MONTANA ADMINISTRATIVE REGISTER

1998 ISSUE NO. 14
JULY 30, 1998
PAGES 1986-2132

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 14

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

AGRICULTURE, Department of, Title 4

4-14-103 Notice of Proposed Amendment - Ranking of Weed Grant Projects - Identifying New Noxious Weeds. No Public Hearing Contemplated. 1986-1988

COMMERCE, Department of, Title 8

8-78-5 (Consumer Affairs Division) Notice of Proposed Adoption - Notice of Resale of Returned Vehicles. No Public Hearing Contemplated. 1989-1990

FISH, WILDLIFE, AND PARKS, Department of, Title 12

(Fish, Wildlife, and Parks Commission)

12-242 Notice of Proposed Adoption - Creating "Primitive Fishing Access Site Designation" where Site Development and Maintenance are Limited. No Public Hearing Contemplated. 1991-1995

12-246 Notice of Public Hearing on Proposed Amendment - Limiting the Use of Motor-propelled Water Craft on Various Bodies of Water within the Thompson Chain of Lakes Areas. 1996-1998

Page Number

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-105 Notice of Proposed Adoption and Amendment - Child Placing Agencies - Transitional Living Programs. No Public Hearing Contemplated. 1999-2011

RULE SECTION

STATE AUDITOR, Title 6

NEW Annuity Disclosure and Sales Illustrations. 2012-2019

Corrected Notice of Amendment - Group Health Insurance in the Large and Small Group Markets - Individual Health Insurance - Covered Services of Policies Under Standard Plan - Calculation of Benefit Values. 2020-2021

EDUCATION, Title 10

NEW (Board of Trustees of the Montana Historical Society) Procedures that State Agencies Must Follow to Protect Heritage Properties and Paleontological Remains - Providing General Procedures which the State Historic Preservation Office Must Follow in Implementing its General Statutory Authority. 2022-2034

ENVIRONMENTAL QUALITY, Department of, Title 17

(Board of Environmental Review) (Public Water Supply) Corrected Notice of Amendment - - Updating Public Water Supply and Public Sewage System Rules - Control Tests--Surface Supplies. 2035-2036

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

TRANS Transfer from the Department of Family Services - Therapeutic Youth Programs. 2037-2038

TRANS AMD Transfer from the Department of Corrections - Certification of Mental Health Professionals. 2039

TRANS Transfer from the Department of Social and Rehabilitation Services - Vocational Rehabilitation Program. 2040-2043

TRANS Transfer from the Department of Social and Rehabilitation Services - Independent Living Services. 2044

Page Number

PUBLIC HEALTH AND HUMAN SERVICES, Continued

NEW AMD REP Rural Health Clinics and Federally Qualified Health Centers. 2045-2058

TRANS Transfer from the Department of Social and Rehabilitation Services - Low Income Energy Assistance Program. 2059-2060

TRANS Transfer from the Department of Social and Rehabilitation Services - Low Income Weatherization Assistance Program. 2961-2062

TRANS Transfer from the Department of Social and Rehabilitation Services - Refugee Assistance. 2063

TRANS Transfer from the Department of Social and Rehabilitation Services - Telecommunications for Persons with Disabilities. 2064-2065

NEW REP Child Support Enforcement Guidelines. 2066-2087

REVENUE, Department of, Title 42

AMD NEW REP Liquor License Transfers. 2088-2101

AMD Management Agreements. 2102

SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee. 2103

How to Use ARM and MAR. 2104

Accumulative Table. 2105-2118

Boards and Councils Appointees. 2119-2120

Vacancies on Boards and Councils. 2121-2132

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 4.5.102, 4.5.108, and 4.5.111 relating to the ranking of weed grant projects and identifying new Noxious Weeds.) NOTICE OF PROPOSED AMENDMENT

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 29, 1998, the Montana Department of Agriculture proposes to amend ARM 4.5.102, 4.5.108 and 4.5.111.

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

4.5.102 APPLICATION PROCEDURE (1) through (4) remain the same.

(5) Advisory council will review, ~~and~~ rank and recommend proposed projects and funding according to the guidelines and criteria described in ARM 4.5.108. Advisory council recommendations will be submitted to the department for final ~~ranking~~ review and determination of funding. The applicant will receive written notification from the department of the action taken on the proposal.

AUTH: 80-7-802, MCA IMP: 80-7-814, MCA

4.5.108 ~~RANKING~~ EVALUATION OF PROJECTS (1) The advisory council shall ~~utilize a scoring system to rank all projects in regard to how well they~~ review and rank all projects as high, medium or low and by majority vote recommend to the department those projects which meet appropriate criteria for the project and the program.

(2) The advisory council shall consider the following criteria in ~~ranking~~ recommending projects for funding.

(a) remains the same.

(b) Projects that involve community groups, ~~and~~ weed districts, reservations or conservation districts.

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

(3) ~~The results of this scoring system will be submitted to the department for final ranking and determination of funding priority for grant requests. The department will use the same criteria in ranking the proposals.~~ The advisory

council evaluations and recommendations will be submitted to the department for final review and determination of funding for grant requests.

AUTH: 80-7-802, MCA IMP: 80-7-814, MCA

Reason: Given the complexity of the grant applications that are submitted for funding under the Montana Noxious Weed Trust Fund, development of a scoring system to rank all projects has been extremely difficult to implement. The proposed changes in rules 4.5.102 and 4.5.108 to rank projects based on appropriate criteria with a low to high scoring system has been tried by the Council and worked very effectively. Adoption of this change will enhance the Council review and recommendation process.

4.5.111 NOXIOUS WEED IDENTIFICATION AND VERIFICATION

(1) remains the same.

(2) The department shall verify the existence of a noxious weed in Montana ~~in the following matter:~~ using any one or a combination of methods set forth below:

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

AUTH: 80-7-802, MCA IMP: 80-7-815, MCA

Reason: Rule 4.5.111 generated some confusion regarding whether all criteria were required prior to verifying a noxious weed in the state. The proposed change clarifies that one or several of the methods may be used to verify the existence of a noxious weed in Montana.

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 August 27, 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 August 27, 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 45 based on the number of Montana Weed Control Association Members.

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

Timothy J. Meloy
Rule Reviewer

Certified to the Secretary of State on July 20, 1998.

BEFORE THE CONSUMER AFFAIRS DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of a rule pertaining to the notice of resale of returned vehicles	)))	NOTICE OF THE PROPOSED ADOPTION OF A RULE PERTAINING TO THE NOTICE OF RESALE OF RETURNED VEHICLES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On August 31, 1998, the Consumer Affairs Division proposes to adopt a rule pertaining to the notice of resale of returned vehicles.

2. The Division is proposing to adopt the new rule as follows:

"I NOTICE OF RESALE OF RETURNED VEHICLE (1) If a motor vehicle is returned to the manufacturer and requires replacement or refund, then the returned vehicle may not be sold in the state unless the seller provides the ultimate consumer a conspicuous written disclosure of the fact that the vehicle was returned. The seller shall give the ultimate consumer opportunity to review the disclosure form in its entirety and shall obtain on the form the ultimate consumer's signature."

Auth: Sec. 61-4-532, MCA; IMP, Sec. 61-4-525, MCA

REASON: The Department is required to provide an independent forum and arbitration procedure for the settlement of disputes arising under the New Motor Vehicle Warranty Act. Section 61-4-515, MCA. Section 61-4-532, MCA, provides that the Department may adopt rules to implement the New Motor Vehicle Warranty Act. Section 61-4-525, MCA, provides that a motor vehicle which is returned to the manufacturer and which requires replacement or refund may not be sold in this state without disclosure of the fact that the vehicle was returned. The Montana Department of Justice may by rule proscribe a form to be used on returned vehicles, and a procedure upon which such notice may be removed.

This rule provides that the seller of a returned vehicle must provide to a buyer of the vehicle a conspicuous written disclosure of the returned status of the vehicle. In addition, the seller must give the purchaser an opportunity to review the disclosure form in its entirety and obtain on the form the signature of the ultimate consumer of the vehicle.

The Department proposes this rule to ensure that the ultimate purchaser of the returned vehicle is advised that the vehicle has been returned to the manufacturer pursuant to the New Motor Vehicle Warranty Act. By requiring that the seller of the vehicle obtain the signature of the ultimate purchaser on the disclosure form, the Department ensures that the ultimate purchaser is advised of the status of the vehicle.

Section 61-4-525, MCA, is effectively implemented by requiring the signature of the ultimate purchaser on the disclosure statement.

3. Interested persons may submit their data, views or arguments concerning the proposed adoption in writing to the Consumer Affairs Division, 1424 Ninth Avenue, P.O. Box 200501, Helena, Montana 59620-0546, no later than 5:00 p.m., August 27, 1998.

4. If a person who is directly affected by the proposed adoption 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 Consumer Affairs Division, 1424 Ninth Avenue, P.O. Box 200501, Helena, Montana 59620-0501, or by facsimile to (406) 444-2903, to be received no later than 5:00 p.m., August 27, 1998.

5. Persons who wish to be informed of the Consumer Affairs Division administrative rulemaking proceedings, or other administrative proceedings, may be placed on a list of interested persons by advising the Division in writing at 1424 Ninth Avenue, P.O. Box 200501, Helena, Montana 59620-0501.

6. If the Division receives requests for a public hearing on the proposed adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed adoption, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 27 based on the number of arbitrators, automotive dealers, automotive manufacturers and county assessors who would be potentially affected by this rule.

CONSUMER AFFAIRS DIVISION

BY: _____

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

_____

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, July 20, 1998.

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

In the matter of the proposed adoption of new rules creating "primitive fishing access site designation" where site development and maintenance are limited.	))))))	NOTICE OF PROPOSED ADOPTION OF NEW RULES FOR PRIMITIVE FISHING ACCESS SITE DESIGNATION NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons.

1. On September 11, 1998, the Montana Fish, Wildlife and Parks Commission (commission) proposes to adopt rules creating primitive fishing access site designation where site development and maintenance are limited.

2. The proposed new rules will read as follows:

"RULE I DESIGNATION OF PRIMITIVE FISHING ACCESS SITES (1) The department hereby designates certain fishing access sites as "primitive fishing access sites." The primary purpose of a fishing access site (FAS) owned or controlled by the department is to provide public access to public waters. Many of these sites should have a low level of development in keeping with their primary purpose. Therefore, future developments of primitive sites will be commensurate with the department's ability to maintain the sites for the primary purpose of providing access to public waters."

AUTH: 87-1-301, MCA IMP: 87-1-301, 87-1-605, MCA

"RULE II PRIMITIVE FISHING ACCESS SITES IN REGION 1 (1) The following sites are designated as primitive fishing access sites within Region 1:

(a) Ashley Creek;
(b) Beaver Lake;
(c) Blanchard Lake;
(d) Bootjack Lake;
(e) Ducharme;
(f) Frank Lake;
(g) Horseshoe Lake - Ferndale;
(h) Loon Lake - Eureka;
(i) Loon Lake - Ferndale;
(j) Marle Lake;
(k) Marlowe Springs;
(l) McKay Landing;
(m) Moran Lake;
(n) Savage Lake;
(o) Skyles Lake;
(p) Spring Creek;
(q) Swan River;
(r) Whitefish."

AUTH: 87-1-301, MCA IMP: 87-1-301, 87-1-605, MCA

"RULE III PRIMITIVE FISHING ACCESS SITES IN REGION 2 (1) The following sites are designated as primitive fishing access sites within Region 2:

(a) Aunt Molly;
(b) Bass Creek;
(c) Cedar Meadows;
(d) Forks;
(e) Harry Morgan;
(f) Marco Flats;
(g) Natural Pier;
(h) Poker Joe;
(i) Red Rock;
(j) River Junction;
(k) Sheep Flats;
(l) Thibodeau;
(m) Whitaker Bridge."

AUTH: 87-1-301, MCA IMP: 87-1-301, 87-1-605, MCA

"RULE IV PRIMITIVE FISHING ACCESS SITES IN REGION 3 (1) The following sites are designated as primitive fishing access sites within Region 3:

(a) Alder Bridge;
(b) Axtell Bridge;
(c) Blackbird;
(d) Cardwell;
(e) Cherry River;
(f) Chicory;
(g) Corrals;
(h) Corwin Springs;
(i) Dewey;
(j) Erwin Bridge;
(k) Fairweather;
(l) Four Corners;
(m) Greenwood Bottoms;
(n) Grey Owl;
(o) High Bridge;
(p) High Road;
(q) Highway 89;
(r) Kalsta Bridge;
(s) Kirk Wildlife Refuge;
(t) Kountz Bridge;
(u) Mayflower Bridge;
(v) McAtee Bridge;
(w) Meadow Lake;
(x) Milwaukee;
(y) Notch Bottom;
(z) Parrot Castle;
(aa) Pennington Bridge;
(ab) Pine Creek;
(ac) Point of Rocks;
(ad) Powerhouse;
(ae) Queen of the Waters;
(af) Sappington Bridge;
(ag) Shed's Bridge;

(ah) Slip & Slide
(ai) Tizer Lakes;
(aj) Williams Bridge."
AUTH: 87-1-301, MCA IMP: 87-1-301, 87-1-605, MCA

"RULE V PRIMITIVE FISHING ACCESS SITES IN REGION 4 (1) The following sites are designated as primitive fishing access sites within Region 4:
(a) Carroll Trail;
(b) Dearborn;
(c) Dunes;
(d) Eagle Island;
(e) Hardy Bridge;
(f) Lichen Cliff;
(g) Loma Bridge;
(h) Lower Carter Pond;
(i) Mid-Canon;
(j) Prickly Pear;
(k) Spite Hill;
(l) Table Rock;
(m) Truly Take-Out;
(n) Upper Carter Pond;
(o) White Bear."
AUTH: 87-1-301, MCA IMP: 87-1-301, 87-1-605, MCA

"RULE VI PRIMITIVE FISHING ACCESS SITES IN REGION 5 (1) The following sites are designated as primitive fishing access sites within Region 5:
(a) Absaroka;
(b) Beaver Lodge;
(c) Big Rock;
(d) Bridger Bend;
(e) Bull Springs;
(f) East Bridge;
(g) General Custer;
(h) Grant Marsh;
(i) Homestead Isle;
(j) Horsethief Station;
(k) Two Leggins."
AUTH: 87-1-301, MCA IMP: 87-1-301, 87-1-605, MCA

"RULE VII PRIMITIVE FISHING ACCESS SITES IN REGION 6 (1) The following sites are designated as primitive fishing access sites within Region 6:
(a) Bjornberg Bridge;
(b) Cole Ponds;
(c) Faber Reservoir;
(d) Whitetail Reservoir."
AUTH: 87-1-301, MCA IMP: 87-1-301, 87-1-605, MCA

"RULE VIII PRIMITIVE FISHING ACCESS SITES IN REGION 7 (1) The following sites are designated as primitive fishing access sites within Region 7:
(a) Amelia Island;

(b) Broads Bridge;
(c) Diamond Willow;
(d) Elk Island;
(e) Falcon Bridge;
(f) Joe's Island (adjacent to Intake FAS);
(g) Little Powder River;
(h) Myers Bridge;
(i) Powder River Depot;
(j) Seven Sisters;
(k) Twelve Mile Dam."
AUTH: 87-1-301, MCA IMP: 87-1-301, 87-1-605, MCA

"RULE IX DEVELOPMENTS AND IMPROVEMENTS ALLOWED AT FISHING ACCESS SITES (1) The following management and development limitations will be applied to primitive fishing access sites. All new or future developments or improvements for primitive fishing access sites are limited as provided in this rule:

(a) no perimeter fencing unless necessary for the security of the site or to prevent conflicts off the site;

(b) existing access roads will be maintained in the same condition as when the site was acquired or purchased or will be developed as a single lane gravel road only with designated pullouts for safe passage of vehicles;

(c) no paved roads or paved parking areas;

(d) sign designating site and directional sign from the nearest public road and secondary highway;

(e) no latrine unless necessary for health and sanitation reasons as determined by the regional park manager or the local county sanitarian. Replacement latrines shall be allowed at all sites where latrines presently exist;

(f) no potable water will be developed or provided;

(g) boat ramp development must be limited to a single lane ramp only;

(h) no developed camping or picnic areas;

(i) barriers may be installed or placed to prevent unauthorized off-road travel at the site;

(j) standard regulation, public safety, and interpretive signs may be placed at the site."
AUTH: 87-1-301, MCA IMP: 87-1-301, 87-1-605, MCA

3. During the 1993 legislative session, the legislature passed House Bill 314, chapter 501 which established a primitive state park designation. The purpose of the legislation was to ensure that the future development and improvements at specific state parks was kept to a minimal level. A similar limitation on development of designated primitive fishing access sites through rulemaking is appropriate. Development at these sites will be kept to a minimum so that they serve the primary purpose of providing access to public waters.

These rules were initially certified to the secretary of state on February 2, 1998. Three public hearings were held: March 4, 1998, in Billings; March 9, 1998, in Missoula; and March 18, 1998 in Helena. A total of two individuals attended the hearings, and the department received one written comment. Since the public hearings

have already been held regarding this issue and little interest was generated, the department decided not to hold more public hearings. Based on further internal review many changes were made to the rules so the department thought it would be best to begin the rulemaking process again in order to effectively involve the public and give the public full opportunity to comment in writing on the changes. The department has a list of persons interested in this issue and rulemaking. Also, the Fish, Wildlife and Parks Commission does not meet until after the expiration of the six month rulemaking deadline so it would now be impossible for the rules to be adopted within the deadline.

4. Interested persons may submit their data, views or arguments concerning the proposed adoption in writing to Tom Reilly, FAS program coordinator, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701. Any comments must be received no later than August 27, 1998.

5. If a person who is directly affected by the proposed adoption wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments he or she has to Tom Reilly, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701. A written request for hearing must be received no later than August 27, 1998.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 36,580 persons based on the number of fishing licenses sold in the 1997 license year.

7. The Department of Fish, Wildlife and Parks maintains a list of persons interested in both department and commission rulemaking proceedings. Any person wishing to be on the list must make a written request to the department, providing name, address and description of the subject or subjects of interest. Direct the request to Montana Fish, Wildlife and Parks, Legal Unit, PO Box 200701, Helena, MT 59620-0701.

RULE REVIEWER

Robert N. Lane

FISH, WILDLIFE AND PARKS COMMISSION

Patrick J. Graham, Secretary

Certified to the Secretary of State on July 20, 1998.

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

In the matter of the proposed amendment of ARM 12.6.901, limiting the use of motor-propelled water craft on various bodies of water within the Thompson Chain of Lakes area.	))))))	NOTICE OF PUBLIC HEARING

To: All Interested Persons.

1. On August 28, 1998, the Montana Fish, Wildlife and Parks Commission (commission) will hold a public hearing from 7:00 p.m. to 9:00 p.m. at Fisher River Volunteer Fire Company, across from Happy's Inn, 39704 Highway 2 South, 100 West Camp Road, Libby, Montana, regarding the amendment of ARM 12.6.901.

2. The proposed rule amendment provides as follows:

12.6.901 WATER SAFETY REGULATIONS (1) In the interest of public health, safety, or protection of property, the following regulations concerning the public use of certain waters of the state of Montana are hereby adopted and promulgated by the Montana fish, wildlife and parks commission.

(a) and (b) remain the same.

(c) The following waters are limited to a controlled no wake speed. No wake speed is defined as a speed whereby there is no "white" water in the track or path of the vessel or in created waves immediate to the vessel:

Big Horn through Fergus County remain the same.

Flathead County:

(A) on Flathead Lake: Bigfork Bay to a point approximately 100 yards west of the Highway 35 bridge as marked by signed buoys;

(B) Beaver Lake (near Whitefish) 5:00 a.m. to 10:00 a.m. and 7:00 p.m. to 11:00 p.m. each day;

(C) Whitefish River from its confluence with Whitefish Lake to the bridge on the JP Road;

(D) Little McGregor Lake.

Gallatin through Lewis & Clark County remain the same.

Lincoln County:

(A) Savage Lake during the hours of 5:00 a.m. to 10:00 a.m. and from 7:00 p.m. to 11:00 p.m. each day;

(B) Lake Koocanusa: Cripple

Horse Bay, within 300 feet of dock or as buoyed.;

(C) Banana Lake;
(D) Bootjack Lake;
(E) Cad Lake;
(F) Cibid Lake;
(G) Lavon Lake; including channel between Lavon and Crystal Lakes;
(H) Leon Lake;
(I) Lilly Pad Lake;
(J) Little Loon Lake;
(K) Little Rainbow Lake;
(L) Lost Lake;
(M) Middle Thompson Lake; channel between Middle and Lower Thompson;
(N) Myron Lake;
(O) Rainbow Lake;
(P) Topless Lake;
(Q) Upper Thompson; middle and lower lobe.

McCone through Missoula County remain the same.
(d) through (2) remain the same.

AUTH: 87-1-303, MCA IMP: 87-1-303, MCA

3. Rationale: In 1991 the department of fish, wildlife and parks (FWP) accepted a gift of 4000 acres named the Thompson Chain of Lakes. Before accepting the gift, FWP conducted a public survey to determine if boating restrictions would be needed on these lakes and what kind of restrictions would be necessary to protect wildlife while still allowing a variety of boating opportunities. The survey results indicated that the public had concerns about boating on some the smaller pothole lakes due to two active nesting loons, the possibility of nesting eagles, and boating safety problems. In 1998, FWP held public hearings to ascertain if public sentiment remained the same as indicated by the survey and to gather additional public input.

FWP proposes amending 12.6.901 to apply mandatory and voluntary restrictions to lakes located within the Thompson Chain of Lakes. These restrictions are necessary to protect boaters and to protect and manage wildlife in the area.

4. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Ed Kelly, Warden Captain, Department of Fish, Wildlife and Parks, 490 North Meridian Road, Kalispell, Montana 59901, no later than September 1, 1998.

5. The Department of Fish, Wildlife and Parks maintains a list of persons interested in both department and commission

rulemaking proceedings. Any person wishing to be on the list must make a written request to the department, providing name, address and description of the subject or subjects of interest. Direct the request to Montana Fish, Wildlife and Parks, Legal Unit, PO Box 200701, Helena, MT 59620-0701.

6. Martha Williams or another hearing examiner designated by the department will preside over and conduct the hearing.

RULE REVIEWER

Martha Williams

FISH, WILDLIFE AND PARKS COMMISSION

Patrick J. Graham, Secretary

Certified to the Secretary of State July 20, 1998.

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

In the matter of the proposed adoption of rules I through VI and amendment of rules 37.93.101, 37.93.105, 37.93.110, 37.93.201, 37.93.203, 37.93.204, 37.93.501, 37.93.505, 37.93.510, 37.93.511, 37.93.515, 37.93.701, 37.93.705, 37.93.708, 37.93.715 and 37.93.716 pertaining to child placing agencies and transitional living programs	)	NOTICE OF PROPOSED ADOPTION AND AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On August 29, 1998, the Department of Public Health and Human Services proposes to adopt rules I through VI and amend 37.93.101, 37.93.105, 37.93.110, 37.93.201, 37.93.203, 37.93.204, 37.93.501, 37.93.505, 37.93.510, 37.93.511, 37.93.515, 37.93.701, 37.93.705, 37.93.708, 37.93.715 and 37.93.716 pertaining to child placing agencies and transitional living programs

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on August 10, 1998, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

[RULE I] LICENSE REQUIRED (1) An individual or entity must be licensed as a child placing agency to establish and operate a youth transitional living program.

(2) Any child placing agency performing the services of a transitional living program is required to meet all requirements of ARM 37.93.101, 37.93.105, 37.93.110, 37.93.201, 37.93.203, 37.93.204, 37.93.501, 37.93.705(6)(f), 37.93.715 and this subchapter.

(3) Eligible youth shall include only those youths 16 to 21 years of age who are or were in foster care, as they exit the

child welfare services system, and make the transition to independent living.

AUTH: Sec. 42-8-102 and 52-2-111, MCA
IMP: Sec. 42-8-103, MCA

[Rule III] TRANSITIONAL LIVING PROGRAM (1) In order to place a youth in a transitional living program, a child placing agency shall have a written description of its program which must include all of the following information:

(a) the types of living arrangements approved by the agency;

(b) the eligibility requirements for the youth who may be placed in transitional living, including age and level of physical, emotional and intellectual functioning;

(c) the means of financial support for the youth;

(d) the educational and vocational requirements for youth in transitional living;

(e) services provided to the youth;

(f) provisions for medical and dental care;

(g) crisis intervention services; and

(h) the basis for discharge from the program.

(2) Prior to placement, each youth who is accepted for admission into the transitional living program shall receive a copy of the child placing agency's program description.

AUTH: Sec. 42-8-102 and 52-2-111, MCA
IMP: Sec. 42-8-104, MCA

[RULE III] BASIS FOR PLACEMENT (1) Prior to the youth's placement, the child placing agency shall screen for appropriateness of the youth's admission into the program and shall document the following in the youth's individual case record:

(a) the reason for selection of transitional living as the most appropriate placement for the youth;

(b) the basis for concluding that the youth exhibits self-care potential, with appropriate agency assistance; and

(c) an evaluation of the youth's need for supervision and determination of appropriate type of living situation.

(2) At the time of admission, a placement agreement shall be negotiated among the youth, the child placing agency, and the placing worker which specifies the responsibilities and expectations of each party. The agreement must be signed and dated by the youth, the child placing agency, and the placing worker.

(3) An individual transitional living plan shall be initiated at the time of the youth's admission and must be completed within 30 days of the youth's placement. The plan must contain the youth's goals, objectives, and tasks related to the following components:

(a) vocational;

(b) medical;
(c) educational;
(d) emotional;
(e) cultural and spiritual issues;
(f) social, leisure, recreational;
(g) independent living skills; and
(h) the youth's involvement with family and/or significant others.

(4) The child placing agency shall conduct a team review and update of each youth's individual transitional living plan at least once every 90 calendar days.

(5) The child placing agency shall keep a record of all requests for services, transitional living placements, and the reasons for acceptance or denial of services.

AUTH: Sec. 42-8-102 and 52-2-111, MCA
IMP: Sec. 42-8-103 and 42-8-104, MCA

[RULE IV] AGENCY SUPERVISION AND CONTACT WITH YOUTH (1) The child placing agency shall personally inspect the premises to determine whether the living situation selected by the youth and the child placing agency is sanitary and reasonably safe.

(2) The child placing agency shall provide supervision for each youth in the program consistent with the needs of the youth.

(3) The child placing agency shall have face to face contact with a youth at regular intervals and as often as necessary to carry out the transitional living plan.

(a) The child placing agency shall assure that the youth is functioning at an acceptable level, carrying out prescribed expectations, managing expenditures and residing in a safe and acceptable environment.

(b) Contacts between the child placing agency and the youth shall occur at the youth's place of residence at least once each month.

(4) Each youth in the transitional living program shall be provided crisis services including a telephone number to contact the agency on a 24 hour, 7 days a week basis.

(5) The child placing agency shall assess with the youth, the availability of specific and relevant resources that can provide for suitable social, physical, vocational, and emotional needs of the youth. These resources shall be made a part of the youth's individual transitional living plan.

AUTH: Sec. 42-8-102 and 52-2-111, MCA
IMP: Sec. 42-8-103, 42-8-104 and 52-2-113, MCA

[RULE V] CASE RECORD (1) At the time of the youth's placement, the child placing agency shall initiate a written case record for each youth. The child placing agency shall update the record at least once every 90 days and shall assure

that the record contains all of the following information and documentation:

(a) physical and personal information including:

(i) name, sex, and birthdate;

(ii) birth certificate;

(iii) social security number;

(iv) address;

(v) updated physical description of youth including any identifying marks; and

(vi) a current photograph of the youth;

(b) documentation of the child placing agency's legal right to the youth;

(c) a copy of the youth's individual transitional living plan;

(d) cumulative health records including medical history and immunization records;

(e) education records and reports;

(f) treatment or clinical records and reports;

(g) the name, address, date of birth, and social security number of the youth's parents, if any;

(h) the name, birthdates, and address of youth's siblings, if any;

(i) the name and address of any other significant persons;

(j) current documentation of financial support sufficient to meet the youth's housing, clothing, food, and miscellaneous expenses;

(k) the date, location, documented purpose, and a summary of the finding of each contact between the youth and the child placing agency;

(l) current adjustment; and

(m) the youth's relationship with family and efforts made to resolve any family conflicts.

AUTH: Sec. 42-8-102 and 52-2-111, MCA
IMP: Sec. 42-8-104, MCA

[RULE VI] DISCHARGE PLAN (1) When a youth is discharged from the transitional living program, the following shall be documented in the case record within 30 calendar days:

(a) the reason for the discharge;

(b) the youth's new location;

(c) a summary of the services provided during care and the needs which remain to be met; and

(d) provisions for any aftercare services.

(2) The child placing agency shall assure and document that each youth who ends transitional living is provided with all the following:

(a) basic information about health, housing, counseling services, and emergency resources;

(b) birth certificate;

(c) social security card;

(d) the youth's funds and personal property;

(e) photo ID;
(f) immunizations records; and
(g) updated resume.

