RESERVE

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

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NOTICE SECTION

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 4.5.302, 4.5.307, 4.5.308, 4.5.309, and 4.5.316 relating to certification of Noxious Weed Seed Free Forage.	) NOTICE OF PROPOSED) AMENDMENT))))

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On July 26, 1998, the Montana Department of Agriculture proposes to amend ARM 4.5.302, 4.5.307, 4.5.308, 4.5.309, and 4.5.316.

2. The rules as proposed to be amended provide as follows (new material is underlined; material to be deleted is interlined):

REASON: Amendment of these rules is necessary to allow for the certification of whole grains as noxious weed seed free forage. Also, the Noxious Weed Seed Free Forage Advisory Council recommended that colored twine be allowed to be used as an identification marker for baled forage. Specific rule changes and reasons are further outlined below:

4.5.302 DEFINITION OF TERMS These definitions apply to all rules adopted under the Montana Noxious Weed Seed Free Forage Act, Title 80, chapter 7, part 9, MCA.

(1) through (6) remain the same.

(7) "Restricted area" means an area designated by an agency, group or person that requires the use of noxious weed seed free forage.

AUTH: 80-7-909, MCA IMP: 80-7-903, MCA

REASON: A definition of restricted area was needed for clarification.

4.5.307 FORAGE INSPECTION PROCEDURES (1) The following procedures and processes will be required for field unit NWSFF certification:

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

(c) If the field unit is certified for straw the seed that is harvested from that field unit may be considered for certification.

(2) through (8) remain the same.

(9) Combining equipment is to be cleaned of any noxious weed seed prior to harvesting the certified whole grain field(s).

~~(9)~~ (10) Fields that appear weedy or show poor crop practices, even though noxious weeds are not present, should

not be certified under the certification standards. The local agent will document the problems and has the discretion to make this judgement. A producer can challenge this decision and petition the department to assign another agent to reinspect the field.

AUTH: 80-7-909, MCA IMP: 80-7-905 and 80-7-906, MCA

REASON: 4.5.307(1)(c) Clarifies that the seed from a field certified for straw could also be considered for certification.

4.5.307(9) Requires cleaning of equipment prior to harvesting crop.

4.5.308 FORAGE IDENTIFICATION AND TRANSPORTATION

(1) Identification of forage field grown or harvested includes the following:

(a) The producer identification number.

(b) Bales sold in one ton lots or less must be identified individually using a department approved identification marker.

(i) If each bale in lots of greater than one ton does not have a numbered tag, a transportation certificate is required.

(ii) ~~(i)~~ If each bale in a load is individually marked with a numbered tag a transportation certificate is not required.

(c) Forage sold in bulk, including whole grain, must be ~~visibly identified with a department approved identification marker~~ accompanied by a completed transportation certificate.

(i) If colored baler twine is used for marking, only one strand of the colored twine is required per bale. However, a completed transportation certificate is required and must specify whether the forage was inspected for Montana noxious weeds or regional noxious weeds.

(ii) ~~(i)~~ Loads of bulk forage not marked with colored twine may be identified with identification markers (tags) placed on the four corners of the load.

(d) All whole grain sold in bags must be marked with a department approved identification marker.

(e) The producer shall make all reasonable efforts to ensure the whole grain is not contaminated with noxious weed seeds from the time of harvest and storage including delivery to the buyer.

(2) Forage identification markers and transportation certificates approved by the department will be sold and distributed, respectively, by the department or its agents. The fee assessed for identification markers shall be commensurate with the actual costs of the markers.

(3) ~~A~~ a noxious weed seed free forage product transportation certificate issued and numbered by the department ~~or a photocopy must be in the possession of the vehicle driver or the transporter of such forage products in a restricted area or while traveling through such an area if each bale is not individually marked and~~ must contain the

following:

(a) A statement that this forage meets the criteria set by the Montana Noxious Weed Seed Free Forage Act;

(b) name and address of the producer;

(c) producer identification number;

(d) name and address of buyer;

(e) type of forage;

(f) identification marker (tags, colored baler twine, etc.);

(g) number of bales by type or tonnage;

(h) date of sale;

(i) seller's signature;

(j) vehicle operator or driver's signature; this must be signed upon receipt of forage.

(k) a statement that the forage meets Montana or regional certification standards.

(4) ~~(k) Bales or bulk~~ All forage sold by a producer to a second party (such as a retail outlet) for resale must be accompanied by the original transportation certificate. The second party (or retail outlet) will photocopy the original transportation certificate and provide this photocopy plus a receipt to third party buyers of the ~~bales or~~ forage. Third party buyers must have the photocopy of the transportation certificate and the receipt (to show where the forage was purchased) in their possession when they are transporting or storing forage in a restricted area.

(5) ~~(4)~~ Identification of forage that has been pelleted, cubed or other related products shall include the following:

(a) Certified pellets, cubes or other forage byproducts must have a label attached (either sewn, printed or a separate label) showing proof of certification of the contents with the following statement: "This product has been certified by the Montana Department of Agriculture as Montana Noxious Weed Seed Free Forage."

(b) For out-of-state pelleted products the label on the product must have the following statement: "This product has been certified by (state, agency, province) to be in compliance with Montana's standards for Noxious Weed Seed Free Forage." Montana may enter into reciprocal agreements with other states, agencies, and/or provinces that will identify the certification procedures to be used.

(c) Identification labels for pellets, cubes or other forage products must be submitted to the department for approval.

(6) ~~(5)~~ It is the responsibility of each producer to make sure that all certified NWSFF sold under the program is properly labeled and identified with transportation certificates before it leaves the premises.

AUTH: 80-7-909, MCA IMP: 80-7-905 ,80-7-906 and 80-7-909

REASON: 4.5.308(b)(i)(ii)(c) Specifies conditions when a transportation certificate is or is not required.

4.5.308(c)(i) Specifies that colored twine may be used for certification and that a transportation certificate is required.

4.5.308(c)(ii) Allows tags on loads of bulk forage not marked with colored twine.

4.5.308(d) Specifies that whole grain in bags must be properly marked.

4.5.308(e) Specifies that the producers make reasonable effort to prevent contamination of whole grain with noxious weed seeds.

4.5.308(3)(k) Specifies that the transportation certificates are issued and numbered by the department and that the forage meets Montana or regional certification standards.

4.5.308(4) Clarifies that all forage when offered for resale must have a transportation certificate.

4.5.309 CERTIFICATION OF AGENTS (1) Each person desiring to be an agent must be trained and certified according to department standards. This certification will be for a three year period.

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

(3) The department will require agents to recertify after the third year of initial certification. ~~Agents who become initially certified during the first or second year of the three year cycle, will recertify according to the established schedule.~~

(a) The training schedule will be:

Initial	Recertification	Recertification
1996	1999	2002
1997	2000	2003
1998	2001	2004
1999	2002	2005
2000	2003	2006

(4) and (5) remain the same.

AUTH: 80-7-909, MCA IMP: 80-7-905, MCA

REASON: Specifies the certification and recertification training schedule for the agents.

4.5.316 CIVIL PENALTIES (1) Whenever the department has reason to believe that a violation of Title 80, chapter 7, part 9, MCA, or any adopted rule thereunder has occurred, it may initiate a civil penalty action pursuant to the Montana Administrative Procedure Act.

(2) through (4)(e) remain the same.

(f) to improperly pay any application or certification fee or refuse to pay for any inspection fees or department approved identification markers;	$250	$500	$1,000

(4)(g) through (k) remain the same.

AUTH: 80-7-909, MCA IMP: 80-7-922, MCA

REASON: Establishes that it is a violation for failure to pay for department approved identification markers.

3. Interested persons may submit their written data, views, or arguments concerning this proposed amendment to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, PO Box 200201, Helena, MT 59620-0201, Phone (406)444-2944, Fax (406)444-5409, or E-mail: agr@mt.gov, no later than July 24, 1998.

4. If a party who is directly affected by the proposed amendment wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, PO Box 200201, Helena, MT 59620-0201, Phone (406)444-2944, Fax (406)444-5409, or E-mail: agr@mt.gov no later than July 24, 1998.

5. If the department receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 40 based on the number of Noxious Weed Seed Free Forage producers.

6. As required by HB 389, 1997 Montana legislative session, this notice advises that the department maintains an interested person list for purposes of providing notice on rule making matters. Any person wishing to be on that list must provide to the department, in writing, their name, mailing address and a brief description of the subject matter in which they are interested.

DEPARTMENT OF AGRICULTURE

Ralph Peck, Director
by

Timothy J. Meloy
Rule Reviewer

Certified to the Secretary of State on June 15, 1998.

BEFORE THE BOARD OF OCCUPATIONAL THERAPISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to unprofessional conduct and continuing education	))))	NOTICE OF PROPOSED AMENDMENT OF 8.35.408 UNPROFESSIONAL CONDUCT AND 8.35.417 CONTINUING EDUCATION

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 25, 1998, the Board of Occupational Therapists proposes to amend the above-stated rules.

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

8.35.408 UNPROFESSIONAL CONDUCT For the purpose of implementing Title 37, chapter 1, MCA, and in addition to the provisions at 37-1-316, MCA, the board defines "unprofessional conduct" as follows:

(1) through (37) will remain the same.

(38) Failure to supply continuing education documentation as requested by the audit procedure set forth in ARM 8.35.417 or supplying misleading, incomplete or false information relative to continuing education taken by the licensee."

Auth: Sec. 37-1-131, 37-1-307, 37-1-316, 37-1-319, 37-24-201, 37-24-202, MCA; IMP, Sec. 37-1-307, 37-1-308, 37-1-309, 37-1-311, 37-1-312, 37-24-202, MCA

REASON: This amendment is being proposed because the Board has determined that failure of a licensee to submit documentation as required under the audit process is conduct which does not meet the generally accepted standards of practice. Therefore, the Board proposes to make such conduct grounds for disciplinary action through the rule.

"8.35.417 CONTINUING EDUCATION (1) On a form provided by the board, all applicants for renewal of licenses shall affirm on the renewal form that they have completed 10 contact hours of continuing education as provided in this rule as a condition to establish eligibility for renewal. The continuing education requirement will not apply until the licensee's first full year of licensure.

(2) will remain the same.

(3) ~~All licensees shall annually attach copies of their documentation of completion for continuing education activities to the renewal form.~~ It is the sole responsibility of each licensee to meet the continuing education requirement, and to provide documentation of compliance if so requested during a random audit. A random audit will be conducted on an annual basis.

(4) will remain the same."

Auth: Sec. 37-1-319, 37-24-202, MCA; IMP, Sec. 37-1-306, 37-1-319, MCA

REASON: The Division has determined that 100% audits, which is the current procedure, is too time consuming of staff time.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Occupational Therapists, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., July 23, 1998.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Occupational Therapists, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., July 23, 1998.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 39 based on the 390 licensees in Montana.

6. Persons who wish to be informed of all Board of Occupational Therapists administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Board in writing addressed to 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3091.

BOARD OF OCCUPATIONAL THERAPISTS
LYNN BENSON, CHAIRMAN

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

Ann M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 15, 1998.

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to fees, continuing education and unprofessional conduct	))))	NOTICE OF PROPOSED AMENDMENT OF ARM 8.59.506 FEES, 8.59.601 CONTINUING EDUCATION REQUIREMENTS AND 8.59.702 UNPROFESSIONAL CONDUCT

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 25, 1998, the Board of Respiratory Care Practitioners proposes to amend the above-stated rules.

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

"8.59.506 FEE SCHEDULE (1) The following fees are hereby adopted:

(a)	Application fee	~~$20~~ 10
(b)	Licensee fee	~~40~~ 20
(c)	Renewal fee	~~40~~ 20
(d)	Temporary permit	~~60~~ 30
(e)	Late renewal fee	~~40~~ 20
(f)	Inactive license fee	~~20~~ 10"

Auth: Sec. 37-1-134, 37-28-104, MCA; IMP, Sec. 37-28-202, 37-28-203, MCA

REASON: The fees are being lowered to make them commensurate with program area costs and to comply with House Bill 240 and Senate Bill 238, mandated by the 1997 legislature, which limit the cash balances of boards.

"8.59.601 CONTINUING EDUCATION REQUIREMENTS (1) Upon annual renewal of licensure, each respiratory care practitioner must ~~document~~ affirm on the renewal form that he/she has completed 12 continuing education units in the preceding 12 months. One continuing education unit is equivalent to 50 minutes in length.

(2) It is the sole responsibility of each licensee to meet the continuing education requirement, and to provide documentation of his/her compliance ~~with his/her renewal form~~ if so requested during a random audit. The random audit will be conducted on an annual basis. The board will not permit excess units to be carried over from one licensing renewal year to the next.

(3) will remain the same.

(4) ~~For licensees who have received their initial license during the immediately preceding licensing year, continuing education is required on the date of initial renewal on a pro-rated basis. This pro-rated basis requires that the licensee~~

~~who has received his or her initial license must attain one credit of continuing education for each month, or greater portion thereof of licensure.~~ The continuing education requirements will not apply until the licensee's first full year of licensure.

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

Auth: Sec. 37-28-104, MCA; IMP, Sec. 37-28-104, 37-28-203, MCA

REASON: This amendment is being proposed because the Division of Professional and Occupational Licensing has determined that performing audits on 100% of licensees, which is the current procedure, is too time consuming for administrative staff.

"8.59.702 UNPROFESSIONAL CONDUCT In addition to 37-1-316, MCA, the board defines "unprofessional conduct" as follows:

(1) through (37) will remain the same.

(38) Failure to supply continuing education documentation as requested by the audit procedure set forth in ARM 8.59.601 or supplying misleading, incomplete or false information relative to continuing education taken by the licensee."

Auth: Sec. 37-1-316, 37-28-104, MCA; IMP, Sec. ~~37-28-210~~ 37-1-136, MCA

REASON: This amendment is being proposed because the Board has determined that failure of a licensee to submit documentation as required under the audit process is conduct which does not meet the generally accepted standards of practice. Therefore, the Board proposes to make such conduct grounds for disciplinary action through the rule.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Respiratory Care Practitioners, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., July 23, 1998.

4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Respiratory Care Practitioners, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile to (406) 444-1667, to be received no later than 5:00 p.m., July 23, 1998.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 46 based on the 460

licensees in Montana.

6. Persons who wish to be informed of all Board of Respiratory Care Practitioners administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Board in writing at 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-3091.

BOARD OF RESPIRATORY CARE
PRACTITIONERS
RICH LUNDY, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 15, 1998.

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

In the matter of the proposed repeal of a rule pertaining to fees for the approval of point-of-sale terminals	NOTICE OF PROPOSED REPEAL OF A RULE PERTAINING TO FEES FOR THE APPROVAL OF POINT-OF-SALE TERMINALS

NO PUBLIC HEARING CONTEMPLATED

1. On July 25, 1998, the Division of Banking and Financial Institutions proposes to repeal a rule pertaining to fees for the approval of point-of-sale terminals.

2. The Division is proposing to repeal ARM 8.80.110, located at page 8-2350, Administrative Rules of Montana. The authority section is 32-6-401, MCA, and the implementing section is 32-6-305, MCA. The rule is being proposed for repeal because the Division of Banking and Financial Institutions does not regulate the fees for the approval of point-of-sale terminals. The fees are now regulated by the FDIC.

3. Interested persons may submit their data, views or arguments concerning the proposed repeal in writing to the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546, no later than 5:00 p.m., July 23, 1998.

4. If a person who is directly affected by the proposed repeal wishes to present their data, views or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit the request along with any comments they have to the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546, or by facsimile to (406) 444-4186, to be received no later than 5:00 p.m., July 23, 1998.

5. If the Division receives requests for a public hearing on the proposed repeal from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed repeal, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 20 based on the number of banks and branch banks in Montana.

6. Persons who wish to be informed of the Division of Banking and Financial Institutions administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Division in writing at 846 Front Street, P.O. Box 200546, Helena, MT 59620.

DIVISION OF BANKING AND
FINANCIAL INSTITUTIONS

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, June 15, 1998.

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

In the matter of the proposed amendment of a rule pertaining to the dollar amounts to which consumer loan rates are to be applied	NOTICE OF PROPOSED AMENDMENT OF A RULE PERTAINING TO THE DOLLAR AMOUNTS TO WHICH CONSUMER LOAN RATES ARE TO BE APPLIED

NO PUBLIC HEARING CONTEMPLATED

1. On July 25, 1998, the Division of Banking and Financial Institutions proposes to amend a rule pertaining to the dollar amounts to which consumer loan rates are to be applied.

2. The Division is proposing to amend ARM 8.80.307. This amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.80.307 DOLLAR AMOUNTS TO WHICH CONSUMER LOAN RATES ARE TO BE APPLIED (1) The dollar amounts in the following statutory sections are changed to the new designated amounts as follows:

Authority	Stated Amount	Changed Designated Amount
32-5-201(4), MCA	$1,000	$1,0900
32-5-306(7), MCA	$ 300	$ 5470

Auth: Sec. 32-5-104, MCA; IMP, Sec. 32-5-104, 32-5-201, 32-5-301, 32-5-302, 32-5-306, MCA

REASON: The reason the rule is being amended is based upon the change in the cost of living index.

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546, no later than 5:00 p.m., July 23, 1998.

4. If a person who is directly affected by the proposed amendment wishes to present their data, views or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit the request along with any comments they have to the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546, or by facsimile to (406) 444-4186, to be received no later than 5:00 p.m., July 23, 1998.

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

by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who 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 25 based on the number of consumer loan licensees in Montana.

6. Persons who wish to be informed of the Division of Banking and Financial Institutions administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Division in writing at 846 Front Street, P.O. Box 200546, Helena, MT 59620.

DIVISION OF BANKING AND
FINANCIAL INSTITUTIONS

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

Ann M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 15, 1998.

BEFORE THE STATE BANKING BOARD
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed transfer and amendment of rules pertaining to state banking board	)))))	NOTICE OF PROPOSED TRANSFER AND AMENDMENT OF RULES PERTAINING TO THE ORGANIZATION OF THE STATE BANKING BOARD

NO PUBLIC HEARING CONTEMPLATED

1. On July 25, 1998, the State Banking Board proposes to transfer and amend rules pertaining to the state banking board.

2. These existing rules ARM 8.87.401, 8.87.601 and 8.87.701 will be transferred to Chapter 80 and ARM 8.87.401 and 8.87.601 will be proposed for amendment as follows:

"8.87.401 CHANGE OF LOCATION (1) Any change of location of a bank, other than drive-in facilities, from one site to another, irrespective of the buildings or structures involved, is considered to be a relocation requiring determination and approval or disapproval by the ~~state banking board~~ division as provided by ~~section~~ 32-1-202, MCA."

Auth: Sec. 32-1-203, MCA; IMP, 32-1-203, MCA

"8.87.601 APPLICATION PROCEDURE FOR APPROVAL TO MERGE AFFILIATED BANKS (1) Under authority granted by ~~32-1-203~~ 32-1-218, MCA, the ~~state banking board~~ division adopts the following rules for the consolidation or merger into one bank of any two or more affiliated banks doing business in this state, if the resultant bank is to be a state bank.

(2) through (4) will remain the same.

(5) If an application is incomplete in any respect, or if additional information is required, the applicants will be so notified by the division of banking and financial institutions and allowed up to 30 days in which to perfect the application or provide additional information. An extension of this 30-day period may be obtained from the division of banking and financial institutions by showing good cause why it should be so extended. The ~~state banking board~~ division may delay processing, including extending the comment period for good cause. Processing will be completed no earlier than the 15th day nor generally not later than the 15th day nor generally not later than the 45th day following the date of the last required publication.

~~(6) The state banking board will conduct a hearing pursuant to 32-1-204, MCA. The board will then consider the record of the hearing and the hearing examiner's report, and may take final action by telephone conference call with a quorum of the board participating.~~

~~(7)~~(6) The application shall be in letter form addressed to the ~~State Banking Board, c/o~~ Commissioner of Banking and Financial Institutions, ~~1520 East Sixth Avenue, Lee Metcalf Building, Room 50, P.O. Box 200512,~~ P.O. Box 200546, 846 Front Street, Helena, Montana 59620-~~0512~~ 0546.

(8) will remain the same but will be renumbered (7)."

Auth: Sec. 32-1-203, MCA; IMP, Sec. 32-1-371, MCA

REASON: The State Banking Board is transferring and amending the rules because of House Bill 262 which was mandated by the 1997 State Legislature. House Bill 262 is generally revising the State Banking Law pertaining to branch banks; transferring certain powers and duties from the State Banking Board to the Department of Commerce. The Board is making these changes to implement the requirements of this bill.

3. Interested persons may submit their data, views or arguments concerning the proposed transfer and amendment in writing to the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546, no later than 5:00 p.m., July 23, 1998.

4. If a person who is directly affected by the proposed amendment wishes to present their data, views or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit the request along with any comments they have to the Division of Banking and Financial Institutions, Department of Commerce, 846 Front Street, P.O. Box 200546, Helena, Montana 59620-0546, or by facsimile to (406) 444-4186, to be received no later than 5:00 p.m., July 23, 1998.

5. If the Division receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who 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 20 based on the banks and branch banks of Montana.

6. Persons who wish to be informed of the Division of Banking and Financial Institutions administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Division in writing at 846 Front Street, P.O. Box 200546, Helena, MT 59620.

DIVISION OF BANKING AND
FINANCIAL INSTITUTIONS

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

Ann M Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 15, 1998.

BEFORE THE STATE LIBRARY COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF THE PROPOSED AMENDMENT of ARM 10.102.4001 relating to Reimbursement to Libraries for Interlibrary Loans	NOTICE OF PUBLIC HEARING

TO: All Interested Persons:

1. On July 16, 1998, at 9:00 a.m., a public hearing will be held in the conference room of the Montana State Library, 1515 E. 6th Avenue, at Helena, Montana, to consider the amendment of ARM 10.102.4001, relating to reimbursement to libraries for interlibrary loans. Due to the fiscal impact parts of this rule will have on Montana libraries, the State Library proposes to make this rule effective on July 1, 1999.

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

10.102.4001 REIMBURSEMENT TO LIBRARIES FOR INTERLIBRARY LOANS

(1) Definitions used in this rule include:

(a) Remains the same

(b) "Libraries eligible for interlibrary loan reimbursement" means public libraries, libraries operated by public schools or school districts, libraries operated by public colleges or universities, libraries operated by public agencies for institutionalized persons, and libraries operated by nonprofit private educational or research institutions are defined in 22-1-328(2), MCA.

(2) Reimbursements will be made on a quarterly an annual basis based on the following:

(a) and (b) Remain the same

(c) Each quarterly annual payment shall be made only for interlibrary loans within the specified quarter year for which reimbursement funding is available. No count of interlibrary loan transactions shall be carried over from one quarter year to another.

(d) Remains the same

(e) No library may levy service charges, handling charges, or user fees for interlibrary loans for which it is reimbursed under the provisions of 22-1-325 - through 22-1-331, MCA and these rules.

(i) through (e)(ii) Remain the same

(iii) Interlibrary loans, when completed via telefacsimile fax transmission, also count as reimbursable interlibrary loans. Costs associated with such telefacsimile fax transmission are chargeable if such the transmission was specified by the requesting library. Such Fax transmissions qualify as special handling.

(iv) Per page photocopying charges may not be separately charged to the borrowing library but are assumed to be covered by the reimbursement under these rules.

(f) through (h) Remain the same

(3) For any library to receive reimbursement through the program, each must annually certify to the state library that the appropriate member of its staff has demonstrated competence regarding the application of the standardized interlibrary loan protocols. AUTH: 22-1-330, MCA; IMP: 22-1-328, MCA.

3. The amendment is proposed to promote cost efficiency because the library incurs substantially more overhead expense when processing reimbursement checks quarterly than it would to process the checks annually. Libraries eligible for reimbursement would not be negatively impacted by this change.

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

Karen Strege
Montana State Library
1515 East 6th Avenue
Helena, Montana 59620-1800

no later than July 24, 1998.

5. Karen Strege, State Librarian, has been designated to preside over and conduct the hearing.

6. 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 four above.

KAREN STREGE
State Librarian and
Rule Reviewer

Certified to Secretary of State June 15, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rule 17.30.201 regarding water quality permit and authorization fees	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULE (Water Quality)

TO: All Interested Persons

1. On July 21, 1998, at 10:00 a.m., the board will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-captioned rule.

The board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the department no later than 5 p.m., July 7, 1998, to advise us of the nature of the accommodation you need. Please contact the board at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

2. The rule as proposed to be amended, appears as follows. Matter to be added is underlined. Matter to be deleted is interlined.

17.30.201 PERMIT APPLICATION, DEGRADATION AUTHORIZATION, AND ANNUAL PERMIT FEES (1) and (2) Remain the same.

(3)(a)(i) The permit application fee is the sum of the fees for the applicable parts or subparts listed in this subsection. Payment of the permit application fee is due upon submittal of the application. ~~The fee schedule for new or renewal applications for a Montana pollutant discharge elimination system permit under subchapter 13 of this chapter, a Montana ground water pollution control system permit under subchapter 10 of this chapter, or any other authorization under 75-5-201, 75-5-401, MCA, or rules promulgated under these authorities, is~~ Set forth below as schedule I is the application fee schedule for new and renewal permits for:

(A) the Montana pollutant discharge elimination system under subchater 13 of this chapter;

(B) the Montana ground water pollution control system under subchapter 10 of this chapter; or

(C) any other authorization under 75-5-201, 75-5-401, MCA, and rules promulgated under these authorities.

Schedule I
Application Fee per Discharge Point,
Point Source, or Source at the Facility *

DOMESTIC DISPOSAL SYSTEMS	
Publicly owned treatment works (POTW) or other domestic ~~wastewater~~ sewage disposal system or potable water treatment plant	
Without significant industry **	$~~250~~ 750
With significant industry **	$~~1000~~ 2500
~~Industrial~~ **INDUSTRIAL DISPOSAL SYSTEMS**	
Individual storm water~~/~~, ground water from dewatering~~/~~, pit water (nontoxic)	$1000 ~~**~~
Noncontact cooling water	$ 400
Individual Wwastewater (surface or ground water):	
With any carcinogenic, ~~or toxic or~~ radioactive or toxic substance (other than nitrate or ammonia) in untreated wastewater at a level >50% of ~~long term (~~chronic~~)~~ or human health standard***	$5000
~~Wastewater w~~Without any carcinogenic, ~~or toxic or~~ radioactive or toxic substance (other than nitrate or ammonia) at a level >50% of ~~long term (~~chronic~~)~~ or human health standard***	$~~2500~~ 1000
GENERAL PERMITS	
~~Feed lots,~~ Confined animal feeding operations (CAFOs); fish farms~~, suction dredges, construction dewatering~~; ~~ARM 16.20.633(3)(a) authorizations~~ produced water; petroleum cleanups; gravel washing; disinfected water; facultative sewage lagoons; nutrient-rich wastewater to ground water	$ 200
ARM 17.30.637(3)(a) authorizations	$ 75
~~Produced water, cleanups, gravel washing, i~~Industrial storm water; construction storm water; mining,	

oil and gas storm water	$ 400
Construction dewatering	$200****
Suction dredges	$125****

* Fees assessed for a single permit or authorization involving mMultiple ~~stormwater water~~ discharge points are limited to a maximum of 5 points yielding the highest total fee.

** "Significant industry" means the ~~POTW has~~ treatment system employs a pretreatment program or receives discharge from a significant industrial user as defined in ARM 17.30.1402.

*** The appropriate standard to be selected based on most restrictive applicable standard in department Circular WQB-7.

**** Suction Dredge and Construction Dewatering General Permits are only good for 12 months and have a combined application and annual fee which is specified in Schedule I.

(ii) An application fee for ~~multiple~~ each discharge point~~s~~ is not required for a single permit or authorization if there are multiple discharge points from the same source that have similar effluent characteristics, unless the discharges are to different receiving waters or stream segments.

(iii) An applicant for a minor permit modification that does not require public notice and will ~~decrease or not change~~ not increase the impact of the discharge to state waters is not required to pay a fee under ~~this section~~ (3)(a).

(b) The degradation authorization fee is the sum of the fees for the applicable parts or subparts listed in this subsection. Payment of the degradation authorization fee is due upon submittal of the applications. If an application for authorization to degrade state waters is denied, the department shall return any portion of the fee that it does not use to review the application. The fee schedule for new or renewal authorizations to degrade state waters under subchapter 7 of this chapter is set forth in Sschedule II, as follows:

Schedule II
Review of Authorizations to Degrade

DOMESTIC DISPOSAL SYSTEMS

~~Domestic Sewage Treatment or Potable Water treatment plant~~ Publicly owned treatment works (POTW) or other domestic sewage disposal system or potable water treatment plant . . . . . $ 2500

INDUSTRIAL ACTIVITY REVIEWS

With any carcinogenic, ~~or toxic or~~ radioactive or toxic substance (other than nitrate or ammonia) in untreated wastewater at a level >50% of ~~(~~chronic~~)~~ or human health standard* . . . $5000

Without any carcinogenic, ~~or toxic or~~ radioactive or toxic substance (other than nitrate or ammonia) in untreated wastewater at a level >50% of ~~(~~chronic~~)~~ or human health standard* . . . $2500

Subdivisions

1 - 9 lots $120/lot

10+ lots $200/lot

(maximum fee) $5000/subdivision

* The appropriate standard to be selected based on the most restrictive applicable standard in department Circular WQB-7.

(3)(c) Remains the same.

(d)(i) The annual permit fee is the sum of the fees for the applicable parts or sub-parts listed in this subsection. This subsection (i) must be used to determine the total annual fee, unless the minimum fee determined under (ii) below is a higher amount. The annual permit fee is determined by applying ~~S~~schedule III to the facility under permit:

Schedule III
Average Discharge Flow Rate Fee
Per Million Gallons of Wastewater Discharged Per Day on an Average Annual Basis, per Discharge Point or Source of Discharge **

DOMESTIC DISPOSAL SYSTEMS ~~POTW or Other Domestic~~ ~~Sewage or Potable Water Treatment Plant~~ Publicly owned treatment works (POTW) or other domestic sewage disposal system or potable water treatment plant	
Without significant industry *	$2000
With significant industry *	$2500
~~Industrials~~ INDUSTRIAL DISPOSAL SYSTEM Individual storm water~~,~~, ground water from dewatering~~,~~, pit water (non-toxic)	$2000*
Noncontact cooling water	$500
Individual ~~W~~wastewater (surface or ground water): With any carcinogenic, ~~or toxic or~~ radioactive or toxic substance (other than nitrate or ammonia) in untreated wastewater at a level >50% of ~~long term~~ chronic or human health standard***	$2500
~~Wastewater w~~Without any carcinogenic, ~~or toxic or~~ radioactive or toxic substance (other than nitrate or ammonia) in untreated wastewater at a level >50% of ~~long term~~ chronic or human health standard***	$2000
GENERAL PERMITS ~~Feed lots,~~ CAFOs; fish farms~~,~~; ~~suction dredges, construction dewatering,~~ construction storm water*	$250
Produced water~~,~~; petroleum cleanups~~,~~; gravel washing~~,~~; disinfected water; industrial storm water~~,~~; mining, oil and gas storm water; facultative	

sewage lagoons; nutrient-rich wastewater to ground water $2000

* "Significant industry" means the treatment system employs a pretreatment program or receives discharge from a significant industrial user as defined in ARM 17.30.1402.

** Fees assessed for a single permit involving mMultiple ~~stormwater water~~ discharge points are limited to ~~the~~ a maximum of 5 points yielding the highest total fees.

*** The appropriate standard to be selected based on the most restrictive applicable standard in department Circular WQB-7.

(ii) The minimum annual permit fee to be charged per discharge point or ~~point~~ source of discharge at a facility regardless of the wastewater flow is set forth in ~~S~~schedule IV, as follows:

Schedule IV
Minimum Annual Fee per Discharge
Point or Source of Discharge ~~Point Source~~ **

DOMESTIC DISPOSAL SYSTEMS
~~POTW or Other Domestic Sewage or Potable Water Treatment Plant~~ Publicly owned treatment works (POTW) or other domestic sewage disposal system or potable water treatment plant

Without significant industry * . . . . . $~~250~~ 750

With significant industry * $1000

~~Industrials~~ INDUSTRIAL DISPOSAL SYSTEMS
Individual storm water~~,~~, ground water from dewatering~~,~~, pit water (non-toxic) $1000

Noncontact cooling water $250

Individual Wwastewater (surface or ground water):
With any carcinogenic~~, or toxic or~~ radioactive or toxic substance (other than nitrate or ammonia) in untreated wastewater at a level >50% of ~~long term~~ chronic or human health standard*** $2500

~~Wastewater w~~Without any carcinogenic~~, or toxic or~~ radioactive or toxic substance (other than nitrate or ammonia) in untreated wastewater at a level >50% of ~~long term~~ chronic or human health standard*** or with "No Discharge" permit requirements $1000

GENERAL PERMITS

~~Feed lots,~~ CAFOs; fish farms~~,~~; ~~suction dredges, construction dewatering,~~ construction storm water~~,~~; produced water; petroleum cleanups; gravel washing; disinfected water $250

~~Produced water, cleanups, gravel washing, i~~Industrial storm water; mining, oil and gas storm water; facultative sewage lagoons; nutrient-rich wastewater to ground water . . . . . $~~400~~ 350

* "Significant industry" means the treatment system employs a pretreatment program or receives discharge from a significant industrial user as defined in ARM 17.30.1402.

** Fees assessed for a single permit involving multiple discharge points are limited to a maximum of 5 points yielding the highest total fee.

*** The appropriate standard to be selected based on the most restrictive applicable standard in department Circular WQB-7.

(iii) An annual fee is assessed for each discharge point or group of multiple discharge points from the same source with similar effluent characteristics. Discharge points of similar effluent characteristics are grouped and considered as one for purposes of fee calculations, unless the discharges are to different receiving waters or stream segments.

(~~iii~~iv) Except as provided in (A), ~~A~~a facility that consistently discharges effluent at less than or equal to one-half of its numeric effluent limitations and is in compliance with other permit requirements, using the previous calendar year's ~~discharge~~ monitoring data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions in annual fee of up to 25% may be given to facilities that

consistently discharge effluent at levels between 50% and 100% of their numeric effluent limitations. The annual average of the percentage of use of ~~each~~ appropriate numeric effluent limitations ~~parameter limit will~~ must be used to determine an overall percentage.

(A) A new permittee is not eligible for fee reduction in its first ~~year~~12 months of operation. A permittee with a violation of any effluent limit during the previous year is not eligible for fee reduction. The department may, in its discretion, grant a fee reduction to a permittee having only minor violations of permit requirements other than effluent limitations during the previous calendar year and otherwise entitled to a fee reduction as provided in [(3)(d)(iv)(A)] of this rule. For purposes of this subsection, minor violations are those which would be classified as minor class II or class III violations under ARM 17.30.2001 through 2006.

(~~i~~v) The annual permit fee is assessed for each ~~state fiscal~~ calendar year. The fee for the ~~fiscal~~ calendar year must be received by the department ~~by~~ no later than March 1 following the commencement of the ~~fiscal~~ calendar year. The fee must be paid by a check or money order made payable to the state of Montana, Department of Environmental Quality.

(4) through (6) Remain the same.

AUTH: 75-5-516, MCA; IMP: 75-5-516, MCA.

3. The Board is proposing to amend ARM 17.30.201 to adjust certain fees paid by applicants and permittees to cover the costs of administration of the water quality permitting programs as provided in 75-5-516, MCA. These adjustments will make the fees more accurately reflect the time and effort expended to administer certain categories of permits. The various proposed fees were derived using a study of the average work hours spent on the various permits. Based upon the department's experience since this rule was adopted in 1994, the fees for some permit categories are proposed to be increased while those for other categories are proposed to be decreased. The net effect of the proposed changes is projected to be a small decrease in overall fee revenue.

The department is also proposing to change the annual fee year from the state fiscal year to the calendar year. This will prevent the typical construction-related permittee from being assessed 2 years annual permit fees for a project spanning one typical construction season.

Another minor change proposed is to combine the application

and annual fees for two short-term permit categories in order to streamline the billing process for those categories. An additional category of general permits, disposal of nutrient-rich waste water to ground water, has been added in anticipation of implementing such a general permit in the future.

In order to provide an additional incentive for effluent reduction, the Board is proposing to amend ARM 17.30.201(3)(d)(iii) (to be renumbered 17.30.201(3)(d)(iv)) to provide that permittees who consistently discharge at less than their effluent limits would not lose their eligibility for fee reduction if they were substantially in compliance with permit requirements other than effluent limits and had no significant violations of such requirements during the previous year. However, any violation of effluent limits during the previous year would continue to render the permittee ineligible for the fee reduction as required by 75-5-516, MCA. This change is being proposed so that a permittee who discharges at less than the effluent limit would not lose eligibility for fee reduction as a result of a minor noncompliance with some other permit requirement such as late filing of one discharge monitoring report.

Finally, the department is proposing a few grammatical changes which will clarify the requirements of the rules, but have no substantive effect.

4. Interested persons may submit their data, views or arguments concerning the proposed rules either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, no later than July 23, 1998.

5. Richard Thweatt has been appointed to preside over and conduct the hearing.

BOARD OF ENVIRONMENTAL REVIEW

by Cindy E. Younkin
CINDY E. YOUNKIN, Chairperson

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State June 15, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rules 17.8.504 and 17.8.505 pertaining to air quality application and operation fees	)))))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES (Air Quality)

TO: All Interested Persons

1. On July 23, 1998, at 1:30 p.m., the board will hold a public hearing in Room 44 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-captioned rules.

The board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the board no later than 5:00 p.m., July 9, 1998, to advise the board of the nature of the accommodation you need. Please contact the board at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

2. The rules as proposed to be amended appear as follows. Matter to be added is underlined. Matter to be deleted is interlined.

17.8.504 AIR QUALITY PERMIT APPLICATION FEES

(1) through (4) Remain the same.

(5) The fee is ~~the greater of:~~

~~(a) a fee calculated using the following formula:~~

~~tons of PM 10 emitted,~~
~~multiplied by $22.50; plus~~
~~tons of sulfur dioxide emitted,~~
~~multiplied by $18.00; plus~~
~~tons of lead emitted,~~
~~multiplied by $18.00; plus~~
~~tons of oxides of nitrogen emitted,~~
~~multiplied by $14.85; plus~~
~~tons of volatile organic compounds emitted,~~
~~multiplied by $14.85;~~

~~(b) or a minimum fee of:~~

~~(i) $1000 for sources of air contaminants subject to ARM 17.8.801, et seq. (Prevention of Significant Deterioration of Air Quality), or sources of air contaminants that are major stationary sources or major modifications [as defined in ARM 17.8.801(20) and (22)], and are seeking to locate within an area designated as nonattainment in 40 CFR 81.327 [adopted by incorporation in ARM 17.8.902(2)(a)] for any air contaminant; or~~

~~(ii) $400 for all other sources of air contaminants, not subject to (i) above, required to obtain an air quality permit under ARM Title 17, chapter 8, subchapter 7.~~

an administrative fee of $454.42, plus $14.15 per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile

organic compounds emitted.
AUTH: 75-2-111, 75-2-220, MCA; IMP: 75-2-211, 75-2-220, MCA

17.8.505 AIR QUALITY OPERATION FEES (1) through (3) Remain the same.

(4) The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and is ~~the greater of a minimum fee of $400 or a fee calculated using the following formula:~~

~~tons of PM-10 emitted,~~
~~multiplied by $22.50; plus~~
~~tons of sulfur dioxide emitted,~~
~~multiplied by $18.00; plus~~
~~tons of lead emitted,~~
~~multiplied by $18.00; plus~~
~~tons of oxides of nitrogen emitted,~~
~~multiplied by $14.85; plus~~
~~tons of volatile organic compounds emitted,~~
~~multiplied by $14.85~~
~~except that the total fee may not be greater than $200,000 per permit.~~

an administrative fee of $367.88, plus $14.15 per ton of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted, except that the total fee may not be greater than $200,000 per permit.

(5) and (6) Remain the same.

(7) Each source of air contaminants subject to (1) above shall submit to the department on the date specified by the department all information necessary to complete an inventory of estimated actual emissions for the preceding calendar year. The department shall notify the source of the date by which the information must be submitted. The information submittal date may not be earlier than February 15.
AUTH: 75-2-111, 75-2-220, MCA; IMP: 75-2-211, 75-2-220, MCA

3. ARM 17.8.510 requires the Board of Environmental Review to annually review air quality permit fees. Air quality permit fees are charged to all facilities that are required to hold air quality permits and are currently based on estimated annual emissions from the regulated facilities. The amount of money the department needs to fund the legislative appropriation changes each year due to the amount of carryover available. The emission fees may also need adjustment to compensate for changes in the total amount of pollutants emitted in the state. The department has projected the amount of fee fund carryover for FY98, and has calculated the total actual emissions from all regulated sources. The proposed amendments to the air quality permit application and annual air quality operation fees will generate sufficient fees to satisfy the legislative appropriation and adequately fund the department's air quality program, when the projected carryover funds and anticipated revenue are included.

The proposed amendments would substitute basic administrative fees for the present minimum fees and would

substitute a uniform fee per ton regulated pollutant emitted in place of the existing tiered fee system that has different fee amounts for the various regulated pollutants. The basic administrative fees reflect the presumptive minimal effort devoted to regulation of a covered facility by department staff. The previous tiered fee system attempted to allocate fees based on gross estimates of the amount of staff time devoted to regulation of each pollutant. The Board proposes to abandon the tiered system because the Department has not been able to confirm the accuracy of those estimates. Many permitting and compliance activities are general in nature and cannot be compartmentalized by pollutant.

The proposed preconstruction administrative fee of $454.42 represents the minimum time devoted to a preconstruction permit application review. The proposed operation administrative fee of $367.88 represents the minimum time devoted to compliance monitoring activities associated with a regulated facility. The administrative fee amounts were developed by multiplying the department's best estimate of the number of hours expended on the appropriate activities by an average salary estimate. The proposed administrative fees accurately represent the minimum amount of regulatory service provided to the regulated community. The board also proposes moving from a tiered fee system to a uniform per ton fee to reflect the additional time spent by department staff on permit applications and monitoring compliance for larger facilities while not artificially skewing the fees to collect any more for a particular pollutant. The proposed amendments would also allow the department to specify an information submittal date that would allow sufficient time to calculate the annual fees and amend the rule. This date varies from year to year based on the board meeting schedule.

4. Interested persons may submit their data, views or arguments concerning the proposed rules either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, no later than July 29, 1998.

5. David Rusoff has been appointed to preside over and conduct the hearing.

BOARD OF ENVIRONMENTAL REVIEW

by Cindy E. Younkin
CINDY E. YOUNKIN, Chairperson

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State June 15, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 17.8.220, regarding settled particulate matter	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED REPEAL (Air Quality)

TO: All Interested Persons

1. On April 16, 1998, the department published a Notice of Proposed Repeal contemplating no public hearing. The department has since received a request for a public hearing. Therefore, on July 31, 1998, at 10:00 a.m., the board will hold a public hearing in Room 35 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed repeal of the above-captioned rule.

The board will make reasonable accommodations for persons with disabilities who wish to participate in this hearing. If you need an accommodation, contact the board no later than 5 p.m., July 17, 1998, to advise us of the nature of the accommodation you need. Please contact the board at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

2. The rule 17.8.220 as proposed to be repealed may be found on page 17-279 of the Administrative Rules of Montana. AUTH: 75-2-111 and 75-2-202, MCA; IMP: 75-2-202, MCA

3. ARM 17.8.220 contains the settled particulate "dustfall" standard. It was adopted in 1980 to combat nuisance dustfall on material surfaces. For example, homeowners or businesses located adjacent to lumber mills, rock crushers, or other process equipment often suffered property damage or inconvenience due to thick layers of process-related dustfall.

Repeal of this standard does not weaken the protection of public health or welfare for several reasons. First, the state and federal ambient air quality standards and ARM 17.8.308, which regulates airborne particulate matter, remain in effect. This latter rule requires the use of reasonable precautions to control dust emissions from the production, handling, transportation or storage of materials; the use of streets, roads, and parking lots; and the operation of construction and demolition projects. The rule also establishes opacity limits and special requirements for nonattainment areas. And second, there have been significant improvements to particulate control equipment since ARM 17.8.220 was adopted. ARM 17.8.220 is therefore no longer necessary.

4. Interested persons may submit their data, views or arguments concerning the proposed rules either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, no later than August 7, 1998.

5. James Madden has been appointed to preside over and conduct the hearing.

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY E. YOUNKIN, Chairperson

Reviewed by:

_____
John F. North, Rule Reviewer

Certified to the Secretary of State June 15, 1998.

BEFORE THE OFFICE OF THE WORKERS' COMPENSATION JUDGE
OF THE STATE OF MONTANA

In the matter of the adoption of a procedural rule.	)))	NOTICE OF PROPOSED ADOPTION OF NEW RULE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On July 25, 1998, the Office of the Workers' Compensation Judge proposes to adopt a new procedural rule of the Court.

2. The text of the proposed new rule follows:

NEW RULE I MOTION FOR RECONSIDERATION (1) Any party may move for reconsideration of any order or decision of the workers' compensation court. The motion shall be filed within 20 days after the order or decision is served. The opposing party shall have 10 days thereafter to respond unless the court orders an earlier response. Upon receipt of the response, or the expiration of the time for such response, the motion will be deemed submitted for decision unless the court requests oral argument.

(2) Within 20 days of the issuance of any order or final decision, the court may, on its own motion and for good cause, reconsider the order or decision.

(3) If the motion requests reconsideration of an appealable order or judgment, the original order or judgment shall not be final until and unless the court denies the motion.

AUTH: Sec. 2-4-201, MCA IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: The Court has in prior cases reconsidered and changed some of its orders and decisions. It believes that the ability to do so is essential since it may have overlooked some critical matter or argument that affects the ruling. The proposed new rule formalizes its current practice and eliminates controversy as to whether the Court has the authority to reconsider its own orders and decisions. A petition (motion) for new trial and/or request for amendment to findings of fact, conclusions of law and judgment is governed by ARM 24.5.344. A motion to amend an order on appeal is governed by ARM 24.5.350(7). Neither rule allows the Workers' Compensation Court to reconsider any order or decision. The new rule complements the rules by extending reconsideration to other types of orders and by broadening the scope of review as to final decisions.

3. It is reasonably necessary to adopt the rule proposed in order for the Workers' Compensation Court to properly and

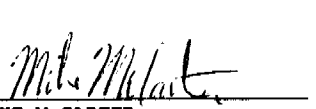
timely decide and hear cases. In addition, the Court polled the rules committee of the Court regarding the proposed rule and did not receive any opposition from any committee member.

4. Interested parties may submit their data, views or arguments concerning this change in writing to Workers' Compensation Court, 1625 Eleventh Avenue, P.O. Box 537, Helena, MT 59624-0537 on or before July 23, 1998.

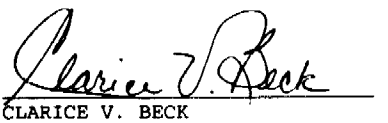
5. If a person who is directly affected by the proposed adoption wishes to express data, views and arguments orally or in writing at a public hearing, she/he must make written request for a hearing and submit this request along with any written comments she/he has to the Workers' Compensation Court, 1625 Eleventh Avenue, P.O. Box 537, Helena, MT 59624-0537, no later than July 23, 1998.

6. If the Workers' Compensation Court receives requests for a public hearing on the proposed rule from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rule, from the Administrative Code Committee of the legislature, from a governmental subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Based on the number of persons with workers' compensation claims, attorneys and insurers, 10% of those persons directly affected has been determined to be more than 25.

7. Persons who wish to be informed of all Workers' Compensation Court rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Court, in writing, at P.O. Box 537, Helena, MT 59624-0537 or by phone at (406) 444-7794.



MIKE McCARTER
JUDGE



CLARICE V. BECK
Hearing Examiner - Rule Reviewer

CERTIFIED TO THE SECRETARY OF STATE: 6-10-98
DATE

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

In the matter of the proposed amendments of ARM 24.16.9003, ARM 24.16.9004 and ARM 24.16.9007, related to Montana's prevailing wage rates	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS OF PREVAILING WAGE RULES AND ESTABLISHING REVISED RATES FOR BUILDING CONSTRUCTION SERVICES

TO ALL INTERESTED PERSONS:

1. On July 17, 1998, at 9:30 a.m., a public hearing will be held in room 104 of the Walt Sullivan Building (Department of Labor and Industry Building), 1327 Lockey, Helena, Montana, to consider proposed amendments to prevailing wage rate rules, ARM 24.16.9003, 24.16.9004 and 24.16.9007. The Department proposes amending ARM 24.16.9003 to provide a methodology for setting fringe benefits levels. The Department proposes amending ARM 24.16.9004 to incorporate technical changes to terminology and to include fringe benefit rates. The Department proposes amending ARM 24.16.9007 to incorporate by reference revised 1998 building construction services rates. The proposed amendments are made in response to comments and data submitted by the public during previous rule-making. Please see elsewhere in this issue of the Montana Administrative Register for information concerning those comments and the Department's responses regarding that prior rule-making.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., July 13, 1998, to advise us of the nature of the accommodation that you need. Please contact the Job Service Division, Office of Research and Analysis, Attn: Ms. Kate Kahle, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-2430; TTY (406) 444-0532; fax (406) 444-2638.

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

24.16.9003 ESTABLISHING THE STANDARD PREVAILING RATE OF WAGES AND FRINGE BENEFITS (1) When deemed necessary, the commissioner ~~established~~ shall establish the standard prevailing rate of wages and fringe benefits for the various occupations in ~~for~~ each district. Except as used in (2) and (3), the term "prevailing rate of wages" includes both wages and fringe benefits.

(2) Remains the same.

(3) Based on survey data collected by the department of labor and industry, for each district, the commissioner will compile fringe benefit information for a given occupation by

district that reflects fringe benefits actually paid to workers engaged in public works and in private or commercial projects. Fringe benefit rates for each occupation will be set for health and welfare, pension, vacation, and training using the following procedure:

(a) If a minimum of 5,000 reported hours exists for the occupation within the district, and each fringe benefit reported for a given occupation has at least 50% of the total number of hours submitted for that occupation, a weighted average of the fringe benefits based on the number of hours reported will be used to calculate the district prevailing fringe benefit rates.

(b) If less than 5,000 hours for the occupation is reported, or a given fringe benefit for the occupation does not have at least 50% of the total number of hours submitted for that occupation, the commissioner will use existing collective bargaining agreements for the district that were effective during the survey period to determine fringe benefit rates for the occupation.

(c) If a collective bargaining agreement does not exist for the occupation, and a minimum of 5,000 hours are reported in the combined contiguous districts, hours will be totaled for contiguous district fringe benefits. Each fringe benefit must be represented by at least 50% of the total number of hours submitted in contiguous districts for that occupation for fringe benefit rates to be set. A weighted average fringe benefit rate for the district based on hours will be computed using data submitted from all contiguous districts. Districts and their contiguous districts are the same as provided by (2)(c) of this rule.

(d) If contiguous district fringe benefit data does not sum to a minimum of 5,000 hours, or does not have 50% of the total number of hours in contiguous districts submitted for that occupation, statewide weighted average fringe benefit rates will be calculated for the occupation.

(e) If a minimum of 5,000 hours is not reported for the occupation in the entire state, then other information which the commissioner deems applicable will be used to establish the prevailing fringe benefit rates for the occupation. The commissioner shall consider:

(i) the established and special project rates of the previous year;

(ii) rates determined by the federal government under the Davis-Bacon Act and the Federal Service Contract Act;

(iii) rate information compiled on a regular basis by the department;

(iv) appropriate information from such surveys as may be conducted by the department; and

(v) other pertinent information.

(3) through (8) Remain the same, but are re-numbered (4) through (9).

AUTH: 18-2-431, MCA
IMP: 18-2-401, 18-2-402, 18-2-403, and 18-2-411, MCA

24.16.9004 DEPARTMENT ASSISTANCE AND ~~SPECIAL PROJECT~~ NEW JOB CLASSIFICATION RATES (1) If the commissioner receives a written request for a rate that does not exist for a particular craft, trade, or occupation that is covered by the provisions of the Act, the commissioner may set an interim advisory rate that may be used by the public contracting agency or public contractor until the rate is published in accordance with ARM 24.16.9007. Such rates will not be established more frequently than once every three months.

~~(1)~~(2) At least ~~thirty~~ (30) days prior to advertising for bids or letting a contract for a public works project, a public contracting agency may request that a ~~special~~ new job classification and commensurate rate of wages and fringe benefits be established for a particular craft, classification or type of worker needed for a project. The commissioner will establish a standard prevailing rate of wages for any craft, classification or type of worker for which no rate has been previously determined.

~~(2)~~(3) A request for a ~~special~~ new project job classification and commensurate rate of wages and benefits does not relieve a contractor from the obligation to classify and pay workers in accordance with annually established standard prevailing wage rates pending the establishment of a ~~special project rate~~ new job classification and wage rates.

~~(3)~~(4) A request for a ~~special project~~ new job classification and rate of wages shall include:

(a) through (i) Remain the same.

~~(4)~~(5) A request for a ~~special project~~ new job classification and rate of wages must establish:

(a) and (b) Remain the same.

AUTH: 18-2-431, MCA
IMP: 18-2-402 and 18-2-422, MCA

24.16.9007 ADOPTION OF STANDARD PREVAILING RATE OF WAGES (1) The commissioner's determination of minimum wage rates, including fringe benefits for health and welfare, pension contributions and travel allowance, by craft, classification or type of worker, and by character of project, are adopted in accordance with the Montana Administrative Procedure Act and rules implementing the Act.

(a) A notice of proposed adoption of the commissioner's determination is published in the Montana Administrative Register 30 to 45 days prior to adoption according to regular publication dates scheduled in ARM 1.2.419.

(b) Adopted wage rates are effective until superseded and replaced by a subsequent adoption.

(c) The wage rates applicable to a particular public works project are those in effect at the time the bid specifications are advertised.

(d) The wage rates proposed and the wage rates adopted are incorporated by reference in respective notices published in the Montana Administrative Register.

(e) The current building construction services rates are contained in the revised 1998 version of "The State of Montana

Prevailing Wage Rates-Building Construction" publication.

(f) The current non-construction services rates are contained in the 1997 version of "The State of Montana Prevailing Wage Rates-Service Occupations" publication.

(2) and (3) Remain the same.

AUTH: 18-2-431 and 2-4-307, MCA
IMP: 18-2-401 through 18-2-432, MCA

Reason: There is reasonable necessity for the proposed amendments to ARM 24.16.9003 and 24.16.9004 in order to address concerns raised by members of the public during previous public comment concerning ARM 24.16.9003. Members of the public commented that the rule lacked a methodology for the computation of fringe benefits, and the proposed amendments address that concern. There is reasonable necessity to give notice of the revised proposed standard prevailing rate of wages and fringe benefits, based on public comment and the submission of additional data. While the Department has historically adopted rates with minor changes based on public comment, the Department believes that the revised proposed rates have enough changes to warrant additional public notice and a comment period. There is also reasonable necessity for the proposed amendments to ARM 24.16.9007 in order to address concerns raised by staff of the Administrative Code Committee. Please see elsewhere in this issue of the Montana Administrative Register for information concerning the amendment of ARM 24.16.9003 and public comments made regarding the previously proposed amendment of ARM 24.16.9007.

