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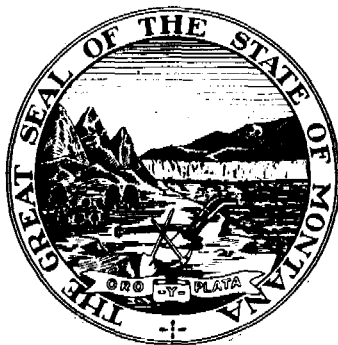
**RESERVE**

**MONTANA  
ADMINISTRATIVE  
REGISTER**

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1998 ISSUE NO. 20  
OCTOBER 22, 1998  
PAGES 2776-2923



# MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE STATE COMPENSATION INSURANCE FUND  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF PUBLIC HEARING
amendment of rule 2.55.327, )	FOR PROPOSED AMENDMENT OF
regarding the construction )	RULE 2.55.327 CONSTRUCTION
industry premium credit )	INDUSTRY PREMIUM CREDIT
program, rule 2.55.501 )	PROGRAM AND
definitions and 2.55.502 )	RULE 2.55.501 DEFINITIONS
regarding the individual loss )	AND RULE 2.55.502
sensitive dividend )	INDIVIDUAL LOSS SENSITIVE
distribution plan )	DIVIDEND DISTRIBUTION PLAN

TO: All Interested Persons:

1. On November 12, 1998 the State Compensation Insurance Fund will hold a public hearing at 2:00 p.m., in Room 201 of the State Compensation Insurance Fund Building, 5 South Last Chance Gulch, Helena, Montana, to consider the amendments to rules 2.55.327, 2.55.501 and 2.55.502 pertaining to the State Compensation Insurance Fund's construction industry premium credit program and the individual loss sensitive dividend plan.

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

2.55.327 CONSTRUCTION INDUSTRY PREMIUM CREDIT PROGRAM

(1) through (2) remain the same.

(3) The following class codes are the construction codes eligible for the construction industry premium credit program:

3365	5057	5188	5348	5472	5506	5645	6045	<del>6260</del>	7601
3724	5059	5190	<del>5402</del>	5473	5507	5651	6204	6306	7605
3726	5069	5213	5403	5474	5508	5703	6217	6319	7855
5020	5102	5215	5437	<del>5478</del>	<del>5536</del>	6003	6229	6325	9521
5022	5146	5221	5443	5479	5538	6005	6233	6365	9552
5037	5160	5222	5445	5480	5551	6017	6251	6400	
5040	5183	5223	5462	5491	5610	6018	6252	7538	

(4)(a) The following credit percentages, are to be applied to the manual premium of the insured's construction class codes during the survey period to determine the premium credit factor for the fiscal year beginning July 1, 19978.

Average Hourly Wage      Credit Percentage

<del>\$14.39 or less</del>	<del>0%</del>
<del>\$14.40 - \$14.89</del>	<del>0%</del>
<del>\$14.90 - \$15.39</del>	<del>10%</del>
<del>\$15.40 - \$15.89</del>	<del>12%</del>
<del>\$15.90 - \$16.39</del>	<del>14%</del>
<del>\$16.40 - \$16.89</del>	<del>15%</del>

\$16.90 - \$17.39	16%
\$17.40 - \$17.89	17%
\$17.90 - \$18.39	18%
\$18.40 - \$19.39	19%
\$19.40 - \$20.39	20%
\$20.40 - \$21.39	21%
\$21.40 and above	22%

Average Hourly Wage      Credit Percentage

\$14.84 or less	0%
\$14.85 - \$15.34	8%
\$15.35 - \$15.84	10%
\$15.85 - \$16.34	12%
\$16.35 - \$16.84	14%
\$16.85 - \$17.34	15%
\$17.35 - \$17.84	16%
\$17.85 - \$18.34	17%
\$18.35 - \$18.84	18%
\$18.85 - \$19.84	19%
\$19.85 - \$20.84	20%
\$20.85 - \$21.84	21%
\$21.85 and above	22%

(b) The following credit percentages in lieu of the table in (4)(a) will be used for the fiscal year beginning July 1, 1998.

Average Hourly Wage      Credit Percentage

\$14.84 or less	0%
\$14.85 - \$15.34	8%
\$15.35 - \$15.84	10%
\$15.85 - \$16.34	12%
\$16.35 - \$16.84	14%
\$16.85 - \$17.34	15%
\$17.35 - \$17.84	16%
\$17.85 - \$18.34	17%
\$18.35 - \$18.84	18%
\$18.85 - \$19.84	19%
\$19.85 - \$20.84	20%
\$20.85 - \$21.84	21%
\$21.85 and above	22%

Average Hourly Wage      Credit Percentage

\$15.40 or less	0%
\$15.41 - \$15.90	8%
\$15.91 - \$16.40	10%
\$16.41 - \$16.90	12%
\$16.91 - \$17.40	14%
\$17.41 - \$17.90	15%
\$17.91 - \$18.40	16%

\$18.41 - \$18.90	17%
\$18.91 - \$19.40	18%
\$19.41 - \$20.40	19%
\$20.41 - \$21.40	20%
\$21.41 - \$22.40	21%
\$22.41 and above	22%

(5) through (6) remain the same.

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

RATIONALE: Subsection (3) is amended to reflect modifications to the classification codes eligible for the program. Two classifications, 5402 and 6260 have been deleted from the inventory and two classifications have been added, 5478 and 5536. The amendment is reasonably necessary at this time so that the classifications eligible for the program will be current for participating policyholders.

Subsection (4)(a) is amended to delete the out-dated construction credit table for the fiscal year beginning July 1, 1997. The table for July 1, 1998 is left in the rule, as it is the table utilized in the current fiscal year.

The proposed amendment to subsection (4)(b) updates the construction credit table to reflect changes in the state's average weekly wage as determined by the Department of Labor and Industry, effective July 1, 1998. It is reasonably necessary to amend this rule at this time as the credit table is based on the states average weekly wage and the table needs to be updated to incorporate the increase in the states average weekly wage effective July 1, 1998, so that credit percentages can be calculated for State Fund policyholders in the program effective July 1, 1999.

2.55.501 DEFINITIONS The following definitions apply to ARM 2.55.502:

(1) through (6) remain the same.

(7) "Premium" means payroll times the manual rate for each classification code, times premium modifiers, and minus volume discount for the dividend year and any premium adjustment pursuant to a rating plan. The premium utilized for dividend calculation purposes shall be the premium on a date no later than 12 months after the close of the dividend year selected by the state fund board of directors and the premium utilized is not subject to change thereafter.

(8) Remains the same.

AUTH: Sec. 39-71-2315 and 39-71-2323 MCA; IMP: Sec. 39-71-2323 MCA.

RATIONALE: The definition of premium needs to be modified to address premium adjustments to policies participating in

retrospective rated plans. It is reasonably necessary that the state fund amend the rule now as the state fund just recently made the first adjustments to premium and the definition should clearly state that premium adjustments for these programs are included in the earned premium used to calculate any declared dividend.

The rule as presently written states that the premium for dividend calculation purposes shall be the premium on a date no later than 12 months after the close of the dividend year. For dividend purposes for FY97, that date would have been July 1, 1998. Recent review of the rule revealed this limitation, and therefore it is reasonably necessary that the rule be amended to allow for premium to be determined for a dividend declaration on a year prior to FY98, to avoid preclusion of any year prior to FY98 from a dividend declaration by the Board of Directors.

2.55.502 INDIVIDUAL LOSS SENSITIVE DIVIDEND DISTRIBUTION PLAN

(1) through (6) remain the same.  
(7) A dividend will be issued as a warrant to a policyholder, unless (7)(a) through (7)(c) exist. The dividend will be applied to the account, unless an exception is made by the board of directors for a warrant to be issued, if the following situations exist:

(a) the current policy is pending forced cancellation for non-payment of premium;

(b) a canceled policy with an existing debt owed the state fund; or

(c) the dividend amount is above the minimum amount established pursuant to (6) above but below an amount as established by the board.

(8) Remains the same.

AUTH: Sec. 39-71-2315 and 39-71-2323 MCA; IMP: Sec. 39-71-2323 MCA.

RATIONALE: The current rule requires the dividend amount be applied to the account (rather than paid in a warrant) to any policyholders pending cancellation for non-payment of premium. However, currently we are limited by our computer system. The primary difference between these policyholders and cancelled bad debt policyholders is that the latter have actually defaulted in their obligation to the State Fund. A policy pending cancellation may or may not end up as a cancelled policy. The rule should be revised to permit but not require the dividend to be credited to the account. In this way, in future years when the state fund has implemented the new computer system, the state fund can apply the dividends to the account for pending forced policies, if desired. This amendment is reasonably necessary at this time to provide the board of the state fund the flexibility to issue a warrant to policyholders pending forced cancellation, as current computer system limitations impact the ability to credit accounts if a dividend is declared prior to system modifications.

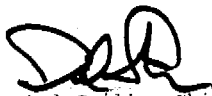


3. The State Compensation Insurance Fund makes reasonable accommodations for persons with disabilities who wish to participate in this public hearing. Persons needing accommodations must contact the State Fund, Attn: Ms. Rita Bird, P.O. Box 4759, Helena, MT 59604; telephone (406) 444-6480; TDD (406) 444-5971; fax (406) 444-6555, no later than 5:00 p.m., November 9, 1998, to advise as to the nature of the accommodation needed and to allow adequate time to make arrangements.


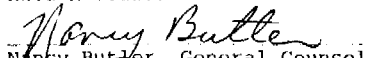
4. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to State Fund attorney Nancy Butler, Legal Department, State Compensation Insurance Fund, 5 South Last Chance Gulch, P.O. Box 4759, Helena, Montana 59604-4759, and must be received no later than 5:00 p.m. November 20, 1998.

5. The State Fund maintains a list of interested persons, which must include the subject, or subjects in which each person on the list is interested. Any interested person may be placed on the list by providing the name, address, and subject matter of which the interested person desires notice to Ms. Rita Bird, P.O. Box 4759, Helena, MT 59601, telephone (406) 444-6480.

6. The State Fund Legal Department has been designated to preside over and conduct the hearing.



Dal Smilie, Chief Legal Counsel  
Rule Reviewer

  
Jim Brouelette  
Chairman of the Board  
Nancy Butler, General Counsel  
Rule Reviewer

Certified to the Secretary of State October 13, 1998.

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

In the matter of the	)	NOTICE OF PROPOSED
proposed amendment of rule	)	AMENDMENT
6.6.5090 regarding the rate	)	
manual and rate restriction	)	NO PUBLIC HEARING
guidelines.	)	CONTEMPLATED

TO: All Interested Persons.

1. On December 2, 1998, the State Auditor and Commissioner of Insurance proposes to amend rule 6.6.5090 regarding the rate manual and rate restriction guidelines.

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

6.6.5090 RATE MANUAL AND RATE RESTRICTION GUIDELINES

(1) through (9) will remain the same.

(10) If group size is used as a case characteristic by a small employer carrier, the highest rate factor associated with a group size classification must not exceed the lowest rate factor associated with such a classification by more than ~~20+~~ 35.

(11) and (12) will remain the same.

AUTH: 33-1-313 and 33-22-1822, MCA

IMP: 33-22-1802, 33-22-1809 and 33-22-1812, MCA

3. REASON: The Commissioner is increasing the maximum percentage by which the highest rate factor associated with group size classification may exceed the lowest rate factor associated with such a classification. This change is being made because of the change in the definition of small employer groups from employer groups of size 3 to 25 to employer groups of size 2 to 50.

4. Interested parties may submit their data, views or arguments concerning the proposed action in writing to Margaret Miksch, State Auditor's Office, P.O. Box 4009, Helena, Montana 59604-4009, to be received no later than December 2, 1998.

5. If a person who is directly affected by the proposed amendment wishes to express their data, views and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to Russell B. Hill, Montana Insurance Department, P.O. Box 4009, Helena, Montana 59604. A written request for hearing must be received no later than December 2, 1998.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 30 persons based on the 300 persons who have indicated interest in the rules of this agency and who the agency has determined could be directly affected by these rules.

7. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, P.O. Box 4009, Helena, MT 59604, faxed to the office at 406-444-3497, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

MARK O'KEEFE, State Auditor  
and Commissioner of Insurance

By: 

Frank Cote  
Deputy Insurance Commissioner

By: 

Russell B. Hill  
Rules Reviewer

Certified to the Secretary of State on October 13, 1998.

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING ON
amendment of rules pertaining	)	THE PROPOSED AMENDMENT OF
to definitions, fees and	)	8.28.1501 DEFINITIONS,
unprofessional conduct and the	)	8.28.1505 FEES AND 8.28.1522
adoption of a new rule pertain-	)	UNPROFESSIONAL CONDUCT AND
ing to NCCPA certification	)	THE ADOPTION OF NEW RULE I
	)	MAINTAINING NCCPA
	)	CERTIFICATION

TO: All Interested Persons:

1. On November 12, 1998, at 9:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing Small Conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

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

"8.28.1501. DEFINITIONS As used in this subchapter the following definitions apply:

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

(4) "Licensee" means a physician assistant licensed to practice in the state of Montana.

(4) through (7) will remain the same, but will be renumbered (5) through (8)."

Auth: Sec. 37-20-201, 37-20-202, 37-20-203, MCA; IMP, Sec. 37-20-202, 37-20-203, MCA

**REASON:** This amendment is proposed to define a term frequently used for physician assistants, for better clarity of both statutes and rules pertaining to physician assistants.

"8.28.1505. FEES (1) will remain the same.

(2) The fee for annual renewal of a license is \$50. If said renewal is late, there is an additional \$50 150 fee.

(3) through (8) will remain the same."

Auth: Sec. 37-1-134, 37-20-201, MCA; IMP, Sec. 37-1-134, 37-20-203, 37-20-302, MCA

**REASON:** Additional work is required by staff of the Department of Commerce to follow up on late renewals and process them. The additional work costs time and money. An increase in the penalty fee for late renewals will encourage timely renewals by the given deadline, and will tend to make fees commensurate with the costs of processing late renewals. The \$150 penalty fee is the same penalty paid by physicians, acupuncturists, nutritionists and podiatrists for late renewal.

"8.28.1522 UNPROFESSIONAL CONDUCT In addition to those forms of unprofessional conduct defined in 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 20, MCA.

(1) through (25) will remain the same.

(26) Failing to maintain certification by the national commission on certification of physician assistants (NCCPA);

(26) will remain the same, but will be renumbered (27)."

Auth: Sec. 37-20-202, MCA; IMP, Sec. 37-1-319, 37-3-202, 37-20-201, 37-20-402, MCA

**REASON:** Applicants for licensure as physician assistants must provide evidence of certification by the National Commission on Certification of Physician Assistants, to demonstrate the knowledge, skills and abilities of the standard required in Montana (section 37-20-402(4), MCA). The Board has, in practice, interpreted this statute to require continued certification by licensed physician assistants throughout their practice in Montana. (Indeed, the word "certified" in the title "Physician Assistant-Certified" refers to NCCPA certification.) Under NCCPA requirements, physician assistants must re-certify every two years, and re-test every seven years in order to maintain NCCPA certification. The Board has, in practice, required licensed physician assistants to provide evidence of continued certification at the time of the physician assistants' annual renewal. The re-certification process provides an opportunity for physician assistants to refresh and update their skills, to the general benefit of the Montana public. To give more specific notice to applicants, licensees and the general public, the Board proposes to amend the foregoing rule, making more explicit the requirement of continued NCCPA certification.

3. The proposed new rule will read as follows:

"I MAINTAINING NCCPA CERTIFICATION (1) A licensee shall maintain certification by the national commission on certification of physician assistants.

(2) A licensee shall provide the board with a copy of the licensee's current certificate from the national commission on certification of physician assistants when submitting the licensee's annual renewal form each year."

Auth: Sec. 37-20-201, 37-20-202, MCA; IMP, Sec. 37-20-202, 37-20-301, 37-20-302, 37-20-402, MCA

**REASON:** See reason for amendment to ARM 8.28.1522 above.

4. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., November 3, 1998, to advise us of the nature of the accommodation that you need. Please contact Cami Robson, Board of Medical Examiners, 111 N. Jackson, P.O. Box 200513, Helena,

Montana 59620-0513; telephone (406) 444-4284; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-9396. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Cami Robson.

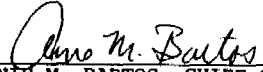
5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Medical Examiners, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-9396, to be received no later than 5:00 p.m., November 19, 1998.

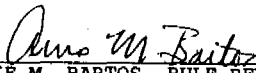
6. Patricia England, attorney, has been designated to preside over and conduct this hearing.

7. Persons who wish to be informed of all Board of Medical Examiners administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at the hearing or in writing to the Board of Medical Examiners, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-4284.

BOARD OF MEDICAL EXAMINERS  
DANIEL C. BROOKE, MD, PRESIDENT

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 13, 1998.

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

In the matter of the proposed ) NOTICE OF PUBLIC HEARING ON  
amendment of a rule pertaining ) THE PROPOSED AMENDMENT OF  
to graduate training require- ) 8.28.403A GRADUATE TRAINING  
ments for foreign medical ) REQUIREMENTS FOR FOREIGN  
graduates ) MEDICAL GRADUATES

TO: All Interested Persons:

1. On November 12, 1998, at 10:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing Small Conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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

"8.28.403A GRADUATE TRAINING REQUIREMENTS FOR FOREIGN MEDICAL GRADUATES (1) A license will not be granted to a foreign medical graduate unless:

(a) such the graduate has had 3 years of post-graduate training education in a post-graduate institution that has been approved by the council on medical education of the American medical association or the American osteopathic association or successors; or

(b) the graduate has been granted board-certification by a specialty board which is approved by, and a member of, the American board of medical specialties or the American osteopathic association."

Auth: Sec. 37-3-203, MCA; IMP, Sec. 37-3-305, MCA

**REASON:** The American Board of Medical Specialties is the entity which oversees the educational and procedural requirements for obtaining certification by approved specialty boards, in identifiable, legitimate fields of medicine. The American Osteopathic Association performs the same function for specialties within the profession of osteopathic medicine. Both entities have high standards, upon which the Board of Medical Examiners may reasonably rely in assessing the qualifications of applicants for Montana licensure. The Board of Medical Examiners is satisfied that a physician who has obtained board-certification from an ABMS or AOA specialty board has the education, training, knowledge, skills and abilities equivalent to that of other applicants under current law (i.e., foreign medical graduates with three years' residency in a U.S. or Canadian training facility). The Board believes that the public will be adequately protected if board-certification is provided as an alternative pathway to licensure. The Board further believes that providing this avenue of licensure for highly qualified physicians (who did

not obtain their post-graduate training in a domestic residency) will enhance the medical care available to the public in Montana.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Department no later than 5:00 p.m., November 3, 1998, to advise us of the nature of the accommodation that you need. Please contact Cami Robson, Board of Medical Examiners, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-4284; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-9396. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Cami Robson.

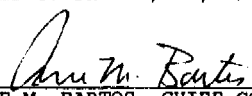
4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Medical Examiners, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-9396, to be received no later than 5:00 p.m., November 19, 1998.

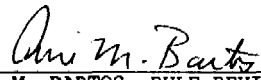
5. Patricia England, attorney, has been designated to preside over and conduct this hearing.

6. Persons who wish to be informed of all Board of Medical Examiners administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at the hearing or in writing to the Board of Medical Examiners, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-4284.

BOARD OF MEDICAL EXAMINERS  
DANIEL C. BROOKE, MD, PRESIDENT

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 13, 1998.



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

In the matter of the proposed	)	NOTICE OF THE PROPOSED
amendment of rules pertaining	)	AMENDMENT OF 8.58.419
to grounds for license	)	GROUND FOR LICENSE
discipline	)	DISCIPLINE - GENERAL
	)	PROVISIONS - UNPROFESSIONAL
	)	CONDUCT AND 8.58.714 GROUND
	)	FOR LICENSE DISCIPLINE OF
	)	PROPERTY MANAGEMENT LICENSES-
	)	GENERAL PROVISIONS -
	)	UNPROFESSIONAL CONDUCT

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 21, 1998, the Board of Realty Regulation proposes to amend rules pertaining to grounds for license discipline.

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

"8.58.419 GROUND FOR LICENSE DISCIPLINE - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT (1) through (3)(e) will remain the same.

(f) Licensees, when entering into a listing agreement shall make a prompt effort to verify that the principal listing the property is the owner or is authorized by the owner to list the property. The licensee may, but is not required to, conduct a title search or obtain a title report at the initial listing. The licensee is not required to either investigate or disclose whether a registered sexual or violent offender resides in proximity to any property with which the licensee lists, shows, negotiates for the purchase or otherwise is involved.

(g) through (4) will remain the same."

Auth: Sec. 37-1-131, 37-1-136, 37-51-102, 37-51-203, 37-51-321, MCA; IMP, Sec. 37-51-102, 37-51-201, 37-51-202, 37-51-321, 37-51-512, MCA

"8.58.714 GROUND FOR DISCIPLINE OF PROPERTY MANAGEMENT LICENSES - GENERAL PROVISIONS - UNPROFESSIONAL CONDUCT

(1) through (3)(d) will remain the same.

(e) Licensees must endeavor to ascertain all pertinent facts concerning every property in any transaction in which the licensee acts, so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation or concealment of pertinent facts. The licensee is not required to either investigate or disclose whether a registered sexual or violent

offender resides in proximity to any property with which the licensee manages, shows, negotiates for the rental or otherwise is involved.