AUTH: Sec. 42-8-102 and 52-2-111, MCA
IMP: Sec. 42-8-103 and 52-2-113, MCA

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

37.93.101 CHILD PLACING AGENCY: DEFINITIONS

~~(1)~~ (4) "Child placing agency" (agency)" means any corporation, partnership, association, firm, agency, institution or person who:

(a) places or who arranges for the placement of any child with any family, person, or facility not related by blood or marriage, either for foster care or for adoption; or

(b) operates a transitional living program for youths between 16 and 21 years of age who are living in licensed or unlicensed residences for the purpose of completion of a transitional living plan.

(1)(a) remains the same in text, but is renumbered (6).

(2) remains the same in text, but is renumbered (5).

(3) "Child" or "youth" means any person under the age of 18 years without regard to sex or emancipation except in the instance of a transitional living program in which youth may be in placement through 21 years of age.

(4) remains the same in text, but is renumbered (2). (5) remains the same in text, but is renumbered (1).

(7) "Transitional living" means the supervision of the living arrangement of a youth age 16 to 21 with the goal of self-sufficiency.

(8) "Transitional living program" means the placement of youth who are at least 16 years of age, by and under the supervision of a child placing agency, in an independent or semi-independent licensed or unlicensed residence or in the licensed or unlicensed residence of an adult who has no supervisory responsibility for the youth.

AUTH: Sec. 42-8-102, 52-2-111, 53-4-111 and 53-4-403, MCA
IMP: Sec. 42-8-102, 52-2-113, 53-4-113 and 53-4-403, MCA

37.93.105 CHILD PLACING AGENCY: GOVERNING BODY (1) through (3)(c) remain the same.

AUTH: Sec. 42-8-102, 52-2-111, 53-4-111 and 53-4-403, MCA
IMP: Sec. 42-8-102, 42-8-104, 52-2-113, 53-4-113 and 53-4-403, MCA

37.93.110 CHILD PLACING AGENCY: PERSONNEL (1) ~~Personnel policy~~: Each child placing agency must have a written personnel

policy covering at least the following items: job qualifications, job descriptions, supervisory structure, salary schedules, fringe benefits, insurance, hours of work, and performance evaluations.

(2) ~~Personnel records.~~ Each child placing agency must maintain a personnel file for each employee. The personnel file must contain: application for employment, reports from references, record of in-service training or other training acquired after the date of hiring, and periodic performance evaluations for each employee.

(3) ~~General personnel qualifications.~~ All child placing agency personnel responsible for providing services to children and/or conducting a licensing study must meet the following general qualifications:

(3)(a) through (h) remain the same.

(4) ~~Executive director.~~ The agency must have an executive director who shall be responsible for the administration and management of the agency, including the supervision of the placement services provided to children.

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

(5) ~~Placement supervisor.~~ The agency must have a placement supervisor who is responsible for supervising the selection, matching, placement of and provision of services to children.

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

(6) ~~Social workers.~~ The agency shall employ an adequate number of social workers to provide selection, matching, placement and supportive services to the children and families and to the youth care facilities utilized by the agency.

(6)(a) through (6)(a)(ii) remain the same.

(7) ~~Paraprofessionals and trainees.~~ The agency may employ persons not qualified to act as social workers to assist the social worker, but such persons may not assume primary responsibility for providing placement-related services. Qualifications for such persons shall be contained in the job descriptions prepared by the agency for such persons.

(8) remains the same.

AUTH: Sec. 42-8-102, 52-2-111, 53-4-111 and 53-4-403, MCA
IMP: Sec. 42-8-104, 52-2-113, 53-4-113 and 53-4-403, MCA

37.93.201 CHILD PLACING AGENCY: LICENSE REQUIRED

(1) remains the same.

AUTH: Sec. 42-8-102, 52-2-111, 53-4-111 and 53-4-403, MCA
IMP: Sec. 42-8-103, 52-2-113, 53-4-113 and 53-4-403, MCA

37.93.203 CHILD PLACING AGENCY: LICENSES (1) ~~One-year licenses.~~ The department shall issue a 1-year license to any license applicant that meets all requirements established by these rules in this subchapter, as determined by the department after a licensing study.

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

(3) ~~Licensing procedures.~~ Application for a child placing agency license must be made on an application form provided by the department.

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

AUTH: Sec. 42-8-102, 52-2-111, 53-4-111 and 53-4-403, MCA
IMP: Sec. 42-8-103, 42-8-104, 42-8-107, 52-2-113, 53-4-113 and 53-4-403, MCA

37.93.204 CHILD PLACING AGENCY: LICENSE REVOCATION AND DENIAL (1) through (1)(c) remain the same.

AUTH: Sec. 42-8-102, 52-2-111, 53-4-111 and 53-4-403, MCA
IMP: Sec. 42-8-107, 52-2-113, 53-4-113 and 53-4-403, MCA

37.93.501 CHILD PLACING AGENCY: CONFIDENTIALITY OF RECORDS (1) and (2) remain the same.

AUTH: Sec. 42-8-102, 52-2-111, 53-4-111 and 53-4-403, MCA
IMP: Sec. 42-8-104, 52-2-113, 53-4-113 and 53-4-403, MCA

37.93.505 CHILD PLACING AGENCY: ADOPTIVE CHILD'S RECORD (1) through (2)(c) remain the same.

AUTH: Sec. 42-8-102, 52-2-111, 53-4-111 and 53-4-403, MCA
IMP: Sec. 42-8-104, 52-2-113, 53-4-113 and 53-4-403, MCA

37.93.510 CHILD PLACING AGENCY: BIRTH FAMILY RECORDS (1) and (2) remain the same.

AUTH: Sec. 42-8-102, 52-2-111, 53-4-111 and 53-4-403, MCA
IMP: Sec. 42-8-104, 52-2-113, 53-4-113 and 53-4-403, MCA

37.93.511 CHILD PLACING AGENCY: ADOPTIVE STUDY RECORDS (1) through (3) remain the same.

AUTH: Sec. 42-8-102, 52-2-111, 53-4-111 and 53-4-403, MCA
IMP: Sec. 42-8-104, 52-2-113, 53-4-113 and 53-4-403, MCA

37.93.515 CHILD PLACING AGENCY: YOUTH FOSTER HOME RECORDS (1) and (2) remain the same.

AUTH: Sec. 42-8-102, 52-2-111, 53-4-111 and 53-4-403, MCA
IMP: Sec. 42-8-104, 52-2-113, 53-4-113 and 53-4-403, MCA

37.93.701 CHILD PLACING AGENCY: SERVICES TO FOSTER PARENT(S) (1) ~~Orientation.~~ The agency shall provide orientation to applicant(s) for an agency youth foster home license to acquaint them with the agency's policies and practices and the department's licensing rules.

(2) ~~Agreement.~~ The agency shall have a signed agreement with all foster parent(s) which includes the following:

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

(3) ~~Payments.~~ The agency shall have a written statement as to the reimbursement rates paid to foster parent(s) for cost of care expenditures and/or fees for service.

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

AUTH: Sec. 42-8-102, 52-2-111, 53-4-111 and 53-4-403, MCA
IMP: Sec. 42-8-103, 42-8-104, 52-2-113, 53-4-113 and 53-4-403, MCA

37.93.705 CHILD PLACING AGENCY: THE PLACEMENT PROCESS

(1) In addition to an agency's responsibility to study and supervise the ongoing operation of its licensed agency youth foster homes, the agency shall comply with the following requirements applicable to the placement process:

~~(1) Intake procedures and practices:~~

~~(a)~~(2) The intake study shall be written and shall include:

(1)(a)(i) through (1)(a)(vii) remain the same in text, but are renumbered (2)(a) through (2)(g).

~~(b)~~(3) The agency shall keep a record of all requests for services, placements and the reasons for acceptance and denial of services.

~~(2) Case plan.~~

~~(a)~~(4) The agency shall develop a written case plan upon completion of the intake study and prior to placement. In cases of emergency placements, the assessment and case plan shall be initiated within 1 week and completed within 6 weeks of placement. The plan shall include, but not be limited to, the following:

(2)(a)(i) through (2)(a)(xi) remain the same in text, but are renumbered (4)(a) through (4)(k). (2)(b) through (2)(d) remain the same text, but are renumbered (5) through (7).

~~(3) Supervision and review of the case plan.~~

(3)(a) through (3)(c) remain the same in text, but are renumbered (8) through (10).

~~(4)~~(11) In the case of a temporary placement of a child prior to placement with the potential adoptive parents which will not exceed 7 consecutive days in duration, the requirements of ~~(1) and (2)~~(2) through (4)(k) of this rule shall be waived. A study incorporating the applicable requirements of ~~(1) and (2)~~(2) through (4)(k) shall be written within 7 days of termination of the temporary interim placement.

~~(5) Placement services to families and children.~~

~~(a) Services to biological parent(s):~~

~~(i)~~(12) The agency shall make services accessible and available to biological parent(s) requesting them.

(5)(a)(ii) through (5)(a)(v) remain the same in text, but are renumbered (13) through (16).

~~(b) Selection of care:~~

(5)(b)(i) through (5)(b)(iv) remain the same in text, but are renumbered (17) through (20).

~~(c) Preplacement preparation.~~

(5)(c)(i) through (5)(c)(iii) remain the same in text, but are renumbered (21) through (23).

~~(d) Services during care.~~

(5)(d)(i) through (5)(d)(vi) remain the same in text, but are renumbered (24) through (29).

~~(e) Aftercare services.~~

(5)(e)(i) and (5)(e)(ii) remain the same in text, but are renumbered (30) and (31).

~~(f) Interstate placements.~~ (32) The agency shall send written notice to the administrator of the interstate compact on placement of children whenever an agency plans to place a child in another state or receives for placement a child from another state and shall comply with the requirements of 41-4-101, ~~et seq.,~~ MCA, et seq., in making or receiving an interstate placement.

(6) remains the same in text, but is renumbered (33).

AUTH: Sec. 42-8-102, 52-2-111, 53-4-111 and 53-4-403, MCA
IMP: Sec. 42-8-104, 52-2-113, 53-4-113 and 53-4-403, MCA

37.93.708 CHILD PLACING AGENCY: ADOPTIVE SERVICES (1) In addition to the child placing agency licensing requirements, those agencies that place children for adoption must meet the following requirements:

~~(1) Adoptive home recruitment.~~

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

~~(2) Adoptive home application.~~

(2)(a) and (2)(b) remain the same in text, but are renumbered (2) and (3).

~~(3) Adoptive home study.~~

~~(a)~~(4) The agency shall have an adoptive home study process and the study process shall be a joint effort of the child placing agency and the applicant~~(s)~~.

~~(b)~~(a) The study process shall be conducted by the social worker in a minimum of three meetings with the applicants, at least one meeting of which shall be in the applicant~~'~~s' home.

(3)(c) through (3)(d)(xvii) remain the same in text, but are renumbered (4)(b) through (4)(c)(xvii).

~~(4) Notification regarding denial.~~

(4)(a) remains the same in text, but is renumbered (5).

~~(5) Services to adoptive parent(s).~~

~~(a)~~ (6) The agency shall discuss the potential children with the adopting family~~.~~

~~(b)~~ and ~~T~~the agency shall prepare the adoptive family for the placement of a particular child. Preparation shall include:

(5)(b)(i) through (5)(b)(iii) remain the same in text, but are renumbered (6)(a) through (6)(c).

(5)(c) and (5)(d) remain the same in text, but are renumbered (7) and (8). (6) remains the same in text, but is

renumbered (9).

AUTH: Sec. 42-8-102, 52-2-111, 53-4-111 and 53-4-403, MCA
IMP: Sec. 42-8-103, 42-8-104, 52-2-113, 53-4-113 and 53-4-403, MCA

37.93.715 CHILD PLACING AGENCY: REPORTS (1) through (4)(b) remain the same.

AUTH: Sec. 42-8-102, 52-2-111, 53-4-111 and 53-4-403, MCA
IMP: Sec. 42-8-104, 52-2-113, 53-4-113 and 53-4-403, MCA

37.93.716 CHILD PLACING AGENCY: CONDUCTING LICENSING STUDIES OF AGENCY FOSTER HOME (1) through (9) remain the same.

AUTH: Sec. 42-8-102, 52-2-111, 53-4-111 and 53-4-403, MCA
IMP: Sec. 42-8-104, 42-8-107, 52-2-113, 53-4-113, and 53-4-403, MCA

4. The administrative rules in Title 37, Chapter 93, govern the licensure of child placing agencies, which is overseen by the Department of Public Health and Human Services (the Department). At the present time these rules authorize child placing agencies to place children for foster care or adoption but do not provide for placement of youths from 16 through 21 years of age who are leaving foster care into transitional living programs. In the past the only service provided to youths leaving foster care was some training in independent living skills, so it was not necessary to address other services to youths making the transition to independent living. Nor do the rules provide for youths in this age group to live in an unlicensed transitional living environment, although many of them would benefit from learning self-sufficiency skills by living in an environment independent of direct adult supervision.

However, in recent years the Department has determined that it would be beneficial to expand the services provided to youths leaving foster care and to allow youths to live in an unlicensed residence without direct adult supervision. Funding for these additional services as well as the training already being provided to these youths is available under Title IV-E of the Social Security Act, 42 USC 677. Section 677 provides funding to state agencies administering foster care programs to provide training and services to youths aged 16 through 21 who are or were in foster care as they exit the child welfare services system and make the transition to independent living.

Therefore, in July 1997 the Department convened a work group to decide what the parameters of the new transitional living programs should be and to formulate rules and policies to regulate these services. Participants and advisors to the work

group included Department staff, representatives of providers and provider groups, and staff of Montana Community Partners.

The adoption of new rules and the amendment of the current rules pertaining to child placing agencies is necessary to specify the requirements and policies governing the new transitional living programs which are being implemented in accordance with the recommendations of the work group. Whereas the current rules do not provide for placement of a youth in an environment without on site adult supervision, the proposed changes will allow a youth in need of care or youth in need of intervention the option of placement in an unlicensed transitional living environment under the supervision of a licensed child placing agency. For some youths, independent living skills can be successfully taught in foster care or in a group living situation. For many, however, the most effective way of acquiring independent living skills is to practice these skills in an independent residence such as an apartment with non-residential supervision. An additional advantage is that a youth who chooses an unlicensed living environment then has the option of remaining in that environment following his or her graduation from the transitional living program.

[Rule I] provides that licensure as a child placing agency is required in order to operate a youth transitional living program and specifies other requirements to operate a transitional living program. [Rule II] requires a written description of the transitional living program and specifies what the written description must contain.

[Rule III] sets forth the criteria used to determine whether a transitional living program is appropriate for the youth and, if so, to determine what type of placement would be most beneficial for the youth. Subsection (2) of [Rule III] mandates a written placement agreement specifying the responsibilities and expectations of the youth, child placing agency, and placing worker. A written agreement is being required because in the past misunderstandings which have adversely affected the youth involved have resulted from the lack of specific terms in a written agreement. Subsections (3) through (3)(h) provide for a transitional living plan and specify what elements the plan must contain. Such a plan assures appropriate planning for teaching of independent living skills to the youth.

[Rule IV] sets out requirements regarding the type and amount of contact between program staff and each youth. The purpose of these requirements is to ensure the youth is in a safe environment and is in a position to learn skills necessary for independence. [Rule V] requires the child placing agency to establish a written case record for each youth, outlines the information and documentation which must be contained in that record, and provides that the record must be updated at least

every 90 days in order to facilitate a plan for the youth which serves the youth's best interests. Finally, [Rule VI] provides for a discharge plan when a youth is leaving the transitional living plan. The plan must address aftercare services to be furnished and must document that the youth has been provided with information about health, housing, counseling services and emergency resources and has an updated resume and other documents necessary for independent living.

The proposed amendments to ARM 37.93.101 are necessary to add definitions of terms which are used in the new rules governing transitional living programs and to broaden the definition of the term child placing agency to include entities which operate transitional living programs to youths between 16 and 21 years. The citations to the authorizing and implementing statutes must also be amended because many of the currently cited statutes have been repealed or renumbered. In addition, the Department has rearranged the definitions into alphabetical order, which is the standard practice for definitions rules.

Similarly, the citations to the authorizing and implementing statutes are being updated in the following rules: ARM 37.93.105, 37.93.110, 37.93.201, 37.93.203, 37.93.204, 37.93.501, 37.93.505, 37.93.510, 37.93.511, 37.93.515, 37.93.701, 37.93.705, 37.93.708, 37.93.715 and 37.93.716. The internal catch phrases in these rules are also being deleted to comply with the required format for Montana's administrative rules.

5. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Kathy Munson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 202951, Helena, MT 59620-2951, no later than August 27, 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. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Kathy Munson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 202951, Helena, MT 59620-2951, no later than August 27, 1998.

7. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Code Committee of the legislature, from a

governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 33 based on the 332 persons or entities affected by rules covering child placing agencies and transitional living programs.

Dawn Sliva
Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State July 20, 1998.

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

In the matter of the adoption of new rules I through XV pertaining to annuity disclosure and sales illustrations.	))))))	NOTICE OF ADOPTION

TO: All Interested Persons

1. On February 12, 1998, the State Auditor's office published a notice of public hearing to consider the proposed adoption of the above-stated rules at page 382, 1998 Montana Administrative Register, issue number 3. The hearing was held on March 9, 1998, in Helena, Montana.

2. The Department has adopted rules II (ARM 6.6.802) and XV (ARM 6.6.807) exactly as proposed.

3. The Department will not adopt proposed Rules V, VII, VIII, IX, X, XI, XII, and XIV.

4. The Department has adopted rules I (ARM 6.6.801), III (ARM 6.6.803), IV (ARM 6.6.804), VI (ARM 6.6.805), and XIII (ARM 6.6.806) as proposed, but with the following changes (Matter to be added is underlined, matter to be deleted is interlined.):

RULE I (ARM 6.6.801) PURPOSE (1) The purpose of this subchapter is to provide standards for the disclosure of certain minimum information about annuity contracts ~~and to provide rules for annuity illustrations that will~~ to protect consumers and foster consumer education. These rules specify the minimum information which must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. ~~These rules provide illustration formats, prescribe standards to be followed when illustrations are used, and specify the disclosures that are required in connection with illustrations.~~ The goals of these rules are to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts ~~and to make illustrations more understandable~~. Insurers shall define terms used in the disclosure statement ~~and illustration~~ in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement ~~or illustration~~ is directed.

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

RULE III (ARM 6.6.803) APPLICABILITY AND SCOPE (1) and (1)(a) will remain the same as proposed.

(b) ~~Annuities used to fund an employee pension benefit plan which is covered by the Employee Retirement Income Security Act, (ERISA), or a plan described by sections 401(a), 401(k) or 457 of the Internal Revenue Code (IRC), or a governmental or church plan defined in section 414, IRC, or a non-qualified deferred compensation arrangement not prohibited by ERISA.~~ Immediate and deferred annuities that contain no non-guaranteed elements if the contract describing the benefits is provided at time of application or if it is provided at time of delivery and a thirty-day free-look is provided:

(c) Annuities used to fund:

(i) An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA);

(ii) A plan described by section 401(a), 401(k), 403(b) of the Internal Revenue Code (IRC), where the plan, for purposes of ERISA, is established or maintained by an employer;

(iii) A governmental or church plan defined in section 414, IRC, or a deferred compensation plan of a state or local government or tax exempt organization under section 457, IRC; or

(iv) A non-qualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(d) Notwithstanding (c), this rule shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;

(e) Structured settlement annuities; and

(f) Charitable gift annuities.

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

RULE IV (ARM 6.6.804) DEFINITIONS For the purposes of this sub-chapter:

~~(1)~~(2) ~~"Actuarial standards board" means the board established by the American academy of actuaries to develop and promulgate standards of actuarial practice.~~ "Contract premium" means the gross premium that is required to be paid under a fixed premium contract, including the premium for a rider for which benefits are shown in the illustration.

~~(2)~~(1) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

~~(3) "Currently payable scale" means a scale of non-guaranteed elements in effect for an annuity contract or certificate form as of the preparation date of the illustration or declared to become effective within the next 60 days.~~

~~(4) "Disciplined current scale" means a scale of non-guaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is reasonably based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer. Further guidance in determining the disciplined current scale as contained in standards established by the actuarial standards board may be relied upon if the standards:~~

~~(a) Are consistent with all provisions of this sub-chapter;~~

~~(b) Limit a disciplined current scale to reflect only actions that have already been taken or events that have already occurred;~~

~~(c) Do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date; and~~

~~(d) Do not permit assumed expenses to be less than minimum assumed expenses.~~

(5) will remain the same as proposed but is renumbered (3).

(6) will remain the same as proposed but is renumbered (4).

~~(7) "Illustrated scale" means a scale of non-guaranteed elements currently being illustrated that is not more favorable to the annuity contract than the lessor of:~~

~~(a) The disciplined current scale; or~~

~~(b) The currently payable scale.~~

~~(8) "Illustration" means a presentation or depiction that includes non-guaranteed elements of an annuity contract over a period of years and that is one of the 3 types defined below:~~

~~(a) "Basic illustration" means a ledger or proposal used in the sale of an annuity contract that shows both guaranteed and non-guaranteed elements.~~

~~(b) "Supplemental illustration" means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this sub-chapter, and that may be presented in a format differing from the basic illustration, but may only depict a scale of non-guaranteed elements that is permitted in a basic illustration.~~

~~(c) "In force illustration" means an illustration furnished at any time after the contract that it depicts has been in force for one year or more.~~

~~(9) "Illustration actuary" means an actuary meeting the requirements of this sub-chapter who certifies to illustrations based on the standard of practice promulgated by the actuarial standards board.~~

~~(10) "Lapse-supported illustration" means an illustration of an annuity contract failing the test of self-supporting as defined in this sub-chapter.~~

~~(11) "Minimum assumed expenses" means the minimum expenses that may be used in the calculation of the disciplined current scale for an annuity contract form. The insurer may choose to designate each year the method of determining assumed expenses~~

~~for all annuity contract forms from the following:~~

~~(a) Fully allocated expenses;~~

~~(b) Marginal expenses; and~~

~~(c) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the commissioner.~~

~~(d) Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.~~

(12) will remain the same as proposed but is renumbered (5).

(13) will remain the same as proposed but is renumbered (6).

~~(14) "Self-supporting illustration" means an illustration of an annuity contract for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth contract anniversary or upon contract expiration, if sooner, the accumulated value of all contract cash flows equals or exceeds the total contract owner value available. For this purpose, contract owner value will include cash surrender values and any other illustrated benefit amounts available at the contract owner's election.~~

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

RULE VI (ARM 6.6.805) STANDARDS FOR THE DISCLOSURE DOCUMENT (1) An applicant for an annuity contract shall be given a disclosure document as described in (2) as early in the sales process as practicable. The disclosure document shall be provided at the time of application or, in the case of a sale conducted by means of the telephone, mailed to the applicant within two business days.

~~(1)~~ (2) At a minimum, ~~the~~ the following information shall be ~~contained~~ included in the disclosure document required to be provided under this rule:

(a) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity;

(b) will remain the same as proposed.

(c) A description of the contract and its benefits, emphasizing its long-term nature and describing in plain language the operation of the annuity including how principal and interest are accumulated and paid out, including examples where appropriate:

(i) will remain the same as proposed.

(ii) ~~if a first specific rate is mentioned, a statement of recent data history is required~~ an explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;

(iii) ~~the availability of periodic income (annuitization) and description of periodic income including whether principal will be returned~~ periodic income options both on a guaranteed and non-guaranteed basis;

(iv) ~~the surrender charges if applicable, specifically their duration and how they are applied~~ any value reductions caused by withdrawals from or surrender of the contract;

~~(v) any other fees and charges, their limits and how they are applied;~~

(vi) will remain the same as proposed but is renumbered (v).

~~(vii)~~(vi) the death benefit, if available and how it will be calculated;

(viii) will remain the same as proposed but is renumbered (vii).

~~(ix)~~(viii) impact of any rider, such as ~~nursing home,~~ long term care rider~~, or accelerated benefits~~.

(d) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply; and

(e) Information about the current guaranteed rate for new policies that contains a clear notice that the rate is subject to change.

(3) All disclosure and marketing material shall be written using plain language with the negatives and positives of all features and concepts clearly presented.

(4) Any concepts that are not specified in the requirements in (2) for the disclosure document that are included in the contract or offered with the contact by the company shall be included and clearly explained in the disclosure document.

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

RULE XIII (ARM 6.6.806) ANNUAL NOTICE TO CONTRACT OWNERS

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

(c) The total amounts that have been credited or charged to the contract value during the current report period; and

(d) will remain the same as proposed.

~~(2) If a sales illustration was used or is available for that annuity contract form, and the annual report does not include an in force illustration, it shall contain the following notice displayed prominently: "IMPORTANT CONTRACT OWNER NOTICE: You should consider requesting more detailed information about your contract to understand how it may perform in the future. You should not consider replacement of your contract or make changes without requesting a current illustration. You may annually request, without charge, such an illustration by calling [insurer's phone number], writing to [insurer's name] and [insurer's address] or contacting your~~

~~producer. If you do not receive a current illustration of your contract within 30 days from your request, you should contact your state insurance department." The insurer may vary the sequential order of the methods for obtaining an in force illustration.~~

~~(3) If a sales illustration was used or is available for that contract form, the annual report must contain a statement that upon the request of the contract owner, the insurer shall furnish an in force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of this sub-chapter. No signature or other acknowledgment of receipt of this illustration shall be required.~~

~~(4) If an adverse change in non-guaranteed elements that could affect the contract has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and the nature of the change prominently displayed.~~

AUTH: Sec. 33-1-313 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

5. These rules shall become effective ~~July 1, 1998~~ December 31, 1998, and shall apply to policies sold on or after the effective date.

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

Comment 1: The vast majority of commentators urged the commissioner to delay implementing rules concerning annuity disclosure and sales illustrations until the NAIC adopts a model regulation.

Response: The commissioner agrees. The commissioner will adopt the June 23, 1998 draft of the Annuity Disclosure Model Regulation. Because this agency does not have rulemaking authority for sales illustration, this agency will drop adopting rules for annuity sales illustrations at this time.

Comment 2: Commentators urged the commissioner to change the effective date of the regulation to a later date, so that the companies would have a realistic chance of implementing the rules.

Response: The commissioner agrees and will make the effective date December 31, 1998.

Comment 3: One commentator noted that the disclosure document set forth in Rule VI, Standards for Disclosure Document, is complicated.

Response: The commissioner agrees. The changes in the latest model rules simplify this disclosure document.

Comment 4: One commentator stated that in Rule IV, Definitions, the definitions for Disciplined Current Scale, Lapse Supported Illustration, Minimum Assumed Expenses, and Self Supported Illustrations have changed or been deleted in the current LDWG and TRA drafts. Another commentator made reference to problems with definition 9, "Standard of practice promulgated by the actuarial standards board", definition 10, "Lapse supported illustration", and definition 11, which incorporated a "GRET".

Response: The commissioner agrees with the comments and is deleting those terms from the rules.

Comment 5: Several commentators commented about sales illustrations and waiting until the NAIC and the industry reach a consensus on sales illustrations.

Response: The commissioner will attempt to have rulemaking authority for annuity sales illustrations passed this next legislative session. By that time, hopefully, the NAIC and the industry will reach a compromise on the wording for the model regulation.

Comment 6: One commentator stated that immediate annuities with no non-guaranteed elements should be exempted from the requirements of the regulation.

Response: The commissioner is exempting "immediate and deferred annuities that contain no non-guaranteed elements if the contract describing the benefits is provided at time of application or if it is provided at time of delivery and a thirty-day free-look is provided."

Comment 7: One commentator suggested that the regulation should exclude structured settlements and charitable gift annuities.

Response: The commissioner agrees and structured settlements and charitable gift annuities are excluded from regulation.

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 this 20th day of July, 1998.

BEFORE 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.	)	CORRECTED NOTICE OF AMENDMENT

TO: All Interested Persons

1. On June 25, 1998, the State Auditor's Office published a notice at page 1698, of the Montana Administrative Register, issue number 12, for the amendment, repeal, and adoption of the above-captioned rules.

2. The Department failed to address the text of 6.6.5008 (2)(c) and (2)(d), of the Administrative Rules of Montana, in both its first and second notice. Due to this error the following rule is amended as follows:

6.6.5008 COVERED SERVICES OF POLICIES UNDER STANDARD PLAN (1) and (1)(a) remain the same as amended.

(2)(c) and (2)(d) remain the same but are renumbered (1)(b) and (1)(c).

(2) will remain the same as amended.

3. The Department failed to address the text of 6.6.5036 (1)(c)(xiii), of the Administrative Rules of Montana, in its first notice. Due to this error the following rule is amended as follows:

6.6.5036 CALCULATION OF BENEFIT VALUES (1) through (1)(c)(xii) will remain the same as amended.

(1)(c)(xiii) will remain the same.

(1)(d) and (2) will remain the same as amended.

4. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on June 30, 1998.

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 July 20, 1998.

BEFORE THE BOARD OF TRUSTEES
OF THE MONTANA HISTORICAL SOCIETY
OF THE STATE OF MONTANA

In the matter of the adoption of rules regarding procedures that state agencies must follow to protect heritage properties and paleontological remains and providing general procedures which the state historic preservation office must follow in implementing its general statutory authority	NOTICE OF ADOPTION OF RULES

TO: All Interested Persons

1. On February 12, 1998, the State Historic Preservation Office of the Montana Historical Society published a notice of proposed adoption of new rules regarding procedures that state agencies must follow to protect heritage properties and paleontological remains and providing general procedures which the state historic preservation office must follow in implementing its general statutory authority at page 411, 1998 Montana Administrative Register, issue number 3.