4. Interested parties may submit their data, views, or comments, either orally or in writing, at the hearing. Written data, views, or comments may also be submitted to:

Kate Kahle
Research and Analysis Bureau
Job Service Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

so that they are received by not later than 5:00 p.m., July 24, 1998.

5. The Department maintains a number of mailing lists of interested persons regarding a variety of topics. For more information about the mailing lists, or to have your name and address added to any or all of the interested persons lists, please contact Mark Cadwallader, Office of Legal Services, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TTY (406) 444-0532.

6. The Department has complied with the provisions of 2-4-302, MCA, regarding notification of the bill sponsor about the proposed action regarding these rules.

7. The Department proposes to make the amendments and revised rates effective at the earliest possible date. The Department reserves the right to adopt only a portion of the proposed changes, or to adopt some or all of the proposed changes at a later time.

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

Mark Cadwallader
Rule Reviewer

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: June 15, 1998.

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

In the matter of the proposed amendment of ARM 24.21.414 by the adoption of wage rates for certain apprenticeship programs	) NOTICE OF PUBLIC HEARING ON) THE PROPOSED AMENDMENT) OF ARM 24.21.414 BY THE) ADOPTION OF WAGE RATES)

TO ALL INTERESTED PERSONS:

1. On July 17, 1998, at 11:00 a.m. or as shortly as possible thereafter, a public hearing will be held in room 104 of the Walt Sullivan Building (Department of Labor and Industry Building), 1327 Lockey, Helena, Montana, to consider the amendment of ARM 24.21.414 by the adoption of wage rates related to certain apprenticeship programs in the building construction industry.

The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., July 13, 1998, to advise us of the nature of the accommodation that you need. Please contact the Apprenticeship Program, Job Service Division, Attn: Mark Maki, P.O. Box 1728, Helena, MT 59624; telephone (406) 444-4100; TTY (406) 444-0532; fax (406) 444-3037. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Mr. Maki.

2. The Department of Labor and Industry proposes to amend ARM 24.21.414 as follows: (new matter underlined, deleted matter interlined)

24.21.414 WAGE RATES TO BE PAID IN BUILDING CONSTRUCTION OCCUPATIONS (1) through (4) Remain the same.

(5) The department will publish and incorporate by reference the ~~1995~~ revised 1998 edition of the publication entitled "State of Montana Base Journey-Level Rates for Apprentice Wages" which sets forth the building construction industry occupations journeyman wage rates in the five regions of Montana, excluding the seven largest counties, in order to set the apprentice wage rates provided by (3) and (4). A copy of the publication is available from Kate Kahle, Research and Analysis Bureau, Department of Labor and Industry, 1327 Lockey, P.O. Box 1728, Helena, MT 59624-1728.

(6) and (7) Remain the same.

AUTH: 39-6-101, MCA
IMP: 39-6-101 and 39-6-106, MCA

REASON: There is reasonable necessity for amendment of this rule in order to update the base wage rates, as contemplated by this rule. The proposed amendments are being offered as part of

the biennial updating of certain wage rates. In addition, there is reasonable necessity to amend the rates at this time because of the relationship to the proposed changes to prevailing wage rates for building construction. Noticing this hearing in conjunction with the prevailing wage rate hearing is generally more convenient for the interested parties, and allows members of the public who wish to attend both public hearings to only make a single trip to Helena. Although a public hearing was previously held on April 17, 1998, concerning proposed rates for apprenticeship purposes, the Department has subsequently received comments and data that affect the proposed standard prevailing rate of wages and fringe benefits upon which the apprenticeship rates are based. Accordingly, the Department has revised the proposed apprenticeship rates. Please see elsewhere in this issue of the Montana Administrative Register for two notices that contain information concerning changes and proposed changes to the standard prevailing rate of wages and fringe benefits.

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:

Mark Maki
Apprenticeship Program
Job Service Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

and must be received by no later than 5:00 p.m., July 24, 1998.

4. ARM 24.21.414 makes reference to the building construction prevailing wage rates adopted in ARM 24.16.9007. Persons interested in those prevailing wage rates should take notice that the Department will be conducting a public hearing on the proposed revised 1998 version of those rates at 9:30 a.m. on July 17, 1998, in the same room as the apprenticeship rate hearing. Persons wishing to obtain a copy of the official Notice of Public Hearing for the prevailing wage rates and/or the proposed revised 1998 prevailing wage rates may contact Kate Kahle, Research and Analysis Bureau, Job Service Division, Department of Labor and Industry, 1327 Lockey, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-2430; TTY (406) 444-0532; fax (406) 444-2638.

5. The Department maintains a number of mailing lists of interested persons regarding a variety of topics. For more information about the mailing lists, or to have your name and address added to any or all of the interested persons lists, please contact Mark Cadwallader, Legal/Centralized Services Division, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-4493; TTY (406) 444-0532.

6. The Department is not required by 2-4-302, MCA, to notify any bill sponsor about the proposed action regarding this rule action.

7. The Department proposes to make these amendments effective as soon as possible.

8. The Hearings Bureau of the Department's Centralized Services Division has been designated to preside over and conduct the hearing.

Mark Cadwallader
Rule Reviewer

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: June 15, 1998.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of adoption of new rules I through VIII as they relate to scrapie	)	NOTICE OF PROPOSED ADOPTION
	)	NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS:

1. On July 30, 1998, the board of livestock (board) proposes to adopt new rules I, II, III, IV, V, VI, VII and VIII.

2. The proposed new rules provide as follows:

RULE I QUARANTINE (1) A scrapie infected or source flock must be quarantined. The owner of this scrapie infected or source flock has the option of depopulating or signing an agreement with state federal scrapie program administrators complying with the requirements of 9CFR 79.2. AUTH: 81-2-102, MCA IMP: 81-2-103, MCA.

RULE II REPORTING REQUIREMENT (1) The owners of the flock or his or her agent shall immediately report to the appropriate authorities any animals exhibiting behavioral abnormalities symptomatic of scrapie disease. Such animals must not be removed from the flock without the written permission of the appropriate authorities. AUTH: 81-2-102, MCA IMP: 81-2-103, MCA.

RULE III IDENTIFICATION (1) All animals 1 year of age or older shall be identified. All animals less than 1 year of age must be identified upon change of ownership unless moving to slaughter. Identification shall consist of a tamper proof ear tag and either an electronic implant, a flank tattoo or an ear tattoo all of which provide a unique identification number in accordance with the instructions of appropriate authorities. AUTH: 81-2-102, MCA IMP: 81-2-103, MCA.

RULE IV RETENTION OF IDENTIFICATION (1) The owner of the flock (or his or her agent) must maintain and retain for a minimum of 5 years after removal of an animal from a flock that animal's individual identification number (from the eartag, electronic implant, tattoo, or ear tattoo) and any secondary form of identification and information the owner or his or her agent may choose to maintain. AUTH: 81-2-102, MCA IMP: 81-2-103, MCA.

RULE V DISCLOSURE OF INFORMATION (1) Breed associations and registries, livestock markets, and packers may disclose records to appropriate authorities for trace source flocks and exposed animals. AUTH: 81-2-102, MCA IMP: 81-2-103, MCA.

RULE VI AVAILABILITY FOR INSPECTION (1) Animals in the flock and those records required under 9CFR 79.2 (a)(2)(iv) shall be available for inspection by the appropriate authority upon reasonable notice given to the owner of the flock or his or her agent. AUTH: 81-2-102, MCA IMP: 81-2-103, MCA.

RULE VII SAMPLE COLLECTION (1) The owner of the flock or his or her agent will have an accredited veterinarian collect and submit tissues from animals reported pursuant to 9CFR 79.2 at paragraph (a)(2)(ii) an APHIS designated laboratory. AUTH: 81-2-102, MCA IMP: 81-2-103, MCA.

RULE VIII IDENTIFICATION METHODOLOGY (1) All high risk mutton breeds and goats associated with these flocks sold or used for breeding purposes must be identified as to the flock of origin by a tamper proof eartag and at least one of the following (electronic implant, flank tattoo or ear tattoo). This information must be on the certificate of veterinary inspection and/or import permit. AUTH: 81-2-102, MCA IMP: 81-2-103, MCA.

3. The Board is proposing the adoption of these rules for the purpose of allowing the department of livestock flexibility in dealing with a changing disease scenario involving scrapie.

4. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to the Department of Livestock, 301 N. Roberts Street - RM 307, PO Box 202001, Helena, MT 59620-2001, to be received no later than July 23, 1998.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Department of Livestock, 301 N. Roberts St. - RM 307, PO Box 202001, Helena, MT 59620-2001. The comments must be received no later than July 23, 1998.

6. If the board receives a request for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions, from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana

Administrative Register. Ten percent of those persons directly affected has been determined to be greater than 25 persons based on the number of livestock producers in the State of Montana.

7. The two-bill sponsor notice requirements of section 2-4-302, MCA, do not apply.

8. The board of livestock maintains a list of interested persons who wish to receive notices of rule making actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices. Such written request may be mailed or delivered to the board of livestock office at PO Box 202001, Helena, Montana, 59620-2001, or faxed to the office at (406) 444-1929.

MONTANA BOARD OF LIVESTOCK
JOHN PAUGH, CHAIRMAN

BY: _____
Laurence Petersen, Executive Officer
To the Board of Livestock

BY: _____
Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel
Department of Livestock

Certified to the Secretary of State June 12, 1998.

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

In the matter of the adoption of rules I through XV, the amendment of 46.18.101 through 46.18.103, 46.18.106 through 46.18.108, 46.18.112 through 46.18.114, 46.18.118 through 46.18.122, 46.18.124 through 46.18.126, 46.18.129, 46.18.130, 46.18.133, and 46.18.134 and the repeal of 46.10.101 through 46.10.306, and 46.10.314 through 46.10.847 pertaining to Families Achieving Independence in Montana (FAIM)	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On July 20, 1998, at 4:00 p.m., a public hearing will be held by MetNet in the Lower Level Auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana; Special Ed. Building, Room 162, 1500 North 30th Street, Montana State University at Billings, Billings, Montana; Burns Center Room 126, EPS Building South 7th & Grant, Montana State University, Bozeman, Montana; ELCB, Room 231, 1300 West Park Street, Montana Tech, Butte, Montana; Room 147, 2100 16th Avenue South, Great Falls College of Technology of MSU, Great Falls, Montana; and Gallagher Building, Room 104, Corner of Arthur and Eddy, University of Montana, Missoula, Montana, to consider the proposed adoption of rules I through XV, the amendment of 46.18.101 through 46.18.103, 46.18.106 through 46.18.108, 46.18.112 through 46.18.114, 46.18.118 through 46.18.122, 46.18.124 through 46.18.126, 46.18.129, 46.18.130, 46.18.133, and 46.18.134 and the repeal of 46.10.101 through 46.10.306, 46.10.314 through 46.10.847 pertaining to Families Achieving Independence in Montana (FAIM). This hearing will be held concurrently with the hearing as proposed pertaining to Families Achieving Independence in Montana (FAIM) in MAR Notice Numbers 37-100 and 37-101 in this issue of the Montana Administrative Register.

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 July 13, 1998, 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] FAIM FINANCIAL ASSISTANCE: GENERAL ELIGIBILITY REQUIREMENTS (1) Subject to the restrictions set forth in [Rule II] and in (2) of this rule, FAIM Financial Assistance (FFA) may be granted to the following classes of persons if they meet all other eligibility requirements for FFA:

(a) minor children as defined in ARM 46.18.103;

(b) specified caretaker relatives, as defined in ARM 46.18.103;

(c) stepparents of minor children who live with the child and with the child's natural or adoptive parent;

(d) persons under the age of 18 or under the age of 19 years and attending high school or an equivalent program full-time who live in the home of a minor child and are the child's siblings by blood, marriage, or adoption, including half brothers and half sisters and stepsiblings;

(e) pregnant women who have no other eligible children living with them, provided that they shall be eligible for cash assistance payments beginning the third month prior to the month in which the child is expected to be born.

(2) The following are not eligible for FFA:

(a) Persons receiving supplemental security income (SSI) benefits under Title XVI of the federal Social Security Act;

(b) a specified caretaker relative who fails or refuses to comply with the requirements of ARM 46.18.114 regarding the assignment of child and medical support rights and cooperation in establishing paternity and obtaining child and medical support;

(c) a specified caretaker relative who refuses without good cause to comply with the requirements of ARM 46.18.114 regarding the assignment of child and medical support rights and cooperation in establishing paternity and obtaining child and medical support and all members of the specified caretaker relative's filing unit;

(d) a specified caretaker relative who fails to report the absence of a child, lasting more than 90 consecutive days as specified in ARM 46.18.112 by the end of the 5-day period which begins with the date on which it becomes clear to the caretaker relative that the child will be absent for more than 90 consecutive days;

(e) teenage parents who are not living with their parent or parents, legal guardian, or other adult relative who would qualify to be a guardian of a minor child under Title 72, Chapter 5, of Montana Code Annotated, unless the teenage parent has been authorized to live in an alternative setting by the

living arrangement review committee because:

(i) the teenage parent has no parent, legal guardian, or other adult relative who would qualify to serve as a guardian who will allow the teenage parent to live in their home; or

(ii) the teenage parent is living independently because:

(A) physical, verbal, or emotional abuse or domestic violence exists in the home of any adult relative or guardian with whom the teenage parent could otherwise live;

(B) alcohol or drug abuse exists in the home of any adult relative or guardian with whom the teenage parent could otherwise live;

(C) any adult relatives with whom the teenage parent could otherwise live do not live in Montana;

(D) any adult relative with whom the teenage parent could otherwise live is mentally ill; or

(E) it would be dangerous to the teenage parent's physical or emotional well being for any other reason to live with any adult relatives with whom the teenage parent could otherwise live.

(f) persons who are in violation of a condition of the individual's probation or parole imposed under state or federal law and persons fleeing to avoid being prosecuted for a felony or fleeing to avoid custody or confinement after conviction of a felony;

(i) a person is an ineligible fleeing felon if the crime involved is a felony in the jurisdiction where the crime occurred.

(g) persons who have intentionally misrepresented their place of residence, for a period of 10 years, in accordance with the disqualification provisions of ARM 46.18.106;

(h) an individual who committed and was convicted after August 22, 1996, of any offense which is classified as a felony in the jurisdiction where the offense occurred and which has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the federal Controlled Substance Act, 21 USC 802(6).

(i) members of a family which includes an adult who has received assistance for 60 months or more, as prescribed in ARM 46.18.107.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211 and 53-4-231, MCA

[RULE II] FAIM FINANCIAL ASSISTANCE; ELIGIBILITY, CITIZENSHIP REQUIREMENTS (1) Except as provided in (5), only U.S. citizens and qualified aliens are eligible for FAIM financial assistance.

(2) A qualified alien is a noncitizen who:

(a) was admitted to the U.S. as a refugee under section 207 of the Immigration and Nationality Act (INA);

(b) was granted asylum under section 8 of the INA;

(c) has had deportation withheld under section 243(h) of

the INA; or

(d) has been lawfully admitted to the U.S. for permanent residence under the INA and either:

(i) is a veteran of the U.S. Armed Services as defined in 38 USC 101 who has received an honorable discharge which was not granted on account of alienage;

(ii) is an active member of the U.S. Armed Services, other than active duty for training;

(iii) is a spouse or unmarried dependent of a veteran or active duty military personnel as described in (2)(d)(i) or (ii); or

(iv) has worked 40 qualifying quarters as defined in Title II of the federal Social Security Act or is credited with 40 such quarters as follows:

(A) an alien shall be credited with all qualifying quarters worked by a parent of the alien while the alien was under age 18, subject to the provision of (2)(d)(iv)(C); and

(B) an alien shall be credited with all qualifying quarters worked by a spouse of the alien during their marriage, provided the alien is still married to that spouse or that spouse is deceased and subject to the provision of (2)(d)(iv)(C).

(C) An alien will not be credited with any qualifying quarter worked by a parent or spouse which occurred after December 31, 1996, if the parent or spouse received any federal means-tested public assistance benefit as defined in ARM 46.18.103 during the qualifying quarter.

(3) The following classes of qualified aliens may receive FFA benefits, if otherwise eligible, only for a limited period of time as specified:

(a) refugees, for 5 years from the date of entry of into the U.S.;

(b) asylees, for 5 years from the date asylum in the U.S. was granted;

(c) aliens who have had deportation withheld, for 5 years after the date of entry of the order withholding deportation.

(4) The 5 year time limits specified in (3)(a) through (c) no longer apply if a refugee, asylee, or person whose deportation has been withheld becomes a naturalized citizen or changes to another status under which the alien may be eligible for FFA benefits.

(5) A noncitizen who is not a qualified alien as specified in this rule may receive medicaid benefits if the individual:

(a) was living in the U.S. on August 22, 1996; and

(b) meets all other eligibility requirements for medicaid.

(6) Aliens legally admitted for permanent residence after August 22, 1996, are banned from receiving cash assistance for 5 years from the date of entry into the U.S.

AUTH: 53-2-201 and 53-4-212, MCA
IMP: 53-2-201, 53-4-211 and 53-4-231, MCA

[RULE III] FAIM FINANCIAL ASSISTANCE: UNDERPAYMENTS AND OVERPAYMENTS (1) The department may recover the value of any FAIM Financial Assistance (FFA) benefits paid to or on behalf of an assistance unit to which it was not entitled, regardless of whether the overpayment occurred due to an error by the department, a nonfraudulent action or omission by the FAIM participant, or fraudulent action by the FAIM participant.

(2) Recovery may be made from the filing unit which was overpaid, from any individual member of the assistance unit at the time when the overpayment occurred, or from any assistance unit which includes a person who was a member of the overpaid filing unit at the time when the overpayment occurred.

(3) Recovery of food stamp over issuances shall be made in accordance with the requirements of 7 CFR 273.18, as amended through January 1, 1997, and provisions of section 13 of the Food Stamp Act of 1977, 7 USC 2022, as amended by section 844 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1966 (PRWORA), which are hereby adopted and incorporated by reference. Copies of 7 CFR 273.18, as amended by PRWORA may be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210. To the extent that the federal regulations at 7 CFR 273.18 are inconsistent with any provision of the Food Stamp Act of 1977 as amended by PRWORA, the provisions of the Food Stamp Act shall take precedence.

(4) Recovery of cash assistance, medical assistance, and all other FFA benefits excluding food stamps shall be made as follows:

(a) If an overpayment of benefits has occurred due to fraudulent action by a member of the filing unit, the sum which must be repaid is 125% of the amount of assistance to which the assistance unit was not entitled. Fraudulent action includes but is not limited to the making of an intentionally false statement or misrepresentation and the intentional withholding of information.

(b) If an overpayment of benefits has occurred due to department error or a nonfraudulent error by a member of the filing unit, the sum which may be recovered is 100% of the amount of assistance to which the assistance unit was not entitled.

(c) The department is entitled to recover an overpayment regardless of whether any or all of the members of the overpaid assistance unit are currently receiving assistance.

(i) In the case of an individual or assistance unit currently receiving assistance, the department may recover an overpayment by reducing the current cash assistance amount by 10% and retaining the sum by which the cash assistance has been reduced to repay the overpayment. At the department's option, recovery may also be made by voluntary payments by a member of the overpaid assistance unit or any other legal means available to collect a debt, including the use of offset against any monies which the State of Montana owes or may owe to a member of

the filing unit.

(ii) In the case of individuals who are not currently receiving assistance, recovery may be made by voluntary payments by a member of the overpaid assistance unit or any other legal means available to collect a debt, including the use of offset against any monies which the State of Montana owes or may owe to a member of the filing unit.

(5) When an assistance unit has been underpaid due to an error by the department or the participant or due to any other reason, the underpayment may be corrected by issuing a supplemental payment in the amount by which the assistance unit was underpaid.

(a) For purposes of determining continued eligibility and amount of assistance, the additional amount paid to the assistance unit to correct an underpayment will not be considered as income or as a resource in the month it is paid nor in the following month.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-108, 53-2-201 and 53-4-211, MCA

[RULE IV] FAIM FINANCIAL ASSISTANCE: GOOD CAUSE (1) A FAIM participant's failure to comply with a pathways or community services program requirement, such as a requirement under a family investment agreement, including but not limited to participation in an employment and training activity or the requirement of accepting or maintaining suitable employment, shall not result in imposition of a sanction if good cause exists for the failure to comply.

(2) If it appears that a participant has failed to comply with a requirement, the participant shall be given the opportunity to provide information to the FAIM coordinator or work readiness component (WoRC) case manager regarding the alleged noncompliance and the reasons for the alleged failure to comply. If the FAIM coordinator or WoRC case manager determines from the available information, including any information provided by the participant, that there was a failure to comply and that good cause for the noncompliance does not exist, a sanction shall be imposed in accordance with ARM 46.18.134.

(3) Good cause consists of circumstances beyond the participant's control which prevent compliance with a requirement or which excuse a failure to comply.

(4) Good cause for failure to keep appointments, report changes, provide required information, or comply with family investment agreement activities or other eligibility requirements includes, but is not limited to, the following circumstances:

(a) illness or incapacity of the participant;

(b) illness or incapacity of another household member sufficiently serious to require the presence of the participant;

(c) death of a family member;

(d) participant's incarceration or required court

appearance;

(e) inability to obtain necessary child care;

(f) adverse weather conditions which make travel impossible or unreasonably dangerous;

(g) lack of transportation in a case where the participant cannot reasonably be expected to walk or bicycle because of the distance or the participant's health or physical limitations;

(i) Transportation is considered to be available if the participant has the use of a private vehicle, has access to public transportation, or can ride with someone else, provided that a participant will not be required to accept a ride under circumstance which a reasonable person would consider dangerous or unsuitable.

(5) Good cause for failure to accept employment or for voluntarily quitting a job or reducing earned income from employment includes, but is not limited to, the following circumstances:

(a) The wage is less than the state minimum wage.

(b) Transportation is not available and the participant cannot reasonably be expected to walk or bicycle to work because of the distance or the participant's health or physical limitations.

(i) Transportation is considered to be available if the participant has the use of a private vehicle, has access to public transportation, or can ride with someone else, provided that a participant will not be required to accept a ride under circumstance which a reasonable person would consider dangerous or unsuitable.

(c) Child care is necessary and is not available.

(d) Working conditions are unsuitable because of an unreasonable degree of risk to health or safety or lack of workers' compensation coverage.

(e) The participant is age 60 or older.

(f) The participant has a physical or mental impairment which prevents the participant from accepting or maintaining this employment, as determined by a licensed physician or psychologist.

(i) A temporary mental or physical illness, injury, or incapacity may constitute good cause for the duration of the incapacity only.

(g) the participant lacks the necessary work-related skills for the employment and cannot acquire such skills in time to obtain or retain the employment.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-201 and 53-4-211, MCA

[RULE V] FAIM FINANCIAL ASSISTANCE: SAFEGUARDING AND SHARING INFORMATION (1) Use of information concerning applicants for or participants in FAIM financial assistance is restricted to purposes directly connected with the

administration of the FAIM project and other federally assisted programs which provide assistance to individuals on the basis of need.

(2) The department may use confidential information concerning an applicant for or participant in FAIM financial assistance, without notice or permission of the person for the following purposes:

(a) administration of FAIM financial assistance or any of the other federal programs listed in (4);

(b) reporting of child abuse and neglect to an appropriate agency or authority or responding to a request for information from an appropriate agency or authority investigating child abuse or neglect; or

(c) the conduct of child support activities.

(3) Administration of a program includes the use of information by the program necessary for:

(a) establishing applicant eligibility;

(b) determining amount of assistance for recipient;

(c) providing services to recipient;

(d) conducting audits and similar activities; or

(e) any investigation, prosecution, or criminal or civil proceeding relating to the administration of the program.

(4) Other federal programs include the following:

(a) food stamps;

(b) medicaid;

(c) federally assisted unemployment compensation;

(d) federal old age assistance;

(e) federal aid to the blind;

(f) federal aid to the disabled;

(g) supplemental security income;

(h) social security;

(i) federally assisted child welfare services;

(j) federally assisted foster care;

(k) federally assisted adoption assistance;

(l) federally assisted weatherization;

(m) low income energy assistance;

(n) social services block grant;

(o) federally assisted work incentive;

(p) federally assisted child care assistance; or

(q) any other federal or federally assisted program providing assistance, in cash, in kind or in services, directly to recipients on the basis of need.

(5) The department, without notice to or the permission of an applicant or participant, may release the current address of the person to a federal, state or local law enforcement officer, if the officer provides in the request the name of the person and satisfactorily demonstrates:

(a) that the person is:

(i) a fugitive felon;

(ii) violating a condition of probation or parole; or

(iii) has information necessary for the officer to conduct the officer's official duties; and

(b) that locating and/or apprehending the person is within the official duties of the officer.

(6) The department, without prior permission of the applicant or participant, may within its discretion release confidential information necessary for the provision of emergency services to meet medical and other critical needs of the person. Notice of the release must be given as soon as possible to the person.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-105, 53-2-201, 53-2-211 and 53-4-211, MCA

[RULE VI] FAIM FINANCIAL ASSISTANCE: RESIDENCY (1) There is no durational residency requirement for FAIM financial assistance. Any resident of Montana who meets all other eligibility requirements may receive FAIM financial assistance.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-201 and 53-4-211, MCA

[RULE VII] FAIM FINANCIAL ASSISTANCE: PLACE OF APPLICATION AND FIRST ASSISTANCE PAYMENT (1) Applications for FAIM Financial Assistance must be made at the office of public assistance in the county where the person lives. When conditions preclude a person from visiting the office of public assistance to make application, he shall have an opportunity to make application at a mutually agreed place or through a home visit by the worker.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211 and 53-4-233, MCA

[RULE VIII] FAIM FINANCIAL ASSISTANCE: INVESTIGATION OF ELIGIBILITY (1) Investigations of eligibility will include securing information from the person applying for or receiving assistance and such other investigation as may be determined necessary by the department.

(2) If a case is selected for program compliance review, the client must cooperate.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211 and 53-4-233, MCA

[RULE IX] FAIM FINANCIAL ASSISTANCE: INITIAL PAYMENT AND REDETERMINATION OF ELIGIBILITY (1) The initial assistance payment will be issued in a prorated amount which includes the day upon which application was made and the remaining days of that month.

(2) Periodic investigations will be made of all FAIM participants to determine whether continuing eligibility to receive assistance exists, at least once every 12 months, but

may be made at any time if circumstances require.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-201 and 53-4-211, MCA

[RULE X] FAIM FINANCIAL ASSISTANCE: RESTRICTIONS ON ASSISTANCE PAYMENTS (1) Monthly assistance payments are made directly to eligible persons for their own unrestricted use except in cases of protective payee payments. The check may not be mailed to the grantee in care of a creditor or delivered through indirect representation. Payments may not be forwarded from one address to another.

(2) Other cash assistance payments, including but not limited to employment and training supportive services payments, may be made directly to the participant or to a vendor on behalf of a participant.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-201 and 53-4-211, MCA

[RULE XI] FAIM FINANCIAL ASSISTANCE: PROTECTIVE PAYMENTS (1) A protective payment plan shall be implemented when the caretaker relative has clearly demonstrated an inability or unwillingness to use the family's assistance payments to meet the basic needs of the minor children in the household, as determined by an employee of the division of the department which provides protective services to children.

(2) Selection of the protective payee will be made by the participant, or with the participant's participation and consent, to the extent possible. Selection of a protective payee may be made among relatives, friends of the family, the clergy, a community service group, a voluntary social service agency, or departmental staff. If it is in the best interest of the participant for a staff member of the department of public health and human services to serve as protective payee, a staff member will be appointed. The selection of protective payees may not include:

(a) county commissioners;

(b) executive heads of the department of public health and human services;

(c) persons determining financial eligibility for public assistance;

(d) special investigative or resource staff;

(e) staff handling fiscal processes;

(f) landlords;

(g) grocers or other vendors of goods or services dealing directly with the client.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-201 and 53-4-211, MCA

[RULE XII] EMERGENCY ASSISTANCE FOR NEEDY FAMILIES WITH

DEPENDENT CHILDREN (1) Financial assistance and/or services may be authorized to meet the emergency needs of a child under the age of 18 or who is age 18 and is a full time primary or secondary school student, or of a relative of the child within the degree of kinship specified in ARM 46.18.112 who lives with the child, in the following circumstances:

(a) where the emergency arises from an unforeseen event which was beyond the household's control, and which has caused or threatens to cause the destitution of the child; or

(b) where the emergency arises out of a situation identified by the department's family services bureau as involving abuse or neglect of the child.

(2) For purposes of this rule, household means the child whose needs are to be met by the emergency assistance and all other persons who live with the child and are related to the child by blood or marriage, as specified in ARM 46.18.112.

(3) Emergency assistance will be provided only if:

(a) the child and all household members are U.S. citizens or qualified aliens as defined in [Rule II].

(b) the emergency needs did not arise because the child or the child's caretaker relative refused without good cause to accept or maintain employment or training for employment;

(i) good cause for failure to accept or maintain employment or training for employment shall be determined in accordance with the provisions of [Rule V].

(c) the emergency situation could not have been foreseen by the household and was not under the household's control; and

(d) the household has exhausted all other means available to meet the emergency need, including but not limited to all liquid resources of the household and any benefits or services for which the household is eligible.

(4) Emergency assistance may be authorized once only in any period of 12 consecutive months.

(5) Emergency assistance shall be provided in the form of cash payments directly to the household or payments by the department to the vendor of a necessary item or service.

(6) Emergency assistance shall not be provided to pay for the following:

(a) penalties, fines, and taxes, including but not limited to personal and real property taxes;

(b) insurance - home, auto, or life;

(c) burials;

(d) mortgages;

(e) reimbursements for expenses already paid or money loaned to the household to pay expenses;

(f) rental, security, and/or utility deposits or any rental payment required to be paid in advance before the household takes possession;

(g) bills for services already received, including medical bills;

(h) bills more than 30 days past due, excepting the two most recent months of past due rent or utility bills if a

written eviction notice or utility cut-off notice has been given to the household;

(i) legal fees, including but not limited to court costs and attorney fees;

(j) the purchase of a vehicle; or

(k) any travel that would be payable by medicaid, or by FAIM supportive services or one-time employment related payments.

(7) Emergency assistance may be provided to pay for family based services in the home if the department's family services bureau or family prevention contractor has identified a need for social worker services to prevent the child's removal, expedite the return of the child to the home, or prevent the need for protective services for the child.

(8) Information will be provided and referrals will be made to meet the needs of the household for counseling, shelter, child care, legal services, homemaker services, or other services.

(9) A pregnant woman who has no children living with her is not eligible to receive emergency assistance to meet her own needs or the needs of her unborn child unless:

(a) she is in the last trimester of her pregnancy; and

(b) an employee of the department who provides protective services to children has determined that she is in need of emergency assistance.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-201 and 53-4-211, MCA

[RULE XIII] EMERGENCY ASSISTANCE FOR NEEDY FAMILIES WITH DEPENDENT CHILDREN, PROCEDURES FOLLOWED IN DETERMINING ELIGIBILITY (1) A household member or an employee or agent of the department may make a request for emergency assistance at the county office administering public assistance programs in the county where the household needing assistance lives.

(2) Eligibility requirements for emergency assistance must be verified and documented.

(3) To receive emergency assistance, an applicant must show:

(a) that a child who is under the age of 18 or is 18 and a full-time primary or secondary school student is living with a relative specified in ARM 46.18.112 in a place of residence maintained by the relative as the child's own home; and

(b) that all requirements set forth in [Rule XIV] have been met.

(4) Emergency assistance may be provided in addition to but not as a substitute for FAIM cash assistance.

(5) The completed request for emergency assistance shall be submitted to the county office of public assistance. The applicant shall be notified by the county office of the approval or reasons for disapproval of the request for emergency assistance.

(6) There are no residency requirements for emergency assistance. Non-residents, migrants and transients who otherwise meet the requirements of this part are eligible for emergency assistance.

(7) County offices shall make a determination of eligibility for emergency assistance within 5 days after receiving the application and all verification required to support the application.

(8) An expedited administrative review of a denial of a request for emergency assistance will be available to applicants who request in writing such an expedited review within 5 working days of the date of the denial. Such a review will be held within 5 working days of the date the request is received by the county. Requests not made in accordance with these provisions will be processed according to the department's standard fair hearing procedures.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-201 and 53-4-211, MCA

[RULE XIV] FAIM FINANCIAL ASSISTANCE: DENIAL OF BENEFITS TO STRIKERS (1) Participation in a strike does not constitute good cause to leave, or to refuse to seek or accept, employment.

(2) FAIM Financial Assistance benefits will be denied to any family for any month in which any caretaker relative with whom the dependent child is living is, on the last day of the month, participating in a strike.

(3) No individual's needs will be included in determining the amount of benefit payable for any month to a family if, on the last day of such month, the individual is participating in a strike.

(4) A strike is defined as a temporary concerted stoppage of work by a group of employees (not necessarily members of a union) to express a grievance, enforce a demand for changes in the conditions of employment, obtain recognition, or resolve a dispute with management. Also included in this definition is a work stoppage by reason of the expiration of a collective bargaining agreement.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-201 and 53-4-211, MCA

[RULE XV] FAIM FINANCIAL ASSISTANCE: NEEDY PREGNANT WOMAN (1) Cash assistance payments shall be provided to an otherwise eligible pregnant woman with no other children receiving assistance when the fact of pregnancy has been verified by a physician or the physician's designee, beginning the third month prior to the month in which the child is expected to be born.

AUTH: Sec. 53-2-201 and 53-4-212, MCA

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

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

46.18.101 FAIM FINANCIAL ASSISTANCE: PURPOSE (1) These rules implement the demonstration project entitled families achieving independence in Montana (FAIM) authorized under section 1115 of the Social Security Act, 42 USC 1315~~, excluding cases with tribal members living on a reservation which operates a tribal JOBS program~~. The purpose of this project is to provide temporary assistance to needy families ~~alternatives to improve the public assistance system~~ and to assist families in ~~becoming self sufficient~~ obtaining employment.

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

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

46.18.102 FAIM FINANCIAL ASSISTANCE: FEDERAL REGULATIONS ADOPTED BY REFERENCE ~~(1) The FAIM AFDC program shall be governed by the regulations of the administration for children and families of the U.S. department of health and human services governing the aid to families with dependent children contained in the following parts, except as the rules in this chapter make specific provisions which are contrary to the federal regulations, in which case these rules shall take precedence over the federal regulations: 45 CFR parts 205, 206, 232, 233, 234, 235, 238, 239, 250, 255 and 256, these parts pertaining to eligibility and furnishing of assistance, coverage and conditions of eligibility, form of assistance, child support enforcement requirements, child care and other work related supportive services, the community work experience program, the work supplementation program, and the job opportunities and basic skills program. The department hereby adopts and incorporates by reference 45 CFR parts 205, 206, 232, 233, 234, 235, 238, 239, 250, 255 and 256, as amended through October 1, 1993. A copy of 45 CFR parts 205, 206, 232, 233, 234, 235, 238, 239, 250, 255 and 256, as amended through October 1, 1993 may be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4201.~~

(1) The FAIM Financial Assistance shall be administered in accordance with the requirements of federal law governing temporary assistance to needy families, food stamps, and medical assistance, as set forth in Title IV of the Social Security Act, 42 USC 601 et seq., as amended by the Personal Responsibility

and Work Opportunity Reconciliation Act of 1996 and the Balanced Budget Act of 1997, the Food Stamp Act of 1977 as amended, 7 USC 2026 et seq., and Title XIX of the Social Security Act, 42 USC 1396 et seq.

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

46.18.103 FAIM FINANCIAL ASSISTANCE: DEFINITIONS ~~(1) The definitions contained in ARM 46.10.110 and 46.10.803 apply to this chapter unless a different definition is specified in this rule, in which case the definition in this rule shall take precedence.~~

~~(2) The following definitions apply to this chapter:~~

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

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

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

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

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

~~(f) "FAIM employment and training" means the training, resources and career choices activities in the family investment agreement for participants who are not referred to and enrolled in the JOBS program.~~

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

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

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

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

The following definitions apply to this chapter:

(1) "Assistance unit" means a minor child or children and all individuals who live with the child and are related to the child by blood, marriage, adoption, or by law if the child was conceived by artificial insemination, provided that the relationship is within the fifth degree of kinship as specified in the definition of caretaker relative in this rule and provided that the individual meets the eligibility requirements to have the individual's needs covered by FAIM financial assistance.

(2) "Benefit month" means the calendar month for which benefits are issued.

(3) "Budget month" means the calendar month used to determine eligibility for FAIM Financial Assistance and to calculate the amount of the cash assistance payment. Under the prospective budgeting method, the budget month and the benefit month are the same.

(4) "Caretaker relative" means a specified caretaker relative.

(5) "Case manager" means the person who provides guidance for a participant in the FAIM employment and training or activity program.

(6) "Case management" means the process of formulating and developing and maintaining a family investment agreement or a WoRC employability plan for a participant.

(7) "Child support rights" means a child's legal entitlement to cash assistance from a parent with whom the child does not live.

(8) "Community operating plan" means the document developed by the community advisory council for a particular county or counties which sets forth local decisions made in areas where community flexibility is allowed.

(9) "Community services program (CSP)" is the cash assistance program for individuals who have exhausted their time limited pathways benefits but have not yet become employed or found alternatives to public assistance.

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

(11) "Department" means the Department of Public Health

and Human Services.

(12) "Domestic violence" means physical, sexual, and/or mental or emotional abuse of a member of the assistance unit by a person with whom that member lives or with whom that member has recently lived which is sufficiently severe to interfere with the FAIM participant's ability to become employed or seek alternatives to public assistance.

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

(14) "Educational activities" means high school education or the equivalent thereof, basic and remedial education, and English as a second language.

(15) "Employability plan" means a written plan developed by the participant and the work readiness component (WoRC) case manager which sets forth services and activities intended to assist the participant in obtaining and retaining employment.

(16) "English as a second language (ESL)" means classroom training for persons with limited or no skills in English which provides them with sufficient command of the English language to compete in the labor market or to participate in training.

(17) "Equity value" means the market value of a resource minus the value of any enforceable mortgage, lien, encumbrance, or security interest.

(18) "FAIM coordinator" means the person who determines eligibility for benefits, assists clients to develop their family investment agreement, monitors the agreements, makes referrals to other resources, and authorizes benefits.

(19) "FAIM employment and training and activities" means the activities in the family investment agreement for all participants other than activities relating to child support enforcement, quality control, third party liability or immunization and health screening requirements.

(20) "FAIM Financial Assistance" is the collective term for the three programs of the FAIM project, namely the job supplement program (JSP), the pathways program, and the community services program (CSP). The term also is used to denote benefits provided in JSP, pathways, or CSP in the form of cash assistance, medical assistance, child care payments, supportive services, or other services.

(21) "Family investment agreement (FIA)" means a written document outlining pathways and community service program requirements and the employment and training activities a family will participate in order to work toward self-sufficiency.

(22) "Federal means-tested public benefit" means food stamp benefits funded by the U.S. Department of Agriculture pursuant to the Food Stamp Act of 1977 as amended, 7 USC 2026 et seq., cash assistance or any other benefits funded by the

Temporary Assistance to Needy Families (TANF) block grant pursuant to Title IV of the Social Security Act, 42 USC 601 et seq., and medical assistance benefits funded by the Medicaid program pursuant to Title XIX of the Social Security Act, 42 USC 1395 et seq.

(23) "Filing unit" means the minor child and all individuals who live with the child and are related to the child within the fifth degree of kinship. The filing unit includes:

(a) all individuals who are included in the child's assistance unit;

(b) all individuals who have the option of being included in the child's assistance unit, such as grandparents of the child, whether or not they choose to be included; and

(c) all persons, such as parents of the child, who would be required to be members of the child's assistance unit if they were not excluded from the assistance unit due for a reason such as lack of U.S. citizenship, receipt of SSI benefits, or the imposition of a sanction or disqualification.

(24) "General education development (GED)" means training provided to persons who need a high school education or its equivalent.

(25) "Grant" means the monthly cash payment to the pathways or CSP assistance unit.

(26) "Gross monthly income" means all earned and unearned income received except for excluded income as provided in ARM 46.18.125 and 46.18.126.

(27) "Group job search" means the provision of counseling, training, information, and peer support activities to employment and training participants in a group in order to give them guidance and support in obtaining employment.

(28) "Home" means the assistance unit's usual residence.

(29) "Incapacity" means a physical or mental defect, illness, or impairment diagnosed by a licensed physician or psychologist which is sufficiently serious as to eliminate or substantially reduce the parent's ability to obtain and retain employment for a period expected to last at least 30 days.

(30) "Indian country" means the land within the geographical boundaries of an Indiana reservation and within the city limits of the towns of Hardin, Harlem, and Dodson, Montana.

(31) "Individual job search" means the provision of employment counseling and information to employment and training participants on a one-to-one basis in order to give the participant guidance and support in obtaining employment.

(32) "Job development and placement" means creating or locating job openings and assisting employment and training participants in obtaining those positions.

(33) "Job readiness activities" means instruction in job seeking and job retention skills, career definition, work ethic and attitudes, and dissemination of occupational and labor market information.

(34) "Job skills training" means vocational training for a specific occupational area conducted by an instructor in a

non-work site or a classroom setting.

(35) "Lump sum payment" means any nonrecurring payment of earned or unearned income, including but not limited to:

(a) retroactive payments of Social Security disability or Supplemental Security Income benefits or other benefits;

(b) payments in the nature of a windfall, such as an inheritance or lottery winnings; and

(c) insurance payments and personal injury and worker compensation awards, to the extent that the payment or award is not earmarked and used to compensate or reimburse the recipient for damages or expenses incurred due to an accident or injury, such as medical bills or replacement or repair of a resource.

(36) "Market value" means the price which a resource would bring if sold on the open market in the geographic area where the resource is located.

(37) "Medical support rights" means a child's legal entitlement to health insurance coverage and/or assistance with medical expenses from a parent with whom the child does not live.

(38) "Minor child" means a person under the age of 18 years, or older than 18 but less than 19 years if the person is a full-time student in a secondary school or an equivalent program who lives with a specified caretaker relative who meets the specifications set forth in ARM 46.18.112.

(39) "Net monthly income" means gross monthly income less any income disregarded in accordance with ARM 46.18.120.

(40) "On-the-job-training (OJT)" means training in the private or public sector given to an employment and training participant which occurs while the participant is engaged in productive work and provides knowledge or skills essential to the full and adequate performance of the job.

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

(42) "Participation hours" means the number of hours which a pathways or community services program participant must perform employment and training activities as specified in the participant's family investment agreement.

(43) "Pathways" means the time limited cash assistance program designed to provide families with employment and training opportunities leading to permanent public assistance alternatives. The duration of pathways is 24 months. Participation requirements are stated in the family investment agreement.

(44) "Penalty period" means the period of time during which a sanctioned participant is ineligible to receive benefits.

(45) "Post secondary education (PSE)" means a field of instruction approved by the Montana commissioner of higher education and offered by an institution of higher education.

(46) "Screening guide" means the tool by which the FAIM coordinator in conjunction with the FAIM participant determines

appropriate employment and training activities for the participant.

(47) "Single-parent household" means a household in which only one parent is included in the assistance unit.

(48) "Specified caretaker relative" means a person related to the minor child within the fifth degree of kinship by blood, marriage, or adoption who lives with the child.

(a) The caretaker relative must be the child's parent, grandparent, great grandparent, great-great grandparent, great-great-great grandparent, sibling, uncle, aunt, great uncle, great aunt, great-great uncle, great-great aunt, first cousin, first cousin once removed, nephew, niece, or step relative of the same degree of relationship; for example, stepparent, step grandparent, or step sibling, or half-brother or half-sister. The spouse of any person named in the immediately preceding sentence will be considered a caretaker relative, even after the marriage is terminated by death or divorce.

(49) "Stepparent" means an individual who is married to the minor child's parent by means of either a ceremonial or common law marriage.

(50) "Supportive services" means expenses and services necessary for a pathways or CSP participant to participate in training or accept a job.

(51) "Teen parent" means an unmarried person under the age of 18 who cares for his or her minor child.

(52) "Teenage parent" means a teen parent.

(53) "Training activities" means jobs skills training, job readiness activities, and job development and placement.

(54) "Two-parent household" means a household in which two parents reside, regardless of whether the two parents are parents of the same minor child or two or more different children, except that a household in which two parents reside is considered a single-parent household for employment and training participation hours if one or both of the parents receives supplemental security income (SSI) benefits or is incapacitated. For purposes of this definition, a biological or adoptive parent or a stepparent is considered a parent.

(55) "Unearned income" means all income which is not earned income as defined in this rule. It includes, but is not limited to, Social Security benefits, Supplemental Security Income payments, Veteran's benefits or payments, workers' compensation and unemployment compensation benefits, interest payments, dividends, and distributions from trusts or estates.

(56) "Valid loan" means a lender delivers a sum of money to a borrower pursuant to a written or oral agreement that the borrower will repay the sum in the future. The obligation to repay must be absolute and not contingent on the occurrence of an uncertain event.

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

(58) "Work Readiness Component (WoRC)" means the intensive

case management component of the FAIM employment and training program.

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

46.18.106 FAIM: FINANCIAL ASSISTANCE; AFDC INTENTIONAL PROGRAM VIOLATION AND DISQUALIFICATION HEARINGS; CASH AND MEDICAL ASSISTANCE ~~(1) If a participant in FAIM appears to have committed an intentional program violation (IPV) as defined in 45 CFR 235.112, the county office of human services must initiate administrative disqualification hearing (ADH) procedures to determine if the individual should be disqualified from receiving AFDC benefits and/or food stamp benefits.~~ (1) An intentional program violation (IPV) is a willful action for the purpose of establishing or maintaining eligibility for assistance or for the purpose of increasing the amount of benefits or preventing a reduction of benefits. An IPV may consist of:

(a) a false or misleading statement or a misrepresentation, concealment, or withholding of facts; or

(b) any other action intended to mislead, misrepresent, conceal, or withhold facts.

(2) If a FAIM participant in pathways, community services program, or job supplement program appears to have committed an IPV as defined in (1), the county office of public assistance (OPA) must initiate administrative disqualification hearing (ADH) procedures to determine if the person should be disqualified from receiving cash and medical assistance, and/or any other FAIM benefits, excluding food stamps. Disqualification from receiving food stamps shall be governed by the federal regulations pertaining to food stamp disqualifications at 7 CFR 273.16, as amended through January 1, 1998, which are hereby adopted and incorporated by reference. Section 273.16 of 7 CFR covers all aspects of food stamp administrative disqualification hearings. Copies of 7 CFR 273.16 may be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

~~(2)~~(3) The individual subject to the ADH must be contacted in writing and requested to appear for a pre-hearing meeting at the local county office of public assistance. During the pre-hearing meeting, the county office will provide to the individual the following:

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

~~(3)~~(4) If the individual does not sign a waiver of the right to an ADH at the pre-hearing meeting in the county office, an ADH shall be scheduled and the individual alleged to have committed an IPV shall be sent a written notice of the hearing at least 30 days prior to the date of the hearing.

(a) The notice must contain ~~all the information specified~~

~~in 45 CFR 235.113.~~;

(i) the date, time, and place of the hearing;

(ii) the charge(s) against the individual;

(iii) a summary of the evidence, and how and where the evidence can be examined;

(iv) a warning that the decision will be based solely on the information provided by the department if the individual fails to appear at the hearing;

(v) a statement that the individual or representative will, upon receipt of the notice, have 5 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;

(vi) a warning that a determination of intentional program violation will result in disqualification periods as set forth in (8)(b)(i) through (b)(iii) of this rule, and a statement of which penalty the department believes is applicable to the individual's case;

(vii) a listing of the individual's rights as set forth in (7) of this rule;

(viii) a statement that the hearing does not preclude the state or federal government from prosecuting the individual for the intentional program violation in a civil or criminal court action, or from collecting any over issuances;

(ix) if there is an individual or organization available which provides free legal representation, notice of the availability of that service; and

(x) notice of the individual's right to obtain a copy of the department's hearing procedures upon request.

(b) The hearing may be held if the notice is returned as undeliverable. However, if no proof of receipt of the notice is obtained, the hearing decision shall be set aside and a new hearing shall be held if the recipient claims good cause for failure to appear due to non-receipt of the notice within 30 days after the date of written notice of the hearing decision and shows good cause as defined in [Rule IV (4)(a) through (g)(i)].

(5) If the participant or the participant's representative cannot be located or fails without good cause to appear at the hearing, the hearing shall be held, but the hearing officer must carefully consider the evidence and determine whether clear and convincing evidence exists that an intentional program violation was committed.

(a) The participant has 30 days as specified in (4)(b) to claim good cause for failure to appear based on non-receipt of the notice. If the participant claims good cause for failure to appear based on any other cause or circumstance, the recipient must present the claim of good cause within 5 days of the date of the hearing.

~~(4)~~ (6) The ADH shall be conducted by an impartial individual appointed or employed by the department as a hearing officer who has not had previous involvement in the individual's case ~~and shall comply with all the requirements of 45 CFR~~

~~235.113~~.

(7) An individual charged with an IPV has the right to:

(a) examine all documents and records to be used at the hearing at a reasonable time before the date of hearing as well as during the hearing;

(b) examine the contents of the individual's case file, provided that confidential information such as the name of persons who have anonymously disclosed information about the individual or information about a pending criminal investigation or action shall not be released to the individual and also cannot be offered into evidence at the hearing;

(c) a free copy of any portions of the case file which are relevant to the hearing, if the individual requests a copy.

~~(5)~~ (8) After the ADH, ~~The~~ the hearing officer shall issue a written decision to the participant and the department no later than 90 days after written notice is given to the participant of the hearing, unless the hearing has been postponed, in which case the 90 day period shall be extended for as many days as the hearing was postponed. ~~after the ADH which shall comply with the requirements of 45 CFR 235.113.~~

(a) The participant is entitled to one postponement of the hearing if the request for postponement is made at least 10 days in advance of the scheduled date of hearing. However, the hearing may not be postponed for more than a total of 30 days.

(b) The department may limit the number of postponements to one.

~~(6)~~ (9) If the hearing officer determines after an ADH has been held that the individual committed an IPV, the department must provide the individual with a written notice of disqualification prior to the commencement of the disqualification period. The notice must contain the following information; ~~specified in 45 CFR 235.113.~~

(a) notice of the decision and the reason for the division;

(b) the date the disqualification shall take effect;

(c) if the individual is not currently participating in the program, notice that the period of disqualification shall be deferred until the individual applies for and is found eligible for assistance again;

(d) the amount of assistance the remaining household members, if any, will receive during the disqualification period.

~~(7)~~ (10) If it is determined through an ADH that an individual committed an IPV or if the individual alleged to have committed an IPV signs a waiver of right to ADH, the period of disqualification shall be:

~~(a) 6 months for the first violation;~~

~~(b) 12 months for the second violation; and~~

~~(c) permanently for the third violation.~~

(a) For IPVs involving misrepresentation of the individual's residence to obtain FAIM cash assistance benefits in two or more states simultaneously, 10 years;

(b) For all other types of IPVs;

(i) 12 months for the first violation;
(ii) 24 months for the second violation; and
(iii) permanently for the third violation.

~~(8)~~ (11) Disqualification shall begin the first month which follows the date the individual receives written notice of disqualification. Once a disqualification has been imposed, the period of disqualification must continue uninterrupted until completed regardless of the eligibility of the disqualified individual's household.

~~(9)~~ (12) The determination by the hearing officer that an IPV has occurred cannot be reversed by a subsequent fair hearing decision relating to the same or a similar issue.

(13) During ~~a period of~~ the disqualification period, the income and resources of the disqualified individual shall be counted in their entirety, but the disqualified individual shall not be included as a member of the assistance unit in determining the size of the assistance unit.

(14) During the disqualification period, the disqualified individual shall lose medical as well as cash assistance.

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

46.18.107 FAIM FINANCIAL ASSISTANCE: FAIM ~~COMPONENT~~ PROGRAMS AND TIME LIMITS (1) The ~~AFDC~~ FAIM Financial Assistance (FFA) portion of the FAIM project consists of three ~~components~~ programs referred to as the job supplement, pathways and community services programs.

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

~~(a) enhanced child support enforcement assistance;~~

~~(b)~~ (a) earned income disregards as provided in ARM 46.18.120;

~~(c)~~ (b) a one time employment related payment as provided in ARM 46.18.130;

~~(d)~~ (c) medicaid coverage as ~~provided in ARM 46.12.501;~~ follows:

(i) basic Medicaid benefits as specified in ARM 46.12.501 for individuals 21 years of age or older, except that pregnant women are eligible for all services provided in ARM 46.12.501;

(ii) individuals under age 21 and pregnant women are eligible for all Medicaid services provided in ARM 46.12.501.

~~(e)~~ (d) child care assistance ~~as provided in ARM 46.10.506~~ for hours of employment;

~~(f)~~ (e) referral to appropriate community resources;

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

~~(h)~~ (g) medicaid coverage ~~and child care assistance~~ extended beyond the eligibility period as provided in ARM 46.12.3401 ~~and 46.18.501~~.

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

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

(b) child support enforcement assistance;

(c) earned income disregards as provided in ARM 46.18.120;

(d) medicaid coverage as ~~provided in ARM 46.12.501~~ follows:

(i) basic Medicaid benefits as specified in ARM 46.12.501 for individuals 21 years of age or older, except that pregnant women are eligible for all services provided in ARM 46.12.501;

(ii) individuals under age 21 and pregnant women are eligible for all Medicaid services provided in ARM 46.12.501.

(e) referral to appropriate community resources;

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

(g) a one time employment related payment as provided in ~~ARM 46.12.3401 and~~ ARM 46.18.130;

(h) extended medicaid coverage ~~and child care assistance~~ as provided in ARM 46.12.3401 ~~and ARM 46.10.501.~~;

(i) Assistance in finding employment through employment and training activities included in a family investment agreement (FIA) as specified in ARM 46.18.133; and

(j) child care assistance as needed to comply with FIA employment and training activities.

(4) The community services program (CSP) is a time limited program which furnishes cash assistance and other benefits to caretaker relatives and their children whose time limited benefits under the pathways program have expired, provided the caretaker relative performs ~~community services~~ employment and training activities as required in the family investment agreement. The elements of the CSP include:

(a) cash assistance for up to 36 months, which months need not be consecutive, or for more than 36 months up to the maximum period of time allowed by section 408(a)(7)(A) of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(b) ~~enhanced~~ child support enforcement assistance;

(c) earned income disregards as provided in ARM 46.18.120;

(d) medicaid coverage as provided ~~in ARM 46.12.501~~ as follows;

(i) basic Medicaid benefits as specified in ARM 46.12.501 for individuals 21 years of age or older, except that pregnant women are eligible for all services provided in ARM 46.12.501;

(ii) individuals under age 21 and pregnant women are eligible for all Medicaid services provided in ARM 46.12.501.