(f) through (4) will remain the same."

Auth: Sec. 37-1-131, 37-51-202, 37-51-203, MCA; IMP, Sec. 37-51-606, MCA

**REASON:** The amendments are being proposed to clarify that real estate licensees are not responsible to determine if a person convicted of a sex crime resides in an area where a buyer is looking at housing. The Board does not feel that it furthers the public health, safety and welfare to require real estate licensees to inquire into the background of residents of a neighborhood. Although the Board is aware of the effect of such a disclosure on the sale of a house and the ramifications on the purchaser of a house, the Board feels that it is better left to the purchaser to contact local law enforcement to determine whether sexual offenders reside within the neighborhood.

3. If a person who is directly affected by the proposed amendment wishes to present their data, views or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit the request along with any comments they have to the Board of Realty Regulation, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, to be received no later than 5:00 p.m., November 19, 1998.

4. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 45 based on the number of Real Estate professionals licensed within the state of Montana.

5. Persons who wish to be informed of all Board of Realty Regulation administrative rulemaking proceedings or other administrative proceedings may be placed on a list of interested persons by advising the Board at the hearing or in writing to the Board of Realty Regulation, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513 or by phone at (406) 444-2961.

BOARD OF REALTY REGULATION  
JACK K. MOORE, CHAIRMAN

BY:

  
ANDY POOLE, DEPUTY DIRECTOR  
DEPARTMENT OF COMMERCE

  
R. PERRY ESKRIDGE, RULE REVIEWER

Certified to the Secretary of State, October 13, 1998.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF PUBLIC HEARING
new rules I through III and the	)	ON PROPOSED ADOPTION AND
amendment of rules 18.9.302,	)	AMENDMENT
18.9.303 and 18.9.321 relating	)	
to agriculture refunds standard	)	
deduction (60%)	)	

TO: All Interested Persons.

1. On November 24, 1998, at 9 a.m., a public hearing will be held in the Commission Room of the Department of Transportation building at 2701 Prospect Avenue, Helena, Montana, to consider the adoption of new rules I through III and the amendment of the above-listed rules.

2. The proposed new rules provide as follows:

RULE I DEFINITIONS As used in this sub-chapter, the definitions found in ARM Title 18, chapters 9 and 10, and 15-70-201 and 15-70-301, MCA, apply. For the purposes of ARM Title 18, chapters 9 and 10, the following definitions also apply:

(1) "Applicant" means a person who files a form using pertinent data required to obtain a refund, license, permit, or similar authorization.

(2) "Appurtenances" means an incidental right (as a right-of-way) attached to a principal property right and passing in possession with any public road, for example, public parking areas, public alleys, or public driveways.

(3) "Bulk invoice" means an invoice issued to a claimant for the purchase of fuel in storage.

(4) "Bulk storage" means a container holding any fuels for storage other than the supply tank of a motor vehicle or any internal combustion engine.

(5) "Commercial use" means to engage in or make use of, mainly for profit.

(6) "Direct labor" means to manage, guide, conduct, or regulate the affairs or actions of a particular task.

(7) "Exempt miles" are miles driven on private property and forest development roads. All other miles are not exempt.

(8) "Farmer or rancher" is a person who earns a living raising livestock, dairy, poultry, fruit, and agricultural commodities. The term also includes a person who cultivates and grows orchards. A farmer or rancher is not a person who earns a living raising fish, fur-bearing animals, horticultural commodities or has a feed yard for the fattening of cattle.

(9) "Forest development road" is a road located on national forest lands or on a right-of-way acquired by the United States which is used for the protection, administration, and utilization of the national forests and other lands administered by the United States forest service. These roads

are built and maintained exclusively by the forest service.

(10) "Gross income", for fuel tax refund purposes, means the applicant's federal gross income as defined in section 61 of the Internal Revenue Code of 1986 or as that section may be labeled or amended.

(11) "Maintained" means to keep or keep up and continue in use, as in a dispersal of bulk tanks and mileage records.

(12) "Maintained roads" means all public roads (built or maintained), except private and forest development roads, and associated appurtenances.

(13) "Person" includes a trust, estate, partnership, limited liability company, limited liability partnership and any legally recognized entity in Montana in addition to those named in 15-70-201 and 15-70-301, MCA. Liability for any fines and imprisonment imposed by this chapter is extended to the individuals, partners, members and officers of all entities.

(14) "Primary source" means 50% or more income derived from the business of farming or ranching.

(15) "Special storage facility" means a separate container directly fueling a piece of equipment without accessibility to other individual vehicles or equipment.

(16) "Supply tank" means a tank holding fuel that permanently or intermittently supplies a motor powered vehicle. When the fuel supply is either directly connected or connected through another tank to the engine of the motor powered vehicle, the tank is considered to be used for the motor vehicle and must contain taxed fuel.

AUTH: 15-70-104, MCA; IMP: 15-70-223, 15-70-225 and 15-70-364, MCA.

**REASON:** Rule I is necessary to define terms that are used in administering the gasoline and special fuel taxes, including the refund of those taxes when the gas and special fuel is used in a non-taxable manner.

**RULE II AUTHORIZED SIGNATURE** (1) A power of attorney is necessary if a person other than the applicant signs an application for a fuel tax refund, or files electronically.

(2) Both spouses must sign the application for a fuel tax refund when they file a joint Montana individual income tax return.

AUTH: 15-70-104, MCA; IMP: 15-70-115, 15-70-225 and 15-70-364, MCA.

**REASON:** Rule II is necessary to allow applications to be filed for gas and special fuel refunds by persons on behalf of the user. In addition, when verifying income through the Department of Revenue, both spouse's signatures are needed to access a taxpayer's tax records if they file jointly.

**RULE III STANDARD DEDUCTION QUALIFICATION** (1) In order to qualify to use the 60% estimate of off-road use allowed under 15-70-223 and 15-70-362, MCA, an applicant's gross income from agriculture must be 50% or more of the applicant's total gross

income.

(2) The applicant must submit any requested income information on forms provided by the department in order to calculate the ratio and retain that information for 3 years.

(3) The department may require verification of the income information either from the applicant or from the department of revenue based on an applicant's most recent individual income or corporation tax return. In situations where an applicant is not required to file a tax return, the department may require verification and breakdown of income information on forms provided by the department.

(4) The 50% agriculture ratio is determined by dividing an applicant's agriculture gross income by their total gross income. If the ratio meets or exceeds 50%, the refund request is granted. If the refund request is denied, the applicant may file an amended application showing the off-road miles driven, the total miles driven and the total gallons used.

(5) If an applicant's agricultural income does meet the 50% requirement in the most recent tax year and the applicant's agriculture income meets or exceeds the ratio in the preceding tax year, the applicant is considered to have met the agricultural income requirements.

AUTH: 15-70-104, MCA; IMP: 15-70-222, 15-70-223, 15-70-361, 15-70-362, and 15-70-364, MCA.

**REASON:** Rule III is necessary to define what percent of a taxpayer's income has to be from agriculture in order to qualify to use the 60% option when filing for a gas or special fuel refund. It allows a taxpayer to qualify for this option even if their agriculture income is less than 50% as long their income met the standard in the prior year.

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

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

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

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

(d) ~~e~~ complete date of delivery and type of fuel;

(e) ~~type of fuel~~ Special fuel must be identified as either dyed or undyed;

(1)(f) through (h)(ii) remain the same.

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

(i) Identification of the vehicle or equipment into which the special fuel is placed.

AUTH: 15-70-104, MCA; IMP: 15-70-207, 15-70-222, 15-70-348 and 15-70-361, MCA

**REASON:** The proposed amendment is necessary to allow sellers some flexibility when printing their invoices, to require that the fuel must be marked as dyed or undyed and to require the identification of the vehicle or equipment that the fuel is placed in.

18.9.303 FILING INVOICES FOR REFUND PURPOSES (1) Only the original bulk and cardtol/keylock invoices will be accepted.

(a) No altered or corrected invoice will be accepted for refund purposes when errors occur.

(i) The original invoice must not be altered or corrected but must be voided by the seller and a new original invoice issued; and

(ii) All altered or corrected invoices must be marked void and retained by the seller for a period of at least 3 years from the date issued.

(b) The department has the authority to use discretion on accepting invoice(s) as long as modifications fall within the 14-month period.

(2) Each licensed seller is required to file for approval a completed sample set of invoices that will be issued covering sales to refund applicants. A sample invoice must be filed annually regardless if the invoice changed. Invoices issued in a name other than the applicant may be accepted if the invoice(s) are submitted with a written statement verifying that the applicants are one and the same.

(a) The department has the authority to use discretion on accepting invoices(a) without a written statement.

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

**REASON:** The proposed amendment is necessary to allow the Department some discretion in accepting invoices from refund applicants with multiple names that are known to be the same applicant, will allow only those invoices from refund applications that fall within the 14-month statute of limitations, and will accept only original invoices for bulk or cardtol purposes.

18.9.321 PROCESSING CLAIMS APPLICATIONS FOR REFUNDS

(1) Upon receipt of an application for refund of fuel tax, the department of transportation has 120 working days after receiving the claim to approve or reject it.

(2) After approval of the claim application, the department will process the refund.

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

application.

(4) ~~A taxpayer~~ Applicants may, of their own initiative, file an amended claim application. If the claim application is reasonable and the taxpayer applicant has furnished substantial proof, the department, in its discretion, may accept the amended claim application.

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

**REASON:** The amendment is proposed to substitute the word "application" for "claim" to make it consistent with the terminology presently used by the Department and the public.

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 William G. Salisbury, Administration Division, Montana Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, and must be received no later than 5 p.m. on November 24, 1998.

5. Nick A. Rotering has been designated to preside over and conduct the hearing.

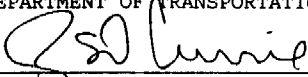
6. The two bill-sponsor-notice requirements of section 2-4-302, MCA, do not apply.

7. MDT attempts to provide accommodations for any known disability that may interfere with a person participating in any service, program or activity of the Department. Alternative accessible formats of this document will be provided upon request. For further information call (406) 444-7672 or TTY users can call (406) 444-7696 by November 10, 1998.

8. The Department of Transportation maintains a list of interested persons who wish to receive notices of the rulemaking actions it proposes. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies the subject area or areas of interest of the person requesting notice, including, but not limited to, rules proposed by the Administration Division, Aeronautics Division, Highways and Engineering Division, Maintenance Division, Motor Carrier Services Division, and Rail, Transit and Planning Division. Such written request may be mailed or delivered to the Montana Department of Transportation, Legal Services, P.O. Box 201001, Helena, MT 59620-1001, faxed to the office at (406) 444-7206, or may be made by completing a request form at any rules hearing held by the Department.

MONTANA DEPARTMENT OF TRANSPORTATION

By:

  
JIM CURRIE, Chief of Staff

20-10/22/98

MAR Notice No. 18-91



Lyle Manley  
Lyle Manley, Rule Reviewer

Certified to the Secretary of State October 2, 1998 .

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the adoption of )	NOTICE OF PUBLIC HEARING
new rules I through IV, the )	ON PROPOSED ADOPTION,
amendment of rules 18.9.306, )	AMENDMENT AND REPEAL
18.10.102 through 18.10.105, )	
18.10.121, 18.10.201, 18.10.202, )	
18.10.301, 18.10.302, 18.10.313, )	
18.10.314, 18.10.321 through )	
18.10.324, 18.10.404, 18.10.406 )	
and 18.10.407 and the repeal of )	
rules 18.10.101, 18.10.122, )	
18.10.123, 18.10.203, 18.10.303, )	
18.10.311, 18.10.312, 18.10.401 )	
through 18.10.403, 18.10.405, )	
18.10.408, 18.10.501 and )	
18.10.502 concerning the Special )	
Fuel Users Tax, Dealers and LPG )	
Tax )	

TO: All Interested Persons.

1. On November 25, 1998, at 9 a.m., a public hearing will be held in the auditorium of the Department of Transportation building at 2701 Prospect Avenue, Helena, Montana, to consider the adoption of new rules I through IV and the amendment and repeal of the above-listed rules.

2. The proposed new rules provide as follows:

RULE I. OFF-HIGHWAY VEHICLE/EQUIPMENT (1) For the purpose of this rule, an "off-highway or off-road vehicle" is defined as a vehicle not designed to transport persons or property upon the public roads and highways of this state, including special mobile (SM) plated vehicles and vehicles with physical characteristics intended for primary use in an off-road manner which may or may not be licensed as special equipment. These vehicles may occasionally move on the public road for purposes such as movement between job sites or repair.

(2) There will be no restriction for miles traveled on the highway from location to location, so long as such travel is occasional and for those purposes listed above.

(3) SM-plated vehicles/equipment that have undyed diesel in the supply tank and move on the public roads do not qualify for a refund for the portion used on public roads.

(4) In order to obtain a refund for off-road or off-highway equipment fueling at a service station, the station must identify on the invoice the off-road or off-highway piece of equipment being fueled.

AUTH: 15-70-104 and 15-70-330, MCA; IMP: 15-70-330, MCA

REASON: Rule I is necessary to define an "off-highway and off-road vehicle", explain any restrictions that apply to these

vehicles and make clear when the tax paid on any fuel used in such a vehicle is eligible for a refund.

RULE II. DYED SPECIAL FUEL ALLOWANCE (1) The department will allow the state of Montana, cities, counties, school districts, and federal and tribal governments to use dyed, low sulphur special fuel on the public roads if the following criteria are met:

(a) The vehicles are owned by a governmental entity (state of Montana, city, county, school district, federal or tribal government); or

(b) The vehicles are leased by the governmental entities (state of Montana, city, county, school district, federal or tribal government) and the lease terms meet the criteria for a "long term lease" as defined in 18.10.302.

AUTH: 15-70-104 and 15-70-330, MCA; IMP: 15-70-301 and 15-70-330, MCA

REASON: Rule II is necessary to allow government entities and tribal governments to use dyed fuel in vehicles upon public roads if certain conditions are met.

RULE III. DYED SPECIAL FUEL (1) The department incorporates by reference the United States department of the treasury, internal revenue service regulations relating to dye color and concentration requirements for tax-exempt diesel fuel, excluding buses and governmental vehicles, as set forth in 26 CFR part 48 (4/1/97). A copy of the CFR may be obtained from Legal Services, Montana Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001.

(a) Red dye will be used to identify all tax-exempt special fuel, regardless of the sulfur content of that fuel.

(b) The special fuel will satisfy the federal dyeing requirement if it contains the dye solvent red 164 at a concentration spectrally equivalent to 3.9 pounds per thousand barrels of the solid dye standard solvent red 26 or contains any dye of a type and in a concentration that has been approved by the commissioner of internal revenue service. The presence of dye at a concentration of 2.0 milligrams per liter (mg/l), or greater is considered to be in violation of 15-70-330, MCA.

(2) Dyed special fuel can be purchased tax free but it is illegal to use it on the public roads, except for the movement of off-road vehicles traveling from one location to another as indicated in rule I and any vehicles as described in rule II.

(3) Motor carrier services division officers making a routine stop of a commercial vehicle or visiting a road construction project site may take a fuel sample from bulk tanks and supply tanks of vehicles, equipment and other internal combustion engines. The sample may be analyzed for dye concentration by a laboratory selected by the Montana department of transportation.

(4) Use of high sulphur dyed special fuel on public roads is prohibited by the federal environmental protection agency (EPA), as set forth in 40 CFR 80.29.

(5) Contractors may not store and/or use dyed diesel in equipment, motor vehicles, and stationary engines used upon public roads and/or within MDT project limits as defined in 15-70-321, MCA. Contractors in violation of this section are subject to penalties for each vehicle upon conviction as defined in 15-70-330, MCA, and may be suspended for up to 6 months from participating in future MDT contracts.

(6) The dye must be injected by means of a mechanical injection process to diesel fuel at the terminal rack. All dyed special fuel sold in, imported to, or exported from the state of Montana shall have dye added in accordance with federal requirements of type and quantity and will be injected by mechanical injection systems.

(7) Exceptions:

(a) If a mechanical injection system is inoperative, the terminal may "splash dye" special fuel for tax free sales. Terminals must notify the department on the first working day after the injection system becomes inoperative. The terminal shall note on each invoice and bill of lading that the fuel is splash dyed and file a separate fuel tax report for splash dyed fuel. The terminal shall keep records of the date and time the dye injection system became inoperative and when the injection system was made operational. All records shall be kept and be available for inspection upon request of the department or representative:

(b) If a mechanical injection system should inject an insufficient amount of dye to meet state and federal standards, the terminal may splash dye keeping the same records as in (a).

(c) The terminal operator or his designated representative may splash dye under the above conditions. Each terminal shall keep a record of persons conducting splash dyeing. Transport drivers shall not be listed as persons conducting splash dyeing.

(d) Special fuels splash dyed and not meeting all of the above standards shall be considered by the state as undyed fuel and the terminal responsible for splash dyeing the fuel shall be liable for all tax, penalty and interest on the fuel.

AUTH: 15-70-104, 15-70-330 and 60-2-201, MCA; IMP: 15-70-321, 15-70-330 and 60-2-111, MCA

**REASON:** Rule III is necessary to define what "dyed special fuel" is by adopting the federal definition, state where dyed fuel can be used, give authority to department officers to test fuel for conformity to state laws and regulate the control and use of the dye used to color special fuel.

**RULE IV IFTA AGREEMENT** (1) The department hereby adopts and implements the International Fuel Tax Agreement (IFTA) as set forth in 15-70-121, MCA.

(2) In addition to being subject to the rules and regulations of the IFTA agreement, an IFTA license holder who is a resident of Montana is subject to the same statutes and rules of a special fuel user under Title 15, chapter 70, part 3, MCA. AUTH: 15-70-104 and 15-70-121, MCA; IMP: 15-70-121, MCA

**REASON:** Rule IV is necessary to implement the International Fuel Tax Agreement which the 1989 Legislature authorized the State of Montana to become a member.

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

18.9.306 REFUND PERCENTAGES FOR PTO OR AUXILIARY ENGINES

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

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

(i) dollar amount of tax;  
(ii) rate of tax;  
(iii) a statement notation that Montana tax is included in the price;

(b) If bulk fuel is purchased used, the customer must keep dispersal records that indicate the date of disbursement, number of gallons withdrawn and the vehicle in which the fuel was delivered. An original invoice for bulk storage must be submitted with the refund application.

(c) Each user shall maintain mileage records to support the mileage reported traveled, both on public roads and off public roads.

(2) The following percentages are allowed for the refund of gasoline or special fuel used in operating a PTO or auxiliary engines when the above records are maintained. The amounts are specified as a percentage of the total taxable fuel used by the vehicle. All requests for refund must have attached an original sales receipt, bulk fuel invoice or a signed dealer affidavit. Work performed in accordance with 15-70-321, MCA, is not eligible for a refund. The percentages are:

<u>Water and Oil Well Drilling Rigs</u>	<u>80%</u>
Cement mixing/concrete pumping trucks	30%
Sanitation/garbage trucks/septic pumpers	30%
Sewer cleaning/jet vactor	30%
Super suckers	30%
Fire trucks	30%
Mobile cranes	30%
Line truck with digger/aerial lift	25%
Refrigeration trucks	25%
Sweeper trucks (must be motor vehicle)	25%
Self loaders/boom truck (i.e., logging trucks)	20%
Truck with hydraulic winch	20%
Wrecker	20%
Semi-wrecker	20%

Service truck with jack hammer/drill/crane	20%
Oil and water well service trucks	20%
Bulk feed truck	20%
Dump trailer trucks	20%
Dump trucks	20%
Hot asphalt distribution truck	20%
Leaf truck	20%
Pneumatic tank truck	20%
Salt spreader on dump truck	20%
Seeder truck	20%
Snow plow	20%
Spray truck	20%
Tank transport	20%
Tank trucks	20%
Car carrier with hydraulic winch	10%
Carpet cleaning van	10%
All others, including auxiliary engines under 15 horsepower	7.5%

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

**REASON:** The proposed amendment states that the tax paid on 80% of the fuel used in a power-take off unit in a water and oil well drilling rig is used in a non-taxable manner and is eligible for refund. The other changes were made to clarify the existing rule language.

**18.10.102 DETERMINATION OF USER** (1) A special fuel user is the legal title holder of the vehicle or the person entitled to the immediate right of possession as conditional vendor, leasee or mortgager of the vehicle.

AUTH: 15-70-104, MCA; IMP: 15-70-301, MCA

**REASON:** This amendment is proposed to clarify existing language by making clear the original intent of the rule.

**18.10.103 DETERMINATION OF PUBLIC ROADS AND HIGHWAYS** (1) ~~it shall be presumed that streets, roads, highways, alleys, county roads, county gravel roads, forest service roads (except forest service development roads) and their related structures~~ are accepted as highways public roads as defined in 15-70-301, MCA, ~~whether~~. ~~A public road may be under new construction, reconstruction, relocation, or repair or is being built, even though it has is not yet been recognized as part of the maintained highway system.~~

AUTH: 15-70-104, MCA; IMP: 15-70-301, MCA

**REASON:** This amendment is proposed to describe the types of roads that have always been considered to be public roads.