2. The Board has adopted new rules I (10.121.901), III (10.121.903), IV (10.121.904), and IX (10.121.909) through XV (10.121.915) exactly as proposed. New rules II (10.121.902), V (10.121.905) through VIII (10.121.908) and XVI (10.121.916) have been adopted but with the following changes: (authority and implementing sections remain the same as proposed.)

RULE II (10.121.902) DEFINITIONS

(1) and (2) remain the same as proposed.

(3) "Anticipatory demolition" means the willful destruction of a heritage property prior to an action.

(3) remains the same as proposed but is renumbered (4).

(4 5) "Heritage values" means the economic, educational, scientific, social, recreational, cultural or historic qualities possessed by buildings, districts, sites, structures or objects possessing sufficient significance to warrant consideration under these rules as heritage property or paleontological remains.

(5) remains the same as proposed but is renumbered (6).

(6 7) "Restore" means to conduct major repairs, reconstruction, structural or other improvements on a building, district, object, site, structure or feature possessing heritage values with the intention of preserving or reconstructing physical features representing those values.

(7) remains the same as proposed but is renumbered (8).

~~(8) "State entity" means an agency or governmental unit recognized by the state constitution or created by the legislature, including counties and municipalities.~~

RULE V (10.121.905) IDENTIFICATION OF HERITAGE PROPERTIES AND PALEONTOLOGICAL REMAINS

(1) remains the same as proposed.

(a) are associated with events that have made a significant contribution to the broad patterns of Montana's or the nation's history;

(b) through (6) remain the same as proposed.

RULE VI (10.121.906) EVALUATION OF HERITAGE PROPERTIES AND PALEONTOLOGICAL REMAINS

(1) remains the same as proposed.

(a) The agency shall seek ~~the SHPO's written evaluation of whether a property qualifies as a site that contains paleontological remains, or heritage property~~ a written evaluation by the SHPO of whether or not any location qualifies as a heritage property or paleontological remains and, if so:

(i) remains the same as proposed.

(ii) whether any property ~~in question~~ is eligible for the register.

(b) remains the same as proposed.

RULE VII (10.121.907) AVOIDANCE OR MITIGATION OF ACTION IMPACTS

(1) and (2) remain the same as proposed.

(3) If heritage properties eligible for the register or paleontological remains are found to exist within the action's area of effect, the agency shall determine, in writing, whether the action will have an adverse effect on that property and propose mitigation of the effect. If the agency determines that an action will have an adverse effect, it shall prepare a written explanation of why one or more of the actions in (3)(a) through (d) has been chosen and how it will be carried out. In determining mitigation the agency ~~may~~ shall solicit the opinions of interested parties and may otherwise collect public comment on the protection of heritage property or paleontological remains in the area of effect as to:

(a) through (d) remain the same as proposed.

(4) If, ~~U~~upon completion of its assessment of action impact the agency finds the action to have adverse effects ~~and selection of the proposed mitigation~~, the agency shall forward a statement of its decision in a single page mitigation plan to the SHPO for review and comment. Mitigation plans shall address whether or not the properties might be utilized for practical purposes in that they:

(a) remains the same as proposed.

(b) embody educational information which may be applied to instruct children or adults in aspects of Montana's history or prehistory;

(c) through (6) remain the same as proposed.

RULE VIII (10.121.908) EMERGENCY DISCOVERY OF HERITAGE PROPERTIES OR PALEONTOLOGICAL REMAINS (1) If historic or prehistoric properties or paleontological remains are identified during the course of the action the agency shall, in accordance with 22-3-435, MCA, notify the SHPO immediately, provide information on the property and stop any ~~action~~ work that could harm the property. The SHPO shall assess the property's value as a heritage property or paleontological remains within two days. The time for evaluation may be extended upon request by SHPO and concurrence by the agency. The agency shall subsequently consider any adverse effects on heritage properties according to ARM 10.121.907(1) through (3) and report its mitigation plan to the SHPO immediately upon completion of that plan.

RULE XVI (10.121.916) SHPO STANDARDS, PROCEDURES, AND GUIDELINES

(1) SHPO standards, procedures, and guidelines shall be referenced in SHPO recommendations when required by statute or rule. ~~(2)~~ The standards and guidelines used by the national park service of the United States department of the interior and the advisory council on historical preservation are, in part, the standards and guidelines to be used to identify and protect heritage properties eligible for listing on the ~~national~~ register, and are hereby incorporated by reference. These are:

(a) the secretary of the interior's standards for archaeology and historic preservation located at: 36 CFR 60 (1997), 36 CFR 61 (1997), 36 CFR 63 (1997), 36 CFR 65 (1997), 36 CFR 67 (1997), and 36 CFR 79 (1997);

(b) the secretary of the interior's standards for the treatment of historic properties;

(c) the secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings;

(d) the national park service, national register bulletin series (technical information on comprehensive planning, survey of cultural resources, and registration in the national register of historic places); and

(e) Advisory Council Regulations, 36 CFR 800.

(2) Copies may be obtained free of charge from the State Historic Preservation Office, 1410 Eighth Avenue, Helena, Montana 59620; telephone (406) 444-7715.

3. The Board accepted written comments if received by March 12, 1998. The Board has throughly considered all comments received. Those comments, and the Board's responses, are as follows:

COMMENT NO. 1: We recommend a global exchange of the term "impact" for "effect". In the draft, the two terms are apparently used interchangeably. While we would agree that they basically are interchangeable, we suggest that "effect" is the term more commonly in use with regard to cultural

resources and that the use of a single term provides needed consistency.

RESPONSE: Use of "impact" in the body of the rules relates to its appearance in the definition of adverse effects where it states that impacts which damage historic qualities are referred to as adverse effects. The distinction is deliberate in the interests of separating conditions which are not yet proven to involve such effects from those that are. The rules apply to agencies not familiar with federal preservation law as well as those that do. The former will be assisted by the distinction, the latter will know enough not to be confused.

COMMENT NO. 2: There should be consistency to the extent of the law between the terminology used and processes defined in the federal regulations (36 CFR 800) and the Montana Code Annotated.

RESPONSE: This is an excellent suggestion. The rules have been amended to provide that consistency where the purpose of the rules are served.

COMMENT NO. 3: The second sentence of Rule I should be amended to read ". . . and to encourage the avoidance or impact, whenever feasible, of . . ."

RESPONSE: The rule was drafted to mirror the language of 22-3-424, MCA. The addition of "or impact" does not add to the clarity of the rule.

COMMENT NO. 4: In Rule II, the definition of "action" should be modified to deal with state sanctioned surveys whereby the survey techniques used adversely affect heritage properties. Some techniques employed in discovery of such property amount to anticipatory demolition as prohibited by 22-3-430(1), MCA.

RESPONSE: Activities which would adversely affect heritage properties would include the type of effects identified in the comment. Agency actions resulting in the willful demolition of heritage properties in advance of an action do constitute anticipatory demolition. To make this clearer, rule II will be amended as shown.

COMMENT NO. 5: "Agency" should be added and defined as follows: "Agency" means a state entity.

RESPONSE: "State agency" is defined in 22-3-421(11), MCA. Rules may not unnecessarily repeat statutory language. 2-4-305(2), MCA.

COMMENT NO. 6: Two comments were received that the definition of "state entity" should be amended to read "an agency or a governmental unit, branch, department division or other official public element recognized by the state."

RESPONSE: The identification of state entities does not appear to be useful as proposed in the rules. Given that it

appears but once in the rules, and there not in a way requiring definition, it is removed.

COMMENT NO. 7: Under the definition of "interested parties," the terms or phrase "clear and reasonable" should be interpreted or refined in light of the fact that this standard may be subject to different or varying interpretations by different administrators or individuals.

RESPONSE: The phrase clear and reasonable is a well-established term of art and would not benefit from further definition in these rules.

COMMENT NO. 8: The definition of "restore" should be amended to read ". . . building, structure, or feature, site, district or object possessing heritage values . . ."

RESPONSE: This comment would clarify the rules in a useful way and make their language more consistent with register criteria wording. The rules will be changed accordingly.

COMMENT NO. 9: We are concerned about the broad definition of "heritage values." In 22-3-424, MCA, heritage properties are entities "significant in American history, architecture, archeology or culture." Rule II(4), however, steps substantially beyond that realm to encompass economic, recreational, and social values of sites. The same comment applies to rule VII(2).

RESPONSE: The section clearly shows there are no criteria beyond those of the statute stated or implied. The definition details values society places on historic properties and illustrates to agencies the practical use and obvious enjoyment the population has derived from such properties. It is consistent with the constitutional charge to the legislature which provides for the protection of historic areas, sites and objects . . . for their use and enjoyment of the people.

COMMENT NO. 10: Under proposed rule II(4), we strongly recommend deletion of the word "economic" from the definition of heritage values. We continue to believe that the use of this word, suggests a degree of commercialism in the definition of such properties which, in certain cases, could well be detrimental to the appropriate conservation of those resources. In general, we believe that "economic" considerations do not and should not play a substantive role in the evaluation of what constitutes the values of the mutual, cultural heritage of all Montanans. More specifically, we believe that such "economic" considerations, have no place in the evaluation of such properties as archaeological sites, and that ascribing such economic value to such properties would be, in many cases, counterproductive to their appropriate conservation.

RESPONSE: The economic value of heritage resources is a well recognized and much utilized source of support for the

retention of those resources. To eliminate the word "economic" as a heritage value would ignore the existence of the many commercial advantages accruing to communities through the rehabilitation of historic structures, tourism development, and real estate investment and thereby ignore the potential for these resources to contribute to community objectives. Agencies are reminded of this most significant attribute through the inclusion of the word.

COMMENT NO. 11: The term "register" is not defined in rule II or in context, but this term is used for the first time in rule V. Although it may be defined in the Antiquities Act, "register" should be defined in rule II or clarified in context as either the National Register of Historic Places or the State Registry of Heritage Properties. There is a difference as properties listed on or those eligible for the State Registry may not be the same as those on or eligible for the National Register. This clarification needs to be made in rule V and rule VII where "register" is used, and also in rule XVI(2) where the "national register" is stated.

RESPONSE: There is no "State Registry of Historic Places" for the term "register" to be confused with and "register" is defined in 22-3-421(9), MCA.

COMMENT NO. 12: We recommend that the terms "buildings" and "districts" be added to the listing of property-types or classes given in the definition of "historic property". This would make the definition consistent with that provided under similar federal authorities for management of these resources.

RESPONSE: This suggestion would make state and federal historic preservation regulations more consistent with one another. The suggested terms are incorporated into the rules.

COMMENT NO. 13: We recommend deletion of the word "sufficient," in reference to significance, inasmuch as the phrase "sufficient significance" is vague and suggests a subjective viewpoint with regard to significance.

RESPONSE: No site, object or district is completely devoid of historic significance. The phrase mentioned distinguishes between places of minor historic significance and those whose level of significance is sufficient to meet register criteria.

COMMENT NO. 14: Proposed rule II(5) is overly-inclusive, and would lead to the involvement of any number of parties, all claiming "clear and reasonable interests," which would have to be assessed by the state agency in a time consuming and potentially contentious process to determine which claimed interests were legitimate and which were spurious. We also see no need, nor any provision of the Montana Antiquity Act which prescribes the involvement of Indian tribes, for action on state lands involving any heritage properties. Therefore, we recommend that this

definition be struck, and that it be replaced with the following:

"Interested parties" includes applicants for state permits, licenses, funding or approvals; landowners with title ownership of lands abutting those state lands involved in a proposed action; and local governments.

RESPONSE: The term "clear and reasonable" is sufficient to describe a direct interest in matters concerning the protection of heritage properties. It is preferred to a set list which could easily exclude a party or parties with a genuine involvement in such matters thus violating the state policy of open government.

COMMENT NO. 15: If Indian tribes are to remain involved in the process, then we very strongly recommend that the tribes with any interest in the process be defined clearly as those which have demonstrated a cultural or religious interest in specific heritage properties. We also recommend that demonstration of this interest must be provided in the form of ethnographically documented associations of cultural or religious interest in specific properties, with defined boundaries.

RESPONSE: For the same reasons as in the comment immediately above, the inclusion of tribal interests needs to be more flexible than the suggested, exclusionary, wording.

COMMENT NO. 16: Take out the hyphen in "reconstruction" in rule II(6).

RESPONSE: The hyphen was placed in the word because it was divided between syllables at the end of a line. This was a matter of proper punctuation.

COMMENT NO. 17: We recommend that paleontological resource be defined in rule II. Our suggestion is:

"Paleontological" means:

a. any naturally occurring remains or trace of a vertebrate, invertebrate or plant that:

(i) lived prior to the Holocene epoch; and

(ii) is not associated with an archaeological resource;

b. any fossilized remains or trace of a vertebrate, invertebrate or plant that:

(i) is discovered in deposits dating from the Holocene epoch; and

(ii) is not associated with an archaeological resource; and

c. any remains or trace that questionably meets the descriptions above.

RESPONSE: The term "paleontological remains" is defined in 22-3-421(7), MCA. The definition suggested in the comment would well serve the conditions of a memorandum of agreement as provided for in rule XI(3).

COMMENT NO. 18: What constitutes a professional paleontologist in rule V(1)(e)? There should be a definition

in this section. You may also wish to include a specialization within the profession, i.e. vertebrate, invertebrate, paleobotanical.

RESPONSE: Professional paleontologist is sufficiently clear to allow general identification to include an area of specialization in a general definition is too restrictive.

COMMENT NO. 19: The word "consultations" in rule IV needs to be defined.

RESPONSE: A definition of this term would not substantially improve the clarity or intent of the rules.

COMMENT NO. 20: Amend rule V(1)(a) to read ". . . patterns of Montana's or the nation's history . . . ."

RESPONSE: The phrase Montana history will be changed to become possessive.

COMMENT NO. 21: Amend the introductory paragraph to read ". . . resources should be discovered and treated:"

RESPONSE: This section is the statement of reasonable necessity. It is not part of the official rules.

COMMENT NO. 22: The phrase "area of effect" is used in the rules for the first time. This phrase or term of art may need to be defined.

RESPONSE: The term is already defined. See rule II(3).

COMMENT NO. 23: What criteria is to be used as identified in the sentence "All SHPO recommendations for methods to be applied shall follow standards, procedures, and guidelines provided for in 22-3-428, MCA?"

RESPONSE: The rules look to the section of the statute mentioned in the comment to indicate intent along with the available standards and guidelines from the Department of the Interior relating to state and federal historic preservation programs as identified in rule XVI.

COMMENT NO. 24: Wherever "eligible for the register" is found this phrase should be amended to read "eligible for inclusion in the federal register."

RESPONSE: Given the definitions in the antiquities act, where "register" is defined as the national register of historic places, this wording would not add to the clarity of the rules.

COMMENT NO. 25: Rule VI(1)(a)(i) should state "and/or" critical rather than "and critical".

RESPONSE: The rule refers to and is consistent with the language in the statute.

COMMENT NO. 26: Rule VI(1)(a) uses the terms "property," "site," "heritage property" and "paleontological remains," all in the same line of text. We believe this is confusing and overly complicated. It also makes reference to the

"register," which we assume to refer to the National Register of Historic Places. We recommend it be rewritten, to read as follows:

(a) The agency shall seek a written evaluation by the SHPO of whether or not any location qualifies as a heritage property or paleontological remains, and if so,

(i) [retain draft language]

(ii) whether any property is eligible for listing in the National Register of Historic Places (Register).

RESPONSE: With certain qualifications the suggested language improves on the clarity of the rules. Rule VI(1)(a) is amended to read as (a) in the suggestion and (ii) in the suggestion with the exception of referring to the "register" rather than the already defined National Register of Historic Places.

COMMENT NO. 27: After rule VI(1)(a)(ii), all references to "register" should be capitalized.

RESPONSE: The suggestion is not in conformance with rulemaking guidelines.

COMMENT NO. 28: Paragraph (4) of rule VII should be amended to read ". . . assessment of the action's adverse impact . . . ."

RESPONSE: The suggestion serves to clarify the rules. The paragraph is amended to reflect the actions an agency will take should adverse effects be discovered.

COMMENT NO. 29: Paragraph (4)(c) of rule VII should be amended to read ". . . Montana's history or pre-history;"

RESPONSE: Prehistory is not hyphenated.

COMMENT NO. 30: In rule VII, the word "impacts" should be changed to read as "effects." As noted above, use of the term "effects" should be made throughout the rules.

RESPONSE: See the response to comment no. 1.

COMMENT NO. 31: For greater clarity, the first line of proposed rule VII(2) should be rewritten to read as follows:

"(2) If there are heritage properties within the area of effect which are not eligible for Register listing, the agency shall follow its existing procedures or policies with regard to the management of said properties."

RESPONSE: The rule recognizes that not all heritage properties are eligible for the register. The suggested language makes no such acknowledgment.

COMMENT NO. 32: Proposed rule VII(3) should be amended to require that agencies consult with and seek the opinions of interested parties in their considerations of potential adverse effects to heritage properties which are eligible for listing in the Register. The draft text states that agencies "may solicit" the opinions of such parties. This should be changed to read as "shall solicit."

RESPONSE: The involvement of interested parties is guaranteed, given other sections of the rules. The section is changed to read "shall solicit the opinions of interested parties" and renders further public comment optional by inserting "may" between the words "and otherwise" to eliminate excessive consultation requirements.

COMMENT NO. 33: Proposed rule VII(4) should be amended by deletion of items (a) through (f). Some of these factors, such as (b), (c), (e) and (f), should perhaps be a part of the consideration of a specific locale as a heritage property, and play an appropriate role in the evaluation of properties as to register eligibility. However, they are not needed in effects mitigation plans. In addition, the remaining factors are overly subjective to the viewpoint of the observer and should have no bearing on either the status of any property, or the plans for mitigation of potential effects. Application of these factors would lead to competitive and subjective, time-consuming arguments over, for example, the true nature and extent, of the "promotional, commercial, recreational, or other" uses of a property, or the true nature and extent of the opportunities presented by a specific property for "sightseeing, photography, painting, or other means of personal experience or artistic expression." These sorts of values are too subjective to the observer and references here to them should be deleted.

RESPONSE: The suggestion would eliminate guidance to agencies unfamiliar with standard, well-established, historic preservation considerations as well as a checklist for consistent agency responses which this section provides. See also the comment above on a similar matter.

COMMENT NO. 34: Amend rule VIII to state that any work should stop immediately.

RESPONSE: This is correct. Due to a typographical error both action and work appeared in the draft of the rule. It will be changed to read "stop any work that could harm the property."

COMMENT NO. 35: In rule VIII, although it is understandable in cases of emergency we would want to take care of the resources promptly, to promise assessment of a paleontological resource within two days may be extremely difficult to do. Weather alone could make it impossible to reach a site within two days. Perhaps there is a way to provide a bit of latitude for SHPO.

RESPONSE: In an emergency situation it may not be possible to halt costly operations without significant reason to do so. It is incumbent on the state to respond quickly to discoveries under such circumstances if only to negotiate additional time for analysis should that be possible. The rule will be changed to allow the state to negotiate with the agency for more time in the event of an emergency.

COMMENT NO. 36: In rule XIII(1), the agency should be required to deposit with the SHPO "and designated repository" all the pertinent documents.

RESPONSE: The agency planning an action is required by 22-3-424, MCA, to deposit reports and material with the SHPO. In 22-3-432, MCA, permit holders are to deposit reports with state institutions but because state agencies are involved in work relating to antiquities' permits they are responsible for the same reports. The rule clarifies the dominance of 22-3-424, MCA, leaving the SHPO to distribute the material pursuant to 22-3-432, MCA.

COMMENT NO. 37: Rule VIII(1) should be amended by the insertion of the word "calendar," between "two" and "days" in the second sentence of the rule.

RESPONSE: The change would not improve the clarity or intent of the rules. The phrase "working days" does not appear in the rules, rendering the term "days" to be days in succession and thus calendar days.

COMMENT NO. 38: Rule X should also extend to Tribes when dealing with a cultural site or resource.

RESPONSE: This is a suggestion which would work well with the memoranda of agreement in rule XI.

COMMENT NO. 39: The term "memorandum of agreement" is used in rule XI(3), however, a memorandum of agreement is a specific document which is defined in cultural resource law [36 CFR 800.5(d)(4)]. Its intent is to provide legal documentation of treatment for an affected historic property and comment from the Advisory Council on Historic Preservation on an undertaking. When a regulatory procedure will be modified, a general practice has been to use the terms "programmatic agreement" [36 CFR 800.13] or "programmatic memorandum of agreement." To minimize confusion and to differentiate between state and federal regulations, we suggest that rule XI be titled, "Alternate Procedures" to reflect the intent of the proposed rule. We also recommend using the term "procedural agreement" for use in alternate procedures, and reserving "memorandum of agreement" only for treatment and evidence of consultation, as set forth in the federal regulations.

RESPONSE: The term "memorandum of agreement" as opposed to the use of "programmatic agreement" is deliberate for the purpose of prescribing the scope of special arrangements. Agencies seeking programmatic alternatives to these procedures are afforded the opportunity to produce administrative rules in 22-3-424, MCA.

COMMENT NO. 40: Rule XII(4) should address the damage some types of survey techniques have on cultural properties.

RESPONSE: Actions involve any activity with the potential to damage resources.

COMMENT NO. 41: Does "individual privacy" in rule XV refer to Tribes? We consider these rules an important opportunity for Montana tribal groups and the Montana SHPO to clarify issues of long standing concern. Long standing issues of concern to tribal people are Native American consultation and confidentiality of information.

RESPONSE: "Individual privacy" refers to the right to privacy found in the Montana Constitution at art. II, sec. 10. Balanced against the right to privacy is the right to know found in art. II, sec. 9, Montana Constitution. While we are sensitive to the issues of Native American consultation and confidentiality, constitutional issues cannot be clarified by rule.

COMMENT NO. 42: Rule XV provides no guidance as to what kinds of information would qualify under this provision. Therefore, it may be said that the proposed rule places a burden of proof upon interested parties to demonstrate to the agency that the "demand of individual privacy clearly exceeds the merits of public disclosure." The rule should provide the same definition of the types of information and documents to be considered, and should be more consistent with existing, federal law provisions regarding the confidentiality of information in the management of cultural resources. Therefore, we recommend that the proposed rule be rewritten as follows:

RULE XV RIGHTS AS REGARDS TO PROPRIETARY AND/OR CONFIDENTIAL INFORMATION (1) Organizations or individuals may provide an agency with written requests that any document, or any part(s) of any document submitted to the agency be treated by that agency as containing proprietary and/or confidential information. Proprietary information consists of that information which is owned by an individual, organization, sole proprietor, or any form of corporation, under any patent, trademark or copyright they may hold, or are in process of establishing at the time of the submission. It also includes information which if generally available, would provide any other parties with financially advantageous opportunities in any form of commerce or legal proceeding. Confidential information includes proprietary information and any information, which if disclosed, could:

(a) lead to the harm, theft or destruction of heritage properties or any components of such properties;

(b) lead to a significant invasion of personal privacy; or

(c) impede the use of a traditional religious site by practitioners.

(2) If the agency disagrees with any request made under this rule, then within five calendar days after the submittal of written requests under this rule, the agency shall notify the requesting party, in writing, that the request has been denied. In so doing, the agency shall provide written support which demonstrates that the merits of public disclosure clearly exceeds the right of the

interested party to have the information treated as proprietary and/or confidential.
(3) In all cases, where the prescriptions of 16 U.S.C. 470w-3 have been implemented by a Federal agency, for any undertaking or the portions of such undertakings, the state agency shall automatically accept the nature and extent of the confidentiality provisions afforded to specific documents, parts of documents, or information, as may be included under the provisions of said 16 U.S.C. 470w-3.

RESPONSE: The language in the rule is in conformance with the statutes, case law, and policies of the state. As a state agency, we must abide by state law. Under the Montana Constitution, we cannot automatically accept the confidentiality of documents under federal law, nor can an agency refuse to follow the Montana Constitution. The rule was deliberately written to place the burden on the party seeking confidentiality because under the Montana Constitution documents are public unless an individual's right to privacy clearly exceeds the merits of public disclosure.

COMMENT NO. 43: In rule XVI(3), first paragraph, sixth sentence, we recommend this change[:]
"But the system developed must . . . to assure interested parties a consistent and timely response to all such issues."
RESPONSE: The sentence refers to the agencies requesting information and, by extension, interested parties.

COMMENT NO. 44: The standards and guidelines in rule XVI should be incorporated by reference.
RESPONSE: The rules are revised as the result of this suggestion to incorporate the material referred to by reference.

COMMENT NO. 45: The standards and guidelines in rule XVI should be specifically identified so they can be incorporated by reference.
RESPONSE: The rules are revised as the result of this suggestion to specifically identify the materials incorporated by reference.

BOARD OF TRUSTEES
MONTANA HISTORICAL SOCIETY

By: _____
William Holt, President

_____
Rule Reviewer

Certified to the Secretary of State July 10, 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.	)	CORRECTED NOTICE OF AMENDMENT OF RULES (Public Water Supply)

To: All Interested Persons

1. On April 30, 1998, the board published amendment of the above-listed rules at page 1167 of the 1998 Montana Administrative Register, Issue No. 8.

2. An error has been detected in the proposed amendment published for 17.38.226. The new paragraph (1)(a)(ii) should follow (1)(a)(i)(B). Thus, the notice of amendment should read as follows:

17.38.226 CONTROL TESTS--SURFACE SUPPLIES (1) A supplier of water utilizing a water treatment plant for surface water or groundwater under the direct influence of surface water where the plant employs in its operation coagulation, settling, softening, or filtration, shall perform at least daily, unless otherwise specified, the following chemical control tests on the filtered water, list them on a report form approved by the department, and submit the completed form monthly to the department:

(a) Chlorine residual:

(1)(a)(i) through (1)(a)(i)(B) Remain the same.

(1)(a)(ii) The supplier of water shall measure the residual chlorine concentration in water from the distribution system at least once each day as specified in ARM 17.38.208(4)(e)(iii).

(1)(b) through (f) Remain the same.

(2) A supplier of water utilizing surface water or ground water under the direct influence of surface water which does not filter but which employs disinfection shall perform, at least daily, unless otherwise specified, the following chemical control tests on the treated water, list them on a report form approved by the department and submit the completed form monthly to the department:

(a) chlorine residual--must be monitored according to department Circular PWS-3 (~~June 1991~~ 1998 edition);

(b) pH value;

(c) turbidity.

(i) A supplier of water utilizing a surface source and not providing filtration treatment must monitor, as specified in these rules and department Circular PWS-3 (~~June 1991~~ 1998 edition), unless the department has determined that filtration is required. The department may specify alternative monitoring requirements, as appropriate, until filtration is in place.

(ii) A supplier of water that uses a ground water source under the direct influence of surface water and does not provide filtration treatment must begin monitoring as specified in department Circular PWS-3 (~~June 1991~~ 1998 edition), 6 months after the department determines that the ground water source is under the direct influence of surface water, unless the department has determined that filtration is required. If filtration is required, the department may specify alternative monitoring requirements, as appropriate, until filtration is in place.

(2)(c)(iii) through (iv) Remain the same.

(3) The department hereby adopts and incorporates by reference department Circular PWS-3 (~~June 1991~~ 1998 edition), which sets forth criteria to avoid filtration of a surface water source or a ground water source under the direct influence of surface water. A copy may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901. AUTH: 75-6-103, MCA; IMP: 75-6-103, MCA

3. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on June 30, 1998.

BOARD OF ENVIRONMENTAL REVIEW

CINDY E. YOUNKIN, Chairperson

Reviewed by:

JOHN F. NORTH, Rule Reviewer

Certified to the Secretary of State July 20, 1998.

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

In the matter of the transfer of rules 11.13.101, 11.13.103, 11.13.104, 11.13.106, 11.13.108, 11.13.110, 11.13.114, 11.13.116, 11.13.201, 11.13.203, 11.13.205, 11.13.207, 11.13.209, 11.13.211, 11.13.215, 11.13.219 and 11.13.221 pertaining to therapeutic youth programs	)	NOTICE OF TRANSFER

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the therapeutic youth programs is transferred from the Department of Family Services to the Department of Public Health and Human Services. In order to implement that legislation, rules 11.13.101, 11.13.103, 11.13.104, 11.13.106, 11.13.108, 11.13.110, 11.13.114, 11.13.116, 11.13.201, 11.13.203, 11.13.205, 11.13.207, 11.13.209, 11.13.211, 11.13.215, 11.13.219 and 11.13.221 are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 37.