(e) referral to appropriate community resources;

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

(g) extended medicaid coverage ~~and child care assistance~~ as provided in ARM 46.12.3401 ~~and ARM 46.18.501~~; and

(h) child care assistance.

(5) Participants in the FAIM project in any of the three ~~components~~ programs may also request to receive food stamps in addition to the other benefits enumerated above.

(6) A family is not eligible for assistance in pathways or CSP if the family includes an adult who has received cash assistance in a program funded under the temporary assistance for needy families block grant in any state or states, including tribal programs, for 60 months or more, whether or not the months are consecutive, except as provided in ARM 46.18.108. However, in calculating the number of months that an adult has received such assistance, the department shall not count any month when the person received assistance if during that month:

(a) the person was a minor child and was not the head of a household or married to the head of the household; or

(b) the person was an adult and lived in Indian country or an Alaskan native village where at least 50% of the adults were not employed.

(i) A person living within the borders of an Indian reservation or within the city limits of Hardin, Dodson, or Harlem, Montana, is considered to be living in Indian country.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211, 53-4-601 and 53-4-603, MCA

46.18.108 FAIM FINANCIAL ASSISTANCE: EXEMPTIONS TO TIME ~~LIMITED BENEFITS~~ LIMITS (1) Benefits under the pathways and community services programs are time limited as provided in ARM 46.18.107. An individual ~~caretaker relative is~~ may be exempted from those time limits if the individual:

(a) is under age ~~20~~ 18 and is a full-time elementary or secondary school student ~~attending high school~~ or is completing an equivalency program;

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

(c) is 60 years of age or older;

(d) is ~~needed to~~ providing care for another household member with a disability who requires special care because no other resources are available to provide such care;

(e) is the parent of and caring for a ~~dependent~~ child under age one~~,~~ who resides with the individual; however, in a two-parent household, only one parent at a time may be exempted to provide care for a child under the age of one.

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

(g) cannot participate in activities to help the

individual gain ~~self sufficiency~~ employment because necessary child care assistance is not available~~.~~;

(h) is a victim of domestic violence as defined in ARM 46.18.103, provided that an individual can be exempted due to domestic violence only for a maximum of 6 months per lifetime.

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

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211 and 53-4-601 and 53-4-607, MCA

46.18.112 FAIM FINANCIAL ASSISTANCE: LIVING WITH A SPECIFIED RELATIVE (1) ~~The requirements of ARM 46.10.302(1) through (1)(b) pertaining to the necessity of living with a specified relative apply to persons seeking assistance in the FAIM project.~~ To be eligible for FAIM Financial Assistance a child must be living with an adult related to the child by blood, marriage, or adoption who is within the fifth degree of kinship to the child as set forth in ARM 46.18.103. The child and adult relative must live together in a place of residence maintained as their home.

(a) A child who is visiting a non-custodial parent or is living with a parent who has joint custody but with whom the child resides less than one-half the time is not considered to be living with that parent for purposes of this rule.

(b) If a child spends equal amounts of time with both parents, both parents must be included in the child's assistance unit.

(2) A child may still be considered to be living with a specified relative even though either the child or the caretaker relative is temporarily absent from the home, providing that the temporary absence does not exceed 90 consecutive days and subject to the following conditions:

(a) It must be intended that the absent child or caretaker relative return to the home within 90 days.

(b) The caretaker relative must continue to exercise responsibility for the care of the child despite the temporary absence and must plan to exercise such responsibility over the child when the reason for the absence ends.

(c) The needs of the child or the caretaker relative are included in determining the assistance unit's eligibility for and amount of cash assistance during the temporary absence.

(3) If the child or caretaker relative is temporarily absent from the home to receive medical treatment, the child is still considered to be living with a specified care-taker relative even if the absence exceeds 90 days, and without regard to the conditions set forth in (2)(a) and (b), provided the parent or caretaker relative is otherwise eligible.

(4) If the child is attending a boarding school and is expected to return to the home of the specified caretaker relative at the end of the school term, the child is still

considered to be living with the specified caretaker relative while away at school.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-201, 53-4-211 and 53-4-601, MCA

46.18.113 FAIM FINANCIAL ASSISTANCE: INCLUSION IN ASSISTANCE UNIT (1) Except as provided in (4), the parent or parents of a ~~dependent~~ minor child who live with the child and meet all other non-financial requirements for eligibility, including citizenship, must be included in the assistance unit, regardless of whether the parents are married to each other~~, if the parent or parents meet all other conditions of eligibility~~. The parent's or parents' income and resources will be counted in determining ~~FAIM~~ eligibility and benefit amount and the parent's or parents' needs will be included in the grant.

(2) Except as provided in (4), the stepparent of a minor child who lives with the child and the child's natural or adoptive parent must be included in the assistance unit if the stepparent meets all other ~~conditions of eligibility~~ nonfinancial requirements for eligibility including citizenship. The stepparent's income and resources will be counted in determining ~~FAIM~~ eligibility and benefit amount and the stepparent's needs will be included in the grant.

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

(3) Except as provided in (4), all persons under the age of 18 years or who are under the age of 19 years and are attending high school or an equivalent program full-time who live in the home must be included in the assistance unit, including ~~but not limited to~~ half brothers and sisters and step siblings of the child applying for or receiving assistance~~,~~ if they meet all other ~~conditions of eligibility~~ nonfinancial requirements for eligibility, including citizenship. Their income and resources will be counted in determining ~~FAIM~~ eligibility and benefit amount and their needs will be included in the grant.

(4) The needs, income and resources of persons receiving supplemental security income (SSI) payments under Title XVI of the Federal Social Security Act shall not be included in determining the need and amount of the assistance payment of an AFDC assistance for the period for which SSI benefits are received. The needs, income and resources of persons with respect to whom federal, state or local foster care payments are made or persons with respect to whom federal, state or local adoption assistance payments are made shall not be included in determining need and amount of the assistance payment.

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

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-201, 53-2-613, 53-4-211 and 53-4-601, MCA

46.18.114 FAIM FINANCIAL ASSISTANCE: CHILD SUPPORT ENFORCEMENT COOPERATION REQUIREMENTS (1) ~~In every FAIM and FAIM AFDC related medicaid only case where one or both of the child's parents is absent from the home, the applicant or recipient must comply with the requirements of ARM 46.10.314 pertaining to child support and medical support.~~ Except as provided in (2), in every FAIM financial assistance case where one or both of the minor child's parents is absent from the home, the specified caretaker relative must:

(a) assign child and medical support rights, as defined in ARM 46.18.103, to the department; and

(b) cooperate in establishing paternity and obtaining child or medical support, or both, subject to the exception for good cause provided in (3)(a) through (f).

(2) In cases of single-parent adoption or where the parental rights of the child's parents have been terminated by a court of competent jurisdiction, the applicant or recipient is not required to assign child or medical support rights or cooperate in establishing paternity or obtaining child support.

(3) The requirement of cooperation in establishing paternity and obtaining child support may be waived if good cause is shown. For purposes of this rule, good cause exists if one of the following circumstances exists, and as a result of that circumstance cooperation would be detrimental to the child:

(a) cooperation is likely to result in substantial danger, physical harm, undue harassment or severe mental anguish to the child or the caretaker relative;

(b) the child was conceived as a result of forcible rape or an incestuous relationship;

(c) the caretaker relative is planning to relinquish or has relinquished the child to a public or licensed social agency for the purpose of adoption;

(d) legal proceedings for the adoption of the child are pending before a court of competent jurisdiction;

(e) the parental rights to the child have been terminated by a court of competent jurisdiction; or

(f) any other situation which makes cooperation with child support requirements detrimental to the child.

(4) A specified caretaker relative who claims to have good cause for refusing to cooperate must:

(a) provide evidence to substantiate the claim; or

(b) provide sufficient information to permit an investigation to determine whether good cause exists.

(5) Assistance will not be denied, delayed, or discontinued pending a determination of good cause for refusal to cooperate if the specified caretaker relative has complied with the requirements of (4). However, if it is ultimately determined that good cause does not exist and the recipient continues to refuse to cooperate, the department may recover

amounts paid pending the determination of good cause.

(6) In cases where good cause has been found, a review must be held at each redetermination of eligibility to determine whether there has been any change in circumstances such that good cause no longer exists.

(7) The county office of public assistance will promptly notify the child support enforcement division of all cases in which it has been determined that there is good cause for refusal to cooperate in establishing paternity or obtaining child or medical support.

(8) A pregnant woman is required before the birth of her child to provide information about the father of her unborn child for the purpose of establishing paternity and obtaining child and medical support after the child's birth.

(9) When a parent or parents have been determined ineligible for assistance due to failure to assign child or medical support rights or cooperate in establishing paternity or in obtaining child or medical support, the children in the household will nevertheless be eligible for assistance.

(10) When a parent or parents refuse to assign child or medical support rights or to cooperate in establishing paternity or obtaining child or medical support, the children in the household as well as the parents will be ineligible for assistance.

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

46.18.118 FAIM FINANCIAL ASSISTANCE: ~~PROPERTY~~ RESOURCES ~~(1) For purposes of this rule, the definitions in ARM 46.10.406 apply.~~ (1) This rule governs the treatment of resources for purposes of all programs and types of benefits in the FAIM Project with the exception of food stamp benefits. The treatment of resources for food stamp purposes shall be governed by ARM 46.18.401, et seq.

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

(2) In determining eligibility for FAIM financial assistance, the department will count the equity value as defined in ARM 46.18.103 of all resources available to any member of the filing unit, unless there is a specific provision for the exclusion of the resource elsewhere in this rule. A resource is considered available both when actually available

and when the applicant or participant has a legal interest in the resource and the legal ability to make it available for support and maintenance.

(3) If the total value of the filing unit's countable resources exceeds $3,000, the filing unit is ineligible for assistance. Eligibility is determined on the basis of the countable resources as of the date of application and the first moment of the first day of each month for which assistance is being determined. If the filing unit's countable resources exceed the $3,000 resource limit on the first day of the month, the filing unit is ineligible for that entire month, even if the value of the filing unit's countable resources drops below $3,000 later in the month.

~~(3)~~(4) The following resources are not counted ~~as currently available resources:~~ in determining eligibility:

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

(a) the filing unit's home, regardless of its value;

(b) household goods, clothing, or other essential personal effects, equipment, or other essential day to day items of limited value;

(c) tools and equipment essential for the self-employment of a member of the filing unit;

(d) one burial space for each member of the filing unit and not more than $1,500 designated under a funeral agreement for burial arrangements for each member;

(e) real property the filing unit is making a good faith effort to sell, but only for 6 months and only if they agree to use the proceeds from the sale to repay the department for any benefits received; the remainder is considered a resource in the month received;

(f) agent orange settlement payments;

(g) radiation exposure compensation payments;

~~(b)~~(h) vehicles as follows:

~~(i) all income-producing vehicles; and~~

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

(ii) all income-producing vehicles;

(i) Maine Indian Claims Settlement Act of 1980 payments;

~~(c)~~(j) the cash value of life insurance policies;

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

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

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

~~(g)~~ (n) student financial assistance for post-secondary education made for attendance costs under Title IV of the Higher Education Act or bureau of Indian affairs student assistance programs as per the Higher Education Technical Amendment Act of 1987. The exclusion lasts only as long as the recipient of assistance is continuously attending an institution of higher education, excluding regular school breaks such as semester breaks or summer vacations; and

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

(5) State and federal income tax refunds are a countable resource in the month received.

(6) If the needs of a member of the assistance unit are removed from the grant due to a sanction or disqualification, the resources of that member will nevertheless be counted in determining the assistance unit's eligibility and grant amount.

(7) If an individual would be required by ARM 46.18.113 to be included in the assistance unit except that the individual is not a U.S. citizen or qualified alien, the resources of that individual will be counted in determining the assistance unit's eligibility and grant amount even though the individual's needs are not included in the grant.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211, 53-4-601 and 53-4-606, MCA

46.18.119 FAIM FINANCIAL ASSISTANCE: TREATMENT OF INCOME ~~(1) The definitions in ARM 46.10.505(1), (2), (2)(a), (4), (5), (6), (7) and ARM 46.18.103 apply to this rule.~~

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

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

(1) This rule governs the treatment of income for purposes of all programs and types of benefits in the FAIM project with the exception of food stamp benefits. The treatment of income for food stamp purposes shall be governed by ARM 46.18.401 et seq.

(2) All available income of any member of the filing unit is counted in determining eligibility and benefit amount, unless a specific provision elsewhere in this chapter provides that the income will be excluded, disregarded, or otherwise not counted. Income is considered available both when actually available and when the applicant or participant has a legal interest in it and the legal ability to make the income available for support and maintenance.

(3) Eligibility and grant amount is determined for each benefit month. The assistance unit's future eligibility with regard to income and grant amount is determined by prospectively evaluating the income expected to be received by members of the filing unit in the month of application and future months. The department estimates total income to be received by the filing

unit in the future based on their current circumstances and available information about changes in their circumstances reasonably anticipated to occur in the future.

(4) Income averaging may be used to determine monthly income if:

(a) income is paid during 1 month but is intended to cover a period of time which is greater than 1 month. The monthly amount would be computed by dividing the payment amount by the number of months the payment is intended to cover. An example would be an employee who receives a paycheck during only 9 months of the year but whose salary is considered to be for a 12 month period; or

(b) income fluctuates significantly from month to month. An example would be an employee paid an hourly wage rather than a set salary whose hours of work vary from month to month.

(5) In the case of earned income from self-employment, allowable business expenses are subtracted from gross receipts to arrive at gross income.

(a) Business expenses means costs directly related to the production of goods or the furnishing of services and without which the goods could not be produced or the services furnished. Allowable business expenses include the costs of materials, labor, tools, rental equipment, supplies, and utilities.

(b) Allowable business expenses do not include depreciation, entertainment expenses, personal work related expenses such as clothing or transportation to the site of employment, purchase of capital equipment, or payments on principal of loans for capital assets or durable goods.

(6) Income tax refunds are not treated as income but are considered a countable resource in the month received.

(7) If the needs of a member of the assistance unit are removed from the grant due to a sanction or disqualification, the income of that member will nevertheless be counted in determining the assistance unit's eligibility and grant amount.

(8) If an individual would be required by ARM 46.18.113 to be included in the assistance unit except that the individual is not a U.S. citizen or qualified alien, the income of that individual will be counted in determining the assistance unit's eligibility and grant amount even though the individual's needs are not included in the grant.

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

46.18.120 FAIM FINANCIAL ASSISTANCE: INCOME DISREGARDS AND INCOME DEEMING (1) This rule governs income disregards and deeming for purposes of FAIM financial assistance with the exception of food stamp benefits, which are governed by ARM 46.18.401 et seq.

~~(1)~~(2) When testing net monthly income and determining the amount of the assistance payment, the following amounts are subtracted in the order listed from the earned income of each

~~member of~~ wage earner in the assistance unit after exclusions provided in ARM 46.18.126:

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

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

(i) in the case of an assistance unit receiving benefits in the job supplement program; and

(ii) in the case of an assistance unit receiving benefits in the pathways program only if:

(A) the assistance unit's net monthly income is less than the NMI standard without applying the 25% disregard, but after the $200 work expense disregard, the dependent care disregard, and the obligated support disregard have been deducted;

(B) the assistance unit's gross monthly income is less than the GMI standard; or

(C) the assistance unit has received a cash assistance grant in one of the 4 months immediately preceding the benefit month.

(iii) Participants in the CSP do not receive the 25% disregard.

(c) in the pathways, job supplement and community services programs, ~~payments for the~~ the cost of care ~~of~~ for each working member's ~~dependent~~ minor child or incapacitated adult ~~living in the same household and receiving assistance under ARM Title 46~~ for hours when the member is working or in training, not to exceed $200 per month per child or incapacitated adult~~.~~, but only if the minor child or incapacitated adult lives in the same household and is either a member of the assistance unit or would be a member of the assistance unit except for the fact that the minor child or incapacitated adult is receiving supplemental security income benefits.

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

~~(2)~~(3) When testing net monthly income and determining the amount of the assistance payment, the amount of any child support payments made under court order by any member of the assistance unit to any individual not living in the household is subtracted from the income of the household, whether earned or unearned or both.

~~(3)~~(4) Subject to the disregards in ~~(4)~~(5)(a) through (d),

income of the following individuals must be deemed when determining eligibility:

(a) For qualified aliens, the income of the alien's sponsor;

(b) For a pregnant woman who has no other eligible child in the home, in the last trimester of her pregnancy, the income of her spouse or of the father of her unborn child; and

(c) For a caretaker relative whose needs are included in the assistance unit's grant and who is not the natural or adoptive parent of the dependent child, the income of the caretaker relative's spouse.

~~(4)~~(5) The following amounts shall be subtracted from the income of the individuals specified in ~~(3)~~(4)(a) through (c) whose income is deemed:

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

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

(c) ~~disregard~~ actual verified amounts paid by the individual to others not living in the household who are claimed by the individual as dependents for federal income tax purposes; and

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

~~(5)~~(6) Income of the individuals specified in ~~(3)~~(4)(a) through (c), less the disregards specified in ~~(4)~~(5)(a) through (d), must be counted as unearned income to the assistance unit whether or not such income is actually contributed to any member of the assistance unit.

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

46.18.121 FAIM FINANCIAL ASSISTANCE; LIMITS ON DISREGARDS (1) The ~~earned~~ income disregards in ARM 46.18.120 are applicable without limit on the number of months ~~that~~ they can be applied.

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

46.18.122 FAIM FINANCIAL ASSISTANCE; ~~AFDC~~ ASSISTANCE STANDARDS; TABLES; METHODS OF COMPUTING AMOUNT OF ~~CASH ASSISTANCE~~ MONTHLY BENEFIT PAYMENT (1) Income ~~S~~standards ~~of assistance~~ as set forth in this rule are used to determine whether need exists with respect to income for any person who applies for or receives ~~aid to families with dependent children (AFDC)~~ FAIM financial assistance ~~in the FAIM project~~ but not

food stamp benefits and to determine the benefit amount ~~of assistance~~ the ~~applicant or recipient~~ assistance unit will receive if eligible. Three sets of assistance standards are used which are as follows:

(a) The gross monthly income (GMI) standard sets the level of gross monthly income for each size assistance unit which cannot be exceeded if the assistance unit is to be eligible for ~~AFDC~~ FAIM financial assistance.

(b) The net monthly income (NMI) standard, also known as the need standard sets the level of net monthly income for each size assistance unit which cannot be exceeded if the assistance unit is to be eligible ~~for AFDC~~. It represents the minimum dollar amount ~~the assistance unit requires~~ required for basic needs such as food, clothing, shelter, personal care items, and household supplies for a household of the assistance unit's size.

(c) The benefit standard~~, also known as the maximum payment amount,~~ sets the level of net countable income which cannot be exceeded if the assistance unit is to be eligible for ~~AFDC~~ assistance. It is also used to determine the amount of the ~~applicant or recipient's~~ monthly cash ~~assistance~~ payment in the pathways and community services programs and is based on the size of the assistance unit. This amount is prorated for the month of application if eligibility is for less than a full month. If this amount is less than $10, no payment check will be issued.

(2) The ~~assistance~~ income standards vary depending on the number of persons in the assistance unit, whether the assistance unit has a shelter obligation, and whether the assistance unit ~~shares its place of residence with persons who are not members of the filing unit and whose income and resources are not considered in determining the assistance unit's eligibility and amount of assistance~~ includes adults.

(a) An assistance unit is considered to have a shelter obligation if a member of the filing unit is obligated to meet any portion of the expenses for the assistance unit's place of residence, such as rent, a house payment, mortgage payment, real property taxes or homeowner's insurance, mobile home lot rent or utilities such as heating fuel, water or lights. An assistance unit receiving a government rent or housing subsidy is considered to have a shelter obligation even if the assistance unit's share of the rent or housing payment is zero.

(3) The ~~GMI standards, NMI standards and benefit~~ income standards used to determine an assistance unit's eligibility and amount of cash assistance are determined as follows:

(a) The standards designated "with shelter obligation" are used if the assistance unit has a shelter obligation as defined in (2)(a) ~~but does not share its place of residence with persons who are not members of the filing unit and whose income and resources are not considered in determining eligibility and the amount of the assistance unit's cash assistance~~.

~~(b) The standards designated "in shared shelter" are used~~

~~if the assistance unit has a shelter obligation as defined in (2)(a) and shares its place of residence with a person or persons who are not members of the filing unit and whose income and resources are not considered in determining eligibility and the amount of the assistance unit's cash assistance, except in the following cases:~~

~~(i) a person with whom the assistance unit shares a place of residence receives supplemental security income;~~

~~(ii) the assistance unit receives a government rent or housing subsidy;~~

~~(iii) any of the other persons with whom the assistance unit shares a place of residence also receives AFDC;~~

~~(iv) the person with whom the assistance unit shares a place of residence is the property owner and there is a bona fide landlord tenant relationship between the assistance unit and the person or persons with whom it shares a place of residence. A bona fide landlord tenant relationship means there is a written agreement between a landlord who owns property and a tenant in which the landlord gives the tenant temporary possession and use of real property for a specified sum of money;~~

~~(v) a member of the assistance unit provides necessary in-home medical care to a relative who is 60 years of age or older;~~

~~(vi) a member of the household who is not included in the assistance unit provides child care which enables a member of the assistance unit to attend school or job training or maintain employment; or~~

~~(vii) any of the persons with whom the assistance unit shares its place of residence receives food stamps as a separate household.~~

~~(c)~~ (b) The standards designated "~~with~~ without shelter obligation" are used if the assistance unit ~~has~~ does not have a shelter obligation as defined in (2)(a).

(4) The assistance unit's gross monthly income as defined in ARM ~~46.10.505~~ 46.18.103 is compared to the applicable GMI standard, and after specified disregards, to the NMI standard. If the assistance unit's gross monthly income exceeds the GMI standard or their net monthly income as defined in ARM 46.10.505~~,~~ exceeds the NMI standard or the benefit standard, the assistance unit is ineligible for assistance. Monthly income is compared to the full standard even if the eligibility is being determined for only part of the month.

(a) Eligibility for assistance and the amount of ~~cash assistance for~~ the monthly benefit payment which ~~an~~ a pathways or CSP assistance unit will receive ~~is eligible~~ is determined prospectively, that is, based on the department's best estimate of income and other circumstances which will exist in the benefit month.

(b) When comparing income to the income standards, income anticipated to be received in the benefit month is used.

(5) The GMI standards, NMI standards and benefits standards used to determine eligibility and amount of cash

assistance are ~~the tables of GMI standards, NMI standards and maximum payment amounts contained in ARM 46.10.403.~~ as follows:

(a) Gross monthly income standards to be used when adults are included in the assistance unit are compared with the assistance unit's gross monthly income as defined in ARM 46.18.103.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

Number of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ 640	$ 231
2	862	379
3	1,086	522
4	1,308	664
5	1,532	794
6	1,754	919
7	1,976	1,043
8	2,200	1,158
9	2,309	1,267
10	2,414	1,375
11	2,509	1,467
12	2,601	1,561
13	2,686	1,645
14	2,764	1,722
15	2,842	1,800
16	2,908	1,867

(b) Gross monthly income standards to be used for child only assistance units are compared with the assistance unit's gross monthly income as defined in ARM 46.18.103.

GROSS MONTHLY INCOME STANDARDS TO BE USED FOR CHILD ONLY ASSISTANCE UNITS

NUMBER OF PERSONS IN HOUSEHOLD	WITH SHELTER OBLIGATION PER MONTH
1	$ 231
2	463
3	696
4	929
5	1,162
6	1,393
7	1,632
8	1,861
9	1,974
10	2,081
11	2,187

12	2,287
13	2,388
14	2,481
15	2,575
16	2,658

(c) Net monthly income standards to be used when adults are included in the assistance unit are compared with the assistance unit's net monthly income as defined in ARM 46.18.103.

NET MONTHLY INCOME STANDARDS WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

NUMBER OF PERSONS IN HOUSEHOLD	WITH SHELTER OBLIGATION PER MONTH	WITHOUT SHELTER OBLIGATION PER MONTH
1	$ 346	$ 125
2	466	205
3	587	282
4	707	359
5	828	429
6	948	497
7	1,068	564
8	1,189	626
9	1,248	685
10	1,305	743
11	1,356	793
12	1,406	844
13	1,452	889
14	1,494	931
15	1,536	973
16	1,572	1,009

(d) Net monthly income standards to be used when no adults are included in the assistance unit are compared with the assistance unit's net monthly income as defined in ARM 46.18.103.

NET MONTHLY INCOME STANDARDS TO BE USED FOR CHILD ONLY ASSISTANCE UNITS

NUMBER OF CHILDREN IN HOUSEHOLD	PER MONTH
1	$ 125
2	250
3	376
4	502
5	628

6	753
7	882
8	1,006
9	1,067
10	1,125
11	1,182
12	1,236
13	1,291
14	1,341
15	1,392
16	1,437

(e) Benefit income standards to be used when adults are included in the assistance unit, are compared with the assistance unit's net countable income as defined in ARM 46.18.103.

BENEFITS STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

NUMBER OF PERSONS IN HOUSEHOLD	WITH SHELTER OBLIGATION PER MONTH	WITHOUT SHELTER OBLIGATION PER MONTH
1	$ 272	$ 98
2	366	161
3	461	221
4	555	282
5	650	337
6	744	390
7	838	443
8	933	491
9	980	538
10	1,024	583
11	1,064	623
12	1,104	663
13	1,140	698
14	1,173	731
15	1,206	764
16	1,234	792

(f) Benefit income standards to be used when no adults are included in the assistance unit, are compared to the assistance unit's net countable monthly income as defined in ARM 46.18.103.

BENEFIT STANDARDS TO BE USE FOR CHILD ONLY ASSISTANCE UNITS

NUMBER OF PERSONS IN HOUSEHOLD	PER MONTH
1	$ 98

2	196
3	295
4	394
5	493
6	591
7	692
8	790
9	838
10	883
11	928
12	970
13	1,013
14	1,053
15	1,093
16	1,128

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211, 53-4-241 AND 53-4-601, MCA

46.18.124 FAIM FINANCIAL ASSISTANCE: LUMP SUM PAYMENTS (1) This rule governs lump sum payments for purposes of FAIM financial assistance but not food stamp benefits, which are governed by ARM 46.18.401 et seq.

~~(1)~~(2) Lump sum payments are payments of a non-recurring sum of earned or unearned income.

~~(2)~~(3) The assistance unit may lose eligibility for one or more months if, when the lump sum payment is added to all other countable resources, the total exceeds the $3000 resource limitation. To determine how long the assistance unit will be ineligible, if at all, the amount of the payment is divided by $3000. If the figure obtained by such division is one or more, the assistance unit will be ineligible for that many months.

~~(3)~~(4) The period of ineligibility, if any, begins the month following the receipt of the lump sum payment. After the period of ineligibility has ended, any part of the payment remaining and available as defined in ARM 46.18.119 is considered a resource ~~in the first month~~ following the period of ineligibility if the assistance unit reapplies for assistance.

~~(4)~~(5) If receipt of a non-recurring lump sum in excess of the resource limitation is reported or discovered after the month of receipt, the ineligibility period is calculated as stated in (2) above. As provided in ~~ARM 46.10.108~~ [RULE III], an overpayment of benefits may exist.

~~(5)~~(6) The period of ineligibility will be recalculated with respect to the remaining months if:

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

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

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

46.18.125 FAIM FINANCIAL ASSISTANCE: EXCLUDED EARNED INCOME (1) This rule governs excluded earned income for purposes of FAIM financial assistance but not food stamp benefits, which are governed by ARM 46.18.401 et seq.

~~(1)~~(2) In testing gross and net monthly income and in determining the monthly grant, the following earned income is to be excluded:

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

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

(c) payments to individuals in the volunteers in service to America program (VISTA) pursuant to Title I of P.L. 93-113, section 404(g); and

(d) all work-study earnings or payments received by a post-secondary student, regardless of the payment source.

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

46.18.126 FAIM FINANCIAL ASSISTANCE: EXCLUDED UNEARNED INCOME (1) This rule governs excluded unearned income for purposes of FAIM financial assistance but not food stamp benefits, which are governed by ARM 46.128.401 et seq.

~~(1)~~(2) In testing gross monthly income and net monthly income and in determining grant amount, the following unearned income ~~specified in ARM 46.10.506(1)(a) through (1)(r) and the following~~ shall be excluded:

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

(b) energy assistance payments based on financial need;

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

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

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

(f) the following income of enrolled tribal members:

(i) judgment claims payments;

(ii) judgments derived from submarginal lands;

(iii) per capita payments;

(iv) interest earned on excluded funds; and

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

(g) complementary assistance from other agencies or organizations which provides or pays for goods or services not intended to be covered by pathways or CSP cash assistance;

(i) The cash assistance grant is intended to provide assistance for food, household supplies, personal care items, clothing, and shelter, including heating costs.

(h) undergraduate grants, loans, or scholarships for purposes directly related to the individual's attendance at an institution of higher education or postsecondary training;

(i) Veterans Administration educational payments are totally excluded if the recipient of the payment is attending an institution of higher education or postsecondary training;

(j) the value of a food stamp allotment or food commodities donated by the U.S. department of agriculture;

(k) any benefits received under Title VII of the Nutrition Program for the Elderly of the Older Americans Act of 1965 as amended;

(l) the value of supplemental food assistance received under the Child Nutrition Act of 1966 and under the National School Lunch Act, P.L. 92-433 and 93-150;

(m) payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(n) vendor payments or other financial assistance provided to the assistance unit by persons not included in the assistance unit where no income is contributed directly to members of the assistance unit;

(o) interest paid on escrow accounts established under the HUD Family Self-Sufficiency (FSS) Program;

(p) payments made under the Maine Indian Claims Settlement Act of 1980;

(q) radiation exposure claims payments;

(r) the Alaska Native Claims Settlement Act, P.L. 92-203;

(s) volunteers in service to America program (VISTA) pursuant to Title I of P.L. 93-113, section 404(g);

(t) reimbursement made to a member of the assistance unit, including repayment of loans and repayment of monies spent;

(u) supportive services payments to or for an assistance unit who is participating in WoRC, AWEP, or any other FAIM employment and training program;

(v) one time employment related payments;

(w) supplemental security income (SSI) payments received by a person who lives with the assistance unit, except that any portion of the SSI payment which is directly contributed to the assistance unit is not excluded;

(x) HUD Section 8 utility payments, regardless of whether the payee is a member of the assistance unit or someone else is the payee; and

(y) money received pursuant to a valid loan as defined in ARM 46.18.103;

(z) emergency assistance payments provided under [Rules XII and XIII].

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

46.18.129 FAIM FINANCIAL ASSISTANCE: RESTRICTIONS ON ASSISTANCE PAYMENTS

(1) Pathways, and community services program monthly benefit ~~assistance~~ payments and one time employment-related payments are made directly to eligible persons for their own ~~unrestricted~~ use except in cases of protective payees.

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

(3) and (4) remain the same.

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

46.18.130 FAIM FINANCIAL ASSISTANCE: ~~ONETIME~~ ONE TIME EMPLOYMENT-RELATED PAYMENT (1) A one time employment-related payment may be provided to participants in the job supplement and pathways program. One time means that the payment may be received once in the ~~individual~~ participant's life time while participating in the pathways program and once while participating in the job supplement program. The payment may be made at the department's discretion for a variety of employment related expenses, including:

(a) transportation, including vehicle repairs, down payment on a vehicle provided the individual will have sufficient funds to make the monthly payments in the future, tires, insurance, driver's license fee, gas, etc.;

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

(c) tools and equipment;

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

(e) up-front costs for employment such as agency fees, testing fees or child care for the first 2 months of employment;

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

(g) relocation expenses to permit a participant to accept verified employment in another county or state.

(2) A one time employment related payment will be provided only if:

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

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

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

(d) the pathways participant is losing eligibility due to increased earnings from employment and requests the payment within 10 calendar days after the last day of the last month of eligibility.

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

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

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

(a) The period of ineligibility following the payment will not count toward the ~~pathways~~ time limits described in ARM 46.18.107.

(b) The period of ineligibility begins:

(i) for job supplement program participants, the calendar month following the month of issuance of the payment;

(ii) for pathways participants, the month following the month in which the last cash assistance payment is received.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211, 53-4-601 and 53-4-603, MCA

46.18.133 FAIM FINANCIAL ASSISTANCE: FAMILY INVESTMENT AGREEMENT (1) The family investment agreement (FIA) is a negotiated document listing eligibility requirements, employment and training ~~required~~ activities, and mutual obligations of the state and the participant regarding the course of action leading to the ~~family's self sufficiency~~ individual's employment and ~~providing~~ the number of hours and the time limits within which such activities and obligations shall be performed.

(a) All participants in the pathways and community services programs are required to negotiate and comply with their FIA as a condition of eligibility ~~for financial assistance~~ in the pathways and community services programs. A participant who is exempt from time limits as specified in ARM 46.18.106 must enter into a FIA. The FIA activities for a participant who is exempt from time limits will take into consideration any limitations which are the basis for the exemption.

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

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

(c) Failure to perform the activities required in the FIA on a timely basis will result in sanctions in accordance with ARM ~~46.18.13~~ 46.18.134.

(2) Because entering into a FIA is a condition of eligibility for pathways and CSP, failure to enter into a FIA initially or to renegotiate and/or sign a new FIA when requested

will result in the denial of or termination of assistance for the entire assistance unit.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211, 53-4-601, 53-4-606 and 53-4-608, MCA.

46.18.134 FAIM FINANCIAL ASSISTANCE: SANCTIONS (1) If any member of the assistance unit fails without good cause as defined in [Rule IV] to comply with a ~~pathways or community services program~~ requirement~~, including but not limited to any requirement under a~~ of the individual's family investment agreement, the ~~assistance unit~~ participant will be sanctioned by means of the reduction of the monthly FAIM assistance payment by an amount equal to the portion of the payment allocated to the needs of that member and the loss of medicaid coverage for the participant, for a period of time as specified in (2) and (3).

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

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

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

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

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

(2) The duration of the penalty period is as follows:

(a) for the first sanction, a minimum of 1 month or until the month following the month in which the participant complies and renegotiates the participant's family investment agreement, whichever is longer;

(b) for the second sanction, a minimum of 3 months or until the month following the month in which the participant complies and renegotiates the participant's family investment agreement, whichever is longer;

(c) for the third sanction, a minimum of 6 months or until the month following the month in which the participant complies and renegotiates the participant's family investment agreement, whichever is longer;

(d) for the fourth and any subsequent sanctions, a minimum of 12 months or until the month following the month in which the participant complies and renegotiates the participant's family investment agreement, whichever is longer.

(3) During the ~~sanction~~ penalty period, ~~the department, for the purposes of calculating a household's grant, will not take into account the needs of the member or members of the~~

~~household who failed to comply with FIA requirements or other program requirements, even if that person is a minor parent, a dependent child or the only dependent child in the assistance unit. However,~~ the income and resources of ~~the non-complying member or members~~ a sanctioned individual will continue to be considered in determining eligibility and grant amount ~~during the sanction period~~ for the remaining members of the assistance unit.

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

~~(5)~~(4) For pathways and community services program participants, the ~~sanction~~ penalty period will count toward the time limits provided in ARM 46.18.107.

~~(6)~~(5) In addition to the loss of financial assistance for the needs of the sanctioned individual as specified in (1) through (3) above, the sanctioned individual will also ~~not be covered by~~ lose medicaid coverage during the ~~sanction~~ penalty period set forth in (2). ~~if the failure to comply involved any of the following requirements:~~

~~(a) child support enforcement as specified in ARM 46.18.114;~~

~~(b) third party liability requirements including health plan enrollments as specified in ARM 46.12.3215; or~~

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

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

(6) In addition to the loss of cash and medical assistance, the food stamp allotment for the sanctioned individual's household will be reduced by 25%.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211, 53-4-601, 53-4-608, MCA.

3. The rule 46.10.101 as proposed to be repealed is on page 46-761 of the Administrative Rules of Montana.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-205, 53-2-201, 53-2-206, 53-4-211 and 53-4-215, MCA

The rules 46.10.102, 46.10.103, 46.10.104, 46.10.105,

46.10.106 and 46.10.107 as proposed to be repealed are on pages 46-762 through 46-764 of the Administrative Rules of Montana.

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

The rules 46.10.108 and 46.10.109 as proposed to be repealed are on pages 46-764 and 46-765 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211 and 53-4-231, MCA

The rule 46.10.110, as proposed to be repealed is on page 46-766 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-4-211 and 53-4-703, MCA

The rules 46.10.201, 46.10.202, 46.10.203, 46.10.204, 46.10.205, 46.10.206, 46.10.207, 46.10.208 and 46.10.210 as proposed to be repealed are on pages 46-771 through 46-776 of the Administrative Rules of Montana.

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

The rule 46.10.301, as proposed to be repealed is on page 46-781 of the Administrative Rules of Montana.

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

The rules 46.10.305, 46.10.306, 46.10.315, 46.10.316, 46.10.317, 46.10.318, 46.10.319, 46.10.320 as proposed to be repealed are on pages 46-785 through 46-786 of the Administrative Rules of Montana.

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

The rule 46.10.302 as proposed to be repealed is on page 46-781 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-201 and 53-4-212, MCA
IMP: Sec. 53-4-211, 53-4-201 and 53-4-231, MCA

The rule 46.10.304A as proposed to be repealed is on pages 46-783 through 46-785 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-201 and 53-4-231, MCA

The rule 46.10.314 as proposed to be repealed is on pages 46-787 through 46-789 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-211, 53.4.212 and 53-6-113, MCA
IMP: Sec. 53-4-211 and 53-4-231, MCA

The rule 46.10.321 as proposed to be repealed is on pages 46-794 and 46-795 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-6-113, MCA
IMP: Sec. 53-4-211, 53-4-231 and 53-6-131, MCA

The rule 46.10.324 as proposed to be repealed is on pages 46-795 and 46-796 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-231, 53-4-241 and 53-4-242, MCA

The rule 46.10.401 as proposed to be repealed is on page 46-797 of the Administrative Rules of Montana.

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

The rules 46.10.405 and 46.10.406 as proposed to be repealed are on pages 46-800 and 46-801 of the Administrative Rules of Montana.

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

The rules 46.10.402 and 46.10.403 as proposed to be repealed are on pages 46-797 through 46-799 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-241, MCA
IMP: Sec. 53-4-211 and 53-4-241, MCA

The rule 46.10.411 as proposed to be repealed is on page 46-802 of the Administrative Rules of Montana.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-4-211 and 53-4-241, MCA

The rule 46.10.505 as proposed to be repealed is on pages 46-811 and 46-812 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-241, MCA
IMP: Sec. 53-4-211, 53-4-231, 53-4-241 and 53-4-242, MCA

The rule 46.10.506 as proposed to be repealed is on pages 46-812 and 46-813 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-231, 53-4-241 and 53-4-242, MCA

The rules 46.10.510, 46.10.511, 46.10.512, 46.10.513, and 46.10.514 as proposed to be repealed are on pages 46-814 through 46-817 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-231, 53-4-241 and 53-4-242, MCA

The rule 46.10.508 as proposed to be repealed is on pages 46-813 and 46-814 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-231, 53-4-241 and 53-4-242, MCA

The rules 46.10.701 and 46.10.702 as proposed to be repealed are on pages 46-831 and 46-832 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-705 and 53-4-720, MCA

The rule 46.10.704 as proposed to be repealed is on page 46-833 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-706 and 53-4-707, 53-4-708, 53-4-715, 53-4-717 and 53-4-720, MCA

The rule 46.10.705 as proposed to be repealed is on pages 46-833 and 46-834 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-706 and 53-4-707, 53-4-708, 53-4-715, and 53-4-720, MCA

The rule 46.10.707 as proposed to be repealed is on page 46-834 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-706 and 53-4-707, 53-4-708, 53-4-715, and 53-4-720, MCA

The rule 46.10.708 as proposed to be repealed is on page 46-835 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-241, 53-4-703 and 53-4-720, MCA

The rule 46.10.710 as proposed to be repealed is on page 46-836 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212, 53-4-719 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703 53-4-716, 53-4-720 and 53-6-131, MCA

The rules 46.10.711 and 46.10.714 as proposed to be repealed are on pages 46-836 and 46-837 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211 and 53-4-215, MCA

The rule 46.10.801 as proposed to be repealed is on page 46-845 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-701 and 53-4-703 and 53-4-705, MCA

The rule 46.10.803 as proposed to be repealed is on pages 46-845 through 848 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-702, 53-4-703 and 53-4-704, 53-4-705, 53-4-706, 53-4-707, 53-4-708, 53-4-715, 53-4-716, 53-4-717 and 53-4-718, MCA

The rule 46.10.805 as proposed to be repealed is on pages 46-849 through 46-851 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-706, 53-4-707, 53-4-708, 53-4-715, 53-4-717 and 53-4-720, MCA

The rule 46.10.807 as proposed to be repealed is on page 46-853 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-705, 53-4-715 and 53-4-720, MCA

The rule 46.10.817 as proposed to be repealed is on page 46-865 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-705, 53-4-715 and 53-4-720, MCA

The rule 46.10.821 as proposed to be repealed is on page 46-868 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-705, 53-4-715 and 53-4-720, MCA

The rule 46.10.808 as proposed to be repealed is on page 46-854 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-703 and 53-4-705, MCA

The rule 46.10.809 as proposed to be repealed is on page 46-855 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-705, 53-4-708, 53-4-715 and 53-4-720, MCA

The rule 46.10.813 as proposed to be repealed is on page 46-861 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-705, 53-4-708, 53-4-715 and 53-4-720, MCA

The rule 46.10.819 as proposed to be repealed is on page 46-867 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-705, 53-4-708, 53-4-715 and 53-4-720, MCA

The rule 46.10.810 as proposed to be repealed is on page 46-856 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-4-701 and 53-4-716, MCA

The rule 46.10.811 as proposed to be repealed is on pages 46-857 through 46-859 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-705, 53-4-706, 53-4-707 and 53-4-720, MCA

The rule 46.10.815 as proposed to be repealed is on page 46-863 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-706, 53-4-715 and 53-4-720, MCA

The rule 46.10.823 as proposed to be repealed is on pages 46-869 and 46-870 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 53-4-703, 53-4-719 and 53-4-720, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-705, 53-4-706, 53-4-708 and 53-4-720, MCA

The rule 46.10.825 as proposed to be repealed is on pages 46-873 and 46-874 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-715, 53-4-716 and 53-4-720, MCA

The rule 46.10.827 as proposed to be repealed is on page 46-877 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-716 and 53-4-720, MCA

The rule 46.10.829 as proposed to be repealed is on page 46-879 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-715, 53-4-718 and 53-4-720, MCA

The rule 46.10.831 as proposed to be repealed is on page 46-881 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-705, 53-4-708, 53-4-715 and 53-4-720, MCA

The rule 46.10.833 as proposed to be repealed is on page 46-883 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-715 and 53-4-720, MCA

The rule 46.10.835 as proposed to be repealed is on page 46-885 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-715 and 53-4-720, MCA

The rule 46.10.837 as proposed to be repealed is on page 46-887 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-706, 53-4-707, 53-4-717 and 53-4-720, MCA

The rule 46.10.839 as proposed to be repealed is on page 46-889 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-706, 53-4-707 and 53-4-717, MCA

The rule 46.10.841 as proposed to be repealed is on pages 46-891 and 46-892 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, and 53-4-720, MCA

The rule 46.10.843 as proposed to be repealed is on page 46-893 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, and 53-4-720, MCA

The rule 46.10.847 as proposed to be repealed is on page 46-897 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212 and 53-4-719, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-705 and 53-4-720, MCA

4. Families Achieving Independence in Montana (FAIM) is a program which provides financial and other types of assistance to low-income families to help them become self-supporting. Benefits available in FAIM Financial Assistance include a monthly cash grant, medical coverage, dependent care assistance, one time employment-related payments, and employment counseling and training to assist the family in becoming self-supporting. FAIM participants may also receive food stamps.

FAIM is administered by the Department of Public Health and Human Services (the Department) under federal waivers granted pursuant to section 1115 of the Social Security Act, 42 USC 1315. These waivers of certain provisions of the federal statutes governing Medicaid, Food Stamps, and Temporary Assistance for Needy Families (TANF) enable the Department to use new approaches to help families become self-supporting.

FAIM Financial Assistance consists of three separate programs, namely the Pathways program, the community services program (CSP), and the Job Supplement program (JSP). The JSP provides an alternative to cash assistance by offering eligible families dependent care assistance, medical assistance, and one time employment-related payments. In the Pathways program, families can receive monthly cash payments, medical assistance, and nonfinancial assistance such as employment counseling and training for a total of 24 months. Families who still need cash assistance after 24 months in Pathways may continue to receive cash benefits in the CSP for up to 36 months if adults in the household perform community service work in accordance with the Community Operating Plan for the county where the family resides.

The proposed changes to the FAIM rules are necessary to implement major changes brought about by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), PL 104-193, and by amendments to Title 53, Chapters 2 through 6, MCA, as enacted by the 55th Montana Legislature in 1997. PRWORA eliminated the longstanding Aid to Families with dependent Children (AFDC) program and replaced it with block grant funding for state cash assistance programs known as Temporary Assistance to Needy Families (TANF).

One of the most significant differences between the old AFDC program and TANF is that states must limit cash benefits for most families to 60 months in order to receive federal funds. In the AFDC program, families could receive benefits as long as there was a minor child in the home and they met the other eligibility requirements for assistance. PRWORA also limits eligibility for most types of assistance to U.S. citizens and certain limited categories of qualified aliens and has imposed new eligibility requirements intended by the U.S. Congress to strengthen family values. For example, under PRWORA, teenage parents generally must live with their own parents or with another adult relative or guardian or in some adult-supervised setting in order to obtain assistance for their minor children.

The Department proposes to adopt new eligibility rules to implement the new federal eligibility requirements. [Rule I] addresses general eligibility requirements and sets forth many requirements which previously were addressed in the Department's AFDC rules. Because the AFDC program no longer exists after PRWORA, the Department is repealing most of its AFDC rules in ARM Title 46, chapter 10. The Department is not repealing all of the AFDC rules at this time because certain AFDC rules relating to children in foster care need to be kept in place until new foster care rules are adopted. The Department anticipates adopting new foster care rules in the near future.

Thus, eligibility requirements for FAIM which were included by

cross-references to the AFDC rules now must be spelled out in the FAIM rules. For example, [Rule I] specifies the individuals who are potentially eligible for assistance, such as minor children and specified caretaker relatives, and specifies individuals who are not eligible for assistance, such as recipients of Supplemental Security Income (SSI). Additionally, a number of eligibility requirements mandated by PRWORA, Title I, Sections 101 through 116, and incorporated into Montana law by the 55th Legislature are spelled out in [Rule I]. For example, [Rule I] specifies that fleeing felons, probation and parole violators, and persons who have been convicted of a drug-related felony are ineligible for assistance.

[Rule II] addresses eligibility requirements relating to citizenship. In accordance with Title I, Section 103, of PRWORA, [Rule II] provides that only U.S. citizens and certain qualified aliens may receive assistance and provides time-limits for assistance to qualified aliens in addition to the 60 month time limit applicable to U.S. citizens. However, in accordance with provisions of the Balanced Budget Act of 1997, subsection (5) of [Rule II] provides for medical coverage for noncitizens who are not qualified aliens but who were living in the United States on August 22, 1996, which was the date of passage of PRWORA.

Many of the new rules the Department proposes to adopt consist of material contained in AFDC rules which are being repealed and/or contained in the federal AFDC regulations which are no longer applicable to the FAIM program. It is now necessary to adopt rules which spell out policies previously covered in these rules and regulations. In many cases, the basic text of the AFDC rule covering the same subject is being used in the new FAIM rule with only minor changes for stylistic or organizational purposes. There was no necessity for major changes in rules where the policy is the same as the former AFDC policy and the AFDC rule stated the policy accurately and clearly. In cases where the new FAIM rule is substantively different from the former AFDC rule on the same topic, the reason for the change is explained below.

[Rule III] regarding underpayments and overpayments of assistance benefits replaces ARM 46.10.108 and is substantially the same as that rule. However, one provision of ARM 46.10.108, which limits the amount by which the cash assistance grant can be reduced to recover an overpayment to 10%, is not included in [Rule III]. This limit on the amount the cash payment can be reduced was mandated by federal AFDC regulations which are no longer binding on the Department. The Department does not intend at this time to reduce payments by more than 10% to recover overpayments, but wishes to have the flexibility to collect more than 10% if that is appropriate. On the other hand, the Department has not reduced the recovery amount to less

than 10% of the monthly payment, because overpayments in some cases can be quite large, and recovery would take too long if the monthly grant were reduced by less than 10%. It would also be too complicated and time consuming to set different recovery percentages for each overpayment depending on the particular facts of each case.

[Rule IV] concerning good cause for failure to comply with requirements of the program or for quitting or failing to accept employment is being adopted because the FAIM rules do not currently define the term good cause. To remedy this deficiency, the Department proposes to adopt [Rule IV], which defines good cause for a failure to comply with a program requirement and good cause for quitting or failing to accept employment.

The proposed definitions of good cause in [Rule IV] are substantially the same as the good cause definitions in the AFDC rules which the Department has already been applying to FAIM participants. An option would be to use the dictionary definition of good cause rather than the specialized AFDC definition. However, defining good cause broadly as any substantial reason for failing to perform a required act would not give FAIM coordinators enough guidance and would be likely to result in inconsistent applications of the good cause exception and more disputes about good cause necessitating fair hearings. Therefore, the Department has opted to continue using the AFDC definitions, which past experience indicates are fair and workable definitions of good cause.

Proposed [Rules V through XV] contain material now contained in AFDC rules which are now being repealed. [Rule V] in regard to treatment of confidential information is substantially the same as the old AFDC rule, ARM 46.10.101, except that it permits the Department to release the address of a participant to a law enforcement officer who is attempting to find the person in the line of duty, as well as to an officer seeking a fugitive felon. Under the old AFDC statute a recipient's address could be released only if the recipient was a fleeing felon, but Title I, Section 103, of PRWORA also allows state agencies to release an address to a law enforcement officer trying to apprehend a participant who is a probation or parole violator or who has information necessary for the officer to perform his official duties. The Department is exercising its option under PRWORA to release information for this additional, very limited purpose because it considers such releases of information to be in the public interest.

[Rule VI] replaces ARM 46.10.107 on residency, which incorrectly states that there is no residency requirement for receipt of AFDC. Pursuant to federal law, the Department always required Montana residency in order to receive AFDC benefits.

ARM 46.10.107 probably was intended to state that there was no durational residency requirement. [Rule VI] provides that there is no durational residency requirement to receive FAIM benefits, in accordance with the Department's longstanding policy. In the past the Department has considered imposing a requirement that an applicant for cash assistance be a resident for a period of time such as 3 or 6 months before becoming eligible for benefits, and legislation to mandate a durational residency requirement has been proposed to the Montana Legislature in the past. However, there are serious issues about the constitutionality of such durational residency requirements due to the U. S. Supreme Court's ruling in Thompson v. Shapiro, 394 US 618 (1969) that a durational residency requirement for receipt of cash assistance violated the constitutional rights to travel and to equal protection of the law. Therefore, the Department did not consider the option of imposing a durational residency requirement in drafting the FAIM rule on residency.

[Rules VII through XI] concerning the application process, periodic redeterminations of eligibility, and payment provisions are substantially the same as the AFDC rules they replace, although they have been rewritten and unnecessary material has been eliminated.

[Rules XII and XIII] regarding emergency assistance are based on ARM 46.10.318 and 46.10.319. There are several differences in wording which were made to avoid possible ambiguity which existed in the AFDC rule. A recent fair hearing decision indicated that the Department's intention of providing emergency assistance only when there is already a child in the home was unclear because ARM 46.10.318 did not state that a pregnant woman with no other children is not eligible for emergency assistance.

Therefore, a provision has been included in [Rule XII] specifying that a pregnant woman who has no children living with her cannot receive emergency assistance to meet her own needs or that of her unborn child unless a child protective services worker has determined that she needs emergency assistance and she is in the last trimester of her pregnancy. The Department believes that as a general rule it is not necessary to provide emergency assistance to a pregnant woman before the birth of her child because a pregnant woman can receive regular (nonemergency) cash assistance beginning with the last trimester of her pregnancy, which should be sufficient to prevent the destitution of her unborn child. However, in a case where a child protective services worker determines that emergency assistance is necessary for a pregnant woman with no other child in her home, the Department will defer to that worker's expertise and provide emergency assistance in the last trimester of pregnancy.

[Rule XII] also specifies that past due rent can be paid only when a written eviction notice has been received and that emergency assistance cannot be provided to pay security deposits, because the provisions in ARM 46.10.318 regarding eviction notices and security deposits apparently were somewhat ambiguous, based on past fair hearing decisions. The Department requires a written eviction notice before emergency assistance is provided because it believes there is not a true emergency until a landlord has clearly indicated the unequivocal intent to terminate the tenancy by giving a written notice as required by Montana landlord-tenant law. These changes represent a clarification of current policy.

[Rule XIV] regarding denial of benefits to strikers, and [Rule XV] regarding assistance to pregnant women set forth the same policies previously contained in the AFDC rules and applied to FAIM.

Many of the FAIM rules, such as ARM 46.18.101 and 46.18.103, are being amended primarily to replace references to the AFDC program with references to TANF and/or FAIM. ARM 46.18.103, which contains definitions, is being amended extensively to include definitions which were previously contained in the AFDC rules and to revise definitions or add new definitions where necessary due to program changes under PRWORA. In addition, definitions are being added for some terms used in the rules which the Department inadvertently failed to define previously, such as the term "screening guide".

ARM 46.18.106 regarding disqualification due to intentional program violations has been revised to provide for the new, more stringent penalties for intentional program violations mandated in PRWORA. Additionally, ARM 46.18.106 is being amended to include in the rule certain material which is currently covered by cross-references to AFDC regulations.

The amendment of ARM 46.18.107 regarding FAIM time limits is necessary to provide the 60 month limitation on receipt of cash assistance mandated in Title I, Section 103, of PRWORA. ARM 46.18.107 currently provides that single-parent families may receive assistance in the Pathways program for 24 months but two-parent families are limited to 18 months in Pathways, based on the periods of potential eligibility provided in 53-4-603, MCA, when ARM 46.18.107 was adopted. The Montana Legislature in 1997 eliminated this distinction and amended 53-4-603, MCA, to state that two-parent families as well as single-parent families may receive 24 months of assistance in Pathways. The Legislature determined that there was no reason to treat two-parent families differently from single-parent families in regard to duration of benefits. Therefore, subsection (3)(a) of the current rule is being amended to delete the 18 month limit for two-parent families.