**18.10.104 LIABILITY FOR USE ON GOVERNMENT MAINTAINED ROADS** (1) Special fuel, as referred to in Title 15, chapters 70 and 71, MCA, ~~shall~~ must be taxed when consumed in the propulsion operation of a motor vehicle upon public roads or the rights-of-way of which are owned by the state, county, municipality, or

other governmental agency regardless of who performs the maintenance thereon, under the following circumstances:

(1) when the special fuel is consumed in the propulsion of a motor vehicle upon roads, the rights-of-way of which are owned by the United States forest service, if said roads are maintained by the state, county, municipality or other state government agency or by one who has contracted with any of these agencies for the maintenance of said roads;

(2) when special fuel is consumed in the propulsion of a motor vehicle upon roads, the rights-of-way of which are owned by the state, county, municipality, or other governmental agency of the state, regardless of who performs the maintenance thereon;

AUTH: 15-70-104, MCA; IMP: 15-70-301 and 15-70-322, MCA

**REASON:** One proposed amendment changes the term "propulsion" of a motor vehicle to "operation" of a motor vehicle since the engine, for example, a cement truck engine may serve more than one purpose of just driving the vehicle forward or backward. The other proposed changes convey the same intent as the original rule but is easier to read.

18.10.105 WHAT CONSTITUTES SPECIAL FUEL (1) Fuel taxable under the Special Fuel Tax Act includes diesel fuel, stove oils, heating oils, burner fuels, compressed natural gas kerosene, or any other combination of hydrocarbon fuels used for the propulsion operation of motor vehicles, except fuels subject to the Gasoline License Tax or to the license tax on vehicles propelled operated by liquefied petroleum gas or compressed natural gas.

AUTH: 15-70-104, MCA; IMP: 15-70-301, MCA

**REASON:** The amendments add kerosene to the definition of a special fuel and delete compressed natural gas from the definition of a special fuel.

18.10.121 QUARTERLY REPORTS - TAX PAYMENT (1) Every special fuel user who is subject to 15-70-302, MCA, shall; must on or before the last day of the month following the close of a calendar quarter; file with the department of transportation a report showing the amount of fuel used during the calendar quarter. The reports are due on or before the last day of the month following the close of a calendar quarter. Reports shall be accompanied by a remittance payable payment to the department of transportation for the total amount of tax due and payable.

(2) Every special fuel user who is subject to 15-70-302, MCA, shall render must submit the quarterly tax report regardless of the fuel usage whether he has used fuel during the calendar quarter. Failure to file the quarterly tax report within a reasonable length of time of a due date shall be in the time prescribed in 15-70-325, MCA, is considered sufficient cause for revocation of the special fuel user's permit.

AUTH: 15-70-104, MCA; IMP: 15-70-121, 15-70-306, 15-70-325,

and 15-70-327, MCA

**REASON:** The amendments are proposed to match the present definitions with the International Fuel Tax Agreement (IFTA) rules which the 1989 Legislature authorized Montana to become a member and include the IFTA taxpayers as a special fuel user who is subject to 15-70-302, MCA.

18.10.201 CERTAIN FEDERALLY OWNED ROADS (1) Special fuel ~~shall will~~ not be taxed when consumed in ~~propulsion the operation of motor vehicles upon roads, or the rights-of-way of which are owned by the United States department of agriculture,~~ under the following circumstances:

~~(1)(a) When the special fuel is consumed in the propulsion of a motor vehicle upon roads, the rights-of-way of which are owned by the United States forest service, if said roads are maintained by a logger or other individual any person on his their own volition without compensation from any state, county, municipality, or other governmental agency of Montana; and~~

~~(2)(b) When the special fuel is consumed in the propulsion of a motor vehicle upon roads, the rights-of-way of which are owned by the United States forest service, if such roads are being built or maintained by any logger person or contractor under an agreement for such construction or maintenance involving as one of the parties of the United States department of agriculture forest service.~~

AUTH: 15-70-104, MCA; IMP: 15-70-301 and 15-70-321, and 15-70-322, MCA

**REASON:** The proposed amendment states that special fuel used on roads that are being built or maintained under the authority of the United States Department of Agriculture is not taxable.

18.10.202 OFF-ROAD USAGE (1) The tax on the use of ~~special~~ fuel by any ~~special fuel~~ user does not apply to the use of fuel in a motor vehicle operated exclusively off the highway ~~public road~~. ~~An operation is exclusively off the highway when a motor vehicle is used in an operation conducted solely off the highway and which does not come within the meaning of a road or highway as referred to in 15-70-301, MCA. If a motor vehicle is used partly both on and off the highway public road, and partly off the highway, use the special fuel tax liability does not attach apply to the use of special fuel used to proper operate the motor vehicle on that portion of travel off the public roads.~~

(2) Each ~~special fuel~~ user, ~~except those covered under 15-70-362, MCA, shall must~~ maintain adequate records of the operations off the public highways roads, the miles traveled, and the ~~special~~ fuel used to establish that ~~he the special fuel user~~ is entitled to the credit for off highway ~~public road~~ use of such fuel.

AUTH: 15-70-104, MCA; IMP: 15-70-121, 15-70-301, 15-70-302,

20-10/22/98

MAR Notice No. 18-92



15-70-321, and ~~15-70-322~~ 15-70-323, MCA

**REASON:** The amendment is to clarify existing language by making clear the original intent of the rule.

18.10.301 PERMIT REQUIRED (1) Any person who uses special fuel to ~~propel a motor vehicle upon the highways of~~ perform public contract work and all crushing, paving, and grinding contracts, regardless of the bid amount, in this state is required to make written application for and obtain a special fuel user's permit.

(2) Application for a special fuel user's permit shall be filed upon a form prepared and furnished by the department of transportation, ~~and shall contain such information as the department deems necessary. Any special fuel vehicle, whether bearing an SM plate or registered under Title 23, chapter 2, part 6, or Title 61, MCA, shall be subject to all taxes and permits levied or imposed by Title 15, chapters 70 and 71, MCA.~~ AUTH: 15-70-104, MCA; IMP: 15-70-121, 15-70-302, and 15-70-303 MCA

**REASON:** The amendment is to clarify that any person performing a public contract which affects a public road is required to apply for a special fuel users' permit.

18.10.302 PERMIT DETAILS (1) A special fuel user's permit is valid until December 31 of the year ~~in which it was issued unless suspended or revoked for cause and in the case of reproduced copies of the permit issued by the department, only if clear and legible.~~

(2) Special fuel user's permits are not transferable and are valid only for the person in whose name the permit is issued. Any vehicle displaying a permit other than that of the registered owner must have a valid lease agreement in the vehicle.

(3) "Permanent Long-term lease" means a lease of more than 30 consecutive days with exclusive use. "~~Temporary lease~~" means a lease of less than 30 days, or more than 30 days without exclusive use.

(a) ~~Except as herein provided, every special fuel user shall be is liable for the tax on special fuel used in motor vehicles permanently leased long-term to him them and operated on the highways public roads of this state to the same extent and in the same manner as his their own vehicles; provided that a lessor who is engaged exclusively in the business of leasing for compensation motor vehicles and equipment he owns without drivers to other carriers, may be deemed to be the special fuel user.~~

(4) "Short-term lease" means a lease of less than 30 consecutive days, or 30 days or more without exclusive use.

~~(b)(a)~~ Without exception, the lessor is responsible for reporting the operation of all units leased to other users on a temporary short-term lease basis.

AUTH: 15-70-104, MCA; IMP: 15-70-121 and 15-70-302, MCA

**REASON:** The amendments are proposed to match the present definitions with the International Fuel Tax Agreement (IFTA) rules which the 1989 Legislature authorized Montana to become a member and include the IFTA taxpayers as special fuel permit holders.

18.10.313. TERMINATION OF LICENSE OR A SPECIAL FUEL USER'S PERMIT (1) Upon ceasing operations in Montana, each special fuel user subject to 15-70-302, MCA, shall:

- (a) ~~s~~Submit a final return together with the original and all copies of the vehicle permit;
- (b) ~~p~~Pay all tax, penalty, and interest due; and
- (c) ~~r~~Request cancellation of their special fuel user's license or permit.

(2) Any attempt to use a canceled license or permit will be ~~is~~ considered a violation of the ~~Special Fuel Tax Act 15-70-302, MCA,~~ and subjects the user violator to the penalty provisions thereof.

~~(2)(3)~~ When the user's permit is revoked for non-compliance, the permit shall be surrendered and returned with reports through the date of the permit's return ~~revocation~~. Any attempt to use a revoked permit will be ~~is~~ considered a violation of the ~~Special Fuel Tax Act 15-70-302, MCA,~~ and subject to the penalty provisions thereof ~~of 15-70-314, MCA.~~

~~(3)(4)~~ An invalid permit list is maintained by the department and is distributed to all ~~duly authorized law enforcement motor carrier services~~ officers in Montana. A permit on the invalid list or a reproduction of such a permit is subject to confiscation by enforcement officers, and a fine citation may be imposed ~~issued~~.

~~(4)~~ The revocation of a special fuel user's permit, however, does not by itself determine special fuel user taxes.  
AUTH: 15-70-104, MCA; IMP: 15-70-121 and 15-70-306, MCA

**REASON:** The proposed amendments are to match the present definitions with the International Fuel Tax Agreement (IFTA) rules which the 1989 Legislature authorized Montana to become a member and include the IFTA taxpayers as special fuel permit holders.

18.10.314. CONFISCATION OF CERTAIN PERMIT COPIES (1) A reproduced copy of a special fuel user's permit that is not clear and legible is invalid and is subject to confiscation by ~~checking station officers, GWV motor carrier services division personnel, and~~ authorized employees of the department, and law enforcement personnel. The person from whom the permit is confiscated may operate the vehicle by obtaining a clear and legible copy of the permit by purchasing a temporary trip permit pursuant to 15-70-311, MCA.

(2) Confiscation of a reproduced copy of a fuel user's permit ~~or Montana IFTA license~~ under this rule does not affect the validity of the original permit issued by the department.

AUTH: 15-70-104, MCA; IMP: 15-70-302, MCA

**REASON:** The amendment identifies that a special fuel permit is subject to confiscation and changes the name of the individuals who can do the confiscating since the division's name has changed.

18.10.321 REQUIRED RECORDS -- AUDITS (1) Pursuant to 15-70-323, MCA, every special fuel user and every person importing, manufacturing, refining, dealing in, transporting, or storing special fuel in this state ~~shall~~ must maintain and keep such records, receipts, and invoices and other pertinent papers with respect thereto as the department may require and shall must produce them for the inspection of the department at any time during the business hours of the day. Such records, receipts, invoices, and other pertinent papers ~~shall be required to must~~ be kept with the corresponding special fuel user's tax return for a period of at least 3 years from the date the tax return relates on which the return to which they relate was required to have been made. For taxpayers falling under the International Fuel Tax Agreement, records have to be kept for 4 years.

AUTH: 15-70-104, MCA; IMP: 15-70-121, 15-70-323 and 15-70-324, MCA

**REASON:** The amendments are to clarify existing language by making clear the original intent of the rule and to add the required timeframe that records must be kept for tax preparers who fall under the International Fuel Tax Agreement.

18.10.322 RECORDS WHEN BULK STORAGE INVOLVED (1) Every ~~special fuel permit holder user shall~~ must maintain a complete stock summary of the gallons of special fuel handled each month ~~which reflecting inventories, receipts including direct purchases into vehicles, use, sales, other disbursements, and loss or gain. The stock summary shall be must supported by physical inventories of bulk storage tanks taken at the close of each calendar month, a record of the special fuel receipts together with invoices, and a record of the special fuel disbursements.~~

(2) Where a special fuel user maintains bulk storage fuels, an accounting of fuel withdrawals from bulk storage facilities determined by the use of meters or other accurate measuring devices and recorded on invoices or other daily record of own use, ~~shall must~~ be maintained. A ~~serially~~ numbered invoice may be issued or an entry on a daily record of own use ~~shall must~~ be made at the time of each fuel disbursement from bulk storage ~~which shall discloseing:~~

(a) ~~t~~The location of the storage facility from which ~~where~~ the fuel is withdrawn;

(b) through (d) remain the same.

(e) ~~+~~ ~~t~~The special fuel vehicle permit identification number and/or the unit numbers if the fuel is delivered into the fuel supply tank of the special fuel user's own vehicle; or

~~-(ii)-(f)~~ ~~t~~The purpose of the withdrawal if the fuel is

withdrawn for the special fuel user but is not delivered into the special fuel user's motor vehicle.

~~(3) Deliveries into the vehicles or bulk storage facilities of others are subject to the provisions of 15-70-322, MCA.~~  
AUTH: 15-70-104, MCA; IMP: 15-70-121 and 15-70-323, MCA

**REASON:** The amendments are to clarify existing language by making clear the original intent of the rule.

18.10.323 TRIP AND FUEL CONSUMPTION RECORDS (1) Every special fuel user subject to 15-70-302, MCA, shall must maintain a record of all trips made by each vehicle in connection with which the special fuel is used. ~~Such operating records shall set forth in must~~ detail the date and points of beginning and termination ~~ending~~ of each one way trip; proper designation of highways upon which ~~of operation~~; total miles traveled; miles traveled in each state; and a complete listing of all purchases of special fuel into such vehicles showing quantity, date and point at which location received during said each trip. The average miles per gallon (ampgl) of each vehicle shall must also be determined. Such ~~All~~ operating information shall must be compiled separately for each vehicle during the calendar month.

(2) Supporting documents, such as bills of lading, time sheets, driver's trip logs, manifests, weight or scale tickets, ~~speedometer~~ odometer readings, and revenue records, shall must be retained for audit purposes.

(3) Every special fuel user subject to 15-70-302, MCA, operating a vehicle equipped with carburetion an apparatus which permits the consumption of special fuel shall must maintain a record, including invoices of all special fuel used and placed into the special fuel supply tanks of such each vehicles.  
AUTH: 15-70-104, MCA; IMP: 15-70-121 and 15-70-323 MCA

**REASON:** The amendments are proposed to clarify existing language by making clear the original intent of the rule.

18.10.324 FAILURE TO MAINTAIN RECORDS (1) The department of transportation considers the failure of a special fuel user, who is subject to 15-70-302, MCA, to retain records as specified in 15-70-323, MCA, to constitute reasonable cause for the revocation of the special fuel user's permit under the provisions of 15-70-306, MCA. Records to be kept include special fuel purchase invoices, bills of lading, and trip records.

(2) The department of transportation shall will, in the event a special fuel user, who is subject to 15-70-302, MCA, fails to retain the required records, ~~make~~ estimates of the miles traveled, special fuel purchases, and average miles per gallon in order to determine the special fuel permit holder's user tax liability. These estimates will be based, whenever possible, on records for a portion of the operations of the special fuel user's vehicles consuming special fuels or other available information indicating fuel usage by the vehicles for which reports are being made. In those cases where the records

are not adequate to verify the average miles per gallon (ampg) reported and the average cannot be estimated, an ampg specified in (4) will be used.

(3) If, within 30 days of the date the department issues an assessment based on the ampg of 4.5, the special fuel user who is subject to 15-70-302, MCA, provides the department with adequate records to verify or estimate special fuel usage for the user's vehicles, the department will review the records and adjust the assessment to the extent necessary.

(4) An ampg in accordance with the following schedule will be used: The department of transportation will, in the event a special fuel user fails to retain the required records for fuel used in internal combustion engines to produce materials used on taxable projects, use the industry standard or other available information for special fuel usage by the internal combustion engines to calculate the formula for which reports are being made. In the event no industry standards are available, the following ampg standards will be used:

(a) trucks and truck tractors whose manufacturers gross vehicle weight rating is 9,000 lbs. or more, 4.5 ampg;

(b) pickups and trucks whose manufacturers gross vehicle weight rating is 6,000 lbs. or less than 9,000 lbs., 10 ampg; and

(c) automobiles and pickups whose manufacturers gross vehicle weight rating is less than 6,000 lbs., 15 ampg.

(5) The formula to compute fuel used to produce materials for taxable projects:

(a) Asphalt is composed of 94% aggregate (1 cu yd = 1.88 tons)

(b) Concrete is composed of 75% aggregate (1 cu yd = 2 tons). 28 gallons per ton is based on industry average (.13 gallons per ton may be used if electrical power is purchased from a commercial source).

(c) Example:

Concrete: 100 cu yd of concrete = 200 tons

200 tons X .75 = 150 tons of aggregate

150 tons X .28 = 42 gallons (diesel generator)

150 tons X .13 = 19.5 gallons (electrical power)

Asphalt: 100 cu yd of asphalt = 188 tons

188 tons X .94 = 176.72 tons of aggregate

176.72 tons X .28 = 49.5 gallons

AUTH: 15-70-104, MCA; IMP: 15-70-121, 15-70-306 and 15-70-323, MCA

**REASON:** The proposed amendments are to conform to the same language as the IFTA rules and allow certain average miles per gallon or formulas to calculate reports if a permit holder fails to retain records.

18.10.404 DEALER SELLER INVOICES (1) Any invoice or receipt shall be issued at the time of each fuel disbursement, used to support any special fuel user's records. Each of these invoices shall be pre-numbered, identifying the seller by business name and location, and shall indicate must contain the

following:

(a) ~~the name and vehicle identification number of the person receiving the special fuel. If the sale is made ex-tax, a notation must be made on the invoice as to type of delivery, such as: barrel, can, reefer, etc. A preprinted number, except when invoices are automatically assigned a number by a computer or similar machine when issued;~~

(b) ~~the date of sale Name and address of the seller;~~

(c) ~~the number of gallons withdrawn or sold Name and address of purchaser;~~

(d) ~~the price per gallon and total amount charged The date of sale and type of fuel;~~

(e) ~~if the fuel is delivered into a United States government vehicle or a city, county, or school district vehicle. Special fuel must be identified as either dyed or undyed;~~

(f) ~~Gallons invoiced;~~

(g) ~~The price per gallon;~~

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

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

(ii) ~~The rate of tax; or~~

(iii) ~~A notation that the Montana tax is included in the price.~~

(i) ~~Identification of the vehicle or equipment into which the special fuel is placed.~~

(2) ~~The sale to those agencies referred to in subsection (1)(c) is nontaxable, and the agency to which the fuel is sold must be listed on the invoice.~~

AUTH: 15-70-104, MCA; IMP: ~~15-70-121~~, 15-70-306 and 15-70-323, MCA

**REASON:** The amendment is proposed to conform the sellers invoices for special fuels to be similar to the sellers invoices for gasoline.

**18.10.406 CARDTROL COMPLIANCE AND ADMINISTRATION** (1) A special fuel ~~dealer~~ seller is responsible for payment of the tax on dyed special fuel dispensed through a cardtrol, keylock, or similar device from an unattended pump or dispensing unit if the seller knows the fuel is sold to a customer who has not signed and filed with the dealer a proper affidavit allowing the purchase of fuel without payment of the tax places the fuel directly into the supply tank of a vehicle not defined as or considered an off-road vehicle as in rule 1.

AUTH: 15.70-104, MCA; IMP: ~~15-70-321 and 15-70-322~~, MCA

**REASON:** The amendment is proposed to make the seller of dyed fuel responsible for the fuel tax if the seller knows that the dyed fuel will not be used for non-taxable purposes.

**18.10.407 STATEMENT FOR KEYLOCK CARDTROL REPORTING**

(1) Any seller who sells gasoline or special fuel to a purchaser through a keylock or cardtrol on which a refund may

be claimed in accordance with 15-70-223 and 15-70-362, MCA, shall provide the purchaser with a statement of fuel purchased. The statement may be prepared as frequently as deemed necessary, but one statement must be issued at least every 30 days. To support the accuracy of the statement, the seller shall list or attach a list supporting all information used in the statement. AUTH: 15-70-104, MCA; IMP: 15-70-223 and 15-70-362, MCA

REASON: The proposed amendment includes special fuel in addition to gasoline in the statement of fuel purchased which is furnished to the buyer who uses a keylock or cardtrol.

4. The reasons for the proposed repeal of the existing rules are as follows:

Rule 18.10.101, which can be found on page 18-1179 of the Administrative Rules of Montana, is proposed to be repealed because MDT eliminated the special fuel user intrastate carrier licensing and reporting requirements and compliance bonds. AUTH: 15-70-104, MCA; IMP: 15-70-322, MCA

Rule 18.10.122, which can be found on page 18-1201 of the Administrative Rules of Montana, is proposed to be repealed because MDT is no longer requiring bonds on IFTA. All special user contractors are required a bond for licensing. AUTH: 15-70-104, MCA; IMP: 15-70-304, MCA

Rule 18.10.123, which can be found on page 18-1202 of the Administrative Rules of Montana, is proposed to be repealed because moving the point of taxation to the distributor level eliminated the special fuel dealers licensing and reporting requirements. AUTH: 15-70-104, MCA; IMP: 15-70-328, MCA

Rule 18.10.203, which can be found on page 18-1207 of the Administrative Rules of Montana, is proposed to be repealed because refund percentages for PTO or auxiliary engines (ARM 18.9.306) was adopted April 5, 1996. AUTH: 15-70-104, MCA; IMP: 15-70-322, MCA

Rule 18.10.303, which can be found on page 18-1216 of the Administrative Rules of Montana, is proposed to be repealed because MDT eliminated the special fuel user intrastate carrier licensing and reporting requirements and compliance bonds. AUTH: 15-70-104, MCA; IMP: 15-70-302, MCA

Rule 18.10.311, which can be found on page 18-1235 of the Administrative Rules of Montana, is proposed to be repealed because MDT eliminated the special fuel user intrastate carrier licensing and reporting requirements and compliance bonds. AUTH: 15-70-104, MCA; IMP: 15-70-302, MCA

Rule 18.10.312, which can be found on page 18-1235 of the Administrative Rules of Montana, is proposed to be repealed

because MDT eliminated the special fuel user intrastate carrier licensing and reporting requirements and compliance bonds.