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

OLD	NEW	
11.13.101	37.37.101	Therapeutic Youth Group Homes, Definitions
11.13.103	37.37.105	Therapeutic Youth Group Homes, Applicability and Participation
11.13.104	37.37.108	Therapeutic Youth Group Homes, Medical Necessity, Staffing – of Moderate Level ~~Therapeutic Youth Group~~ Homes
11.13.106	37.37.111	Therapeutic Youth Group Homes, Medical Necessity, Staffing – of Campus Based Level ~~Therapeutic Youth Group~~ Homes
11.13.108	37.37.115	Therapeutic Youth Group Homes, Medical Necessity, Staffing – of Intensive Level ~~Therapeutic Youth Group~~ Homes
11.13.110	37.37.120	Therapeutic Youth Group Homes, Medical Necessity, Additional Training Requirements
11.13.114	37.37.130	Therapeutic Youth Group Homes,

		Medical Necessity, Well-child Screening and Chemotherapy
11.13.116	37.37.136	Therapeutic Youth Group Homes, Medical Necessity, Additional Case Records
11.13.201	37.37.303	Therapeutic Family Care, Compliance with Applicable Requirements
11.13.203	37.37.301	Therapeutic Family Care, Definitions
11.13.205	37.37.310	Therapeutic Family Care, Levels of Service
11.13.207	37.37.311	Therapeutic Family Care, Staff
11.13.209	37.37.316	Therapeutic Family Care, Treatment Parents
11.13.211	37.37.323	Therapeutic Family Care, Individual Treatment Plan
11.13.215	37.37.330	Therapeutic Family Care, Well-child Screening and Chemotherapy
11.13.219	37.37.336	Therapeutic Family Care, Medical Necessity, Additional Case Records
11.13.221	37.37.318	Therapeutic Family Care, Medical Necessity, Additional Training Requirements

3. The transfer of rules is necessary because this program was transferred from the Department of Family Services 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 July 20, 1998.

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

In the matter of the transfer of rules 20.14.501 and 20.14.503 through 20.14.512, and the transfer and amendment of 20.14.502 pertaining to certification of mental health professionals	)))))))	NOTICE OF TRANSFER AND AMENDMENT

TO: All Interested Persons

1. On June 11, 1998, the Department of Public Health and Human Services published notice of the proposed transfer of rules 20.14.501 and 20.14.503 through 20.14.512, and the transfer and amendment of 20.14.502 pertaining to certification of mental health professionals at page 1485 of the 1998 Montana Administrative Register, issue number 11.

2. The Department has transferred rules 20.14.501 and 20.14.503 through 20.14.512 and transferred and amended rule 20.14.502 as proposed.

3. No comments or testimony were received.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State July 20, 1998.

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

In the matter of the transfer of rules 46.6.102, 46.6.103, 46.6.105, 46.6.201, 46.6.303 through 46.6.305, 46.6.307, 46.6.405 through 46.6.412, 46.6.501 through 46.6.513, 46.6.516 through 46.6.521, 46.6.540, 46.6.602, 46.6.701, 46.6.705, 46.6.801, 46.6.901, 46.6.903, 46.6.906, 46.6.907, 46.6.1101, 46.6.1201 through 46.6.1203, 46.6.1302, 46.6.1304 through 46.6.1306, 46.6.1312, 46.6.1313, 46.6.2501, 46.6.2505, 46.6.2510, 46.6.2515, 46.6.2520, 46.6.2525, 46.6.2530, 46.6.2535, 46.6.2540, 46.6.2545, 46.6.2550, 46.6.2555, 46.6.2560, 46.6.2565, 46.6.2570, 46.6.2601, 46.6.2603, and 46.6.2605 pertaining to the vocational rehabilitation program	)	NOTICE OF TRANSFER

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the vocational rehabilitation program is transferred from the Department of Social and Rehabilitation Services to the Department of Public Health and Human Services. In order to implement that legislation, rules 46.6.102, 46.6.103, 46.6.105, 46.6.201, 46.6.303 through 46.6.305, 46.6.307, 46.6.405 through 46.6.412, 46.6.501 through 46.6.513, 46.6.516 through 46.6.521, 46.6.540, 46.6.602, 46.6.701, 46.6.705, 46.6.801, 46.6.901, 46.6.903, 46.6.906, 46.6.907, 46.6.1101, 46.6.1201 through 46.6.1203, 46.6.1302, 46.6.1304 through 46.6.1306, 46.6.1312, 46.6.1313, 46.6.2501, 46.6.2505, 46.6.2510, 46.6.2515, 46.6.2520, 46.6.2525, 46.6.2530, 46.6.2535, 46.6.2540, 46.6.2545, 46.6.2550, 46.6.2555, 46.6.2560, 46.6.2565, 46.6.2570, 46.6.2601, 46.6.2603 and 46.6.2605 are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 30.

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

OLD	NEW	
46.6.102	37.30.101	Definitions
46.6.103	37.30.105	Vocational Rehabilitation Program: Implementation of Rehabilitation Act of 1973
46.6.105	37.30.106	Vocational Rehabilitation Program: Employment Goals
46.6.201	37.30.111	Vocational Rehabilitation Program: Order of Selection
46.6.303	37.30.301	Vocational Rehabilitation Program: Application
46.6.304	37.30.304	Vocational Rehabilitation Program: Determination of Eligibility
46.6.305	37.30.305	Vocational Rehabilitation Program: Client Eligibility Criteria
46.6.307	37.30.310	Vocational Rehabilitation Program: Extended Evaluations
46.6.405	37.30.401	Vocational Rehabilitation Program: Purpose of Financial Need Determination Standard
46.6.406	37.30.404	Vocational Rehabilitation Program: Adaptations of Financial Need Standard
46.6.407	37.30.405	Vocational Rehabilitation Program: Determination and Use of Financial Need Prior to Service
46.6.408	37.30.406	Vocational Rehabilitation Program: Information for Determination of Financial Need
46.6.409	37.30.407	Vocational Rehabilitation Program: Calculation of Financial Need Standard
46.6.410	37.30.411	Vocational Rehabilitation Program: Income and Resources
46.6.412	37.30.416	Vocational Rehabilitation Program: Payment of Tuition for Higher Education
46.6.501	37.30.701	Vocational Rehabilitation Program: Availability of Services
46.6.502	37.30.705	Vocational Rehabilitation Program: Personal and Vocational Adjustment Services
46.6.503	37.30.706	Vocational Rehabilitation Program: Physical and Mental Restoration Services
46.6.504	37.30.710	Vocational Rehabilitation Program: Travel and Moving Services
46.6.505	37.30.711	Vocational Rehabilitation Program: Maintenance
46.6.506	37.30.712	Vocational Rehabilitation Program: Placement Services
46.6.507	37.30.713	Vocational Rehabilitation Program:

		Vocational Items
46.6.508	37.30.717	Vocational Rehabilitation Program: Assistive Services for Persons with Disabilities
46.6.509	37.30.718	Vocational Rehabilitation Program: Services to Family Members and Dependents
46.6.510	37.30.719	Vocational Rehabilitation Program: Other Goods and Services
46.6.511	37.30.723	Vocational Rehabilitation Program: Post Employment Services
46.6.512	37.30.724	Vocational Rehabilitation Program: Counseling and Guidance Services
46.6.513	37.30.725	Vocational Rehabilitation Program: Work Activity Services
46.6.516	37.30.729	Guidelines and Standards for Services Provided by Clients
46.6.517	37.30.730	Vocational Rehabilitation Program: Financial Limitations
46.6.518	37.30.733	Vocational Rehabilitation Program: Instructional Services for Blind and Visually Impaired Vocational Rehabilitation Clients
46.6.519	37.30.734	Vocational Rehabilitation Program: Attendant Services
46.6.520	37.30.735	Vocational Rehabilitation Program: Licenses and Fees
46.6.521	37.30.736	Vocational Rehabilitation Program: Work Adjustment Training
46.6.540	37.30.702	Vocational Rehabilitation Program: Services Available to Applicants
46.6.602	37.30.1030	Rehabilitation Facilities: Policies on Establishment
46.6.701	37.30.801	Group Services Program: Availability of Services
46.6.705	37.30.805	Certification of Handicapped Persons for Minimum Wage Exemptions
46.6.801	37.30.901	Statement of Civil Rights Compliance
46.6.901	37.30.1001	Standards for Providers: Certification
46.6.903	37.30.1002	Standards for Providers: Certification of Providers of Programs or Services
46.6.906	37.30.1006	Standards for Providers: On-Site Evaluation
46.6.907	37.30.1007	Standards for Providers: Professional Providers
46.6.1101	37.30.1301	Confidential Information
46.6.1201	37.30.1401	Right to Fair Hearings
46.6.1202	37.30.1402	Provider Client Grievances Procedures
46.6.1203	37.30.1403	Fair Hearings: Review of Fair Hearing Decisions

46.6.1302	37.30.1602	Extended Employment Services: Objectives
46.6.1304	37.30.1603	Extended Employment Services: Responsibility for Functions
46.6.1305	37.30.1608	Extended Employment Services: Extended Employment Committees
46.6.1306	37.30.1612	Extended Employment Services: Program Requirements
46.6.1309	37.30.1613	Extended Employment Services: Eligibility
46.6.1312	37.30.1614	Extended Employment Services: Supported Employment Requirements
46.6.1313	37.30.1615	Extended Employment Services: Sheltered Employment Requirements
46.6.2501	37.30.2501	Definitions
46.6.2505	37.30.2505	Establishment of Business Enterprise Facilities
46.6.2510	37.30.2510	Issuance and Conditions of Certification
46.6.2515	37.30.2515	Transfer and Termination
46.6.2520	37.30.2520	Equipment, Stocks and Insurance
46.6.2525	37.30.2525	Vendor Responsibilities
46.6.2530	37.30.2530	Training of Blind Vendors
46.6.2535	37.30.2535	Department's Set Aside Funds
46.6.2540	37.30.2540	Necessary Compliance
46.6.2545	37.30.2545	Organization and Election - State Committee of Blind Vendors
46.6.2550	37.30.2550	Functions of Committee
46.6.2555	37.30.2555	Temporary Operation of Facility by the Department
46.6.2560	37.30.2560	Contracts With Vending Companies
46.6.2565	37.30.2565	Distribution and Use of Vending Machine Income on Federal Property
46.6.2570	37.30.2570	Informing Vendors of Rights and Responsibilities
46.6.2601	37.30.2601	Visual Medical Program: Purposes
46.6.2603	37.30.2605	Visual Medical Program: Services
46.6.2605	37.30.2608	Visual Medical Program: Eligibility Requirements

3. The transfer of rules is necessary because this program was transferred from the Department of Social and Rehabilitation Services 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 July 20, 1998.

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

In the matter of the transfer of rules 46.6.1601 through 46.6.1604 pertaining to independent living services	))))	NOTICE OF TRANSFER

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the independent living services program is transferred from the Department of Social and Rehabilitation Services to the Department of Public Health and Human Services. In order to implement that legislation, rules 46.6.1601 through 46.6.1604, are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 31.

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

OLD	NEW	
46.6.1601	37.31.101	Independent Living Rehabilitation Program: Purposes
46.6.1602	37.31.201	Independent Living Rehabilitation Program: Services
46.6.1603	37.31.401	Independent Living Rehabilitation Program: Eligibility Requirements
46.6.1604	37.31.206	Independent Living Rehabilitation Program: Provision of Services

3. The transfer of rules is necessary because this program was transferred from the Department of Social and Rehabilitation Services 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 July 20, 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 VIII, amendment of rules 46.12.4810 and 46.12.5007 and repeal of rules 46.12.1601, 46.12.1603, 46.12.1605, 46.12.1607, 46.12.1701, 46.12.1703, 46.12.1705 and 46.12.1707 pertaining to rural health clinics and federally qualified health centers	))))))))))	NOTICE OF ADOPTION, AMENDMENT AND REPEAL

TO: All Interested Persons

1. On April 16, 1998, the Department of Public Health and Human Services published notice of the proposed adoption of rules I through VIII, amendment of rules 46.12.4810 and 46.12.5007 and repeal of rules 46.12.1601, 46.12.1603, 46.12.1605, 46.12.1607, 46.12.1701, 46.12.1703, 46.12.1705 and 46.12.1707 pertaining to rural health clinics and federally qualified health centers at page 886 of the 1998 Montana Administrative Register, issue number 7.

2. The Department has amended rules 46.12.4810 and 46.12.5007 and repealed rules 46.12.1601, 46.12.1603, 46.12.1605, 46.12.1607, 46.12.1701, 46.12.1703, 46.12.1705 and 46.12.1707 as proposed.

3. The Department has adopted the rules I (46.12.1708) and IV (46.12.1718) as proposed.

4. The Department has adopted 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.

[RULE II] (46.12.1712) RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, PROVIDER PARTICIPATION REQUIREMENTS (1) and (2) remain as proposed.

(3) As a condition of participation in the Montana ~~medicare~~ medicaid program, a rural health clinic must be and remain certified by the medicare program under the conditions of certification specified in 42 CFR part 491, subpart A.

(4) As a condition of participation in the Montana ~~medicare~~ medicaid program, an FQHC must be a federally qualified health center as defined in 42 USC 1396d(l)(2)(B).

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

[RULE III] (46.12.1713) RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, SERVICE REQUIREMENTS (1) The Montana ~~medicare~~ medicaid program will cover and reimburse under the RHC or FQHC services programs only those services that are RHC services or FQHC services as defined in ARM 46.12.1708 and subject to the provisions of ARM 46.12.1708 through 46.12.1726.

(2) The Montana ~~medicare~~ medicaid program will not reimburse an RHC or FQHC for RHC or FQHC services that are:

(2)(a) through (5)(d) remain the same.

(e) RHCs and FQHCs must comply with requirements for ~~medicare~~ medicaid program authorization prior to provision of services or prior to payment, as applicable to the particular category of services being provided.

(5)(f) through (6)(b) remain as proposed.

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

[RULE V](46.12.1719) RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, REIMBURSEMENT FOR CERTAIN PROVIDER-BASED RHCS (1) through (1)(b) remain as proposed.

(2) Provider-based RHCs in rural hospitals with less than 50 beds will be reimbursed the lower of the provider's usual and customary charges for RHC services or 100% of the reasonable costs of providing rural health clinic services to ~~medicare~~ medicaid recipients. The provider's medicaid reimbursement for providing rural health clinic services to medicaid recipients shall be calculated as follows:

(2)(a) through (2)(d) remain as proposed.

(e) The department will compare the total medicaid charges for all cost centers determined as provided in (2)(c) with the total medicaid reasonable cost for all cost centers determined as provided in (2)(d) to arrive at the lower of the provider's usual and customary charges for RHC services or 100% of the reasonable costs of providing rural health clinic services to ~~medicare~~ medicaid recipients, for purposes of (2).

(3) through (7) remain as proposed.

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

[RULE VI] (46.12.1720) RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, REIMBURSEMENT FOR OTHER PROVIDER-BASED ENTITIES AND FOR INDEPENDENT ENTITIES (1) through (3) remain as proposed.

(a) For purposes of (3), the provider's allowable RHC or FQHC costs for RHC or FQHC core services are the provider's costs actually incurred which are reasonable in amount and necessary and proper to the efficient delivery of RHC or FQHC core services. The allowability of costs shall be determined in accordance with medicare reasonable cost principles as set forth

in 42 CFR Part 413 and medicare RHC or FQHC allowable cost principles set forth in 42 CFR 405.2468, and Health Care Financing Authority (HCFA) manual provisions applicable to FQHCs, including the medicare provider reimbursement manual, HCFA Pub. 15 (referred to as Pub. 15 or HIM-15) and HCFA Pub. 27. For purposes of determining the provider's allowable RHC or FQHC costs for RHC or FQHC core services, the department hereby adopts and incorporates by reference 42 CFR Part 413 (1997), 42 CFR 405.2468 (1997), HCFA Pub. 15 and HCFA Pub. 27. The cited authorities are federal statutes, regulations and manuals specifying the methods and rules used to determine reasonable cost for purposes of the medicare program. Copies of the cited regulations and manuals are available upon request from the Health Policy and Services Division, Department of Public Health and Human Services, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3)(a)(i) through (4)(b) remain as proposed

(c) The provider's total RHC or FQHC costs for each category of other ambulatory services in the reporting period shall be divided by the provider's total number of visits for the category of other ambulatory services in the reporting period to determine the cost per visit for each other ambulatory services.

(5) remains as proposed.

(a) For purposes of determining a provider's cost per visit under these rules, costs include ~~the~~ all reasonable costs of providing RHC or FQHC services and visits include all RHC or FQHC visits, regardless of payor source.

(5)(b) through (10)(a) remain as proposed.

(b) for FQHC crossover claims, the difference between the medicare payments for the visit and the ~~RHC's or~~ FQHC's medicaid all-inclusive rate per visit applicable to the service determined in accordance with (2) through (9), less any applicable medicaid copayment amount and any other third party payments in addition to medicare.

(11) remains as proposed.

(a) The department will make cost settlements as provided in ARM 46.12.1726 on the provider's fiscal year basis, but in doing so will separately determine the provider's ~~single~~ all-inclusive rates per visit for each provider reporting period and for any portion of the provider's reporting period in which the applicable productivity screening guidelines or per-visit payment cap differ.

(12) through (12)(c) remain as proposed.

(d) For new providers, including providers new to the Montana ~~medicare~~ medicaid program or new providers after a change in ownership, the department will establish interim rates under this rule based upon the cost report and other information submitted in accordance with ARM 46.12.1718(5). The department will establish the interim rates within 30 days following submission of all information and documentation required under ARM 46.12.1718(5). The provider's claims will not be paid until

an applicable interim rate has been established under this rule.

(e) For existing providers for which the department previously has established an interim rate, the department may revise the interim rate at any time as provided in this rule. The provider may continue to submit claims for payment at the interim rate most recently established by the department and, to the extent all other requirements are met, claims will be paid at such interim rate according to ~~medicare~~ medicaid requirements and procedures.

(13) remains as proposed.

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

[RULE VII] (46.12.1725) RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, SUPPLEMENTAL PAYMENTS FOR MENTAL HEALTH SERVICES AND HEALTH MAINTENANCE ORGANIZATION (HMO) SERVICES ~~(1) The department may require by administrative rule or contract that a managed care organization or HMO that contracts with an RHC or FQHC for provision of services to medicare recipients make payments under its contract with an RHC or FQHC at rates or in amounts not less than the RHC or FQHC would be entitled to receive for services under [Rules V and VI], and that the managed care organization or health maintenance organization must make additional payments to the RHC or FQHC at least quarterly to the extent necessary to assure that contract payments are no less than the medicaid reimbursement provided under these rules.~~

~~(2) If the department requires the managed care organization or health maintenance organization to make payment as provided in (1), the provider must seek such payment from the managed care organization or health maintenance organization rather than from the department.~~

~~(3)~~(1) ~~If the managed care organization or health maintenance organization subject to the payment requirement described in (1) does not make payment as provided in (1) within 60 days after demand from the provider in accordance with the organization's claim procedures or if the department has not provided by administrative rule or contract for payments by a managed care organization or health maintenance organization as described in (1), the~~ A provider may submit a request to the department for ~~such payment~~ the difference between payments under a contract with an MCO or HMO and the rates it would receive under ARM 46.12.1719 or ARM 46.12.1720. A request to the department must include:

(3)(a) through (7) remain the same in text, but are renumbered (1)(a) through (5).

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

[RULE VIII] (46.12.1726) RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, RECONCILIATION AND SETTLEMENT OF INTERIM RATE PAYMENTS (1) through (2) remain as proposed.

(a) If the department has made supplemental payment to a provider under 46.12.1725~~(5)~~(3) prior to a determination of the provider's final reimbursement rate or amount, as part of the reconciliation and settlement provided in this rule, the department will reconcile and settle the amount of such supplemental payments to assure that such supplemental payments are consistent with the actual payments made by the managed care or health maintenance organization and with the final ~~medicare~~ medicaid reimbursement rates and/or amounts determined in accordance with these rules.

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

5. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: Rule VI(3) (46.12.1720) - A commentor requested that the state be considerate of the RHC/FQHCs and not make the revised cost report format for other ambulatory services overly burdensome.

RESPONSE: The major modification to the cost report will be on Worksheet B-1. Ambulatory services will be indicated as visits instead of cost to charge. A copy of Worksheet B-1 can be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, P.O. Box 202951, Helena, Montana, 59620-2951.

COMMENT #2: Rule VII(2) (46.12.1725) - A commentor expressed concern regarding the proposal that providers seek wrap around payments from the managed care organization or HMO. The commentor feels this is unacceptable as this requirement makes it impossible for providers to compete with other contractors available to the HMOs.

Rule VIII (46.12.1726) - The Department may require by administrative rule or contract that a managed care organization or HMO that contracts with an RHC or FQHC for provision of services to Medicare recipients make payments under its contract with an RHC or FQHC at rates or in amounts not less than the RHC or FQHC would be entitled to receive for services under Rules V (46.12.1719) and VI (46.12.1720) and that the managed care organization or health maintenance organization must make additional payments to the RHC or FQHC at least quarterly to the extent necessary to assure that contract payments are no less

than the Medicaid reimbursement provided under these rules. The commentor requests clarification whether this same standard would be applied to services provided to Medicaid recipients.

Rule VII (46.12.1725) - The commentor requested clarification regarding whether the Department will require the provider to seek payments directly from the HMO and if the HMO does not make such payment within 60 days after demand from the provider, then will the provider simply request such payment from the Department. The commentor wondered if follow-up measures will be pursued with the HMO and whether sanctions will be imposed if such payment is not received from the HMO.

Rule VII (46.12.1725) - A commentor argued that given recent guidance from the Health Care Financing Authority (HCFA) to State Medicaid Directors (April 21, 1998), this entire rule as proposed fails to meet the requirement of the federal Balanced Budget Act of 1997 (BBA). The commentor offered to review and provide feedback to the Department on any proposed revisions to this rule to come into compliance with applicable BBA provisions.

RESPONSE: The Department agrees with the commentors after reviewing the HCFA Regional Identical Letter (RIL) dated April 21, 1998. Rule VII (46.12.1725) has been changed to delete subsections (1) and (2). Subsection (3) has been renumbered (1) and now reads "A provider may submit a request to the Department for the difference between payments under a contract with an MCO or HMO and the rates it would receive under Rules V (46.12.1719) or VI (46.12.1720)." Subsections (3)(a) through (e) remain intact, but are renumbered (1)(a) through (e). Sections (4), (5), (6) and (7) have been renumbered to (2), (3), (4) and (5) respectively.

COMMENT #3: A commentor requested more specificity regarding how charges will be used. Some FQHC services are difficult to provide and have charges cover costs, such as Targeted Case Management.

Rule VI(5) (46.12.1720) - A commentor asked for an explanation why the Department believes that it "may be necessary" to use the cost to charge methodology to allocate costs versus the percentage of direct costs methodology currently utilized by Medicare. A commentor argued it is forbidden to utilize a cost to charge methodology in section 501, Allowable Costs, of HCFA Publication 27.

RESPONSE: The Department has never used the lower cost or charge methodology for independent FQHCs and RHCs; the lower cost or charge methodology is prohibited by HCFA Publication 27, Section 501, not the use of cost to charge ratios for allocation purposes. The Department did use a cost to charge ratio

methodology to allocate overhead costs to cost of other ambulatory services on the previous cost report. The Department chose to do so because Medicare does not pay for other ambulatory services and no other reasonable method of allocation was available for use on the previous cost report. At the request of the FQHCs and the Primary Care Association, the Department changed the system of allocation for other ambulatory services.

The Department will have a separate rate for each other ambulatory service provided by the independent FQHC or RHC. The Department will use a method based upon the provider's reasonable costs of providing each other ambulatory service and allocating these costs based on the number of visits rendered for each category of ambulatory services.

The Department intends to continue using the percentage of direct cost methodology to allocate overhead cost to FQHC core services, other ambulatory services and nonreimbursable services. The Department has been using this method on the previous cost report and will not change in the future cost report.

COMMENT #4: Rule I(10) (46.12.1708) - A commentor requested "reporting period" be defined stating the provider's reporting period for Medicaid must be the same as the provider's Medicare reporting period instead of using the provider's fiscal year as the reporting period.

RESPONSE: The reporting period is defined as the RHCs' or FQHCs' chosen fiscal year. This is consistent with Medicare requirements and also assures a provider's cost report will present a consistent representative portrayal of the provider's cost to provide services on a consistent fiscal year basis. This provision will remain unchanged.

COMMENT #5: Rule I(16) (46.12.1708) - A provider association requested the addition of a definition of "health professional".

RESPONSE: The department believes it is neither practical nor necessary to add a definition of the term "health professional" and declines to do so at this time. Due to the rapidly changing nature of the health care industry, it would not be practical to maintain a list of all possible health professionals. The department does not believe it is necessary to list every conceivable type of provider in the rule. Furthermore, Rule III(5)(a) (46.12.1713) requires a health professional to meet the same requirements that would apply if the health professional were to enroll directly in the Montana Medicaid program in the category of service to be provided. That rule goes on to say such requirements include but are not limited to applicable licensure, certification and registration

requirements and applicable restrictions upon the form of entity or category of individual provider that may provide particular services. The health professional is not required to enroll separately as a Medicaid provider. In other words, if a health professional is providing services in an RHC or FQHC and meets the requirements to be covered under Montana Medicaid's State Plan, that health provider's services are considered to be reimbursable. Further, providers will, before providing new "other ambulatory services", request approval from the Department. This insures that the Department and the provider will know in advance whether the services are covered by Medicaid's State Plan, instead of leaving the determination until cost settlement.

COMMENT #6: Rule III(6) (46.12.1713) - A commentor expressed concern with the use of the word "approval" for other ambulatory services added to the services provided by RHCs or FQHCs.

RESPONSE: Rule III(6) (46.12.1713) requires that providers notify the Department in advance and obtain department approval before offering a category or categories of other ambulatory services. While core services consist of a specific group of service categories, other ambulatory services consists of a variety of unrelated services. Upon program enrollment, the Department can give providers information regarding core services requirements, but under current rules, the Department does not know which, if any, other ambulatory services the provider will offer. The Department typically does not find out which services are being offered until years later in the cost settlement process, at which time issues may arise because the provider was unaware of the requirements applicable to the service category and did not know how to report costs, visits and other information relating to the service. Often, the cost settlement process is more laborious because it is difficult or impossible to tell what services were provided. This rule provision is intended to prevent such problems by making it clear in advance what services will be provided.

This advance approval requirement is an exercise of the Department's authority to administer and supervise the Medicaid program as authorized and directed by the legislature in 53-2-201, 53-6-101, 53-6-111 and 53-6-113, MCA. The prior approval requirement is an extension of provider enrollment. Prior approval is necessary to enable the Department to track and obtain data regarding the types and utilization of other ambulatory services being provided by each provider, to allow the Department to follow up to assure that the services are provided in accordance with applicable standards and requirements and to allow the Department an opportunity to give each provider advance information and instructions regarding applicable standards and requirements. In addition, the Department needs to know what other ambulatory service

categories are being offered because under Rule VI (46.12.1720) the Department will set a separate per visit rate for each category of other ambulatory services offered by the provider. The Department finds the current lack of a prior notice and approval requirement an unacceptable option. Therefore, Rule III(6) through (6)(b)(46.12.1713) is adopted as proposed.

COMMENT #7: Rule IV(5)(b) and (8)(46.12.1718) - A commentor expressed concern with the Department's requirement of "settled" Medicare cost reports. The commentor stated it is not feasible for the provider to have settled Medicare cost reports, therefore, the Department should only require copies of filed Medicare cost reports.

RESPONSE: Rule IV(5)(b) (46.12.1718) states what is required when a new provider enrolls or a provider has had a change in ownership. Rule IV(8) (46.12.1718) requires an RHC in a rural hospital with less than 50 beds to submit a copy of the provider's most recent Medicare hospital cost report that has been settled by Medicare. If an RHC becomes affiliated with a hospital, the hospital would already have a settled Medicare cost report, therefore, the requirement should impose no undue hardship on the RHC.

COMMENT #8: Rule V (46.12.1719) - A commentor recommended the Department follow the HCFA instructions that all provider based RHC providers must submit a manual version of the HCFA-222-92 cost report form in addition to the hospital cost report.

RESPONSE: The Department agrees and will adopt this recommendation.

COMMENT #9: Rule VI (46.12.1720) - A commentor asked when the Department will be filing a State Plan Amendment to incorporate changes in the methodology of reimbursement from the Department's single all-inclusive rate. The commentor asked if the Department has any assurances that HCFA will approve this State Plan Change.

RESPONSE: The Department consulted the HCFA Regional Office in Denver, which confirmed that states have considerable flexibility in establishing their own billing codes/fees specification for "other ambulatory services" for RHCs and FQHCs as long as the applicable Federal regulations are adhered to. The Department will file the State Plan Amendment (SPA) on or before September 30, 1998, as required by Federal regulations. The Department does not have any written guarantee the SPA will be approved, but has no reason to believe it will be denied by HCFA.

COMMENT #10: Rule VI (46.12.1720) - A commentor requested explanation how this rule complies with 42 CFR 447.371(b) in

paying independent RHCs that don't offer other ambulatory services. The cited regulation states independent RHCs must be paid for their services at the reasonable cost rate per visit determined by a Medicare carrier.

A commentor observed the Department has selected 42 CFR 447.371(c)(2) as the methodology for reimbursing all FQHCs and independent RHCs that do offer other ambulatory services. Under this option, rate for core services must be the Medicare reimbursement rate per visit. The commentor argued this statement implies the rate would be determined by the Medicare carrier. The commentor requested an explanation how this rule complies with the federal regulation.