To limit the total months of cash assistance in FAIM to the 60 months mandated by PRWORA, ARM 46.18.107(4)(a) as proposed to be amended states that the number of months in CSP is limited to 36 months except as provided in Section 103 of PRWORA. The latter provision requires states to limit assistance to 60 months after the date the state's TANF program commenced. Montana's TANF program commenced in February 1997, the date its TANF state plan was accepted as complete by the U.S. Department of Health and Human Services. Individuals who were receiving benefits in Pathways prior to February 1997 are potentially eligible to receive cash assistance for more than a total of 60 months, because months of receipt before February 1997 are not counted under PRWORA. Persons who received FAIM benefits prior to February 1997 will still be limited to 24 months in Pathways but may potentially receive more than 36 months of CSP benefits.

Finally, ARM 46.18.107(2)(a), which specifies that enhanced child support enforcement services are a benefit of the JSP program, is being deleted because JSP participants receive the same child support services as nonparticipants. ARM 46.18.107(2)(d) is being amended to delete the cross-reference to ARM 46.18.506, which has been repealed, and specify that child care assistance is available only for hours when the JSP participant is working. This requirement was previously contained in ARM 46.18.506.

ARM 46.18.108, in regard to exemptions to the time limits, is being amended to include an exemption for victims of domestic violence. Title I, Section 103, of PRWORA allows the states to exempt victims of domestic violence from the 60 month time limit on receiving cash assistance. Based on this provision of PRWORA, the Department began in March 1997 exempting victims of domestic violence from time limits for up to a total of 6 months in a person's lifetime. Subsection (1)(h) is now being added to ARM 46.18.108 to incorporate in the rule the policy already being applied. The Department granted the exemption based on the recommendation of the Montana Coalition for Domestic and Sexual Violence. The Department agrees with advocates for victims of domestic violence that victims of domestic violence may need additional time to work through family issues and become self-supporting but also believes these issues must be addressed within a reasonable time frame. The Department has determined that a 6 month exemption provides a reasonable amount of additional time.

Also, subsection (1)(a) of ARM 46.18.108, which currently provides an exemption for persons under age 20 attending high school, is being amended to state that the exemption applies only to persons under age 18 attending high school. This change is necessary to comply with the amendment of 53-4-607, MCA, by the Legislature in 1997 which made the exemption for high school students applicable to individuals under the age of 18, not 20.

ARM 46.18.112 regarding the requirement that a child be living with a specified relative to receive assistance currently states that the requirements of the AFDC program regarding specified relatives set forth in ARM 46.10.302 apply to the FAIM program. It is now necessary to amend ARM 46.18.112 to delete the cross reference to the AFDC rule and spell out the requirements contained in ARM 46.10.302.

In ARM 46.18.113 pertaining to inclusion in the filing unit, minor changes in wording are being made simply for purposes of clarity. For example, subsection (1) currently provides that the parents of a minor child who live with the child and who meet all other requirements for eligibility must be included in the assistance unit. This subsection is being amended to state that citizenship is one of the factors of eligibility which must be met to be included in the filing unit. This does not represent a change in policy, as citizenship has always been a factor which was looked at in determining eligibility. This language has merely been added to make this requirement clear.

Subsection (3) of ARM 46.18.113 currently provides that all persons under the age of 18 years who live with the minor child and are otherwise eligible must be included in the assistance unit. This is being amended to specify that persons under the age of 19 who are attending school full-time are also included in the assistance unit. Pursuant to the definition of the term dependent child contained in 53-4-201(2)(a)(ii), MCA, and in the federal regulations governing the old AFDC program, persons over the age of 18 but under 19 who are still in school have been eligible for cash assistance for many years. However, subsection (3) is now being amended to state specifically that these individuals over the age of 18 will be included in the assistance unit. This does not represent a change in policy but brings the rule into conformity with 53-4-201, MCA, and the policy already being applied.

The amendment of ARM 46.18.114 pertaining to child support enforcement requirements is necessary to incorporate material which was in the AFDC child support rule now being repealed, ARM 46.10.314, and was cross-referenced in ARM 46.18.114. The contents of ARM 46.18.114 as proposed to be amended differ from the policies set forth in ARM 46.10.314 in only two areas. The first area is in regard to the obligations of pregnant women. ARM 46.10.314(9) now provides that a pregnant woman is not required to cooperate with the Child Support Enforcement Division (CSED) prior to the birth of her child. ARM 46.18.114 as amended will provide that a pregnant woman is required to provide information about the paternity of her unborn child prior to its birth. The Department has chosen this option, as opposed to the policy in the AFDC rule of not requiring a pregnant woman to cooperate with CSED in any way until her child is born, because the Department believes it will receive more

reliable information about paternity of the child when the mother first comes in to apply for assistance during her pregnancy. At this time CSED does not act on any of the information received from the mother about the child's paternity until after the birth of the child, however.

The other way in which ARM 46.18.114 as amended is substantively different from ARM 46.10.314 is in regard to the consequences of a refusal to comply with CSED requirements. The federal regulations governing the AFDC program did not allow the states to disqualify the entire household when the parent refused without good cause to comply with CSED requirements. The AFDC regulations provided that assistance would be provided to all of the household members except the individual who failed or refused to comply. However, Title I, Section 103, of PRWORA requires the states to deny eligibility to the entire family if the parent refuses to assign child support rights. Pursuant to this provision of PRWORA, the Department will deny benefits to the entire household if the parent refuses to comply with CSED requirements.

The amendment of ARM 46.18.118 and 46.18.119 pertaining to the treatment of resources and income in determining eligibility is necessary to incorporate material previously contained in the AFDC rules. The changes in the text of the rules do not reflect any changes in the Department's policy regarding income and resources. In both ARM 46.18.118 and 46.18.119, a provision has been added stating that the resources and income of sanctioned and disqualified members of the household will be counted in determining eligibility, even though the needs of sanctioned and disqualified persons are not included when determining benefit amount. Under TANF, the Department could theoretically exclude the income and resources of a sanctioned or disqualified household member, but has not opted to do so. If the sanctioned individual's income as well as that individual's needs were excluded in computing the household's monthly payment during the sanction period, the monthly payment would be reduced less than under the current policy. This would undermine the purpose of the sanction, which is to force the household to experience the negative consequences of a parent's failure to fulfill obligations. Thus, the Department has chosen to continue applying the same policy required in the old AFDC program and is adding this provision to ARM 46.18.118 and 46.18.119 to make clear how income and resources are treated in case of a sanction.

Minor changes are being made to the wording of ARM 46.18.120 and 46.18.121 pertaining to income disregards for purposes of style and clarity only. There is no change in the Department's policy regarding income disregards.

ARM 46.18.122 pertaining to the assistance standards used to

determine eligibility and amount of cash assistance must be revised for several reasons. Currently the rule states that the AFDC assistance standards contained in ARM 46.10.403 are used in the FAIM Program. Since ARM 46.10.403 is being repealed, it is now necessary to set forth the tables of standards in the FAIM rules. In addition, the standards presently in the AFDC rule are being increased. House Bill 2 of the 55th Montana Legislature sets FAIM cash assistance payments for state fiscal years 1998 and 1999 at 40.5% of the federal poverty indices for calendar year 1997 and 1998 published by the U.S. Office of Management and Budget (OMB). The OMB publishes an updated poverty index annually in the spring. The standards used to determine cash payment amounts, known as the benefit standards, now must be revised to reflect increases in the recently published 1998 federal poverty index. Also, the gross income standards and net monthly income standards contained in ARM 46.18.122 are based on the benefit standards and must be revised when the benefit standards change.

The Department is not including in ARM 46.18.122 any shared shelter standards, although they are contained in the AFDC standards rule and were used in the FAIM Program in the past. Federal regulations governing the AFDC program allowed the states in determining need to take into consideration the fact that the assistance unit was sharing its place of residence with persons who were not part of the assistance unit. Several years ago, the Department implemented that option by adopting shared shelter standards which provided reduced cash assistance to households who shared their shelter obligations with nonhousehold members, as mandated by House Bill 2 for the 1995-1996 biennium. At that time, the Legislature apparently believed that the such households would need less help from the Department to pay their rent or mortgage, presumably because the persons with whom they were living would help to pay the shelter cost. The Legislature anticipated that there would be considerable savings of General Fund dollars as a result of implementing this policy.

However, after using the shared shelter standards for several years, the Department determined that sharing one's shelter obligation did not necessarily correlate with less need for assistance, nor did use of the lower shared shelter benefit standards result in a significant savings of General Fund dollars. Therefore, since the Legislature did not include the requirement to use shared shelter standards in House Bill 2 in 1997, the Department is now opting to pay the same amounts to households which have a shelter obligation regardless of whether they share that shelter obligation with a nonhousehold member.

Another option would be for the Department to develop a method of computing the amount of assistance that would take into consideration the actual amount each household pays for its

mortgage or rent, regardless of whether the household shares its shelter expenses with other nonhousehold members. Verifying the actual amount of the shelter expenses each month would be very burdensome for FAIM Coordinators, however, and for this reason such a method has never been used by the Department.

Minor changes in ARM 46.18.124 regarding lump sum payments are being made to make it clear that this rule applies for purposes of cash assistance but not food stamp benefits. This is because the federal food stamp regulations mandate a different policy. The cross-reference to the AFDC rule ARM 46.10.508 in subsection (4) of the current rule is being amended to refer to the new FAIM rule on overpayments, [Rule III].

ARM 46.18.125 regarding excluded earned income is being amended to specify that work study earnings and Volunteers in Service to America (VISTA) payments are excluded. The Department has always excluded such payments pursuant to a federal AFDC regulation requiring their exclusion but is now spelling out the exclusion in its FAIM rule. Similarly, provisions are being added to ARM 46.18.126 relating to excluded unearned income to specify exclusions which were stated in the federal AFDC regulations.

In ARM 46.18.129 pertaining to restrictions on assistance payments, subsection (1) is being amended to change the term assistance payments to monthly benefit payments, because the latter is the term more commonly used within FAIM. This term also makes it clear that the assistance payments referred to are the participants' monthly payments, as opposed to other kinds of assistance payments such as supportive service payments. Also, subsection (2) of ARM 46.18.129 currently states that payments to JSP participants may be made to the participant or to a protective payee or vendor. This is incorrect. The Department's automated information management system, The Economic Assistance Management System (TEAMS), is not set up to issue vendor payments on behalf of JSP participants. Additionally, protective payees are not used in JSP cases, because protective payees are appointed for participants who fail to use their cash assistance payments to meet the needs of the minor children, and JSP participants do not receive cash assistance. Therefore, subsection (2) is being amended to provide that JSP payments are made directly to the participant.

The amendment of ARM 46.18.130 is necessary to establish a time limit for requesting a one time employment-related payment. Currently the rule provides that a Pathways participant who is losing FAIM eligibility because of increased earnings from employment may be eligible for such a payment to pay for tools, clothing, transportation, or something else the participant needs to obtain or maintain employment. When the Department implemented employment-related payments in FAIM, it was intended

that these payments would be provided when the participant first lost eligibility due to income from employment, as this was believed to be the time the household would have the greatest need for such assistance.

However, the rule fails to require that requests for these payments be made within a specified period of time after eligibility ends. In reviewing the FAIM rules the Department noted that ARM 46.18.130 does not state the policy it had intended to implement, namely that of assisting the participant in the period immediately after eligibility was lost. Therefore, ARM 46.18.130 is being amended to state that the participant must request the payment within 10 calendar days after the last day of the last month of eligibility. The Department considers this a reasonable length of time for a former participant to identify a need for a one time payment and make a request.

ARM 46.18.130 is further being amended to clarify when the period of ineligibility due to receipt of a one time employment-related payment begins; to specify that such payments can be made to pay for relocation expenses to another county or state; and to clarify that payments to be used for a down payment on the purchase of a vehicle will be made only if the participant has sufficient income to keep up the monthly payments in the future. The policy has always been for the period of ineligibility to begin the month after the month in which the participant last received an assistance payment, rather than the month after the one time payment was received. In some cases, depending on the time of the month when the one time payment is approved, there is not sufficient time to give the required ten days advance notice to close the assistance case at the end of the month when the payment is received. The participant thus may receive a monthly cash assistance payment for one month after the one time payment is received. It would not make sense to count a month when the participant was receiving a monthly cash assistance payment as one of the months of ineligibility.

A provision allowing one time payments to be made for relocation expenses is being added to ARM 46.18.130 because the Department has determined that it is sometimes necessary for participants to move to another locale in order to obtain employment and become self-supporting. Participants may not have enough funds to pay the expenses of moving to a new place where better jobs may be available, however. Therefore, the Department by providing one time payments for this purpose may help some participants become self-supporting.

A provision specifying that a one time payment may be used for a down payment on a vehicle only if the participant has the ability to make the monthly payments is necessary to ensure that participants do not purchase vehicles which they will ultimately

lose because of their inability to make the monthly payments. Since a participant is ineligible for cash assistance for a prescribed period of time due to the one time payment, the participant will be in a very difficult position if the vehicle is repossessed during the ineligibility period because the participant can't make the monthly payments, leaving the participant with no way to get to work. The participant will not have cash assistance to fall back on if the participant's job is lost because of lack of transportation. Additionally, it is also not a good use of the Department's limited resources to use its funds for down payments on vehicles which are likely to be repossessed.

Subsection (1)(a) of ARM 46.18.133 pertaining to the family investment agreement (FIA) is being amended to clarify that only Pathways and CSP participants must have a FIA. JSP participants do not have FIAs, because 53-4-606(2), MCA, provides that recipients of assistance in JSP are not required to enter into a FIA, presumably because they are not receiving cash assistance as Pathways and CSP participants are. However, the current rule does not state that a FIA is not required for JSP participants. Thus the rule is being amended to conform to 53-4-606, MCA, and the policy which is already being applied in regard to FIAs.

Also, subsection (2) is being added to ARM 46.12.133 to provide that a failure to enter into a FIA, as opposed to a failure to comply with requirements of a FIA which has already been signed, results in the ineligibility of the entire assistance unit. This policy is based on the language of 53-4-606, MCA, which states that entering into a FIA is a condition of eligibility for assistance. Since entering into a FIA is a prerequisite for eligibility, like meeting income, resource, or other eligibility requirements, the entire household is ineligible for assistance if a FIA is not signed. Additionally, other minor changes in language are also being made in ARM 46.18.133 which do not represent changes in policy.

A substantive change is being made to the FAIM rule on sanctions for failure to comply with FIA requirements, ARM 46.18.134, in regard to the consequences of a sanction. The rule currently provides that when a sanction is imposed, the family's cash assistance payment is reduced. It further states that the sanctioned individual will also lose Medicaid coverage during the penalty period if the failure to comply which was the basis for the sanction involved child support enforcement, quality control, or third party liability requirements. This policy, whereby Medicaid coverage is terminated along with cash assistance in some cases when a sanction is imposed but not in others, was based on language in regulations governing the old AFDC program.

In the AFDC program, the JOBS regulations stated that the needs

of a sanctioned individual would not be taken into account in determining the family's assistance payment, but the regulations did not state that the sanctioned person's Medicaid coverage would also be terminated. However, the regulations did specifically require the termination of Medicaid coverage as well as cash assistance for an individual who refused to comply with child support enforcement, quality control, or third party liability requirements. Subsequently the Department determined that Medicaid coverage must be terminated for a sanctioned individual, regardless of what the failure to comply consisted of, because eligibility for medical assistance in FAIM is tied to and dependent upon eligibility for cash assistance. Additionally, PRWORA, Title I, Section 103, specifically states that Medicaid coverage as well as cash assistance can be terminated when an individual fails to comply with employment and training requirements. Therefore the rule is being amended to state that both cash assistance and medical coverage for the sanctioned individual are lost when a sanction is imposed.

The rule on sanctions is also being amended to state that a sanction is imposed only if the failure to comply occurred without good cause as defined in [Rule IV]. The Department has always taken into consideration the reasons for a failure to comply when determining if a sanction must be imposed, but the current rule does not specifically mention good cause. Thus, the addition of this language regarding good cause does not represent a change in policy.

5. The repeal of rules 46.10.101 through 46.10.306 and 46.10.314 through 46.10.847 will take effect on October 1, 1998. These rules pertain to the former Aid to Families with Dependent Children (AFDC) program and are still the basis for determining eligibility for foster care assistance under Title IV-E of the federal Social Security Act. Therefore, the repeal of these rules is being delayed until new foster care rules incorporating the material in the AFDC rules can be adopted.

6. 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 July 28, 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. 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

Hank Hudson Jr.
Director, Public Health and Human Services

Certified to the Secretary of State June 15, 1998.

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

In the matter of the amendment of rules 46.12.3001 through 46.12.3003, 46.12.3201, 46.12.3206, 46.12.3401 through 46.12.3404, 46.12.3801, 46.12.3803 through 46.12.3805 and 46.12.3808 pertaining to medicaid eligibility	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On July 20, 1998, at 4:00 p.m., a public hearing will be held by MetNet in the Lower Level Auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana; Special Ed. Building, Room 162, 1500 North 30th Street, Montana State University at Billings, Billings, Montana; Burns Center Room 126, EPS Building South 7th & Grant, Montana State University, Bozeman, Montana; ELCB, Room 231, 1300 West Park Street, Montana Tech, Butte, Montana; Room 147, 2100 16th Avenue South, Great Falls College of Technology of MSU, Great Falls, Montana; and Gallagher Building, Room 104, Corner of Arthur and Eddy, University of Montana, Missoula, Montana, to consider the proposed amendment of rules 46.12.3001 - 46.12.3003, 46.12.3201, 46.12.3206, 46.12.3401 - 46.12.3404, 46.12.3801, 46.12.3803 through 46.12.3805 and 46.12.3808 pertaining to medicaid eligibility. This hearing will be held concurrently with the hearing as proposed pertaining to Families Achieving Independence in Montana (FAIM) in MAR Notice Numbers 37-99 and 37-101 in this issue of the Montana Administrative Register.

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 July 13, 1998, 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. Matter to be added is underlined. Matter to be deleted is interlined.

46.12.3001 APPLICATION (1) and (2)(a) remain the same.
(i) on the form and in the manner prescribed by the

department of ~~social and rehabilitation~~ public health and human services; and

(ii) at the office of ~~the county welfare department~~ public assistance in the county in which the person presently resides, except that institutionalized individuals may make application with the county in which the institution is located.

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

(i) ~~aid to families with dependent children (AFDC)~~ FAIM financial assistance;

(4)(a)(ii) through (6)(c)(iii) remain the same

~~(d) Further, under 42 CFR 435.910 and 53-2-201, MCA, if an applicant cannot recall his SSN, or has not been issued one, and wishes to secure one, the department will:~~

~~(i) assist the applicant in completing an application for a SSN;~~

~~(ii) obtain evidence required under social security administration regulations to establish the age, the citizenship or alien status, and the true identity of the applicant; and~~

~~(iii) either send the application to the SSA or, if there is evidence that the applicant has previously been issued a SSN, request that the SSA verify the number.~~

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-132 and 53-6-133, MCA

46.12.3002 DETERMINATION OF ELIGIBILITY (1) through (2)(c)(ii) remain the same.

(3) Determinations of disability will be made in accordance with the requirements applicable to disability determinations under the Supplemental Security Income Program specified in 20 CFR, Part 416, Subpart I (1993). The department hereby adopts and incorporates by reference 20 CFR, Part 416, Subpart I (1993). A copy of these federal regulations may be obtained from the Department of ~~Social and Rehabilitation~~ Public Health and Human Services, P.O. Box 4210, 111 N. Sanders, Helena, Montana 59604-4210.

(4) through (7)(b) remain the same.

(c) For coverage of parents and children whose eligibility is related to the ~~aid to families with dependent children~~ FAIM financial assistance program, eligibility is granted for the month if all eligibility criteria are met ~~any time during the month~~ on the date of application and first day of subsequent month.

(7)(d) through (e) remain the same.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-131, 53-6-132 and 53-6-133, MCA

46.12.3003 REDETERMINATION OF ELIGIBILITY (1) through (1)(a)(ii) remain the same.

(iii) at least every 6 months if the client is categorically eligible related to ~~AFDC~~ FAIM financial

assistance; or

(1)(a)(iv) through (3) remain the same.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-142, MCA

46.12.3201 CITIZENSHIP AND ALIENAGE (1) and (1)(a) remain the same.

(b) ~~an~~ a qualified alien as defined in [Rule II on MAR Notice No. 37-99] lawfully admitted for permanent residence or who entered the U.S. after August 22, 1996, otherwise permanently residing in the United States ~~under color of law~~, including any alien who is lawfully present in the United States under authority of sections 203(a)(7) or 212(d)(5) of the Immigration and Nationality Act.

(c) a non-citizen legal alien living in the U.S. prior to August 23, 1996.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-131, MCA

46.12.3206 ASSIGNMENT OF RIGHTS TO BENEFITS, COOPERATION WITH CHILD SUPPORT ENFORCEMENT REQUIREMENTS (1) ~~General rule.~~

~~(a)~~ As a condition of eligibility for medicaid, each legally able applicant and recipient must assign his rights to medical support or other third party payments to the department and must cooperate with the department in obtaining medical support or payments, except as provided in (4)(a) through (4)(e).

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

(i) With respect to establishing paternity of a child born out of wedlock or obtaining medical care support and payments for a child for whom the individual can legally assign rights, good cause is as defined in ARM ~~46.10.314(2)~~ 46.18.114.

(ii) With respect to obtaining medical care support and payments for an individual in any case not covered by (3)(c)(i), the department will waive cooperation if the department determines that cooperation is against the best interests of the individual or other person to whom medicaid is being furnished, because it is anticipated that cooperation will result in reprisal against, and cause physical or emotional harm to, the individual or other person.

(d) The procedure for waiving cooperation is as provided in ARM ~~46.10.314(3), (4), (5), and (6)~~ 46.18.114.

~~(4) Denial or termination of eligibility.~~

~~(a) Eligibility for medicaid will be denied or terminated for any applicant or recipient who refuses without good cause to cooperate.~~

~~(b) However, medicaid will be provided to any individual who would otherwise be eligible for medicaid but for the refusal, by a person who has legally assigned his rights under this rule, to cooperate as required by this rule.~~

(4) Individuals receiving medical assistance only in any of the following coverage groups are not required to assign their rights to medical support or cooperate with the child support enforcement division in establishing paternity and obtaining medical support:

(a) automatic newborn assistance;

(b) poverty level child assistance;

(c) poverty level pregnant woman assistance;

(d) poverty six child assistance; and

(e) Ribicoff child assistance.

(5) Medicaid eligibility will be denied or terminated for any applicant or recipient who fails or refuses without good cause to comply with the requirements of this rule regarding assignment of rights and/or cooperation in establishing paternity and obtaining support.

(a) However, medicaid will be provided to a minor child or other individual who cannot legally assign rights or cooperate, if that individual is otherwise eligible, despite the failure or refusal of the caretaker relative or any other individual to comply with the requirements of this rule.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-2-612, 53-2-613 and 53-6-131, MCA

46.12.3401 GROUPS COVERED, NON-INSTITUTIONALIZED ~~AFDC~~ FAIM FINANCIAL ASSISTANCE RELATED FAMILIES AND CHILDREN (1) Medicaid will be provided to:

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

(i) An individual is ~~receiving AFDC~~ participating if his needs are included in determining the ~~AFDC~~ grant amount.

(b) individuals deemed to be receiving ~~AFDC~~ cash assistance. This coverage is limited to:

(i) those individuals who are not receiving ~~an AFDC check~~ cash assistance solely because the check amount is less than $10;

~~(ii) participants in a work supplementation program under Title IV-A of the Social Security Act and any child or relative of such individual (or other individual living in the same household as such individuals) who would be eligible for AFDC if there were no work supplementation program;~~

~~(iii) individuals whose AFDC is terminated due to collection or increased collection of child support. These individuals will continue to receive medicaid for 4 months;~~

~~(iv) individuals whose AFDC is terminated because of loss of the $30 and 1/3 disregard at the end of 4 months or the $30 disregard at the end of 8 months. These individuals will continue to receive medicaid up to 12 months; and~~

~~(v)~~(ii) individuals under age ~~21~~ 19 who currently reside in Montana and are receiving foster care or adoption assistance under Title IV-E of the Social Security Act, whether or not such

assistance originated in Montana. Eligibility requirements for Title IV-E foster care and adoption assistance are found in ARM 46.10.307; and

~~(vi)~~ (iii) individuals ~~receiving assistance as participants~~ who choose medicaid as a benefit of the FAIM job ~~supplementation~~ supplement program.

~~(c) individuals whose AFDC is terminated because of increased income or hours from employment, or because of termination of AFDC as specified in (1)(b)(iv) of this rule. Those individuals will continue to receive medicaid up to 12 months, providing:~~

~~(i) the household received an AFDC grant in at least 3 of the 6 months prior to the month the household became ineligible; and~~

~~(ii) a member of the household continues to work during the 12 months.~~

~~(A) This 12 month period of continued medicaid coverage begins the month following the date of AFDC closure, or, if AFDC eligibility ends prior to the month of closure, with the first month in which AFDC was erroneously paid.~~

~~(B) The transitional medical assistance is not available to any family who received AFDC because of fraud during the last 6 months prior to the beginning of the transitional period.~~

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

(i) a member of the household continues to work during the 12 months;

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

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

~~(e)~~ (d) individuals under age 19 who would be eligible for ~~AFDC~~ cash assistance, if they ~~met the school attendance requirements which are found in ARM 46.10.301~~ are full-time students in a secondary school or an equivalent program;

~~(f) individuals who would be eligible for AFDC except for failure to meet the JOBS participation requirements found in ARM 46.10.801 through 46.10.847;~~

~~(g)~~ (e) a pregnant woman whose pregnancy has been verified and whose family income and resources meet the requirements listed in ARM ~~46.10.403 and 46.10.406~~ 46.18.118 and 46.18.122;

(i) The unborn child shall be considered an additional member of the assistance unit for purposes of determining eligibility.

~~(h)~~ (f) a pregnant woman whose pregnancy has been verified, whose family income does not exceed 133% of the federal poverty

guidelines and whose countable resources do not exceed $3,000; this coverage group is known as "poverty level pregnant woman";

(i) The unborn child shall be considered an additional member of the assistance unit for purposes of determining eligibility.

(ii) Newborn children are continuously eligible through the month of their first birthday, provided they continue to reside with their mother and she would continue to be eligible for assistance if she were still pregnant; this coverage group is known as "automatic newborn assistance";

~~(i)~~ (g) a pregnant woman during a period of presumptive eligibility;

(i) Presumptive eligibility is established by submission of an application by the applicant on the form specified by the department, to a qualified presumptive eligibility provider, verification of pregnancy and a determination by the qualified presumptive eligibility provider that applicant's household income and resources ~~does~~ do not exceed the income and resource standards specified in (1) ~~(h)~~ (f).

(1)(i)(i)(A) through (1)(i)(ii) remain the same, but are renumbered (1)(g)(i)(A) through (1)(g)(ii).

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

(i) Eligibility shall be continuous without lapse in medicaid eligibility from the prior ~~AFDC, SSI or~~ medicaid eligibility and shall terminate on the last day of the month in which the sixtieth postpartum day occurs.

(ii) During a period of eligibility under (1)(h), a pregnant woman is limited to services covered under the Montana medicaid program related to pregnancy and conditions which may complicate pregnancy, including prenatal care, delivery, postpartum and family planning services.

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

~~(l)~~ (j) a child through the month of the sixth birthday whose family income does not exceed 133% of the federal poverty guidelines and whose countable resources do not exceed $3,000; this group is known as "poverty level child";

~~(m)~~ (k) individuals under the age of 21 who are receiving foster care or subsidized adoption payments through child welfare services;

(i) These individuals must have full or partial financial responsibility assumed by public agencies and must have been placed in foster homes, private institutions or private homes by a non-profit agency.

~~(n)~~ (l) a child of a minor custodial parent when the

custodial parent is living in the child's grandparent's home and the grandparent's income is the sole reason rendering the child ineligible for ~~AFDC~~ FAIM financial assistance;

~~(o)~~(m) needy caretaker relatives as defined in ARM ~~46.10.302~~ 46.18.103 who have in their care an individual under age 19 who is eligible for medicaid; and

~~(p)~~(n) individuals who would be eligible for, but are not receiving, ~~AFDC~~ cash assistance.

(o) a child born on or after October 1, 1983, through the child's 19th birthday, who lives in a household whose income and resources do not exceed the medically needy income and resource standards specified in ARM 46.12.3803 through 46.12.3805, regardless of whether the child lives with a parent or specified caretaker relative as defined in ARM 46.18.103; this coverage group is known as "Ribicoff child";

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

(4) Medicaid may be provided for up to 3 months prior to the date of application for individuals listed in ~~(1)(a), (1)(b)(i), (1)(b)(vii), (1), (e), (f), (g), (j), (k), (l), (m) and (n)~~ (1)(a), (1)(b)(i), (1)(b)(ii), (1)(d), (1)(e), (1)(h), (1)(i), (1)(j), (1)(k) and (1)(l) if all financial and non-financial eligibility criteria are met the first day of the month for ~~any~~ each of those months. ~~For individuals listed in (1)(g) and (k) retroactive eligibility cannot begin prior to July 1, 1989.~~

AUTH: Sec. 53-4-212 and 53-4-113, MCA
IMP: Sec. 53-6-101, 53-6-131, 53-6-134 and 53-4-231, MCA

46.12.3402 NON-FINANCIAL REQUIREMENTS, NON-INSTITUTIONALIZED ~~AFDC~~ FAIM FINANCIAL ASSISTANCE RELATED FAMILIES AND CHILDREN (1) Individuals eligible for FAIM financial assistance ~~receiving AFDC, including those deemed to be receiving AFDC,~~ are presumed to have met the non-financial requirements of the medicaid program.

~~(2) For individuals and families under the heading families with dependent children who are not receiving AFDC, the AFDC non financial requirements which are set forth in ARM 46.10.301 through 46.10.314 and in ARM 46.10.320 and 46.10.321 will be used to determine whether:~~

~~(a) an individual under age 19 is a dependent child because he is deprived of parental support or care;~~

~~(b) an individual is an eligible member of a family with a dependent child.~~

~~(c) Notwithstanding the above and in accordance with ARM 46.12.3401(2)(b) and (d), the school attendance requirement found in ARM 46.10.301 and the WIN participation requirements found in ARM 46.10.308 through 46.10.313 do not apply to this coverage group.~~

~~(3)~~(2) For individuals under ~~21~~ 19 who are not eligible for foster care or adoption assistance under Title IV-E or do

not qualify as dependent children, the nonfinancial requirements for medicaid under this subchapter are as provided in ARM 46.12.3401(3).

AUTH: Sec. 53-4-211, 53-4-212, 53-4-231 and 53-6-113, MCA
IMP: Sec. 53-4-211, 53-4-212 and 53-6-131, MCA

46.12.3403 FINANCIAL REQUIREMENTS, NON-INSTITUTIONALIZED ~~AFDC~~ FAIM FINANCIAL ASSISTANCE RELATED FAMILIES AND CHILDREN (1) Individuals eligible for FAIM financial assistance ~~receiving AFDC, including those deemed to be receiving AFDC,~~ are presumed to have met all the financial requirements for medicaid eligibility.

~~(2) For individuals and families under the heading families with dependent children who are not receiving AFDC, the AFDC financial requirements which are set forth in ARM 46.10.401, 46.10.402, 46.10.403, 46.10.406 and 46.10.505 through 46.10.514 will be used to determine whether:~~

~~(a) the assistance unit is eligible with respect to resources;~~

~~(b) the assistance unit is eligible with respect to gross and net income and with respect to the applicable benefit standards.~~

~~(c)~~(2) Notwithstanding the above and in accordance with ARM 46.12.3401~~(c)~~(d) ~~and (f)~~, for purposes of this coverage group:

~~(i)~~(a) the increase in OASDI benefits on July 1, 1972 will be excluded from unearned income; and

~~(ii)~~(b) ineligibility for ~~AFDC~~ FAIM financial assistance on the basis of the gross monthly income test found in ARM ~~46.10.402 and 46.10.403~~ 46.18.122 will not preclude continued medicaid coverage under ARM 46.12.3401~~(f)~~(1)(c).

(3) For individuals under ~~21~~ 19 who are not eligible for foster care or adoption assistance under Title IV-E or do not qualify as dependent children, the ~~AFDC~~ FAIM financial requirements which are set forth in ARM ~~46.10.401 through 406 and 46.10.505 through 514~~ 46.18.118 through 46.18.122 will be used to determine whether:

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

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-4-231 and 53-6-131, MCA

46.12.3404 THREE MONTH RETROACTIVE COVERAGE, NON-INSTITUTIONALIZED ~~AFDC~~ FAIM FINANCIAL ASSISTANCE RELATED FAMILIES AND CHILDREN (1) and (1)(a) remain the same.

(b) they are determined eligible for medicaid on the first day of the month in the month or months medical services were received.

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

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-131, MCA

46.12.3801 INDIVIDUALS COVERED, NON-INSTITUTIONALIZED MEDICALLY NEEDY (1) Medicaid under this subchapter will be provided to the following individuals who would be receiving ~~AFDC~~ FAIM financial assistance if their income ~~or resources~~ had not exceeded the ~~AFDC~~ income standards found in ARM ~~46.10.403~~ 46.18.122 ~~or resource standard found in ARM 46.10.406~~ provided they are also eligible under ARM 46.12.3802 through 46.12.3805:

(1)(a) and (1)(b) remain the same.

(c) a child born on or after October 1, 1983, through the month of their 19th birthday whose family income and resources meet the requirements listed in ARM 46.12.3803 and ~~46.12.3805~~ 46.18.118;

~~(d) individuals who failed to meet JOBS requirements found in ARM 46.10.805;~~

~~(e)~~(d) individuals under age ~~21~~ 19 who are ineligible for medicaid under ARM 46.12.3401; and

~~(f)~~(e) individuals in ~~an AFDC~~ a FAIM financial assistance lump sum period of ineligibility.

(2) This group does not include individuals whose ~~AFDC~~ cash assistance is terminated solely because of increased income from employment and who, under ARM 46.12.3401, are receiving continued medicaid coverage. However, this group may be eligible when the medicaid coverage terminates.

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

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-131, MCA

46.12.3803 MEDICALLY NEEDY INCOME STANDARDS (1) To be eligible for medically needy assistance, SSI and ~~AFDC~~ FAIM financial assistance related institutionalized and non-institutionalized recipients must meet:

(1)(a) through (3)(b) remain the same.

MEDICALLY NEEDY INCOME LEVELS
FOR SSI and ~~AFDC~~ FAIM FINANCIAL ASSISTANCE
RELATED INDIVIDUALS AND FAMILIES

Family Size	One Month Net Income Level	
1	~~466~~	491
2	~~466~~	491
3	~~497~~	523
4	~~527~~	555
5	~~615~~	650
6	~~703~~	744
7	~~792~~	838
8	~~880~~	933
9	~~923~~	980
10	~~966~~	1,024
11	~~1,003~~	1,064
12	~~1,040~~	1,104
13	~~1,073~~	1,140
14	~~1,104~~	1,173
15	~~1,134~~	1,206
16	~~1,161~~	1,234

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141, MCA

46.12.3804 INCOME ELIGIBILITY, NON-INSTITUTIONALIZED MEDICALLY NEEDY (1) remains the same.

(a) For groups covered under ARM 46.12.3801, monthly countable income will be determined using ~~the AFDC~~ FAIM income requirements, in particular those with respect to prospective budgeting and earned income disregards, set forth in ARM ~~46.10.401, through 46.10.404, and ARM 46.10.505 through 46.10.514~~ 46.18.120.

(i) In the case of individuals whose income must be deemed when determining eligibility, the ~~AFDC~~ FAIM financial assistance income requirements contained in ARM ~~46.10.512(2)~~ 46.18.119 will be used.

(1)(a)(ii) remains the same.

(iii) To determine the income for the ~~one~~ (1) month prospective period, individuals or families who, ~~under ARM 46.10.403(3)~~ under ARM 46.18.124, are ineligible for ~~AFDC~~ FAIM financial assistance due to the receipt of a lump sum payment, ~~an amount equal to the AFDC net monthly income standard for the family size will be imputed to the individual or family and added to other income expected during the month to arrive at the total countable income~~ use ARM 46.18.122.

(1)(b) through (3)(a)(i)(A) remain the same.

(I) eligible or ineligible individuals who are considered members of the household for ~~AFDC~~ FAIM financial assistance related medicaid; or

(3)(a)(i)(A)(II) through (3)(b)(i) remain the same.

(A) eligible or ineligible individuals who are considered members of the household for ~~AFDC~~ FAIM financial assistance

related medicaid; or

(3)(b)(i)(B) through (6) remain the same.

AUTH: Sec. 53-2-201, 53-4-212, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-2-201, 53-4-231, 53-6-101, 53-6-131 and 53-6-402, MCA

46.12.3805 RESOURCE STANDARDS, NON-INSTITUTIONALIZED MEDICALLY NEEDY (1) through (3) remain the same.

(a) FAIM financial assistance related ~~AFDC-related~~ individuals and families will have resources evaluated according to ARM ~~46.10.406~~ 46.18.118. The value of the resources must not exceed the resource limit under (1) as of the date of application to be eligible for any part of the month.

(3)(b) and (4) remain the same.

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-131 and 53-6-402, MCA

46.12.3808 THREE MONTH RETROACTIVE COVERAGE, NON-INSTITUTIONALIZED MEDICALLY NEEDY (1) through (2)(a) remain the same.

(b) resource criteria of ARM 46.12.3805 as of the first day of the month; and

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

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-131, MCA

3. Families Achieving Independence in Montana (FAIM) provides financial and other types of assistance to low-income families to help them become self-supporting. Benefits available in FAIM Financial Assistance include cash assistance to pay for necessities such as shelter and clothing, medical assistance, dependent care assistance, and also employment counseling and training, assistance to complete educational goals, and other activities to eliminate barriers to self sufficiency. FAIM participants may also be eligible for food stamps. FAIM is administered by the Department of Public Health and Human Services (the Department) under federal waivers granted pursuant to section 1115 of the Social Security Act, 42 USC 1315. These waivers of certain provisions of the federal statutes governing Medicaid, Food Stamps, and Temporary Assistance for Needy Families cash assistance, enable the Department to use new approaches to help families be self-supporting.

FAIM Financial Assistance consists of three separate programs, namely the Pathways program, the Community Services Program (CSP), and the Job Supplement Program (JSP). The JSP provides

an alternative to cash assistance by offering eligible families dependent care assistance, medical assistance, and one time employment-related payments. Families can receive monthly cash assistance and non-financial assistance such as employment counseling and training in the Pathways program for a total of 24 months. Families who still need cash assistance after 24 months in Pathways may continue to receive cash benefits in the CSP for an additional period, which in most cases cannot exceed 36 months, if adults in the household perform community service work. Pathways and CSP participants may also receive medical assistance and/or food stamps. Receipt of medical assistance and food stamps is not time-limited.

The proposed changes to the Department's Medicaid rules are necessary primarily to reflect changes brought about by the passage of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), PL 104-193. PRWORA eliminated the longstanding Aid to Families with dependent Children (AFDC) program and replaced it with block grant funding for state cash assistance programs known as Temporary Assistance to Needy Families (TANF).

Because the AFDC program no longer exists after PRWORA, the Department is repealing most of its AFDC rules in ARM Title 46, Chapter 10. (The Department is not repealing all of the AFDC rules at this time because certain AFDC rules relating to children in foster care need to be kept in place until new foster care rules are adopted. The Department anticipates adopting new foster care rules in the near future.) Thus, a number of Medicaid rules are being amended to replace references to the AFDC program with references to FAIM or cash assistance.

In several rules, references to the Department of Social and Rehabilitation Services are being changed to the Department of Public Health and Human Services, which now administers the Montana Medicaid Program. The Department of Social and Rehabilitation Services was merged into the newly created Department of Public Health and Human Services in 1995. Other changes in terminology which do not affect the substance of the rules are also being made, such as changing "county welfare department" to "office of public assistance".

ARM 46.12.3001, 46.12.3002, 46.12.3003, 46.12.3401, 46.12.3402, 46.12.3403, 46.12.3404, 46.12.3801, 46.12.3803, 46.12.3804, and 46.12.3805 are being amended to make changes in terminology as discussed above.

Additionally, the provisions in ARM 46.12.3001(6)(d) through (6)(d)(iii) regarding steps to be taken when a Medicaid applicant cannot recall his Social Security Number are being deleted because this material does not need to be addressed in the administrative rules. This material relates to procedures

used by employees of offices of public assistance rather than substantive issues regarding eligibility or benefits and is more appropriately addressed in the Department's Medical Assistance Manual for those employees.

ARM 46.12.3002(7)(c) is being amended to provide that Medicaid coverage for the month is granted if all eligibility criteria are met on the date of application and on the first day of the subsequent month, rather than at any time during the month as currently stated in the rule. This change is being made because the current language of subsection (7)(c) does not accurately state the Department's policy. Thus the change does not represent a change in policy but merely amends the rule to conform to the policy already being applied for many years.

In ARM 46.12.3201 relating to citizenship requirements, several changes are being made to implement changes brought about by PRWORA, PL 104-193, which was passed on August 22, 1996. PRWORA restricted eligibility for cash and medical assistance to U.S. citizens and very limited categories of aliens known as "qualified aliens". For this reason, subsection (1)(b) of ARM 46.12.3201 is being amended to refer to qualified aliens and to cross reference the new FAIM rule on citizenship and alienage requirements, [Rule II on MAR Notice No. 37-99]. Subsection (1)(c) is being added to provide that non-citizens who are legal aliens and were residing in the U.S. prior to August 23, 1996, may be eligible for medical assistance. Congress created this new coverage group in the Balanced Budget Act of 1997 to mitigate the harshness of PRWORA's provisions on citizenship and alienage, which resulted in termination of medical assistance for many noncitizens who were living in the United States legally and receiving Medicaid at the time PRWORA was passed.

ARM 46.12.3206 sets out requirements for Medicaid recipients to assign rights to benefits and to cooperate in establishing paternity and obtaining support. A new subsection (4) is being added to specify that recipients of medical assistance only in certain coverage groups, such as poverty level pregnant women and poverty level children, are not required to assign their rights to medical support or cooperate in establishing paternity or obtaining child support. This has been the Department's policy for many years but is being added so that there will be no confusion about the obligations of individuals in these coverage groups. Subsections (4) through (4)(b) of ARM 46.12.3206 are also being rewritten for the sake of clarity, but there is no change in the policy stated in these subsections, which provide that adults will lose Medicaid eligibility for failing to comply with the requirements of this rule, but children will not lose Medicaid coverage due to such a failure by a parent or other adult.

In ARM 46.12.3401, which lists family-related Medicaid coverage

groups, several minor changes are being made in addition to the substitution of the term "FAIM" for "AFDC". None of these changes indicates any change in policy. Rather these changes are being made to correct errors or make the rule's meaning clearer. In subsection (1)(b)(iii) of the rule (as renumbered) on this notice, a correction is being made to the name of the Job Supplement Program, which was erroneously referred to as the Job Supplementation Program. The wording of subsection (1)(b)(iii) is also being changed to clarify that Medicaid coverage is an optional benefit of the JSP, rather than being automatic for all JSP participants.

In subsections (1)(e), (1)(f)(ii), (1)(i), and (1)(j) of ARM 46.12.3401 (as renumbered), the names by which these coverage groups are known, such as "poverty level pregnant woman" and "poverty level child" are being inserted for ease of reference. Additionally, a new subsection, subsection (1)(o), is being added to list the "Ribicoff child" coverage group. The Department has provided medical assistance to children under the Ribicoff child coverage group for many years pursuant to federal law, but through an apparent oversight this coverage group was never specified in the rule.

Finally, the upper age limit for coverage for persons receiving Medicaid in the IV-E related foster care or adoption assistance coverage groups is erroneously stated in ARM 46.12.3401(1)(b)(ii) (as renumbered) to be 21. The Department provides assistance to persons in these groups only until they turn 19. The amendment of this subsection is necessary to correct this error, but there is no change in the Department's policy. Similarly, in ARM 46.12.3402(2), 46.12.3403(3) and 46.12.3801(1)(d) as renumbered, the upper age limit for Medicaid coverage is erroneously stated to be 21. The age in these subsections is being changed to age 19 to state correctly the Department's policy.

Additionally, several substantive changes are being made in ARM 46.12.3401(1) in regard to categories of persons covered. Subsections (1)(b)(ii), (1)(b)(iii), (1)(b)(iv) and (1)(f) are being deleted because they specify Medicaid coverage which is no longer available in the FAIM program. FAIM does not have a work supplementation program equivalent to the AFDC work supplementation program, so it is not necessary to specify that work supplementation participants are eligible for Medicaid. Also, extended Medicaid coverage is now provided to FAIM participants whose cash assistance is terminated due to an increase in child support received or due to the elimination of income disregards used in determining eligibility for cash assistance for up to 12 months, as provided in subsection (1)(c), rather than for a maximum of 4 months. Finally, while (1)(f) currently provides Medicaid coverage for a person who would be eligible for AFDC except for failure to meet the

requirements of JOBS, the AFDC employment and training program, this is not true in FAIM. As provided in ARM 46.18.134 pertaining to FAIM sanctions as proposed to be amended on MAR Notice No. 37-99, a FAIM participant who is sanctioned due to failure to comply with employment and training requirements or for any other reason will lose Medicaid coverage as well as cash assistance.

In ARM 46.12.3803, the Medically Needy Income standards, which are used to determine eligibility for medical assistance for individuals who are not categorically eligible due to receipt of FAIM cash assistance or Supplemental Security Income (SSI) cash assistance are being increased. The medically needy income standards are based on the income standards for FAIM cash assistance contained in ARM 46.18.122 as proposed to be amended on MAR Notice No. 37-99, which are in turn based on federal poverty levels published by the U.S. Office of Management and Budget (OMB) and revised annually. The Montana Legislature has set FAIM cash assistance benefits for the 1997-98 biennium at 40.5% of the federal poverty levels. The income standards used to determine eligibility for FAIM cash assistance are being increased at this time to reflect increases in the 1997 poverty levels which were recently published. The medically needy standards must now be increased to reflect these changes.

In ARM 46.12.3804, a number of cross-references to Aid to Families with Dependent Children (AFDC) rules are being changed to cite the FAIM rules, due to the repeal of the AFDC rules.

In ARM 46.12.3808 relating to eligibility for retroactive Medicaid coverage for three months prior to the date of Medicaid application, subsection (1)(b) is being amended to specify that the applicant must met the resource criteria as of the first day of the month, as opposed to any day during the month, to be eligible for retroactive coverage for the month. This is only a clarification, not a change in policy, as federal Medicaid regulations have always specified that resource eligibility is determined as of the first day of the month.

5. The amendments to ARM 46.12.3803 pertaining to medically needy income standards will be applied effective July 1, 1998. The amendments provide an increase in benefits to the recipients.

6. 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 July 28, 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. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State June 15, 1998.

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

In the matter amendment of 46.18.305 through 46.18.326, except reserved rules, and 46.18.330 through 46.18.332 and repeal of title 46, chapter 18, subchapter 2 pertaining to the families achieving independence in Montana's (FAIM) work readiness component (WoRC) and other employment and training activities	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Interested Persons

1. On July 20, 1998, at 4:00 p.m. a public hearing will be held by MetNet in the Lower Level Auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana; Special Ed. Building, Room 162, 1500 North 30th Street, Montana State University at Billings, Billings, Montana; Burns Center Room 126, EPS Building South 7th & Grant, Montana State University, Bozeman, Montana; ELCB, Room 231, 1300 West Park Street, Montana Tech, Butte, Montana; Room 147, 2100 16th Avenue South, Great Falls College of Technology of MSU, Great Falls, Montana; and Gallagher Building, Room 104, Corner of Arthur and Eddy, University of Montana, Missoula, Montana, to consider the proposed amendment of 46.18.305 through 46.18.326, except reserved rules, and 46.18.330 through 46.18.332 and repeal of title 46, chapter 18, subchapter 2 pertaining to the families achieving independence in Montana's (FAIM) work readiness component (WoRC) and other employment and training activities. This hearing will be held concurrently with the hearing as proposed pertaining to families achieving independence in Montana (FAIM) in MAR Notice Numbers 37-99 and 37-100 in this issue of the Montana Administrative Register.

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 July 13, 1998, 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. Matter to be added is underlined. Matter to be deleted is interlined.

46.18.305 FAIM EMPLOYMENT AND TRAINING: ~~ELIGIBILITY~~ PARTICIPATION (1) A person who is eligible for the pathways or community services program ~~and is not participating in FAIM JOBS~~ is required to participate in FAIM employment and training as provided in these rules. No one is exempt. All adults, teen parents, and minor children between the ages of 16 and 18 who are not attending school or an equivalency program full time must participate in FAIM employment and training ~~or FAIM JOBS~~ activities as indicated in the FIA.

(2) ~~In a two-parent household, both parents will be referred to the FAIM JOBS program. One parent may be referred back for FAIM employment and training activities~~ Participants in single and two-parent households may, on the basis of the screening guide as defined in ARM 46.18.103 and FAIM coordinator's recommendation, be required to participate in the Work Readiness Component (WoRC).

(3) Placement of persons into FAIM employment and training services will be based upon the following factors:

(a) the suitability of the available services for meeting the person's needs as identified in the ~~profile model~~ screening guide and action plan or by the FAIM coordinator; ~~and~~

(b) the availability of the necessary services~~.~~; and

(c) allowability under the community operating plan in effect in the county where the participant resides.

(4) Some FAIM employment and training activities may differ from community to community based on available resources. Participants may be placed in any activities available in their ~~home~~ community.

(5) A WoRC participant who loses eligibility for the pathways program or CSP due to employment may, if the participant's case manager and FAIM coordinator approve, receive case management services for up to 180 days after the last day of the last month of eligibility for FAIM cash assistance.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

46.18.306 FAIM EMPLOYMENT AND TRAINING ACTIVITIES (1) Participants in ~~the~~ FAIM employment and training ~~program~~ activities, regardless of whether they are members of a single-parent or two-parent family, may, in accordance with their FIA and subject to availability in their community, participate in the ~~activities specified in ARM 46.10.807(1)(a) through (1)(g) and also~~ following activities:

~~(a) post secondary training or education in the pathways program and in the community services program (CSP) if post-secondary is an acceptable CSP activity in the community where the participant resides; and~~

~~(b) Volunteer activities designated appropriate in the~~

~~FIA~~.

(a) job readiness training;

(b) job development and placement;

(c) on-the-job training; and

(d) work experience training (WEX);

(e) post-secondary training or education in the pathways or community services program if post-secondary training or education is an acceptable pathways or CSP activity in the community where the participant resides and the criteria of the community operating plan for that community are met;

~~(b)~~ (f) appropriate volunteer activities ~~designated appropriate~~ specified in the FIA~~.~~;

(g) short-term skills training for a period not to exceed 6 months; and

(h) individual or group job search.

(2) Participants who are members of a two-parent family may also, in accordance with their employability plan or FIA and subject to the approval of their case manager, participate in educational activities as follows:

(a) activities to qualify for a high school diploma or equivalency and remedial adult educational activities as determined appropriate by the case manager; and

(b) post-secondary education only if the recipient is enrolled in the course or program of study under a Job Training Partnership Act (JTPA), vocational rehabilitation, Trade Adjustment Act or refugee assistance center program or a similar program approved by the department.

(3) The FAIM Coordinator may refer pathways or community services program participants to one single WoRC activity for the duration of a class or training if there is space in that specific class or training. Participants entering WoRC in this manner will be enrolled for the duration of the class or training only.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

46.18.309 FAIM EMPLOYMENT AND TRAINING: ~~ALTERNATIVE~~ WORK EXPERIENCE PROGRAM (WEX) ~~(1) The provisions pertaining to the alternative work experience program (AWEP) contained in ARM 46.10.808 apply to participants in FAIM employment and training.~~

(1) The work experience component is an activity of FAIM employment and training designed to improve the employability of participants by assigning a participant to train in a nonprofit organization or public agency or in a for profit private agency. The specific purposes of the work experience component are to:

(a) provide meaningful training for participants with little or no work history;

(b) provide an avenue for participants to earn a current recommendation; and

(c) provide participants with the skills to balance the demands of home and activities outside the home.

(2) The department shall determine whether the participant shall participate in the work experience program (WEX) rather than in some other component, what work site the participant will be assigned to and how many hours per week the participant shall be required to participate. However, participants may not be required to participate more than 40 hours per week in work experience component activities, including hours spent in volunteer activities or paid employment.

(3) A participant's assignment to a work experience component site is subject to the following requirements:

(a) the participant may request a reassignment at any time which may be granted at the discretion of the participant's case manager;

(b) the site and the training activities in which the participant is engaged must be in compliance with all applicable federal, state or local health and safety standards;

(c) the participant's assignment shall take into consideration the following:

(i) family circumstances;

(ii) extent of work experience;

(iii) length of detachment from the labor market; and

(iv) barriers to employment.

(d) a participant shall not be assigned to a site until the department and the sponsoring agency have entered into an agreement.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

46.18.310 FAIM EMPLOYMENT AND TRAINING: PARTICIPATION REQUIREMENTS FOR EDUCATIONAL ACTIVITIES (1) A ~~custodial~~ teen parent who is ~~between the ages of 13 and 19 years~~ under 18, who has not completed high school or its equivalent or any other teen student referred to FAIM employment and training must participate in ~~FIA activities which may include~~ educational activities ~~such as pursuit of a high school diploma or its equivalent~~ unless the FAIM coordinator or WoRC operator designates or approves another activity.

(2) The determination of the appropriateness of educational activities is based on:

(a) results of the participant's available educational assessment;

(b) the participant's social and psychological history;

(c) availability of educational resources; and

(d) the employment goals of the participant specified in the employability plan.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

46.18.314 FAIM EMPLOYMENT AND TRAINING; CHILD CARE (1) The department ~~must~~ may provide child care assistance

to pathways and CSP participants who are ~~participating in the~~ performing FAIM employment and training ~~program~~ activities and need child care in order to participate in approved activities, of the program, including training. ~~Child care assistance can be in the form of alternative child care resources unique to each community.~~ The following requirements and specifications ~~contained in ARM 46.10.810(1)(a) through (1)(b)(ii)(B) apply to FAIM employment and training child care.~~ apply:

(a) The child for whom the care is provided must be either included in the assistance unit or a recipient of supplemental security income (SSI) under Title XVI of the federal Social Security Act and must be:

(i) under the age of 13 years; or

(ii) age 13 to 18 and a full-time student expected to complete the child's school program by age 19, providing that the child requires care because the child is either:

(A) physically or mentally incapacitated as determined by a physician or licensed or certified psychologist; or

(B) under the supervision of a court.

(2) The department shall make child care payments in accordance with the requirements and payment amounts set forth in ARM ~~46.10.404~~ 11.14.601 through 11.14.605.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

46.18.315 FAIM EMPLOYMENT AND TRAINING: TWO-PARENT FAMILIES PARTICIPATION AND OTHER REQUIREMENTS (1) ~~Once a two parent family moves from pathways into the community services program, they must begin to participate in FAIM employment and training to keep the adult portions of the grant.~~ The FAIM employment and training participation requirements for two-parent families are specified in ARM 46.18.133.