AUTH: 15-70-104, MCA; IMP: 15-70-304, MCA

Rule 18.10.401, which can be found on page 18-1279 of the Administrative Rules of Montana, is proposed to be repealed because moving the point of taxation to the distributor level eliminated the special fuel dealers licensing and reporting requirements. Therefore, the rules relating to dealers are no longer necessary.

AUTH: 15-70-104, MCA; IMP: 15-70-302, MCA

Rule 18.10.402, which can be found on page 18-1279 of the Administrative Rules of Montana, is proposed to be repealed because moving the point of taxation to the distributor level eliminated the special fuel dealers licensing and reporting requirements. Therefore, the rules relating to dealers are no longer necessary.

AUTH: 15-70-104, MCA; IMP: 15-70-325, MCA

Rule 18.10.403, which can be found on page 18-1280 of the Administrative Rules of Montana, is proposed to be repealed because moving the point of taxation to the distributor level eliminated the special fuel dealers licensing and reporting requirements. Therefore, the rules relating to dealers are no longer necessary.

AUTH: 15-70-104, MCA; IMP: 15-70-323, MCA

Rule 18.10.405, which can be found on page 18-1280 of the Administrative Rules of Montana, is proposed to be repealed because moving the point of taxation to the distributor level eliminated the special fuel dealers licensing and reporting requirements. Therefore, the rules relating to dealers are no longer necessary.

AUTH: 15-70-104, MCA; IMP: 15-70-325, MCA

Rule 18.10.408, which can be found on page 18-1281 of the Administrative Rules of Montana, is proposed to be repealed because moving the point of taxation to the distributor level eliminated the special fuel dealers licensing and reporting requirements. Therefore, the rules relating to dealers are no longer necessary.

AUTH: 15-70-104, MCA; IMP: 15-70-304, MCA

Rule 18.10.501, which can be found on page 18-1301 of the Administrative Rules of Montana, is proposed to be repealed because HB 311 of the 1997 legislative session repealed sections 15-70-101 through 15-71-105 and 15-71-110, MCA, effective December 31, 1997.

AUTH: 15-1-201, MCA; IMP: 15-71-101, MCA

Rule 18.10.502, which can be found on page 18-1301 of the Administrative Rules of Montana, is proposed to be repealed because HB 311 of the 1997 legislative session repealed sections



15-70-101 through 15-71-105 and 15-71-110, MCA, effective December 31, 1997.

AUTH: 15-70-104, MCA; IMP: 15-71-101 and 15-70-322, MCA

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to William G. Salisbury, Administration Division, Montana Department of Transportation, P.O. Box 201001, Helena, MT 59620-1001, and must be received no later than 5 p.m. on November 25, 1998.

6. Timothy W. Reardon has been designated to preside over and conduct the hearing.

7. The two bill-sponsor-notice requirements of section 2-4-302, MCA, apply and have been complied with.

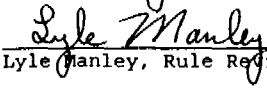
8. MDT attempts to provide accommodations for any known disability that may interfere with a person participating in any service, program or activity of the Department. Alternative accessible formats of this document will be provided upon request. For further information call (406) 444-7672 or TTY users can call (406) 444-7696 by November 11, 1998.

9. The Department of Transportation maintains a list of interested persons who wish to receive notices of the rulemaking actions it proposes. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies the subject area or areas of interest of the person requesting notice, including, but not limited to, rules proposed by the Administration Division, Aeronautics Division, Highways and Engineering Division, Maintenance Division, Motor Carrier Services Division, and Rail, Transit and Planning Division. Such written request may be mailed or delivered to the Montana Department of Transportation, Legal Services, P.O. Box 201001, Helena, MT 59620-1001, faxed to the office at (406) 444-7206, or may be made by completing a request form at any rules hearing held by the Department.

MONTANA DEPARTMENT OF TRANSPORTATION

By:

  
TIMOTHY W. REARDON, Chief Counsel

  
Lyle Manley, Rule Reviewer

Certified to the Secretary of State October 13, 1998.

BEFORE THE DEPARTMENT OF CORRECTIONS  
STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF PUBLIC HEARING
of ARM Title 20, Chapter 9,	)	ON THE PROPOSED REPEAL AND
Sub-Chapter 5, and the	)	ADOPTION OF NEW RULES
adoption of new rules I	)	
through XXXIV pertaining to	)	
licensure of youth detention	)	
facilities	)	

TO: All Interested Persons

1. On Thursday, November 12, 1998, at 9:00 a.m., a public hearing will be held in the downstairs conference room at the Department of Corrections, 1539 11th Avenue, Helena, Montana, to consider the proposed repeal and adoption of rules pertaining to licensure of youth detention facilities.

2. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. To request an accommodation, contact Claudia (Cj) Johnson, PO Box 201301, Helena, MT 59620-1301; telephone (406) 444-7917; FAX (406) 444-4920, no later than 4:00 p.m. on November 6, 1998, to advise of the nature of the accommodation you need.

3. The rules proposed for repeal are: ARM 20.9.501, 20.9.503, 20.9.506, 20.9.510, 20.9.513, 20.9.515, 20.9.518, 20.9.520, 20.9.524, 20.9.526, 20.9.528, 20.9.533, 20.9.535, 20.9.538, 20.9.541, 20.9.545, 20.9.547, 20.9.550, 20.9.555, 20.9.558, 20.9.561, 20.9.566, 20.9.569, 20.9.572, 20.9.575, and 20.9.578 (authority 41-5-1802, MCA, and implementing 41-5-1801, MCA). The text of these rules are located at pages 20-147 through 20-147.31, Administrative Rules of Montana.

4. The new rules proposed for adoption provide as follows:

**RULE I PURPOSE** (1) These rules establish the licensing requirements and procedures for youth detention facilities and short-term detention facilities. Except where specifically noted, these rules apply to both types of facilities.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

**RULE II DEFINITIONS** The following definitions apply to all youth detention facility licensing rules:

(1) "Administrative segregation" means a method of housing and managing youth whose continued presence in the general population poses a serious threat to life, property, self, staff, or other youth.

(2) "Collocated facility" means a youth facility located in the same building as an adult jail or lockup, or is

part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings is considered related when it shares physical features such as walls, fences, or services beyond mechanical services (heating, air conditioning, water and sewer), or is part of a related complex of buildings located on the same grounds as an adult jail or lockup.

(3) "Contraband" means any item possessed by a confined youth or found within the facility that is illegal by law or expressly prohibited by those legally charged with the administration and operation of the facility or program.

(4) "Delinquent youth" means a youth as defined by 41-5-103, MCA.

(5) "Department" means the department of corrections as provided for in 2-15-2301, MCA.

(6) "Detention" means placement by law of a youth in a detention facility.

(7) "Detention facility" means a facility as defined by 41-5-103, MCA.

(8) "Disciplinary detention" means a sanction which may be used when a youth commits a serious rule violation as defined by facility policy.

(9) "Facility" means youth detention facility or short-term detention facility.

(10) "Inflammatory agent" means a substance like oleoresin capsicum (OC), commonly called pepper spray, which is derived from the cayenne pepper plant and classified as an inflammatory agent that affects the mucous membranes and the upper respiratory system.

(11) "Licensing specialist" means the person designated by the department to perform licensing inspections, and to ensure that detention facilities comply with these rules.

(12) "Mechanical restraint" means handcuffs, belly chains, shackles or leg irons.

(13) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include a putative father.

(14) "Passive physical restraint" means the least amount of direct physical contact required by a staff member using approved methods of making such physical contact to restrain a youth from harming self or others.

(15) "Privileged correspondence" is correspondence between a youth and the youth's attorney, courts, government officials, facility director or probation/parole officers.

(16) "Secure observation" means placement of a youth in an assigned room for observation for the initial 24 hours of detention.

(17) "Serious incident" means: (a) a suicide attempt; (b) an allegation of abuse or neglect; (c) use of excessive force by staff; (d) sexual assault by another youth or staff; (e) injury to a youth, staff or visitor which requires hospitalization; or (f) the death of a youth, staff or visitor.

(18) "Short-term detention" means a facility as defined by 41-5-103, MCA.

(19) "Unencumbered space" means a measurement of square footage in a room or area obtained by multiplying the length and width of the cell/room and subtracting from that figure the total number of square feet encumbered by beds, plumbing fixtures, desks, lockers, and other fixed equipment.

(20) "Youth" means any person under the age of 18 years, without regard to gender or emancipation.

(21) "Youth in need of intervention" means a youth as defined in 41-5-103, MCA.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

**RULE III FACILITY LICENSE** (1) Each youth detention facility operating within the state of Montana must be licensed by the department. The facility's current youth detention license must be publicly displayed at the facility.

(2) The department shall issue a one-year youth detention facility license to any state or private facility which meets the requirements established by these rules, as determined by the department after a licensing study.

(a) The department shall renew the license annually on the expiration date of the previous year's license if the facility:

(i) makes written application for renewal at least 30 days prior to the expiration date of its current license; and

(ii) continues to meet the licensing requirements established by these rules, as determined by the department after a relicensing study.

(b) If a facility makes timely application for renewal of a license, but the department fails to complete the relicensing study before the expiration date of the previous year's license, the previous year's license will continue in effect for the time necessary for the department to complete the relicensing study.

(3) The department may, in its discretion, issue a provisional license for any period up to six months to any license applicant which:

(a) has met all applicable requirements for fire safety and health standards; and

(b) has agreed in writing to comply fully with all requirements established by these rules within the time period covered by the provisional license.

(4) The department may, in its discretion, renew a provisional license if the license applicant shows good cause for failure to comply fully with all of the requirements within the time period covered by the prior provisional license. The total time period covered by the initial provisional license and renewals may not exceed one year.

(5) Within 30 days of receipt of a written licensing inspection report, the facility shall provide to the department a written response to the report which includes a plan to correct any deficiencies identified by the inspection and the time frame for correcting the deficiencies.

(6) The facility may not detain more youth at one time than the number specified on the license except as stipulated

in these rules.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

**RULE IV LICENSING PROCEDURES** (1) Application for a youth detention facility license must be made on an application form provided by the department.

(2) Upon receipt of an application for license or renewal of license, the department shall conduct a licensing study to determine if the applicant meets applicable licensing requirements established in these rules. A licensing study must include an on-site visit for review of incident reports, logs, facility personnel files, policies and procedures, other written rules, as well as interviews with detained youth and staff members.

(3) If the department determines that an application or accompanying information is incomplete or erroneous, it will notify the applicant, in writing, of the specific deficiencies or errors, and the applicant shall submit the required or corrected information within 30 days of receipt of the written notice. The department may not issue a license or renew a license until it receives all required or corrected information.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

**RULE V LICENSE REVOCATION AND DENIAL** (1) The department, after written notice to the applicant or licensee, may deny, suspend, restrict, revoke or reduce to provisional status a license upon finding that the facility:

(a) is not in compliance with fire safety requirements;  
(b) is not in substantial compliance with any other licensing requirements established by these rules;

(c) has made any misrepresentations to the department, either negligent or intentional, regarding any aspect of its operations or facility;

(d) has failed to take corrective action when a staff member has been found guilty of a criminal offense;

(e) has failed to report an incident of abuse or neglect within the facility to the county attorney, the department of corrections and the department of public health and human services as required by 41-3-201, MCA; or

(f) has failed to comply with its plan to correct areas of noncompliance identified by an inspection as required in [Rule IV].

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

**RULE VI HEARING** (1) Any applicant or licensee who is dissatisfied because of the department's action refusing to grant a license, restricting, suspending a license, reducing to provisional license or revoking a license may request a hearing as provided in 2-4-601, MCA.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

**RULE VII CONFIDENTIALITY OF RECORDS AND INFORMATION**

(1) All records maintained by a facility and all

personal information made available to a facility pertaining to an individual youth must be kept confidential and may be released only to the following:

(a) Those parties entitled to access to records in accordance with 41-5-215, MCA; and

(b) The licensing specialist for purposes of licensing only. The licensing specialist shall keep confidential any information identifiable to a particular youth.

(2) In addition to the requirements of (1) of this rule, facility record keeping must meet any additional state or federal records requirements, and facility policy must provide:

(a) an orderly system of recording, managing and maintaining youth records;

(b) that all records are marked confidential and kept in locked files to safeguard against unauthorized or improper use or disclosure; and

(c) for an admittance form as detailed in [Rule XIX].

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

RULE VIII REPORTS (1) The facility shall submit to the department, upon its request, any reports required by federal or state law or regulation.

(2) The facility shall report any of the following changes to the department prior to the effective date of the change:

(a) a change of director;

(b) a change in location;

(c) a change in the name of the agency, program or facility; or

(d) a significant change in the organization, administration, purposes, programs, or services.

(3) Staff members shall report within 24 hours any incidents of known or suspected child abuse or neglect to the local and state offices of the department of public health and human services, to the department of corrections, and to the county attorney in the county where the facility is located.

(a) Each facility shall require each staff member to read and sign a statement which outlines the state law on child abuse and neglect and the staff member's responsibility to report all incidents of child abuse or neglect according to state law.

(b) Each facility shall cooperate fully in the investigation of any incident of suspected child abuse or neglect.

(c) Each facility shall have written procedures for handling any incident of suspected child abuse including:

(i) a procedure for ensuring that the staff member involved does not have contact with the youth involved until the investigation is completed; and

(ii) a procedure for disciplining any staff member involved in an incident of child abuse.

(d) At the discretion of the department and for protection of youth in detention, the department may request

that the staff member alleged to have committed sexual or physical abuse be moved immediately upon receipt of the allegation to a position where that person does not have contact with youth.

(4) Any serious incident involving a youth must be reported within the next working day to the parent, the juvenile probation officer and the licensing specialist.

(a) The facility shall complete a written incident report concerning any serious incident involving a youth. The report must include the date and time of the incident, the youth involved, the nature of the incident, description of the incident, and the circumstances surrounding it.

(b) A copy of the report must be filed at the facility, and a copy must be sent to the licensing specialist.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

RULE IX ESCAPES (1) Escapes must be reported immediately to the law enforcement and to the youth's probation officer.

(2) Disasters or emergencies which require closure of the facility must be reported to the licensing specialist within the next working day.

(3) The facility shall implement a means of recording the daily population of youth in the facility. The means of such recording must be set out in written policy. The policy must ensure compliance with the requirement that the population of youth be recorded daily.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

RULE X ADMINISTRATION (1) Each facility shall be purchased, leased, or otherwise provided for by one or more counties.

(a) The facility shall ensure that the county commissioners provide for inspection of the facility annually. Inspection must include but is not limited to health, fire safety, security, rehabilitation programs, recreation, treatment of youth and personnel training.

(2) The facility must not be used for the confinement of youth in need of care, persons who have attained the age of 18, or youth who have been criminally adjudicated. If a youth turns 18 years of age while in the facility, the youth may no longer be held in the youth detention facility.

(3) The facility must have written policies and procedures which describe the purpose, programs and services offered by the facility. Such written policies and procedures must include: (a) admissions, including the requirement that the facility only admit youth considered appropriate as "appropriate" is defined in such policy; (b) medical care; (c) emergencies; (d) discipline; (e) recreation; (f) food; (g) clothing; (h) visiting; (i) transportation; (j) mail; (k) religious services; (l) grievances; (m) discharge; (n) access by media; (o) fiscal management; (p) an organizational chart; and (q) personnel consistent with these rules.

(4) The facility must have written personnel policies

and procedures which govern: (a) job qualifications, descriptions and responsibilities; (b) employee grievance procedure; (c) employee evaluations; (d) record keeping; (e) leave; (f) work hours; (g) salary; (h) disciplinary procedures; (i) staff training; (j) equal opportunity employment provisions; (k) retirement; and (l) resignation and termination.

(5) All policies and procedures must be explained to each new staff person prior to the person having direct contact with youth in the facility. A copy of all policies and procedures must be made available to each employee at the time of employment and be continually available thereafter. The policies and procedures must be developed in consultation with employees, and may include other persons deemed relevant by the facility director.

(6) The facility shall maintain a current and accurate record for each employee. The record must include: (a) qualifications; (b) background investigation report; (c) references, dates and terms of employment; (d) orientation and training record; and (e) written disciplinary actions which involve abuse, neglect, safety, security or constitutional issues.

(7) The facility shall investigate the personal and employment references of each staff prior to hiring.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

**RULE XI FISCAL MANAGEMENT** (1) The facility or county commissioners must have written procedures which govern fiscal management consistent with accepted accounting practices.

(2) All financial records must be retained for three years and subject to audit in accordance with accepted auditing procedures.

(3) The facility shall show proof of institutional insurance coverage, including at a minimum fire, public liability, worker's compensation, and civil liability for employees.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

**RULE XII MANAGEMENT, STAFF AND TRAINING** (1) Each facility must have a director or program manager to whom all employees or units are responsible and who has responsibility and accountability for the day-to-day operations of the facility.

(a) The director must have the following qualifications:

(i) a bachelor's degree supplemented with experience in an area relating to professional child care or appropriate graduate education, or an equivalent combination of education and experience;

(ii) a thorough understanding of the purposes and programs of youth detention facilities in general;

(iii) general leadership, administrative, and management ability, including the ability to supervise youth care personnel; and

(iv) have or attain within three months of beginning employment a thorough working knowledge of the Youth Court Act



and related laws of Montana regarding law enforcement, apprehension and detention of youth, and the youths' rights under the law.

(2) Each short-term detention facility must have an identified program manager to whom all employees are responsible and who has responsibility and accountability for the day-to-day operations of the facility.

(a) The program manager must have the following qualifications:

(i) a bachelor's degree or at least three years' experience in a supervisory position involving human services responsibility;

(ii) a thorough understanding of the purposes of the facility; and

(iii) general leadership, administrative, and management ability.

(3) The facility shall employ, train and supervise an adequate number of staff in order to provide continuous awake supervision of youth and at least one immediately available staff member of the same gender as the youth.

(a) The minimum ratio of staff on duty to numbers of youth must be:

(i) 1:8 from 7:00 a.m. to 11:00 p.m. with a minimum of two staff; and

(ii) 1:12 from 11:00 p.m. to 7:00 a.m. An additional designated staff person must be available onsite for backup at all times.

(b) No staff member or other person having direct contact with the youth in the facility shall conduct themselves in a manner which poses any potential threat to the health, safety or well-being of the youth in detention.

(4) All youth care facility staff must meet the following general qualifications on their first day of employment:

(a) post secondary degree or extensive/relevant experience working with youth;

(b) be at least 18 years of age;

(c) have successfully passed background checks by both law enforcement and the child protective services division of the department of public health and human services;

(d) be physically, mentally and emotionally competent to care for youth;

(e) understand the purpose of the youth detention facility and be willing to carry out its policies and programs; and

(f) be certified in cardiopulmonary resuscitation (CPR).

(5) Written policy, procedure, and practice must provide that:

(a) each new employee receive 40 hours of orientation training before undertaking assignments;

(b) each new juvenile detention officer in the first year of employment complete 120 hours of training as defined by American correctional association (ACA) standards (1-SJD-

1D-05), and applicable Montana law;

(c) each employee receive 20 hours of in-service training each year thereafter; and

(d) CPR training be accomplished annually by each youth care staff member in addition to the required 20 hours of annual training.

(6) Orientation training must include, at a minimum, the following: (a) orientation to the purpose, goals, policies and procedures of the facility; (b) working conditions and regulations; (c) employees' rights and responsibilities; (d) emergency response procedures; (e) suicide risk and assessment; (f) first aid; (g) overview of juvenile justice system; (h) youth rights; (i) training in passive physical restraint; (j) communicable diseases and blood borne pathogens and (k) the provisions of the Montana Youth Court Act.

(7) All training must be documented in each staff member's personnel file.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

RULE XIII ENVIRONMENT (1) The facility shall provide an adequate and potable supply of water. The facility shall:

(a) connect to a public water supply system approved by the department of environmental quality; or

(b) for a facility utilizing a nonpublic water system, the department hereby adopts and incorporates by reference the following circulars setting forth relevant water quality standards prepared by and available from the Department of Environmental Quality, 1520 E. Sixth Avenue, Helena, MT 59620:

(i) circular #11 for springs;

(ii) circular WQB 3 - Montana department of environmental quality standards for small water systems (1992 edition); and

(iii) circular #17 for cisterns.

(c) If a nonpublic water supply is used, the facility shall submit a water sample at least once a quarter (January 1 - March 31, April 1 - June 30, July 1 - September 30, and October 1 - December 31) to a laboratory licensed by the department of public health and human services for a coliform bacteria test of the system and a nitrate test of the system at least once every three years. Bacteriological testing of a water supply must be in accordance with ARM 17.38.215.

(i) Sampling results must be kept at the facility and a copy of the results provided to the department and the local department of public health and human services.

(ii) Sampling result records must be retained for a minimum of three years.

(d) The water system is determined to have failed and to require replacement, repair, or disinfection when the water supply becomes unsafe (exceeds maximum contaminant levels as specified in ARM 17.38.201 through 17.38.207) or inadequate (less than 20 psi measured at the extremity of the distribution line during peak usage).