A commentor stated that in the absence of specific federal Medicaid regulations for FQHC reimbursement, HCFA guidelines have consistently referenced Medicaid RHC reimbursement regulations 42 CFR 447.371. The commentor deemed it unnecessary to provide the level of detail included in the rules on calculation of FQHC and RHC core visit rates. The commentor suggested a simple reference to the Medicaid core visit rate the same as the core visit rate established by Medicare would be adequate.

RESPONSE: The Department will determine the allowability of costs for core services by adopting Medicare's reasonable cost principles in 42 CFR part 413 and 42 CFR 405.2468. The Department may set its own rate not to exceed the upper limit set by HCFA. The Department believes that the proposed methodologies comply with all requirements in the cited regulations. Also, Medicare does not reimburse some of these services. The Department could not simply adopt the Medicare rate to pay providers, since all applicable services are not considered in the Medicaid core visit rate. The department believes reference should be made in the rule to both FQHC and RHC so there is no question in the future that this rule pertains to both types of providers.

COMMENT #11: Rule VI(4) (46.12.1720) - A commentor questioned the Department's intent to set a separate rate for each other ambulatory service provided by an FQHC or RHC without utilizing payment caps or productivity screening guidelines. The commentor also recommended adding the word "each" between "for" and "other" in (4)(c).

RESPONSE: The Department intends to set a rate for each "other ambulatory" service provided by an FQHC or RHC by dividing total costs by the number of visits for each category of service provided. The Department agrees the word "each" should be added between "for" and "other" in (4)(c), and the rule is amended accordingly.

COMMENT #12: Rule VI(9) (46.12.1720) - A commentor asked if the Department adopts additional tests of reasonableness, such tests be imposed only after the state has analyzed the payment system and cost containment mechanisms and assured HCFA that its methodology covers the reasonable cost for core and other ambulatory services. The commentor recommended language in this subsection be amended as follows:

> Costs for which productivity screening guidelines or payment caps have not been established by Medicare may be disallowed if the department determines, after study and analysis, that the costs are unreasonable or unnecessary pursuant to Medicare reasonable cost principles provided at 42 CFR 405.2468(c) and assurance has been provided to HCFA that such cost containment mechanisms are in compliance with the State's requirement to cover the reasonable costs of providing FQHC and RHC core and other ambulatory services to Medicaid recipients.

RESPONSE: Rule VI(9) (46.12.1720) is modeled after a provision in HCFA Publication 27 (section 502), the Health Care Financing Administration (HCFA) manual that sets forth the Medicare RHC and FQHC cost per visit methodology and limits. This provision complements the reasonable cost provisions in subsections (3)(b) and (4)(b) of the rule, by reiterating that all costs are subject to the Medicare reasonable cost requirements established in the rule. This provision makes it clear that even though there may not be a specific limit such as a cap that applies to the cost item, the cost is subject to disallowance under the adopted Medicare reasonable cost principles. These principles apply to all costs under this rule, regardless of whether the costs are subject to limits under Medicare or under subsections (6) or (7) of this rule. Under the Medicare reasonable cost principles in 42 CFR part 413, costs would be reviewed and allowed or disallowed on a case by case basis using appropriate measures of reasonableness. This provision does not impose an across the board limit in every case regardless of the specific circumstances involved. The Department declines to adopt the suggested language.

COMMENT #13: Rule VI(10)(b) (46.12.1720) - A commentor noted that reference to RHC should be removed from the first sentence in this subsection as it is defining payment methodology for FQHC. Also, since Medicare doesn't cover other ambulatory services, reference to the per visit rate applicable to the service seemed unnecessary.

RESPONSE: Rule VI(10)(b) (46.12.1720) states how FQHC crossover claims are to be paid. The Department believes the per visit rate applicable to the service is suitable as written. The Department agrees with the first comment and has deleted RHC from the first sentence.

COMMENT #14: Rule VI(11)(a) (46.12.1720) - A Commentor pointed out that if the Department accepts the commentor's recommendation to change "fiscal year basis" to "reporting period basis", the wording would have to be changed in this rule.

RESPONSE: The Department is retaining the term "fiscal year basis". This is consistent with Medicare requirements and also assures a provider's cost report will present a consistent representative portrayal of the provider's cost to provide services on a consistent fiscal year basis.

COMMENT #15: Rule VI(12) (46.12.1720) - A commentor suggested removing the word "temporary" in the first sentence since all interim rates are considered temporary. The commentor believed this was confusing and unnecessary.

RESPONSE: The Department chooses to retain the word "temporary" since it provides the clearest description of the term "interim rates".

COMMENT #16: Rule VI(12)(e) (46.12.1720) - A commentor noted the Department has indicated its goal is to reimburse FQHCs and RHCs on an interim basis at rates that will result in minimal overpayments/underpayments to be settled at the end of a provider's reporting period. The commentor recommended adding the following after the first sentence in Rule VI(12)(d) (46.12.1720):

> The Department will review and revise a provider's interim rate(s) within 30 days following submission of a complete and accurate cost report as required by Rule IV (46.12.1720).

RESPONSE: The Department cannot guarantee that the interim rates can be reviewed and revised within 30 days following submission of the cost report by a provider. As indicated in the rationale distributed to providers and the provider association, there is only one staff person who completes all settlements and therefore, this person may not be able to complete this requirement in the 30 days suggested. The Department declines to adopt the proposed language.

COMMENT #17: Rule VIII(1) (46.12.1726) - The commentor suggested the Department should include a maximum 18 month time limit to determine the provider's final reimbursement for the reporting period. The commentor argued Medicare takes 12 to 15 months to settle and believed the department should not blame Medicare for delay in receiving the final reconciliation. Medicaid takes up to 2 years to perform a similar function. The commentor suggested the rule should include interest payments for underpayments made to providers if the suggested time line

cannot be met. The commentor believed that the Department's lack of adequate staff is verification of failure by the Department to appropriately support programs covered under Medicaid. The commentor is concerned about increased complexity of the reimbursement system being proposed and not having adequate staff to support this system.

RESPONSE: The Department declines to adopt a specific time limit for completion of cost settlement under Rule VIII(1) (46.12.1726), because there are various factors over which the Department has no control that affect the timing of cost settlements. These factors include a variety of tasks the Department must complete for each of a large number of providers, whereas each provider is responsible only for submission of its own cost reports and related documentation and information. Since the Department uses settled Medicare cost reports and rates, and Medicare limits, the Department's cost settlements must await receipt of Medicare program information, the timing of which is beyond the Department's control. In addition, the Department does not have adequate staff to assure that every cost settlement always can be completed within a particular period of time. The staff available to complete the cost settlements for FQHCs and RHCs also must complete cost settlements for a number of other provider types and must complete other administrative duties. While the Department prefers to complete cost settlements as soon as possible after the receipt of all required information and documentation, it is not feasible to specify a particular period by which the Department must complete cost settlements.

COMMENT #18: Rule VIII(3) (46.12.1726) - A commentor suggested Rule VIII(3) (46.12.1726) should be dropped as the commentor could find no reference in the Medicare reimbursement principles for any reconciliation other than the annual reconciliation provided for in 42 CFR 405.2466. If the Department determines interim payments do not approximate final payments due to providers, the commentor suggested the Department adjust interim rates as provided in Rule VI(12)(b) (46.12.1720).

RESPONSE: It may be appropriate for the Department to perform partial reconciliations or settlements if the Department finds changes with current billings as compared to past billings. This assures that a large overpayment/underpayment will not occur due to changes made at the provider's facility. Rule VIII(3) (46.12.1726) was not changed, but the Department confirms that interim settlements will be made in appropriate circumstances. A mid-year interim settlement can be initiated by the Department by delivery of a certified letter to the provider.

COMMENT #19: Rule VIII(7) (46.12.1726) - A commentor stated he is aware of several times in the past few years that the

Department's rules referenced the incorrect fair hearings ARMs for RHCs and FQHCs which resulted in mishandling and delay of provider appeals. The commentor requested a specific reference to the appropriate fair hearings rules of RHCs and FQHCs be published and if these rules are amended and/or renumbered, a brief rule amendment process, possibly without a formal hearing, should be utilized to correct this reference.

RESPONSE: The rule as written informs the provider they may request an administrative review or fair hearing. Anytime the Department issues an adverse action to a provider, the Department instructs the provider of their appeal rights and the ARMs which providers may reference. The Department may also include these ARM references in the FQHC and RHC provider manuals if available at the time the manuals are updated. Including citations regarding fair hearings in this rule will not necessarily prevent errors. The current rule includes a citation and those alleged errors referenced in the comment occurred under the current rule.

6. These rule changes will be applied effective retroactively to July 1, 1998. Due to a lack of staff, the department was unable to file this notice sooner. Delayed publication of the rules does not have a negative impact on the public.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State July 20, 1998.

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

In the matter of the transfer of rules 46.13.101, 46.13.102, 46.13.104 through 46.13.107, 46.13.201 through 46.13.207, 46.13.301 through 46.13.305, 46.13.401 through 46.13.405, 46.13.501 and 46.13.502 pertaining to low income energy assistance program	)	NOTICE OF TRANSFER

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the low income energy assistance program is transferred from the Department of Social and Rehabilitation Services to the Department of Public Health and Human Services. In order to implement that legislation, rules 46.13.101, 46.13.102, 46.13.104 through 46.13.107, 46.13.201 through 46.13.207, 46.13.301 through 46.13.305, 46.13.401 through 46.13.405, 46.13.501 and 46.13.502 are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 70.

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

OLD	NEW	
46.13.101	37.70.101	Safeguarding/Sharing Information
46.13.102	37.70.102	Role of the Local Contractor
46.13.104	37.70.106	Fair Hearings
46.13.105	37.70.107	Referrals to the Department of Revenue
46.13.106	37.70.110	Fraud/Transfer of Property
46.13.107	37.70.115	Overpayments and Underpayments
46.13.201	37.70.301	Interviews Required and Content of Interviews
46.13.202	37.70.304	Applications to be Voluntary
46.13.203	37.70.305	Application
46.13.204	37.70.310	Investigation of Eligibility
46.13.205	37.70.311	Procedures Followed in Processing Applications
46.13.206	37.70.312	Notification of Eligibility
46.13.207	37.70.318	Notice of Adverse Action
46.13.301	37.70.401	Definitions
46.13.302	37.70.402	Eligibility Requirements For Certain Types of Individuals and Households
46.13.303	37.70.406	Tables Of Income Standards
46.13.304	37.70.407	Calculating Income
46.13.305	37.70.408	Resources
46.13.401	37.70.601	Benefit Award Matrices

46.13.402	37.70.602	Benefit Awards: Miscellaneous
46.13.402A	37.70.603	Reversion of Benefits
46.13.403	37.70.607	Method of Payment
46.13.404	37.70.608	Adjustment of Payments to Available Funds
46.13.501	37.70.901	Emergency Assistance
46.13.502	37.70.902	Supplemental Assistance

3. The transfer of rules is necessary because this program was transferred from the Department of Social and Rehabilitation Services 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 July 20, 1998.

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

In the matter of the transfer of rules 46.14.101, 46.14.102, 46.14.104 through 46.14.106, 46.14.206 through 46.14.208, 46.14.301, 46.14.302, 46.14.401 and 46.14.402 pertaining to the low income weatherization assistance program	)	NOTICE OF TRANSFER

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the low income weatherization assistance program is transferred from the Department of Social and Rehabilitation Services to the Department of Public Health and Human Services. In order to implement that legislation, rules 46.14.101, 46.14.102, 46.14.104 through 46.14.106, 46.14.206 through 46.14.208, 46.14.301, 46.14.302, 46.14.401 and 46.14.402 are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 71.

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

OLD	NEW	
46.14.101	37.71.101	Safeguarding/Sharing Information
46.14.102	37.71.102	Role of the Local Contractor
46.14.104	37.71.106	Fair Hearings
46.14.105	37.71.107	Referrals to the Department of Revenue
46.14.106	37.71.110	Fraud
46.14.206	37.71.301	Notification of Eligibility Determination
46.14.207	37.71.304	Notice of Adverse Action
46.14.208	37.71.308	Application/Eligibility
46.14.301	37.71.401	Low Income Weatherization Assistance Program, Definitions
46.14.302	37.71.404	Low Income Weatherization Assistance Program, Eligibility
46.14.401	37.71.601	Eligibility for Service, Priorities
46.14.402	37.71.602	Determining Low Income Weatherization Assistance

3. The transfer of rules is necessary because this program was transferred from the Department of Social and Rehabilitation Services 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 July 20, 1998.

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

In the matter of the transfer of rules 46.15.101 through 46.15.103 pertaining to refugee assistance	))))	NOTICE OF TRANSFER

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the refugee assistance program is transferred from the Department of Social and Rehabilitation Services to the Department of Public Health and Human Services. In order to implement that legislation, rules 46.15.101 through 46.15.103 are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 74.

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

OLD	NEW	
46.15.101	37.74.101	Definitions
46.15.102	37.74.102	Refugee Cash Assistance
46.15.103	37.74.103	Refugee Medical Assistance

3. The transfer of rules is necessary because this program was transferred from the Department of Social and Rehabilitation Services 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 July 20, 1998.

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

In the matter of the transfer of rules 46.19.101, 46.19.201, 46.19.202, 46.19.206, 46.19.207, 46.19.301, 46.19.302, 46.19.306, 46.19.401 through 46.19.403, 46.19.406, 46.19.407, 46.19.410 through 46.19.412, 46.19.501 and 46.19.502 pertaining to telecommunications for persons with disabilities	)	NOTICE OF TRANSFER

TO: All Interested Persons

1. Pursuant to Chapter 546, Laws of Montana 1995, effective July 1, 1995, the telecommunications for persons with disabilities program is transferred from the Department of Social and Rehabilitation Services to the Department of Public Health and Human Services. In order to implement that legislation, rules 46.19.101, 46.19.201, 46.19.202, 46.19.206, 46.19.207, 46.19.301, 46.19.302, 46.19.306, 46.19.401 through 46.19.403, 46.19.406, 46.19.407, 46.19.410 through 46.19.412, 46.19.501 and 46.19.502 are transferred to the Department of Public Health and Human Services ARM Title 37, Chapter 36.

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

OLD	NEW	
46.19.101	37.36.101	Definitions
46.19.201	37.36.201	Assessment
46.19.202	37.36.202	Exemptions
46.19.206	37.36.206	Reporting Requirements
46.19.207	37.36.207	Examination of Records
46.19.301	37.36.401	Loans
46.19.302	37.36.402	Ownership
46.19.306	37.36.406	Security Deposit
46.19.401	37.36.601	Provision of Information
46.19.402	37.36.602	Application Process
46.19.403	37.36.603	Eligibility Criteria
46.19.406	37.36.606	Verification Requirements
46.19.407	37.36.607	Notices
46.19.410	37.36.610	Determination of Appropriate Telecommunication Device
46.19.411	37.36.611	Priorities
46.19.412	37.36.612	Required Training and Conditions Of Acceptance
46.19.501	37.36.901	Grounds for Appeal

46.19.502 37.36.902 Appeal Procedures

3. The transfer of rules is necessary because this program was transferred from the Department of Social and Rehabilitation Services 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 July 20, 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 XXIII and the repeal of rules 46.30.1501, 46.30.1502, 46.30.1507, 46.30.1508, 46.30.1513 through 46.30.1516, 46.30.1520 through 46.30.1522, 46.30.1525, 46.30.1532 through 46.30.1535, 46.30.1538, 46.30.1541, 46.30.1542, 46.30.1543, and 46.30.1549 pertaining to child support enforcement guidelines	))))))))))))))))	NOTICE OF ADOPTION AND REPEAL

TO: All Interested Persons

1. On January 29, 1998, the Department of Public Health and Human Services published notice of the proposed adoption and repeal of the above-stated rules at page 317 of the 1998 Montana Administrative Register, issue number 2. On February 12, 1998, the Department published notice of the extension of comment period for these rules at page 447 of the 1998 Montana Administrative Register, issue number 3.

2. The Department has adopted the rules I (37.62.101), V (37.62.108), VIII (37.62.114), IX (37.62.116), XI (37.62.121), XVI (37.62.134), XVII (37.62.136), XIX (37.62.140), XX (37.62.142), XXI (37.62.144), XXII (37.62.148) and XXIII (37.62.146) and repealed rules 46.30.1501, 46.30.1502, 46.30.1507, 46.30.1508, 46.30.1513 through 46.30.1516, 46.30.1520 through 46.30.1522, 46.30.1525, 46.30.1532 through 46.30.1535, 46.30.1538, 46.30.1541, 46.30.1542, 46.30.1543, and 46.30.1549 as proposed.

3. The Department has adopted 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.

Rule II (37.62.102) REBUTTABLE PRESUMPTION (1) The guidelines create a presumption of the adequacy and reasonableness of child support awards. However, every case must be determined on its own merits and circumstances and the presumption may be rebutted by evidence that a child's needs are or are not being met.

(2) through (6) remain the same.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule III (37.62.103) DEFINITIONS For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) through (13) remain the same.

(14) "Standard of living" includes the necessities, comforts and luxuries enjoyed ~~or aspired to~~ by either parent, the child or both parents and the child, which are needed to maintain them in customary or proper community status or circumstances.

(15) and (16) remain the same.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule IV (37.62.106) DETERMINATION OF INCOME FOR CHILD SUPPORT (1) and (2) remain the same.

(a) economic benefit from whatever source derived, except as excluded in (3) of this rule, and includes but is not limited to income from salaries, wages, tips, commissions, bonuses, earnings, profits, dividends, severance pay, pensions, ~~preretirement~~ periodic distributions from retirement plans, draws or advances against earnings, interest, trust income, annuities, royalties, alimony or spousal maintenance, social security benefits, veteran's benefits, workers' compensation benefits, unemployment benefits, disability payments, earned income credit and all other government payments and benefits. A history of capital gains in excess of capital losses shall also be considered as income for child support.

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

(6) "Imputed income" means income not actually earned by a parent, but which ~~may~~ will be attributed to the parent based on:

(a) the parent's earning potential if employed full-time;

~~(a)~~(b) the parent's recent work history;

~~(b)~~(c) occupational and professional qualifications;

~~(c)~~(d) prevailing job opportunities in the community and earning levels in the community.

(7) through (7)(d) remain the same.

(e) is a full-time student whose education or retraining will result, within a reasonable time, in an economic benefit to the child for whom the support obligation is being determined, unless actual income is greater. If income to a student parent is imputed it should be determined at the parent's earning capacity based on a 40 hour work week for 13 weeks and a 20 hour work week for the remaining 39 weeks of a 12 month period. (This is an annual average of 25 hours per week.)

(8) When income is imputed to a parent, federal earned income credit (EIC) ~~should not be included in the imputed income.~~ should not be added to income and child care expense

should not be deducted from income when the effects are offsetting.

(9) Income should not be imputed if any of the following conditions exist:

(a) the reasonable costs of ~~day~~ child care for dependents in the parent's household would offset in whole or in substantial part, that parent's imputed income.; ~~Day care includes care of any person for whom a party would be allowed a dependent care tax credit under current internal revenue service rules;~~

(9)(b) through (9)(e) remain the same.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule VI (37.62.110) ALLOWABLE DEDUCTIONS FROM INCOME (1) through (1)(c) remain the same.

(d) the actual income tax liability based on tax returns. If no other information is available, ~~or if income is imputed,~~ use the tax tables which show the amount of withholding for a single person with one exemption;

(1)(e) and (1)(f) remain the same.

(g) actual mandatory contributions toward internal revenue service (IRS) approved retirement and deferred compensation plans. Mandatory contributions are fully deductible. ~~Voluntary contributions or a combination of mandatory and voluntary contributions may be deducted up to the current contribution rate for Montana state public employees' retirement system;~~

(1)(h) through (1)(j) remain the same.

(k) cost of tuition, books and mandatory student fees for a parent who is a full-time student as anticipated under ARM 37.62.106(7)(e).

(2) remains the same.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule VII (37.62.111) NON-ALLOWABLE DEDUCTIONS FROM INCOME (1) and (1)(a) remain the same.

(b) a net loss in the operation of a business or farm, ~~unless the parent cannot reasonably be removed from the unprofitable situation~~ used to offset other income;

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

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule X (37.62.118) TOTAL INCOME AVAILABLE/PARENTAL SHARE (1) The parents' incomes available for child support are combined to determine the total income available for child support. Each income is divided by the total. The resulting factor determines each parent's ~~responsibility for~~ share of the

primary child support allowance under ~~[Rule XII]~~ ARM 37.62.121 and supplements under ~~[Rule XII]~~ ARM 37.62.123.

(2) For any parent whose support obligation is determined according to the provisions of ARM 37.62.126(1)(a) and (1)(b), the amount of the minimum contribution is substituted for that parent's total income available for child support for the purpose of determining each parent's share of the primary child support allowance and supplements.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule XII (37.62.123) SUPPLEMENTS TO PRIMARY CHILD SUPPORT ALLOWANCE (1) remains the same.

(a) reasonable child care costs incurred by a parent for children of the calculation as a prerequisite to employment. The ~~day~~ child care expense is reduced by the federal dependent care tax credit; ~~and~~

(b) costs required for health insurance coverage for the children of the calculation. Include only those amounts which reflect the actual costs of covering the children; and

~~(b)~~(c) other needs of the child as determined by the circumstances of the case, ~~excluding health insurance premium and other health related costs~~ including other health related costs.

(2) and (3) remain the same.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule XIII (37.62.126) MINIMUM SUPPORT OBLIGATION (1) A specific minimum contribution toward child support should be ordered in all cases when the parent's income is insufficient to meet the parent's personal allowance or the parent's child support obligation is less than 12% of that parent's income after deductions ~~even though a parent does not have sufficient income as defined in [Rule IV] after deductions as defined in [Rule VI] to meet the parent's personal allowance~~.

(a) For parents whose income as defined in ARM 37.62.106 after deductions, as defined in ARM 37.62.110 is insufficient to meet the parent's personal allowance, the minimum contribution is a portion of the income after deductions and is determined by applying the table in (3) as follows:

(i) divide the income after deductions by the personal allowance as defined in ARM 37.62.114 to determine the income ratio;

(ii) find the income ratio in Column A;

(iii) locate the corresponding minimum contribution multiplier in Column B; and

(iv) multiply the income after deductions by the minimum contribution multiplier. The result is the parent's minimum contribution.

(b) For parents whose income after deductions exceeds the personal allowance, the parent's minimum contribution is the greater of:

(i) the difference between income after deductions and the parent's personal allowance; or

(ii) 12% of income after deductions.

~~(2) The minimum contribution is a portion of the income after deductions and is determined by the ratio between income after deductions and the personal allowance as follows:~~

(3) The table for determining the minimum support obligation of a parent whose income after deductions is insufficient to meet the parent's personal allowance is as follows:

~~"Income after deductions" divided by the personal allowance~~ Column A "Income Ratio"	~~Multiply "income after deductions" by the following~~ Column B "Minimum Contribution Multiplier"
over .00 to .25	.00
~~.25 to .30~~	~~.01~~
~~.30 to .35~~	~~.02~~
~~.35 to .40~~	~~.03~~
~~.40 to .45~~	~~.04~~
~~.45 to .50~~	~~.05~~
~~.50 to .55~~	~~.06~~
~~.55 to .60~~	~~.07~~
~~.60 to .65~~	~~.08~~
~~.65 to .70~~	~~.09~~
~~.70 to .75~~	~~.10~~
~~.75 to .80~~	~~.11~~
~~.80 to .85~~	~~.12~~
~~.85 to .90~~	~~.13~~
~~.90 to .95~~	~~.14~~
~~.95 to 1.00~~	~~.15~~
.25 to .31	.01
.31 to .37	.02
.37 to .43	.03
.43 to .50	.04
.50 to .56	.05
.56 to .62	.06
.62 to .68	.07
.68 to .75	.08
.75 to .81	.09
.81 to .87	.10
.87 to .93	.11
.93 to 1.00	.12

~~(3) For parents whose income after deductions equals or~~

~~exceeds the parent's personal allowance but which is less than the primary child support allowance, plus supplements, the parent's minimum contribution is the greater of:~~

~~(a) the difference between income after deductions and the parent's personal allowance; or~~

~~(b) an amount equal to .15 multiplied by the parent's income after deductions.~~

(4) remains the same but is renumbered (2).

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule XIV (37.62.128) INCOME AVAILABLE FOR STANDARD OF LIVING ADJUSTMENT (SOLA) (1) through (2) remain the same.

(3) If income is available for SOLA, multiply the income by the SOLA factor from the following table which corresponds to the number of children for whom support is being determined.

Number of Children	SOLA FACTOR
1	~~.17~~ .14
2	~~.26~~ .21
3	~~.33~~ .27
4	~~.37~~ .31
5	~~.41~~ .35
6	~~.45~~ .39
7 ~~or more~~	~~.49~~ .43
8 or more	.47

(4) remains the same.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule XV (37.62.130) LONG DISTANCE PARENTING ADJUSTMENT (1) Long distance parenting is any travel by a parent or child to attain the goals of the parenting plan. A long distance parenting adjustment is allowed when travel by a parent or child exceeds ~~4,000~~ 2,000 miles in a calendar year.

(2) The amount of income available for SOLA is reduced to the extent the actual annual expense of transportation for long distance parenting exceeds ~~4,000~~ 2,000 miles multiplied by the current IRS business mileage rate (standard expense). The reduction is determined separately for each parent.

(3) through (5) remain the same.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

Rule XVIII (37.62.138) PAYMENT OF MONTHLY SUPPORT AMOUNT IN COMBINATION PARENTING ARRANGEMENTS (1) If any child of a calculation spends more than 110 days with both parents, there ~~may~~ will be an adjustment to the portion of the obligation due

and payable from one parent to the other.

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

~~(2)~~ (3) For the purposes of this rule, a day is when a child spends the majority of a 24 hour calendar day with or under the control of a parent. This assumes that there is a correlation between time spent and resources expended for the care of the child. Reference can be made to the residential schedule in the parenting plan ordered under 40-4-234, MCA.

AUTH: Sec. 40-5-203, MCA
IMP: Sec. 40-5-209, MCA

4. The Department inadvertently numbered two subsections as (2) in Rule XVIII (37.62.138). The Department has corrected the error and renumbered the second (2) as (3).

In subsection (6) of Rule IV (37.62.106), the department added the language in subsection (a) to clarify that imputed income should be based on full time employment potential.

The provision in Rule VI (1)(d) (37.62.110) which instructed the use of tax tables for a single person with one exemption when income is imputed was deleted by the department. The deleted provision would have resulted in an inequity if a parent has more than one exemption.

In the third sentence of Rule X (1)(37.62.118), the language has been changed from "each parent's responsibility for..." to "each parent's share of..." for purposes of clarity.

Rule X (37.62.118) was changed to provide more accurate parental shares of the primary child support allowance and supplements when one parent's obligation is determined according to the provisions of the minimum contribution Rule XIII (37.62.126) and the other parent's obligation is not. But for the rule change, one parent's share would be 100% and the other would be zero even though the parent with zero share is obligated to pay more than zero. When both parents' obligations are determined according to the provisions of the minimum contribution, the rule change provides parental shares where otherwise none would be calculated.

In its review of the comments to the proposed rules and specifically to the comments on Rule XII (37.62.123), the CSED recognized the need for the guidelines calculation to provide a percentage of responsibility for each parent, in every case, that may be utilized for apportioning medical expenses not considered in the calculation as provided in 40-5-806, MCA.

In Rule XIII (37.62.126), the department added subsections to (1) and changed the headings on the minimum contributions columns. These changes were made for the purposes of clarity.

Rule XIII (37.62.126) was changed to clarify that all parents are responsible for a minimum obligation between zero and 12% of the parent's income after deductions.

As per the response in Comment #30, the SOLA percentages in Rule XIV (37.62.128) will not be raised and will remain the same as they were in former rule 46.30.1534. Since the SOLA percentages were retained, the minimum contribution percentages in Rule XIII (37.62.126) were reduced accordingly.

5. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

[Rule I] (37.62.101)

Comment #1: One commentor objected to the provision that the guidelines are structured to determine child support on an annual basis, and that child support payments should be made in 12 equal monthly installments each year. The commentor suggested a different rule for shared parenting arrangements. If the residence of a child changes from one parent to the other during the year, the commentor suggested that the parent not providing residential care should make child support payments to the other parent.

For example, if a child resides with the mother nine months each year, the commentor suggested that the father pay child support to the mother each of those months. For the three months the child resides with the father, the mother would pay child support to the father.

Response: The CSED finds that the commentor's suggestion would be unduly cumbersome to implement. Immediate income withholding would require amendment of each parent's withholding order at least twice each year, a total of four amendments. Furthermore, the suggestion would violate the principle that the parent receiving support payments needs a steady cash-flow to maintain a stable budget, maintain the household pending the child's return and to amortize costs for clothing, routine medical checkups or other periodic expenses incurred for the child.

The suggested policy would not result in a different net transfer of cash between the parents when parenting for each parent is 110 days or greater in a calendar year. The shared parenting adjustment provided in the guidelines simply offsets the mother's obligation against the father's and requires the difference to be paid in equal installments over the entire year. The CSED finds adjustments allowed for parenting time less than 110 days are negligible.

As a result, the rule is adopted as proposed.

[RULE II] (37.62.102)

Comment #2: One commentor wondered who determined when "extraordinary circumstances" exist to rebut the presumption of adequacy and reasonableness of the guidelines amount.