(2) Either one or both parents may be referred by the county to WoRC if a referral is appropriate based on the results of the screening guide as defined in ARM 46.18.103. If a parent is referred to WoRC, the parent will perform all participation hours specified in ARM 46.18.133 in WoRC activities.

(3) ~~The two parent family shall have access to all the activities set forth in ARM 46.10.807(1)(a) through (1)(h), but not post secondary training or education~~ Subject to the requirements of ARM 46.18.133, members of two-parent families may participate in the activities specified in ARM 46.18.306. Additionally, one of the parents may be permitted to provide child care for a family member as that parent's WoRC activity during the hours when the other parent who is the work activity participant is engaged in WoRC activities.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

46.18.318 FAIM EMPLOYMENT AND TRAINING: POST-SECONDARY

PARTICIPATION CRITERIA (1) Subject to the limits set forth in ARM 46.18.306, post secondary education may be an allowable activity for FAIM employment and training if it is an approved part of the community operating plan for the county in which the participant resides and if:

(1)(a) remains the same.

(b) child care funds are available; ~~and~~

(c) ~~the requirements of ARM 46.10.819(1)(a), (1)(c), (1)(d) and (1)(e) are met.~~ the training provides skills which the department has determined will lead to gainful employment in the area where the participant lives or in an area of Montana to which the participant is willing to move;

(d) the participant is making satisfactory progress as defined in ARM 46.18.319;

(e) the participant's course work will lead to a degree or certificate in the approved program; and

(f) the program is consistent with the participant's employability plan which has been approved by the participant's case manager.

(2) remains the same.

(3) The participant who wishes to obtain approval for post-secondary activities may, as provided in the community operating plan for the county in which the participant resides, have to complete or document some or all of the following ~~in order to participate in post secondary activities~~:

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

(4) The decision as to whether to approve post-secondary activities shall be made by the department based on the criteria established and information required as set forth in the community operating plan for the county in which the participant resides.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

46.18.319 FAIM EMPLOYMENT AND TRAINING: REQUIREMENTS FOR SATISFACTORY PROGRESS IN EDUCATIONAL, WORK AND TRAINING ACTIVITIES (1) Satisfactory progress in educational activities and post-secondary education in FAIM employment and training ~~is as specified in ARM 46.10.813~~ must be made in accordance with the requirements of the community operating plan for the county in which the participant resides.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

46.18.322 FAIM EMPLOYMENT AND TRAINING: JOB SEARCH (1) Participants may be required to participate in individual or group job search for the number of hours listed in ~~the~~ their family investment agreement or their WoRC employability plan.

(2) remains the same.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

46.18.323 FAIM EMPLOYMENT AND TRAINING: ON-THE-JOB TRAINING (OJT) (1) ~~The requirements of ARM 46.10.817 apply to on-the-job training in the FAIM employment and training program.~~ At the end of the on-the-job training, the participant is expected to be retained as a regular employee.

(2) The participant's training and work in an on-the-job training placement will be governed by a contract entered into with the employer.

(a) The term of the contract will be for a period of no more than 6 months.

(b) The contract will provide:

(i) specific tasks that are to be taught to the participant;

(ii) reasonable time periods for completion of the specific tasks in the training program; and

(iii) the wages and benefits to be provided.

(3) The tasks to be taught to the participant must relate to the responsibilities of the position the participant is taking.

(4) The time periods are to be based on the best interests of the participant and may not exceed the time allowed for that type of a position by the specific vocational preparation level from the training time conversion chart of the Dictionary of Occupational Titles of the United States department of labor.

(5) The wages and benefits to be provided must be reasonably similar to those provided for similar positions with the employer and generally in the area.

(a) If the position given to the participant is subject to a labor contract, the wages and benefits provided to the participant must be in accord with that labor contract.

(6) A WoRC participant who is participating in on-the-job training funded by WoRC or Job Training Partnership Act (JTPA) who loses eligibility for the pathways program due to employment may receive case management services and child care until the participant completes the training described in the on-the-job training contract, even if the time required to complete the training exceeds 180 days after the last day of the last month of eligibility for FAIM cash assistance.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

46.18.326 FAIM EMPLOYMENT AND TRAINING: SUPPORTIVE SERVICES (1) through (1)(b) remain the same.

(c) Supportive services for WoRC participants are available as provided in the department's WoRC manual, section 8. The department hereby adopts and incorporates by reference the WoRC manual, section 8, as amended through March 1, 1998. Section 8 of the WoRC manual specifies what supportive services

are available to FAIM participants. A copy of the WoRC manual, section 8, as amended through March 1, 1998, may be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 111 N. Sanders, Helena MT 59604-4210.

(2) ~~One time pathways employment related~~ Supportive services payments ~~(PERP)~~ may be made for expenses determined necessary to participate in a FAIM activity or accept or maintain employment which ~~may include~~ includes but is not limited to:

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

~~(h) items necessary to search for or obtain employment.~~

(3) through (5) remain the same.

(6) ~~The provision of supportive~~ Supportive services ~~and pathways employment related payments will~~ may be provided ~~through~~ in the form of voucher payments.

(7) ~~Supportive services and pathways employment related payments must be referenced in the FIA and be consistent with employment goals.~~

Supportive services may be provided only if they are necessary to comply with the family investment agreement and are consistent with the participant's employment goals.

(8) Supportive services ~~and pathways employment related payments shall~~ will not be made if ~~the participant has~~ similar services are available through other programs.

AUTH: 53-4-212, MCA
IMP: 53-2-201, 53-4-211, 53-4-601, and 53-4-613, MCA

46.18.330 FAIM EMPLOYMENT AND TRAINING: GOOD CAUSE

(1) A FAIM employment and training participant may have good cause for failure to participate in ~~the program~~ activities. Good cause ~~includes, but is not limited to, any of the~~ consists of circumstances ~~specified in ARM 46.10.837(1)(a) through (1)(d)(iii)~~ beyond the control of the participant which prevent participation, including but not limited to the circumstances specified in [Rule IV of MAR Notice No. 37-99] as constituting good cause for failure to comply with family investment agreement activities or other eligibility requirements.

(2) A FAIM employment and training participant has good cause for failure to accept employment under the auspices of the program due to, but not limited to, any of the circumstances specified in [RULE IV on MAR Notice No. 37-99] as constituting good cause for failure to accept employment. ~~specified in ARM 46.10.837(2)(a) through (2)(c)(ii)(B).~~

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

46.18.331 FAIM EMPLOYMENT AND TRAINING: SANCTIONS

(1) remains the same.

(2) The sanctions imposed for failure to participate without good cause are as provided in ARM ~~46.18.238~~ 46.18.134

pertaining to sanctions in the FAIM project.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

46.18.332 FAIM EMPLOYMENT AND TRAINING: FAIR HEARING PROCEDURE (1) and (2) remain the same.

~~(3) A recipient who is dissatisfied with the decision of the fair hearing officer with regard to any of the matters set forth in (1) may appeal as specified in ARM 46.10.843(3) through (3)(b).~~

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

3. The rule 46.18.202 as proposed to be repealed is on page 46-6550 of the Administrative Rules of Montana, respectively.

AUTH: Sec. 53-4-212 and 53-4-601, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

The rules 46.18.201, 46.18.205, 46.18.206, 46.18.209, 46.18.210, 46.18.215, 46.18.216, 46.18.217, 46.18.220, 46.18.221, 46.18.222, 46.18.223, 46.18.226, 46.18.227, 46.18.230, 46.18.231, 46.18.237, 46.18.238, 46.18.239, 46.18.240, and 46.18.243 as proposed to be repealed are on pages 46-6549 through 46-6583 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

The rules 46.18.302 and 46.18.329 as proposed to be repealed are on page 46-6633 and 46-6693 of the Administrative Rules of Montana, respectively.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211, 53-4-601 and 53-4-613, MCA

4. The Families Achieving Independence in Montana (FAIM) Program is a comprehensive program operated by the Department of Public Health and Human Services (the Department) to help low-income families become self-supporting. The benefits available in the FAIM Program include cash assistance to pay for necessities such as shelter and clothing, food stamps, medical assistance, and dependent care assistance. An equally important part of the FAIM Program is the provision of education, training, and employment services to help participants obtain employment and ultimately become self-supporting.

The FAIM Program consists of three separate parts, namely the Pathways program, the Community Services Program (CSP), and the

Job Supplement program (JSP). The JSP provides an alternative to cash assistance by helping families with dependent care assistance, medical assistance, food stamps, and other non-cash assistance. Families can receive cash assistance and non-financial assistance such as employment counseling and training in the Pathways program for a total of 24 months. Families who still need cash assistance and/or employment services after 24 months in Pathways may continue to receive cash benefits and services in the CSP for an additional period which in most cases cannot exceed 36 months, provided adults in the household perform community service work. Pathways and CSP participants may also receive medical assistance and/or food stamps as well as cash assistance. Receipt of food stamps and medical assistance is not time-limited.

A major revision of the FAIM employment and training rules is necessary to implement changes brought about by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), PL 104-193. PRWORA eliminated the longstanding Aid to Families with Dependent Children (AFDC) program and replaced it with funding for state cash assistance programs for families known as Temporary Assistance to Needy Families (TANF). Under the old AFDC statute, the states were required to operate a JOBS program in order to receive AFDC funds. PRWORA eliminated the JOBS program along with AFDC and did not replace JOBS with another program to provide education, employment and training services.

Section 103 of PRWORA does contain a number of mandatory work requirements for participants in state programs funded by TANF, however. These requirements specify the number of hours certain categories of individuals must be engaged in work and/or employment and training activities. PRWORA also requires the states to meet monthly participation rates, i.e., to have specified percentages of the TANF caseload participating in work and/or work-related activities each month.

Subchapters 2 and 3 of the FAIM rules at ARM Title 46, Chapter 18, contain rules pertaining to employment and training activities and requirements. Subchapter 2 governs the Job Opportunity and Basic Skills (JOBS) program and Subchapter 3 governs other employment and training activities and requirements for individuals not enrolled in JOBS. Due to the elimination of the JOBS program under PRWORA, it is no longer necessary to have two sets of rules for FAIM employment and training services. Therefore, the JOBS rules in subchapter 2 are being repealed. ARM 46.18.329 pertaining to Family Investment Agreements also is being repealed because the material it covers is contained in ARM 46.18.133 and does not need to be addressed again in the employment and training rules.

Throughout subchapter 3, the term "JOBS" is being eliminated and

the term "WoRC" is being substituted. Work Readiness Component (WoRC) is the name of the intensive case management component of the Department employment and training program, as defined in ARM 46.18.103 as amended on MAR Notice No. 37-99. The Department also is substituting "Work Experience Program (WEX)" for "Alternative Work Experience Program (AWEP)" in ARM 46.18.309, as that is the name of the Department's new work experience program.

Because the AFDC program no longer exists after PRWORA, the Department's AFDC rules in ARM Title 46, Chapter 10, are being repealed. However, a number of the FAIM employment and training rules in subchapter 3 contain cross-references to the AFDC rules. The amendment of these rules is necessary to eliminate the cross-references and insert the material previously covered in the AFDC rules. Rules which must be amended for this reason are ARM 46.18.306, 46.18.309, 46.18.314, 46.18.315, 46.18.318, 46.18.319, 46.18.323, 46.18.330, and 46.18.332. Additionally, in ARM 46.18.331 pertaining to sanctions, a reference to ARM 46.18.238, which is being repealed, is being replaced with a reference to ARM 46.18.134.

In ARM 46.18.305 pertaining to participation in employment and training activities, subsection (1) is being amended to specify that participants in the CSP as well as Pathways components of FAIM must participate in employment and training activities. When ARM 46.18.305 was adopted in 1995, the FAIM Program was just beginning. There were no participants in the CSP program at that time, because CSP is the component for individuals who have exceeded the 24-month limit for receipt of benefits in Pathways. Therefore ARM 46.18.305 did not state the CSP participants must perform employment and training activities. This omission is now being remedied. Additionally, a provision is being added to subsection (1) to require minor children between the ages of 16 and 18 who are not attending school full-time to participate in training or work-related activities. The latter provision is being added to allow the Department to comply with the mandatory work requirements contained in Section 103 of PRWORA.

Subsection (2) of ARM 46.18.305 is also being amended to specify that individuals in one-parent as well as two-parent households may be referred to WoRC on the basis of the results of the screening guide and the FAIM Coordinator's recommendation. This is being added to clarify, not change, the Department's policy. In subsection (3), a provision is being added to state that one factor considered in determining a participant's employment and training placement is whether the activity is allowed in the community operating plan of the participant's county of residence. Again, this is not a change in policy but a clarification. Finally, subsection (5) is being added to provide that a WoRC participant who becomes ineligible for

assistance due to employment may in some cases continue to receive case management services for another 180 days. The Department has chosen to do this because it believes providing case management services may enable some participants to maintain and succeed in employment in which they might otherwise fail.

ARM 46.18.306 is being amended to state that the activities listed as acceptable in this rule are acceptable regardless of whether the participant is a member of a one-parent or two-parent household. This is being added to clarify the Department's existing policy.

ARM 46.18.310(1), currently states that any parent between the ages of 13 and 19 who hasn't completed high school may be required to participate in educational activities. These ages were based on requirements of the AFDC employment and training program, the Job Opportunity and Basic Skills (JOBS) program, which did not allow states to serve participants younger than 13 in JOBS. The Department is no longer governed by the JOBS regulations, since PRWORA eliminated both the AFDC and the JOBS programs. Therefore the Department is eliminating the minimum age of 13 years. Additionally, the rule is being amended to make educational activities mandatory rather than discretionary for teen parents under 18 who do not have a high school diploma, unless the FAIM coordinator or WoRC operator specifically approve some other non-educational activity instead. The requirement for teen parents to pursue educational activities is being inserted because it is mandated by PRWORA, but it applies only to persons under 18 and not to persons under 19 years old because that is the age limit specified in PRWORA.

Subsection (2) has been added to ARM 46.18.310 to specify what factors the FAIM coordinator or WoRC operator will consider in deciding whether the mandatory education provision should be waived for a teen parent, such as the participant's educational assessment and social and psychological history.

In ARM 46.18.314 pertaining to child care to allow a participant to perform employment and training activities, the rule is being amended to provide that the Department "may" rather than "must" provide child care assistance. This change is being made because the Department may not always have sufficient funds to pay for child care assistance for all employment and training participants. The Department should not be required to provide services for which it does not have funding. However, if a participant needs child care in order to perform an activity and cannot obtain child care without state assistance, the participant may have good cause for failing to perform the activity. Provisions are also being added to ARM 46.18.314 to incorporate child care requirements previously contained in the AFDC rules.

In addition to the changes in terminology and cross-references in ARM 46.18.315 explained above, a provision is being added to specify that in a two-parent household, either one or both parents may be referred to WoRC if the results of the screening guide indicate a referral is appropriate. This is being added to clarify rather than change the policy on WoRC referrals. The Department has always used the screening guide to determine the appropriateness of WoRC referrals and has referred one, both, or neither of the parents based on the results of the screening guide.

The amendment of ARM 46.18.322 is necessary to provide that the number of hours a participant may be required to participate in job search may be specified in the participant's WoRC employability plan as well as the individual's FIA. This change is being made because in practice the number of job search hours may be stated in the employability plan rather than in the FIA.

ARM 46.18.326 pertaining to supportive services currently does not list all the services which may or may not be provided because such a list would be too lengthy. However, the Department is now incorporating by reference the supportive services section of its WoRC manual which does specify what supportive services are covered. Subsection (2) of the current rule which relates to one time employment-related payments is being deleted because it is already covered in the FAIM rule on one time employment related payments at ARM 46.18.130 and does not need to be addressed again in the supportive services rule.

In ARM 46.18.332 on fair hearings rights for employment and training participants, subsection (3) provides for an appeal to an administrative law judge of the U.S. Department of Labor in cases involving issues such as working conditions. This subsection now is being deleted because this special appeal process was provided in the regulations of the former AFDC program and is no longer available since the AFDC program no longer exists.

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 July 28, 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.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State June 15, 1998.

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

In the matter of the amendment of 16.28.101, 16.28.601, 16.28.601A, 16.28.605D and 16.28.609A concerning control of sexually transmitted diseases	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On July 27, 1998, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of rules 16.28.101, 16.28.601, 16.28.601A, 16.28.605D and 16.28.609A concerning control of sexually transmitted diseases.

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 July 20, 1998, 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. Matter to be added is underlined. Matter to be deleted is interlined.

16.28.101 DEFINITIONS Unless otherwise indicated, the following definitions apply throughout this chapter:

(1) "Blood and body fluid precautions" mean the following requirements to prevent spread of disease through contact with infective blood or body fluids:

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

(f) If a needle-stick injury occurs, the injured person must be evaluated immediately to determine if hepatitis prophylaxis is needed or human immunodeficiency virus is a concern.

(1)(g) through (12) remain the same.

(13) "Health care" means health care as defined in 50-16-504, MCA.

~~(13)~~(14) "Health care facility" is a facility defined in 50-5-101, MCA.

(15) "Health care provider" means a health care provider as defined in 50-16-504, MCA.

(14) through (33) remain the same in text, but are renumbered (16) through (35).

AUTH: Sec. 50-1-202, 50-2-116 and 50-17-103, MCA
IMP: Sec. 50-1-202, 50-17-103 and 50-18-101, MCA

16.28.601 MINIMAL CONTROL MEASURES (1) This subchapter contains minimal control measures to prevent the spread of disease which must be employed by a local health officer, a representative of the department when assisting a local health officer with a case, ~~an attending physician~~ a health care provider treating a person with a reportable disease, or any other person caring for a person with a reportable disease.

(2) remains the same.

AUTH: Sec. 50-1-202, 50-2-116 and 50-2-118, MCA
IMP: Sec. 50-1-202, 50-2-116 and 50-2-118, MCA

16.28.601A ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) AND HIV INFECTION (1) Whenever ~~acquired immune deficiency~~ human immunodeficiency virus (HIV) infection occurs, blood and body fluid precautions must be used for the duration of the infection.

(2) If a test confirms HIV infection, the department will contact the health care provider submitting the test or another health care provider designated by the subject of the test in order to determine whether acquired immune deficiency syndrome is present. If AIDS exists, the provider must submit a report pursuant to ARM 16.28.204.

(3) Either a health care provider treating an individual with HIV infection for that infection or a representative of the department or local health department must:

(a) instruct the case how to prevent spreading the HIV infection to others;

(b) provide the case with information about any available services relevant to the case's health status and refer the case to appropriate services;

(c) interview the infected person to determine the person's contacts; and

(d) locate each contact, counsel each contact, advise the contact to receive testing to determine the contact's HIV status, and refer the contact for appropriate services.

(4) The health care provider may conduct the interview with the case and assist the case with contact notification, or the provider may request the department to assist in conducting the interview and/or notifying contacts.

AUTH: Sec. 50-1-202, 50-2-118 and 50-16-1004, MCA
IMP: Sec. 50-1-202, 50-2-118 and 50-16-1004, MCA

16.28.605D CHLAMYDIAL GENITAL INFECTION (1) An individual with a chlamydial genital infection must be directed

to undergo appropriate antibiotic therapy and to avoid sexual contact until ~~24 hours have passed after completion of the treatment regimen~~ seven days have elapsed since the commencement of effective treatment prescribed by the centers for disease control and prevention in the 1998 guidelines for treatment of sexually transmitted diseases.

(2) remains the same.

(3) The department hereby adopts and incorporates by reference the 1998 guidelines for treatment of sexually transmitted diseases published by the U.S. centers for disease control and prevention in the January 23, 1998, Morbidity and Mortality Weekly Report, volume 47, which specify the most currently accepted effective treatments for sexually transmitted diseases. A copy of the 1998 guidelines is available from the Department of Public Health and Human Services, Health Policy and Services Division, HIV/STD Section, P.O. Box 202951, Helena, Montana 59620-2951, telephone: 406-444-3565.

AUTH: Sec. 50-1-202, 50-2-118, 50-18-105, MCA
IMP: Sec. 50-1-202, 50-2-118, 50-18-102, 50-18-107, MCA

16.28.609A GONOCOCCAL INFECTION (1) A person who contracts genital gonococcal infection must be directed to undergo appropriate antibiotic therapy and to avoid sexual contact until ~~24 hours have passed after completion of the treatment regimen~~ seven days have elapsed since the commencement of effective treatment prescribed by the centers for disease control and prevention in the 1998 guidelines for treatment of sexually transmitted diseases. Individuals who have contracted genital gonococcal infection must also be treated for chlamydia.

(2) remains the same.

(3) The department hereby adopts and incorporates by reference the 1998 guidelines for treatment of sexually transmitted diseases published by the U.S. centers for disease control and prevention in the January 23, 1998, Morbidity and Mortality Weekly Report, volume 47, which specify the most currently accepted effective treatments for sexually transmitted diseases. A copy of the 1998 guidelines is available from the Department of Public Health and Human Services, Health Policy and Services Division, HIV/STD Section, P.O. Box 202951, Helena, Montana 59620-2951, telephone: 406-444-3565.

AUTH: Sec. 50-1-202, 50-2-118 and 50-18-105, MCA
IMP: Sec. 50-1-202, 50-2-118, 50-18-102 and 50-18-107, MCA

3. The addition to the definition of "blood and body fluid precautions" in ARM 16.28.101 of the requirement that an evaluation of a person sustaining a needle-stick injury occur "immediately" is necessary to adequately protect such individuals from, particularly, HIV infection. The addition of "immediately" reflects the current recommendations of the U.S.

Public Health Service that therapy be commenced within one or two hours of a suspected exposure to HIV in order to be effective in preventing HIV infection. While some benefit may result from therapy commenced later than two hours after an exposure, this option has not been found as effective as immediate treatment. Due to the serious consequences of HIV infection, failing to initiate therapy immediately places exposed individuals at risk and is not therefore considered a viable option by the department.

The definition of "health care provider" was added because the term is used in the proposed amendments of the rules contained in this notice, and to leave the phrase undefined could lead to confusion about who is considered a health care provider. The definition of "health care" was added because the definition of "health care provider" refers to health care, and uncertainty about the meaning of the latter phrase could result unless it were defined. The definitions of both phrases contained in 50-16-504, MCA, part of the Uniform Health Care Information Act, were incorporated because they are already widely understood and accepted as definitions.

The proposed amendments to ARM 16.28.601 are necessary to ensure that all of the key individuals ordinarily involved in communicable disease control are clearly required to follow the minimal control measures in the subchapter. The addition of the reference to a department representative was to recognize the fact that, while primary authority for implementing control measures rests with local health authorities, department representatives may also be assisting local health authorities as necessary to limit spread of disease and must also adhere to the minimal control measures while doing so. The substitution of "health care provider" for "attending physician" was necessary to clarify that the requirements also apply to the variety of health care providers, in addition to physicians, who may deal with reportable diseases, such as nurse practitioners and physicians' assistants.

Failing to amend the rule to include department officials was considered and rejected because the existing language failed to recognize the role, authority, and existing practices of the department and local health agencies when enforcing control measures. As for the amendment clarifying that all types of health care providers must follow the minimum control measures, the department considered adding additional examples of persons who must follow the control measures, but found it unnecessary because of the existing broad language including "any other person caring for a person with a reportable disease".

The substitution of "HIV" for "acquired immune deficiency" before the word "infection" in ARM 16.28.601(1) is necessary,

both to accurately reflect that the infection in question is with the human immunodeficiency virus rather than with a "syndrome" and to reflect the fact that the required precautions are necessary for anyone who is infected with the virus even if they have not yet developed acquired immune deficiency syndrome or are at any other stage of the disease. As for the rest of the added requirements, revisions to the AIDS Prevention Act (50-16-1001, et seq., MCA) enacted by 1997 legislature (Chapter 524 of the 1997 Laws of Montana) required the department to promulgate rules adopting the most currently accepted public health practices with regard to the control of the human immunodeficiency virus. The added requirements represent the most currently accepted practice. The requirements that the department must contact the designated health care provider if a test shows HIV infection and that the provider must then determine if AIDS has developed ensures that timely and accurate reporting of AIDS cases is made to both the local and state health departments. Such information is essential to combat further spread of HIV infection, to evaluate community based prevention efforts, and to ensure that the department gets timely and accurate information concerning AIDS diagnoses. The provision also serves as additional notice to health care providers who may have otherwise missed the fact that ARM 16.28.204 requires them to report AIDS cases.

The procedures outlined in ARM 16.28.601A(3) are consistent with standards and guidelines outlined in the U.S. Department of Health and Human Services' HIV Counseling, Testing and Referral, Standards and Guidelines, May 1994, and are consistent with the most recently accepted appropriate standards for treatment and prevention of HIV infection and AIDS. The procedures are needed to ensure that individuals testing positive for HIV receive the information necessary to prevent spreading HIV to other individuals, as well as appropriate medical referrals for care and treatment for themselves. As needed preventive measures, the rule emphasizes identification and notification of sex and/or needle-sharing contacts and encourages counseling and testing of these contacts. Proposed ARM 16.28.601A(4) is needed because many physicians may be unfamiliar with interviewing patients with HIV infection about their contacts and are either unable or unwilling to conduct the interviews and/or notify contacts; the added language indicates that such physicians can request the assistance of the department, which will ensure that the interviews needed by their patients and contact notification take place.

As for alternatives to the language proposed to be added, since the added language represents the most currently accepted practices as required by Chapter 524, 1997 Laws of Montana, no other viable options were identified.

The proposed changes to ARM 16.28.605D are necessary to

incorporate the most current and nationally accepted standards for treatment of chlamydia, i.e., those prescribed by the Centers for Disease Control and Prevention, and to prescribe abstinence from sexual contact for the seven-day time period now recognized as necessary to effectively prevent transmission. Other alternative time frames were rejected by the department because, regardless of the medication used, the disease remains contagious for a period of seven days after treatment has been given, making a shorter waiting period ineffective as a preventive measure, and because there is no evidence that waiting longer is more effective in preventing transmission.

The reasons cited for the amendments to ARM 16.28.605D also apply to the amendments to this rule. In addition, the requirement that anyone with gonorrhea also be automatically treated for chlamydia is necessary because of the fact that most patients with gonorrhea are also infected with chlamydia, but determining that chlamydia is present under the circumstances is often difficult because the test results may be obscured by the gonorrheal infection. Therefore, automatic treatment for chlamydia of those found to have gonorrhea is advisable without requiring a test to confirm the existence of chlamydia. The recommendations also follow those established by the Centers for Disease Control and Prevention. No alternatives to the above proposed standards were considered because none are justified given nationally accepted public health standards.

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 Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, Box 202951, Helena, MT 59620-2951, no later than August 3, 1998.

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

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State June 15, 1998.

BEFORE THE WHEAT AND BARLEY COMMITTEE OF THE
STATE OF MONTANA DEPARTMENT OF AGRICULTURE

In the matter of the amendment of rule 4.9.401 pertaining to Wheat and Barley Assessment and Refunds	))))	NOTICE OF AMENDMENT

TO: All Interested Persons:

1. On April 16, 1998, the Department of Agriculture published a notice of public hearing on proposed amendment of 4.9.401 at page 807, 1998 Montana Administrative Register, Issue No. 7. The hearing was held on May 7, 1998, at the W.H.E.A.T. Building, Basement Conference Room, 750 6th Street SW, Great Falls, Montana.

2. The Wheat and Barley Committee, after careful consideration of all comments received, has amended 4.9.401 Wheat and Barley Assessment and Refunds as proposed.

3. Several individuals and organizations offered oral and written comments about the proposed amendment at the public hearing and the committee received approximately 27 additional letters either supporting or opposing the amendment. For the sake of clarity and due to the volume of comments received, the committee summarizes the comments and responses as follows:

1.

COMMENT: The most common thread throughout all the comments in opposition to the proposed amendment was that the committee should not be raising the assessment at a time when wheat and barley prices were low and the state was facing the prospect of a dry growing season.

RESPONSE: While the committee certainly recognizes and acknowledges the concern over wheat and barley prices and the prospects for this year, it believes that one of the remedies to the price situation is to invest more towards production research and promotion of the sale of wheat and barley thereby increasing production efficiency and market demand for wheat and barley.

2.

COMMENT: A number of individuals were concerned over the manner in which and the assessment funds are expended.

RESPONSE: The committee offered at the hearing and offers to any interested person a copy and explanation of the budget which explains in detail where the money is allocated and how its expenditure promotes the efficient production and marketing of wheat and barley. The committee believes that its grant allocations are reasonable, are not in any great excess and are proper in light of its duty to promote research and marketing.

3.

COMMENT: A number of individuals stated that there was considerable opposition from producers who were unable to attend the hearing because it was scheduled during a peak time for production work and those persons were unable to attend.

RESPONSE: The committee understands that producers may have had difficulty in attending and for that reason urged any such persons to provide their comment to the committee in writing and that any such written comment will be given equal weight to oral comment provided at the hearing. That announcement was made in the original notice, copies of which were sent to all the major producer organizations, and the record was left open until at least May 14, 1998, a week after the public hearing. The committee believes that ample opportunity to comment was given.

Duane Arnekley - 6-15-98

Duane Arneklev, Chair
Montana Wheat and Barley Committee

W. Ralph Peck, Director
Department of Agriculture

Timothy J. Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State June 15, 1998

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

In the matter of the amendment of rules 6.6.2503, 6.6.2504, 6.6.2506, 6.6.2507, 6.6.5001, 6.6.5004, 6.6.5008, 6.6.5024, 6.6.5032, 6.6.5036, 6.6.5050, 6.6.5058, 6.6.5060, 6.6.5078, and 6.6.5090, the repeal of 6.6.5020, 6.6.5028, 6.6.5044, 6.6.5054, 6.6.5062, 6.6.5066, 6.6.5070, 6.6.5074 and the adoption of new rules I - XIV pertaining to group health insurance in the large and small group markets and individual health insurance.	)	NOTICE OF AMENDMENT, REPEAL, AND ADOPTION OF RULES

TO: All Interested Persons

1. On January 15, 1998, the State Auditor's Office published a notice of public hearing to consider the proposed amendment, repeal and adoption of the above-stated rules at page 1, 1998 Montana Administrative Register, issue number 1. The hearing was held on February 13, 1998, in Helena, Montana.

2. The Department has amended ARM 6.6.2503, 6.6.2504, 6.6.2506, 6.6.5004, 6.6.5024, 6.6.5032, 6.6.5078, and 6.6.5090 exactly as proposed.

3. The Department has amended ARM 6.6.2507, 6.6.5001, 6.6.5008, 6.6.5036, 6.6.5050, 6.6.5058, and 6.6.5060 as proposed, but with the following changes. (Matter to be added is underlined; matter to be deleted is interlined):

6.6.2507 PROHIBITED PRACTICES (1)(a) A health maintenance organization may include in its contract and evidence of coverage a provision setting forth exclusions or limitations of services for preexisting conditions at the time of enrollment as permitted under 33-22-246, 33-22-514, ~~and~~ or 33-22-1811, MCA.

(1)(b) through (3) will remain the same as proposed.

AUTH: Sec. 33-31-103 and 33-22-1811, MCA
IMP: Sec. 33-18-203, 33-22-1811, 33-31-111(7), 33-31-301(3)(c), and 33-31-312, MCA

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

(1) through (8) will remain the same as proposed.

(a) ~~"Temporary" means anyone hired to work for less than nine months. At the discretion of the employer, "temporary" employment may be defined for a shorter period.~~ "Temporary employee" means an employee who is designated as temporary by an employer for a definite period of time, not to exceed twelve months, and who has no guarantees of becoming a permanent employee. A temporary employee may not be an eligible employee. At the employer's discretion, a seasonal employee may be an eligible employee provided they are not designated as temporary and that they work the requisite number of hours per week.

(b) Officers must be subject to the same eligibility criteria as other employees~~.~~ including working the required number of hours per week.

(c) through (14) will remain the same as proposed.

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

6.6.5008 COVERED SERVICES OF POLICIES UNDER STANDARD PLAN ~~(1) Policies of insurance offered under the standard health benefit plan contemplated by 33-22-1828, MCA, must provide coverage for medically necessary major medical services, subject to the deductible, coinsurance, copayment, maximum out-of-pocket, and lifetime maximum benefit levels.~~

(2), (2)(b) and (3) will remain the same as proposed but are renumbered (1), (1)(a) and (2).

AUTH: Sec. 33-1-313 and 33-22-1822, MCA
IMP: Sec. 33-22-1802, 33-22-1812, and 33-22-1828, MCA

6.6.5036 CALCULATION OF BENEFIT VALUES (1) through (1)(d) will remain the same as proposed.

(2) ~~Calculations must be made for the standard health benefit plan and for each basic health benefit plan filed for approval by the commissioner. Each such filing~~ Filing of standard and basic health benefit plans for approval by the commissioner must include a description of the small employer carrier's benefit value method, an actuarial certification that the formula's expected claims costs, utilization rates and values used are based on commonly accepted actuarial assumptions, and the calculation of the benefit values of the ~~carrier's~~ standard and basic plans being filed.

AUTH: Sec. 33-1-313, 33-22-1812, and 33-22-1822, MCA
IMP: Sec. 33-22-1802, 33-22-1809, 33-22-1811, and 33-22-1812, ~~and 33-22-1822,~~ MCA

6.6.5050 STATUS OF CARRIERS AS SMALL EMPLOYER CARRIERS - PERMISSION TO REENTER - ANNUAL REPORTING REQUIREMENTS

(1) In order to ~~participate~~ enter ~~in~~ the small employer

market, health insurance carriers must:

(a) through (6) will remain the same as proposed.

AUTH: Sec. 33-1-313, 33-22-143, and 33-22-1822, MCA
IMP: Sec. 33-22-1802, 33-22-1810, 33-22-1811, 33-22-1812, and 33-22-1814, MCA

6.6.5058 REQUIREMENT TO INSURE ENTIRE GROUPS (1) through (3)(d) will remain the same as proposed.

(4) Part-time and temporary employees may be offered coverage in a small employer group health plan at the discretion of the employer, provided all part-time and temporary employees are treated uniformly and eligibility for coverage is not related to risk characteristics or factors listed in 33-22-526, MCA. Such employees are not to be counted for purposes of determining the number of "eligible employees" pursuant to 33-22-1803(24), MCA.

(5) through (9) will remain the same as proposed.

AUTH: Sec. 33-1-313, 33-22-143, and 33-22-1822, MCA
IMP: Sec. 33-22-526, 33-22-1802, 33-22-1803, 33-22-1811, and 33-22-1812, MCA

6.6.5060 COVERAGE THROUGH ASSOCIATIONS (1) and (a) will remain the same as proposed.

(b) Make health insurance coverage offered through the association available to all members of the association. Bona fide associations may create membership categories that will not be offered association health insurance coverage, provided that such membership categories must not be based on health status or insurability or designed in any way to circumvent Montana health insurance law.

(2) through (7) will remain the same as proposed.

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

4. The Department has repealed ARM 6.6.5020, 6.6.5028, 6.6.5044, 6.6.5054, 6.6.5062, 6.6.5066, 6.6.5070 and 6.6.5074 as proposed.

5. The Department has adopted the new rules V (ARM 6.6.5079D), VII (ARM 6.6.5079F), VIII (ARM 6.6.5079G), XII(ARM 6.6.5079K), and XIV (ARM 6.6.5079M) exactly as proposed.

6. The Department has adopted new rules I (ARM 6.6.5079), II (ARM 6.6.5079A), III (ARM 6.6.5079B), IV (ARM 6.6.5079C), VI (ARM 6.6.5079E), IX (ARM 6.6.5079H), X (ARM 6.6.5079I), XI (ARM 6.6.5079J), and XIII (ARM 6.6.5079L) as proposed, but with the following changes. (Matter to be added is underlined; matter to be deleted is interlined):

RULE I (ARM 6.6.5079) OPPORTUNITIES FOR INDIVIDUALS TO

ENROLL IN SMALL GROUP PLANS (1) will remain the same as proposed.

(2) Except as provided in (3), eligible employees who do not enroll during an initial enrollment opportunity as described in (1), provided that the opportunity lasted at least 30 days, may be considered late enrollees. ~~A carrier may not exclude a late enrollee from coverage for more than 18 months from the date of the late enrollee's application. Any exclusion from coverage must be coordinated with any preexisting condition exclusion as set forth in 33-22-1811(3)(c), MCA.~~ A carrier may not impose a preexisting condition exclusion of more than 18 months from the date of a late enrollee's application. Although 33-22-1811(3)(c), MCA, allows a carrier to impose an 18 month period of exclusion from coverage or an 18 month preexisting condition exclusion for late enrollees, the federal Health Insurance Portability and Accountability Act of 1996 does not allow both and only authorizes a maximum 18 month preexisting condition exclusion. Therefore, late enrollees may only be subject to the 18 month preexisting condition exclusion from the date of application and a carrier must not impose unreasonable delays in issuing coverage from the date of such application.

(3) and (4) will remain the same as proposed.

AUTH: Sec. 33-22-143 and 33-22-1822, MCA
IMP: Sec. 33-22-140, 33-22-523, 33-22-526, and 33-22-1811, MCA

RULE II (ARM 6.6.5079A) GUARANTEED AVAILABILITY OF COVERAGE IN THE SMALL GROUP MARKET - GUARANTEED ISSUE REQUIREMENTS - EXCEPTIONS (1) will remain the same as proposed.

(2) A small employer carrier is not required to issue coverage to a small group employer that does not meet the minimum participation and contribution requirements of the carrier, as permitted by 33-22-1811(3)(d), MCA. ~~However, solely for the purpose of meeting participation requirements, carriers may not consider as part of the group of eligible employees those otherwise eligible employees who waive coverage under the plan because they are covered under other health insurance.~~ If a carrier refuses to issue any plan to a small employer on the basis that the small employer does not meet participation or contribution requirements, the carrier may not issue any other plan to the small group employer.

(3) through (5) will remain the same as proposed.

AUTH: Sec. 33-22-1822, MCA
IMP: Sec. 33-22-1811, MCA

RULE III (ARM 6.6.5079B) DISCLOSURE OF INFORMATION (1) through (2) will remain the same as proposed.

(a) Information required in 33-22-~~1810~~ 1809(4), MCA;

(2)(b) through (e) will remain the same as proposed.

AUTH: Sec. 33-22-1822, MCA
IMP: Sec. 33-22-1802, 33-22-1809(4), and 33-22-1811, MCA

RULE IV (ARM 6.6.5079C) PREEXISTING CONDITIONS - PERMISSIBLE RESTRICTIONS IN SMALL GROUPS (1) will remain the same as proposed.

(2) A preexisting condition exclusion must relate to a condition based on presence of a condition for which medical advice, diagnosis, care or treatment was recommended or received by the participant or beneficiary within the 6-month period ending on the enrollment date as defined in 33-22-140, MCA. Medical advice, diagnosis, care, or treatment may be taken into account only if it is recommended by, or received from, an individual licensed or similarly authorized to provide such services under ~~the laws of this state and operating within the scope of practice authorized by this state~~ state law and operating within the scope of practice authorized by state law. A negative diagnosis does not constitute medical advice, diagnosis, care, or treatment for purposes of determining whether there is a preexisting condition.

(3) A preexisting exclusion period may not extend ~~for~~ more than ~~12 months, or 18 months in the case of a late enrollee, after the effective date of the individual's coverage.~~ the following periods of time:

(a) For an employee or dependent obtaining coverage within the initial period of eligibility, twelve months from the coverage effective date;

(b) For an employee or dependent obtaining coverage through a special enrollment period as set forth in 33-22-523, MCA, or an employee or dependent qualifying for a later enrollment period pursuant to 33-22-140(17), MCA, twelve months from the coverage effective date;

(c) For an employee or dependent obtaining coverage as a late enrollee as defined in 33-22-140(17), MCA, eighteen months from the enrollment date.

(4) through (8) will remain the same as proposed.

AUTH: Sec. 33-22-1822, MCA
IMP: Sec. 33-22-1811, MCA

RULE VI (ARM 6.6.5079E) TRANSITION IN LARGE AND SMALL GROUP HEALTH PLANS TO CHANGES UNDER HEALTH INSURANCE PORTABILITY ACCOUNTABILITY ACT (HIPAA) IN MONTANA LAW

(1) through (1)(t) will remain the same as proposed.

(2) ~~A group health plan issued or renewed after June 30, 1997~~ When a group health plan is first issued or renewed after June 30, 1997, it must provide an open enrollment period for the purpose of providing an opportunity to enroll in the plan to those persons who previously may have been excluded from coverage, or discouraged from participating, for reasons now prohibited under any statute listed in (1). The period shall commence at the time the plan is issued or renewed and last not less than 30 days after eligible employees and their dependents

are notified of the enrollment opportunity as set forth in (3).

(3) Small employer carriers must provide written notice prior to the opportunity to enroll set forth in (2) to each small employer insured under a health benefit plan offered by such carrier. The notice must clearly describe the enrollment rights required by this rule to all eligible employees and dependents not currently covered under the plan. ~~Carriers~~ Small employer carriers are not required to send this notice to each eligible employee or dependent, but must obtain written proof from the employer that each eligible individual has been notified.

(4) through (5) will remain the same as proposed.

(6) In order to continue operating as a small employer carrier, each health insurance carrier that was approved as a small employer carrier prior to ~~[the effective date of these rules]~~ June 26, 1998, must make a submission in accord with ARM 6.6.5050(1)(b) by ~~April 1, 1998~~ October 1, 1998.

AUTH: Sec. 33-1-313, 33-22-143, and 33-22-1822
IMP: Sec. 33-22-141, 33-22-514, 33-22-526, and 33-22-1811, MCA

RULE IX (ARM 6.6.5079H) PREEXISTING CONDITIONS - PERMISSIBLE RESTRICTIONS IN GROUP PLANS OTHER THAN SMALL EMPLOYER PLANS (1) will remain the same as proposed.

(2) For purposes of a preexisting condition exclusion, medical advice, diagnosis, care, or treatment may be taken into account only if it is recommended by, or received from, an individual licensed or similarly authorized to provide such services under ~~the laws of this state and operating within the scope of practice authorized by this state~~ state law and operating within the scope of practice authorized by state law. A negative diagnosis does not constitute medical advice, diagnosis, care, or treatment for purposes of determining whether there is a preexisting condition.

(3) through (6) will remain the same as proposed.

AUTH: Sec. 33-22-143, MCA
IMP: Sec. 33-22-514, MCA

RULE X (ARM 6.6.5079I) SPECIAL ENROLLMENT PERIODS (1) If an employee or dependent makes a timely request for enrollment under 33-22-523(1), MCA, enrollment must be effective not later than the first ~~day of the first calendar month beginning after the date the completed request for enrollment is received~~ regular billing date used by the carrier during the month following receipt of the completed request for enrollment.

(2) through (4) will remain the same as proposed.

AUTH: Sec. 33-22-143, MCA
IMP: Sec. 33-22-523, MCA

RULE XI (ARM 6.6.5079J) OPPORTUNITIES FOR INDIVIDUALS TO ENROLL IN GROUP PLANS OTHER THAN SMALL EMPLOYER PLANS (1) Upon

issuance of a group health plan all ~~eligible~~ employees and their dependents~~,~~ who are eligible for enrollment under the criteria set by the plan, and thereafter all new eligible employees and their dependents, must be offered an opportunity to enroll in the plan. Any waiting period prior to enrollment may not exceed 12 months.

(2) Except as provided in (3), eligible employees who do not enroll during an initial enrollment opportunity as described in (1), provided that the opportunity lasted at least 30 days, may be considered late enrollees. A health insurance carrier or group health plan must afford late enrollees ~~and~~ an opportunity to enroll at least annually.

(3) and (4) will remain the same as proposed.

AUTH: Sec. 33-1-313 and 33-22-143, MCA
IMP: Sec. 33-22-140, 33-22-523, and 33-22-526, MCA

RULE XIII (ARM 6.6.5079L) PREEXISTING CONDITIONS IN THE INDIVIDUAL MARKET - DISCLOSURE (1) through (1)(c) will remain the same as proposed.

(2) For purposes of a preexisting condition exclusion, medical advice, diagnosis, care or treatment may be taken into account only if it is recommended by, or received from, an individual licensed or similarly authorized to provide such services under ~~the laws of this state and operating within the scope of practice authorized by this state~~ state law and operating within the scope of practice authorized by state law. A negative diagnosis does not constitute medical advice, diagnosis, care, or treatment for purposes of determining whether there is a preexisting condition.

(3) will remain the same as proposed.

AUTH: Sec. 33-1-313 and 33-22-143, MCA
IMP: Sec. 33-18-206(4), 33-22-130, 33-22-246, and 33-22-301, MCA

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

Comment 1: One commentator suggested that the proposed amendment to ARM 6.6.2507(1) be clarified to indicate that the preexisting exclusion statutes only apply to HMO lines in appropriate markets.

Response: The commissioner agrees, and the word "and" in the proposed amendment is changed to "or."

Comment 2: One commentator indicated that the purpose of deleting existing subsection (2) of ARM 6.6.2507 is unclear.

Response: Subsection (2) of ARM 6.6.2507 is being deleted because HIPAA and certain provisions of state law adopted pursuant to HIPAA require varying periods of notice, depending on the reason for termination of health insurance coverage by a health insurance issuer. Because the language of subsection

(2) refers only to 15 days as the required period of notice, it is inconsistent with HIPAA and existing state law and should be deleted.

Comment 3: Three commentators alleged that defining "temporary" with respect to employees in ARM 6.6.5001(8)(a) is outside the scope of the commissioner's authority.

Response: 33-1-313, MCA, generally grants the commissioner rule-making authority as follows: "(1)The commissioner may make reasonable rules necessary for or as an aid to effectuation of any provision of this code." The commissioner deems it necessary for purposes of determining which employees are "temporary" to define that term. Additionally, 33-22-1822, MCA, grants the commissioner specific rule-making authority in connection with the "Small Employer Health Insurance Availability Act." The term "temporary" in reference to the phrase "eligible employee" is found at 33-22-1803(13), MCA, in that act, hence the definition of that term is within that specific grant of rule-making authority as well.

Comment 4: Two commentators said that the proposed definition of "temporary" in ARM 6.6.5001(8)(a) is problematic in that some employers hire "temporary" employees for longer than nine months, that the proposed definition might therefor result in a loss of jobs for such employees, that there is "no mandate that a temporary employee be defined in a time bound manner," and that the definition is unnecessary.

Response: The commissioner deems the proposed definition necessary in order to avoid a situation in which an employer will classify regular employees as "temporary" to avoid including them within its group health plan. The definitions used in the rule follow those found in section 2-18-101, MCA. Regarding the suggestion that the definition will result in the loss of jobs, the commissioner understands that this criticism can and is leveled at any provision which has as its potential impact additional costs on employers. It is not the clarification of terms used in the statutes that have this potential result but rather the statute itself.

Comment 5: Regarding ARM 6.6.5001(8)(a), one commentator wondered if an employer could identify seasonal employees who meet the hourly workweek requirement but work less than nine months per year as "eligible employees" rather than defining a shorter temporary period.

Response: The commissioner agrees that an employer should have the discretion to include seasonal workers as eligible employees provided they are not designated as temporary employees and that they work the requisite number of hours per week. The proposed rule has been amended to address this issue.

Comment 6: Two commentators noted that application of eligibility criteria to officers as proposed in ARM 6.6.5001(8)(b) would constitute a burden. One commentator

suggested that there is no authority cited for this proposed rule.

Response: Montana law (section 33-22-1803(13), MCA) provides that members of a partnership, sole proprietors and independent contractors may be eligible employees or group health plan participants if such persons are included as an employee under the health benefit plan at issue and they work the requisite number of hours per week. The commissioner believes that corporate officers should be included as potential insureds in this scheme provided they meet the same criteria.

Comment 7: One commentator suggested that the language "except for temporary employees excluded under ARM 6.6.5001(8)(a)" be added after the last word in the second sentence of proposed amendment ARM 6.6.5004(6)(5).

Response: The commissioner rejects this suggestion as unnecessary. The currently proposed language refers to both 33-22-1803, MCA, and ARM 6.6.5001(8) in which temporary employee exclusions are referenced and clarified.

Comment 8: One commentator suggested striking reference to 33-22-1812, MCA, under the "Implementing" citations for proposed amendments to ARM 6.6.5004 since that section has been repealed.

Response: The commissioner rejects the suggestion, as it is customary to leave references to earlier rule-making authority in the implementing line for purposes of tracing rule-making history.

Comment 9: Two commentators objected to proposed amendments to ARM 6.6.5004(12) and (13) insofar as they create an affirmative duty upon carriers to ascertain whether employers are contributing to payment for employee health policies. The commentators maintain that this burden-shifting is without statutory authority and creates additional administrative burdens upon carriers, as well as being potentially interpreted by employers as unnecessary meddling in their internal affairs.

Response: The Small Employer Health Insurance Availability Act (33-22-1801, MCA, *et seq.*) places certain requirements upon carriers providing group health insurance to small employers. In addition to bringing traditional "small employers" within the ambit of the act, it provides that if any employer dollars are going toward the financing of health coverage, even for individuals, that will bring those individual policies under the act. Therefore, in order to effectuate the provisions of that act, there must be a reliable way to determine whether employers are contributing to individuals' policies. The commissioner believes that the most effective way to make this determination is for carriers to inquire of prospective policyholders - whether they are potential group certificate holders or individual policy holders - whether employer dollars are involved. Contrary to the assertions of the commentators

regarding the "burdens" this imposes, the necessary information can be easily obtained by carriers by asking some simple questions on the application for insurance forms. If carriers do so, they will not have to be concerned with the "deeming" language in subsection (13). The commissioner considers the statutory authority references cited to be adequate for the stated purpose of subsections (12) and (13) of the proposed rule amendment.

Comment 10: One commentator suggested that the proposed new language of ARM 6.6.5004(12) was unclear and that it goes beyond the intent of the Health Insurance Portability and Accountability Act (HIPAA).

Response: The intent of the proposed language is to place the burden of ascertaining whether employers are contributing to an employee's health benefit plan upon the carriers. For response to the comment that it seems to go beyond the intent of HIPAA, see the Response to Comment 9.

Comment 11: One commentator suggested that the proposed amendment at ARM 6.6.5004(12)(b) be changed to reflect the fact that under certain circumstances payments for group health insurance under a 125 IRS plan can be uniquely identified as coming solely from employee funds. Given this, those kinds of health plans should not trigger the application of the Small Employer Health Insurance Availability Act.

Response: The statutory language at 33-22-1804(1)(c), MCA, specifically disallows making distinctions of the sort suggested.

Comment 12: One commentator objected to the proposed amendments to ARM 6.6.5008, saying that the language did not reflect changes made by the 1997 legislature.

Response: Some of the proposed changes to this rule are considered "housekeeping" changes, the intent of which is to delete unnecessary language. These rule changes are not specifically in response to 1997 code changes. However, there is no requirement that the commissioner limit rule-making to statutory changes made in a particular legislative session.

Comment 13: With respect to ARM 6.6.5008, two commentators suggested deletion of subsection (1) (referencing "major medical" benefits) as beyond the scope of 33-22-1828(1), MCA, the statute implemented through this rule. Another commentator additionally suggested that the entire rule be repealed in light of that statute, either because it is redundant of that statute or contradicts it.

Response: The commissioner agrees with the commentators' suggestion regarding deletion of subsection (1), and the rule is amended accordingly. However, except for the language in subsection (1) (which the commissioner will delete), the balance of the language in the rule is not contradictory to the statute, but rather refers to other code and rule sections that are relevant to standard plans in the small group market.

Hence, it is deemed to be useful for those carriers that are trying to determine the requirements for standard plan in the small group market.

Comment 14: One commentator suggested that if the commissioner agreed with Comment 12 that ARM 6.6.5008 should be repealed in its entirety, and reference to that rule should be deleted from ARM 6.6.5024. The commentator also suggested striking reference to 33-22-1812, MCA, in the implementing section of ARM 6.6.5024.

Response: The commissioner disagreed with the suggestion to entirely eliminate ARM 6.6.5008, so maintaining the reference to it in ARM 6.6.5024 is appropriate. In response to the suggestion to strike reference to 33-33-1812, MCA, see the Response to Comment 8.

Comment 15: A commentator suggested deleting reference to 33-22-1812, MCA, in the implementing line for proposed amendments to ARM 6.6.5024.

Response: See Response to Comment 8.

Comment 16: One commentator suggested that the proposed amendment to ARM 6.6.5036 is ambiguous, and that the rule should be clarified to indicate that small employer carriers do not have to refile their benefit calculations each time a new standard or basic plan is filed. Additionally, the commentator suggested that reference to 33-22-1812 and 1822, MCA, be stricken from the implementing information.

Response: The commissioner has amended the proposed rule language to clarify that carriers do not have to refile the benefit calculations relating to standard and basic plans already filed with the commissioner before the effective date of these rules.

Regarding the comment about 33-22-1812, MCA, see Response to Comment 8. Regarding the comment about 33-22-1822, MCA, the commissioner agrees with the comment that section should only appear in the "Authority," and reference to it will be stricken from the implementing cite.

Comment 17: Three commentators suggested that proposed amendments to ARM 6.6.5050(1) be rewritten to make it clear that it applies only to carriers entering the small group market for the first time.

Response: The commissioner has amended the rule proposal in ARM 6.6.5050(1) to reflect that the language only applies to carriers entering the small group market for the first time.

Comment 18: Some commentators suggested in writing, and others did so orally at the hearing, that ARM 6.6.5050 be broken into three separate rules.

Response: The title of this rule reflects the fact that it is aimed at setting forth, under one rule, the requirements that must be met for a carrier to become and maintain its status as a small employer carrier, and to reenter that market

once it has left. Since the rule as proposed is not overly lengthy, the commissioner deems it best to leave it as proposed so that carriers will have one place to look for guidance on how to become approved, stay approved and obtain reapproval as small employer carriers.

Comment 19: Two commentators requested that the proposed language in ARM 6.6.5050(6)(c) requiring small employer carriers to annually report small employer plans by county be amended out of the rule. They argued that the provision is in excess of statutory authority and is unnecessarily burdensome on carriers. One of those commentators indicated that the information is difficult to assemble in some circumstances.

Response: Section 33-22-1820, MCA, requires the commissioner to regularly report to the governor and other interested persons on the effectiveness of Montana's Small Employer Health Insurance Availability Act. The report must analyze the effectiveness of the Act in promoting rate stability, product availability and coverage affordability. The report must also address whether carriers and producers are fairly and actively marketing or issuing health benefit plans to small employers. The commissioner feels the information required by ARM 6.6.5050(6)(c) is critical to developing the report and recommendations required by this statute.

Comment 20: Two commentators objected to the proposed language in ARM 6.6.5050(6)(g) as being in excess of statutory authority and because it presents an additional burden upon small employer carriers.

Response: The commissioner also believes the information required by ARM 6.6.5050(6)(g) is critical to the reporting duties contained in section 33-22-1820, MCA, as described in the response to Comment 19.

Comment 21: One commentator noted that the proposed language at ARM 6.6.5058(1) is problematic in that it requires carriers to offer and make coverage available to individuals in group health plans, whereas it is usually the employer that actually makes the coverage available to individuals within a group.