(e) Extension, alteration, repair, and replacement of a water supply system, or development of a new water supply

system must be in accordance with ARM 17.36.301 through 17.36.305, and if the system is a public water supply system, ARM 17.38.101 through 17.38.105.

(f) Plumbing must be installed and maintained in a manner which prevents cross connections between the potable water supply and any non-potable or questionable water supply or any source of pollution through which the potable water supply might become contaminated. The potable water system must be installed to preclude the possibility of backflow. A hose shall not be attached to a faucet unless a backflow prevention device is installed.

(g) The department hereby adopts and incorporates by reference ARM 17.38.101 through 17.38.105, which describe water system review requirements for public water supply systems, ARM 17.36.301 through 17.36.305, which describe water system review requirements for subdivisions; ARM 17.38.201 through 17.38.207, which set maximum contaminant levels, and ARM 17.38.214, which describes bacteriological water sample testing requirements. Copies of the above-mentioned rules may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

(2) An adequate and safe sewage system must be provided for conveying, treating, and disposing of all sewage. Immediate measures must be taken to alleviate health and sanitation hazards caused by sewage at the youth detention facility. To ensure sewage is safely disposed of, the facility shall either:

(a) connect to a public sewer approved by the department of environmental quality; or

(b) if a nonpublic system is utilized, the department hereby adopts and incorporates by reference the following circulars which set forth standards for sewage disposal. Copies of the circulars may be obtained from the Department of Environmental Quality at the above address.

(i) circular WQB 4 - Montana department of environmental quality standards for multi-family sewage systems and public subsurface sewage treatment systems (1992 edition); and

(ii) circular WQB 5 - Montana department of environmental quality minimum design standards for on-site alternative sewage treatment and disposal systems (1992 edition).

(c) The sewage system must be repaired or replaced whenever:

(i) it fails to accept, treat, or dispose of sewage as designed;

(ii) seepage of effluent from or ponding of effluent on or around the system occurs;

(iii) contamination of a potable water supply or state waters is traced to the system; or

(iv) a mechanical failure occurs, including electrical outage, or collapse or breakage of a septic tank, lead line, or drainfield line.

(d) Extension, alteration, replacement, or new

development of any sewage system must be in accordance with ARM 17.36.301 through 17.36.305 and, if the system is a public sewage system, ARM 17.38.101 through 17.38.105.

(e) Liquid wastes from sinks, showers, toilets, or baths are not allowed to accumulate on the ground surface. Such waste must be discharged into the sewage system serving the youth detention facility or into an alternate system approved by the department of environmental quality or the local health authority.

(f) The department hereby adopts and incorporates by reference ARM 17.36.301 through 17.36.305 setting standards for sewage treatment and disposal systems, and ARM 17.38.101 through 17.38.105, setting requirements for public water and sewer plans and cross connections. Copies of the above rules may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

(3) The facility shall:

(a) store all solid waste in containers which have lids and are corrosion-resistant, flytight, watertight, and rodent-proof;

(b) clean all solid waste containers frequently; and

(c) transport or utilize a private or municipal hauler to transport the solid waste at least weekly to a landfill site approved by the department of environmental quality or a local solid waste district in a covered vehicle or covered containers.

(4) Bathtubs, showers, lavatories, urinals, toilet bowls, toilet seats, and floor areas must be cleaned thoroughly with an approved disinfectant or sanitizing agent daily.

(5) Other areas must be cleaned on a regular basis. All furnishings, fixtures, floors, walls, and ceilings must be clean and in good repair.

(6) There must be hot and cold water available in the facility. Handsinks and bathing facilities must be provided with water at a temperature of at least 100°F and not more than 120°F. Youth should be encouraged to shower or bathe at least three times per week.

(7) Laundries operated in conjunction with, or utilized by the youth detention facility must be provided with a mechanical washer and hot air tumble dryer and a hot water supply system capable of supplying water at a temperature of 130°F to the washer during all periods of use.

(a) Sheets, pillow covers, towels and washcloths must be machine washed at a minimum temperature of 130°F for a minimum time of eight minutes and dried in a hot air tumble dryer or ironed to a minimum temperature of 150°F. Appropriate detergents and sanitizers must be used.

(b) Separate areas for sorting and storing soiled laundry and folding and storing clean laundry must be provided.

(c) Clean clothes and linens must be stored in a clean place and protected from contamination until used.

(d) All bedding, towels, and wash cloths provided by the youth detention facility must be clean and in good repair. Clean laundered bed sheets and pillow cases must be provided on each bed and must be replaced by clean, freshly laundered sheets and pillow cases after the departure of each youth and prior to occupancy by the next youth. Clean bedding and linens must be available to each youth at least weekly or more often, as necessary.

(8) The facility and all areas used by youth must have an adequate ventilation and heating system and adequate lighting (as determined by the tasks to be performed).

(9) Cleaning compounds and pesticides must be stored, used, and disposed of in accordance with the manufacturer's instructions.

(10) Facilities and premises must be kept free of harborage for insects, rodents, and other vermin. The facility shall have a plan for the control of vermin and pests which includes monthly inspections. If fumigations are necessary, they must be done by a licensed pest control professional.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

RULE XIV NUTRITION AND FOOD SAFETY (1) The facility must have written policy, procedure, and practice requiring food service staff to develop advanced, planned menus and substantially follow the schedule. In the planning and preparation of all meals, the staff shall take into consideration food flavor, texture, temperature, appearance, and palatability.

(2) Youth must be given three well-balanced meals daily, as well as supplemental snacks appropriate to the nutritional needs of the youth.

(3) Written policy, practice, and procedure must provide for special diets as prescribed by appropriate medical or dental personnel. Such orders must be kept on file at the facility.

(4) Written policy, procedure, and practice must specify that the food services comply with the applicable sanitation and health codes as promulgated by federal, state, and local authorities.

(5) Written policy, procedure, and practice must provide for adequate health protection for all youth and staff in the facility and youth and other persons working in food service, including the following:

(a) Where required by the laws and/or regulations applicable to food service employees in the community where the facility is located, all personnel involved in the preparation of food shall receive a preassignment medical examination and periodic reexaminations to ensure freedom from diarrhea, skin infections, and other illness transmissible by food or utensils;

(b) When the facility's food services are provided by an outside agency or individual, the facility must have written verification that the outside provider is in compliance with state and local regulations regarding food

service;

(c) All food handlers shall wash their hands with warm water and soap before handling food upon reporting to duty and after using toilet facilities;

(d) Youth and other persons working in food service must be monitored each day for health and cleanliness by the director of food services or designee; and

(e) Use of home canned products is prohibited.

(6) Copies of menus as served must be kept on file for at least three months and be available for inspection.

(7) Menus and records of meals served must be reviewed at least annually by a dietician or nutritionist to verify that the meals provide nutrition adequate for youth between the ages of 10 and 18. The facility shall maintain documentation of the dietitian's or nutritionist's review and verification. Subsequent menus must be promptly revised to eliminate any deficiencies noted.

(8) Food service equipment, facilities, practices, and procedures must meet the requirements of ARM Title 16, chapter 10, subchapter 2, Food Service Establishments.

(9) The department of public health and human services may allow a deviation from (4) above after the youth detention facility submits to the department:

(a) a written application that demonstrates to the department that the deviation requested does not have the potential to cause adverse public health effects; and

(b) a written plan that describes management practices or procedures that will assure food safety related to the deviation request.

(10) If the youth detention facility food service is provided by a contractor, then the contractor shall provide proof it has a current food establishment license issued by the department of public health and human services.

(11) The department hereby adopts and incorporates by reference ARM Title 16, chapter 10, subchapter 2 which sets forth the requirements for food service establishments. Copies of the above rules may be obtained from the Food and Consumer Safety Section, Department of Public Health and Human Services, PO Box 202951, Helena, MT 59620-2951.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

**RULE XV PHYSICAL PLANT** (1) A facility shall comply with the following structural requirements:

(a) All rooms and hallways must have adequate lighting;

(b) Adequate space must be provided for all phases of daily living, including recreation, privacy, group activities and visits;

(c) Detention facilities must have indoor areas of at least 40 square feet of floor space per youth for quiet, reading, study, relaxing, and recreation. Halls, kitchens, and any rooms not used by youth may not be included in the minimum space requirement; and

(d) In detention facilities constructed or remodeled

after the adoption of these rules, sleeping areas must contain at least 35 square feet of unencumbered space per youth. Facilities in operation prior to the adoption of these rules must contain at least 30 square feet of floor space per youth.

(2) Collocated facilities, where a youth facility is collocated with an adult facility, shall provide for sight and sound separation of youth and adult detainees. In addition:

(a) Collocated facilities shall ensure that written operational plans, policies and procedures are in place to ensure that no contact between youth and adult detainees occurs;

(b) Recreational and admission areas used for both adult and youth must be closely regulated by time phasing to prevent contact between adult and youth;

(c) Sleeping and living areas may not be shared by adult and youth under any circumstances;

(d) Only staff providing specialized services such as cooks, maintenance staff, medical professionals and bookkeepers, whose infrequent contact with detainees occurs under conditions of separation of youth and adult detainees, may serve both populations; and

(e) The day-to-day management and functions of youth detention facilities must be vested in separate staff who, where they serve both youth and adult populations, are trained to serve youth. Except for emergency circumstances, staff whose duties include in whole or in part the provision of direct care to youth may not be used to serve the adult jail at the same time or during the same tour of duty that they serve in the juvenile detention facility.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

**RULE XVI FIRE SAFETY** (1) The facility shall conform to applicable federal, state, and/or local fire safety codes. Compliance must be documented by the authority having jurisdiction. A fire alarm and automatic detection system are required and must be approved by the authority having jurisdiction.

(2) Written policy, procedure, and practice must specify the facility's fire prevention regulations and practices. These must include but are not limited to the following:

(a) provision for an adequate fire protection service;

(b) a system of fire inspection and testing of equipment at least quarterly or at intervals approved by the authority having jurisdiction, following the procedures stated for variances, exception, or equivalencies;

(c) an annual inspection by local or state officials or other qualified person; and

(d) availability of fire protection equipment at appropriate locations throughout the facility.

(3) Written policy, procedure, and practice must provide for a comprehensive and thorough monthly inspection of the facility by a qualified fire and safety officer for compliance with safety and fire prevention standards. There

must be a weekly fire and safety inspection of the facility by a qualified staff member. This policy and procedure must be reviewed annually and updated as needed.

(4) The facility must have documentation showing that specification for the selection and purchase of facility furnishings indicate the fire safety performance requirements of the materials selected.

(5) Facilities must be designated and maintained as smoke-free buildings. Special containers must be provided for flammable liquids, for rags used with flammable liquids, and for other combustible refuse. All receptacles and containers must be emptied and cleaned daily.

(6) The facility must have written policy, procedure, and practice governing the control and use of all flammable, toxic, and caustic materials.

(7) The facility must have a written evacuation plan prepared in the event of fire or major emergency that is certified by an independent, outside inspector trained in the application of appropriate codes. The plan must be reviewed annually, updated as needed, and reissued to the local fire jurisdiction. The plan must include the following:

- (a) location of building/room floor plan;
- (b) use of exit signs and directional arrows for traffic flow;
- (c) location of publicly posted plan;
- (d) monthly drills in all occupied locations of the facility; and
- (e) staff drills when evacuation of dangerous residents is not permitted.

(8) All facility personnel must be trained in the implementation of written emergency plans. Work stoppage and riot/disturbance plans may be communicated only to appropriate supervisory or other personnel directly involved in the implementation of those plans.

(9) Written policy, procedure, and practice must specify the means for the immediate release of youth from locked areas in case of emergency and provide for a backup system.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

**RULE XVII SAFETY AND SECURITY** (1) Each youth must be physically observed every 15 minutes. A method for documenting these checks must be in place.

(2) A youth giving indications of self destructive tendencies or exhibiting behavior suggesting possible medical problems must be monitored more regularly.

(3) The facility must have written policies and procedures for security and control which are in accordance with recognized ACA standards. These must include:

- (a) searches of residents, their rooms or property;
- (b) control of contraband;
- (c) population counts;
- (d) key, tool, utensil and cutlery control;
- (e) visitation;



- (f) emergency procedures;
- (g) staffing; and
- (h) locking of doors.
- (4) Staff members shall control security measures, and must not permit youth to assist with these security measures.
- (5) Procedures must provide for regular and frequent inspections and maintenance of all security devices, locks, and doors to ensure their proper working order and to detect escape efforts. Any damaged or nonfunctioning security equipment must be promptly repaired.
- (6) All living and sleeping areas must be kept free of bars, grates, hooks or any other physical features which may reasonably be expected to present a suicide risk to youth.
- (7) Procedures must provide that, except in emergency situations, weapons including those of law enforcement personnel, are not permitted beyond a designated area to which detained youth have no access.
- (8) Every facility shall implement policies and procedures for tool control, confidentiality requirements, and limitations on youth interactions whenever maintenance workers or other nonstaff members are admitted to the facility.
- (9) Facility procedures must provide for reporting escapes or runaways.
- (10) Procedures must provide for a plan to be followed in emergency situations (e.g., fire, disturbance, taking of hostages, and natural disasters) which must be made available to all personnel.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

- RULE XVIII. SEARCHES** (1) All policies and procedures on searches must, at a minimum, follow ACA standards.
- (2) Although control of weapons and contraband is essential to the order and security of the detention facility, indiscriminate searches of youth are prohibited. Searches of a youth, his possessions, room, or other areas of the facility are permitted only when there is sufficient reason to believe that the security of the facility is endangered or that contraband is present in the facility.
- (3) A search plan must be established and made available to both staff and youth. The search plan must be reviewed at least annually and updated as needed.
- (4) Searches may be performed for the following reasons:
- (a) to prevent the introduction of weapons or other dangerous contraband into the facility;
  - (b) to detect the manufacture of weapons, escape devices, etc., within the facility;
  - (c) to discover and suppress trafficking between staff and youth;
  - (d) to check malicious waste or destruction of facility property; and
  - (e) to discover hazards to health or safety that may go unnoticed during routine inspections.
- (5) Searches of youth may be performed only by properly

trained personnel of the same gender.

(6) Strip searches may be performed upon entry to the facility or when there is reason to believe that weapons or contraband will be found.

(a) Strip searches are to be performed visually and in an area that ensures privacy.

(b) Clothing should be searched carefully and returned to the youth as soon as possible.

(7) A body cavity search must be authorized by the facility director or designee and will be done only when there is probable cause that weapons or contraband will be found.

(a) Only trained medical staff (e.g., a doctor or nurse) may perform a body cavity search.

(b) A body cavity search must be fully documented by medical staff. Copies of the documentation must be placed in the youth's file and a copy must be maintained at the facility.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

RULE XIX ADMISSION (1) The facility shall obtain, in writing, the youth's court order or consent decree for the detention of a youth or a consent adjustment, or a written authorization for the detention of the youth from a law enforcement officer, probation officer (or designee of such probation officer), department representative enforcing a youth parole agreement, or other lawful authorizing documentation for detention of the youth under the requirements of the Montana Youth Court Act.

(2) Any youth held in detention must be between the ages of 10 and 18 years, may not be mentally ill and may not be criminally adjudicated.

(3) A youth who has been placed in detention may not be held longer than 24 hours, excluding weekends and legal holidays, unless a hearing has been held by the court to determine whether there is probable cause to believe the youth is a delinquent youth or a youth in need of intervention.

(a) The facility shall record the specific charges, date, and time of probable cause hearing.

(b) A parole youth who has been placed in detention may not be held longer than 72 hours, excluding weekends and legal holidays, unless a parole violation hearing has been held.

(4) The facility shall develop written policy and procedures governing the admission and orientation, and secure observation of admitted youth which include the following requirements:

(a) A staff member of each gender must be available or on call at all times to receive youth for detention;

(b) Staff members accepting youth for detention shall determine that the youth is being held under proper legal authority, and the identity of the youth being admitted must be verified as soon as possible;

(c) Intake searches of each youth must be performed to prevent the introduction of weapons or contraband;

(d) The youth's personal property, if removed, must be

properly itemized, signed for by the youth and staff, and held safely. The youth must be advised that all personal belongings will be returned to him when he leaves, with the exception of illegal contraband or evidence;

(e) Upon admission a youth may be segregated from other youth and placed under secure observation for a maximum of 24 hours for the purpose of assessment and evaluation;

(f) At a minimum the facility shall provide new youth the following:

- (i) a set of standard facility clothing or uniform;
  - (ii) fire-retardant mattress;
  - (iii) pillow and pillow case;
  - (iv) two sheets, or one sheet and one mattress cover;
  - (v) sufficient blankets to provide comfort under existing temperature conditions; and
  - (vi) one clean towel.
- (g) Youth uniforms must be laundered or exchanged at least twice a week. The youth's own clothing must be laundered if needed and safely stored.

(5) The facility shall provide youth with the following articles necessary for maintaining personal hygiene and without charge to indigent youth:

- (a) soap;
  - (b) toothbrush;
  - (c) toothpaste or powder;
  - (d) comb; and
  - (e) products for female hygiene needs.
- (6) The youth's physical and emotional condition must be noted and recorded, along with identifying data, under the facility admittance form which must be completed upon admission of the youth. Facility admittance forms, as a minimum, must also allow for the recording of the following information:

(a) court case number, corrections juvenile offender number, juvenile probation information system (JPIS) number, child and adult protective services (CAPS) number and facility admission number;

- (b) date and time of admission;
  - (c) name of youth and A.K.A. (if any);
  - (d) last known address;
  - (e) name of attorney (if any);
  - (f) specific charges;
  - (g) gender, race;
  - (h) date and place of birth;
  - (i) health status;
  - (j) property inventory;
  - (k) emergency contact number of parent or guardian;
  - (l) emergency contact number of placing agency; and
  - (m) a violence risk assessment.
- (7) The admitting staff member shall inquire into and examine the youth for any obvious injuries, medical tags, rashes, unusual cough or high temperature and determine, by questioning, if there are medical problems, including drug or alcohol abuse, asthma, diabetes, epilepsy, mental distress,

suicidal thoughts, or other conditions which require medical attention.

(a) If in the judgment of the facility director or designee, a youth has an untreated physical or mental condition or disorder, or is under the influence of drugs or alcohol, the facility may deny admission of the youth.

(b) Any prescription medication in the possession of a youth at admission must be labeled for identification and determination must be made at the earliest possible time regarding the need for its continued use by contacting the prescribing health care professional. A written record of the diagnosis, treatment, and medication prescribed must be placed in the youth's detention file.

(8) Staff shall contact parents or other responsible persons as soon as possible following the detaining of the youth. Verification of such contacts or attempted contacts must be recorded in writing.

(9) If a youth is hungry at admission, he must be given sufficient food to sustain the youth until the next regular meal.

(10) After a youth has been admitted, showered, issued clothing and other essentials, the youth shall receive orientation on the policies and procedures of the facility prior to disciplinary action or integration with other youth and within 24 hours of admission.

(a) The youth must be given a copy of the printed facility rules and the youth's rights. Staff shall explain or clarify the contents of the material, especially for youth who do not have adequate reading or comprehension skills.

(b) Completion of orientation must be documented by a statement that is signed and dated by the youth.

(11) A record for each youth must be established at admission and must be maintained throughout the period of detention.

(12) Facility policy and procedure must grant all youth the right to make at least two local or long-distance telephone calls to family members, attorneys or other approved individuals at some time during the admission process.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

**RULE XX RIGHTS OF YOUTH** (1) The facility shall implement the following policies and procedures governing the rights of youth which must be in accordance with ACA standards, and must include:

(a) The facility's written grievance procedure for youth and the youth's right to make requests or complaints to the facility's administration without censorship;

(b) A provision that youth have the right to determine the length and style of their hair, including facial hair except when a valid security interest justifies otherwise; and

(c) A provision that a youth has the right to be separated from the general population in so far as space and staffing patterns permit.

(2) A notice containing facility rules and youth's

rights must be accessible to all youth.

(3) The facility may require a detained youth to perform housekeeping functions such as necessary housekeeping in his own room and assisting with general housekeeping duties in the living unit except that:

(a) Youth may not have primary responsibility for any phase of operation such as cooking, laundry, housekeeping, or maintenance work which is the duty of regular staff;

(b) Assignments must be made in relation to the age and abilities of the youth;

(c) The work may not have as its primary purpose monetary benefit to the facility;

(d) Work assignments may not include areas to which youth do not have regular access;

(e) Staff are responsible for the safety of youth while they are near equipment and machinery; and

(f) Youth may not perform any work prohibited by state and federal regulations and statutes pertaining to child labor.

(4) No facility may discriminate against any youth based on race, religion, national origin, gender, handicap, political belief, or sexual orientation.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

RULE XXI COMMUNICATION/MAIL (1) The facility must have written policies and procedures governing correspondence which must be in accordance with ACA standards. The policies and procedures must include the following:

(a) The facility may routinely screen and refuse mail going to or incoming from another correctional or detention facility unless it is from a member of the youth's immediate family.

(b) The facility may refuse any incoming mail from a youth who was released from any facility, placement, correctional facility and/or program within 30 days prior to the date of the correspondence.

(c) At the youth's request, the facility may provide postage for the mailing of a maximum of two letters per week for each youth.

(d) Appropriate stationery, envelopes and a writing implement must be supplied.