Response: The parties may agree to a rebuttal of the guidelines and reduce that agreement to writing to be approved by an appropriate tribunal. An appropriate tribunal may also, after hearing the case, determine a rebuttal of the presumptive amount is proper under the circumstances of a specific case.

Comment #3: Another commentor wondered how the guidelines determined amount could be appropriate for a child if it resulted in the needs of a parent being neglected.

Response: The appropriate tribunal may decide whenever the facts of a case require a rebuttal of the presumptive amount determined under these rules to meet the specific needs of the parents and children in the case.

[RULE IV] (37.62.106)

COMMENT #4: Two commentors suggested that only the obligor's income should be included in the calculation and the obligee's should not.

RESPONSE: Montana law (40-4-204, MCA) requires that all relevant factors, including "the financial resources of the parents" be considered in ordering a child support payment. Additionally, the results of the study undertaken by the University of Montana and the Center for the Support of Families under contract with the child support enforcement division (CSED) confirmed an overwhelming consensus that it is most equitable to consider the income of both parents when determining the financial responsibility of each to support the children. Therefore, the child support guidelines are based on a calculation which considers the income of both parents.

COMMENT #5: Certain commentors felt that child care expense for students who are parents should be considered in the guidelines calculation, child care expense should be imputed to a parent when income is imputed, and child care expense should not be allowed as a deduction from income if for children not of the current calculation.

RESPONSE: Child care expense is considered only to the extent it is an expense of producing income and is treated accordingly in the guidelines.

While the guidelines make provision for students who are parents through limitations on imputed income, the other parent should

not be made to further subsidize the parent who has chosen to be a student by requiring that other parent to contribute to child care expense when not necessary for the production of income.

Actual child care expense for student parents is a supplemental need of the child of the calculation to the extent the parent has actual income. In other words, if the guideline calculation includes actual income, the calculation should include the actual child care expense necessary for the parent to earn the income. When income is imputed to a parent, however, there is no actual child care expense and the other parent's obligation should not be increased to pay for an expense that does not exist. It is for this reason that the previous guidelines treated imputed child care as a deduction from the custodial parent's income. That treatment, however, provides few actual dollars to the custodian for payment of the expense when it is actually incurred. When a parent to whom income was imputed begins earning actual income and has an actual child care expense, a modification of the support order is necessary to properly assess the liability for the expense to both parents. Furthermore, imputing child care requires gathering a significant amount of information with little practical effect and removing this provision was seen as a method of simplifying the calculation without sacrificing fairness.

When child care is necessary for children not of the current calculation but legally dependent upon a parent in the calculation so that parent can work outside the home, the expense is a deduction from income as is any other required employment expense.

COMMENT #6: One commentor wondered why earned income credit is not imputed when other income is imputed to a parent?

RESPONSE: Despite the fact a provision for treatment of the earned income credit was not included in the previous guidelines, many guideline users imputed the amount in the guidelines calculation anyway. To determine the amount accurately, however, requires gathering information not usually available for child support calculations, namely the income of a parent's current spouse. In many cases, the effect of imputing the earned income credit directly offsets the effect of imputing child care expense resulting in little change to the obligation. Again, the provision for not imputing earned income credit is seen as a way to simplify the information necessary for the calculation without sacrificing fairness. The rebuttable nature of the guidelines allows for an argument that the earned income credit should be imputed in a specific case.

COMMENT #7: One commentor felt the proposed guidelines appear to count work-study income twice: once as a "grant" and again as actual earned income.

RESPONSE: Clearly it is improper to include a work-study grant as both grant and actual income. The individual situation should be analyzed to determine the most accurate method of including the income so that duplication does not occur.

COMMENT #8: One commentor noted that some non-traditional students attend school year-round so the rule for imputation of income based on full-time work in the summer is unfair.

RESPONSE: The guidelines are written to apply to the average case and summer enrollment totals indicate the majority of students do not attend classes in the summer. In addition, many parents, whether in single parent or two parent households, must work while attending school in order to support a family. The rule regarding imputation of income to students was changed for the proposed guidelines because of a perception of unfairness to the other parent when no income was imputed to the student parent. The proposed guidelines make clear that a parent is expected to work an annual average of 25 hours per week.

Because the guidelines as a whole, and each part of the guidelines, is a rebuttable presumption, it is not necessary nor desirable to make rules for every individual circumstance. The proponent of an exception to the rule has the duty to prove the inequity of the particular provision.

COMMENT #9: A commentor asked why income should not be imputed at more than 25 hours per week to students, and wondered if the proposed rule applies only to students.

RESPONSE: While some students are able to arrange full-time work schedules and full-time class schedules to avoid conflict, most are not. Some disciplines also require a commitment of time in addition to classroom time that precludes full-time work. The rebuttable nature of the guidelines allows for the argument that a parent is able to work 40 hours per week while attending school.

The rule for imputing at 25 hours per week applies only to students and the language of the rule has been changed to clarify the intent.

COMMENT #10: A commentor wanted clarification that portions of deductions for straight-line depreciation not allowed must be adjusted in relation to business profit or loss and not personal income.

RESPONSE: This point is well made but the proposed rules generally avoid this degree of specificity due to the large number of circumstances which would require instructions. An example may serve to clarify the correct method of adjustment: If a parent's net business loss for a year is $3,500 and one of

the deductions is accelerated depreciation which exceeds straight-line depreciation by $2,000, an adjustment should be made which adds $2,000 to $3,500 for a new loss of $1,500. If the business loss is not included in the parent's income for child support, the adjustment should not be added to other income for the parent because the business still generated a loss even after the adjustment.

If, however, the business loss is being included in the parent's income for child support, the adjustment for non-allowable depreciation should be added as other, non-taxable income for the most accurate result.

COMMENT #11: One commentor felt, if Supplemental Security Income (SSI) is not considered income for child support, other disability benefits should not be considered income.

RESPONSE: SSI is a means-tested form of assistance and is excluded from consideration as income for child support because of the general prohibition against means-tested benefits in the guidelines. Other forms of disability benefits are a type of "insurance" in which benefits are based on eligibility due to the payment of premiums (workers' compensation, private disability insurance) or payroll contributions (Social Security) and are properly included as income for child support.

COMMENT #12: A commentor felt a parent should not be required to have a second family in order to exclude income from overtime or a second job.

RESPONSE: Montana law (40-4-204(2)(c), MCA) requires consideration of "the standard of living that the child would have enjoyed had the marriage not been dissolved" in determining child support obligations. This provision suggests the child should share in the future earnings of a parent and this philosophy underlies the previous, as well as the proposed rules. The exception, when a parent has a second family, was intended to meet the needs of a parent who is willing to work longer hours to support a subsequent family and must be assured the additional income will not result in a greater child support obligation for the prior family. Again, the rebuttable nature of the guidelines allows for arguments addressing this issue.

COMMENT #13: A commentor wanted income of domestic partners included in a parent's income for child support.

RESPONSE: Under Montana law, (40-6-217, MCA) domestic partners are not liable for support of the other partner's child and to include the partner's income would result in an incorrect obligation. If circumstances exist which require a deviation from that principle, the appropriate tribunal may make findings which support the deviation.

COMMENT #14: A commentor felt income should not be imputed to a parent incapable of earning income.

RESPONSE: Subsection (9) of Rule IV (37.62.106) includes four specific reasons why income should not be imputed to a parent. In addition, the last provision of the paragraph allows the appropriate tribunal to make findings about any circumstances that make imputation inequitable.

COMMENT #15: One commentor suggested that in the provision addressing a situation in which income should not be imputed due to child care expense, the word "substantial" should be replaced by a specific amount.

RESPONSE: Due to the range of possible incomes and child care expenses, it is not feasible to set either a dollar amount or a percentage of income for this rule. The only accurate method is to analyze the relationship between the income and the expense and determine if a reasonable person would accept employment under those circumstances.

COMMENT #16: One commentor wanted more guidance regarding retirement income.

RESPONSE: The proposed rule has been changed to refer to "periodic distributions from retirement plans" rather than "pre-retirement" distributions in an effort to clarify that, generally, only retirement funds regularly paid out to the beneficiary are considered income for child support. Lump sum distributions from retirement plans must be analyzed case by case to avoid counting a one-time occurrence as ongoing income but also to consider the best interest of the child if a parent withdraws retirement funds for discretionary purchases.

COMMENT #17: A commentor asked if income could be imputed based on assets.

RESPONSE: Although the proposed guidelines do not include income attributed or imputed to assets as a standard part of the calculation, there is no reason it could not be included in a particular case where an inequity would otherwise result. Cases in which a parent has little available income for child support but owns substantial non-performing assets may benefit from this approach. In such a case, it is suggested that the average 10 year U.S. treasury constant maturity rate for the previous calendar year be used to calculate the attributed income. The rate can be obtained from any Federal Reserve Bank.

[RULE VI] (37.62.110)

Comment #18: A commentor asked why the CSED limited the deduction for child care for other children to one-half of the

actual costs.

Response: The guidelines presume children have two parents to assume economic responsibility for their needs. When computing child care expense for other children, only one of the parents is a party to the guidelines calculation and is therefore allowed one-half this work related expense. The presumption is rebuttable in cases where it is proven that there is only one parent to meet these needs.

Comment #19: One commentor felt a deduction for support for other children should be allowed only if the parent is actually paying this support, regardless if there is a support order.

Response: Any amount of child support ordered, either judicially or administratively, is due and collectible and must be allowed as a deduction in the Montana child support guidelines.

Comment #20: One commentor wondered why the guidelines allow only one-half the expense for child care when all voluntary retirement contributions are allowed?

Response: The CSED agrees with the commentor that only mandatory retirement contributions should be allowed and the proposed rule has been amended accordingly.

Comment #21: One commentor wondered why the guidelines allow only one-half the expense for elder care.

Response: After reviewing the proposed rules, the CSED determined there should be no allowance for elder care. The CSED finds requests for such an allowance are rare and can better be addressed in a specific case by the appropriate tribunal or by agreement of the parties.

Comment #22: One commentor suggested child care expenses should be allowed even for children who don't qualify for federal tax credit.

Response: The CSED agrees child care expenses actually incurred should be allowed and the second sentence in Rule VI (9)(a) (37.62.110) has been deleted.

Comment #23: A commentor felt this proposed rule allows someone with many children to pay nothing.

Response: Subsection (1)(b) of Rule VI (37.62.110) may result in a minimal support order for a parent with many other children. In a modification of a child support obligation, Rule XXIII (37.62.146) would be followed to ensure that an inequity does not occur because of a parent's choice about his

or her family size.

Comment #24: One commentor felt books and tuition should be allowed as expenses for student parents.

Response: The CSED agrees and Rule VI(1)(k) (37.62.110) has been rewritten to incorporate these expenses as allowable deductions for student parents.

[RULE VII] (37.62.111)

Comment #25: One commentor suggested that the language "unless the parent cannot reasonably be removed from the unprofitable situation" be removed from subsection (1)(b) of Rule VII (37.62.111). The commentor reasoned that application of the provision was impractical and that it added nothing to the policy set by the rule.

Another commentor objected to the provision because it was unfair to small farmers whose business was unprofitable through no fault of their own. The commentor argued that the proposed rule penalized parents who were attempting to start new businesses. New businesses are often unprofitable during the startup phase of operations. The commentor argued that over the long run a successful business was likely to result in increased income for child support as opposed to regular wages.

Response: The CSED finds the commentor's suggestion persuasive. The CSED notes that a similar provision under the former guidelines was rarely used. The former rule created a problem of proof when a parent wished to demonstrate that he/she could not reasonably be removed from the unprofitable situation. The CSED finds that the principle of fairness to small farmers and other self-employed parents would be served by deleting the problematic language and has amended the rule to do so.

Comment #26: One commentor suggested that investment losses should be allowed as a deduction from income.

Another commentor argued that if interest on investments was included as income, losses should be deductible from income.

Response: The CSED agrees that investment losses should be deductible from income, so long as the investments are made in the normal course of the parent's business. For example, a farmer may invest in agricultural commodities as a hedge against market fluctuations. Any losses incurred as a result of such normal investments should be deductible from gross income. The proposed rule already provides for the deduction of such losses. This is a change from the previous guidelines.

However, the CSED finds that investment losses should not be

deductible from gross income when the investment is not made in the normal course of the parent's business. Parents are free to make speculative investments, but losses incurred from speculation should not reduce a parent's obligation to support the child.

As a result, subsection (1)(c) of Rule VII (37.62.111) is adopted as proposed.

[RULE XI](37.62.121)

COMMENT #27: One commentor requested clarification as to the actual dollar amount for needs of a child. The commentor felt the rules should contain all the information necessary to calculate a child support obligation.

RESPONSE: The primary child support allowance, as well as the personal allowance, is based on the federal poverty index guidelines, published annually. This index was chosen because it is readily available and the best information on which to base the needs of both parents and children. Because it is updated annually, including the actual numbers in the rules would require that the rules be formally changed each year, a costly and time-consuming process. The CSED will publish and distribute, each year, tables providing the primary child support allowance and other variables contained in the guidelines.

Based on the poverty index guidelines released early in 1998, the personal allowance in the proposed guidelines is $10,465 annually which is the yearly amount for a family of one ($8,050) multiplied by 1.3 (130%). The primary child support allowance for one child is $3,140 annually, which is the personal allowance multiplied by .3 (30%). For a family with two children, the personal allowance is multiplied by .2 (20%) and that amount ($2,093) is added to the primary child support allowance for one child ($3,140) for a total of $5,233 per year. For the third child, another 20% of the personal allowance is added to the primary child support allowance for two children for a total of $7,326. For each additional child, the personal allowance is multiplied by .1 (10%) and that amount is added to the previous total.

[RULE XII] (37.62.123)

Comment #28: Several commentors objected to the proposed removal of health insurance premiums and extraordinary medical expenses from supplements to primary support allowance. Those commentors argued that it would be unfair to separate health insurance from child support obligations. The commentors suggested retaining the credit provisions of the previous guidelines. One commentor suggested that the health insurance

premiums should be considered only if they are actually being paid. Another commentor suggested testing the cost of health insurance as provided in 40-5-806(9), MCA to determine if it should be considered in the calculation.

However, another commentor argued that health insurance premiums should not be considered in the calculation.

Response: The CSED finds that the commentors' suggestion to retain consideration of health insurance and extraordinary medical expenses persuasive. The CSED notes that public policy favors health insurance coverage for a child whenever that coverage is available at reasonable cost. 40-5-806(6), MCA requires parents to share the cost of insurance in accordance with the child support guidelines. Therefore the provisions of the previous guidelines are retained in [Rule XII](37.62.123).

The CSED recommends that the cost of insurance be considered in the calculation if it is actually being paid. Proof in the form of a letter of intent from an insurance carrier or other documentation of coverage should be provided. The result will be a sharing of premium between the parents in proportion to their income.

[RULE XIII] (37.62.126)

Comment #29: A commentor suggested the CSED should look at the facts of each case and not use charts to calculate a minimum contribution.

Response: The CSED feels that in the majority of cases, using a minimum support obligation chart ensures consistency which is necessary in calculating child support obligations. Parents with extraordinary situations may rebut the presumption of the minimum contribution.

[RULE XIV](37.62.128)

Comment #30: One commentor felt the standard of living adjustment (SOLA) percentages should not be increased.

Response: The Department agrees. The proposed percentage changes will not be made.

Comment #31: One commentor felt child support is often set too high for non-custodial parents who see the children often.

Response: The rules provide that if an inequity occurs as a result of strict application of the guidelines, the presumption may be rebutted.

Comment #32: A commentor suggested the phrase "aspired to"

should be deleted from the definition of SOLA.

Response: The Department agrees. The term has been deleted from the definition of SOLA in Rule III.

[RULE XV] (37.62.130)

Comment #33: Two commentors argued that the 4,000 mile threshold for long-distance parenting was too high. One of the commentors suggested a 2,000 mile threshold.

Another commentor argued that the adjustment for long-distance parenting was inadequate when the cost of contact was extremely high.

A fourth commentor suggested that CSED retain the variance for long-distance parenting.

Response: The Department finds the commentors' suggestion to reduce the threshold for long-distance parenting adjustment persuasive. The CSED adopts a 2,000 mile annual threshold.

The CSED finds that long-distance parenting is sufficiently commonplace that it should be considered in the guideline computation. The inclusion of a long-distance parenting adjustment does not eliminate or replace adjustments for extraordinary long-distance parenting costs. A parent with costs significantly greater or less than allowed by the adjustment may still apply to the court or administrative tribunal for adjustment.

[RULE XVII] (37.62.136)

COMMENT #34: One commentor wanted this rule stricken because the commentor felt it requires the obligor to actually pay child support but not the obligee. Both parents have an obligation.

RESPONSE: Application of the child support guidelines results in an obligation for both parents. Rather than parents exchanging payments, the transfer payment rule sets a threshold for time the children spend with each parent and requires only one payment per month. The obligee parent retains the amount of his/her obligation and spends it directly on the children in his/her care. Without the threshold, monthly obligations would have to be adjusted pro-rata based on the amount of time children spend with each parent in a month, a task which could not be completed until the month had passed.

Where the children spend time with both parents that exceeds the threshold, in most cases, each parent must pay some portion of the obligation to the other parent. This rule and Rule XVIII (37.62.138) allow the payments to be offset so that only one

payment per month is necessary. The offset does not relieve either party of the obligation and each party ends up with the same amount of money as if payments had been exchanged.

[RULE XVIII] (37.62.138)

COMMENT #35: A commentor thought the combination parenting adjustment should be required rather than just allowed; references to "sole", "joint", "shared" and "split" custody should not be deleted.

RESPONSE: The Department agrees that the combination parenting adjustment should be required and paragraph (1) of the proposed rule has been changed accordingly. References to types of custody have been deleted because of changes to family law statutes at Title 40, chapter 4, Part 2, MCA by the 1997 legislature, which now refer to parenting and parental contact rather than custody and visitation. To facilitate communication and understanding, terminology should be consistent.

[RULE XIX] (37.62.140)

Comment #36: A commentor felt an order should provide for adjustments only in those cases where an anticipated change was shown to occur.

Response: The Department agrees that if an anticipated change is addressed in the child support order, the order should contain language to ensure the amount of child support does not change unless the anticipated change occurs.

[RULE XXIII] (37.62.146)

Comment #37: One commentor argued that, when modifying an existing support order, all children of a parent should receive the same amount of support.

Response: The Department finds that the commentor's suggestion is impractical. It ignores the probability that no two parents income will be identical. When a parent chooses to have a second family, it is unlikely that the other parent in the second family will have income identical to that of the other parent in the first family. Because the guidelines set support based on the income of both parents, it would be impractical and unjust to set the support received by the children in the first family at the rate received by the children of the second family.

The suggestion would also be impractical for the reason that equal modification requires financial information from each parent. Gathering financial information from all parents and adjudicating several cases in one forum would be impractical at

best. If the forum does not have jurisdiction to adjudicate all cases, modification would be impossible.

The Department finds that the guideline provisions for serial families are fair and well-balanced. That balance would be skewed by amendment of proposed Rule XXIII (37.62.146).

Therefore, Rule XXIII (37.62.146) is adopted as proposed.

[GENERAL COMMENTS]

Comment #38: One commentor objected to the removal of household size from determination of personal allowance (formerly "self-support reserve").

Response: The Department finds that removal of household size and composition simplifies the calculation. Under the previous guidelines, determination of household size was a frequent source of error. The personal allowance simplifies most guideline computations and eliminates the possibility of error in determining the amount allowed. Extraordinary self-support needs may still be addressed through variances.

Consequently, Rule VIII (37.62.114) is adopted as proposed, without adjustments for household size.

COMMENT #39: One commentor argued that guidelines should return to simple rules applied with judges' discretion.

RESPONSE: Effective October 13, 1989, federal law 42 USC 667 and 45 CFR 302.56 mandated the adoption of child support guidelines by the states in the interest of consistency, fairness and meeting the needs of children. While many judges met those conditions in decisions involving child support, some did not and often there was little consistency between judicial districts within a state. Obligors in similar circumstances paid substantially different amounts for child support and perceived the process to be unfair. In many if not the majority of cases, child support obligations were insufficient to meet the needs of children and there has been a notable increase in the dollar amount of support obligations since the adoption of child support guidelines. By far, the majority of comments received by the Department request more detailed guidelines, not less.

COMMENT #40: A commentor suggested that provisions of the guidelines which require paperwork be submitted to the court according to deadlines complicate the court's job.

RESPONSE: The child support guidelines do not contain any deadlines for submission of information or documents to the court although local court rules may specify deadlines.

COMMENT #41: A commentor argued that marital debt repayment should constitute reason for an automatic variance from the guidelines.

RESPONSE: The circumstances of individual cases involving the repayment of marital debt are so diverse as to defy creation of a rule which would be equitable to all. The rebuttable nature of the guidelines allow arguments for adjustments to support obligations which consider the financial circumstances of the party as well as the best interest of the child.

COMMENT #42: One commentor argued that all information necessary to calculate a child support obligation should be contained in the rules and should not refer to information outside of the rules.

RESPONSE: Please refer to the response to comments on Rule XI (37.62.121). By relying on the federal poverty index guidelines which are updated annually, the guidelines utilize current information to maintain equity and accuracy in a fluid economy.

COMMENT #43: One commentor argued that variances are necessary because marital situations are too complicated to reduce to a formula.

RESPONSE: The Department agrees regarding the complexity of marital situations. A formula, however, is useful in the majority of cases to maintain consistency even if deviations are permitted to address specific circumstances.

COMMENT #44: A commentor stated that guidelines should be rebuttable without "extraordinary circumstances".

RESPONSE: The purpose of structuring the guidelines as a rebuttable presumption is to make sure that meeting the needs of the child is the priority. That goal should not be compromised in the absence of circumstances which are unusual or which cause substantial inequity to the parties or the child. Consistency in the calculation of child support obligations requires that only extraordinary circumstances cause deviations from the presumptive amount.

COMMENT #45: Some commentors felt that tables and worksheets should have been provided with the proposed rules.

RESPONSE: The Department agrees and will attempt to provide tables and worksheets in future revisions of the rules.

COMMENT #46: A commentor argued that by not listing possible variances, information is being hidden from people who need it.

RESPONSE: The Department believes that a listing of variances

increases complexity for the user and suggests that ordinary circumstances are sufficient to cause a deviation. Parents are the best judge of the existence of extraordinary circumstances which should be considered in the calculation.

6. The adoption and repeal of the rules in this notice will take effect on November 1, 1998. The delayed effective date is necessary in order to allow sufficient time for guideline users to receive training and to otherwise prepare for implementation of the rules.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State July 20, 1998.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.11.244, 42.12.101, 42.12.106, 42.12.108, 42.12.111, 42.12.207, 42.13.101 and 42.13.105; ADOPTION of NEW RULES I (ARM 42.12.209), II (ARM 42.12.210), III (ARM 42.12.211), and IV (ARM 42.12.212); and REPEAL of ARM 42.12.102 and 42.13.212 relating to Liquor License Transfers	NOTICE OF AMENDMENT, ADOPTION AND REPEAL

TO: All Interested Persons:

1. On April 30, 1998, the Department published a notice of the proposed amendments to ARM 42.11.244, 42.12.101, 42.12.106, 42.12.108, 42.12.111, 42.12.207, 42.13.101, and 42.13.105; adoption of New Rules I (ARM 42.12.209), II (ARM 42.12.210), III (ARM 42.12.211), and IV (ARM 42.12.212); and Repeal of ARM 42.12.102 and 42.13.212 relating to Liquor License Transfers at page 1139 of the 1998 Montana Administrative Register, issue no. 8.

2. A public hearing was held on May 27, 1998, where written and oral comments were received.

3. Oral and written comments received by the Department are summarized as follows along with the Department's responses.

COMMENT 1: The Montana Tavern Association (MTA), stated concern regarding the amendment of ARM 42.12.101(3), allowing for the gathering of state and federal tax information as the information is of an extremely sensitive and confidential nature. The MTA is hopeful the department will take safeguards to ensure the tax information, if gathered, is not kept in the files which are open to public inspection.

RESPONSE: The department agrees to keep tax records separate from those records which are open to public inspection.

COMMENT 2: The MTA stated that the department's definition of "non institutional lender," ARM 42.12.106(7), will preclude a licensee from lending money to the licensee's licensed establishment or from individually guaranteeing a debt incurred by the licensee's licensed business entity.

RESPONSE: The department agrees to delete the last sentence in the definition of non institutional lender and has amended NEW RULE II (ARM 42.12.210(2)(c)), to address the situation.

COMMENT 3: The MTA acknowledged the department has deleted the definition of "financial interest" in ARM 42.12.106 as it

has been incorporated in (8) which is the definition of "ownership interest".

RESPONSE: None

COMMENT 4: The MTA suggested the term, "liquor business," found in NEW RULE I (ARM 42.12.209) - Transfer of a license to another person, be changed to "business operated under the license."

RESPONSE: The department agrees to amend the rule.

COMMENT 5: The MTA believes the penalty for violation of NEW RULE I (ARM 42.12.209), is excessive as it is a dramatic change from bureau practice of allowing purchasers to give sellers the full amount of the purchase price prior to approval. The MTA suggested that suspension of the license rather than revocation be the penalty for violation of this rule.

RESPONSE: The department has amended the rule to allow for the total purchase price to be paid by the purchaser if the money is held in escrow until the application has been approved. Revocation of a license for violation of this rule is discretionary.

COMMENT 6: The MTA disagrees with NEW RULE II (ARM 42.12.210(2)(a)), prohibiting contracts which provide a party with the option to purchase a license. The MTA believes that straight options to purchase should be allowed, so long as, there are no elements of control over the license. The MTA believes it is unfair to place a blanket prohibition on options to purchase and would suggest that they be allowed and reviewed on a case by case basis as are all other agreements.

RESPONSE: The department disagrees. As a legal matter, an option to purchase is an ownership interest prohibited by law. If parties disagree with the law the remedy is to seek a legislative change.

COMMENT 7: The MTA believes NEW RULE II (ARM 42.12.210 (2)(c)) would prohibit licensees from loaning money to their own businesses or individually guaranteeing a debt incurred by a licensed business entity for which the lender has an ownership interest.

RESPONSE: See response to comment 2.

COMMENT 8: The MTA stated that often times the licensee will lease a premises from a business entity which is composed of the same individuals as the licensed entity. NEW RULE II (ARM 42.12.210(2)(e)) would prohibit a long time acceptable practice.

RESPONSE: The department disagrees. The rule is intended to prohibit an "unqualified" party from leasing a premises to a licensee unless it's evident that the lessor has no ownership interest in the business operated under the license.

COMMENT 9: The MTA suggested that the phrase "because the associated business owner does not have an ownership interest in the liquor business," in NEW RULE II (ARM 42.12.210(2)(e)) and the phrase "that the other person in the business relationship does not have an ownership interest in the liquor business," in (2)(f) be deleted as the verbiage is unnecessary.

RESPONSE: The department agrees and will amend the rule to delete the unnecessary language.

COMMENT 10: The MTA believes NEW RULE II (ARM 42.12.210 (3)(a) through (e)) goes too far by creating an ownership interest where a security interest exists. This rule would prohibit a seller on a contract from moving out of state during the term of the contract and prohibit the seller from investing in another all-beverages license during the term of the sale contract if the license sold were an all-beverages license. The MTA also states the rule appears to conflict with 16-4-205, MCA, which allows a seller/secured party 180 days from the date of issuance to transfer a license to a qualified purchaser. The MTA suggested the rule be amended to include a blanket provision which states that a secured party who does not qualify for a license under 16-4-401, MCA, shall transfer any ownership of a license within 180 days of issuance.

RESPONSE: The department disagrees. The seller has the right to live wherever the seller chooses but must remain qualified, e.g., as a resident until the final payment. As a matter of law, the seller on a contract for sale remains an owner until the last payment.

COMMENT 11: The MTA is concerned that the meaning of NEW RULE III (ARM 42.12.211(2)) would create problems in cases of foreclosure.

RESPONSE: The department agrees to amend the rule to clarify that the requirements pertain to instances of contracts for sale.

COMMENT 12: Gary Chumrau, Attorney, representing himself and several clients objects to NEW RULE II (ARM 42.12.210(2)(a)), which prohibits the granting of an option to purchase the license to any person. Mr. Chumrau stated that the rule is too broad in its scope and application. Not all options convey ownership or control. Mr. Chumrau recommended that the rule require department review of options to purchase on a case by case basis to determine if a particular option conveys an ownership interest or control to a third party.

RESPONSE: See response to comment 6.

COMMENT 13: The following attorneys collectively suggested amendments to ARM 42.12.106(1), Mr. P. Bruce Harper, Mr. Dave Jackson, Mr. Mike Garrity, Mr. John Dudis, Ms. Mary Scrim Dyre and Mr. Ron Carson, by deleting the words "partnership or corporation which owns a" and add "owner" after the word hotel.

This change clarifies that the entity owning the hotel or shopping mall is the associated business and does not limit the nature of the business entity to solely a partnership or corporation.

RESPONSE: The department agrees.

COMMENT 14: These attorneys suggested the deletion of "privilege of keeping" and replace with "authorized purchase and keeping" in ARM 42.12.106(4).

RESPONSE: The department disagrees. A license is a privilege between the state and the licensee.