Response: Although these remarks are technically correct, the provisions of the code which this rule implements are phrased in the same manner. For example, section 33-22-1811(3)(e)(i), MCA, provides that "If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees..." Section 33-22-1811(3)(e)(iii), MCA, provides that "A small employer carrier shall secure a waiver of coverage from each eligible employee who declines, at the sole discretion of the eligible employee, an offer of coverage..." While the acts referred to in the rule may, in fact, be performed by the small employer, the statutes themselves place the burden for compliance on the small employer carrier.

Comment 22: Two commentators sought clarification of the proposed amendment at ARM 6.6.5058(4). The proposed language allows employers discretion to include in their group plans employees who are not statutorily eligible because they are part-time or temporary employees. The intent of this language is to clarify that there is no statutory prohibition of covering such employees. The concern expressed by these commentators was about whether those employees would be included in the determination of how many "eligible employees" an employer has for purposes of deciding whether small group provisions applied to the employer.

Response: It was not the intent to have such discretionary employees included in the calculation, and the language is being so clarified. "Such employees are not to be counted for purposes of determining the number of "eligible employees" pursuant to 33-22-1803(24), MCA."

Comment 23: Three commentators expressed concern about the employee waiver requirements in ARM 6.6.5058(7). While noting that these provisions are currently in rule and are not part of the proposed rule changes, the commentators urged either repealing the requirements or otherwise addressing their concerns. The concerns center around the fact that carriers, once a health benefit plan is issued to an employer, have no way of directly accessing new employees and dependents for purposes of obtaining the required waivers.

Response: Section 33-22-1811(3)(e)(iii), MCA, requires the small employer carrier to obtain a waiver of coverage from each eligible employee who declines coverage. Because the statute at issue places this burden on the small employer carrier, the commissioner deems it appropriate that the proposed rule language follows the scheme adopted by the legislature.

Comment 24: Regarding proposed rule amendment ARM 6.6.5060(1)(b) requiring bona fide associations to make coverage available to "all members," one commentator noted that associations have different kinds of members. Some "members" are members of the association only for limited purposes, and should not necessarily be afforded the health coverage options available to "full" members. The commentator suggested that the word "eligible" be added so that the rule referred to "all eligible members."

Response: The commissioner is aware that many existing associations have differing membership categories and that often certain membership categories are not entitled to participate in the association's health insurance coverage. The proposed rule language has been amended to allow for this situation as long as membership categories are not created for the purpose of evading state law.

Comment 25: The proposed amendment to ARM 6.6.5060(5) provides that carriers may not issue a group health insurance plan to an association which does not meet the requirements of either a bona fide or non-bona fide association. One

commentator requested the addition of language allowing carriers to rely upon written representations of associations that they do meet the appropriate requirements.

Response: The commissioner is concerned that such language would relieve a carrier of the responsibility of making a reasonable investigation into the actual practices of associations in the event the carrier had reason to suspect, or even had knowledge that, an association was not complying with the requirements. Certainly carriers can typically meet their responsibilities in this regard by requiring written assurances from associations. The written assurances should not, however, allow a carrier to issue a health plan in cases where it has knowledge or legitimate suspicions that the association does not meet the requirements.

Comment 26: One commentator recommended striking the reference to 33-22-1812, MCA, in the implementing line for ARM 6.6.5078.

Response: See the Response to Comment 8.

Comment 27: One commentator argued that there is nothing in federal law nor in Senate Bill 378 which authorizes a late enrollment period for employees of small group employers as provided for in proposed new Rule I (2), and that such a provision encourages adverse selection.

Response: The authority for this late enrollment provision is found in section 33-22-1811(3)(c), MCA. The statute, adopted in 1995, allowed an insurer to subject a late enrollee to either an 18 month period of exclusion from coverage or an 18 month preexisting condition exclusion. When HIPAA was passed in 1996, it allowed for only an 18 month preexisting condition exclusion and not an 18 month exclusion from coverage for late enrollees. The rule language reflects this conflict between federal and state law and recognizes the preemption of HIPAA in this area. With respect to the concern about adverse selection, the legislature provided for this late enrollee opportunity and apparently considered an 18 month coverage exclusion to be adequate to address the adverse selection process.

Comment 28: Three commentators requested that the language in the last sentence of proposed Rule I(3) be clarified to apply only to those enrollees who are not eligible at the inception of the plan. Two of those commentators were concerned that under this language a plan might enroll only healthy individuals at the inception of the plan, then once the rate is fixed, allow the "unhealthy" individuals the opportunity to enroll.

Response: Contrary to the language proposed by the commentators, under certain circumstances a person may be entitled to an opportunity to enroll in a plan and not be considered a late enrollee even though the person was eligible to enroll during the initial enrollment period but elected not to enroll. These circumstances are outlined in 33-22-523 and

33-22-140(17), MCA, which are referenced in the proposed rule. Hence the commentators' proposed language would be inappropriate. Regarding the concern that "unhealthy" individuals may not be accorded an opportunity to enroll because of this language, there is nothing in subsection (3) that would allow that, and subsection (1) of the proposed rule prohibits it. Additionally, 33-22-526 and 33-22-1811(3)(e), MCA, prohibit such activity.

Comment 29: Three commentators objected to requiring carriers to comply with proposed subsection (4) of proposed new Rule I, which requires plans to notify eligible employees of possible later enrollment opportunities, on the grounds that carriers do not have direct access to employees. Two of the commentators suggested that the burden of providing the notice required by subsection (4) be placed upon plan administrators.

Response: The language is identical to the federal rule language at 45 CFR 144.117(c) which requires plans to notify employees of special enrollment rights. Montana law with regard to "special enrollees" is modeled on the federal language. The language does place the requirement on the plan, which is a "group health plan" as defined in 33-22-140(1), MCA. The rule could not place the requirement upon employers because the insurance code gives the commissioner no jurisdiction over employers.

Comment 30: Three commentators object to proposed Rule II(2) to the extent that it disallows counting eligible employees who reject coverage due to having coverage elsewhere in the number of eligible employees for minimum participation requirement purposes. Two of those commentators alleged that proposal contradicts the terms of 33-22-1811(3)(d), MCA. One commentator supported the subsection as being good policy and fostering more workplace health insurance coverage.

Response: The commissioner believes that the statutory authority in this area should be clearer and more explicit authority will be sought before adopting rules concerning minimum participation requirements.

Comment 31: One commentator suggested that reference to 33-22-1810(4), MCA, in proposed new Rule III(2)(a) should instead be a reference to 33-22-1809(4), MCA.

Response: The commentator is right and the reference is changed in the final rule.

Comment 32: Three commentators requested that proposed Rules IV(2), IX(2) and XIII(2) be changed to allow for the licensing laws of other states to apply to preexisting conditions diagnosed in other states.

Response: It was not the intent behind these proposed rule sections to exclude conditions diagnosed in other states from the permissible conditions for preexisting condition exclusions. The language is revised accordingly.

Comment 33: Two commentators requested that proposed new Rule IV(3) be revised to "reflect several terms contained in HIPAA legislation." The commentators requested that preexisting exclusion periods for initial, special and late enrollees be specified separately, with each exclusion period being a maximum of twelve months.

Response: The maximum exclusion period for late enrollees in the small group market is eighteen months, so that comment is rejected. Since the comments reflect possible confusion about the appropriate preexisting exclusion periods for different kinds of enrollees, the suggestion to refer to each type of enrollment opportunity specifically is well-taken and the language will be changed accordingly.

Comment 34: One commentator wanted clarification with respect to a situation which might arise under proposed new Rule IV(2) regarding a "negative diagnosis." In the situation in question a person (prior to obtaining health coverage) has gone to a physician who makes no diagnosis but refers the person to another doctor for additional consultation. The question is whether that would constitute a "negative diagnosis" under the proposed language.

Response: The intent of the proposed language is to disallow a visit to a physician or other appropriate licensed health care provider from which there is a medical opinion that the patient has no diagnosable condition at that time as grounds for finding the existence of a preexisting condition.

Comment 35: Three commentators objected to the open enrollment period required in proposed new Rule VI(2) on the following grounds: (1) It is beyond the scope of authority in general; (2) it would result in a guarantee issue requirement for the large group market contrary to statutory authority; and (3) it requires an annual open enrollment for large groups.

Response: Both HIPAA and Senate Bill 378 require that coverage be made available, after a specified date, to individuals who previously had no such guarantees of coverage. The commissioner has determined that a one-time open enrollment period is the best mechanism to ensure that such individuals are offered the newly available coverage. Regarding the second concern, the proposed rule subsection does not address guaranteed issue and only requires the creation of an opportunity to enroll. The question concerning issuance will be determined by state and federal law concerning large and small group coverage, not by these regulations. Regarding the final concern, the proposed language has been modified to clarify that the open enrollment period is a one-time event.

Comment 36: Three commentators complained that the requirement in proposed new Rule VI(3) to obtain proof from employers that they have given certain notices to their employees is unduly burdensome. They note that carriers would have a difficult time obtaining such proof from small employer carriers. One commentator suggests that the phrase "carriers"

in the last sentence be changed to "small employer carriers."

Response: The commissioner recognizes this burden. The importance, however, of assuring that all eligible employees and dependents receive the notice is substantial. The rule attempts to alleviate the burden by not requiring carriers to actually provide the notice to employees, but rather obtain assurances from small employers that the notice was supplied to eligible employees and dependents.

The reference to "carriers" in the last sentence will be changed as suggested.

Comment 37: Three commentators objected to the filing required in proposed new Rule VI(6). Three suggested that it is unnecessary because small employer carriers already operating in this state have already gone through the approval process, and one of those suggested that the April 1, 1998, date was too soon.

Response: While existing small employer carriers have gone through the approval process, they were approved prior to the extensive revision of requirements for small employer carriers made by the 1997 legislature in SB378. Accordingly, it is the responsibility of the commissioner to review their submissions again in light of the statutory revisions to assure compliance.

In light of the effective date of these rules, April 1, 1998, is clearly too soon. The date is therefore changed to October 1, 1998.

Comment 38: One commentator requested that proposed new Rule VII(1) be deleted because it is "redundant."

Response: The intent in Rule VII is to clarify creditable coverage applications and methods of counting in one section so that a carrier can determine its obligations more readily. Subsection (1) does refer to two statutes that pertain to creditable coverage, however, it does not go so far as to repeat the language in those statutes. Providing a convenient rule in which carriers are referred to various applicable sections of the code is deemed to be adequate justification for any redundancy.

Comment 39: One commentator urged that the period for mailing or hand-delivering certificates of creditable coverage as required in proposed new Rule VIII(2) be extended from seven to 14 days.

Response: The seven day requirement applies only in the event an individual makes a specific request for a certificate, and the seven day period does not commence until the carrier receives the request. An individual making a specific request for a certificate may have a pressing need for it. Having heard no objections to this requirement from other carriers, the seven day period is deemed reasonable.

Comment 40: One commentator suggested that proposed Rule VIII(16) requires duplicate notices to individuals, and as such goes beyond the statutory requirements.

Response: The notice required in this section regards how a new issuing carrier has decided to treat previous creditable coverage periods. The commentator did not say which notices are being duplicated, and the commissioner is unable to see any duplication required by this section.

Comment 41: One commentator suggested that the phrase "urgent medical services" in proposed Rule VIII(16) be changed to "medically necessary services."

Response: This language is taken largely from the parallel federal rule at 45 CFR 146.115. The rule generally requires issuing carriers to notify individuals within a "reasonable time" of how that new carrier has decided to treat periods of creditable coverage for purposes of preexisting condition exclusions under the new plan. "Reasonable," according to the rule, is to be determined in the context of the "relevant facts and circumstances." These circumstances are to "include" whether the exclusion would prevent an individual from obtaining "urgent" medical services. The word is used primarily to illustrate one example in which a shorter time period would be deemed "reasonable." Services which are medically necessary but not urgent may imply a slightly longer reasonable time period. The intent is only to provide some guidance for determining what is "reasonable," hence the reference to "urgent" seems appropriate.

Comment 42: One commentator claimed that the language at proposed Rule VIII(16) differs substantially from the federal rule at 45 CFR 146.115, and that it requires a plan or issuer to provide notice concerning creditable coverage to all individuals whether there is an unsatisfied preexisting period or not.

Response: The language in the proposed rule is almost exactly the same as that in 45 CFR 146.115(d), except that it is slightly revised to be consistent with the format used in these rules. Subsection (16) does require a notice to all individuals applying for coverage for whom there is creditable coverage information, regardless of whether the carrier decides to apply a preexisting condition exclusion or not. Subsection (17) requires carriers to provide more information to those individuals for whom it has decided to impose a preexisting condition exclusion. It is reasonable to assume that individuals will wish to be notified that they will have a preexisting exclusion period as well as when they will not. Pending such information they may refrain from seeking appropriate medical services.

Comment 43: Two commentators agreed that proposed new Rule X(1) parallels the related federal rule, but requested that carriers be allowed to make special enrollments effective anytime during the month following a request for special enrollment. The rule provides that a special enrollment must occur on the first calendar day of the month following a carrier's receipt of a request for enrollment. According to

the commentators, carriers often have regular billing dates falling on the first, fifteenth or other days of the month.

Response: The rule will be modified to allow a special enrollment to commence on the first regular billing date used by the carrier during the month following receipt of a request for special enrollment.

Comment 44: Two commentators indicated similar objections to proposed new Rule X(3) as were raised in connection with previous rules with respect to the difficulty of carriers providing notices to individuals within a group plan.

Response: The Montana Code Annotated, HIPAA and the adopted federal rules under HIPAA all place burdens concerning special enrollment periods on group health plans as opposed to employers. The commissioner believes it is appropriate to place this burden on the group health plan given the language of the authorizing legislation and subsequent federal rule-making.

Comment 45: One commentator suggested that proposed new Rule X(3)(a) is written such that an employee could terminate coverage under another plan for any reason at any time, and then come into the current employer's plan.

Response: The language in subsection (3)(a) parallels the related federal rule. It contains suggested model language for use by carriers when notifying new enrollees of possible later special enrollment opportunities. The specific language is not mandatory. It refers to opportunities an individual "may" have in the future, but does not fully specify the conditions under which those opportunities would be available. It is intended only to alert employees generally that in the event they have declined initial enrollment and other coverage subsequently terminates, there is a possibility that they could then enroll in the plan. Employees have the option at any time to inquire about the specific conditions under which they could enroll later.

Comment 46: Two commentators objected to the use of the term "eligible employees" in proposed new Rule XI(1). That section concerns enrollment opportunities for employees and dependents in large groups. The commentators pointed out that "eligible employee" is defined in a specific way in 33-22-1803, MCA, and the definition is inappropriate in the large group market.

Response: This was not the intent of the rule, and the language will be clarified.

Comment 47: Several commentators objected to proposed Rule XI(2) which requires an annual open enrollment period for late enrollees in large groups. They claimed that this requirement is contrary to HIPAA and statutory authority under SB378. One commentator suggested that it encourages adverse selection in that employees could wait until they became sick, then enroll in a plan during annual enrollment.

Response: HIPAA specifically states (42 USC 300gg) that late enrollees may have a preexisting condition exclusion of up to 18 months. Although the Health Care Financing Administration has interpreted HIPAA as not requiring the enrollment of late enrollees, the National Association of Insurance Commissioners believes that HIPAA's specific mention of a late enrollee's preexisting condition exclusion period indicates a congressional intent to require issuers to accept late enrollees. The commissioner believes that certain distinctions found in HIPAA, such as the 18 month preexisting condition exclusion for late enrollees versus the 12 months for on-time enrollees, would not have been made if late enrollees were not intended to be covered.

The commissioner agrees with other state insurance regulators that in reading the various provisions of HIPAA, the interpretation which best gives meaning to all the references to "late enrollees" is one which requires a periodic open enrollment for late enrollees. The reference to an 18 month waiting period, for example, makes no sense if one interprets HIPAA as allowing health plans to afford no enrollment option whatsoever. If Congress had intended for a plan to have no enrollment obligation with respect to late enrollees, it is difficult to see why Congress would be concerned to limit the period of preexisting exclusion for those enrollees. The limit without an obligation to enroll is inconsistent.

With respect to the commentator's objection that an annual late enrollment opportunity would encourage adverse selection, the limit on preexisting condition exclusions is designed to limit adverse selection.

Comment 48: One commentator noticed a typo in new Rule XI(2) in which "and" in the last sentence should be changed to "an."

Response: The commissioner agrees, and the word "and" in the new rule will be changed to "an."

Comment 49: Two commentators objected to proposed new Rule XI(4) insofar as it places responsibility on carriers to provide notices directly to employees because of the difficulty of carriers obtaining direct access to employees.

Response: See the Response to Comments #21 and #44.

MARK O'KEEFE, State Auditor
and Commissioner of Insurance

By: _____
Frank Coté
Deputy Insurance
Commissioner

By: _____
Russell B. Hill
Rules Reviewer

Certified to the Secretary of State June 15, 1998.

BEFORE THE BOARD OF SANITARIANS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to minimum standards for licensure and continuing education	))))	CORRECTED NOTICE OF AMENDMENT

TO: All Interested Persons:

1. On April 16, 1998, the Board of Sanitarians published a notice of public hearing pertaining to the amendment of the above-stated rules at page 824, 1998 Montana Administrative Register, issue number 7. On June 11, 1998, the Board of Sanitarians published a notice of adoption of the rules at page 1497, 1998 Montana Administrative Register, issue number 11.

2. ARM 8.60.414 was adopted with changes in the adoption notice. In subsection (2), the word "his" should have been stricken and amended to the word "licensee's"; the language "licensee's renewal form" should have been added after the word "with"; the word "every" should have been amended to "each" and the word "consecutive" should have been omitted. The subsection should have been adopted as follows with the above-listed changes:

"8.60.414 CONTINUING EDUCATION (1) will remain the same as adopted in the adoption notice.

(2) A licensee must affirm on ~~his~~ licensee's license renewal form that the licensee has obtained a minimum of 15 clock hours (50 to 60 minutes per hour) or 1.5 continuing education units ~~in~~ with licensee's renewal form ~~every~~ each ~~consecutive~~ odd-numbered year.

3. The Board received a comment from John MacMaster, staff member of the Administrative Code Committee, suggesting grammatical changes to this subsection. The above changes are being made only to make the subsection grammatically correct as suggested by Mr. MacMaster.

4. The replacement pages for these amendments will be submitted for the June 30, 1998 filing date.

BOARD OF COSMETOLOGISTS
DENISE MOLDROSKI, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, June 15, 1998.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the repeal, amendment and adoption of rules relating to school funding, budgeting and transportation	))))	NOTICE OF REPEAL, AMENDMENT AND ADOPTION OF RULES RELATING TO SCHOOL FUNDING, BUDGETING AND TRANSPORTATION

TO: All interested persons.

1. On May 14, 1998, The Superintendent of Public Instruction (OPI) published notice of public hearing on the proposed repeal, amendment and adoption of the rules referenced above at page 1244 of the 1998 Montana Administrative Register, Issue No. 9.

2. An opportunity for public hearing was held on June 5, 1998. No oral comments were made at the hearing. Written comments were received from six individuals/organizations prior to the closing of the comment period.

3. After consideration of the comments received, the following rule is being repealed as proposed: 10.16.2215. No comments were received on the repeal of this rule.

4. After consideration of the comments received, the following rules are being amended as proposed: 10.7.101, 10.7.106, 10.7.108, 10.7.111, 10.10.301C, 10.10.303, 10.10.308, 10.10.311, 10.10.313, 10.10.503, 10.10.504, 10.16.1314, 10.16.2218, 10.20.102, 10.22.102, 10.23.103, 10.23.104, 10.30.402, 10.30.404, and 10.30.415.

10.10.503 REPORTS - NOTIFICATION TO BOARD OF PUBLIC EDUCATION

COMMENT: The Missoula County Superintendent of Schools and the President of the Montana Association of County Superintendents of Schools asked if subsection (8), which is not proposed to be amended, is currently being implemented.

RESPONSE: Yes, the provisions of 10.10.503 have been used in cases of late or incomplete annual financial reports and budgets.

10.16.1314 SPECIAL EDUCATION TUITION RATES

COMMENT: The President of the Montana Council of Administrators of Special Education commented that he believes striking the requirement in subsection (3)(b)(i) that the district charge regular education tuition could allow districts to charge tuition for students with disabilities while not doing so for their nondisabled peers.

RESPONSE: ARM 10.16.1314(2) states that any waivers of tuition must apply equally to all students. ARM 10.16.1314(3) currently allows a district to charge a special education tuition add-on rate calculated under "option a" regardless of whether the district charges all students regular education tuition. The change in subsection (3)(b)(i) will make tuition rate calculations under "option b" consistent with those in "option a."

10.20.102 CALCULATION OF AVERAGE NUMBER BELONGING (ANB)

COMMENT: The Superintendent of Missoula Public Schools commented that in subsection (7)(b), wherein students enrolled for less than 180 hours of pupil instruction time per school year would be excluded from the enrollment count, would exclude GED students who might have only two classes in one semester remaining.

RESPONSE: The 1997 Legislature placed a minimum hour requirement on public school programs. This rule applies that minimum hour requirement to the existing determination of part-time versus full-time enrollment for funding purposes. Part-time students generate one-half of the state's normal (full-time) per-pupil funding. On the enrollment date, a student enrolled in a program designed to provide the student a minimum of 180 hours of pupil instruction per year will be counted as part-time. The 180 hours can be provided 1 hour per day for 180 days, 2 hours per day for 90 days, or in any other combination of days and hours that provides a total of 180 hours. Students in programs which are designed to be less than 180 hours, such as a semester class that meets for one hour each day, will not meet the rule's criteria for part-time students and cannot be counted for state funding purposes. School boards, at their discretion, may still provide, and may allow students to enroll in programs lasting less than 180 hours.

COMMENT: The Superintendent at Hellgate Elementary commented that subsection (7)(b), appears to allow a student to be counted for three ANB at three different schools in one year.

RESPONSE: Student enrollment is counted one day in October and one day in February. The two semester counts are averaged to determine the enrollment used for funding. A student enrolled full-time in School A in October and full-time in School B in February would be counted as full-time for a half-year in each school, not as full-time for a full year in both schools.

COMMENT: The Missoula County Superintendent of Schools and the President of the Montana Association of County Superintendents of Schools commented that in subsection (7), they disagree with the concept that two hours per day of instructional time is sufficient to receive the same reimbursement as that of a student attending a full six-hour day and the same on counting a student as full-time if the student attends only 1/3 of any part of the entire year.

RESPONSE: State law provides for including in the ANB count students enrolled less than full-time (20-9-311(4), MCA). The rule change does not attempt to change the number of hours currently required for full-time enrollment. It clarifies the existing statute and rules that allow partial funding for students attending less than full-time.

10.23.104 RETIREMENT LEVIES

COMMENT: The Missoula County Superintendent of Schools and the President of the Montana Association of County Superintendents of Schools commented that because the preliminary budget was eliminated prior to FY98, the county superintendent has no way of verifying the amounts submitted for the retirement fund levy. They both suggested new language that would require districts to submit to the county superintendent a listing of each position of employment with budgeted amount of compensation.

RESPONSE: The rule reflects the 1997 law change that eliminated the preliminary budget document and moved the position roster to the final budget document. Section 20-9-132, states, "If any appropriation item of the final budget provides for the payment of wages or salary to more than one person, the district shall attach to the budget a separate listing of each position of employment, with the budgeted amount of compensation for each position."

5. After consideration of the comments received, the following rules are being adopted as proposed and codified as follows: RULE I (10.10.316) and RULE II (10.23.108). No comments were received on these rules.

6. After consideration of the comments received, the following rules are being amended with the changes given below, new material underlined, deleted material interlined.

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

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

(a) ~~The county transportation committee must withdraw approval of a route that crosses two school districts' boundary if one school district objects to the route and the districts do not have a written agreement authorizing the route.~~ If a district's bus route crosses the district boundary into another district's transportation service area without a written agreement between districts authorizing the route, the county transportation committee must withdraw its approval of the entire route.

(b) remains the same as proposed.

(3) through (9) remain the same.

COMMENT: The Missoula County Superintendent of Schools, the Fergus County Superintendent of Schools, and the president of the Montana Association of County Superintendents of Schools commented that the proposed language in subsection (2)(a) is awkward. Alternative language was suggested in two comments.

RESPONSE: OPI agrees and will replace the currently proposed language.

10.15.101 DEFINITIONS The following definitions apply to ARM Title 10, chapters 16, 20, 21, 22, and 23:

(1) and(2) remain the same as proposed.

~~(3) "Attendance" means a student is present for at least the minimum amount of pupil-instruction (PI) time defined in (36) or (37).~~

(4) through (58) remain the same as proposed, but are renumbered (3) through (57).

COMMENT: The Missoula County Superintendent of Schools and the President of the Montana Association of County Superintendents of Schools commented that the language in subsection (3) is not proposed to be changed, however, it refers to subsections(36) and (37) which will be deleted with these rule changes.

RESPONSE: OPI agrees. Subsection (3), defining "attendance," will be removed and remaining subsections renumbered.

COMMENT: The Superintendent of Missoula Public Schools commented that the wording change in the definition of "Enrolled student" would seem to exclude GED students.

RESPONSE: The proposed rule change reflects current OPI policy, which allows students in district approved, state accredited programs to be counted for state funding if minimum pupil instruction time requirements are met. Students in accredited high school programs, including programs designed to prepare them for high school equivalency diplomas or certificates or to provide graduation in alternative high school settings, will continue to qualify. Students in programs which are not acceptable to be applied toward graduation would not meet this qualification.

10.16.2216 SPECIAL EDUCATION TRANSFERS AND PAYMENTS TO OTHER DISTRICTS AND COOPERATIVES (1) To meet its obligation to provide services for students with disabilities, a district may establish its own special education program, participate in a ~~special education~~ full service cooperative for special education services established under 20-7-451, MCA, or enter into an interlocal agreement, as defined in Title 7, chapter 11, part 1, MCA, with another district.

(2) remains the same as proposed.

(3) When a ~~special education~~ full service cooperative for special education services established under 20-7-451, MCA, contracts with a district to provide special education instructional and related services:

(a) and (b) remain the same as proposed.

(4) and (5) remain the same.

COMMENT: The President of the Montana Council of Administrators of Special Education, commented that he believes the wording "special education cooperative(s)" in subsections (1) and (3) should be changed to "full service educational cooperatives" as allowed under 20-7-451, MCA.

RESPONSE: OPI agrees. The words "special education cooperative" should be replaced with "a full service cooperative for special education services established under 20-7-451, MCA" in (1) and (3).

7. Based on the foregoing, the Superintendent of Public Instruction hereby repeals, amends and adopts the rules as proposed, with changes noted above.

Geralyn Driscoll
Rule Reviewer
Office of Public Instruction

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State June 15, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of 17.8.101, 801 and 901, revising the definition of volatile organic compounds, the amendment of 17.8.102, updating the incorporations by reference, and the amendment of 17.8.302, incorporating by reference maximum achievable control technology standards for primary aluminum reduction plants.	)	NOTICE OF AMENDMENT (Air Quality)

TO: All Interested Persons

1. On April 16, 1998, the Board published notice of the proposed amendment of the above-stated rules at page 851 of the 1998 Montana Administrative Register, issue number 7.

2. The Board has amended rules 17.8.102 and 17.8.302 as proposed.

3. The Board has amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

17.8.101 DEFINITIONS As used in this chapter, unless indicated otherwise in a specific subchapter, the following definitions apply:

(1) through (39) Remain as proposed.

(40)(a) "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, and including any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methyl acetate; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 1,2-dichloro-1,1,2,2 tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3 -pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3 -pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1 chloro-

1-fluoroethane (HCFC-151a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ~~($C_4F_9OCH_3$)~~ ($C_4F_9OCH_3$); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ~~($(CF_3)_2CFCF_2OCH_3$)~~ ($(CF_3)_2CFCF_2OCH_3$); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ~~($C_4F_9OC_2H_5$)~~ ($C_4F_9OC_2H_5$); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ~~($(CF_3)_2CFCF_2OCH_2H_5$)~~ ($(CF_3)_2CFCF_2OC_2H_5$); ~~hydrofluoro carbon (HFC) 43 mee~~ 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC43-10mee); ~~hydrochlorofluorocarbon (HCFC) 225ca and cb~~ 3,3-dichloro-1,1,1,2,2,-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetra-fluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene) and perfluorocarbon compounds which fall into these classes:

(i) cyclic, branched, or linear completely fluorinated alkanes;

(ii) cyclic, branched, or linear completely fluorinated ethers with no unsaturations;

(iii) cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and

(iv) sulfur-containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For purposes of determining compliance with emissions limits, VOC will be measured by the test methods in 40 CFR Part 60, Appendix A, as applicable. Where such a method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of such compounds is accurately quantified, and such exclusion is approved by the department. As a precondition to excluding these compounds as VOC or at any time thereafter, the department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of the department, the amount of negligibly-reactive compounds in the source's emissions.

(41) through (42) Remain as proposed.

AUTH: 75-2-211, MCA; IMP: Title 75, chapter 2, MCA

17.8.801 DEFINITIONS For the purpose of this subchapter, the following definitions apply:

(1) through (28) Remain as proposed.

(29)(a) "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, and including any such organic compound other than the following, which have been determined to have negligible

photochemical reactivity: methane; ethane; methyl acetate; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1-chloro-1-fluoroethane (HCFC-151a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ~~(C4F9OCH3)~~ (C4F9OCH3); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ~~((CF3)2CFCF2OCH3)~~ ((CF3)2CFCF2OCH3); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ~~(C4F9OC2H5)~~ (C4F9OC2H5); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ~~((CF3)2CFCF2OCH2H5)~~ ((CF3)2CFCF2OC2H5); ~~hydrofluoro-carbon (HFC) 43 mee~~ 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC43-10mee); ~~hydrochlorofluorocarbon (HCFC) 225ca and cb~~ 3,3-dichloro-1,1,1,2,2,-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1-fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetra-fluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene) and perfluorocarbon compounds which fall into these classes:

(29)(a)(i) through (b) Remain as proposed.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.901 DEFINITIONS For the purposes of this subchapter:

(1) through (19) Remain as proposed.

(20)(a) "Volatile organic compounds (VOC)" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, which participates in atmospheric photochemical reactions, and including any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: methane; ethane; methyl acetate; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,1-trichloro-2,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11);

dichlorodifluoromethane (CFC-12); chlorodifluoromethane (CFC-22); trifluoromethane (FC-23); 1,2-dichloro-1,1,2,2 -tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro-2,2 -dichloroethane (HCFC-123); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3 -pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1 chloro-1-fluoroethane (HCFC-151a); 1,1,1,2,2,3,3,4,4 -nonafluoro-4-methoxy-butane ~~(C4F9OCH3)~~ (C4F9OCH3); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ~~((CF3)2CFCF2OCH3)~~ ((CF3)2CFCF2OCH3); 1-ethoxy-1,1,2,2,3,3,4,4,4 -nonafluorobutane ~~(C4F9OC2H5)~~ (C4F9OC2H5); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ~~((CF3)2CFCF2OCH2H5)~~ ((CF3)2CFCF2OC2H5); ~~hydrofluoro carbon (HFC) 43 mee~~ 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC43-10mee); ~~hydrochlorofluorocarbon (HCFC) 225ea and cb~~ 3,3-dichloro-1,1,1,2,2,-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro-1 -fluoroethane (HCFC-141b); 1-chloro-1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene) and perfluorocarbon compounds which fall into these classes:

(20)(a)(i) through (b) Remain as proposed.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-202, 75-2-203, 75-2-204, MCA

4. Changes to the original proposal have been made in response to comments from EPA. EPA submitted technical corrections to the definitions of volatile organic compounds contained in ARM 17.8.101, 801, and 901. The corrections consist of converting chemical formulae to a subscript format, and using specific chemical names rather than the more generic names used in the proposal. These corrections will conform the final state rule to the final federal regulations.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

John F. North, Rule Reviewer

by CINDY E. YOUNKIN, Chairperson

Certified to the Secretary of State June 15, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of amendment of 17.8.514, updating the air quality major open burning fees	)))	NOTICE OF AMENDMENT (Air Quality)

TO: All Interested Persons

1. On April 16, 1998, the Board published notice of the proposed amendment of 17.8.514 at page 859 of the 1998 Montana Administrative Register, issue number 7.

2. The Board has amended rule 17.8.514 as proposed.

3. No comments or testimony were received.

BOARD OF ENVIRONMENTAL REVIEW

by _____
CINDY E. YOUNKIN, Chairperson

Reviewed by:

_____
John F. North, Rule Reviewer

Certified to the Secretary of State June 15, 1998.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of rules 17.38.101, 17.38.202, 17.38.207, 17.38.208, 17.38.215 through 17.38.218, 17.38.226, 17.38.229, 17.38.234, 17.38.235, 17.38.239, 17.38.244, 17.38.256 and 17.38.270, updating public water supply and public sewage system rules.	)	NOTICE OF AMENDMENT OF RULES (Public Water Supply)

To: All Interested Persons

1. On January 29, 1998, the Board published a notice of public hearing for proposed amendment of the above-stated rules, at page 242 of the 1998 Montana Administrative Register, Issue No. 2.

2. On April 3, 1998, the board approved amendment of the above-listed rules with the exception of 17.38.215(1)(b). The board deferred action on that sub-section to its meeting on June 12, 1998. The Notice of Amendment was certified to the Secretary of State April 30, 1998, and published at page 1167 of the 1998 Montana Administrative Register, Issue No. 8.

3. The board has amended rule 17.38.215(1)(b) as proposed in the Notice of Proposed Amendment, referred to in 1. above, with the following changes (new material is underlined; material to be deleted is interlined):

17.38.215 BACTERIOLOGICAL QUALITY SAMPLES (1)(a) remains as amended in April 1998.

(1)(b) The supplier of water for a transient non-community water system shall sample according to the table in (a) above, except that:

(i) beginning August 1, 1998, a supplier of water for a transient non-community water system that uses only ground water ~~(except ground water~~ that is not under the direct influence of surface water~~)~~ and serves a maximum daily population of 1000 persons or fewer shall sample for coliform bacteria in each calendar quarter during which the system provides water to the public unless required to sample more frequently as provided in (c) below~~; except that beginning October 1, 1993, these suppliers must sample according to the table in (a) above~~.

~~(ii) uses only ground water (except ground water under the direct influence of surface water) and serves a maximum daily population of over 1000 persons must sample according to the table in (a) above.~~

(1)(c) through (8) same as amended in April 1998.

4. The notice of public hearing specified the reasons for these amendments. Spoken and written comments were received at the public hearing held on February 23, 1998. Additionally,

written comments were received. Responses to comments 1 and 23 through 27 were set forth in the Notice of Amendment published at page 1167 of the 1998 Montana Administrative Register, Issue No. 8. Specific responses to comments 2 through 22 directed at 17.38.215(1)(b) did not appear in the previous Notice of Amendment referenced above. Those responses follow.

COMMENT 2: All persons commenting on this provision opposed the proposed change from monthly to quarterly bacteriological sampling for transient non-community water systems. Ruth Powers, R.S., Missoula City-County Health Department; Peter M. Frazier, Great Falls/Cascade County City-County Health Department; Denise Moldroski, R.S. and Thomas Moore, R.S., Gallatin City-County Health Department; Dick Quist, Ph.D., R.S., Flathead County Health Department; David Haverfield, Lolo Water and Sewer District, Missoula County; Jake Kammerer, R.S., Ravalli County Sanitarian; Jeff McCleary, Montana Association of Water and Sewer Systems; Robert A. Davidson, microbiologist, AMATEC Water and Wastewater Analysis & Consulting, Billings.

RESPONSE: The entire justification for this amendment is provided here in order to promote a better understanding of the effect of the amendment and the reasons for it. The amendment will reduce the required frequency of sampling for coliform bacteria from monthly to quarterly for certain small public water supply systems. The amendment will apply only to transient non-community water systems that use only ground water that is not under the direct influence of surface water and that serve a maximum daily population of 1,000 or fewer. This would include, for example, small restaurants and bars with water supplied by a well.

The term "transient non-community water system" is defined at Section 75-6-102(20), MCA, as "a public water supply system that is not a community water system and that does not regularly serve at least 25 of the same persons for at least 6 months a year". Transient systems using surface water or serving more than 1,000 people per day would still have to sample monthly as required by EPA regulations. The amended reuse will still be more stringent than EPA requirements for non-community systems and will adequately protect public health.

As stated, EPA regulations require monthly monitoring for non-community systems that utilize surface water sources, or that serve more than 1,000 people per day. But EPA regulations allow all other non-community systems to sample quarterly, or even as infrequently as once per year under certain conditions. Montana's amended rule is still more stringent than the EPA rule. Non-transient non-community systems (such as schools and businesses) will still have to sample monthly under this proposal. No public water supply system will be allowed to

sample less frequently than quarterly and the department will retain authority to require monthly sampling where warranted.

Over the past 4-1/2 years, all transient non-community systems have been required to sample monthly. Monthly coliform monitoring for all non-community water suppliers was required in 1993 because monthly sampling would provide for earlier detection of contamination by bacteria, just as weekly sampling would detect contamination earlier than monthly sampling, and so on. Four Hundred and one (401) transient systems had positive samples between January 1, 1995, and April 30, 1998. This is an average of 10 per month or 0.93% of the total transient non-community systems utilizing ground water. In addition, many of the problems identified through monthly sampling during this period have now been addressed by water suppliers. In light of this information, the board believes that quarterly coliform sampling is adequate for systems of this type that have a satisfactory history of coliform sampling, and that are not known to have sources vulnerable to contamination.

In addition, the reduction to quarterly sampling will allow the department to more effectively administer public water supply regulations overall. Every coliform sample that is taken creates expenditures of time beyond the obvious. Some of these are in taking and mailing the sample, analysis of the samples, review of sample results to ensure compliance and accuracy, data entry and filing, database maintenance, follow-up regarding incomplete and inaccurate sample information, follow-up on missed or late samples, quarterly data reporting to EPA, and enforcement actions. Currently, the department receives an average of more than 125 coliform sample results from public water suppliers every working day. The board believes the amended rule will result in a more effective allocation of the department's resources for the overall protection of public water supplies.

COMMENT 3: Microbial contamination often occurs on an intermittent and sporadic basis. Monitoring quarterly is likely to be ineffective at detecting this type of contamination. Consider eating at your favorite rural restaurant or bar and not knowing if the water is safe to drink, because it hasn't been sampled for several months. Ruth Powers, R.S., Missoula City-County Health Department.

RESPONSE: Microbiological contamination does often occur on an intermittent basis. The department agrees that monthly sampling is generally more desirable than quarterly sampling, but even monthly sampling will not guarantee safe water. EPA estimates that five samples should be taken at a given time to accurately assess the microbiological quality of drinking water, but the results of even multiple samples are only indicative of the quality of water at the time of sampling. However, EPA has established through rulemaking that quarterly routine sampling is adequate for this classification of public water systems. Additionally, the department intends to begin evaluations of the

sources of water serving transient systems to determine if surface water influence exists. Many sanitary surveys have been completed at transient systems over the past 5 years to identify system deficiencies, and to explain sampling requirements. The board expects that source water protection, proper source construction, and treatment (where necessary) will provide more effective public health protection for transient systems than monthly coliform sampling.

COMMENT 4: Microbiological contamination of ground water (well) sources may occur sporadically in response to seasonal effects or other influencing factors and does not necessarily persist for a lengthy time period. Quarterly sampling may miss the period of contamination. Dick Quist, Ph.D., R.S., Flathead County Health Department.

RESPONSE: See response to comment 3 above.

COMMENT 5: From a public health perspective, contaminated water can result in contamination of foods, utensils, dishes, food preparation surfaces and ice. This can be a significant causal factor of food borne illness. The very young and elderly are most at risk. Dick Quist, Ph.D., R.S., Flathead County Health Department.

RESPONSE: See responses to comments 2 and 3 above.

COMMENT 6: Many instances of contamination may be occurring daily that go unnoticed. Reducing the frequency of testing may only further endanger our fragile potable water supplies. David Haverfield, Lolo Water and Sewer District, Missoula County.

RESPONSE: See responses to comments 2 and 3 above.

COMMENT 7: The proposal to reduce sampling frequency for small public water systems under 17.38.215(1)(b)(i) is a setback, not a step in the right direction, due to health risks involved with contaminated drinking water. Quarterly sampling is not adequate to detect problems in a timely manner. Jake Kammerer, R.S., Ravalli County Sanitarian.

RESPONSE: See responses to comments 2 and 3 above.

COMMENT 8: Bacteriological water sampling is one of the least expensive of all required water tests, but serves one of the most important public health roles. Peter M. Frazier, Great Falls/Cascade County City-County Health Department.

RESPONSE: See responses to comments 2 and 3 above.

COMMENT 9: The cost of monthly sampling, for as little as $10 per month, does not seem a significant hardship. David Haverfield, Lolo Water and Sewer District, Missoula County.

RESPONSE: Sample analysis cost was not a significant consideration in this proposal. However, sampling errors can result in additional costs associated with follow-up samples. One unsatisfactory sample requires four immediate check samples ($40 to $100, depending upon the lab), and five samples the next month ($50 to $125, depending upon the lab). Because transient owners and operators are not certified operators and are often unaware of proper sampling techniques, sample errors can result in significant expenditures without a commensurate public health benefit.

COMMENT 10: While there may be circumstances that warrant quarterly sampling for public water supplies that are not at risk to microbial contamination, in many situations reducing the sampling would unnecessarily expose the public to microbial contamination. Ruth Powers, R.S., Missoula City-County Health Department.

RESPONSE: See responses to comments 2 and 3 above.

COMMENT 11: Although there are probably a number of systems throughout the state where monthly sampling may not be warranted, there are many systems where quarterly monitoring could put the public at risk. Peter M. Frazier, Great Falls/Cascade County City-County Health Department.

RESPONSE: See responses to comments 2 and 3 above.

COMMENT 12: While there may be circumstances that warrant quarterly sampling for public water supplies that are less at risk from microbial contamination, in many situations reducing the sampling frequency may unnecessarily expose the public to dangerous bacteria. David Haverfield, Lolo Water and Sewer District, Missoula County.

RESPONSE: See responses to comments 2 and 3 above.

COMMENT 13: Commentor opposes the proposed amendment, at least until a more detailed rationale is provided to the public with additional opportunity for public comment. No reason for the change in terms of protecting public health was stated other than to conform with federal requirements which have not changed since 1993 when the requirement for monthly sampling of these systems was adopted. Jeff McCleary, Montana Association of Water and Sewer Systems.

RESPONSE: See response to comments 2 and 3 above, and comment 15 below.

COMMENT 14: Commentor requests that the board require answers to the following questions and allow additional public comment before approving the proposed amendment.

(1) Why is this change being proposed at this time?

(2) Is the change proposed in order to better protect public health?

(3) What were the reasons given in 1993 when the sampling requirement for such systems was changed from quarterly to monthly?

(4) Do sanitary surveys, bacteriological sampling results, absence of boil orders and overall conditions of transient non-community public water supply systems suggest that quarterly bacteriological sampling is again adequate to protect public health?

(5) Is this change being proposed to give transient non-community systems monitoring relief, or to relieve the paperwork burden of someone else?

(6) Is it in the best interests of public health to impose a stringent regulation in 1993 and then change it back to a less stringent regulation in 1998?

Jeff McCleary, Montana Association of Water and Sewer Systems.

RESPONSE: (1) See response to comment 2 above.
(2) See response to comment 2 above.
(3) See response to comment 2 above.
(4) After 4-1/2 years of monthly monitoring and increased sanitary surveys, the overall condition of transient non-community systems has improved. As stated in the response to comment 2 above, 401 transient systems had positive samples between January 1, 1995, and April 30, 1998, an average of 10 per month or 0.93% of the total transient non-community systems utilizing ground water.
(5) The board always tries to avoid imposing unnecessary regulations on either the regulated public or the department. Based on 4-1/2 years of sampling data, the board believes that monthly coliform testing is simply not necessary for most transient non-community systems since the department retains authority to continue to require monthly testing for systems which are suspect.
(6) Based upon the above responses and the response to comment 15 below, the board believes the amended rule is in the best overall interest of public health, including the much greater population served by community and non-transient systems.

COMMENT 15: Missoula City-County Health Department recommends alternate language to the effect that monthly samples would be required for these systems for each month during which the system provides water to the public. An exception to this requirement would be made for such systems to sample for coliform on a quarterly basis if the following conditions were met: (1) if no routine samples from the previous 3 years contained coliform; and (2) a sanitary survey conducted by the department or county sanitarian within the past 3 years showed no relevant risk to the

well or distribution system; and (3) no changes have been made to the well or to the distribution system. Ruth Powers, R.S., Missoula City-County Health Department.

RESPONSE: The board does not believe the alternate language suggested by this Commentor and others is necessary. The existing rule gives the department the authority to increase the required sampling frequency based upon sampling results or other conditions that indicate a risk to the health of water users. See 17.38.215(1)(c). The department intends to use this authority to require some systems to continue with monthly sampling after the amended rule takes effect.

In addition, it was determined that the existing database and database programming were not sufficient to perform the necessary searches and reviews to easily compile the relevant information to implement a system as proposed in this comment. As a result, each system file would have to be manually reviewed individually to make fair and uniform decisions. More than 35,000 sample records (750 pages of data), relevant file correspondence, and inspection results would have to be reviewed. This task would require staff resources beyond what is available.

COMMENT 16: Great Falls/Cascade County Health Department supports the language proposed by Missoula City-County Health Department. This is a good, common sense approach that provides protection where needed without creating major financial hardship to any operator. Peter M. Frazier, Great Falls/Cascade County City-County Health Department.

RESPONSE: See response to comment 15 above.

COMMENT 17: Gallatin City-County Health Department concurs in the modification recommended by Missoula City-County Health Department. In other words, Commentor recommends that the rule be amended to require a 3-year record of monthly, uncontaminated sampling before the public water supplier is offered the option to decrease sampling frequency. A 3-year "clean" sample period requirement is long enough to provide sampling results from the water source over several seasonal changes thus increasing the probability of having sampled during both high and low ground water periods. This time period also coincides with the sanitary survey inspection cycle for public water supplies. Denise Moldroski, R.S. and Thomas Moore, R.S., Gallatin City-County Health Department.

RESPONSE: See response to comment 15 above.

COMMENT 18: Commentor suggests that bacteriological sampling of these samplings continue to generally be required on a monthly basis, but that certain individual systems could be allowed to reduce sampling frequency to a quarterly basis if it was demonstrated: (1) that the system had a history of good bacteriological sampling results; (2) that sanitary surveys of

the system reflected appropriate conditions; and (3) that the system had a history of compliance with pertinent regulations. Jeff McCleary, Montana Association of Water and Sewer Systems.

RESPONSE: See response to comment 15 above.

COMMENT 19: Commentor suggests that sampling schedules could be designed around periods of high contamination risk such as spring runoff. Dick Quist, Ph.D., R.S., Flathead County Health Department.

RESPONSE: See response to comment 15 above.

COMMENT 20: Commentor proposes that the rules establish a special class of transient non-community water supplies having (1) a satisfactory track record of microbiological sampling, and (2) a satisfactory current sanitary survey of the water source. These facilities would qualify for quarterly microbiological sampling while the remaining sources would continue with monthly sampling. A monthly update of facility status would be required. Dick Quist, Ph.D., R.S., Flathead County Health Department.

RESPONSE: See response to comment 15 above.

COMMENT 21: Contracted local sanitarians should be authorized to reduce sampling from quarterly to monthly for systems which have consistently shown safe results. Local sanitarians should also be authorized to again require monthly sampling for 6 months to 1 year if an operator fails to send in a quarterly sample. Jake Kammerer, R.S., Ravalli County Sanitarian.

RESPONSE: Granting authority to local departments of health to authorize quarterly sampling, or to require more frequent monitoring would likely result in unequal implementation of the requirements. Monitoring the specific requirements for each system would become more complicated for the department, resulting in improper compliance determinations. The board believes that the department should retain responsibility for these actions.

COMMENT 22: Commentor is concerned that some small system operators do not use proper techniques in taking samples. If the board goes to quarterly sampling, the department should contract with counties to take the samples. Jake Kammerer, R.S., Ravalli County Sanitarian.

RESPONSE: The fee for a transient non-community water system is set by Section 75-6-108, MCA, at $50. This is not adequate to allow the department to contract for this service, and no other funds are available. The Board has therefore not made the suggested modification.

COMMENT 23: Commentor states that transient non-community systems are ignored and neglected and operators are untrained and may

not use proper sampling techniques. Commentor believes that monthly monitoring would be more likely to detect contamination. Robert A. Davidson, microbiologist, AMATEC Water and Wastewater Analysis & Consulting, Billings.

RESPONSE: See response to comments 2 and 3 above.

BOARD OF ENVIRONMENTAL REVIEW

CINDY E. YOUNKIN, Chairperson

Reviewed by:

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State June 15, 1998.

BEFORE THE DEPARTMENT ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of new Rules I and II, providing for assessment of administrative penalties for violations of the underground storage tank act, and amendment of 17.56.1227, providing for issuance of emergency underground storage tank permits.	)	NOTICE OF ADOPTION AND AMENDMENT (Underground Storage Tanks)

TO: All Interested Persons

1. On April 16, 1998, the Department published notice of the proposed adoption of the above-captioned rules and amendment of 17.56.1227 at page 842 of the 1998 Montana Administrative Register, issue number 7.

2. The Department has adopted rule I (17.56.120) and II (17.56.121) and has amended 17.56.1227 as proposed with no changes.

3. On May 19, 1998, hearing officer Marty Tuttle conducted a public hearing on the proposed adoption of new rule I (17.56.120) and II (17.56.121) and the proposed amendment. The notice of public hearing specified the reasons for adoption. No comments were received by the department related to the adoption or amendment.

Reviewed by:

John F. North
Rule Reviewer

Mark A. Simonich, Director

Certified to the Secretary of State June 15, 1998.

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

In the matter of the amendment of ARM 24.16.9003 and the proposed amendment of ARM 24.16.9007, related to Montana's prevailing wage rates	)))))	NOTICE OF AMENDMENT OF ONE PREVAILING WAGE RULE

TO ALL INTERESTED PERSONS:

1. On March 26, 1998, the Department published notice at pages 718 through 721 of the Montana Administrative Register, Issue No. 6, to consider the amendment of the above-captioned rules.

2. On April 17, 1998, a public hearing was held in Helena concerning the proposed amendments at which oral and written comments were received. Additional written comments were received prior to the closing date of April 24, 1998.

3. On April 30, 1998, the Department published notice at page 1060 of the Montana Administrative Register, Issue No. 8, to extend the public comment period through May 15, 1998.

4. No person or organization commented on the proposed amendments to ARM 24.16.9003, and the Department has amended the rule exactly as proposed.

5. After consideration of the comments received on the proposed amendments to ARM 24.16.9007, the Department has decided not to amend the rule at this time, but to propose further amendments to the rule and the proposed rates. Please see elsewhere in this issue of the Montana Administrative Register for information concerning further amendments and information concerning revised rates.

6. The Department has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: Numerous members of the public commented regarding the proposed standard prevailing rate of wages and fringe benefits. In addition to submitting additional data, some commenters objected to the lack of methodology in ARM 24.16.9003 regarding computation of fringe benefits.

Response 1: As a result of the comments and data, the Department has re-computed the proposed standard prevailing rate of wages and fringe benefits. Because there appear to be a significant number of changes to the rates and/or the fringe benefit amounts in certain occupations in various districts, the

Department has revised the proposed rates. As noted elsewhere in this MAR issue, the Department is holding an additional public hearing on the revised proposed wage and fringe benefit rates, and is seeking additional public comment on those revised rates. In addition, the Department is proposing a methodology to compute fringe benefits.

Comment 2: Staff of the Administrative Code Committee commented that use of the phrase "proposed amendment" in the title of the Notice of Public Hearing was confusing as to ARM 24.16.9007, because of the way the rule reads. Staff commented that the incorporation by reference of the 1998 rates was perhaps more accurately described as implementation of ARM 24.16.9007.

Response 2: The Department, while it has used the same format for the adoption by reference for a number of years, agrees with the ACC staff that the potential for confusion exists. In order to clarify the rule, and to make sure that persons reading the rule are aware of what the current version of the rates are, the Department is proposing to amend ARM 24.16.9007(1) to specify the date of the edition of the rate publications that is currently being used. As noted in Response 1, the Department has published elsewhere in this Register notice of that proposed change. The biennial change in year will then be able to be tracked by reference to the rule's history note and the appropriate volume of the Montana Administrative Register.

7. The amendments to ARM 24.16.9003 are effective June 26, 1998.

Mark Cadwallader
Rule Reviewer

Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: June 15, 1998.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of amendment of a rule to alter the milk pricing rule as it pertains to the butter fat component.) NOTICE OF EMERGENCY AMENDMENT

TO: All Interested Persons:

1. The board believes the following reasons constitute action for an emergency amendment to rule 32.24.301:

a) That as of July 1, 1998, the Chicago Mercantile Exchange (CME) will no longer trade in grade A butter. The board of milk control utilizes the price of this commodity in the pricing structure of the various classes of milk in Montana. The emergency order gives the board of milk control up to 120 days to find a permanent alternative to the grade A butter price used in the calculation of milk prices.

b) That if the board did not act immediately to change the derivation of the butterfat component used in the pricing of classes I, II, and III milk, the result would have the potential to seriously jeopardize or interfere with the Montana consumer's right to an adequate supply of wholesome class I milk and to otherwise disrupt and injure the milk industry. Such welfare conditions are in imminent peril.

c) Therefore, the board intends to amend the following emergency rule. The rule as amended will be mailed to all licensed producers, processors and commenting parties and published as an emergency rule in the Montana Administrative Register.

2. The emergency amendment will be effective July 1, 1998.

3. The text of the emergency amendment is as follows: (text of present rule with matter to be stricken interlined and new matter added, then underlined)

32.24.301 PRICING RULES

(1)-(3)(a) Remain the same.

(b) The class I butterfat differential will be calculated by multiplying the most recent Chicago area grade AA butterfat price ~~(grade A 92 score)~~ as reported by the United States department of agriculture, less an adjustment factor of $.0895. by a factor of .118 and the resulting answer from this calculation shall be rounded to nearest half

cent. When milk does not test 3.5 percent butterfat, the price per CWT will be adjusted for each .1 percent the butterfat test moves up or down. The derivation of the adjustment factor shall be an average of the difference between the Chicago area grade AA and grade A butter prices over a two year period ending April 30, 1998.

(4) Formula for fixing the class II price to be paid to producers.

(a) Prices paid producers for class II milk will be the last spray process nonfat dry milk solids price per pound quote for the month, Central States area, as most recently reported by the United States department of agriculture, plus a factor of $.0125 per pound for freight, multiplied by 8.2 (which is the amount of solids not fat in skim milk), plus the last Chicago area grade AA butter price quote for the month ~~(grade A, 92 score),~~ as most recently reported by the United States department of agriculture, less an adjustment factor of $.0895, as calculated in (3)(b), multiplied by 4.2 (which is the amount of butter in pounds, which can be produced from 100 pounds of 3.5% milk), less a make allowance of 8.5%. In the case of milk containing more or less than 3.5% butterfat, the differential to be employed in computing prices will be determined by multiplying the above-mentioned Chicago area butter price by .111 and the resulting answer from this calculation shall be rounded to nearest half cent ($0.005).