(e) Written policy and procedure must specify that youth are permitted to send sealed letters to a specified class of persons and organizations and privileged correspondence including but not limited to courts, counsel, officials of the confining authority, administrators of grievance systems and members of the releasing authority.

(f) Youth have the right to communicate or correspond with persons or organizations subject only to the limitations necessary to maintain facility order and security.

(g) Youths' mail, both incoming and outgoing, may be opened and inspected for contraband. Mail may be read, censored, or rejected when based on legitimate facility interest of order and security. The youth must be notified

when incoming or outgoing letters are withheld in part or in full.

(h) Incoming correspondence may be opened and inspected for cash, checks, or money orders. Receipt of all cash, checks, and money orders sent to youth must be documented and the money retained for the youth in accordance with the written procedures of the facility.

(i) Youth shall not be denied mail rights for disciplinary purposes.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

RULE XXII VISITATION AND TELEPHONE USE (1) The facility shall adopt policies and procedures governing visitation in accordance with ACA standards including the following requirements:

(a) Youth have the right to receive visits subject only to the limitations necessary to maintain facility order and security.

(b) A facility shall permit informal communication between youth and visitors, including opportunity for physical contact. Physical contact may be restricted, on a case-by-case basis, if it is determined to compromise the facility's security.

(c) All visitors shall register their name and relationship to youth. A "search notice" sign which advises visitors of the policy provisions regarding visitation must be conspicuously posted and pointed out to all visitors.

(d) Youth must be searched after each contact visit.

(e) The visiting area must be thoroughly searched before and after each visiting period.

(f) During a visit, there must be a system for staff to observe youth and visitors at all times.

(2) The facility shall adopt policies and procedures governing telephone use which must include the following:

(a) The facility must be equipped with a telephone.

(b) Emergency telephone numbers must be posted by each telephone.

(c) Youth must be permitted reasonable and equitable access to the telephone according to the facility's policy which may establish hours of availability and time limits.

(d) Youth must have access to telephone contact with their attorneys at reasonable times at facility expense. These telephone calls must be confidential.

(e) Youth must have access to a telephone for calls made upon admission as provided in [Rule XIX] and for other approved calls.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

RULE XXIII HEALTH CARE (1) Written policy, procedure, and practice must provide that the facility has a designated health authority with responsibility for health care pursuant to a written agreement, contract, or job description.

(a) The health authority may be a physician, physician assistant, health administrator, or health agency. When the

authority is other than a physician, final medical judgments must rest with a single designated physician.

(b) The health authority shall meet at least quarterly with the facility director.

(2) Written policy, procedure, and practice must provide that treatment by health care personnel other than a physician, dentist, psychologist, optometrist, podiatrist, or other independent provider is performed pursuant to or ordered by personnel authorized by law to give such orders. Nurse practitioners and physician's assistants may practice within the limits of applicable laws and regulations.

(3) Written policy, procedure, and practice must provide for the proper management of pharmaceuticals and address the following subjects:

(a) prescription practices;

(b) procedures for medication receipt, storage, dispensing, and administration or distribution;

(c) maximum security storage and periodic inventory of all controlled substances, syringes, and needles;

(d) dispensing of medicine in conformance with appropriate federal and state laws;

(e) administration of medication must be by licensed personnel only; otherwise, the system of self-administration must be utilized. Training pursuant to ARM 8.32.1704, 8.32.1705, 8.32.1706 and 8.32.1708 must be provided to staff for supervised self administration to be used; and

(f) accountability for administering or distributing medications in a timely manner and according to physician's orders.

(4) Written policy, procedure, and practice must require medical, dental, and mental health screening to be performed by health-trained or qualified health care personnel on all youth on arrival at the facility. All findings must be recorded on a form approved by the health authority and placed in the youth's file. The screening form must include at least the following:

(a) Inquiry into:

(i) current illness and health problems, including sexually transmitted diseases and other infectious diseases;

(ii) dental problems;

(iii) mental health problems including suicidal thoughts;

(iv) use of alcohol and other drugs, including types of drugs used, mode of use, amounts used, frequency of use, date or time of last use, and a history of problems that may have occurred after ceasing use (e.g., convulsions);

(v) past and present treatment or hospitalization for mental disturbance or suicide attempts; and

(vi) other health problems designated by the responsible physician.

(b) Observation of:

(i) behavior, which includes state of consciousness, mental status, appearance, conduct, tremor, and sweating;

(ii) body deformities, ease of movement, etc.; and

(iii) condition of skin, including trauma markings,

bruises, lesions, jaundice, rashes and infestation, and needle marks or other indications of drug abuse.

(c) Medical disposition of youth:

(i) general population;

(ii) general population with appropriate referral to health care service; or

(iii) referral to appropriate health care service for emergency treatment.

(5) Written policy, procedure, and practice must provide for 24-hour emergency medical, dental and mental health care availability as outlined in a written plan that includes arrangements for the following:

(a) on-site emergency first aid and crisis intervention;

(b) emergency evacuation of the youth from the facility;

(c) use of an emergency medical vehicle;

(d) use of hospital emergency rooms or other appropriate health facilities;

(e) emergency on-call physician, dentist, and mental health professional services when the emergency health facility is not located in a nearby community; and

(f) security procedures providing for the immediate transfer of youth, when appropriate.

(6) Written policy, procedure, and practice must provide that direct care staff and other personnel are trained to respond to a health-related emergency within a five-minute response time. A training program must be established by the facility director under the supervision of and in cooperation with the responsible health authority. The plan must include the following:

(a) recognition of signs and symptoms and knowledge of action required in potential emergency situations;

(b) administration of first aid and CPR;

(c) methods of obtaining emergency assistance;

(d) signs and symptoms of mental illness, retardation, and chemical dependency; and

(e) procedures for patient transfers to appropriate medical facilities or health care providers.

(7) There must be a written suicide prevention and intervention program that is reviewed and approved by a qualified medical or mental health professional.

(a) The program must include specific procedures for intake/admission screening, identification, and supervision of youth identified as potentially suicidal.

(b) All staff with responsibility for youth supervision must be trained in the implementation of the program.

(8) Written policy must prohibit the use of youth for medical, pharmaceutical, or cosmetic experiments. Policy may not preclude individual treatment of a youth based on his/her need for a specific medical procedure that is not generally available.

(9) Written policy and procedures must require that information about access to health care services be



communicated both orally and in writing to youth upon arrival at the facility.

(10) Written policy and defined procedures require that sick call be conducted by a physician or other qualified health personnel and be available to each youth according to the following schedule:

(a) In small facilities of fewer than 25 youth, sick call is held once per week, at a minimum; and

(b) In medium-sized facilities of from 25 to 100 youth, sick call is held at least three days per week.

(11) If a youth's custody status precludes attendance at sick call, arrangements must be made to provide sick call services at the place of the youth's detention.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

RULE XXIV SERVICES AND PROGRAMS (1) This rule applies to provision of services to all youth who remain in detention beyond 10 days.

(2) A range of resources should be provided to meet the needs of youth, including individual and family counseling and community services.

(a) Youth should be afforded access to mental health counseling and crisis intervention services in accordance with their needs.

(b) Psychiatric, psychological, medical and other diagnostic services, as determined by the youth court, must be available to every youth either provided directly by the facility or by contracting with another county or agency which provides such services.

(c) Other professional services should be provided as needed.

(3) The facility must have a recreational program.

(a) There must be opportunities for exercise and leisure time activity. All youth must be permitted and encouraged to participate in recreation.

(b) No youth may be required or forced to participate in recreational activities.

(c) Exercise areas must be equipped and available for use within the limitations of security requirements.

(4) Procedures must allow youth to participate in religious services and counseling within the facility on a voluntary basis. All youth must have the opportunity to voluntarily practice their respective religions and to receive visits from representatives of their respective faiths within the limits imposed by safety and security restrictions.

(5) The facility shall provide library services which are available to all youth.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

RULE XXV EDUCATION (1) A detention facility licensed by the department shall provide each youth detained for 10 or more consecutive days with the opportunity for education.

(2) A licensed facility must have written policies and procedures governing education which include at a minimum:

- (a) An educational policy for the facility that provides the youth with:
  - (i) educational rights under Montana and federal law, including the Individuals with Disabilities Education Act; and
  - (ii) the opportunity to participate in an educational program being taught by a Montana state certified teacher. At the discretion of the facility, this program may be provided in conjunction with cooperating school districts or may be provided by the facility.
  - (b) A description of the facility's procedures for:
    - (i) obtaining youths' prior educational records;
    - (ii) assessing youths' educational needs;
    - (iii) providing youth with educational programs appropriate to their knowledge, skills and abilities;
    - (iv) maintaining the youths' educational records while at the facility; and
    - (v) transferring records to educational agencies when requested.
  - (c) A description of the education release policy, if any.
  - (d) A description of the in-facility education services, location, materials, teaching staff, etc., if no education release policy exists.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

RULE XXVI OVER CAPACITY (1) Each facility must have an over capacity plan which must be in accordance with the facility's policies and procedures, and must be approved by the facility director or program manager. The plan must provide for the following:

- (a) The nature of the offense of the youth who will cause the facility to go over capacity, and the nature of the offense of the youth already in the facility;
- (b) Reasonable efforts must have been made to place youth at another facility;
- (c) Over capacity space must be predesignated in the facility policy, and must comply with ACA standards;
- (d) The staff-to-youth ratio must be maintained; and
- (e) The facility may not go over capacity if it will jeopardize the safety and security of the youth detained or the facility.

(2) The plan must be documented to the licensing agent.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

RULE XXVII DISCIPLINE (1) The facility shall use appropriate forms of discipline but may not use any form of corporal punishment or any other technique which is humiliating, shaming or otherwise damaging to youth.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

RULE XXVIII PASSIVE PHYSICAL RESTRAINTS (1) The facility shall provide training in passive physical restraint to all staff members who may be required to use passive physical restraint. The facility shall provide at least yearly

refresher courses.

(2) Passive physical restraint of a youth may only be used to end a disturbance by a youth that immediately threatens physical injury to the youth, other persons, or property.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

**RULE XXIX ADMINISTRATIVE SEGREGATION AND DISCIPLINARY DETENTION** (1) Each facility which uses administrative segregation or disciplinary detention must have written policies governing these practices which comply with ACA standards.

(2) Administrative segregation may be used as a measure for behaviors by a youth such that the youth's continued presence in the general population poses a serious threat to life, property, self, staff, or other youth. Protective custody may be used for youth requesting or requiring protection from other youth.

(3) Disciplinary detention may be used to control a youth convicted of serious rule violations and may only be utilized for a maximum of four hours.

(a) Disciplinary detention is a sanction that is used when a youth commits a serious rule violation.

(b) Facility policy must identify acts which are considered to be serious rule violations.

(4) The youth must be provided a due process disciplinary proceeding when placed in disciplinary detention.

(5) Each facility which utilizes disciplinary detention shall have a written statement of its policies which describe, at a minimum:

(a) the criteria for use of disciplinary detention;

(b) the procedure for use of disciplinary detention;

and  
(c) the procedure by which a youth can appeal decisions of the disciplinary committee to the facility director or designee.

(6) Records of the use of disciplinary detention, the youth's records, staff records and the room must be made available to the department for inspection.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

**RULE XXX MECHANICAL RESTRAINT** (1) Each facility which utilizes mechanical restraint must have a written statement of its policies.

(2) The use of mechanical restraint may only be permitted to transport youth or to control aggressive or assaultive behavior that is a clear and present danger to the youth, other youth, staff, property damage, or the safety and security of the facility.

(3) A youth who is mechanically restrained may not be denied food or subjected to corporal punishment or abusive or degrading treatment.

(4) Mechanical restraint may not be used for punishment, for the convenience of staff, or as a substitute

for programming.

(5) Whenever mechanical restraint is used, for any purpose other than transportation, an incident report which documents all relevant information must be entered into the youth's case record.

(a) The information contained in (b) (i) through (iv) below must be sent to the licensing specialist within 48 hours of the incident excluding weekends and legal holidays.

(b) The information contained in the incident report must include but need not be limited to the following:

(i) the specific behavior that necessitated the use of mechanical restraint;

(ii) alternative interventions that were unsuccessful in controlling the youth's behavior;

(iii) authorization by the director or designee;

(iv) the time and date that the use of mechanical restraint began and ended; and

(v) monitoring reports, with observations and notations regarding the youth's physical and emotional condition, at no greater than 15-minute intervals.

(6) The following procedures and conditions must be observed whenever the use of mechanical restraint on a youth is implemented:

(a) Authorization for the use of mechanical restraint must be provided by the facility director or designee;

(b) The use of mechanical restraint must be for the minimum period of time necessary to enable the youth to gain control of his behavior but must not exceed one hour;

(c) While in mechanical restraints, the youth shall remain under constant direct visual observation by a staff person. The staff person may have no duties or responsibilities other than the supervision of the youth;

(d) The staff person shall ensure that the physical needs of the youth are met promptly;

(e) Mechanical restraint must be applied in a manner to minimize the risk of injury to the youth or the staff person responsible for supervising the youth;

(f) Mechanically restraining a youth to a stationary object is prohibited; and

(g) A youth who requires a mechanical restraint in excess of one hour must be evaluated by a mental health professional.

(7) A log recording all incidents where mechanical restraint was used except for the purpose of transportation must be maintained by the facility director. Information contained in the log must include but need not be limited to the following:

(a) the youth's name;

(b) the date and time period over which mechanical restraint was used;

(c) staff who used mechanical restraint; and

(d) the signature of the director or designee who authorized the use of mechanical restraint.

(8) Facility staff must be trained by a Montana-

certified trainer in the use and effects of mechanical restraint.

(9) The use of mechanical restraints during transportation is permitted. The mechanical restraints should be applied so as to minimize the discomfort of such devices. Lap and shoulder restraints which are part of a vehicle's safety equipment must be worn at all times during transportation.

(10) The youth's probation officer or referring agency must be notified whenever mechanical restraints are used.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

RULE XXXI INFLAMMATORY AGENT (1) Each facility which utilizes inflammatory agents must have a written procedure which includes:

(a) Inflammatory agents may only be permitted when a lesser degree of force is not effective to prevent serious injury to youth or staff, or to ensure the safety and security of the facility;

(b) Inflammatory agents may be used only by employees specifically trained by a certified oleoresin capsicum trainer in its use and effects upon youth; and

(c) Inflammatory agents may not be used for punishment, for the convenience of staff, or as a substitute for programming.

(2) The following procedures and conditions must be observed whenever the use of inflammatory agents on a youth is implemented:

(a) Authorization for the use of inflammatory agents must be provided by the facility director or designee;

(b) Youth subjected to inflammatory agents who suffer from burning to the eyes, nose, mouth and other exposed skin areas must be removed from the contaminated environment as soon as possible;

(c) Youth who have been subjected to inflammatory agents must be allowed to shower and change clothes once they are under staff control;

(d) Youth or other individuals exposed to an inflammatory agent must be examined by a health care employee as soon as possible. If there are any persistent symptoms, the youth must be monitored until no further effects or symptoms remain; and

(e) Cells and other areas exposed to an inflammatory agent must be decontaminated pursuant to accepted decontamination procedures.

(3) Policy must contain the manner of response to cross contamination and evacuation procedures for uninvolved youth.

(4) Whenever inflammatory agents are used an incident report must be entered in the youth's case record, and a copy must be sent to the licensing specialist within 48 hours of the incident excluding weekends and legal holidays. The information contained in the incident report must include but need not be limited to the following:

(a) the specific behavior that necessitated the use of

an inflammatory agent;

(b) alternative interventions that were unsuccessful in controlling the youth's behavior;

(c) authorization by the director or designee;

(d) the time and date that the agent was used; and

(e) decontamination procedures followed.

(5) The youth's probation officer or referring agency must be notified whenever an inflammatory agent is used.

(6) Protective devices must be available for facility staff in order to function in a contaminated area.

(7) A log recording all incidents where an inflammatory agent was used must be maintained by the facility. Information contained in the log must include but need not be limited to the following:

(a) the youth's name;

(b) the date and time used;

(c) staff who used the inflammatory agent; and

(d) the name of the director or designee who authorized the use of an inflammatory agent.

(8) Inflammatory agents must be stored and maintained in a locked area with access restricted to the director or designee.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

RULE XXXII TRANSFERS (1) Transfers to other facilities must be by youth court order or by other proper written authorization.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

RULE XXXIII TRANSPORTATION (1) The facility must have policy and procedures for transportation of youth which are in accordance with good correctional practice and state and federal law.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

RULE XXXIV RELEASE (1) A youth's release from or continuance in detention must be determined by proper authority.

(a) The youth court release from detention must be in writing and on file at the facility.

(b) If a release by the youth court is made by phone, it must be followed up by a written release no later than close of business the following business day.

(2) Procedures for the release of youth must include:

(a) verification of identity;

(b) verification of release papers;

(c) completion of release arrangements, including the person or agency to whom the youth is to be released;

(d) recording of the date, time, and authority;

(e) return of personal property and funds; and

(f) documentation of release or return of medication to the person authorized to receive physical custody of the youth.

AUTH: 41-5-1802, MCA

IMP: 41-5-1801, MCA

5. These proposed new rules I through XXXIV are a substantial revision of the licensure of youth detention facilities, and are reasonably necessary for the following reasons. The rules had not been substantially revised since juvenile corrections was under the auspices of the Department of Institutions. The rules are necessary because there have been numerous changes in the Montana Code Annotated, reflecting changes in the philosophy of the legislature regarding youth detention and its place in the juvenile justice system. Perhaps the best indicator of this was the legislative change in 1995 moving juvenile corrections from the Department of Family Services to the Department of Corrections. There also have been changes nationally in the philosophy of youth justice, and in the federal law regarding juvenile detention. The proposed rules encompass the changing law in the area of juvenile corrections.

Further, the rules are necessary because there were sections in the rules which the proposed rules are replacing that were not enforceable by the Department of Corrections, as it does not have the power to direct counties in the general conduct of their business. Those sections are not included in the proposed new rules.

Because the changes have been spread across all pieces of the youth justice system and have affected so many areas addressed by these rules, virtually every section of these rules has been revised, repealed or added to. Entire sections have been placed with other sections in an attempt to eliminate redundancy and to structure the rules so that like concerns are placed together in rule.

For these reasons, the Department has chosen to repeal the old rules and submit proposed new rules rather than simply to revise the old rules.

6. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Cj Johnson, PO Box 201301, Helena, MT 59620-1301, and must be received no later than November 19, 1998.

7. Lois Adams, Rule Reviewer, has been designated to preside over and conduct the hearing.

8. Any person/party may be placed on the Department of Corrections' list of interested persons/parties by contacting Cj Johnson, Administrative Support, in writing, at the address listed above or may be made by completing a request form at any rules hearing held by the department.



Rick Day, Director  
Department of Corrections



Lois Adams  
Rule Reviewer

Certified to the Secretary of State, October 13, 1998.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of rules 46.20.103,	)	ON PROPOSED AMENDMENT
46.20.106, 46.20.114,	)	
46.20.120 and 46.20.123	)	
pertaining to the Montana	)	
mental health access plan	)	

TO: All Interested Persons

1. On November 13, 1998, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above stated rules pertaining to the Montana mental health access plan.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on October 30, 1998, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.20.103 MENTAL HEALTH ACCESS PLAN. DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) through (3) remain the same.

(4) "Covered diagnosis" means ~~a diagnosis that is one of the ICD-9-CM diagnosis codes numbered 290.0 through 291.0, 291.2 through 291.3, 291.5 through 291.9, 292.1 through 292.89, 293, 293.0 through 302, 302.2, 302.4, 302.6, 302.84 through 302.89, 306, 306.0 through 307, 307.1 through 307.3, 307.46, 307.5 through 312.30, 312.32 through 314.9 or 316 a diagnosis for which the mental health access plan provides covered services to members, as specified in ARM 46.20.114.~~

(a) Prior to April 1, 1999, "covered diagnosis" means for an individual who is Medicaid eligible, one of the ICD-9-CM diagnosis codes numbered 290.0 through 291.0, 291.2 through 291.3, 291.5 through 291.9, 292.1 through 292.89, 293, 293.0 through 302, 302.2, 302.4, 302.6, 302.84 through 302.89, 306, 306.0 through 307, 307.1 through 307.3, 307.46, 307.5 through



312.30, 312.32 through 314.9 and 316.

(b) Beginning April 1, 1999, "covered diagnosis" means for an individual who is medicaid eligible one of the ICD-9-CM diagnosis codes numbered 290, 293, 293.0 through 302, 302.2, 302.4, 302.6, 302.84 through 302.89, 306, 306.0 through 307, 307.1 through 307.3, 307.46, 307.5 through 307.80, 307.82 through 312.30, 312.32 through 314.9 and 316.

(c) A "covered diagnosis" means for an individual who is not medicaid eligible one of the ICD-9-CM diagnosis codes numbered 290, 293, 293.0 through 302, 302.2, 302.4, 302.6, 302.84 through 302.89, 306, 306.0 through 307, 307.1 through 307.3, 307.46, 307.5 through 307.80, 307.82 through 312.30, 312.32 through 314.9 and 316.

(5) through (17)(b)(i) remain the same.

(ii) the person has ongoing functioning difficulties because of the mental illness, as indicated by one of the following:

(A) ~~medication has been prescribed is necessary~~ to control the symptoms of mental illness;

(17)(b)(ii)(B) through (19) remain the same.