COMMENT 15: These attorneys suggested that the last sentence of ARM 42.12.106(7) be deleted.

RESPONSE: The department agrees and will make this amendment.

COMMENT 16: These attorneys stated that the definition of "ownership interest" in ARM 42.12.106(8), is important and beneficial. However, they indicated it is overly broad and would prohibit a nonresident hotel or restaurant owner from providing a guaranteed return to a licensee to induce the licensee to locate or remain on the hotel or restaurant premises and gambling route operators from performing their duties. The attorneys believe such an arrangement should not be determined undesirable by the department. They proposed the definition of "ownership interest" be amended to read, "ownership interest" means a person who shares in the profits, losses, or liabilities of the alcoholic beverages licensed business and exercises control over the assets of the business.

RESPONSE: The department does not interpret the rule to preclude either route operators from sharing in gambling profits or hotels from providing a guaranteed return to a licensee.

COMMENT 17: These attorneys believe NEW RULE I (ARM 42.12.209), should be amended to allow a corporate licensee to sell all or a portion of their stock ownership either to the corporation through a Redemption Agreement or to other stockholders through a Stock Purchase Agreement without prior approval by the department to reflect this process.

RESPONSE: The department agrees that prior approval is not necessary to transfer ownership interest among already qualified owners of the license or qualified owners of stock in a corporation owning the license. However, if transfer results in an ownership interest by a party not currently qualified, the party must have prior approval by the department. The rule is being amended to reflect this process.

COMMENT 18: These attorneys suggested an amendment to NEW RULE I (ARM 42.12.209), allowing a licensee to transfer by assignment an ownership interest in a license to a related family member.

RESPONSE: See the response to comment 17.

COMMENT 19: These attorneys suggested an amendment to NEW RULE I (ARM 42.12.209(2)), allowing transfer of any portion of the purchase price for the license as long as the monies remain in an escrow account until either temporary operating authority is issued or the transfer of ownership is approved by the department.

RESPONSE: The department agrees to amend the rule as suggested but if the application is not approved the money must be refunded.

COMMENT 20: These attorneys suggested deleting the words "agent is" and replacing them with "parties are" in NEW RULE II (ARM 42.12.210(2)(b)).

RESPONSE: The department agrees to amend the rule.

COMMENT 21: These attorneys suggested an amendment to NEW RULE II (ARM 42.12.210(2)(c) through (f)), by removing the language in each subsection which states that the lender, lessor, associated business owner or party with a business relationship does not have an ownership interest in the liquor business. The group believes a party cannot prove it does not have an ownership interest in a business until the business enterprise commences operation and the accounting trail is able to establish whether or not an ownership interest exists. The group suggested the rule be modified to permit the submission of financial statements and/or tax returns and reports from an independent accountant on a regular basis for the department to be able to determine whether an unacceptable ownership interest exists.

RESPONSE: The department agrees to amend the rule to delete the reference to parties described in (2)(c) through (f) as the language is unnecessary. However, the purpose of the rule is to review business relationships in advance and determine no unlawful arrangements exist. Audits by independent accountants to determine whether business relationships as represented to the department are being honored may be required.

COMMENT 22: These attorneys proposed an amendment to NEW RULE II (ARM 42.12.210(3)(a),(b),(d), and (e)), by replacing the reference to "contract for deed" with "contract for sale" or "installment sale contract."

RESPONSE: The department agrees to amend the rule.

COMMENT 23: These attorneys suggested an amendment to NEW RULE III (ARM 42.12.211(3)), by deleting revocation as a requirement if the party applying for transfer of a license, as a result of foreclosure on a contract for deed, is found at any time to be unqualified to own the license. The group believes it would be sufficient for the rule to permit the department to revoke the license but not require revocation of the license.

RESPONSE: The department disagrees. Revocation is required by 16-4-205, MCA.

COMMENT 24: These attorneys suggested amending NEW RULE IV (ARM 42.12.212(1)), the second sentence including the word "either" after "by using standards found," deleting the word "and" after "internal revenue code" and replacing those words with "or which are in accordance with."

RESPONSE: The department agrees to amend the rule.

COMMENT 25: These attorneys believe the second sentence of NEW RULE IV (ARM 42.12.212(2)), is overly broad because any uncured default would result in the immediate creation of an undisclosed ownership interest in favor of the lender. It is the attorneys' opinion that the commercial world often tolerates defaults or allows a debtor to work out of a difficult situation without entering into written modifications to the agreement and that requiring parties to advise the department each time a small change takes place would be burdensome to the parties and to the department. The attorneys suggested amendment to the rule requiring "substantial compliance" with the loan arrangements previously approved or require disclosure of "substantial deviations" from the arrangements previously approved by the department.

RESPONSE: The department agrees the changes need not be reported to the department. However, the rule will not be amended as suggested because there is too much uncertainty with substantial compliance. All such deviations must, however, be documented and available for department review.

COMMENT 26: These attorneys believe the amendments to ARM 42.13.101, which set revocation penalties for undisclosed financial interests based on the new rules when applied to existing businesses, could result in widespread violations concerning undisclosed ownership interests. Revocation penalties for various infractions are too onerous and the rule does not make exception for a good faith attempt at compliance.

RESPONSE: The department disagrees as the rule takes this fact into consideration by using progressive penalties.

COMMENT 27: These attorneys contend the amendment to ARM 42.13.101(9)(b), which requires a licensee to report an admission against his own interest and face license revocation is a burdensome, unconscionable and unworkable rule.

RESPONSE: The department will amend the rule to require reporting at the time of renewal.

COMMENT 28: Senator Fred Thomas asked the department to address the situation where an applicant and/or landowner is unable to use a premises for the sale, service and consumption of alcoholic beverages if a license is currently issued to the location, even if the license is not in use and has been granted

nonuse status. It was suggested an exception be made to allow a license to be issued if a license issued to the location is on nonuse status.

RESPONSE: The department agrees. ARM 42.13.105 will not be amended. At a later time, the department will propose an amendment to ARM 42.12.401 to consider an exception for restaurant, beer and wine lottery license applications. The exception will apply when a location is in nonuse status and the applicant is someone other than the licensee. The nonuse must be due to the licensee's loss of use of the premises.

COMMENT 29: Greg Smith, Attorney with Smith Law Office, Great Falls, questioned what constitutes a complete transfer and when does it occur. Does it happen when the department's assignment form is signed or when the transfer is approved.

RESPONSE: A transfer of an alcoholic beverages license is final when approved by the department.

COMMENT 30: Greg Smith stated, the second sentence in ARM 42.12.106(7) is not definitional and the remedy provided is already available under Montana law.

RESPONSE: See response to comment 2.

COMMENT 31: Greg Smith suggested ARM 42.12.106(8), be amended to include sharing in the assets as an ownership interest. Further, in the second sentence, add "any" portion of the profits or suffers "any" portion of the losses. He also stated, the third sentence regarding participation in business decisions is overly broad and does not create an ownership interest.

RESPONSE: The department agrees to amend this rule.

COMMENT 32: Greg Smith suggested NEW RULE I (ARM 42.12.209(1)), be amended to state "a license may be transferred to another qualified person only pursuant to means legally authorized for the transfer of personal property in Montana."

RESPONSE: The department agrees to amend this rule.

COMMENT 33: Greg Smith stated the 5% earnest money limitation is artificial.

RESPONSE: See response to comments 5 and 19.

COMMENT 34: Greg Smith disagreed with NEW RULE II (ARM 42.12.210(2)(a)), the prohibition of an option to purchase as he believes it is a legitimate business tool. Mr. Smith suggested the department require disclosing the existence of any option or other contingent interest within 30 days of execution. If the department finds the holder of the option is not qualified to own the license, the option would be voided by the department.

RESPONSE: The department disagrees. See response to comment 6.

COMMENT 35: Greg Smith stated NEW RULE II (ARM 42.12.210(2)(c) through (f)), is unnecessary as all situations described can currently be enforced under existing law. Mr. Smith suggested the rule provide any ownership interest in the business operated under the license will create an ownership interest in the license and thereby prevent the need for addressing specific situations in (2)(c) through (f).

RESPONSE: The department believes it is necessary to adequately inform applicants of specific requirements not outlined in the law which affect license applications. See responses to comments 8 and 19.

COMMENT 36: Greg Smith questioned the restriction to contracts for deed in NEW RULE II (ARM 42.12.210(3)). Mr. Smith asked how the seller of a license could not be qualified to own a license unless it had been obtained by a foreclosure of a security interest or through inheritance.

RESPONSE: The department is amending NEW RULE II (ARM 42.12.210), to clarify the process.

COMMENT 37: Greg Smith stated, a true contract for deed cannot exist on an alcoholic beverages license because existing law requires a complete transfer of ownership of a license.

RESPONSE: See response to comment 22.

COMMENT 38: Greg Smith stated, NEW RULE III (ARM 42.12.211), providing any security interest owned by someone not qualified to own the license is essentially unenforceable.

RESPONSE: The department is amending NEW RULE III (ARM 42.12.211(2), to clarify this issue.

COMMENT 39: Greg Smith suggested, NEW RULE IV (ARM 42.12.212(2)), be amended to provide "such an extended financial arrangement, if not disclosed to the department may be determined by the department to be an undisclosed ownership interest."

RESPONSE: See response to comment 25.

4. As a result of these comments, the Department has amended the following rules:

42.12.106 DEFINITIONS (1) "Associated business" means a business that is not licensed by the State to keep or sell alcoholic beverages but has an alcoholic beverages licensed business located within or on the premises owned or controlled by the "Associated business." Examples of associated businesses are a ~~partnership or corporation which owns a~~ hotel OWNER that is not licensed to keep or sell alcoholic beverages but leases space in the hotel to a licensee, or a shopping mall that is not licensed to keep or sell alcoholic beverages but leases space in the mall to a licensee for use as tavern.

(2) through (6) remain as proposed.

(7) "Non-institutional lender" means a person other than a state or federally regulated banking or financial institution who loans money to an applicant for a license or to a licensee. ~~A non-institutional lender must provide evidence to show it does not have an ownership interest in the business operated under the license it is financing.~~

(8) "Ownership interest" means the involvement in the business operated under the license by someone who OWNS SOME OR ALL OF THE ASSETS OF THE BUSINESS, shares ~~in~~ ANY PORTION OF the profits, OR ANY PORTION OF THE losses, or liabilities of the business. Someone with an ownership interest in a liquor license shares in the financial risks of the business, is entitled to the profits or suffers the losses. OWNERSHIP INTEREST INCLUDES THE RIGHT TO CONTROL THE LOCATION OR OWNERSHIP OF A LICENSE. Examples of ownership interests would include THE AUTHORITY TO ~~participation~~ PARTICIPATE in such business decisions as sale of the license, relocation of the license, change or creation of any financial arrangements for loan repayment or funding sources, or any responsibilities listed in ARM 42.12.132 to be held by the licensee. PARTICIPATION IN BUSINESS DECISIONS DOES NOT INCLUDE PROVIDING ADVICE. A right of first refusal is not an ownership interest.

(9) through (14) remain as proposed.

AUTH: Sec. 16-1-303, MCA; IMP, Secs. 16-3-311, 16-4-105, 16-4-205, 16-4-207 and 16-4-404, MCA

42.12.207 APPLICATION APPROVED SUBJECT TO FINAL INSPECTION OF PREMISES (1) through (4) remain as proposed.

(5) In the event an applicant fails to meet the requirements of the conditional approval, the application will be denied. If intervening circumstances beyond an applicant's control prevent completion of a proposed premises and final inspection within a reasonable time, an applicant must notify the ~~liquor license bureau~~ DEPARTMENT in writing and provide evidence establishing grounds for extension of time in order to avoid denial of application.

(6) and (7) remain the same.

AUTH: Sec. 16-1-303 MCA; IMP, Secs. 16-4-104, 16-4-106, 16-4-201, 16-4-402, and 16-4-404, MCA

42.13.101 COMPLIANCE WITH LAWS AND RULES (1) and (2) remain as proposed.

(3) The department will impose progressive penalties for multiple violations of any laws, ordinances and rules within any three-year period unless mitigating circumstances indicate the penalty should be reduced or aggravating circumstances indicate the penalty should be increased. Violations and progressive penalties include, but are not limited to, those listed on the following chart. Any combination of 4 of the below violations occurring within a three-year period could result in license revocation action.

Violation	1st Offense	2nd Offense	3rd Offense	4th Offense
Sale to a Minor	$250	$500	20 day Suspension	Revocation
Sale to Intoxicated Persons	$250	$500	20 day Suspension	Revocation
Open after Hours	$150	$300	12 day Suspension	Revocation
Sale after Hours	$150	$300	12 day Suspension	Revocation
Repouring	$250	$500	20 day Suspension	Revocation
Denial of Right to Inspect	$150	$300	12 day Suspension	Revocation
No approval to Alter	$150	$300	12 day Suspension	Revocation
No management Agreement	$150	$300	12 day Suspension	Revocation
Improper use of Catering Endorsement	$150	$300	12 day Suspension	Revocation
Accept more than 7 Days Credit	$250	$500	20 day Suspension	Revocation
Extend more than 7 Days Credit	$250	$500	20 day Suspension	Revocation
Undisclosed Ownership Interest	FINE, SUSPENSION OR revocation			
90 Day Nonuse Without Approval	lapse			

(4) through (8) remain the same.

(9) Aggravating circumstances include, but are not limited to:

(a) no effort on the part of a licensee to prevent a violation from occurring,

(b) a licensee's failure to report a violation AT TIME OF RENEWAL,

(c) a licensee's ignoring warnings issued by a regulating authority about compliance problems,

(d) a licensee's failure to timely respond to requests during the investigation of a violation, or

(e) a violation's significant negative effect on the health and welfare of the community in which the licensee operates.

(10) IF THE VIOLATION DISCOVERED IS AN UNDISCLOSED OWNERSHIP INTEREST, THE DEPARTMENT WILL CONSIDER AGGRAVATING CIRCUMSTANCES DESCRIBED IN (9) ABOVE AND MITIGATING CIRCUMSTANCES SUCH AS VOLUNTARY DISCLOSURE OF RELEVENT FACTS IN DETERMINING THE APPROPRIATE PENALTY.

~~(10)~~ (11) Nothing in this rule prevents the department from revoking, suspending or refusing the renewal of a license if revocation, suspension or refusing renewal are expressly allowed in law or rule with reference to a prohibited act.

AUTH: Sec. 16-1-303, MCA; IMP, Sec. 16-3-301, 16-6-305, 16-6-314 and 16-4-406, MCA

NEW RULE I (ARM 42.12.209) TRANSFER OF A LICENSE TO ANOTHER PERSON (1) A license may be transferred to another qualified person only ~~if~~ PURSUANT TO MEANS LEGALLY AUTHORIZED FOR THE TRANSFER OF PERSONAL PROPERTY IN MONTANA, SUCH AS:

(a) the person is a purchaser upon a bona fide sale,

(b) the person is the personal representative of the estate of a deceased licensee,

(c) the person has a security interest in a license being foreclosed pursuant to ARM 42.12.205,

(d) the person is gifted the license and the donor completely transfers ownership interest, as provided in Title 70, chapter 3, part 1, MCA, or

(e) the person is appointed receiver under the license receivership.

(2) A potential buyer of a liquor license or a potential buyer of 10% or more of stock in a ~~liquor~~ business OPERATED UNDER THE LICENSE is required to submit an application for transfer of a liquor license or transfer of shares of stock pursuant to ARM 42.12.101. The applicant for ownership of either the business or its stock must be notified in writing by the department that EITHER TEMPORARY AUTHORITY HAS BEEN GRANTED OR such a transfer of the license is approved by the department before the buyer may pay to or in any way transfer any money or other valuable consideration to the seller in payment for the ~~liquor~~ business OPERATED UNDER THE LICENSE or stock. IF MONEY IS PAID TO THE SELLER ON THE GRANTING OF TEMPORARY OPERATING AUTHORITY AND THE APPLICATION IS LATER NOT APPROVED, THE MONEY MUST BE RETURNED. ~~However, as part of the sale or purchase of the liquor business or stock the~~ THE seller and the buyer may ~~enter into an earnest money agreement for the purpose of guaranteeing performance of the sale~~ EXCHANGE ANY PORTION OF THE

PURCHASE PRICE so long as the amount ~~of the earnest money agreement~~ is ~~not more than 5% of the total price of the liquor business or stock~~ PLACED IN ESCROW.

(3) A TRANSFER OF OWNERSHIP INTEREST OR MONEY CHANGING HANDS BETWEEN CURRENTLY QUALIFIED AND DISCLOSED OWNERS IS NOT PROHIBITED PRIOR TO NOTIFICATION TO AND APPROVAL BY THE DEPARTMENT.

~~(3)~~(4) The department may revoke a license for a violation of the requirements in (2).

AUTH: Sec. 16-1-303, MCA; IMP, Secs. 16-4-401, 16-4-402 and 16-4-404, MCA

NEW RULE II (ARM 42.12.210) COMPLETED TRANSACTIONS UNDER BONA FIDE SALES (1) A transaction under bona fide sale is complete only if the department receives an application for a license submitted pursuant to ARM 42.12.101 and the department approves the application pursuant to 16-4-402, MCA, and this rule.

(2) An application will not be approved if the sales transaction:

(a) provides for another person other than the applicant to have an option to purchase the license~~,~~;

(b) involves an escrow agent unless the ~~agent is~~ PARTIES ARE required to report to the department all changes or assignments to the original escrow agreement within 30 days of the change~~,~~;

(c) involves a loan from a non-institutional lender or a loan guarantor unless the loan from a non-institutional lender has been approved in writing by the department~~,~~ ~~because the lender has no ownership interest in the liquor business~~ BUT THIS DOES NOT PRECLUDE A QUALIFIED OWNER OF A LICENSE FROM LENDING MONEY TO THE BUSINESS OPERATED UNDER THE LICENSE OR FROM INDIVIDUALLY GUARANTEEING A DEBT INCURRED BY THE BUSINESS OPERATED UNDER THE LICENSE~~,~~;

(d) involves a lessor of the licensed premise who is not qualified to own the license being applied for unless the department approves in writing ~~such a business arrangement because the lessor does not have an ownership interest in the liquor business~~,;

(e) involves an applicant who is or will be the manager of an associated business if the associated business is owned or controlled by a person who is not qualified to own the license being applied for unless the department approves in writing ~~the associated business owner because the associated business owner does not have an ownership interest in the liquor business~~,; or

(f) ~~i~~Involves any business relationship, with respect to the proposed alcoholic beverages business, with a person who is not qualified to own the license being applied for unless the department approves in writing ~~that the other person in the business relationship does not have an ownership interest in the liquor business~~.

(3) An application may be approved if the sales transaction:

(a) ~~i~~is a contract for ~~deed~~ SALE and the seller and the

purchaser are persons each of whom is qualified to own the license being applied for at the time the application is submitted to the department and thereafter~~;~~.

(b) ~~T~~the seller and the purchaser in a contract for ~~deed~~ SALE must each submit with the application for the license the same level of supporting documentation required of the applicant in ARM 42.12.101 and 42.12.103 and cooperate in any investigation associated with the application or the license once it is approved~~;~~.

(c) ~~I~~if the application is approved, the license will be issued with the purchaser named on the face of the license as the owner and the seller named on the face of the license as the secured party~~;~~.

(d) ~~A~~a license may be revoked if either the seller or the purchaser in a contract for ~~deed~~ SALE is found to be unqualified to own the license~~;~~ OR

(e) ~~F~~for purposes of this rule a contract for ~~deed~~ SALE shall be construed to mean any sale in which the seller intends to retain legal ownership of the license until the terms and conditions of the contract are completely executed or performed by the purchaser.

AUTH: Sec. 16-1-303, MCA; IMP, Secs. 16-4-401, 16-4-402 and 16-4-404, MCA

NEW RULE III (ARM 42.12.211) TRANSFER OF A LICENSE DUE TO FORECLOSURE (1) A transfer of a license resulting from a ~~foreclosure~~ DEFAULT on a sale under a contract for ~~deed~~ SALE requires an application to transfer the license back to the seller pursuant to ARM 42.12.101 and the department's approval of the application pursuant to 16-4-402, MCA, and this rule.

(2) An application for the transfer of a license resulting from a ~~rescission or cancellation including breach or~~ default on a contract for ~~deed~~ SALE may be approved if the applicant's name is on the license as AN OWNER OR AS a secured party.

(3) An application for the transfer of a license resulting from a ~~rescission or cancellation including breach or~~ default on a contract for ~~deed~~ SALE may be denied and the license revoked if the party with the security interest is found at any time to be unqualified to own the license.

(4) A transfer of a license resulting from a foreclosure on a security interest based on a loan to the licensee requires the filing of documents evidencing the foreclosure. Based on the foreclosure documents, the transfer may be approved pursuant to ARM 42.12.205. A foreclosing secured party may retain ownership of the transferred license in a nonuse status for a period of no more than 180 days. If the license has not transferred to a qualified purchaser within 180 days, the license will be revoked.

AUTH: Sec. 16-1-303, MCA; IMP, 16-4-401, 16-4-402, and 16-4-404, MCA

NEW RULE IV (ARM 42.12.212) LOAN STANDARDS (1) The department will further evaluate a designated loan to determine if the transaction is in reality a loan or an ownership interest. Such a review of the transaction will be conducted by using standards found EITHER in the uniform commercial code, the internal revenue code ~~and~~ OR WHICH ARE IN ACCORDANCE WITH generally accepted commercial lending practices.

(2) The department will decline to find a loan arrangement where the money borrowed has not been returned when due and alternate arrangements have not been memorialized in a written contract. Such an extended financial arrangement~~, if not disclosed~~ MUST BE DOCUMENTED AND AVAILABLE to the department~~, will be determined by the department to be an undisclosed ownership interest~~.

AUTH: Sec. 16-1-303, MCA; IMP, Secs. 16-4-401, 16-4-402 and 16-4-404, MCA

5. The Department amends ARM 42.11.244, 42.12.101, 42.12.108, and 42.12.111 as originally proposed.

6. The Department repeals ARM 42.12.102 and 42.13.212.

7. Based on the comments of Senator Thomas in Comment 28, the Department will not adopt the amendments which were proposed to ARM 42.13.105.

CLEO ANDERSON
Rule Reviewer

MARY BRYSON
Director of Revenue

Certified to Secretary of State July 20, 1998

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF AMENDMENT
of ARM 42.12.132 relating to)
Management Agreements)

TO: All Interested Persons:

1. On June 11, 1998, the Department published notice of the proposed amendment of ARM 42.12.132 relating to Management Agreements at page 1491 of the 1998 Montana Administrative Register, issue no. 11.

2. No comments were received regarding the rule.

3. The Department has amended the rule as proposed.

CLEO ANDERSON
Rule Reviewer

MARY BRYSON
Director of Revenue

Certified to Secretary of State July 20, 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.

GENERAL PROVISIONS, Title 1

1.2.419 Filing, Compiling, Printer Pickup and Publication of the Montana Administrative Register, p. 1913, 2301

ADMINISTRATION, Department of, Title 2

I-VI and other rules - Payroll Administration - Decedent's Warrants, p. 1855, 2278
2.13.201 and other rules - 9-1-1 Emergency Telephone Systems, p. 1691, 2178
2.21.1412 and other rules - Employment Preference for Persons with Disabilities, p. 1845, 2277, 157
2.21.3704 and other rules - Recruitment - Selection, p. 1861, 2279
2.21.6401 and other rules - Performance Appraisal, 1452

(Public Employees' Retirement Board)
I Members of Retirement Systems who may Elect Coverage under the Guaranteed Annual Benefit Adjustment, p. 1843, 2280
2.43.302 and other rules - Definitions used in Rules and Statutes - Actuarial Data - Mailing for Non-profit Groups, p. 376, 920

(State Compensation Insurance Fund)

I and other rules - Employers' Liability - Premium Rates, p. 1697, 158

I&II Individual Loss Sensitive Dividend Distribution Plan, p. 695, 1273

AGRICULTURE, Department of, Title 4

I Weed District Supervisor Training, p. 811, 1913

4.5.203 Category 2 Noxious Weeds, p. 809, 1912

4.5.302 and other rules - Certification of Noxious Weed Seed Free Forage, p. 1546, 1827

4.9.401 Wheat and Barley Assessment - Refunds, p. 807, 1696

4.12.3801 and other rule - Grading Standards for Mustard Seed, p. 1869, 345

4.13.1001A Grain Fee Schedule, p. 698, 1276

4.13.1004 and other rules - Change of Implementing Statutes, p. 1867, 346

STATE AUDITOR, Title 6

I Fidelity Bond, p. 1706, 2180

I-XV Annuity Disclosure and Sales Illustrations, p. 382

6.6.302 and other rules - Replacement of Life Insurance, p. 395

6.6.2503 and other rules - Group Health Insurance in the Large and Small Group Markets - Individual Health Insurance, p. 1, 1698

6.6.4001 Valuation of Securities other than those Specifically Referred to in Statutes, p. 47, 528

6.6.5101 Plan of Operation for the Small Employer Health Reinsurance Program, p. 814, 1406

(Classification Review Committee)

6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 Edition, p. 599, 1407

COMMERCE, Department of, Title 8

8.63.101 and other rules - Passenger Tramways, p. 1960, 643

(Board of Alternative Health Care)

8.4.405 and other rules - Naturopathic Physician Continuing Education Requirements - Licensing by Examination - Midwives Continuing Education Requirements - Natural Substances Formulary List, p. 2134, 529

8.4.510 Licensure of Out-of-State Applicants, p. 515, 921

(Board of Architects)

8.6.405 and other rules - Licensure of Out-of-State Applicants - Examinations - Individual Seal - Renewals - Unprofessional Conduct - Fees - Architect Partnerships - Screening Committee - Solicitation of

Business by Architects from other States - Use of Title, p. 2142, 449

(Board of Athletics)
8.8.2802 and other rules - Definitions - Prohibitions - Physical Examinations - Physician Requirements - Elimination-type Events - Point System - Scoring - Promoter-Matchmaker - Medical Advisor, p. 1053

(Chemical Dependency Counselor Certification Program)
I Unprofessional Conduct, p. 1305, 1914
I-XVIII Chemical Dependency Counselor Certification, p. 602, 1408

(Board of Chiropractors)
8.12.601 and other rules - Applications - Examination Requirements - Temporary Permit - Renewals - Unprofessional Conduct - Endorsement, p. 49, 1494

(Board of Clinical Laboratory Science Practitioners)
8.13.303 and other rules - Fees - Renewal - Inactive Status - Reactivation of License, p. 54

(Board of Cosmetologists)
8.14.401 and other rules - Practice of Cosmetology - Electrology - Manicuring - Esthetics, p. 1709, 2181, 159
8.14.803 and other rules - Applications for Examination - Temporary Permits - Application of Out-of-state Cosmetologists, Manicurists, Estheticians - Transfer Students - Continuing Education - Salons - Booth Rental Licenses - Restrictions of Temporary Permits, p. 1456
8.14.814 Fees - Initial, Renewal, Penalty and Refund, p. 1226

(Boilers, Blasters and Crane Operators Program)
8.15.103 and other rules - Construction Blasters - Hoisting Operators - Crane Operators - Boiler Engineer Training, p. 2149, 453, 1155

(Board of Dentistry)
8.16.405 and other rule - Fees - Dentist Licensure by Credentials, p. 2157, 922

(State Electrical Board)
8.18.402 and other rules - Applications - General Responsibilities - Continuing Education - Screening Panel, p. 1625, 2161, 455

(Fire Prevention Program)
8.19.108 and other rules - Practice of Selling, Servicing or Installing Fire Prevention Systems, p. 2163, 458

(Board of Hearing Aid Dispensers)
8.20.401 and other rules - Traineeship Requirements and Standards - Examinations - Definitions - Transactional Document Requirements, p. 1743, 2281

(Board of Horse Racing)
8.22.502 and other rules - Parimutuel Wagering - Annual License Fees - Timers - Jockeys - Trainers - General Requirements - Weight-Penalties and Allowances - Exacta Betting - Requirements of Licensee - Bonus for Owners of Montana Breds, p. 615, 1156

(Board of Landscape Architects)
8.24.409 Fee Schedule, p. 1058, 1915

(Board of Medical Examiners)
8.28.414 and other rules - Physician Temporary Certificate - Fee Schedule - Acupuncture - Podiatry - Nutrition Practice Rules, p. 1746, 2197

(Board of Funeral Service)
8.30.402 and other rules - Applications - Licensure of Out-of-State Applicants - Examination - Fee Schedule - Sanitary Standards - Transfer or Sale of Mortuary License - Crematory Facility Regulation - Processing of Cremated Remains - Board Meetings - Disclosure of Funeral Arrangements - Methods of Quoting Prices - Itemization - Disclosure Statement - Cemetery Regulation - Federal Trade Commission Regulations - Disclosure Statement on Embalming, p. 1228, 1833

(Board of Nursing)
8.32.306 Application for Recognition, p. 1308
8.32.1408 Standards Relating to the Licensed Practical Nurse's Role in Intravenous (IV) Therapy, p. 623

(Board of Nursing Home Administrators)
8.34.414A Application for Licensure, p. 1423, 161

(Board of Occupational Therapists)
8.35.408 and other rule - Unprofessional Conduct - Continuing Education, p. 1551

