mike Mathew, Billings	Governor	2/15/1998
Qualifications (if required): county commissioner		
Mr. Jack Lynch, Butte	Governor	2/15/1998
Qualifications (if required): mayor		
Colonel Craig Reap, Helena	Governor	2/15/1998
Qualifications (if required): Montana Highway Patrol representative		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 1998 through MARCH 31, 1998

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Private Land-Public Wildlife Advisory Council (Fish, Wildlife and Parks)		
Mr. Russ Smith, Philipsburg	Governor	1/18/1998
Qualifications (if required): outfitter		
Mr. Alan Charles, Miles City	Governor	1/18/1998
Qualifications (if required): hunter		
Mr. Steve Christensen, Corvallis	Governor	1/18/1998
Qualifications (if required): landowner		