(4)(b) Remains the same.

(5) Formula for fixing the class III price to be paid to producers.

(a) Prices paid to producers for class III milk will be the last Chicago area grade AA butter price quote for the month ~~(grade A, 92 score)~~ as most recently reported by the United States department of agriculture, less an adjustment factor of $.0895, as calculated in (3)(b), less 10% and, in addition, when skim milk is utilized in this classification by any distributor, the last spray process nonfat milk solids price per pound quote for the month, the Central States area, as most recently reported by the United States department of agriculture, plus a factor of $.0125 per pound for freight, multiplied by 8.2, less 17%.

(5)(b)-(8) Remain the same.

AUTH: 81-23-302, MCA
IMP: 81-23-302, MCA

4. The rationale for the emergency amendment is set forth in paragraph 1.

5. A standard rule-making procedure will be undertaken prior to the expiration of this emergency rule.

6 Interested persons are encouraged to submit their comments during the upcoming standard rule-making process. If interested persons wish to be personally notified of that rule-making process, they should submit their names and addresses to the Milk Control Bureau, 301 N. Roberts Street - Room 236, PO Box 202001, Helena, MT 59620-2001.

MONTANA BOARD OF MILK CONTROL
MILTON J. OLSEN, Chairman

By: _____
Laurence Petersen, Exec. Officer, Board of Livestock
Department of Livestock

By: _____
Lon Mitchell, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State June 15, 1998.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 36.22.1308, pertaining to plugging and restoration bond	))))	NOTICE OF AMENDMENT

TO: All Interested Persons.

1. On March 12, 1998, the board published a notice of public hearing on the proposed amendment to rule 36.22.1308, pertaining to plugging and restoration bond, at page 636 of the 1998 Montana Administrative Register, Issue No. 5.

2. On April 2, 1998, a public hearing was held by the Board of Oil and Gas Conservation in the Petroleum Club of the Sheraton Hotel in Billings, Montana, to receive comments on the proposed rule . Eight individuals representing themselves or their companies or associations commented at the public hearing. One written comment was received through the April 8, 1998, deadline for written comments. The single written comment from Somont Oil Co., Ferdig, Montana, was generally supportive of the proposed rule change. Oral comments at the public hearing from Shell Western E&P and the Montana Petroleum Association generally were supportive of the proposed rules.

3. The Board amended rule 36.22.1308 as proposed, but with the following changes. Matter to be added is underlined. Matter to be deleted is interlined.

36.22.1308 PLUGGING AND RESTORATION BOND (1) Except as otherwise provided in these rules, the following ~~penal~~ bonds are required for wells within the board's jurisdiction:

(a) The owner or operator of a single well to be drilled, or of a single existing oil, gas, or Class II injection well to be acquired, must provide a one well ~~penal~~ bond:

(i) through (iii) remain as proposed.

(b) The owner or operator of multiple wells to be drilled, of existing wells to be acquired, or any combination thereof, must provide a multiple well ~~penal~~ bond in the sum of $50,000. A one-time consolidation of companies will not be considered an acquisition requiring a $50,000 bond if the consolidation does not change the party or parties responsible for the ultimate plugging of the wells and the resulting consolidated company provides a bond not less than the aggregate amount of the existing bonds covering wells prior to consolidation.

(c) The owner or operator of existing wells covered by a multiple well bond in an amount less than $25,000 must provide a new bond or a supplemental bond or rider to an existing bond to increase coverage to $25,000. An operator may request a payment schedule of equal annual bond increases over a period

not exceeding five years from the effective date of these rules. Such payment schedule may be approved administratively.

(2) through (5)(b) remain as proposed.

(c) a letter of credit issued by:

(i) an FDIC-insured, Montana commercial bank; or

(ii) an out-of-state FDIC-insured, commercial bank having assets in excess of $200 million.

AUTH: 82-11-111, MCA
IMP: 82-11-123, MCA

4. The Board thoroughly considered all commentary received. The comments received and the Board's response to each follow:

COMMENT 1: Mr. Pat Montalban, MSR Exploration, and Mr. Kneelon Teague, Northern Montana Oil and Gas Association, commented that increasing the "grandfathered" $10,000 blanket bond to $25,000 was not legal and the independent operators could not afford the increase. Several others (Messrs. Dan Mitchell, Joe Montalban, Carter Stewart) identified the proposed increase of "grandfathered" bonds as a financial burden on small operators.

RESPONSE: The underlying statute, 82-11-123(5), MCA, which states in part "the board shall require: ... the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well" provides more than permissive direction in setting bond amounts. "Good and sufficient" must be considered in the current context, and when a change of circumstances renders a bond less than sufficient, it is the Board's obligation to review and make a new determination of sufficiency. The board, having considered the work of its ad hoc bonding committee, believed a $25,000 bond is no longer sufficient financial assurance for unlimited numbers of new wells, and a $10,000 blanket bond is even farther removed from sufficiency. The Board believed 82-11-123, MCA mandates its proposed rule. Nevertheless, the Board was sensitive to the possible financial burden on the smallest operators and modified paragraph (1)(c) of the proposed rules as indicated above.

COMMENT 2: Mr. Teague and Mr. Mitchell commented on the word "penal" in the existing language of Rule 36.22.1308. Mr. Teague said the underlying statute had been modified some time ago to provide the board authority to take the entire bond amount for an operator's failure to properly plug wells and the rule did not need to include the word "penal" as it implies the bond could be forfeited merely as a punishment.

RESPONSE: The board agreed that the word "penal" was superfluous and removed it from Rule 36.2.1308 in the instances where it occurred.

COMMENT 3: Mr. Mitchell and Mr. Joe Montalban said the Resource Indemnity Trust Fund should constitute an operator's plugging bond and there should be no bond increase as operators have paid the RIT (now Resource Indemnity and Ground Water Assessment) tax for many years.

RESPONSE: The Board does not consider the RIT a substitute for well bonds. The Board has made several efforts to obtain direct appropriations from the RIT for plugging orphan wells. The Board's experience leads it to believe a legislative effort to use RIT funds as a substitute for plugging bonds will be unsuccessful. The statute that requires the Board to mandate filing a bond does not allow the Board to consider the RIT fund as a bond.

COMMENT 4: Mr. Teague said that some of his association membership was confused as to the meaning of the term multiple-well bond and wished the Board to clarify the number of wells that could be covered by a multiple-well bond.

RESPONSE: The term multiple means more than one and, unless otherwise restricted by the Board, a multiple well bond may cover an unlimited number of wells. The term is considered synonymous with "blanket bond."

COMMENT 5: Mr. Teague said the proposed rule pertaining to letters of credit appears to require in-state banks to have total assets in excess of $200 million to qualify to provide letter of credit bonds.

RESPONSE: The Board's intent was that only out-of-state banks meet a minimum asset criteria. The Board modified paragraph 5(c) as indicated above.

BOARD OF OIL AND GAS CONSERVATION

TERRI PERRIGO
EXECUTIVE SECRETARY

DONALD D. MACINTYRE
RULE REVIEWER

Certified to the Secretary of State June 15, 1998

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

In the matter of the transfer of rules 20.14.201 through 20.14.208 pertaining to veterans' facilities	))))	NOTICE OF TRANSFER

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the veterans' facilities program is transferred from the Department of Corrections to the Department of Public Health and Human Services. In order to implement that legislation, rules 20.14.201 through 20.14.208, are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 45.

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

OLD	NEW	
20.14.201	37.45.101	Mission Statement
20.14.202	37.45.102	Definitions
20.14.203	37.45.201	Admission Criteria
20.14.204	37.45.205	Application Procedures
20.14.205	37.45.207	Admission Procedures
20.14.206	37.45.301	Discharge
20.14.207	37.45.501	Appeal Procedure
20.14.208	37.45.206	Application Materials

3. The transfer of rules is necessary because this program was transferred from the Department of Corrections to the Department of Public Health and Human Services by the 1995 legislature by Chapter 546, Laws of Montana 1995.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State June 15, 1998.

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

In the matter of the amendment of 46.12.1221, 46.12.1222, 46.12.1228, 46.12.1229, 46.12.1231, 46.12.1232, 46.12.1235, 46.12.1237, 46.12.1241, 46.12.1245, 46.12.1246, 46.12.1251, 46.12.1254, 46.12.1258, 46.12.1260 and 46.12.1265 pertaining to medicaid coverage and reimbursement of nursing facility services	)	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On April 30, 1998, the Department of Public Health and Human Services published notice of the proposed amendment of 46.12.1221, 46.12.1222, 46.12.1228, 46.12.1229, 46.12.1231, 46.12.1232, 46.12.1235, 46.12.1237, 46.12.1241, 46.12.1245, 46.12.1246, 46.12.1251, 46.12.1254, 46.12.1258, 46.12.1260 and 46.12.1265 pertaining to medicaid coverage and reimbursement of nursing facility services at page 1097 of the 1998 Montana Administrative Register, issue number 8.

2. The Department has amended rules 46.12.1221, 46.12.1222, 46.12.1228, 46.12.1232, 46.12.1235, 46.12.1237, 46.12.1241, 46.12.1245, 46.12.1246, 46.12.1251, 46.12.1254, 46.12.1260 and 46.12.1265 as proposed.

3. The Department has amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

46.12.1229 OPERATING COST COMPONENT (1) through (3)(a) remain the same.

(4) The operating cost limit is ~~102%~~ 103% of median operating costs.

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

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

46.12.1231 DIRECT NURSING PERSONNEL COST COMPONENT

(1) through (3) remain the same.

(4) The direct nursing personnel cost limit is ~~104%~~ 107.5% of the statewide median average wage, multiplied by the provider's most recent average patient assessment score, determined in accordance with ARM 46.12.1232.

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

46.12.1258 ALLOWABLE COSTS (1) through (3)(b)(iv) remain the same.

(v) In accordance with sections 1861(v)(1)(O) and 1902(a)(13) of the Social Security Act, allowable property costs shall not be increased on the basis of a change in ownership which takes place on or after July 18, 1984 ~~and before December 1, 1997~~. Sections 1861(v)(1)(O) and section 1902(a)(13) of the Social Security Act are hereby adopted and incorporated herein by reference. The cited statutes are federal statutes governing allowability of certain facility property costs for purposes of medicare and medicaid program reimbursement. Copies of these sections may be obtained through the Senior and Long Term Care Division, Department of Public Health and Human Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.

~~(vi) In accordance with section 1861(v)(1)(O) of the Social Security Act, allowable property costs shall not be increased on the basis of a change in ownership which takes place on or after December 1, 1997. Section 1861(v)(1)(O) of the Social Security Act, as amended by the Balanced Budget Act of 1997, P.L. 105-33, is hereby adopted and incorporated herein by reference. The cited statute is a federal statute governing allowability of certain facility property costs for purposes of medicare program reimbursement. Copies of this section may be obtained through the Senior and Long Term Care Division, Department of Public Health and Human Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604-4210.~~

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

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

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The proposals to delete reasonable payment standards and to cut the various components of the reimbursement formula are arbitrary and without reasonable basis and do not meet the standards for agency actions and rule making set forth in 2-4-305, 2-4-506, 2-4-704, MCA and provisions of Montana's Administrative Procedure Act.

RESPONSE #1: The Department believes that the rule changes adopted in the final rule are consistent with state and federal Medicaid statutes, and that the rules and the adoption process meets all MAPA requirements.

COMMENT #2: The Department proposes to eliminate subsection (4) of ARM 46.12.1221 which sets forth current state policy to

provide for payment for nursing facility services through rates which are "reasonable and adequate to meet the costs, including the costs of services required to attain or maintain the highest practicable physical, mental and psychosocial well being of each Medicaid recipient, which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations and quality and safety standards".

The Department states that maintaining this language is unacceptable. We oppose this change because we believe that it is unacceptable to eliminate such basic standards. What part of this language could the Department possibly disagree with? Is it the part that requires rates to be "reasonable"? The part that requires the rates to be "adequate" to meet costs? The part that requires the rates to cover the cost of services required to attain or maintain the highest practicable physical, mental and psychosocial well being of each Medicaid recipient? The part that requires that rates cover the costs efficiently and economically operated facilities must incur to provide care and services in conformity with state and federal laws, regulations and quality and safety standards?

If the purposes stated in the current language are not appropriate, what standards does the Department intend to set? Is the Department proposing that as a matter of public policy we should set nursing facility rates that are unreasonable, inadequate and do not cover the actual costs experienced by efficiently and economically operated facilities when they conform with state and federal laws, regulations and quality and safety standards? We believe the proposed change is arbitrary and without rational basis.

We recognize that the Department is no longer subject to Boren Amendment requirements and as such is not required to assure anyone that rates are set at levels which are adequate to compensate efficient and economically operated facilities. As noted in rule hearings last year, it does not appear to us that the Department could have been successful in making the changes which were made last year had Boren not been in the process of going away. It is clear that without Boren the Department is taking an even more draconian position toward the industry and the result will necessarily translate into a hindrance to quality patient care for the elderly.

RESPONSE #2: The language at ARM 46.12.1221, which is being removed is a restatement of the intent to follow federal Boren provisions. This language was never intended to be the adoption of a specific standard for payment purposes, but rather a statement of intent to comply with the Boren standard. The Boren Amendment provisions were repealed in the Balanced Budget Act of 1997, effective October 1997. The Boren Amendment has

been the federal standard for Medicaid nursing facility reimbursement for a number of years but no longer exists. To leave this language in the rules now that the standard has been eliminated may be interpreted as compliance or a voluntary continued application by the Department of the former Boren Amendment standard to Medicaid nursing facility reimbursement under these rules. This interpretation could lead to litigation by providers that would seek to require the Department to comply with certain procedural requirements of the Boren Amendment or to force the Department to pay higher rates that Boren might have required. The Department will comply with the current requirements as the federal law no longer imposes Boren amendment requirements and it would not be in this Department's best interest to leave this language in place. The Department will remove the language as proposeed in the rule notice as it pertains to the Boren amendment provisions.

The notion that the Department's approach to rate setting and rule drafting will change significantly in the post Boren era is without foundation. The implication that the Department's approach to nursing facility rate setting and its interactions with nursing facility providers is draconian is without merit and is contrary to how providers and the industry have been treated in dealings with this Department. The Department has no agenda to change how it interacts with providers or modify significantly its methods or standards in establishing equitable and fair payment rates for all nursing facilities in Montana.

COMMENT #3: A number of changes are proposed to the rate effective dates. They provide that the Department is not required to update inflation and other rate formula factors each July 1 and that the various medians and other calculations in the formula will not be changed once they are determined at the start of the rate year. Additional language is contained throughout the following rules which reiterates this change to make it applicable to all portions of the rate setting process.

We oppose these changes. It is important for all of the factors in the formula to be updated each year. This is necessary if the formula is to be accurate and if available funds are to be distributed equitably. This is true regardless of the amount of funding available. Even if funding does not change, equitable distribution of the available funding depends on the factors in the formula being accurate. If the Department is not distributing sufficient funds to account for inflation, changes in the medians, etc., it can, as we are painfully aware, adjust the caps to meet the funding level. The benefit of keeping the formula components accurate is that facilities and the public will have an accurate picture of the adequacy or inadequacy of funding and of the values in place in terms of where the caps are set.

Also, we are aware of a recent situation where the Department was retroactively reducing a provider's rate after an audit. The provider was able to prove that the operating median was set too low, and that at the time of setting the median the Department was in possession of sufficient information to have accurately set the median. The provider asserted that if the Department was going to set a new rate retroactively, it should at least be accurate and based on the correct median. We agree with the provider's assertion and believe these proposals are before us so no future provider in a similar situation can insist on an accurate rate. This is not good policy and we oppose the proposed changes.

COMMENT #4: The proposed ARM 46.12.1228 for rate effective dates is the Department's response to provider concerns about the rate setting process. While we understand that the Department wishes to avoid confusion, this proposal makes the rate setting process even more uncertain for providers. By giving an open ended effective date for rates, the Department might be able to utilize any excuse for not revising rates to reflect more current data. With no specific target or deadline for adjusting rates, the provider community is placed at serious risk because we are unable to adjust to changes in the marketplace without being able to forecast our revenues. The indefinite nature of the language is particularly objectionable, because rates have lagged behind actual cost increases for several years. If the Department does not wish, for whatever reason, to adjust rates, there is absolutely no requirement to do so, not now, perhaps not ever. This language change violates all sense of fair play. While we recognize the state has issues relative to maintenance of systems within budgeted levels, the underlying expectation from all who deal with governmental agencies is that a sense of equity and fair play will be the order of the day, each and every day. To have no requirement to adjust rates with some sort of frequency takes a serious chink out of the cornerstone of the relationship between providers and the state. This in turn, diminishes our collective ability to provide care to the residents we are both called upon to serve. If all costs were constant and controllable and market forces were not moving heavier care residents into facilities with lighter care residents going elsewhere, perhaps no adjustments to rates would be fair and equitable. We simply do not see that scenario in existence anywhere, so we must necessarily count on adjustments to the rates in order to have the resources necessary to provide quality care.

The Department formula is predicated upon the notion that increasing acuity in the current year is rewarded with future rate changes. A similar circumstance exists for facilities that experience declining patient acuity. The Department requires a minimum staffing level be maintained based upon the patient acuity score used in the rate year. But the facility must also

staff according to patient needs. Locking up the rates for more than one year at a time will potentially cause a nursing facility to over staff its facility in the face of declining patient acuity or occupancy changes. Likewise, facilities who experience increasing acuity cannot be rewarded for increased costs due to higher acuity. We oppose adding this statement to the rules and request that the Department not include it in final rule.

RESPONSE TO #3 AND #4: The Department is proposing this wording based upon interpretations by providers that there is somehow an implied increase that would automatically be provided in rates without a rule notice being published. There is no implied increase in the rates or rate components with or without the publication of a new rule and the establishment of new reimbursement levels. This language is not an attempt to change how the Department has operated in the past nor how it will operate in the future in the proposal and adoption of payment policy.

Providers have argued that the rule as currently drafted and without any rule amendments would require application of an inflation factor to base period costs and a resulting rate increase for all providers effective July 1. Nursing facility providers have threatened to file suit to enjoin the Department's proposed rule, contending that if the proposed rule did not take effect, providers would automatically be entitled to a rate increase. The Department disagrees that there was any basis upon which the proposed rule could have been enjoined or that if the rule had been enjoined the existing rule would have provided for any automatic increase.

The Department generally adopts rule amendments each year to specify the particular rate methodology and variables that will apply for purposes of calculating and establishing new rates for all providers effective July 1. The Department believes that the current rule was intended to provide for establishment of new rates only on a year by year basis as provided in additional rule amendments. The Department generally either adopts a new base period or applies a further inflation factor to base period costs for purposes of setting new rates. The legislature appropriates funding for each year of the biennium. The Department must go through some reasoned decision making process in order to distribute this funding to providers. The variables in the rate methodology must be set as a total package rather than in isolation from one another. If providers were to succeed in their argument, the result would be that rates would be increased for inflation, regardless of changes in patient acuity or availability of appropriations to fund increases. Some providers might receive inappropriate increases, because in light of decreased patient acuity, it might actually cost them less to provide services currently and no increase would be

warranted. Automatic rate increases might require Department expenditures in excess of appropriations. Since this language is clarification of the intent of the existing rule language, the addition of this language does nothing to change how the Department interprets or applies these rules, as they were the implied intent of these rules since they were adopted by the Department.

The implication that the Department will, because of the addition of this clarification language, be able to hold rates at the current level and not adjust components is without merit. There is no Department historical perspective that warrants this interpretation by the provider community, nor by adding this language is the Department bound to make a rate or a rule change on July 1, or at any other time. This language provides clarification of the Department's intent as it has always existed that rate components and rates will be adjusted based upon the publication of rules and adoption of policy or rule amendments through a formal rule notice process, with the input of providers and impacted parties. The Department anticipates that with the repeal of the Boren amendment, providers will look to other aspects of the reimbursement system and rules for issues for which to challenge Department rate calculations and thus we are warranted in providing this clarification of the Department's intent.

The comments that a provider prevailed in proving that the operating median was set too low is inaccurate. The provider had their rate adjusted retroactively based upon audit adjustments that were due to reporting of costs in the incorrect cost categories. The Department has taken great efforts to insure that providers separate costs as defined in the administrative rules into appropriate cost categories. This adjustment of costs to the correct categories has been applied consistently, when it is discovered, to all impacted providers. As a result of this adjustment this provider had a retroactive rate decrease. The provider in question appealed their audit adjustments and subsequently entered into a settlement agreement to reduce the amount that was required to be paid back to the Department as a result of their audit settlement and retroactive rate decrease. The agreement that was entered into with this provider did not validate the claims or objections that were made during this providers appeal. The Department's analysis of this provider's objections in fact found that even if misclassification of costs has occurred among providers, it has not resulted in significant enough variances to undermine the functioning or effectiveness of the component medians or limit calculations. The Department's analysis shows that the impact on the medians is far less significant than this commentor believes.

COMMENT #5: We oppose the proposed change to lower the operating

cost limit from 103% of the median to 102% of the median operating costs. We believe this reduction is arbitrary and inappropriate and is without rational basis. The effect of this change is to fail to recognize inflation as well as minimum wage increases and increased care needs of our residents. This component includes a number of cost centers that directly relate to resident care needs - activities, social services and dietary. The enforcement arm of this Department is increasingly citing the need for more individualized activities, more social services interventions and more dietary interventions, as well as the need for more staff generally. Yet the payment arm of the same Department is failing to recognize even the full effect of inflation - let alone the need to do even more in the areas being cited. In addition, the 1996 cost reports being used to set rates do not fully take into account the minimum wage increases that took effect in 1996 and 1997.

The operating costs of 55 facilities (almost 60% of all facilities) exceed the cap set by the Department under this proposal and therefore those facilities will not receive a rate that covers their operating costs.

We believe the history of this percentage shows a volatility that is evidence of the arbitrary and irrational way it has been set:

FY94 110%
FY95 115%
FY96 105%
FY97 106%
FY98 103%
FY99 102% (proposed)

We recommend that the proposed operating cap be increased to adequately account for inflation and to reflect the actual costs incurred by facilities in providing care and services that meet all state and federal quality and other standards. We also recommend that the operating cost component be rebased in order to reflect wage increases and increased patient acuity not accounted for in the 1996 base year.

COMMENT #6: Subsection (5) of ARM 46.12.1229 lowers the incentive allowance from the lesser of 10% of median operating costs or 27% of the difference between the provider's inflated base year per diem operating cost and the operating cost limit to 10% of median operating costs or 20% of the difference between the provider's inflated base year per diem operating cost and the operating cost limit.

We oppose the Department's proposal to reduce the operating incentive factor from 27% to 20%. The opportunity to earn an incentive payment is reduced once by the Department's proposal to reduce the operating cost limit and again by a reduction in

the operating incentive factor. This makes no sense. Facilities that manage to operate at less than the Department's operating cost limit (even after it has been lowered) are the facilities hurt by this cut. The philosophy behind having an incentive factor is to provide an incentive to lower cost facilities to keep their costs down. The lowering of this incentive will make it meaningless. And, these lower cost facilities are the very facilities that are most likely to be required to increase their costs to stay in compliance with standards which continue to change by virtue of "interpretation" and increased enforcement by federal regulators and state surveyors. These facilities save the state Medicaid program money. Why would the Department want to provide less incentive for facilities to keep their operating costs down?

In 1991, when the Department developed the current Medicaid reimbursement system for nursing homes, it stated: "The purpose of the incentive is intended to encourage providers to reduce operating costs such as administrative costs to receive an incentive payment". The proposed reduction in this cap is inconsistent with the Department's stated purpose for this component.

We believe the history of this percentage cap shows a volatility that is evidence of the arbitrary and irrational manner in which it is set:

FY94 40%
FY95 40%
FY96 30%
FY97 33%
FY98 27%
FY99 20% (proposed)

We recommend that the proposed operating incentive factor be increased in order to continue to be a viable incentive to facilities to keep their operating costs down.

COMMENT #7: We are concerned that the Department again reduces the operating cost cap. This year, the cap is reduced from 103% to just 102% of the median operating cost. Even though the Department applied an inflation factor to the base year costs, the Department still caps those facilities whose costs exceed the median value by nominal amounts. Capping facility costs at such low amounts means the Department no longer recognizes legitimate cost differences for combined facilities, small, rural providers and those facilities with significant changes in patient occupancy. We recommend that the Department leave the cost cap at 103% of the new median cost component. The Department should consider increasing this component even higher when funding is available.

RESPONSE TO #5, 6, AND 7: The Department continues to further the basic goals of the reimbursement methodology to maximize reimbursement of nursing services and nursing costs while providing an incentive to operate efficiently and contain costs. These adjustments in percentages have been set with these reimbursement goals in mind and in conjunction with the adjustment of the reimbursement components to incorporate inflationary trends, patient assessment information, new median cost computations, adequacy of the reimbursement levels through the Department's findings processes and appropriation levels.

The Department has continued to update the information in the rate spreadsheet from the first notice of the rule and, based on the updated information, we will increase the direct nursing personnel cost limit percentage from 104% of the median to 107.5%, and the operating cost limit percentage from 102% of the median to 103%. The incentive upper limit will remain at 20% of the difference between the inflated base year cost and the operating cost limit, and the property cap will remain at $11.50. Reimbursement rates must be considered as a whole to determine the adequacy of reimbursement levels and not isolated to one component of reimbursement. Percentages have previously been adjusted in order to provide for the maximum amount of reimbursement to be distributed in the most appropriate manner to all facilities participating in the program. These percentages have been adjusted upward in some instances but can be adjusted downward in conjunction with the other reimbursement components in order to maximize the system of reimbursement as a whole.

Rates have increased or decreased as a result of several factors, not simply as a result of the amount of funding increase or the reductions in the cap percentages. The incentive cap while being lowered, still serves to further the underlying basic goals of the reimbursement methodology. The operating incentive is discretionary from the Department's standpoint as it reimburses providers for costs not incurred, and it provides an incentive for providers to consider how to incur facility operation costs in an efficient manner and provides a mechanism for facilities to be recognized for cost containment while still meeting participation requirements.

The incentive is not intended to be an encouragement for providers to forgo compliance with standards nor is it an entitlement, but rather an entirely discretionary aspect of the reimbursement system, since it pays providers beyond the level of actual cost. However, the Department continues to recognize that an incentive for operating efficiency is of value in the reimbursement system. Capital costs continue to be recognized and increases are provided up to $1.86 per day or the $11.50 cap if costs in this area support an increase. We have updated patient acuity to the most current information that is available

and provide increases in funding to the system of reimbursement based upon both the appropriated funding level and projected increases in patient contributions.

The percentages, caps and medians used in setting rate components must be established in conjunction with each other in order to distribute funding in the most equitable and appropriate manner to all providers participating in the Medicaid nursing home program. The percentages are not required to be maintained at any particular levels to distribute funding equitably though the reimbursement system. Percentages and caps must be part of a reasoned decision making process that evaluates all of the information in the system globally and cannot be looked at in isolation to determine whether the system meets legal requirements. All reimbursement factors must be considered as a whole to determine the adequacy of reimbursement levels and not isolated to one component of reimbursement.

The Department notes that neither the previous Boren Amendment nor any state or federal regulation requires that any particular number or percentage of facilities receive rates that equal or exceed actual costs, and that courts have recognized that there is no requirement that all costs be reimbursed.

COMMENT #8: We oppose the change to lower the direct nursing personnel cost limit from 109% to 104% of the statewide median average wage.

When the Department's current Medicaid reimbursement system was developed in 1991, the Department set the nursing care cap at 125% of the median. The Department's stated rationale at the time was: "this component is intended to encourage providers to direct resources toward direct nursing care to residents and to improve quality of care. This is why the percentage is much higher than the operating percentage limit". Clearly, there was a stated interest in quality of care and the need to recognize the acuity of the facility's residents.

We believe this reduction is arbitrary and inappropriate and is without rational basis. The effect of this change is to fail to recognize inflation as well as minimum wage increases and increased care needs of our residents. The enforcement arm of this Department is increasingly citing quality of care issues in nursing facilities as well as the need for more staff. Yet the payment arm of the same Department is failing to recognize even the full effect of inflation - let alone the need to do even more in the areas being cited. In addition, the 1996 cost reports being used to set rates do not fully take into account the minimum wage increases that took effect in 1996 and 1997.

COMMENT #9: Nursing home providers are experiencing an increase in admissions of patients with more clinically complex

conditions. This type of patient requires more direct and indirect care. Higher care patients require more nursing staff. A decrease in the nursing cost limit by 5% is not consistent with what the market is bearing on nursing homes today. If the nursing home rates are being reduced annually due to limit reductions but they have to incur more costs due to patient acuity, nursing homes are heading towards extinction.

The nursing costs of 51 facilities (over 50% of all facilities) exceed the cap set by the Department under this proposal and therefore those facilities will not receive a rate that covers their nursing costs.

We believe the history of this percentage cap shows a volatility that is evidence of the arbitrary and irrational way it has been set:

FY94 125%
FY95 130%
FY96 116%
FY97 117%
FY98 109%
FY99 104% (proposed)

We recommend that the proposed nursing cap be increased to adequately account for inflation, increased patient acuity, minimum wage increases and to reflect the actual costs incurred by facilities in providing care and services that meet all state and federal quality and other standards. We also recommend that the nursing cost component be rebased in order to reflect wage increases and increased patient acuity not accounted for in the 1996 base year.

COMMENT #10: During the past two years, the Department has reduced the nursing limit from 117% of the median down to the proposed limitation of 104% of the median and has reduced the operating limit down from 109% of the median down to the proposed 102% of the median. Meanwhile, the property rate limit remains frozen for the past two years. At this rate, in just 16 more years the state will be expecting to get these services for free? Reducing limits to median levels fails to give adequate allowance for reasonable differences between facilities, local economics, facility layout, size of facility and other variables which give rise to a legitimate need to pay at levels which are necessary in order to provide quality patient care.

In the 4th quarter of 1996, the industry faced the challenge of dealing with an increase in the minimum wage. The DRI, as utilized by the state does not forecast changes in wages based upon changes in the underlying wage scale. DRI simply takes the historical past and using various leading economic indicators, attempts to predict changes in prices into the future. While the Department did a survey and found that only a very small

percentage of the industry was directly impacted by an increase in the minimum wage (meaning that they actually had employees who were being paid at levels below the new minimum), the Department failed to take into account the upward pressure a change in the minimum wage has on wages in general due to competitive forces. If the industry does not respond, there are insufficient workers available to perform the important services required by our elderly population. Adding to that, another increase in the minimum wage was implemented in the latter part of the third quarter of 1997. Because the impact of both of these increases are not reflected in the 1996 cost reports (the basis for setting current rates), we find that the DRI alone is inadequate. However, to reduce payment limits to lower levels at the same time is extremely punitive.

As an indicator of the impact of these changes, consider that in the 1997 rate calculation, the nursing cost per hour limit was $12.85: was decreased to $11.70 in the 1998 rate calculation and is being reduced again to $11.50 per hour in the current rate calculation. At the same time, the stated goal of the reimbursement system is to provide quality care! We can understand attempting to slow or reduce rates of increase, but actual cuts in the face of upward pressure on actual wages the industry must pay are simply unreconcilable with the provision of quality care. Even using the DRI calculations (which we believe are understated) over the past year, wages increased by 2.90%. All else being equal the limit should have been increased from $11.70 to $12.04, not decreased to $11.50.

Furthermore, these reductions fail to take into consideration the increased costs faced by the industry as we are required to implement electronic filing of minimum data set (MDS) data to the state. This requirement will necessitate additional computer expenses, telephone/internet charges, staff training, additional time to input and transmit and monitor transmissions. These are very real costs and there is no consideration of these costs accounted for anywhere. This is simply another example of the inadequacy of the system whereby new rules and regulations are requiring additional expenses, with no compensation forthcoming.

The end result of these changes is that per the Department's rate sheet, we have gone from the 1997 rate calculation wherein 44 of 98 facilities had rates which covered their cost to the proposed rules that now produce rates which cover cost for only 27 of 98 facilities. With 73% of the industry not having rates which cover the cost of care, we believe this is a very strong indicator that the system is inadequate. A system which produces rates at these levels must necessarily force providers to find ways to eliminate expenses. Unfortunately, rents are fixed, utilities are not negotiable and things like insurance and taxes do not diminish. This leaves about 60% of the

remaining cost being somewhat controllable, with the end result being such that quality care must necessarily be diminished or compromised in some fashion.

RESPONSE TO #8, #9, AND #10: The Department continues to further the basic goals of the reimbursement methodology to maximize reimbursement of nursing services and nursing costs while providing an incentive to operate efficiently and contain costs. These adjustments in percentages have been set with these reimbursement goals in mind and in conjunction with the adjustment of the reimbursement components to incorporate inflationary trends, patient assessment information, new median cost computations, adequacy of the reimbursement levels through the Department's findings processes and appropriation levels. The Department has continued to update the information in the rate spreadsheet from the first notice of the rule and, based on the updated information as stated in an earlier response, we will adopt a direct nursing personnel cost limit median of 107.5%, an operating cost limit median of 103%, an incentive upper limit of 20% and a property cap of $11.50. Reimbursement rates must be considered as a whole to determine the adequacy of reimbursement levels and not isolated to one component of reimbursement. Percentages have previously been adjusted in order to provide for the maximum amount of reimbursement to be distributed in the most appropriate manner to all facilities participating in the program. These percentages have been adjusted upward in some instances but can be adjusted downward in conjunction with the other reimbursement components in order to maximize the system of reimbursement as a whole.

The percentages, caps and medians used in setting rate components must be established in conjunction with each other in order to distribute funding in the most equitable and appropriate manner to all providers participating in the Medicaid nursing home program. The percentages are not required to be maintained at any particular levels to distribute funding equitably though the reimbursement system. Percentages and caps must be part of a reasoned decision making process that evaluates all of the information in the system globally and cannot be looked at in isolation to determine whether the system meets legal requirements. All reimbursement factors must be considered as a whole to determine the adequacy of reimbursement levels and not isolated to one component of reimbursement. The Department previously analyzed the impact of the federal minimum wage increase for fiscal year 1998 rate setting and determined that there was little impact based upon those individuals that would be impacted directly by the minimum wage increase. Again in an effort to analyze any impact any proposed increase in the minimum wage would have on providers we did a new survey for the month of March 1998. We will analyze this data to determine if there will be any future impact to providers if any increases are finalized at the federal level.

The Department notes that there is no state or federal regulation that requires that any particular number or percentage of facilities receive rates that equal or exceed actual costs, and that courts have recognized that there is no requirement that all costs be reimbursed. Moreover, such a percentage test is not the standard adopted by the Department by which to assess compliance with Boren Amendment requirements in the past or the Department's test for adequacy of its rates today.

COMMENT #11: We are concerned that the Department is amending cost report requirements that remove direct care staff from direct nursing personnel costs and classify them as operating costs. The Department specifies that direct nursing personnel includes only "registered nurses, licensed practical nurses, nurse aides" and direct patient care provided by the director of nurses.

We recommend that the Department consider adding ward clerks who work in support of the above listed licensed personnel, and other universally trained, but unlicensed, health care workers who provide direct patient care, to the direct nursing salary component. We believe the proposed rule will actually create an incentive to deliver direct patient care through higher cost employees in certain circumstances.

Facilities who are capped on the operating cost component, but who are below nursing personnel cost limit can increase Medicaid payments by using licensed staff (such as certified nurse aides) to deliver services or provide administrative support in place of otherwise unlicensed staff.

We recommend that the Department provide adequate payments to facilities for direct patient care regardless of where the Department requires the salary cost be reported.

RESPONSE #11: The Department has taken great efforts to insure that costs have been reported accurately and in the correct cost category during the last two years. These clarifications are necessary to try to achieve some consistency and comparability in costs that are being reported by providers. While ward clerks may be providing a service as an adjunct to nursing staff they do not meet the definition of direct nursing personnel as defined in ARM 46.12.1231(2)(c) and as such need to be reported as nursing administration costs on the cost report and not included in the direct nursing computation for rate setting purposes. In conjunction with the Departments efforts to update and modify the patient acuity factor in the reimbursement calculation the Department's contractors will look at the costs that should be acuity adjusted and will make recommendations or changes, as necessary, in the definition of costs that are

appropriate to include in the direct care center.

COMMENT #12: The Department proposes to eliminate the separate payment for reimbursement of nurse aide competency evaluation. We do not have serious concerns about this proposal. However, if the Department adopts it, we recommend that the Department take into account when setting rates for facilities that have received this funding, the fact that the amounts received were reported on base year cost reports as a revenue offset. These amounts must be added back in when calculating rates for these facilities. Also, we recommend that the reporting requirement contained in this regulation be deleted. If there are no separate reimbursements, why should the Department continue to require separate reporting by facilities of OBRA costs?

We would issue a cautionary statement, that we believe nurse aide training costs are on the rise due to outside competition for staff. We must spend a greater share our time in recruiting and training staff members. Sometimes that may be due to local market conditions, not endemic to the industry as a whole. As such, it would seem appropriate that when a facility is in short supply of qualified staff, there should be every incentive for them to recruit and train as necessary. The existing system provides that incentive. We would propose that in light of the fact that the Department continues to receive a higher matching level from the federal government for nurse aide training expenses than for other services, the unique reimbursement of these expenses remains appropriate.

We further suggest, that since the Department believes they are duplicate paying for these services, a mandatory revenue offset of the amount paid by the Department should eliminate any concerns about double dipping. This should also alleviate the federal government's concerns that the Department has been double dipping as well, since the Department has clearly submitted claims to the federal government wherein (if the state paid for the same services twice as alleged), payment for NATCEP costs have been included more than once. We believe an offset of these costs on the cost report is more appropriate as it assures that the costs are identified, covered and reimbursed and only submitted to HCFA for matching funds once.

RESPONSE #12: The Department adopted payment rules and reporting rules for nurse aide certification (testing) and training costs several years ago. In the beginning we provided for a recognition of increased costs due to OBRA requirements with an add on to the payment rate for facilities. As these costs were incorporated into the cost base we eliminated the separate add on for OBRA payment and recognized these costs as part of the base period costs that are utilized for payment rate calculations. The cost of nurse aide testing was maintained separately from the training costs and continued to be paid for

outside the per diem rate calculation because it varied from facility to facility. The quarterly reporting and quarterly payment has for testing costs fallen off considerably as the first large group of nurse aides became certified and there continues to be a smaller amount of new aides being trained and certified through facilities. Providers have never been instructed to offset these revenues against expenses on their cost reports, so they in fact have been receiving double recognition for these expenses, as well as, receiving revenue separately. We do not believe that any providers are offsetting this revenue so this elimination will result in no impact to these facilities from a cost reporting standpoint.

Nurse aide certification and training costs were designated as administrative costs for reporting purposes by the federal government, which is why we established the separate reporting for these costs. This means that the state does not receive the same matching rate for costs related to OBRA nurse aide training and testing, as we do for other costs of providing nursing facility services. Because the federal government requires the state to report these costs at a lower federal matching rate we are required to capture these costs separately. We will continue to require facilities to submit the quarterly nurse aide testing and training information to us for meeting this reporting requirement. The Department will however, eliminate the OBRA cost reporting form from the cost report forms and instructions that facilities must fill out when submitting their annual cost report to the Medicaid agency.

COMMENT #13: The Department's proposal fails to increase the property rate cap of $11.50. We recommend that the cap be increased. Although only 12 facilities are subject to the cap, these are either relatively new facilities or facilities that have undergone significant additions or renovations. The costs involved in constructing these facilities (or additions/renovations) exceed the cap because it is a totally unrealistic cap and it is simply impossible to construct a nursing facility which meets standards at a cost at or near the cap. Raising this cap is a matter of equity for those facilities arbitrarily affected by it.

Also, we recommend that the Department continue to provide rate changes that recognize substantial remodeling costs of existing facilities. Montana's nursing facilities are aging and will require substantial investments to upgrade and replace outdated physical structures.

RESPONSE #13: The Department continues to recognize rate adjustments for new construction or remodeling up to the $11.50 cap. Increases are available up to $1.86 per day in this component. While this is not a fair rental value or market value system, the Department notes that in the aggregate rates

meet or exceed the costs in this area of the reimbursement system which provide that providers will have resources available to spend on capital improvements. When the reimbursement system was changed in 1991 the capital rates were not rolled back to the actual costs that were being reported by providers, which accounts for a large number of facilities receiving capital rates in excess of their actual costs in this component. Facilities that have undertaken new construction and remodeling projects are aware of the limit on the capital rate and have made a decision based upon those limits and their ability to receive a rate increase up to the $1.86 per year to incur these costs and undertake this new construction.

The Department has not committed to a fair rental value system or any specific property methodology for the future. Providers continue to advocate for changes in the property component without considering the property rates may be calculated upon an entirely different basis than under the present system and that property rates are likely to shift considerably up or down for many facilities under a new methodology. These changes may impact the increases received in this year's or subsequent year's property rates significantly. The Department will continue to monitor the property reimbursement system in conjunction with other changes being considered for reimbursement in the area of MDS and patient acuity adjustments to insure that all components of the reimbursement system work in conjunction with each other.

COMMENT #14: For the calculated property cost section, we know of no provision in the BBA of 1997 which requires states to adopt any provision contained in the BBA other than to recognize the demise of Boren. Certainly, there is no mandate for states to adopt any provisions relative to changes to ownership. The provisions of the specific Medicare citation as incorporated by reference was aimed at hospitals and had to do with recapture of depreciation. We believe the adoption of this provision to be unwarranted and is applying regulation which is not consistent with congressional legislative intent. The cited Medicare rule does not apply to nursing homes as nursing home rules have been totally modified to the new PPS (prospective payment system) environment, wherein facility specific costs are not recognized, and therefore, there is no basis for claiming depreciation, resulting in no basis for recapture of depreciation.

Furthermore, the additional argument that was preferred by the Department was that to not be consistent with Medicare would increase the differences between Medicare and Medicaid cost reporting and would; therefore, increase cost. First of all, as indicated above, the cited regulation does not apply to nursing homes under Medicare. Accordingly, there is and will be no difference between the two. Additionally, even if it did apply, since there are already differences in this and other cost

centers as well, why doesn't the Department eliminate all differences between Medicare vs Medicaid cost reporting. We do not see the significance of the matter, other than a further attempt by the Department to limit property costs.

Meanwhile, the Department has gone to extra lengths in the proposed changes to specify that property costs, plant operations and maintenance costs, nursing costs, etc. must necessarily be different between Medicaid vs Medicare. We do not see where one more slight difference between Medicare cost reporting and Medicaid cost reporting will add significantly to the Department's burden.

We further believe that reliance upon the Medicare cost report format will become decreasingly valuable for the Department because providers will no longer be incentivized to record costs which are captured for recovery from Medicare. We also expect Medicare auditors to be somewhat less aggressive in pursuing audit adjustments as the Medicare system will no longer rely on the cost reports as the basis for payment. Thus, as a natural course, we anticipate even greater difficulties in discerning proper coding for both the Department as well as providers.

Our only other objection to this provision is simply that it was incorporated by reference without it being attached as an addendum to the proposal. This assumes that the reader/responder has access to the specific provisions of the Balanced Budget Act of 1997 and that the exact citation is readily available and it's intent discernable. The Department indicates that copies are available upon request, but disclosure in rule making should be full disclosure, not disclosure with a "you have to ask for additional publications" approach in order to obtain full disclosure.

It is also unclear as to how the Department intends to apply these provisions to changes of ownership under lease arrangements. Leases under Medicare are not subject to the issues addressed in this regulation. What is the intent of the Department in the adoption of this language?

COMMENT #15: Subsection (3)(vi) of ARM 46.12.1258 incorporates Medicare language which provides that allowable property costs shall not be increased on the basis of a change in ownership which takes place on or after December 1, 1997. We oppose the adoption of this provision. This fails to recognize the value of a partially or fully depreciated building. For many years the Department has promised to adopt rules governing payment of property costs which reflect the "value" of the building, rather than costs associated with it. This has never been done and the property component remains outdated and inequitable.

RESPONSE TO #14 AND #15: The Department will not adopt the

proposed changes to ARM 46.12.1258(3)(b)(v) and the addition of (3)(b)(vi) at this time. We proposed this adoption in an attempt to be consistent with the Medicare regulations in this area. We will continue to monitor the impact of this change in federal law on the Medicare program and will determine if these regulations are appropriate to consider and adopt in the future for Medicaid reimbursement purposes.

The Department can and often does incorporate by reference sections of laws and regulation that are to voluminous to add to the text of the rules. There is no requirement that these rules or regulations be restated in their entirety in the Administrative Rules of Montana if they are incorporated by reference. The Department will always provide copies of any rules or regulations that are incorporated by reference and finds no merit to this comment.

The Department has as part of this rule notice made additional changes to ARM 46.12.1260(4) to clarify for providers the appropriate reporting of costs in the cost report categories that correspond to the Medicaid expense statement line items. We have taken efforts to insure that providers are aware of the differences in the Medicaid and the Medicare cost reporting requirements and, to the extent possible, have tried to maintain consistency with the Medicare forms where we could. We do find that we need additional information that is not available from the Medicare cost report and will continue to utilize supplemental Medicaid forms in order to gather this information.

COMMENT #16: We recommend that subsection (6) of ARM 46.12.1232 be deleted. This subsection provides for an annual monitor of patient assessment abstracts. Because the Department plans to utilize a minimum data set (MDS)-based acuity measure effective July 1, 1999, there is no purpose served in having providers continue to do the paperwork and documentation associated with the patient abstract system. Thus, there is no need to monitor the abstracts. We also recommend that the abstract requirement be eliminated as soon after July 1, 1998, as possible. Facilities are being required to needless and wasteful paperwork to document to two systems-the patient abstract system required by Medicaid and the MDS system required by the federal government. Implementation of Medicare PPS for many facilities on July 1 exacerbate an already difficult situation.

COMMENT #17: The Department continues the provision that facilities must utilize and submit the patient assignment score (PAS) forms and data to the state. Meanwhile, the Department has also promised that they will soon drop the PAS requirement. The proposed rule does not address the phase out or demise of the PAS tool in favor of the MDS (RUGS) system. Since the Department has not provided for a phase out, it is forcing providers to incur additional costs in order to complete both

the PAS and the MDS since these are substantially different tools and must necessarily be done independently. The Department indicated a need to adopt new rules relating to property cost based on change of ownership in order to avoid differences in the Medicare versus Medicaid cost report on the premise that it would cause increased costs unduly. However, to retain the PAS system and be required to migrate everything to the MDS system is of far greater expense to all parties than any cost reporting difference, regardless of the cost center which is impacted.

We would strongly encourage the Department to drop the PAS by September 1, 1998, so that all parties can focus on the MDS. This change should be adopted by the rule making process which is presently underway so the Department's reimbursement system contractor does not have an open window to perform the task of mapping the MDS (RUGS) grouper to the current PAS system. At a minimum, language indicating an intention to transition away from PAS to MDS (RUGS) would give the provider community heads up notice and would provide the Department the opportunity to make the change mid-stream without having to go to rule making at that time.

COMMENT #18: Provider changes such as changes in occupancy or special patient needs may be ignored by the Department. The patient assessment scoring number used in the reimbursement formula does not accurately reflect the level of care required in our facility. The increased number of behavior problems, cannot be scored in the current form. This results in the increase of staffing for resident safety while receiving less compensation. The state must recognize that the acuity level has risen in nursing facilities even if the PAS has not. We are obligated by law as well as morality to provide the best care we can. This should not be done at a loss in revenue.

RESPONSE TO #16, #17 AND #18: The Department continues to be committed to the elimination of the patient assessment system requirements for facilities and has entered into a contract with a consulting firm to help us in this transition and development process for a new acuity measurement system. We are undertaking an analysis of the adjustment of acuity in the reimbursement system in conjunction with computerization of the minimum data set and its use as an assessment tool and are planning to have a new system implemented by the July 1, 1999 rate setting process. The development and implementation of a new system of acuity measurement may also provide additional options to address the concerns that have been raised in the past regarding the nursing wage computation, the licensed to non-licensed ratio calculation and the minimum staffing requirements.

We believe that the use of the MDS data will better recognize the increase in acuity of nursing facility residents and be a

better tool to capture staff time in dealing with residents with behaviors.

The Department did not propose any changes in the patient assessment area in this rule notice, and will not remove these rule provisions as part of the final adoption of these rule changes. We will agree however to propose a separate rule notice to deal specifically with repeal of the patient assessment abstract provisions. This notice will solicit input on what alternative will be put into place if a new acuity measurement system cannot be put in place on July 1, 1999. As part of this rule notice we will need to put into place a contingency plan concerning acuity adjustment for rate setting purposes for fiscal year 2000. These provisions may mean that a provider would be required to keep their rate year 1999 (current) six month patient assessment average for rate setting purposes because there will be no abstracts or monitors from which to establish new acuity information for rate year 2000. We will also need to adopt provisions for providers that have deficient patient assessment monitor scores for fiscal year 1999 rate setting purposes so that they will continue to submit patient assessment abstracts in order to receive a rate change on January 1, 1999, if they are not deficient on a new monitor. We believe the impact of repealing the acuity measurement process needs to be commented on by all nursing facility providers and feel that a separate rule notice and comment period would provide all providers an opportunity to comment and provide input prior to the elimination of these rule provisions.

COMMENT #19: Examination of the Department's rate spreadsheets based on implementation of these proposed rules indicates the following:

1) 32 of 98 facilities (33%) receive actual rate cuts

2) 72 of 98 facilities (74%) receive rates that do not cover the actual, allowable costs of providing care to Medicaid recipients

3) In addition, nursing salaries as well as nursing hours staffed are rising steadily - faster than inflation. Based on a sample of Montana's nursing facilities, we have found the following:

a) Nurse aide salaries increased 12.3% from the 1995 cost reporting periods to the 1997 cost reporting periods

b) RN salaries increased 8.5% during the same period

c) LPN salaries increased 4.6% during the same period

d) RN hours staffed per patient day increased 14.8% from

the 1994 cost report period to the 1996 cost report period

e) LPN hours staffed per patient day increased 10.8% for the same period

f) Nurse aide hours staffed per patient day increased 6.8% for the same period

Clearly, Medicaid rate increases in the 2 to 3% range have failed to keep pace with the unavoidable cost increases being experienced by facilities who are caring for residents with ever-increasing care needs. There is a great need for funding levels that take these issues into account.

Therefore, we are asking the Department to consider using funding appropriated for increased patient days to fund rate increases that are sufficient to enable facilities to provide care and services that meet all applicable quality standards.

The Department's spreadsheet which outlines how legislative funding is distributed indicates that actual Medicaid bed days paid from July 1, 1997 through March 31, 1998, when annualized, amount to 1,347,358 patient bed days projected for FY98. Yet, the Department's spreadsheet spreads legislative funding over 1,421,283 bed days. This represents bed day growth of 5.5%! This is at a time of declining bed days, when it is expected that FY99 bed days will be less that FY98, not more. This amounts to an over-projection of bed days of 73,925, which translates into $6.6 million. In effect, $6.6 million appropriated by the Legislature to the nursing home program will not be distributed to nursing homes.

We believe that it is important for the Department to have some room for mid-year adjustments due to various factors, but a 5.5% rate is artificially high and comes on the backs of 73% of the providers in the state. In the previous two rate years, the cushion was in the 2.5% range. By reducing the cushion to the same margin as in the two previous years, the Department would be able to restore approximately $3.5 million to current year rates, without any crunch on the budget.

There is clearly no rational basis to reduce caps, cut rates for one-third of nursing facilities and provide rates that are less than costs for 75% of nursing facilities, all at the risk of reducing the quality of care to nursing home residents, when the legislature appropriated sufficient funds to more properly fund this program. In fact, the legislature specifically provided language in HB2 to address potentially inadequate funding and potentially declining bed days. The language states:

"The Department is authorized to supplement funds

appropriated to rebase nursing home rates with funds appropriated for increased nursing home bed days in order to avoid inappropriate decreases in the Department's current nursing home reimbursement formula and to comply with federal law, as long as total program expenditures do not exceed the appropriation for nursing homes."

We believe the caps proposed in these rules represent "inappropriate decreases in the Department's current nursing home reimbursement formula". We recommend that the Department use its authority to move funding from bed days to the rate formula in order to increase the various caps to appropriate levels.

RESPONSE #19: The Department disagrees with the comments suggesting that the rates have been developed based solely upon budgetary considerations, that the level of appropriations available to the rate system is inadequate or that the Department has no legitimate standards for rate setting. The Department also disagrees that rates must cover the actual costs of facilities or that the law prohibits rate decreases. These are not the standards by which the legal adequacy of the rates is measured. The Department has developed the rates to comply with legal requirements and its analysis demonstrates that all requirements have been met or exceeded.

The Department acknowledges that some providers will receive rate decreases even with the increases in the percentages on the medians that will be adopted in the final rules. However, these rate decreases are based upon changes that have occurred in the costs incurred by these facilities, changes in patient acuity at that facility, audit adjustments and settlements that have occurred and adjustment in the statewide medians which are representative of the costs that were incurred in the base period cost reports plus an allowance for DRI inflation to inflate those costs to the mid point of the rate year. Even if a 3 to 4% funding increase had been provided there would continue to be providers that would receive a rate decrease.

The total reimbursement for fiscal year 1999 will be over $128,500,000 which results in an average per day rate increase of 3% over the fiscal year 1998 average rates. This amount exceeds the 1.5% increase in state and federal funds appropriate by the legislature for fiscal year 1999. The Department took into account all relevant information, including the funding available from patient contribution and the lowest quartile analysis to determine rates that are appropriate.

The Department disagrees that the bed day calculation is inaccurate for fiscal year 1999. The logic for this computation is consistent with past practice for projecting caseload growth in this program. The case load increase was computed from

fiscal year 1997 projected days as of April, 1997 and was indexed forward for each year of the biennium. The Department does not have the data available to conclude what the final bed days will be for fiscal year 1999 and it would be premature to spend funds on reliance of bed day savings yet unrealized.

The Department agrees that it does have the authority language included in House Bill 2 to supplement funds appropriated to rebase nursing home rates with funds appropriated for increased nursing home bed days in order to avoid inappropriate decreases in the Department's current nursing home reimbursement formula as long as total program expenditures do not exceed the appropriation for nursing homes.

While there may be some amount of case load growth available to provide for increases in this program, the amount of days that the commentor believes are available are clearly overstated based upon the Department's analysis of bed day trends. The calculation of the $6.6 million dollar amount is clearly in error. The only funding that could be made available would be the state and federal funds that were appropriated by the legislature. There is no additional funding available from a patient's contribution to their cost of care if there are no bed days occupied. At the present time the Department does not know what, if any, excess case load growth is available to provide for increases in this program, and clearly it is not at the level that the commentor believes is available. Nor does the Department believe that this funding is necessary in order to comply with laws or to avoid inappropriate decreases in the Department's current nursing home reimbursement formula.

COMMENT #20: It appears that the Department now uses the payment formula merely to allocate scarce state dollars among the facilities.