(Board of Optometry)
8.36.409 and other rules - Fees - Licensure of Out-of-State Applicants - Continuing Education Requirements - Approved Programs or Courses, p. 235, 925

(Board of Outfitters)
I Watercraft Identification, p. 2224, 740
8.39.505 and other rules - Outfitter Applications and Renewals - Guide or Professional Guide Licenses and Qualifications - Safety Provisions - Unprofessional Conduct, p. 816

8.39.804 Review of New Operations Plan and Proposed Expansion of Net Client Hunting Use under an Existing Operations Plan, p. 1463

(Board of Pharmacy)
8.40.404 and other rules - Fees - Internship Regulations - Pharmacy Technicians, p. 1628, 2060, 163

(Board of Physical Therapy Examiners)
8.42.402 and other rules - Fees - Temporary Licenses - Continuing Education, p. 2169, 460

(Board of Plumbers)
8.44.402 and other rule - Definitions - Fees, p. 1751, 2226, 1158

(Board of Professional Engineers and Land Surveyors)
Establishment of a Negotiated Rulemaking Committee on Fire Extinguisher Systems - Need for Engineering Services, p. 700
Establishment of a Negotiated Rulemaking Committee on Wastewater Treatment Systems - Need for Engineering Services, p. 703
8.48.507 Classification of Experience, p. 1504, 534

(Board of Psychologists)
8.52.604 and other rules - Application Procedures - Continuing Education - Unprofessional Conduct - Ethical Practice of Psychology - Unprofessional Conduct, p. 57, 927

(Board of Public Accountants)
8.54.408 and other rules - Education Requirements - Fees - Enforcement Against Licensees, p. 2172, 463

(Board of Radiologic Technologists)
8.56.402 and other rules - Applications - Continuing Education - Permit Application - Types - Unprofessional Conduct, p. 1241, 1916

(Board of Real Estate Appraisers)
8.57.407 and other rules - Qualifying Education Requirements for Licensed Appraisers - Residential Certification - General Certification - Continuing Education - Ad Valorem Tax Appraisal Experience, p. 238, 744

(Board of Realty Regulation)
8.58.413 Reactivation of Licenses, p. 407, 1496
8.58.419 and other rules - Grounds for License Discipline - General Provisions - Unprofessional Conduct - Grounds for License Discipline of Property Management Licensees - General Provisions - Unprofessional Conduct, p. 821

(Board of Respiratory Care Practitioners)
8.59.506 and other rule - Fees - Continuing Education - Unprofessional Conduct, p. 1553

(Board of Sanitarians)
8.60.408 and other rules - Minimum Standards for Licensure - Continuing Education, p. 824, 1497, 1718

(Board of Speech-Language Pathologists and Audiologists)
8.62.204 and other rules - Examinations - Schedule of Supervision - Continuing Education, p. 1465

(Board of Veterinary Medicine)
8.64.401 and other rules - Definitions - Application Requirements - Temporary Permits - Support Personnel, p. 1633, 464

(Building Codes Division)
8.70.101 and other rules - Building Codes Division, p. 1310
8.70.101 and other rules - Building Codes Bureau, p. 1509, 2061, 164

(Weights and Measures Bureau)
8.77.101 and other rules - Voluntary Registration of Servicepersons and Service Agencies - Uniform Regulation of National Type Evaluation, p. 517, 1498

(Consumer Affairs Division)
I-XX New Motor Vehicle Warranty Act, p. 68, 746, 930
8.78.401 and other rules - Proprietary Schools, p. 2016, 165

(Banking and Financial Institutions Division)
I-VIII Annual Fees - Examinations - Reports by the Foreign Capital Depositories, p. 1871, 2283
8.80.110 Fees for the Approval of Point-of-Sale Terminals, p. 1556
8.80.307 Dollar Amounts to Which Consumer Loan Rates are to be Applied, p. 1558

(State Banking Board)
I-XI Application Procedure for a Charter - Notice of Hearing - Grounds for Denial - Procedural Rules for Determination - Procedural Rules for Discovery and Hearing - Application Charter Fee for the Foreign Capital Depositories, p. 1882, 2286
8.87.401 and other rule - Organization of the State Banking Board, p. 1560

(Local Government Assistance Division)
I Administration of the 1998 Treasure State Endowment Program (TSEP), p. 2228, 758, 932
8.94.3707 and other rule - 1991 Federal Community Development Block Grant Program - Administration of the 1998 Federal Community Development Block Grant Program, p. 2230, 751

8.94.3714 Administration of the 1998 Federal Community Development Block Grant Program, p. 706
8.94.4102 and other rule - Single Audit Act, p. 1355, 1917

(Economic Development Division)
8.99.401 and other rules - Microbusiness Advisory Council - Microbusiness Finance Program, p. 1547, 466
8.99.506 and other rule - Microbusiness Finance Program, p. 1468

(Board of Housing)
8.111.402 and other rules - Reverse Annuity Mortgage (RAM) Loans, p. 92, 644

(Travel Promotion and Development Division)
8.119.101 Tourism Advisory Council, p. 526, 933

(Burial Preservation Board)
I-VI Unmarked Burials within the State of Montana, p. 2233, 478

EDUCATION, Title 10

(Superintendent of Public Instruction)
10.16.2215 and other rules - School Funding - Budgeting - Transportation, p. 1244, 1719

(Board of Public Education)
10.55.602 and other rules - Content and Performance Standards for Reading and Mathematics, p. 1358
10.57.204 Teacher Certification - Experience Verification, p. 826, 1918
10.57.215 Teacher Certification - Renewal Requirements, p. 836, 1919
10.57.220 Teacher Certification - Recency of Credit, p. 830, 1920
10.57.301 Teacher Certification - Endorsement Information, p. 838, 1923
10.57.301 Teacher Certification - Endorsement Information, p. 832, 1922
10.57.301 Teacher Certification - Endorsement Information, p. 1962, 347
10.57.401 Teacher Certification - Class 1 Professional Teaching Certificate, p. 834, 1924
10.57.403 Teacher Certification - Administrative Certificate, p. 840, 1925
10.57.404 Teacher Certification - Class 4 Vocational Certificate, p. 409, 934
10.57.406 Teacher Certification - Class 6 Specialist Certificate, p. 828, 1926
10.58.527 Teacher Certification - Areas of Permissive Special Competency, p. 1964, 348
10.65.101 and other rules - Hours and Days of Instruction - Pupil Instruction-Related Days, p. 1966, 349

(State Library)
10.102.4001 Reimbursement to Libraries for Interlibrary Loans, p. 1262, 1563

(Montana Historical Society)
I-XVI Procedures that State Agencies must Follow to Protect Heritage Properties and Paleontological Remains - General Procedures which the State Historic Preservation Office must Follow in Implementing its General Statutory Authority, p. 411

FISH, WILDLIFE, AND PARKS, Department of, Title 12

I-III Angler Education Events, p. 626
12.3.202 Establishing a New Class of License Agent who may Receive Compensation from Clients for Preparation of Hunting License and Permit Applications, p. 629

(Fish, Wildlife, and Parks Commission)
I Defining Guiding Services for Use of Class B-10 and B-11 Licenses which are Outfitter-sponsored Nonresident Big Game Combination Licenses, p. 1753, 166
I-VIII Creating "Primitive Fishing Access Site Designation" where Site Development and Maintenance are Limited, p. 423
12.6.901 Limiting the Use of Motor-propelled Water Craft to Ten Horsepower on Lake Helena, p. 95, 1160

ENVIRONMENTAL QUALITY, Department of, Title 17

I&II and other rules - Underground Storage Tanks - Assessment of Administrative Penalties for Violations of the Underground Storage Tank Act - Issuance of Emergency Underground Storage Tank Permits, p. 842, 1739
I-VI CECRA - Listing, Delisting and Ranking Rules for Comprehensive Environmental Cleanup and Responsibility Act (CECRA) Facilities, p. 1264

(Board of Environmental Review)
I Water Quality - Temporary Water Standards for Daisy Creek, Stillwater River, Fisher Creek, and the Clark's Fork of the Yellowstone River, p. 1652, 1872, 2211, 1049, 2502, 534, 1636, 631
I-IV Water Quality - Assessment of Administrative Penalties for Violations of Water Quality Act, p. 263, 940
I-VI and other rule - Water Quality - Cross-connections in Drinking Water Supplies, p. 257, 958, 1277
16.2.501 Major Facility Siting Act - Definitions, p. 279, 935
17.8.101 and other rules - Air Quality - Definition of Volatile Organic Compounds - Incorporations by Reference - Incorporating by Reference Maximum

Achievable Control Technology Standards for Primary Aluminum Reduction Plants, p. 851, 1725
17.8.220 Air Quality - Settled Particulate Matter, p. 1577
17.8.220 Air Quality - Settled Particulate Matter, p. 849
17.8.504 and other rule - Air Quality - Application and Operation Fees, p. 1574
17.8.514 Air Quality - Air Quality Major Open Burning Fees, p. 859, 1729
17.8.1201 and other rules - Air Quality - Air Quality Operating Permit Program, p. 2018, 350
17.30.201 Water Quality - Permit and Authorization Fees, p. 1566
17.30.502 Water Quality - Montana Mixing Zone - Definitions, p. 847
17.30.602 and other rules - Water Quality - Montana Surface Water Quality Standards - Nondegradation Rules - Ground Water Pollution Control System Rules, p. 1835
17.30.610 Water Quality - Montana Surface Water Quality Standards, p. 857
17.30.716 Water Quality - Categorical Exclusions, p. 274, 936
17.30.1022 Water Quality - Montana Ground Water Pollution Control System Requirements, p. 271, 1164
17.36.801 and other rules - Subdivisions - Increasing the Fees and Reimbursements to Local Governing Bodies, p. 282, 646
17.38.101 and other rules - Public Water Supply - Updating Public Water Supply and Public Sewage System Rules, p. 242, 1167, 1730, 1927
26.4.1301 Reclamation - Modification of Existing Permits, p. 281, 963

(Petroleum Tank Release Compensation Board)
I Applicable Rules Governing the Operation and Management of Tanks - Interpretation of 75-11-308(1)(e), MCA, p. 1755, 479
17.58.342 Eligible Reimbursement for Per Diem Expenses, p. 1757, 2198

TRANSPORTATION, Department of, Title 18

I-VI Seizure of Improperly Imported Motor Fuels, p. 97, 964
18.8.101 Definition of F.O.B. Factory List Price and F.O.B. Port-of-Entry List Price as it Relates to the Motor Carrier Services Program, p. 1969, 170
18.8.509 and other rules - Motor Carrier Services Program, p. 1638, 171

CORRECTIONS, Department of, Title 20

I-VII Siting and Construction Standards of Private Correctional Facilities in Montana, p. 1895, 172, 1175

I-X Siting, Establishment, and Expansion of Pre-release Centers or Juvenile Transition Centers in the State of Montana, p. 428
20.9.501 and other rules - Licensure of Youth Detention Facilities, p. 289

JUSTICE, Department of, Title 23

I-VII Valuation and Taxation of Light Motor Vehicles - Imposition of Fees in Lieu of Tax on Buses, Heavy Trucks, Truck Tractors and Trailers, p. 1901, 2292
23.16.101 and other rules - Public Gambling, p. 2023, 1176
23.17.108 Establishment of a Tuition Fee at the Montana Law Enforcement Academy, p. 709, 1279

LABOR AND INDUSTRY, Department of, Title 24

24.16.9003 and other rules - Montana's Prevailing Wage Rates - Establishing Revised Rates for Building Construction Services, p. 1581
24.16.9003 and other rule - Prevailing Wage Rates - Establishing Rates for Building Construction Services, p. 718, 1060, 1740
24.21.414 Wage Rates for Certain Apprenticeship Programs, p. 1586
24.21.414 Adoption of Wage Rates for Certain Apprenticeship Programs, p. 723
24.28.101 and other rule - Workers' Compensation Mediation, p. 1061
24.29.207 and other rules - Workers' Compensation Matters, p. 1064
24.29.1425 and other rules - Hospital Rates Payable in Workers' Compensation Cases, p. 433, 759
24.30.102 Occupational Safety and Health Standards for Public Sector Employment, p. 439
24.30.1302 Safety Standards for Coal Mines, p. 443, 760, 966
24.33.121 and other rules - Operation of the Construction Contractor Registration Program, p. 1078
24.35.111 and other rules - Independent Contractor Exemption, p. 1082
24.35.202 and other rules - Independent Contractor Central Unit, p. 1086

(Workers' Compensation Court Judge)
I Procedural Rule - Motion for Consideration, p. 1579
24.5.101 and other rules - Workers' Compensation Court, p. 711, 1281

(Human Rights Commission)
I - XIV and other rules - Organization and Functions of the Montana Human Rights Commission, p. 1851

LIVESTOCK, Department of, Title 32

(Board of Livestock)

I-VI and other rule - Equine Infectious Anemia - Importation of Animals into Montana, p. 1090

I-VIII Scrapie - Quarantine - Reporting Requirement - Identification - Disclosure of Information - Availability for Inspection - Sample Collection - Identification Methodology, p. 1589

32.3.212 Brucellosis Vaccination(s), p. 1641, 656

32.24.301 Emergency Amendment - Alteration of the Milk Pricing Rule as it Pertains to the Butter Fat Component, p. 1742

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

I-IV Marketing of Water at State Water Projects, p. 728, 1415

I-XX Financial Assistance Available Under the Drinking Water State Revolving Fund Act, p. 861, 1412

36.24.104 Types of Bonds - Financial and Other Requirements in the Wastewater Revolving Fund Act, p. 102, 538

(Board of Land Commissioners and Department of Natural Resources and Conservation)

I Grazing of Domestic Sheep on State Tracts within or Adjacent to Occupied Bighorn Ranges, p. 731, 1414

26.2.703 and other rules - Transfer from the Department of State Lands - Citizen Participation in Agency Decisions, p. 726, 1282

26.5.101 and other rules - Transfer from the Department of State Lands - Resource Development Division - Establishment, Administration and Management of State Natural Areas, p. 761

(Board of Oil and Gas Conservation)

36.22.1303 and other rules - Well Plugging Requirement - Plugging and Restoration Bond - Financial Responsibility, p. 1646, 2038, 482

36.22.1308 Plugging and Restoration Bond, p. 636, 1745

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

Establishment of a Negotiated Rulemaking Committee on Bed and Breakfast Establishments, p. 1774

Establishment of a Negotiated Rulemaking Committee on Guest Ranches and Outfitting and Guide Facilities, p. 1778

I and other rules - Medicaid Outpatient Drugs, p. 2241, 495

I-VIII and other rules - Rural Health Clinics and Federally Qualified Health Centers, p. 886

I-XV and other rules - Families Achieving Independence in Montana, p. 1592

I-XVIII Tattoos, p. 108, 967

I-XXI	and other rules - Youth Care Facilities, p. 1759, 489
I-XXI	and other rule - Minimum Standards for Mental Health Centers, p. 1556, 539
I-XXIII	and other rules - Child Support Enforcement Guidelines, p. 317, 447
11.5.101	and other rules - Transfer from the Department of Family Services - Protective Services, p. 657
11.5.401	and other rules - Transfer from the Department of Family Services - Supplemental Security Income Payments, p. 2294
11.6.101	and other rules - Transfer from the Department of Family Services - Adoptive Services, p. 659
11.7.105	and other rules - Transfer from the Department of Family Services - Foster Care Services, p. 2250, 488
11.9.101	and other rules - Transfer from the Department of Family Services - Residential Alcohol and Drug Treatment for Indigent Juveniles, p. 2295
11.11.101	and other rules - Transfer from the Department of Family Services - Licensure of Child Placing Agencies, p. 661
11.12.101	and other rules - Transfer from the Department of Family Services - Youth Care Facilities, p. 663
11.16.101	and other rules - Transfer from the Department of Family Services - Licensure of Adult Foster Care Homes - Community Homes for Persons with Developmental Disabilities - Community Homes for Persons with Physical Disabilities, p. 667
16.24.414	Health Supervision and Maintenance for Day Care Centers, p. 2254, 762
16.28.101	and other rules - Control of Sexually Transmitted Diseases, p. 1690
16.32.320	Hospital Swing Beds, p. 1890
16.38.307	Laboratory Fees for Clinical Analysis, p. 105, 671
20.3.201	and other rules - Transfer from the Department of Corrections - Chemical Dependency Treatment Program, p. 1502
20.3.502	and other rules - Chemical Dependency Educational Courses, p. 2040, 351
20.14.104	and other rules - Transfer from the Department of Corrections - Mental Health Inpatient Facilities, p. 1505
20.14.201	and other rules - Transfer from the Department of Corrections - Veterans' Facilities, p. 1748
20.14.501	and other rules - Certification of Mental Health Professionals, p. 1485
46.8.1510	Exceptions to Placement Rules for Developmental Disabilities Service Positions, p. 2045, 176
46.12.303	and other rules - Medicaid Coverage - Reimbursement of Various Medical Items and Services, p. 1470
46.12.303	and other rules - Medicaid Billing and Reimbursement for Podiatry, Therapy, Audiology, Clinic, Family Planning, Organ Transplant, Optometric, Eyeglasses, Home and Community Speech Pathology and Audiology,

Physician, and Mid-level Practitioner Services, p. 129, 676
46.12.514 and other rules - Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT) - Private Duty Nursing Services, p. 1894
46.12.802 and other rule - Medicaid Durable Medical Equipment, p. 2257, 497
46.12.1221 and other rules - Medicaid Coverage - Reimbursement of Nursing Facility Services, p. 1097, 1749
46.12.3001 and other rules - Medicaid Eligibility, p. 1660
46.13.303 and other rules - Low Income Energy Assistance, p. 1649, 2296
46.14.301 and other rule - Low Income Weatherization Assistance Program (LIWAP), p. 639, 1416
46.18.305 and other rules - Families Achieving Independence in Montana's (FAIM) Work Readiness Component (WORC) - Other Employment and Training Activities, p. 1676
46.30.507 Child Support Enforcement Distributions of Collections, p. 1395
46.30.1605 and other rules - Child Support and Enforcement Services Fee Schedule, p. 310, 1777

PUBLIC SERVICE REGULATION, Department of, Title 38

I-VI Electricity Supplier Licensing and Reporting Rules, p. 1121, 1929
I-IX Montana Interim Universal Access Program, p. 1253, 1921, 181
I-XI IntraLATA Equal Access Presubscription, p. 2048, 983
I-XIII Natural Gas Utility Restructuring and Customer Choice Act, Title 69, Chapter 3, Part 14, MCA - Standards of Conduct - Anticompetitive and Abusive Practices - Supplier Licensing - Universal System Benefits, p. 2263, 1506, 1928
38.4.105 and other rules - Railroads, p. 342, 1184
38.5.1010 and other rules - Pipeline Safety, including Drug and Alcohol Testing - National Electric Safety Code, p. 1972, 180
38.5.1502 and other rule - Utility to Consumer Notice of Proposed Tariff Changes, p. 1488

REVENUE, Department of, Title 42

I-III Income Tax Credit for the Preservation of Historic Buildings, p. 1980, 184
I-IV Family Education Savings Act, p. 2175, 680
42.2.601 Tax Assessment Review Process, p. 1814, 2199
42.11.244 and other rules - Liquor License Transfers, p. 1139
42.11.301 and other rules - Commissions Earned by Agents Operating Liquor Stores in Montana, p. 1132
42.12.132 Management Agreements, p. 1491
42.14.102 and other rules - Accommodation Tax, p. 1983, 182
42.15.506 and other rule - Elderly Homeowner Renter Credit, p. 1975, 183

42.15.507 and other rules - Charitable Endowment Funds, p. 150, 1004
42.15.601 and other rules - Medical Care Savings Account, p. 2273, 1015
42.17.131 Withholding Allowances, p. 1909
42.19.1203 and other rules - Industrial Property Trend - New Industrial Property - Personal Property Trended Depreciation Schedules, p. 1782, 2297
42.20.160 and other rules - Forest Classification and Appraisal for Property Tax, p. 1128
42.21.113 Personal Property Schedules, p. 1153, 1525
42.31.131 Cigarette Tax Refunds/Distributions, p. 148, 681
42.31.331 Tobacco Rules - Sales from Vending Machines, p. 733, 1417
42.31.401 Emergency Telephone Service, p. 1978, 185
42.38.101 and other rules - Unclaimed Property, p. 1399

SECRETARY OF STATE, Title 44

I Schedule of Fees for the Centralized Voter File, p. 735, 1283
1.2.419 Filing, Compiling, Printer Pickup and Publication of the Montana Administrative Register, p. 1913, 2301
44.9.101 and other rules - Mail Ballot Elections, p. 737, 1285

(Commissioner of Political Practices)
44.10.331 Limitations on Receipts from Political Committees, p. 1986, 186

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 June 1998, appear. Vacancies scheduled to appear from August 1, 1998, through October 31, 1998, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of July 6, 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 JUNE, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Barbers (Commerce)			
Mr. Max DeMars	Governor	reappointed	6/1/1998
Big Timber			7/1/2001
Qualifications (if required): practicing barber			
Board of Plumbers (Commerce)			
Mr. Duane Steinmetz	Governor	reappointed	6/9/1998
Billings			5/4/2002
Qualifications (if required): journeyman plumber			
Mr. Jerry Lyford	Governor	Grover	6/9/1998
Kalispell			5/4/2002
Qualifications (if required): master plumber			
Board of Regents of Higher Education (Education)			
Ms. Kimberly Cunningham	Governor	Thielman	6/1/1998
Billings			6/1/1999
Qualifications (if required): student representative			
Western Interstate Commission for Higher Education (Education)			
Rep. Emily Swanson	Governor	reappointed	6/19/1998
Bozeman			6/19/2002
Qualifications (if required): legislator			

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1998 through OCTOBER 31, 1998

Board/current position holder	Appointed by	Term end
Alternative Health Care Board (Commerce)		
Dr. Tom Rasmussen, Helena Qualifications (if required): public member	Governor	9/1/1998
Ms. Kathee Dunham, Arlee Qualifications (if required): direct midwife	Governor	9/1/1998
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 Outfitters (Commerce)		
Mr. Roy Ereaux, Malta Qualifications (if required): representing District 4	Governor	10/1/1998
Mr. Max Barker, Augusta Qualifications (if required): representing District 3	Governor	10/1/1998
Board of Private Security Patrol Officers and Investigators (Commerce)		
Ms. Mary Luntsford, Kalispell Qualifications (if required): representing proprietary security organizations	Governor	8/1/1998
Mr. Gary Gray, Great Falls Qualifications (if required): representing contract security companies	Governor	8/1/1998

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1998 through OCTOBER 31, 1998

Board/current position holder	Appointed by	Term end
Board of Private Security Patrol Officers and Investigators (Commerce) cont.		
Mr. Michael Ames, Colstrip	Governor	8/1/1998
Qualifications (if required): representative of a proprietary security organization		
Board of Psychologists (Commerce)		
Dr. Marian Martin, Billings	Governor	9/1/1998
Qualifications (if required): licensed psychologist		
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		

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1998 through OCTOBER 31, 1998

Board/current position holder	Appointed by	Term end
Family Support Services Advisory Council (Public Health and Human Services) cont.		
Ms. Maria Pease, Lodge Grass Qualifications (if required): parent representative	Governor	9/11/1998
Ms. Chris Volinkaty, Missoula Qualifications (if required): service provider	Governor	9/11/1998
Ms. Barbara Stefanic, Laurel Qualifications (if required): related services agency representative	Governor	9/11/1998
Mr. John Holbrook, Helena Qualifications (if required): state insurance governance representative	Governor	9/11/1998
Ms. Colleen Thompson, Glasgow Qualifications (if required): related agency representative	Governor	9/11/1998
Ms. Christine Gutschenritter, Great Falls Qualifications (if required): related agency representative	Governor	9/11/1998
Ms. Jackie Jandt, Helena Qualifications (if required): state agency representative	Governor	9/11/1998
Ms. Lynda Hart, Helena Qualifications (if required): state agency representative	Governor	9/11/1998
Rep. Matt McCann, Harlem Qualifications (if required): legislator	Governor	9/11/1998
Ms. Sharon Wagner, Helena Qualifications (if required): state agency representative	Governor	9/11/1998

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1998 through OCTOBER 31, 1998

Board/current position holder	Appointed by	Term end
Family Support Services Advisory Council (Public Health and Human Services) cont.		
Ms. Georgia Rutherford, Browning Qualifications (if required): parent representative	Governor	9/11/1998
Ms. Millie Kindle, Malta Qualifications (if required): parent representative	Governor	9/11/1998
Ms. Gwen Beyer, Polson Qualifications (if required): parent representative	Governor	9/11/1998
Ms. Beth Kenney, Helena Qualifications (if required): parent representative	Governor	9/11/1998
Mr. Phil Matteis, Florence Qualifications (if required): health/medical services representative	Governor	9/11/1998
Governor's Advisory Council on Disability (Administration)		
Mr. Peter Leech, Missoula Qualifications (if required): public member	Governor	8/1/1998
Mr. James Meldrum, Helena Qualifications (if required): public member	Governor	8/1/1998
Ms. Mary Morrison, Missoula Qualifications (if required): public member	Governor	8/1/1998
Mr. Michael Regnier, Missoula Qualifications (if required): public member	Governor	8/1/1998
Mr. Bill Roberts, Helena Qualifications (if required): public member	Governor	8/1/1998

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1998 through OCTOBER 31, 1998

Board/current position holder	Appointed by	Term end
Governor's Advisory Council on Disability (Administration) cont.		
Ms. Anne MacIntyre, Helena Qualifications (if required): ex-officio member	Governor	8/1/1998
Mr. William Jones, Great Falls Qualifications (if required): public member	Governor	8/1/1998
Ms. Patricia Lockwood, Laurel Qualifications (if required): public member	Governor	8/1/1998
Historical Preservation Review Board (Historical Society)		
Mr. John Robert Horner, Bozeman Qualifications (if required): paleontologist	Governor	10/1/1998
Ms. Theo Hugs, Fort Smith Qualifications (if required): historian	Governor	10/1/1998
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

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1998 through OCTOBER 31, 1998

Board/current position holder	Appointed by	Term end
Historical Records Advisory Council (Historical Society) cont.		
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
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

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1998 through OCTOBER 31, 1998

Board/current position holder	Appointed by	Term end
Indian Burial Preservation Board (Commerce) cont.		
Dr. Ken Deaver, Billings	Governor	8/22/1998
Qualifications (if required): representing the Montana Archaeological Association		
Lewis and Clark Bicentennial Advisory Council (Historical Society)		
Mr. John G. Lepley, Fort Benton	Governor	8/1/1998
Qualifications (if required): public member		
Ms. Edythe McCleary, Hardin	Governor	8/1/1998
Qualifications (if required): public member		
Mr. John Pretty On Top, Crow Agency	Governor	8/1/1998
Qualifications (if required): public member		
Mr. Mike Labriola, Great Falls	Governor	8/1/1998
Qualifications (if required): public member		
Mr. Tim Crawford, Helena	Governor	8/1/1998
Qualifications (if required): public member		
Ms. Gloria Wester, Laurel	Governor	8/1/1998
Qualifications (if required): public member		
Mr. Jack Hines, Big Timber	Governor	8/1/1998
Qualifications (if required): public member		
Mr. Dennis Seibel, Bozeman	Governor	8/1/1998
Qualifications (if required): public member		
Ms. Diane Wolfe, Missoula	Governor	8/1/1998
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1998 through OCTOBER 31, 1998

Board/current position holder	Appointed by	Term end
Lewis and Clark Bicentennial Advisory Council (Historical Society) cont.		
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
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
Lewis and Clark Bicentennial Commission (Historical Society)		
Mr. Hal J. Stearns, Missoula Qualifications (if required): public member	Governor	10/1/1998
Mr. Leif Johnson, West Yellowstone Qualifications (if required): public member	Governor	10/1/1998

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1998 through OCTOBER 31, 1998

Board/current position holder	Appointed by	Term end
Lewis and Clark Bicentennial Commission (Historical Society) cont.		
Mr. Curley Youpee, Poplar	Governor	10/1/1998
Qualifications (if required): enrolled member of a Montana Indian Tribe		
Noxious Weed Seed Free Forage Advisory Council (Agriculture)		
Mr. Bob McNeill, Dillon	Director	9/17/1998
Qualifications (if required): outfitters/guides		
Mr. Dennis Cash, Bozeman	Director	9/17/1998
Qualifications (if required): ex officio		
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		

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1998 through OCTOBER 31, 1998

Board/current position holder	Appointed by	Term end
Risk Management Advisory Committee (Administration) cont.		
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		
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		

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1998 through OCTOBER 31, 1998

Board/current position holder	Appointed by	Term end
Risk Management Advisory Committee (Administration) cont.		
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		
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		

VACANCIES ON BOARDS AND COUNCILS -- AUGUST 1, 1998 through OCTOBER 31, 1998

Board/current position holder	Appointed by	Term end
Risk Management Advisory Committee (Administration) cont.		
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		
Water and Wastewater Operators Advisory Council (Health and Environmental Sciences)		
Mr. James L. Worthington, Laurel	Governor	10/16/1998
Qualifications (if required): representative of municipality		
Mr. Curt Myran, Miles City	Governor	10/16/1998
Qualifications (if required): representative of municipality		
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		