(20) The department hereby adopts and incorporates by reference the ICD-9-CM diagnosis codes with meanings found in the St. Anthony's ICD-9-CM Code Book (1998) effective October 1, 1998 through September 30, 1999, published by St. Anthony Publishing. The department also hereby adopts and incorporates by reference the DSM-IV diagnosis codes with meanings found in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (1994), published by the American Psychiatric Association of Washington, DC. These systems of coding provide the codes and meanings of the diagnostic terms commonly used by treating professionals and are incorporated herein in order to provide common references for purposes of the provision of services through the mental health access plan. Copies of the ICD-9-CM and the DSM-IV may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: Sec. 41-3-1103, 52-1-103, 53-2-201, 53-6-113 and 53-6-701, MCA

IMP: Sec. 41-3-1103, 52-1-103, 53-6-113, 53-1-601, 53-6-101, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-21-139, 53-21-202, MCA

46.20.106 MENTAL HEALTH ACCESS PLAN. MEMBER ELIGIBILITY

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

(3) For purposes of determining the total family income under (2)(b):

(a) the family ~~will may not be permitted to~~ spend down to the required level of income;

(3)(b) remains the same.

(c) the most recently published FPL is the FPL most recently published in the federal register as of the end of the

month immediately preceding the month in which the application is submitted to the MCO.

~~(4) The MCO will determine eligibility for non-medicaid eligible individuals. The MCO will also determine the copayment amounts applicable to individuals determined eligible under (2).~~

~~(4)(a) Applications Application forms and information regarding eligibility for of non-medicaid eligible individuals for the plan will be are available at all local county human services departments and from the MCO.~~

~~(b) Applications, together with required income statements and income verification, must be submitted to the MCO on the forms provided by the MCO.~~

~~(5)(e) The applicant must submit with the application form a completed and signed income statement and the necessary documentation to verify the income reported.~~

~~(6)(5) For purposes of (4)(e)(5), necessary income verification may include one or more of the following or other appropriate and persuasive documentation:~~

~~(5) (a) through (c) remain the same, but are renumbered (6) (a) through (c).~~

~~(7)(6) For non-medicaid individuals determined eligible for the plan under (2), eligibility Eligibility and the copayment amounts determined by the MCO premium payments determinations for non-medicaid individuals are effective for a period of 1 year unless the federal poverty level or the member's income or family composition changes before the expiration of the 1 year eligibility period.~~

~~(a) Eligibility must be redetermined within 1 year after the most recent determination or sooner based upon changes in income, family composition or the federal poverty level. Members may be required by the MCO to submit completed forms and verification by a specified date for purposes of eligibility redetermination.~~

~~(b) Non-medicaid eligible members must notify the MCO give notice of any change in total family income or family composition within 30 days of the change. Failure to so notify the MCO give notice will be grounds for termination of eligibility until such time as complete and accurate income and family composition information is provided to the MCO.~~

~~(c) The MCO must adjust the maximum amount of copayment premium payment due from any member or member family must be adjusted within 5 working days of receiving receipt of documentation of changes in income or family composition that would change the copayment maximum premium payment calculated under ARM 46.20.120(4).~~

~~(d) If a member's plan Termination of eligibility, will end based upon a change in the federal poverty level, income or family composition, termination of eligibility will may not be effective no earlier than 30 days after mailing of written notice of termination by the MCO to the member.~~

~~(e) An individual is liable to the MCO and the MCO may collect from the individual the amount of actual MCO payments to~~

providers for any services furnished to the individual, including any ~~additional copayment amount~~ premium payments that may be due, because of misrepresentation of income or a failure to notify the MCO give the required notice of material changes in income or family composition.

~~(7)(8) If an individual attempts to access mental health services through the plan in an emergency, the individual will be presumed eligible. A nonmember receiving emergency mental health services, except for a hospital emergency room visit, is presumed eligible for the plan and will may receive medically necessary services for a covered diagnosis unless the provider determines that the individual has the means, financially or otherwise, by which to make payment.~~ If the individual is subsequently determined ineligible for the plan or fails to complete an application for plan eligibility within 60 days following completion of emergency treatment, the individual ~~shall be~~ is liable for and may be billed by the provider at its usual and customary private pay charges or by the MCO for the amount of payments actually made by the MCO to the provider for the services provided.

~~(8)(9)~~ In addition to meeting any additional member notification and education requirements under its contract with the department, the MCO must provide all applicants with current, accurate, understandable information regarding covered diagnoses, available services, procedures to access services, financial liability for services obtained outside the plan, the amount of and financial liability for premiums and copayments, and grievance and appeal procedures.

~~(a)(10)~~ Members must comply with the procedures specified by the MCO ~~in accordance with (8) as necessary~~ to obtain or access services under the plan.

AUTH: Sec. 41-3-1103, 53-2-201, ~~53-6-113~~, 53-6-131, 53-6-701 and 53-6-706, MCA

IMP: Sec. 41-3-1103, 53-2-201, 53-1-601, ~~53-6-101~~, 53-6-113, ~~53-6-116~~, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-6-706, 53-21-139 and 53-21-202, MCA

#### 46.20.114 MENTAL HEALTH ACCESS PLAN. COVERED SERVICES

(1) through (4) remain the same.

(a) Members must comply with the procedures specified required by the MCO ~~in accordance with ARM 46.20.106(8)~~ to obtain or access services under the plan.

(5) and (6) remain the same.

(7) Except as provided in (7)(a), the plan ~~will cover~~ covers medically necessary mental health services for covered diagnoses for members who are residents of nursing facilities, regardless of whether the services are provided in the nursing facility.

(a) The plan ~~will does~~ not cover services defined as "nursing facility services" in ARM 46.12.1222 or otherwise required by law to be provided by the nursing facility and ~~will~~.

does not cover or reimburse the nursing facility for services provided by the nursing facility.

(b) remains the same.

(8) Regardless of diagnosis, members admitted voluntarily or involuntarily to the Montana state hospital, ~~will~~ receive Montana state hospital services under the plan, except for the following members:

(8)(a) through (d) remain the same.

(9) Regardless of diagnosis, members admitted voluntarily or involuntarily to the Montana mental health nursing care center ~~will~~ receive all long-term care services under the plan, including medically necessary mental health services.

(10) remains the same.

(11) Native American members may choose to access medically necessary services for a covered diagnosis either through the plan or, if eligible, through the Indian health service, except that Native American members admitted to the Montana state hospital ~~will are~~, if eligible, be covered under contract with Indian health services rather than under the plan.

(12) through (13)(b) remain the same.

(c) detoxification, drug or alcohol evaluation, treatment or rehabilitation, regardless of the member's diagnosis; ~~and~~

(d) services provided to a presumptively eligible nonmember during a hospital emergency room visit.

(14) The services described in (13)(a), (b) and (c), ~~even if medically necessary with respect to a mental health condition, will be are~~ covered for medicaid recipients under the medicaid program to the extent provided under applicable medicaid requirements.

(15) remains the same.

(a) The plan ~~will cover~~ covers discharge planning services in relation to a covered diagnosis prior to release from a correctional or detention facility for a member who is:

(15)(a)(i) through (iv) remain the same.

(b) A member may receive medically necessary mental health services for covered diagnoses after leaving the correctional or detention facility, except that the plan ~~will does~~ not cover the individual's security or detention needs.

AUTH: Sec. 41-3-1103, 52-1-103, ~~53-6-113~~, 53-6-706, and 53-2-201, MCA

IMP: Sec. 41-3-1103, 52-1-103, 53-1-405, 53-1-601, 53-2-201, ~~53-6-101~~, ~~53-6-116~~, 53-6-701, 53-6-705, 53-6-706, 53-21-139 and 53-21-202, MCA

46.20.120 MENTAL HEALTH ACCESS PLAN. PREMIUM PAYMENTS, AND MEMBER COPAYMENTS (1) A non medicaid member of the plan must pay a monthly premium payment to the MCO determined from the table below. The premium payment that a member must pay is the corresponding payment for the percentage range of the federal poverty level that is within the member's total family income.

Percent of federal poverty level:

Premium payment per month:

<u>0-25%</u>	<u>\$ 0</u>
<u>26-50%</u>	<u>\$ 10</u>
<u>51-100%</u>	<u>\$ 25</u>
<u>101-150%</u>	<u>\$ 35</u>
<u>151-200%</u>	<u>\$ 50</u>

(2) A family with more than one non medicaid member of the plan must pay a monthly premium payment to the MCO determined from the table below. The premium payment a family must pay is the corresponding payment for the percentage range of the federal poverty level that is within the family's total family income.

Percent of federal poverty level:

Premium payment per month:

<u>0-25%</u>	<u>\$ 0</u>
<u>26-50%</u>	<u>\$ 20</u>
<u>51-100%</u>	<u>\$ 50</u>
<u>101-150%</u>	<u>\$ 70</u>
<u>151-200%</u>	<u>\$100</u>

(3) The MCO may waive payment of a premium payment for purposes of managing risk.

(4)-(4) Copayments may be charged to and collected from members by providers or the MCO only as provided in this rule.

(2)-(5) Medicaid-eligible members may not be charged or required to pay copayments for mental health services provided under the plan. This rule does not in any way reduce the liability of a A resident of a state institution, however, remains obligated to pay charges for the cost of care as provided in Title 53, chapter 1, part 4, MCA and implementing rules.

(3) Except as provided in this rule and subject to the limits specified in (4), members who are not medicaid eligible shall pay copayments as follows:

(a) a copayment of \$10.00 for each outpatient service or session, including but not limited to individual therapy, group therapy, evaluation or assessment, crisis service, prescription, in home service, and community rehabilitation service;

(b) a copayment of \$50.00 per day for each day in any 24-hour out of home service, including but not limited to inpatient hospitalization, residential treatment, therapeutic group care, and therapeutic family care; and

(c) a copayment of \$50.00 for each hospital emergency room visit.

(4) For any calendar month, the total amount of copayments under (3) shall not exceed:

(a) for any member or member family with a total family income less than or equal to 125% of the federal poverty level, 5% of one twelfth of the annual total family income;

~~(b) for any member or member family with a total family income greater than 125% and less than or equal to 175% of the federal poverty level, 10% of one twelfth of the annual total family income, and~~

~~(c) for any member or member family with a total family income greater than 175% and less than or equal to 200% of the federal poverty level, 15% of one twelfth of the annual total family income.~~

~~(6) A non medicaid member must pay a copayment of the lesser of the cost of the drug or \$10 on the purchase of any pharmaceutical prescription.~~

~~(a) The total of pharmaceutical prescription copayments for a member may not exceed \$50 per month.~~

~~(b) The total of pharmaceutical prescription copayments for a family with more than one non medical member of the plan may not exceed \$100 per month.~~

~~(c) The MCO may waive payment of a copayment payment for purposes of managing risk.~~

~~(5)(7) The MCO may refuse to provide services under the plan, except emergency services or services provided by the Montana state hospital or the Montana mental health nursing care center, to any member who has accumulated unpaid premiums and copayments more than 90 days in arrears in excess of an amount equal to 2.5 times the monthly maximum copayment established for the member of family under (4), if:~~

~~(5) (a) and (5) (b) remain the same, but are renumbered (7) (a) and (7) (b).~~

~~(6)(8) Residents of the Montana state hospital and the Montana mental health nursing care center, whether or not medicaid eligible, will be are liable to the institution for amounts assessed by the department pursuant to Title 53, chapter 1, part 4, MCA and implementing rules. Residents of the Montana state hospital and the Montana mental health nursing care center will are not be responsible in addition to for such amounts for the premium payments copayments specified in this rule. Copayments due to the MCO with respect to these residents will be settled by the department with the MCO on a periodic basis as provided in the contract between the MCO and the department. Pharmacy copayments required by this rule are not charged to inpatients of the Montana state hospital and the Montana mental health nursing care center.~~

~~(7) remains the same, but is renumbered (9).~~

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-131, MCA;  
IMP: Sec. 53-1-405, 53-1-601, 53-2-201, 53-6-101,  
53-6-113, 53-6-116 and 53-6-131, MCA

46.20.123 MENTAL HEALTH PLAN, MEMBER NOTICE AND APPEAL RIGHTS (1) A member has the right to a fair hearing as provided for claimants at ARM 46.2.201, et seq., regarding a denial or termination of plan eligibility.

~~(1)(2)~~ Subject to the requirements of this rule, a member

has the right to a fair hearing as provided for claimants at ARM 46.2.201, et seq., regarding:

~~(a) a denial or termination of plan eligibility;~~  
~~(b)(a) a denial of service coverage by the MCO;~~  
~~(c)(b) a copayment determination of premium, including a refusal by the MCO to provide services under ARM 46.20.120(5)-(7) based upon unpaid copayments premiums;~~

~~(d)(c) a determination that a member is liable to the MCO as provided in ARM 46.20.106(6)-(7)(e) based upon a misrepresentation or failure to notify the MCO provide notification of material changes in income or family composition; and~~

~~(e)(d) a determination that a member is liable to the MCO as provided in ARM 46.20.106(7)-(8) based upon failure to apply for plan eligibility within 60 days following completion of emergency treatment.~~

~~(2)(3) The MCO must notify the member or the member's designated representative in writing of a decision denying a request for services. The notice must be provided within 10 days after a decision is made by the MCO. The requirements of ARM 46.2.204 do not apply to the notice. The notice must state:~~

~~(2)(a) through (2)(e) remain the same, but are renumbered (3)(a) through (3)(e).~~

~~(3)(4) If the MCO fails to provide notice or fails to timely provide notice or if a notice required by (2)(3) fails to comply substantially with the requirements of (2)(3), the remedy shall be is the provision of a new notice which does comply substantially with (2)(3) and a new opportunity to contest the decision specified in the notice. A failure to give adequate or timely notice under (2)(3) shall does not entitle the member to an authorization for the services that were denied.~~

~~(4)(5) The MCO will must provide a written procedure for resolution of grievances and appeals brought by a member or the member's representative. A member may submit a grievance or appeal to the MCO within 30 days after mailing of notice of the decision to the member or the member's designated representative. A member must exhaust the MCO's grievance or appeal procedure before exercising the administrative review panel procedure specified in (5)(6).~~

~~(5) and (5)(a) remain the same, but are renumbered (6) and (6)(a).~~

~~(b) The department will convene a panel of 3 members, selected by the department with due consideration of the necessary qualifications for the case at issue, to consider and decide the matter. The panel proceeding will be is conducted informally. The panel will consider considers the written materials submitted and the rationale for the decision provided by the MCO. In its discretion, if the department panel finds that resolution of the issues would be aided, the panel or members of the panel may contact persons involved in the case, interested agencies or mental health professionals and may request that the member, the member's representative, a mental~~

health professional, a representative of the MCO, a provider representative or other appropriate persons to appear in person or by telephone conference to discuss the case.

(c) The department must make a decision on the administrative panel review and notify the member or the member's representative in writing of the decision.

~~(6)~~ (7) The administrative review panel decision is final and binding on the MCO. The MCO is not entitled to an administrative hearing as provided in ARM 46.2.201, et seq., 46.12.409, 46.12.509A, 46.12.1268 or any other department rule to contest an adverse administrative review panel decision.

~~(7)~~ (8) A member has the right of appeal as provided at ARM 46.2.201, et seq., to contest an adverse administrative review panel decision regarding an action described in (2)(a) through (d) of this rule, but must exhaust the administrative review panel procedure before a fair hearing may be requested from the department under the provisions of ARM 46.2.201, et seq. A member does not have a right of appeal under ARM 46.12.201, et seq. to contest an adverse panel decision regarding a matter not described in ~~(1)-(a) through (e)~~ (2) of this rule.

~~(8)~~ (9) A member that does not timely submit a grievance or appeal or a request for an administrative panel review ~~will be~~ is deemed to have accepted the agent's determination and is not entitled to any further notice or appeal opportunity.

~~(9)~~ (10) For purposes of ARM 46.2.202(1)(c), the 90 day appeal period starts on the day the department mails to the member or the member's representative a written notice of the administrative review panel decision.

~~(10)~~ (11) The administrative review process provided in ARM 46.2.208 does not apply to a member request for a fair hearing to contest an administrative review panel decision under ~~(7)~~ (8).

~~(11)~~ (12) The member and the MCO are the parties to ~~a fair hearing case~~ an appeal brought by ~~a recipient under member regarding any matters subject to appeal as specified in (2) of this rule.~~ The department is not a party to ~~a fair hearing case~~ an appeal brought by a member under regarding any matters subject to appeal as specified in (2) of this rule.

(12) and (13) remain the same, but are renumbered (13) and (14).

AUTH: Sec. 2-4-201, 53-2-201, ~~53-6-113~~ and 53-6-706, MCA  
IMP: Sec. 2-4-201, 53-2-201, 53-1-601, ~~53-6-101~~,  
53-6-113, ~~53-6-116~~ and 53-6-706, MCA

3. The proposed rule amendments implement changes in the coverage and procedures of the Montana Mental Health Access Plan (MHAP). The proposed amendments modify the diagnoses for which the managed care organization (MCO) is required to provide treatment; eliminate the requirement that the MCO perform eligibility determination for members not eligible for medicaid; eliminate most copayment requirements and substitute a premium



payment for non-medicaid members; and eliminate presumptive eligibility for hospital emergency room services.

The Department believes the proposed changes are necessary to enable the MHAP to function according to the goals originally established for the program. They have been developed in discussions between the Department, the MCO, consumer groups, the MHAP oversight committee, and the legislative finance committee. Some of the changes proposed will compensate for a funding reduction in MHAP during the current biennium of nearly \$6 million that resulted from the legislative appropriation being less than the amount originally requested.

The proposed amendment of the definition of "covered diagnosis" at ARM 46.20.103(4), removing a range of alcohol and drug-induced psychoses, ICD-9-CM 291 and 292 series, as diagnoses required to be covered by MHAP, is necessary to correct a mistaken assumption in the original specifications that those diagnoses are to receive treatment for mental illnesses rather than for substance abuse disorders. Experience to date has demonstrated that the diagnoses are most frequently treated with detoxification procedures. The MCO has found that treatment for the diagnoses provided in acute care hospitals frequently consists of largely, or even exclusively, physical health procedures which the MCO has little ability to manage. The proposed change will eliminate an inconsistency with ARM 46.20.114(13) which specifies that detoxification and drug and alcohol treatment and rehabilitation are not covered services under MHAP. The proposed change will assure that services under the program better conform to the program's stated purpose of providing treatment for mental illnesses rather than for substance abuse services. MHAP has not received non medicaid monies for substance abuse services.

The proposed changes in covered diagnoses would be implemented in two phases. This phased implementation is necessitated by differences in funding sources for MHAP for the two eligibility categories. For MHAP members who are not eligible for medicaid, the change would be effective upon the effective date of the rule. The proposed change would allow the Department to better define MHAP coverage. For medicaid eligible members, the change would not be effective until April 1, 1999 when new capitation rates reflecting the removal of medicaid funds for the diagnoses from MHAP to the Montana medicaid program will be in effect.

The proposed amendment to the definition of "severe disabling mental illness" at ARM 46.20.103(17), changing the indication of mental illness based on medication from a prescribed medication to a necessary medication, is needed to assure that persons in need of the services are not denied services due to a lack of a current prescription and use of that prescription. There have been situations of persons being denied eligibility for services

due to the lack of a current prescription or current use of medications even though the person was diagnostically mentally ill.

The proposed amendments, deleting references to the MCO in ARM 46.20.106, are necessary to allow the Department to assume responsibility for determining the eligibility of non medicaid members of MHAP, including application design, receipt and processing. That proposed change would result in an application process more comparable with that used to determine eligibility for medicaid and more consistent with the intent and goals of the program. The proposed change would permit implementation of application procedures that are more rigorous and consistent. For applicants, the proposed change would provide a more convenient process that is less of an impediment to accessing necessary services. The proposed change would also enable the Department to identify applicants who may be eligible for Medicaid. Finally, the change is necessary to permit an eligibility process that corresponds with that proposed for the Children's Health Insurance Program, reducing the possibility for duplication of payment by the Department as well as producing greater efficiency in eligibility processing.

The proposed elimination of hospital emergency rooms from the provision for presumptive emergency eligibility is necessary to reestablish the original intent of the presumptive eligibility provision. Presumptive eligibility in an emergency was established to ensure that community-based crisis services were preserved and enhanced. The Department feared that without this provision community providers of mobile crisis response services, being uncertain of payment for their services, would be reluctant to respond in psychiatric emergency absent an individual's established MHAP membership. The result would be decreased crisis response services and increased reliance on acute care hospital emergency room services. This is counter to MHAP's goal of increasing the utilization of community-based services and decreasing reliance on inpatient treatment.

The Department has determined that the change will eliminate the potential for an improper reliance on the MHAP as a dependable payment source for people treated in emergency rooms who are not financially eligible for the MHAP. The proposed change will make the program consistent with other funding sources for emergency room payment. The change will preserve MHAP resources for the treatment of those who meet eligibility criteria, without adversely affecting the ability of acute care hospitals to receive payment for emergency treatment of individuals who do meet eligibility criteria.

The proposed amendments to ARM 46.20.120, eliminating most copayment requirements for MHAP members who do not qualify for medicaid eligibility and implementing a premium payment, are

necessary to preserve the intent of MHAP program to require members to retain some responsibility for payment of their treatment according to their financial ability. The MCO and the Department have determined that the original copayment requirements and procedures were overly complex and difficult to administer correctly, resulting in a net financial loss to the MCO and overpayment of copayment by members. The combination of a copayment for prescriptions, with a monthly maximum, and a premium payment that increases with increasing income provides an understandable means to maintain member responsibility with minimal administrative complications. It also provides protection of members from inadvertent overpayment.