Originally, the current payment formula recognized a wide range of provider costs. The operating cost component cap began at 125% of the median cost. It now stands at 102%. The nursing cost component cap began at 140% of the median nursing hourly wage cost. The cap is now 104%. By next year, it is very likely that the Department will reduce the cost caps below the median cost to provide care. This means that at least one-half of the nursing facilities in Montana will be required to subsidize the Medicaid program.

The increase as proposed is by no means adequate or reasonable. It is unfair to tax private pay patients with a bed tax and then be forced to pass on additional costs in order to make ends meet when the Medicaid population is being under funded. There has to be a more fair and equitable way to distribute the available dollars within the budget. Last year legislators I visited with just assumed that each facility was given the straight

percentage approved across the board. Maybe that is the fair way.

We are concerned that the Department's rate setting policies will not be amended to respond to changes in facility occupancy and local access. We ask that the Department provide an explanation in the response to public comments about its plans to extend the current payment method beyond the next few years.

COMMENT #21: The costs of running a nursing home must all be paid for by someone. As the acuity of patients continues to rise, sacrifices in care must be made in order to provide services at current reimbursement levels. When there is a disparity between cost and Medicaid reimbursement, the difference must be made up in private pay rates. This cost shifting is an additional burden on those who are not yet Medicaid eligible. The point is rapidly approaching where we will be forced to screen Medicaid patients and deny admission to those of higher acuity whose projected costs exceed reimbursement.

RESPONSE TO #20 and #21: The Department does not agree with the objection that the payment methodology is driven out of state budgetary considerations, and that the level of appropriations available to fund the rate system is inadequate. The Department has developed rates to comply with legal requirements and its analysis demonstrates that all requirements have been met or exceeded. We have considered numerous factors in the development and the establishment of reimbursement levels for nursing facilities.

The goals of Montana's reimbursement methodology continue to be to encourage providers to make reasonable and necessary expenditures on nursing costs, by recognizing more of these costs through a higher limit on the direct nursing personnel cost component. We strive to contain operating costs by reimbursing at a lower percentage on the median for operating costs, but we continue to provide for an incentive to providers that have contained operating costs below the median.

Since the establishment of the current rate system in 1991, the Department has used the same methodology and standards to evaluate whether the rates established under the rate system comply with legal requirements. The methodology and standards are contained in the Department's lowest quartile analysis. The proposed rates are evaluated in relation to a set standard which is the average cost of the 25% of facilities with the lowest cost in the operating and direct nursing cost centers.

Under state law, the Department is authorized to establish rates in accordance with federal requirements, taking into account various factors, including the availability of appropriated

funds. While the availability of appropriated funds is one factor that is considered in setting rates, rates are not set solely based upon available appropriation and the adequacy of rates has been measured in relation to actual cost data and without regard to appropriation levels. The Department does not believe that it would be appropriate to provide rate increases in all cases, across the board to providers regardless if data indicated that a providers cost or acuity does not support such an increase.

Moreover, we believe funding levels are adequate to establish adequate rates for all facilities. In the aggregate, total funding distributed to nursing facilities will increase more than the 1.5% appropriated for fiscal year 1999. The reimbursement system for FY 1999 will distribute a 3% increase in aggregate funding to nursing facilities, demonstrating that rates are not tied directly to appropriation levels and or state budgetary constraints. The adequacy of rates is determined after comparison of proposed rates to these actual cost levels, which was done for the rates that will be adopted in this notice. As indicated in other responses to comments in this notice, the operating component cap percentage has been increased from 102% to 103% of the median operating cost. The direct nursing cost component cap percentage has been increased from 104% to 107.5% of the state wide median average wage. The results of the analysis indicate that the rates as finally adopted comply with applicable legal standards.

COMMENT #22: The Department should be aware of the impacts on Medicaid payments and provider billing requirements due to the Balanced Budget Act of 1997. The Act requires skilled nursing facilities to bill Medicare directly for certain Part A and Part B services provided by outside suppliers.

Contrary to the Health Care Financing Administration's opinion, consolidated billing will affect Medicaid payments and billing requirements. This is most true for bills submitted to Medicaid for Medicare deductible and coinsurance amount.

We recommend that the Department include any necessary administrative rule changes and provider instructions related to consolidated billing in its final rule notice. Consolidated billing begins for certain facilities on July 1, 1998. Providers, including hospitals, nursing facilities and other Part B suppliers need state instructions in order to complete their own financial and treatment programs.

RESPONSE #22: This request is outside of the proposed rule changes that are included in this rule notice. The Department is monitoring the changes that will be required for skilled nursing facilities under the prospective payment system and the new consolidated billing requirements under the Medicare

program. We have been in contact with the Medicare fiscal intermediary, as well as HCFA staff, to get information concerning the impact of these regulations. Interim final rules with a comment period were published May 12, 1998 from Medicare. The Department is committed to determining the impact that these regulations will have on skilled nursing facility providers under the Medicaid program and will publish any administrative rule notices that are necessary for nursing facilities under the Medicaid program once the requirements are determined and the scope of the program services that will be impacted is assessed. The Department will formally write to HCFA regarding its concerns and seek clarification concerning these provisions. We will share the response to our questions with the provider community once it is provided from HCFA.

COMMENT #23: One provider recommended that the Department change the rules on PAS to accommodate smaller facilities for minimum staffing requirements. State survey staff required that we schedule additional nursing personnel in our facility to insure the safety of our residents. The minimum staffing requirements based on our PAS score should be correlated to the number of residents and the number of days in a month to determine the appropriate staffing levels.

RESPONSE #23: The proposed change is outside the scope of the proposed rule changes that are being considered at this time. Facilities are required to staff to meet the level of care that is required for the residents that are living in the facility.

COMMENT # 24: Some commentors requested information and copies of documents related to the rate setting process.

RESPONSE #24: Requests for information and documentation should be directed in writing to the Department of Public Health and Human Services, Senior and Long Term Care Division, P.O. Box 4210, 111 North Sanders, Helena, MT 59604-4210.

5. The changes will apply to nursing facility services provided on or after July 1, 1998.

Dawn Sliva
Rule Reviewer

Russell E. Cater acting
Director, Public Health and Human Services

Certified to the Secretary of State June 15, 1998.

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

In the matter of the amendment of rule 46.30.1605 and the repeal of 46.30.1601 and 46.30.1603 pertaining to the child support and enforcement services fee schedule	))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Interested Persons

1. On January 29, 1998, the Department of Public Health and Human Services published notice of the proposed amendment of rule 46.30.1605 and the repeal of 46.30.1601 and 46.30.1603 pertaining to the child support and enforcement services fee schedule at page 310 of the 1998 Montana Administrative Register, issue number 2.

2. The Department has repealed rules 46.30.1601 and 46.30.1603 as proposed.

3. The Department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

46.30.1605 FEE SCHEDULE (1) through (1)(h) remain as proposed.

~~(i) for issuance of an administrative paternity decision and order, the CSED may assess a standardized fee of $60.00.~~

~~(j) for preparation of a hardship on payment of delinquent support, a standardized fee of $15.00 for each request and $5.00 for each hardship renewal. This fee shall be paid by the individual requesting a hardship. The total fee incurred against an individual for preparation of a hardship in any 12 month period shall not exceed $30.00.~~

~~(k) for preparation of a request for another state to take an action, a standardized fee of $20.00 to be assessed against the individual receiving CSED services.~~

~~(l)~~(i) for each payment ~~distribution to a CSED case, a fee which is the lesser of $7.00 or 10% of the payment.~~ of support distributed to an Obligee, whether by warrant, electronic funds transfer, direct deposit in a financial institution or by any other means a fee may be assessed. For each distribution, the fee shall be no greater than $7.00, or 10% of the distribution, whichever is less. This fee ~~shall~~ may be assessed against the individual or entity receiving CSED services. ~~If the individual receiving CSED services is the obligee, the fee may be deducted from the payment before distribution.~~ If the Obligee or another State is receiving CSED services, the fee may be deducted from the support collection, before distribution. The total fee

incurred against an individual or entity for payment distribution alone shall not exceed $364.00 per year, per case. The payment distribution fee may be assessed over and above any other fee permitted by this rule. However, the payment distribution fee only applies to distributions made in cases being enforced by the CSED under Title IV-D of the Federal Social Security Act.

~~(m)~~(j) ~~for non-assistance related services, a fee for each application.~~ a fee for each application for non-assistance related services. This fee shall be collected from the applicant at the time of application ~~from the individual submitting the application~~ in the form of a cashier's check or money order. If the appropriate fee is not included with the application, the CSED will not open or re-open the case until such fee is paid. The fee shall be $25.00 for an individual whose annual household income is at least $20,000. The fee shall be $15.00 for an individual whose annual household income is at least $10,000, but less than $20,000. The fee shall be $5.00 for an individual whose annual household income is less than $10,000. If the applicant misrepresents or errs in reporting annual household income, the CSED may assess an additional application fee against the applicant at any time. The additional fee shall be the difference between the amount which was paid at the time of application, and the amount that would have paid for the application if there had been no misrepresentation or error of annual household income.

(2) through (5) remain as proposed.

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

(a) for parent locate services, a fee of ~~$11.00~~ 10.00 if the social security number of the person to be located is provided to the CSED, and $14.00 if the social security number of the person to be located is not provided;

(b) for each intercept of federal or state payments ~~in non-public assistance cases~~, a standardized fee of $25.00 or actual costs if less than the standardized fee; federal or state payments include, but are not limited to, income tax refunds; and

(6)(c) remains as proposed.

(7) In no case may a fee authorized under this rule be charged to or collected from a person while that person is a recipient of public assistance in Montana unless federal regulations pertaining to operation of the IV-D program allow the charging or collection of that fee. Fees will not be charged to individuals receiving a FAIM financial assistance cash grant under the federal TANF (Temporary Assistance to Needy Families) Block Grant in Montana.

(8) In no case may a fee authorized under this rule be ~~changed~~ charged to or collected from a foreign reciprocating country, or an obligee residing in a foreign country.

(9) Any fee provided for under this rule may be assessed in addition to any other fee allowed by the rule which may be

applicable to the case.

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

4. The Department has made changes in format to the proposed amendments of rule 46.30.1605, which did not affect the content of the rule. Further, the Department corrected a typographical error in ARM 46.30.1605(8). The Department also made changes to ARM 46.30.1605 in response to comments the Department received as addressed in the comments and responses below. In addition, the cost to the Department to perform locate services has changed since that particular fee was last amended. The cost to the Department is now $10.00 if the Department knows the social security number of the person to be located. The cost to the Department for locate services if the social security is unknown is $14.00. The rule was changed, at the Department's request, to clarify the amount of the fee, based on current actual costs.

5. The Department has thoroughly considered all commentary received. The comments received and the Department's response to each follow:

COMMENT #1: Numerous comments addressed issues outside of the Department's proposed fee schedule. Further, numerous commentors provided a historical background of their support cases, but only expressed their support or opposition to the proposed rules.

RESPONSE: For clarity, the Department grouped categories of comments, and provides responses to each category. The Department will not address issues outside of the proposed fee schedule in these comments. To protect the privacy of all persons involved in the Department's caseload, the Department is unable to provide a response in these public documents, to individuals who expressed specific case concerns. The Department invites any individual or group who has concerns outside of the fee schedule to contact the Department in person.

COMMENT #2: A commentor asserted that fees will not generate revenue. Other commentors questioned the method by which the Department predicted fee revenue. A commentor also asked for copies of the formula used by the Department to determine the expected income. In addition, the commentor asked for a breakdown of support collected in non-assistance cases, and assistance cases. The commentor also asked whether there are statistics of collections made for persons, based on that person's income range. The commentor also asked whether there are studies from other states concerning the relationship between fee increases and the number of persons using child support enforcement services.

RESPONSE: In September of 1997, the University of Montana issued a study concerning fee implementation in Montana. The hardship fee, fee for interstate actions and fee for paternity decisions found in the Department's original proposed rules were based on the University of Montana study. However, these fees were removed from the Department's final rule. The $7.00 handling fee was derived through a Department analysis of actual costs per case for enforcement services ($266 per year) and payment processing ($98 per year). The anticipated revenue from the enforcement fee is approximately $1.2 million, of which only $404,000 is retained by the state in its state special revenue account and 66% is returned to the federal government for reinvestment in the program.

Even with the projected fee income, the Department projects a state special revenue shortfall of nearly $900,000 for Fiscal Year 1999 beginning July 1, 1998. A copy of the Department methodology for determining the amount of the handling fee and projecting the revenues generated from the handling fee is included at the end of this response.

In fiscal year 1997, the Child Support Enforcement Division collected $27,967,704 in non-public assistance cases. Collections were $10,871,905 for cases where public assistance was provided. No statistics are available for collections, based on an Obligee or Obligor's income range. The information necessary to compile such statistics is not available to the Department. The Department is not aware of any studies concerning the relationship between fee increases and the number of persons using child support enforcement services.

Methodology Used by CSED to Calculate Handling Fees and Project Fee Revenue

Calculation of Handling Fees Total costs related to cases in "enforcement" status Excluding costs of payment processing	$7,473,459
Divided by number of cases in "enforcement" status	28,102
Equals Enforcement Cost per Year Per Enforcement Case	$ 266
Total costs related to payment processing	$1,023,709
Divided by number of cases receiving payment	10,434
Equals Payment Processing Costs Per Year Per Paying Case	$ 98

Annual Enforcement Costs plus Annual Payment Processing Costs Per Paying Case	$ 364
Divided by Est. # Payments Per Year	52
Equals Amount Paid Toward Enforcement/Processing Per Warrant	$ 7

CALCULATION OF INCOME GENERATED BY HANDLING FEES

Total Number of Warrants Issued Per Year	212,556
Multiplied by Handling Fee	$ 7
Equals Maximum Potential Annual Income from Handling Fee	$ 1,487,892
Assume 80% Collection Rate of Full Fee	80%
Equals Projected Annual Income from Handling Fee	$ 1,190,313
Less 66% Share to Federal Government	$ 785,606
Equals State Share to State Special Revenue Account	$ 404,707

COMMENT #3: Numerous comments demonstrated a possible misunderstanding of the $7.00 or 10% handling fee and how this fee will be assessed.

RESPONSE: The handling fee will only be assessed when a collection is made. If the collection equals or exceeds $70, the fee per collection will be $7.00. If the collection is less than $70.00, only 10% of the total collection will be assessed. Fees will not be charged to public assistance recipients under the TANF block grant, nor will they be charged if a collection is not made. Fees are based on the actual cost of enforcing and collecting support.

COMMENT #4: Several commentors opposed the proposal to add additional fees in general, regardless of whether the fee is paid by Obligors or Obligees. Some commentors suggested that the Department collect more support, and implement saving measures instead of charging fees. Commentors suggested reduction of the number of discretionary or non-necessary cases as a cost-saving measure, in lieu of fee implementation. Another commentor suggested that the Department seek additional

funding from the legislature instead of assessing fees. A commentor also asked why fees are necessary, in light of welfare reform legislation.

RESPONSE: The Department understands that assessment of fees is a controversial issue. However, the Department is required to follow the directives of the Montana Legislature concerning the Department's budget. The Child Support Enforcement Division has historically been funded in part by assignment of support, followed by collections in public assistance cases. The remainder of the funding comes from the federal government. The Child Support Enforcement Division has not been funded in the past to any significant degree by the state general fund. However, Montana's welfare reform, the FAIM program, has been successful in drastically reducing the number of public assistance recipients. The reduction in assistance cases caused a severe drain on money available to fund the Child Support Enforcement Division program. The Department strives to increase collections in all cases. In fact, the Child Support Enforcement Division continues to increase collections from year to year. However, increasing collections in non-assistance related cases, as suggested by commentors, will not increase the Department's revenue. Therefore, the Department must look to other sources of funding.

When the 1997 Legislature met, they recognized the success of the FAIM program, and decline of revenue available to the Child Support Enforcement Division. The Legislature also recognized that it may be necessary to develop a contingency plan to help cover the costs of the child support program, because the Department may not have sufficient funding to operate over the biennium without additional money. The contingency plan adopted by the Legislature specifically required implementation of child support related fees, in the event that special revenue funds wouldn't cover Child Support Enforcement Division costs. Based in part on the Federal Government Accounting Office's proposal to collect user fees, the 1997 Montana Legislature passed House Bill 2. It reads, "The legislature recognizes that parties who are not required to participate in the IV-D program are choosing to use program services. The legislature intends that these parties help defray the costs associated with provision of services. If the CSED projects that state special revenue may be insufficient to fund appropriations, the CSED shall implement a plan to charge fees and recover costs from parties who receive CSED services."

In addition to assessing the proposed fees, the Child Support Enforcement Division is undertaking cost cutting measures given the projected revenue shortfall for fiscal year '99. However, the ability to provide expeditious services would likely be negatively impacted if substantial cuts in the personal services budget, which represents the most significant aspect of the

budget, are undertaken. A cut in services is the least desirable option. The services provided are required by federal law as a condition of federal program funding, and the Child Support Enforcement Division is required to provide services to all public assistance recipients when a referral is made by a county welfare office, and anyone else who applies, regardless of need. If the essential services are cut, federal funding for the Child Support Enforcement Division and public assistance programs would be jeopardized. If federal funding is lost, it would be financially impossible to operate a child support enforcement program. The Child Support Enforcement Division has implemented significant cost savings measures recently. It decreased the need for manual payment processing and costs associated with adding employees by implementing an automated payment processing system. Further, caseworker productivity increased through implementation of a Customer Service Unit to respond to incoming calls. The Division contributed to a reduction in Medicaid costs by actively enforcing medical support obligations. Further, it developed a partnership with a private insurer, at no cost to the Department, for a child-only insurance policy which is available to persons using Child Support Enforcement Division services. It is also achieving vacancy savings by deferring the immediate hiring of essential employees. The Child Support Enforcement Division is also in the process of reviewing cases in which past due support is owed the state to determine the likelihood of collection. Collections in this area would supplement projected fee revenues to fund the program.

The Department agrees that it could save some costs if its caseload were reduced. However, the Department cannot refuse to provide services, under federal law, when it receives an application, even if the applicant is wealthy. The Department may only close a case under very limited closure criteria. Therefore, the Department cannot reject applications that are not necessary, or are discretionary.

The Child Support Enforcement Division estimates that state special revenue shortfall will be in the range of $900,000 for Fiscal Year 1999. Without state special revenue, the 2:1 federal match cannot be accessed. This would cause a severe funding shortfall to the program. Therefore, the law now requires that fees be implemented to meet those remaining costs. Asking for additional funds from the Legislature, as suggested by commentors is not possible, since the Legislature has already addressed the matter by requiring fees from users to defray costs.

COMMENT #5: A couple of commentors suggested splitting fees between Obligors and Obligees for equity.

RESPONSE: The Department believes that its fee schedule

adequately assigns fees among Obligors and Obligees for various services. The ability to charge these fees has been the law for many years. The Department declined to assess the fees in the past, because they were not necessary for program funding. However, the 1997 Montana Legislature required that additional fees implemented for cost recovery be assessed against the persons receiving services. The proposed payment processing fees, and application fees reflect the Legislature's directive. Pursuant to 40-5-210, MCA, application fees must be charged to persons who apply for services. Further, under 40-5-210(3), MCA, handling fees for processing support are charged to Obligees. The fee may be deducted from the support payment, before distribution to the Obligee. Federal law prohibits deductions of a cost recovery fee from the distribution, if the fee is assessed against the Obligor. 45 CFR 302.33(d)(3). Even if the law permitted this fee to be assessed against the Obligor, the Department could not comply with the Legislature's directive, because Obligor fees would not generate sufficient revenue to cover the Child Support Enforcement Division's budget shortfall over the biennium. Unlike Obligee fees, Obligor fees can only be collected after current support and all past due support is paid. Under present income withholding criteria, found at 40-5-416, MCA, any fee assessed against an Obligor would be payable over 2 years.

Splitting fees among Obligors and Obligees is only possible for certain types of fees, and may only be done in a contested case action. For example, fees for review and modification may be split between the Obligor and the Obligee under the present fee schedule. Fees for application and payment processing are not assessed during a contested case action. Therefore, they may not be split at the present time. An Obligor fee may only become a judgment collectible using support remedies if the fee is part of an administrative contested case action or a district court action. The fee cannot just be added to an Obligor's debt without notice and an opportunity for hearing. The cost of obtaining such judgments would be more than the revenues generated. Therefore, such fees cannot be expected to help fund the Child Support Enforcement Division's budget shortfall.

COMMENT #6: Commentors suggested that Obligors should pay any fees assessed by the Department.

RESPONSE: The majority of fees in the existing fee schedule are either assessed against the Obligor, or split between the Obligor and Obligee. There is no provision in present law which would permit application fees and handling fees to be allocated to an Obligor who is not an applicant for services. The handling fee must be assessed against Obligees under 40-5-210, MCA. The application fee can only be assessed against the applicant under 40-5-210, MCA and 45 CFR 302.33(c).

COMMENT #7: Commentors suggested that the application fee proposed by the Department should not be charged to the Obligee. Another commentor suggested that the application fee not be collected upon application, but be taken out of future collections instead.

RESPONSE: Application fee provisions in 40-5-210, MCA were adopted in 1993. Since the inception of this law, the application fee has been assessable against the Obligee, or applicant for service. There is no provision in present law which would permit these fees to be allocated to an Obligor who is not an applicant for services. Federal law requires payment of these fees, and also requires that they be assessed against the applicant. In the past, the Department has paid the application fee to the federal government, directly out of Department funds. Due to the budget shortfall, however, the Department cannot continue to do so.

Under 40-5-203, MCA, persons who are receiving non-public assistance related services are bound by terms and conditions adopted by the Department. The terms and conditions are found in ARM 46.30.701. Under ARM 46.30.701(3), a person receiving services must ". . . pay any application fee and any other fee which may be charged under 40-5-210, MCA;"

The application fee is due at the time of application. The fee must be passed on to the federal government each year. If it hasn't been collected, the Department must pay the fee on the applicant's behalf. There is no funding for the Department to do so at this time. The commentor's suggestion would require the Department to develop a computer system enhancement which would track which cases the fee is due on, what year the fee was assessed, and whether the fee had already been paid to the federal government out of the Department's funds. This is cost-prohibitive. Additionally, after a case is opened the Department has no authority under federal regulations to close a case if the application fee is not later collected. The Department believes that the application fee schedule, which is based on income, provides adequate relief for those persons who wish to apply for services, but cannot afford a $25.00 application fee.

COMMENT #8: One commentor noted that the Department's rule notice stated that Montana may not have jurisdiction over all Obligors. The commentor asked why the Department claims that jurisdiction may be lacking to assess fees, when a support order exists.

RESPONSE: Jurisdiction was only one factor considered by the Department when it discussed which fees should be assessed against Obligors. However, the law also limits the persons subject to fees such as the application and handling fee.

Jurisdiction does play a role when Montana's Child Support Enforcement Division asks for assistance from other states. In many instances Montana lacks jurisdiction over specific Obligors. The other states then act on Montana's request for services. Montana may also be asked to enforce orders which were not established in Montana. If the Obligor has no ties to Montana, jurisdiction is lacking. Jurisdiction is also limited when an Obligor is a Native American who resides, or earns money on a Montana reservation. When Montana lacks jurisdiction over an Obligor, it cannot act to establish a support order or to assess fees against that Obligor.

COMMENT #9: Commentors suggested that the Department's proposed handling fee is excessive. Commentors noted that the fee is applied to each payment. Because many obligors pay support through income withholding, several distribution fees could be incurred each month. Another commentor suggested that there be a cap on the handling fee.

RESPONSE: The distribution fee is based on actual costs of enforcing and collecting in an average case in a year. In response to these comments, however, the proposed rule was amended to apply the fee to each warrant or fund transfer made to an Obligee. To address concerns that fees would occur when payments occur more frequently than once each month, the proposed rule was changed to place a yearly cap on the fee, so that an obligee will not pay more than the average yearly enforcement cost for a case.

COMMENT #10: "Hardships" are payment arrangements which allow an Obligor to pay delinquent support over a period greater than two years. Commentors suggested that it is inappropriate to charge a fee for a hardship. If a hardship is needed, then an Obligor cannot afford an additional cost. Another commentor opposed offering hardships to Obligors in general. Another commentor asked whether hardship fees would be charged to public assistance recipients.

RESPONSE: In response to comments, the Department deleted the hardship fee from its proposed rule.

COMMENT #11: One commentor proposed a sliding fee scale, based on income. Another suggested means-tested fees.

RESPONSE: Fees are not assessed against recipients of public assistance if the individual is receiving a FAIM financial assistance cash grant under the TANF (Temporary Assistance to Needy Families) Program in Montana. The Department discussed the option proposed by the commentor, and determined that the application fee is appropriate for a sliding scale, because it is a one time fee, collected at the time of application and would not be cost prohibitive to analyze and collect.

Modification fees are means-tested, because they are one time fees and are not cost prohibitive to calculate and collect. However, the $7.00 handling fee is not appropriate for a sliding scale, or means-tested application but will only be charged when support is actually collected. Additionally, the $7.00 will not be charged when the amount of support collected is less than $70.00, in which case only 10% of the collection will be charged. The commentor's suggestion concerning the handling fee would require the Department to track and make a determination of income level and application of a fee on every Obligee, each time a payment is distributed. The payment processing function is largely automated, and a manual tracking of income, whether a fee should be assessed, and amount of fee assessed on each distribution would be impossible, since the Department processes over 200,000 payments each year.

COMMENT #12: Commentors asked why the Department intends to charge fees against persons receiving public assistance. Another commentor asked whether fees can be assessed against public assistance recipients under federal law. A commentor asked whether changes in law are expected to allow fee assessment against public assistance recipients.

RESPONSE: The final rules clarify that individuals receiving a FAIM financial assistance cash grant under the federal Temporary Assistance to Needy Families block grant in Montana are not subject to fees. The Department is not aware of any expected changes in federal law in this area.

COMMENT #13: One commentor stated that the provision which prohibits fees against foreign persons and foreign countries is "stingy".

RESPONSE: This provision is required by federal law under 42 USC 654(32)(c).

COMMENT #14: Several commentors suggested that fee assessment against Obligees penalizes the family, or the children.

RESPONSE: The fees are not intended to be a penalty on any person or entity. Instead, they are a funding source for Department services. The Department has been given no choice concerning this matter. The 1997 Montana Legislature required fee assessment against persons who use Child Support Enforcement Division services. Further, the existing law only allows handling fees to be assessed against Obligees. Finally, application fees must be assessed against the applicant under both federal and Montana law.

COMMENT #15: A commentor suggested that fees may inhibit the use of child support enforcement services.

RESPONSE: The Department believes that some persons receiving its services may choose other means to enforce support, if fees are assessed. However, the Department cannot choose not to assess fees at this time. The Department recognizes that individuals do not always utilize support enforcement services because of difficulty obtaining support through other means. In fact, many persons use the services for other purposes, including cases where support has always been paid in a timely manner. Obligors may also receive services.

Fees were required by the 1997 Montana Legislature to collect the revenue necessary to partially fund Child Support Enforcement Division operations. To meet the expected budget shortfall, the revenue generated from fees must also be collected within the biennium. The application fee and handling fees are expected to generate sufficient revenue, and can be collected within the biennium. Therefore, they are fees which will satisfy the Legislature's mandate.

COMMENT #16: Commentors questioned the appropriateness of the proposed fee for paternity orders. A commentor also indicated that the proposed rule does not clearly state whom the fee would be assessed against.

RESPONSE: The Department deleted the fee for paternity orders in the final rule.

COMMENT #17: A commentor questioned the appropriateness of the proposed fee for sending an action to another state. The commentor stated that the fee should be charged by the other state to the Obligor.

RESPONSE: The Department cannot control what fees are charged by other states. However, the Department deleted the fee for requests to other states in the final rule.

COMMENT #18: One commentor asked whether fees will apply to interstate cases as well. The commentor also asked whether the fees will still be charged if the other state also assesses fees.

RESPONSE: Fees will be assessed in cases where a person receives services in Montana, even if Montana requests the assistance of another state to collect support. The fees will also be assessed when other states request assistance by utilizing Montana's child support enforcement services. These fees will be in addition to any fees assessed by the other state.

COMMENT #19: One commentor asked how fee reductions will be accomplished.

RESPONSE: No fee reductions are intended, except in the case of a review and modification action. The formula for fee reduction for that service is adequately explained in the existing rule. The only other fees which vary are locate fees and application fees. The amount of fee due will be determined and assessed at the time those services are requested. The final rule adequately describes the criteria upon which the amount of locate fee and application fee are assessed.

COMMENT #20: Commentors asked if the fees would be tax deductible, or whether tax relief is available as a result of the fees.

RESPONSE: The Department is unable to provide tax relief by administrative rule.

COMMENT #21: One Commentor asked why the fee schedule is necessary, if federal law already provides for assessment of fees based on actual costs.

RESPONSE: State law, under 40-5-210, MCA suggests that the Department establish a fee schedule.

COMMENT #22: One commentor asked why all of the Department's "clients" didn't get a copy of proposed rules, when judges and lawyers all get copies.

RESPONSE: The Department provided copies of the proposed rules to persons who requested to be on its mailing list, as required by the Montana Administrative Procedure Act. Additionally, the Department of its own volition provided copies to all judges and lawyers. If individuals wish to be added to the list of persons who wish to receive notice of the Department's proposed rules in the future, they must contact the Department and make such a request.

COMMENT #23: One commentor suggested an additional METNET session be held concerning these rules for the Department to provide in-person responses to comments.

RESPONSE: The Montana Administrative Procedure Act (MAPA) requires that the Department respond to comments in writing. A METNET session, in addition to written responses is not required by MAPA. Further it would not be cost effective and would be unnecessarily duplicative.

Dawn Sliva
Rule Reviewer

Laura Lange
Director, Public Health and Human Services

Certified to the Secretary of State June 15, 1998.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1998. This table includes those rules adopted during the period April 1, 1998 through June 30, 1998 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1998, 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, 1997 and 1998 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 May 1998, appear. Vacancies scheduled to appear from July 1, 1998, through September 30, 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 June 2, 1998.

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 MAY, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
AIDS Advisory Council (Public Health and Human Services)			
Ms. Shelly Johnson	Governor	Bennetts	5/27/1998
Fairfield			11/26/1998
Qualifications (if required): public member			
Board of Nursing Home Administrators (Commerce)			
Mr. Douglas Faus	Governor	reappointed	5/28/1998
Chester			5/28/2003
Qualifications (if required): nursing home administrator			
Board of Real Estate Appraisers (Commerce)			
Mr. William Northcutt	Governor	reappointed	5/1/1998
Joliet			5/1/2001
Qualifications (if required): certified real estate appraiser			
Ms. Lynn Strand	Governor	Every	5/1/1998
Billings			5/1/2001
Qualifications (if required): public member			
Board of Realty Regulation (Commerce)			
Mr. Terry Hilgendorf	Governor	Moore	5/15/1998
Great Falls			5/9/2002
Qualifications (if required): public member			
Board of Veterans' Affairs (Military Affairs)			
Ms. Karen Furu	Governor	reappointed	5/18/1998
Bozeman			5/18/2003
Qualifications (if required): veteran			

BOARD AND COUNCIL APPOINTEES FROM MAY, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services)			
Ms. Sally Grover	Governor	Geist	5/12/1998
Helena			1/1/2002
Qualifications (if required): consumer representative			
Montana Source Water Assessment Program Advisory Council (Environmental Quality)			
Mr. Pat Graham	Director	not listed	5/20/1998
Helena			5/20/2000
Qualifications (if required): none specified			
Mr. Robert E. Willems	Director	not listed	5/20/1998
Harlowton			5/20/2000
Qualifications (if required): none specified			
Mr. Bruce Farling	Director	not listed	5/20/1998
Missoula			5/20/2000
Qualifications (if required): none specified			
Rep. Roger DeBruycker	Director	not listed	5/20/1998
Floweree			5/20/2000
Qualifications (if required): none specified			
Mr. Douglas Parker	Director	not listed	5/20/1998
Missoula			5/20/2000
Qualifications (if required): none specified			
Mr. Joe Steiner	Director	not listed	5/20/1998
Billings			5/20/2000
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES FROM MAY, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Source Water Assessment Program Advisory Council (Environmental Quality) cont.			
Mr. Mike Cobb Augusta Qualifications (if required): none specified	Director	not listed	5/20/1998 5/20/2000
Ms. Denise Deluca Missoula Qualifications (if required): none specified	Director	not listed	5/20/1998 5/20/2000
Mr. Richard Parks Gardiner Qualifications (if required): none specified	Director	not listed	5/20/1998 5/20/2000
Ms. Deb Madison Poplar Qualifications (if required): none specified	Director	not listed	5/20/1998 5/20/2000
Ms. Shelly Nolan Havre Qualifications (if required): none specified	Director	not listed	5/20/1998 5/20/2000
Mr. Marv Miller Butte Qualifications (if required): none specified	Director	not listed	5/20/1998 5/20/2000
Mr. Bill O'Connell Butte Qualifications (if required): none specified	Director	not listed	5/20/1998 5/20/2000

BOARD AND COUNCIL APPOINTEES FROM MAY, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Source Water Assessment Program Advisory Council (Environmental Quality) cont.			
Ms. Starr Sullivan Florence Qualifications (if required): none specified	Director	not listed	5/20/1998 5/20/2000
Mr. Jack Stultz Helena Qualifications (if required): none specified	Director	not listed	5/20/1998 5/20/2000
Mr. George Algard Helena Qualifications (if required): none specified	Director	not listed	5/20/1998 5/20/2000
State Electrical Board (Commerce)			
Mr. Joe F. Wolfe Helena Qualifications (if required): master electrician	Governor	Sweet	5/27/1998 7/1/2000
State Library Commission (Education)			
Ms. Mary Doggett White Sulphur Springs Qualifications (if required): public member	Governor	reappointed	5/22/1998 5/22/2001

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1998 through SEPTEMBER 30, 1998

Board/current position holder	Appointed by	Term end
Aging Advisory Council (Governor)		
Mr. M.L. Cook, Helena	Governor	7/18/1998
Qualifications (if required): representing Region III		
Ms. Fern Prather, Big Timber	Governor	7/18/1998
Qualifications (if required): representing Region II		
Mr. R.H. Hultman, Drummond	Governor	7/18/1998
Qualifications (if required): representing Region V		
Mr. Irvin Hutchison, Chester	Governor	7/18/1998
Qualifications (if required): representing Region III		
Agriculture Development Council (Agriculture)		
Mr. Peter Blouke, Helena	Governor	7/1/1998
Qualifications (if required): Director of the Department of Commerce		
Mr. Larry Johnson, Kremlin	Governor	7/1/1998
Qualifications (if required): active in agriculture		
Mr. P.L. "Joe" Boyd, Billings	Governor	7/1/1998
Qualifications (if required): actively engaged in agriculture		
Mr. W. Ralph Peck, Helena	Governor	7/1/1998
Qualifications (if required): Director of the Department of Agriculture		
Alfalfa Leaf-Cutting Bee Advisory Committee (Agriculture)		
Mr. Allen Whitmer, Bloomfield	Governor	7/1/1998
Qualifications (if required): representative of an alfalfa seed association		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1998 through SEPTEMBER 30, 1998

Board/current position holder	Appointed by	Term end
Alfalfa Leaf-Cutting Bee Advisory Committee (Agriculture)	cont.	
Mr. W. Ralph Peck, Helena	Governor	7/1/1998
Qualifications (if required): representative of the Department of Agriculture		
Ms. Sue Blodgett, Bozeman	Governor	7/1/1998
Qualifications (if required): representative of the extension service of Montana State University		
Alternative Health Care Board (Commerce)		
Dr. Tom Rasmussen, Helena	Governor	9/1/1998
Qualifications (if required): public member		
Ms. Kathee Dunham, Arlee	Governor	9/1/1998
Qualifications (if required): direct midwife		
Board of Banking (Commerce)		
Mr. Douglas Morton, Kalispell	Governor	7/1/1998
Qualifications (if required): national bank officer		
Ms. Shirley Gierke, Miles City	Governor	7/1/1998
Qualifications (if required): public member		
Board of Barbers (Commerce)		
Mr. Max DeMars, Big Timber	Governor	7/1/1998
Qualifications (if required): barber		
Board of Funeral Services (Commerce)		
Mr. Douglas D. Lowry, Big Timber	Governor	7/1/1998
Qualifications (if required): licensed mortician		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1998 through SEPTEMBER 30, 1998

Board/current position holder	Appointed by	Term end
Board of Hearing Aid Dispensers (Commerce)		
Ms. Kristy Foss, Billings Qualifications (if required): hearing aid dispenser	Governor	7/1/1998
Board of Landscape Architects (Commerce)		
Mr. Robert Broughton, Hamilton Qualifications (if required): licensed architect	Governor	7/1/1998
Mr. Lester Field, Townsend Qualifications (if required): public member	Governor	7/1/1998
Board of Medical Examiners (Commerce)		
Dr. James Bonnet, Kalispell Qualifications (if required): doctor/surgeon	Governor	9/1/1998
Mr. David B. Huebner, Great Falls Qualifications (if required): doctor of podiatry	Governor	9/1/1998
Dr. Donald Grewell, Billings Qualifications (if required): doctor of osteopathy	Governor	9/1/1998
Board of Nursing (Commerce)		
Ms. Blanche Proul, Anaconda Qualifications (if required): public member	Governor	7/1/1998
Ms. Suzzie Thomas, Stevensville Qualifications (if required): licensed practical nurse	Governor	7/1/1998
Ms. Rita Harding, Edgar Qualifications (if required): registered nurse	Governor	7/1/1998

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1998 through SEPTEMBER 30, 1998

Board/current position holder	Appointed by	Term end
Board of Nursing (Commerce) cont.		
Ms. Kathy Barkus, Kalispell	Governor	7/1/1998
Qualifications (if required): public member		
Board of Pharmacy (Commerce)		
Ms. Ann H. Pasha, Highwood	Governor	7/1/1998
Qualifications (if required): public member		
Board of Physical Therapy Examiners (Commerce)		
Ms. Colleen Hatcher, Miles City	Governor	7/1/1998
Qualifications (if required): physical therapist		
Board of Private Security Patrol Officers and Investigators (Commerce)		
Ms. Mary Luntsford, Kalispell	Governor	8/1/1998
Qualifications (if required): representing proprietary security organizations		
Mr. Gary Gray, Great Falls	Governor	8/1/1998
Qualifications (if required): representing contract security companies		
Mr. Michael Ames, Colstrip	Governor	8/1/1998
Qualifications (if required): representing a proprietary security organization		
Board of Professional Engineers and Land Surveyors (Commerce)		
Mr. Paul Dana, Billings	Governor	7/1/1998
Qualifications (if required): public member		
Mr. Daniel Prill, Great Falls	Governor	7/1/1998
Qualifications (if required): professional engineer		
Mr. Richard Ainsworth, Missoula	Governor	7/1/1998
Qualifications (if required): professional land surveyor		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1998 through SEPTEMBER 30, 1998

Board/current position holder	Appointed by	Term end
Board of Psychologists (Commerce)		
Dr. Marian Martin, Billings	Governor	9/1/1998
Qualifications (if required): licensed psychologist		
Board of Public Accountants (Commerce)		
Mr. James R. Smrcka, Glasgow	Governor	7/1/1998
Qualifications (if required): certified public accountant		
Board of Radiologic Technologists (Commerce)		
Mr. Jim Winter, Great Falls	Governor	7/1/1998
Qualifications (if required): radiologic technologist		
Dr. Daniel Alzheimer, Helena	Governor	7/1/1998
Qualifications (if required): physician who employees a radiologic technologist		
Board of Sanitarians (Commerce)		
Ms. Melissa Tuemmler, Ulm	Governor	7/1/1998
Qualifications (if required): sanitarian		
Board of Veterinary Medicine (Commerce)		
Dr. Robert P. Myers, Bozeman	Governor	7/31/1998
Qualifications (if required): licensed veterinarian		
Board of Water Well Contractors (Natural Resources and Conservation)		
Mr. Pat Byrne, Great Falls	Governor	7/1/1998
Qualifications (if required): water well contractor		
Committee on Telecommunications Services for the Handicapped (Social and Rehabilitation Services)		
Mr. John Delano, Helena	Governor	7/1/1998
Qualifications (if required): non-handicapped and engaged in business		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1998 through SEPTEMBER 30, 1998

Board/current position holder	Appointed by	Term end
Committee on Telecommunications Services for the Handicapped (Social and Rehabilitation Services) cont.		
Mr. Ben Havdahl, Helena	Governor	7/1/1998
Qualifications (if required): hard of hearing		
Mr. Ron Bibler, Great Falls	Governor	7/1/1998
Qualifications (if required): handicapped		
Community Services Advisory Council (Governor)		
Mr. Bob Simoneau, Helena	Governor	7/1/1998
Qualifications (if required): representing the Department of Labor and Industry		
Ms. Patricia J. Gunderson, Belgrade	Governor	7/1/1998
Qualifications (if required): representing labor unions		
Ms. Billie Krenzler, Billings	Governor	7/1/1998
Qualifications (if required): representing local government		
Ms. Candace Bowman, Lewistown	Governor	7/1/1998
Qualifications (if required): representing human services		
Mr. Bill Cain, Butte	Governor	7/1/1998
Qualifications (if required): representing business		
Electrical Board (Commerce)		
Mr. Todd Stoddard, Dillon	Governor	7/1/1998
Qualifications (if required): licensed journeyman electrician		
Family Education Savings Program Oversight Committee (Commissioner of Higher Education)		
Mr. Gerry Meyer, Great Falls	Governor	7/1/1998
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1998 through SEPTEMBER 30, 1998

Board/current position holder	Appointed by	Term end
Family Support Services Advisory Council (Public Health and Human Services)		
Ms. Sylvia Danforth, Miles City	Governor	9/11/1998
Qualifications (if required): service provider		
Mr. Ted Maloney, Missoula	Governor	9/11/1998
Qualifications (if required): representative at large		
Mr. Dan McCarthy, Helena	Governor	9/11/1998
Qualifications (if required): state agency representative		
Ms. Sandi Marisdotter, Helena	Governor	9/11/1998
Qualifications (if required): service provider		
Ms. Linda Botten, Bozeman	Governor	9/11/1998
Qualifications (if required): service provider		
Ms. Sue Forest, Missoula	Governor	9/11/1998
Qualifications (if required): representative of personnel preparation		
Mr. Pete Surdock, Helena	Governor	9/11/1998
Qualifications (if required): state agency representative		
Ms. Maria Pease, Lodge Grass	Governor	9/11/1998
Qualifications (if required): parent representative		
Ms. Chris Volinkaty, Missoula	Governor	9/11/1998
Qualifications (if required): service provider		
Ms. Barbara Stefanic, Laurel	Governor	9/11/1998
Qualifications (if required): related services agency representative		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1998 through SEPTEMBER 30, 1998

Board/current position holder	Appointed by	Term end
Family Support Services Advisory Council (Public Health and Human Services) cont.		
Mr. John Holbrook, Helena	Governor	9/11/1998
Qualifications (if required): state insurance governance representative		
Ms. Colleen Thompson, Glasgow	Governor	9/11/1998
Qualifications (if required): related agency representative		
Ms. Christine Gutschenritter, Great Falls	Governor	9/11/1998
Qualifications (if required): related agency representative		
Ms. Jackie Jandt, Helena	Governor	9/11/1998
Qualifications (if required): state agency representative		
Ms. Lynda Hart, Helena	Governor	9/11/1998
Qualifications (if required): state agency representative		
Rep. Matt McCann, Harlem	Governor	9/11/1998
Qualifications (if required): legislator		
Ms. Sharon Wagner, Helena	Governor	9/11/1998
Qualifications (if required): state agency representative		
Ms. Georgia Rutherford, Browning	Governor	9/11/1998
Qualifications (if required): parent representative		
Ms. Millie Kindle, Malta	Governor	9/11/1998
Qualifications (if required): parent representative		
Ms. Gwen Beyer, Polson	Governor	9/11/1998
Qualifications (if required): parent representative		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1998 through SEPTEMBER 30, 1998

Board/current position holder	Appointed by	Term end
Family Support Services Advisory Council (Public Health and Human Services) cont.		
Ms. Beth Kenney, Helena	Governor	9/11/1998
Qualifications (if required): parent representative		
Mr. Phil Matteis, Florence	Governor	9/11/1998
Qualifications (if required): health/medical services representative		
Governor's Advisory Council on Disability (Administration)		
Mr. Peter Leech, Missoula	Governor	8/1/1998
Qualifications (if required): public member		
Mr. James Meldrum, Helena	Governor	8/1/1998
Qualifications (if required): public member		
Ms. Mary Morrison, Missoula	Governor	8/1/1998
Qualifications (if required): public member		
Mr. Michael Regnier, Missoula	Governor	8/1/1998
Qualifications (if required): public member		
Mr. Bill Roberts, Helena	Governor	8/1/1998
Qualifications (if required): public member		
Ms. Anne MacIntyre, Helena	Governor	8/1/1998
Qualifications (if required): ex-officio member		
Mr. William Jones, Great Falls	Governor	8/1/1998
Qualifications (if required): public member		
Ms. Patricia Lockwood, Laurel	Governor	8/1/1998
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1998 through SEPTEMBER 30, 1998

Board/current position holder	Appointed by	Term end
Historical Records Advisory Council (Historical Society)		
Mr. Timothy Bernardis, Crow Agency Qualifications (if required): public member	Governor	9/24/1998
Ms. Connie Erickson, Helena Qualifications (if required): public member	Governor	9/24/1998
Ms. Peggy Lamberson Bourne, Great Falls Qualifications (if required): public member	Governor	9/24/1998
Mr. Robert M. Clark, Helena Qualifications (if required): public member	Governor	9/24/1998
Ms. Kathryn Otto, Helena Qualifications (if required): state archivist	Governor	9/24/1998
Mr. Brian Cockhill, Helena Qualifications (if required): representative of the Historical Society	Governor	9/24/1998
Ms. Marie L. Torosian, St. Ignatius Qualifications (if required): public member	Governor	9/24/1998
Ms. Ellen Crain, Butte Qualifications (if required): public member	Governor	9/24/1998
Historical Society Board of Trustees (Historical Society)		
Dr. Thomas A. Foor, Missoula Qualifications (if required): anthropologist/archeologist	Governor	7/1/1998
Mr. William M. Holt, Lolo Qualifications (if required): public member	Governor	7/1/1998

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1998 through SEPTEMBER 30, 1998

Board/current position holder	Appointed by	Term end
Historical Society Board of Trustees (Historical Society) cont.		
Ms. Vicki A. McCarthy, Billings Qualifications (if required): public member	Governor	7/1/1998
Indian Burial Preservation Board (Commerce)		
Mr. Gilbert Horn, Harlem Qualifications (if required): representing the Gros Ventre Tribe	Governor	8/22/1998
Mr. John Pretty On Top, Crow Agency Qualifications (if required): representing the Crow Tribe	Governor	8/22/1998
Mr. Germaine White, Pablo Qualifications (if required): representing the Little Shell Band of Chippewa Indians	Governor	8/22/1998
Mr. Mickey Nelson, Helena Qualifications (if required): representing the Montana Coroner's Association	Governor	8/22/1998
Mr. Duncan Standing Rock, Sr., Box Elder Qualifications (if required): representing the Chippewa-Cree Tribe	Governor	8/22/1998
Dr. Ken Deaver, Billings Qualifications (if required): representing the Montana Archaeological Association	Governor	8/22/1998
Lewis and Clark Bicentennial Advisory Council (Historical Society)		
Mr. John G. Lepley, Fort Benton Qualifications (if required): public member	Governor	8/1/1998
Ms. Edythe McCleary, Hardin Qualifications (if required): public member	Governor	8/1/1998

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1998 through SEPTEMBER 30, 1998

Board/current position holder	Appointed by	Term end
Lewis and Clark Bicentennial Advisory Council (Historical Society) cont.		
Mr. John Pretty On Top, Crow Agency Qualifications (if required): public member	Governor	8/1/1998
Mr. Mike Labriola, Great Falls Qualifications (if required): public member	Governor	8/1/1998
Mr. Tim Crawford, Helena Qualifications (if required): public member	Governor	8/1/1998
Ms. Gloria Wester, Laurel Qualifications (if required): public member	Governor	8/1/1998
Mr. Jack Hines, Big Timber Qualifications (if required): public member	Governor	8/1/1998
Mr. Dennis Seibel, Bozeman Qualifications (if required): public member	Governor	8/1/1998
Ms. Diane Wolfe, Missoula Qualifications (if required): public member	Governor	8/1/1998
Ms. Jan Blaydon, Missoula Qualifications (if required): public member	Governor	8/1/1998
Dr. Robert Bergantino, Butte Qualifications (if required): public member	Governor	8/1/1998
Mr. Darrell Kipp, Browning Qualifications (if required): public member	Governor	8/1/1998

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1998 through SEPTEMBER 30, 1998

Board/current position holder	Appointed by	Term end
Lewis and Clark Bicentennial Advisory Council (Historical Society) cont.		
Ms. Nancy Maxson, Missoula Qualifications (if required): public member	Governor	8/1/1998
Ms. Mary Partridge, Miles City Qualifications (if required): public member	Governor	8/1/1998
Mr. Loren Stiffarm, Harlem Qualifications (if required): public member	Governor	8/1/1998
Colonel Harold Stearns, Missoula Qualifications (if required): public member	Governor	8/1/1998
Ms. Mary Farver Urquhart, Great Falls Qualifications (if required): public member	Governor	8/1/1998
Montana Mint Committee (Agriculture)		
Mr. Darrel Sperry, Corvallis Qualifications (if required): mint grower	Governor	7/1/1998
Noxious Weed Seed Free Forage Advisory Council (Agriculture)		
Mr. Bob McNeill, Dillon Qualifications (if required): Outfitters/Guides	Director	9/17/1998
Mr. Dennis Cash, Bozeman Qualifications (if required): Ex Officio	Director	9/17/1998

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1998 through SEPTEMBER 30, 1998

Board/current position holder	Appointed by	Term end
Noxious Weed Seed Free Forage Advisory Council (Agriculture) cont.		
Mr. Ray Ditterline, Bozeman	Director	9/17/1998
Qualifications (if required): ex-officio		
Mr. Harry Woll, Kalispell	Director	9/17/1998
Qualifications (if required): forage producer		
Mr. Don Walker, Glendive	Director	9/17/1998
Qualifications (if required): forage producer		
Mr. Dennis Perry, Choteau	Director	9/17/1998
Qualifications (if required): Feed Pellets and Cube Products		
Risk Management Advisory Committee (Administration)		
Ms. Jane Reed Benson, Helena	Governor	8/26/1998
Qualifications (if required): representing the Department of Environmental Quality		
Ms. Lois A. Menzies, Helena	Governor	8/26/1998
Qualifications (if required): representing the Governor's Office		
Mr. Bob Person, Helena	Governor	8/26/1998
Qualifications (if required): representing Legislative Services Division		
Ms. Donna Campbell, Helena	Governor	8/26/1998
Qualifications (if required): representing the Department of Fish, Wildlife and Parks		
Mr. Gary Managhan, Helena	Governor	8/26/1998
Qualifications (if required): representing the Office of Secretary of State		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1998 through SEPTEMBER 30, 1998

Board/current position holder	Appointed by	Term end
Risk Management Advisory Committee (Administration) cont.		
Ms. Barb Charlton, Helena	Governor	8/26/1998
Qualifications (if required): representing the Department of Commerce		
Ms. Ann Gilkey, Helena	Governor	8/26/1998
Qualifications (if required): representing the Department of Public Health and Human Services		
Ms. Karen Munro, Helena	Governor	8/26/1998
Qualifications (if required): representing the Department of Justice		
Captain Thomas Muri, Helena	Governor	8/26/1998
Qualifications (if required): representing the Department of Military Affairs		
Mr. Mike Zahn, Helena	Governor	8/26/1998
Qualifications (if required): representing the Department of Revenue		
Mr. Bruce Swick, Helena	Governor	8/26/1998
Qualifications (if required): representing the Department of Natural Resources and Conservation		
Mr. Michael Buckley, Helena	Governor	8/26/1998
Qualifications (if required): representing the Department of Transportation		
Mr. Patrick A. Chenovick, Helena	Governor	8/26/1998
Qualifications (if required): representing the Montana Judiciary		
Ms. Laura Calkin, Helena	Governor	8/26/1998
Qualifications (if required): representing the Montana Public Service Commission		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1998 through SEPTEMBER 30, 1998

Board/current position holder	Appointed by	Term end
Risk Management Advisory Committee (Administration) cont.		
Ms. Janie Wunderwald, Helena	Governor	8/26/1998
Qualifications (if required): representing the Department of Corrections		
Ms. Geralyn Driscoll, Helena	Governor	8/26/1998
Qualifications (if required): representing the Office of Public Instruction		
Mr. Carl Swanson, Helena	Governor	8/26/1998
Qualifications (if required): representing the State Compensation Insurance Fund		
Mr. Richard A. Crofts, Helena	Governor	8/26/1998
Qualifications (if required): representing the Office of the Commissioner of Higher Education		
Mr. Mike Krings, Helena	Governor	8/26/1998
Qualifications (if required): representing the Department of Administration		
Ms. Sandra Kuchenbrod, Helena	Governor	8/26/1998
Qualifications (if required): representing the Department of Agriculture		
Mr. David Scott, Helena	Governor	8/26/1998
Qualifications (if required): representing the Department of Labor and Industry		
Mr. George Harris, Helena	Governor	8/26/1998
Qualifications (if required): representing the Department of Livestock		
Ms. Sharon McCabe, Helena	Governor	8/26/1998
Qualifications (if required): representing the Montana Historical Society		
Mr. Bob Post, Helena	Governor	8/26/1998
Qualifications (if required): representing the Office of the State Auditor		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 1998 through SEPTEMBER 30, 1998

Board/current position holder	Appointed by	Term end
Teachers' Retirement Board (Administration)		
Dr. Rick Stuber, Culbertson	Governor	7/1/1998
Qualifications (if required): teacher		
Tourism Advisory Council (Commerce)		
Ms. Diane Brandt, Glasgow	Governor	7/1/1998
Qualifications (if required): representing Missouri Country		
Ms. Maureen Averill, Bigfork	Governor	7/1/1998
Qualifications (if required): representing Glacier Country		
Ms. Edythe McCleary, Hardin	Governor	7/1/1998
Qualifications (if required): representing Custer Country		
Ms. Lisa Perry, Shepherd	Governor	7/1/1998
Qualifications (if required): representing Custer Country		
Ms. Betsy Baumgart, Helena	Governor	7/1/1998
Qualifications (if required): representing Gold Country		
Mr. Robert Dompier, Great Falls	Governor	7/1/1998
Qualifications (if required): representing the Montana Innkeepers Association		
Wheat and Barley Committee (Agriculture)		
Mr. Fred Elling, Rudyard	Governor	8/20/1998
Qualifications (if required): Republican from District II		
Ms. Judy Vermulum, Cut Bank	Governor	8/20/1998
Qualifications (if required): Democrat from District III		