The proposed changes to ARM 46.20.123 are necessary to make the appeal provisions consistent with changes being made to the eligibility determination process and to the elimination of copayment maximums that vary according to a member's income.

#### Options Considered

The alternatives to reducing the scope of diagnoses covered by the MHAP would be either to increase the funding for the program or to maintain the MCO's responsibility for treatment of the diagnoses. The Department does not have the budgetary authority to increase payment to the MCO. Failure to make an adjustment in covered diagnoses risks the discontinuation of the entire program in order to preserve treatment for substance abuse related conditions that were not originally intended to be covered in the program. Treatment for the diagnoses being eliminated from coverage was not previously paid by the Department for individuals not eligible for medicaid; for those covered by medicaid, treatment for the diagnoses will be covered under the medicaid fee-for-service program.

The only available alternative to assumption by the Department of eligibility determination for those not eligible for medicaid is the status quo. While this appears to now function adequately, it does not allow for coordination of eligibility determination for medicaid or for the CHIP program. It also does not provide for an adequate level of rigor or verification in the Department's view. This potentially results in services provided to those who do not meet financial eligibility criteria. Not only is this an inappropriate use of resources, it threatens the program's ability to accomplish the Department's goals.

Alternatives to elimination of presumptive eligibility for emergency room treatment are either elimination of all presumptive eligibility or maintenance of the status quo. The former risks the decimation of community crisis programs, an alternative the Department is unwilling to risk. The latter risks financial viability of the program to the degree the MCO

finds it is subsidizing emergency room treatment for those who, because they have sufficient incomes or insurance, are able to pay for treatment. This risk can be eliminated through the proposed change without jeopardizing the availability of emergency room treatment and without adverse consequences to hospitals.

Because the original design for copayment collection proved to be an administrative nightmare that could only be resolved by eliminating the copayment requirement, the only feasible alternative to the proposed premium payment strategy would be to eliminate any member responsibility for payment for services received. Not only is this alternative contrary to the intent of the program, it removes a source of revenue to the MCO that was contemplated in the original design and that was relied upon by the contractor in designing its program. Combined with the revenue shortfall previously discussed, the loss of this revenue could well be fatal to the MHAP.

The change to the definition of "severe disabling mental illness" in ARM 46.20.103 is the best option in that it appropriately recognizes that persons may have need of mental health services even though they do not have a current prescription for a medication and do not have a current need to be using such a medication. The option of leaving the definition unchanged may seriously jeopardize the well being of those persons with mental illness who do not have a current prescription for medication or do not currently use a prescribed medication.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than November 19, 1998. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

  
Rule Reviewer

  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 13, 1998.

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
proposed amendment of ARM	)	ON PROPOSED AMENDMENT OF
1.2.519 regarding Basic	)	ARM 1.2.519 regarding
Format Instructions for the	)	Basic Format Instructions
Montana Administrative	)	for the Montana
Register	)	Administrative Register

TO: All Interested Persons.

1. On November 16, 1998, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room at room 225 of the Capitol Building at Helena, Montana, to consider the proposed amendment of ARM 1.2.519 regarding Basic Format Instructions for the Montana Administrative Register.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the Secretary of State no later than 5:00 p.m. on November 6, 1998, to advise us the nature of the accommodation that you need. Please contact Kathy Lubke, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-2055; FAX (406) 444-5833.

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

1.2.519 BASIC FORMAT INSTRUCTIONS (1) through (k) remain the same.

(l) ~~signatures~~— Notices and administrative orders must be signed by the head of the department or the chairman of the governing board. The head of the agency or the chairman of the governing board will sign for an agency that is assigned to a department for administrative purposes only. A stamped (facsimile) signature is not acceptable. A letter must be filed with the secretary of state indicating signatory authority in the absence of the above. For the purposes of electronic filing of documents, the secretary of state will accept as signatures:

(i) digitized signatures;

(ii) digital signatures; or

(iii) typed names on documents that have been taken from the directory created for rule submission. This directory will have limited access, and only those authorized and with verifiable signatory authority will be accepted.

~~(+)~~ (m) The rule reviewer must sign each proposal and adoption notice published in the Montana Administrative Register, indicating that he has reviewed and approved the rules

as required by 2-4-110, MCA. A stamped (facsimile) signature is not acceptable. A letter must be filed with the secretary of state and administrative code committee indicating rule reviewer appointment. For the purposes of electronic filing of documents, the secretary of state will accept as signatures:

(i) digitized signatures;  
(ii) digital signatures; or  
(iii) typed names on documents that have been taken from the directory created for rule submission. This directory will have limited access, and only those authorized and with verifiable signatory authority will be accepted.

(m) remains the same, but is re-earmarked (n).

AUTH: Sec. 2-4-201, 2-4-306 MCA;

IMP: Sec. 2-4-110, 2-4-306 MCA

4. The rule is proposed to be amended to revise signature requirements for submission of documents for the Montana Administrative Register. The signature revision will allow for electronic submission of rulemaking notices.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Kathy Lubke, Administrative Rules Bureau, Secretary of State's Office, 1236 Sixth Avenue, P.O. Box 202801, Helena, Montana 59620-2801, and must be received no later than November 19, 1998.

6. Kathy Lubke, address given in paragraph 5 above, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-5833, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

  
MIKE COONEY  
Secretary of State

  
DAN WHYTE  
Rule Reviewer

Dated this 13th day of October 1998.

20-10/22/98

MAR Notice No. 44-2-101

BEFORE THE BOARD OF ATHLETICS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF 8.8.
of rules pertaining to defini-	)	2802 DEFINITIONS, 8.8.2803
tions, prohibitions, physical	)	PROHIBITIONS, 8.8.2903
examinations, physician require-	)	PHYSICAL EXAMINATION, 8.8.
ments, elimination-type events,	)	2904 PHYSICIAN REQUIREMENTS,
point system - scoring and	)	8.8.2906 ELIMINATION-TYPE
promoter-matchmaker and the	)	EVENTS, 8.8.3103 POINT
adoption of a new rule pertain-	)	SYSTEM - SCORING AND 8.8.
ing to a medical advisor	)	3301 PROMOTER-MATCHMAKER AND
	)	THE ADOPTION OF NEW RULE I
	)	(8.8.2909) MEDICAL ADVISOR

TO: All Interested Persons:

1. On April 30, 1998, the Board of Athletics published a notice of proposed amendment and adoption of the above-stated rules at page 1053, 1998 Montana Administrative Register, issue number 8.

2. The Board has amended ARM 8.8.2802, 8.8.2803, 8.8.2904, 8.8.2906, 8.8.3103, 8.8.3301 and has adopted new rule I (8.8.2909) exactly as proposed and has amended ARM 8.8.2903 as proposed, but with the following changes:

"8.8.2903 PHYSICAL EXAMINATION (1) through (3)(m) will remain the same as proposed.

(n) exam performed by M.D. or D.O. only for professional boxing and wrestling events. Semi-professional event examinations can be performed by an M.D., D.O., D.C. ~~(with sports medicine specialty)~~, nurse practitioners and physician's assistants;

(o) through (8) will remain the same as proposed."


Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-404, 23-3-405, MCA

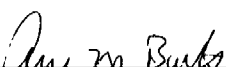
3. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, are as follows:

COMMENT NO. 1: One comment was received which stated that requiring a chiropractor to possess a sports medicine specialty when a nurse practitioner or physician assistant does not need to, is not appropriate.

RESPONSE: The Board concurred and has amended the rule as shown above.

BOARD OF ATHLETICS  
GARY LANGLEY, CHAIRMAN

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

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 13, 1998.



BEFORE THE BOARD OF CLINICAL LABORATORY  
SCIENCE PRACTITIONERS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

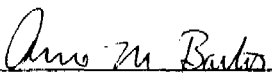
In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules pertaining to fees and	)	8.13.303 FEES AND 8.13.304
renewal and the adoption of new	)	RENEWAL AND THE ADOPTION OF
rules pertaining to inactive	)	NEW RULE I (8.13.307)
status and reactivation of	)	INACTIVE STATUS AND NEW RULE
license	)	II (8.13.308) REACTIVATION
	)	OF LICENSE

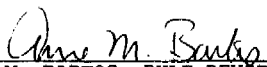
TO: All Interested Persons:

1. On August 13, 1998, the Board of Clinical Laboratory Science Practitioners published a notice of proposed amendment and adoption of the above-stated rules at page 2136, 1998 Montana Administrative Register, issue number 15.
2. The Board has amended and adopted the rules exactly as proposed.
3. No comments or testimony were received.

BOARD OF CLINICAL LABORATORY  
SCIENCE PRACTITIONERS  
JOANNE SCHNEIDER, CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 13, 1998.

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

In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules pertaining to fees,	)	8.58.411 FEE SCHEDULE,
continuing education and unpro-	)	8.58.415A CONTINUING REAL
fessional conduct	)	ESTATE EDUCATION AND 8.58.
	)	419 GROUNDS FOR LICENSE
	)	DISCIPLINE - GENERAL PRO-
	)	VISIONS - UNPROFESSIONAL
	)	CONDUCT

TO: All Interested Persons:

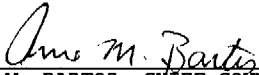
1. On August 13, 1998, the Board of Realty Regulation published a notice of proposed amendment of the above-stated rules at page 2141, 1998 Montana Administrative Register, issue number 15.
2. The Board has amended the rules exactly as proposed.
3. The Board has thoroughly considered all comments and testimony received. Those comments, and the Board's responses thereto, are as follows:

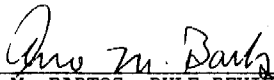
COMMENT NO. 1: One comment was received pertaining to the mechanics of implementing the rule (i.e. how continuing education would be submitted by licensees).

RESPONSE: The Board acknowledged receipt of the comment. The rule states that licensees must submit a sworn affidavit attesting to the successful completion of continuing education by the renewal date. The rule also states that the Board may audit licensees for compliance with continuing education requirements whereby licensees must, when solicited, provide copies of completion certificates to the Board.

BOARD OF REALTY REGULATION  
JOHN BEAGLE, CHAIRMAN

BY:

  
ANNIE M. BARTOS, CHIEF COUNSEL  
DEPARTMENT OF COMMERCE

  
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 13, 1998.

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

In the matter of the ) NOTICE OF AMENDMENTS OF  
amendments of ARM 24.11.442, ) ARM 24.11.442 AND 24.11.443  
and 24.11.443, related to )  
unemployment insurance benefit)  
claims )

TO ALL INTERESTED PERSONS:

1. On August 13, 1998, the Department published notice at pages 2157 through 2162 of the Montana Administrative Register, Issue No. 15, to consider the amendments of the above-captioned rules.

2. On September 10, 1998, a public hearing was held in Helena concerning the proposed amendments. Oral and written comments were offered at that time. Additional written comments were received prior to the closing date of September 17, 1998.

3. The Department has thoroughly considered the comments on the proposed amendments to the existing rules. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: The AFL-CIO opposes the proposed amendments to ARM 24.11.442(5)(g) and 24.11.443(4)(f), regarding "strike pay", on the basis that "strike pay" is not wages, but actually is a return of money previously paid by members into a strike fund.

Response 1: The Department agrees with the comment and has amended the rule accordingly.

Comment 2: The AFL-CIO and other commenters oppose the deletion of the sentence "No portion of the payment will be assigned past the date of separation" from ARM 24.11.442(5)(a), on the basis that it will allow an employer to attribute severance payments to weeks or periods after the termination of the employment relationship, and thus disqualify the claimant from benefits.

Response 2: Deleting the language referenced in this concern does not mean that severance payments are being spread forward over weeks following separation from employment. In addition, severance pay is not being applied in a way that results in a claimant being held ineligible for continued claim weeks following the week of separation. ARM 24.11.442 does not address continued claims. It simply indicates that for the purpose of determining a claimant's monetary eligibility (weekly benefit amount and duration), these payments are reported by the employer for the quarter in which they are paid. Any future impact to monetary eligibility only occurs if and when that quarter is included in a base period for a future claim. A claimant can upon filing a claim request those wages be moved to

the quarter in which the termination occurred, if it is a different quarter.

In the proposed ARM 24.11.443(4)(a), for the purpose of reporting these "earnings" for a weekly claim for benefits, the payments are reported by the claimant in the week of the separation, not before and not after. Therefore, it does not affect the eligibility for benefits for weeks after the week of separation and after the waiting week is served. Prorating of such payments into the future will not occur because the payments, according to the proposed rule, are reported during the week of the separation.

Comment 3: The AFL-CIO also opposes language that would allow the Department to deny benefits during a period of involuntary unemployment, including a "mandated vacation". The AFL-CIO contends "that this proposed rule change was prepared for a specific employer which is seeking to do by rule what the law currently denies."

Response 3: Unemployment Insurance is intended to provide benefits to workers that are unemployed through no fault of their own. However, vacation (whether voluntary or mandated), time off for which the employee is paid by the employer, is not considered unemployment. Section 39-51-2101, MCA, describes unemployment as performing no work and earning no wages. Vacation pay is defined as wages in 39-51-201(20), MCA. The proposed amendments are a clarification of what is already in statute and the current version of the rules. The current language and the proposed amendments provide that the payment for a paid vacation constitutes wages when the vacation is taken.

The AFL-CIO contention that this proposed rule change was prepared for a specific employer is not correct. The Department's practice since at least January 1996 has been that vacation pay is reported for the period in which the vacation is taken. This is the correct interpretation of the current rules which have not changed in several years. The proposed amendment is not a change in interpretation, but rather is a change for clarification. It is coincidental that this issue is currently under protest by a group of employees at the same time that this rule revision is being pursued. The process to consider revising or clarifying these sections of rule began in 1995.

Comment 4: One person testified that "I do not believe that this [severance pay] should be lumped in as and considered wages".

Response 4: Severance pay is specifically included in the definition of wages in 39-51-201(20), MCA. The proposed rules cannot change the statutory definition of wages.

Comment 5: The AFL-CIO and another commenter expressed concern

that the proposed amendments in ARM 24.11.442(5)(e) and (h) are confusing and conflict with each other, and that similarly, the proposed amendments in ARM 24.11.443(4)(e) and (g) are confusing and in conflict.

Response 5: In each section, the two subsections refer to different situations. Subsection (e) in both cases refers to payments to an employee for accrued "unused" leave for which a payment is made to clear the "unused" leave from the employer's books. This occurs when an employer will not allow the carrying forward of unused leave but will pay the employee for the leave time not taken (i.e., employee does not take the leave time off and continues to be employed). In these instances, the Department attributes the payment to the quarter paid for wage reporting purposes and to the week paid for continued claim purposes. In order to help clarify the language, the Department has amended the rules to also refer to this as a "cash-out" of unused leave time. Subsections (h) and (g) in their respective sections refers to accrued leave that is taken by the employee (in other words, the employee takes the leave time off). The Department will add language to ARM 24.11.443(5)(g) to better clarify the intent.

Comment 6: The AFL-CIO supports the elimination of ARM 24.11.442(7).

Response 6: The Department agrees with the comment and has deleted the subsection as proposed.

Comment 7: The AFL-CIO opposes the inclusion of language "requiring" unemployed workers to file continued claims via the interactive voice response (IVR) telephone system, unless it is determined that the claimant cannot use the IVR system.

Response 7: The Department wants claimants to use the IVR system to file their continued (biweekly) claims because it allows the claimant to enter their answers to the claim questions quickly and accurately, resulting in a quicker payment and fewer errors. The IVR system also reduces the need for data entry of "mail-in" paycards, resulting in elimination of data entry errors and lost paycards. The Department also notes that the IVR system is used by over 97 percent of UI claimants and is a highly accepted method for filing the biweekly claim. The option of using the mail-in paycard is still available for persons who cannot use the system or do not have access to a telephone.

Comment 8: Several persons commented that there have been problems with the telephone claims systems, referring both to the Telephone Claims Centers and the Interactive Voice Response (IVR) systems. The comments relate to "the inability to get through" at times, occasional technical problems, and the cost burden on claimants.

Response 8: The Unemployment Insurance Division acknowledges that there have been times when it is difficult to access the two telephone systems. Unemployment claims in Montana tend to be very cyclical. Winter is much busier than summer and Mondays and Tuesdays are busier than other days of the week. For the IVR system, Sunday is the busiest day (about 80 percent of biweekly claims are filed on Sunday). When the volume is concentrated on certain days, it is difficult to avoid congestion and busy signals. The Department has implemented measures that have very much improved access but anticipate that at busy times, access may be difficult.

One problem with access is large layoffs that cause 500 to 1,000 workers to try to call in a very short period of time. To address these occurrences the Department has held group, in-person claims taking sessions in a few instances. Such methods take some of the burden off the Telephone Centers at busy times, although the claims still have to be entered into the computer system. When such groups are arranged, the cooperation of the employees in using these group sessions is appreciated. Knowing about such layoffs in advance is helpful in planning for the claims activity.

There have indeed been occasional technical problems with both systems. These processes are relatively new and they are dependent upon technology that is relatively new. Occasional technical "glitches" will occur. The Department has achieved considerable improvement over the past year and expects that the callers of both systems will experience far fewer technical problems. For example, the IVR system ("800" number) is dependent on the availability of a mainframe computer system that is occasionally taken "off-line" for maintenance on Sunday mornings or other times. These outages are scheduled to avoid impacting critical operations but unfortunately cannot avoid all operations. Therefore, because Sunday is the busiest day for the IVR system, there is a perception that there is a problem. In reality, the claimant can call anytime during the week and if the call is completed by the end of the day Monday, the benefit check is not delayed.

The Department is sensitive to the concerns regarding long-distance telephone charges incurred when filing an initial claim. The Department notes that when a claimant had to drive to the local Job Service to file the claim, there was a cost in time and travel. The Telephone Claims Centers allow the claimant to call from the convenience of their home, while eliminating the time and cost of driving to the local office. The Department will continue to explore alternatives for circumstances in which access is limited.

For a few people, it can be difficult to do their business on the telephone, i.e., explaining complicated situations or events that led to a separation, etc. Claims can be complicated. The Customer Service Representatives that take these calls are

trained to assist the caller in providing needed information for the adjudication of the claim. The more they do this, the more skilled they get. Because these Customer Service Representatives (claims takers) are located in two centers instead of 23 local offices, training can more easily be done on a day-to-day basis rather than only occasionally.

Overall, the acceptance of these two telephone systems (Telephone Centers and IVR) has been very high. In a recent survey, for the Telephone Center services, only 7 percent indicated dissatisfaction (93 percent acceptance); for the center that opened first, only 4 percent indicated dissatisfaction (96 percent acceptance). This tells us that as we gain more experience, the services provided can only improve in both centers. For the IVR system, 97 percent of claimants use this system. The acceptance level is also very high (93 percent).

Comment 2: Several commenters stated that claimants should be able to visit their local Job Service office and file an initial claim.

Response 2: The Department has instituted the telephone claims system in response to budgetary and service considerations. The Department does not have adequate funding to allow it to provide that option on a regular basis. As noted above, the Department does provide for in-person claim filing in the event of certain large layoffs or plant closures. (See response 8, above.)

4. After consideration of the comments, the Department has amended the rules as follows: (new matter underlined, deleted matter interlined, added material in ALL CAPS)

24.11.442 INITIAL MONETARY DETERMINATION--WAGES--REVISIONS

(1) through (4) Remain the same.

(5) The following payments are wages assignable which must be reported by employers on their quarterly reports in accordance with ARM 24.11.702, but these wages can be recorded in the wage record of the claimant after the filing of a claim, if necessary, in the following manner:

(a) Payments based upon length of employment or paid upon termination of the employment will be treated as follows: The attributable portion of the payment will be prorated from the date of hire or from the beginning of the base period, whichever occurs later, through the date of separation. No portion of the payment will be assigned past the date of separation. However, if the accumulated pay is \$1,000 or less, the pay will be attributed to the quarter in which the separation occurred. Such payments include:

(i) accumulated vacation or sick pay made upon termination of employment;  
(ii) bonus payments;  
(iii) wages in lieu of notice, for termination, dismissal pay, severance and separation, or other similar payments;

~~(b) Payments made for vacation taken by the claimant are attributable to the period covered by the payment.~~

~~(c) Payments made for back pay are attributable to the period of time under dispute and are assigned to the period specified by the back pay award.~~

~~(d) Payments made for a holiday are attributable to the week in which the holiday occurs.~~

~~(e) Weeks of sick leave taken by the claimant are attributable to the period of employment when the sick leave is taken.~~

~~(a) Payments made for termination of employment generally known or described as severance pay, separation pay, termination pay, wages in lieu of notice, continuation of wages for a designated period of time following cessation of work, or other similar payment, and payments made under an incentive, employee buy-out, or similar plan designed to produce a general or specific reduction in force by inducing employees to leave voluntarily or in lieu of involuntary termination, whether paid in a lump sum or incrementally over any period of time, are attributable to the quarter in which the separation from work occurred.~~

~~(b) Accrued vacation and sick leave paid at or after separation, other than a temporary layoff, are attributable to the quarter in which the separation from work occurred.~~

~~(c) Bonus, awards, incentives, rewards, profit sharing, and stocks are attributable to the quarter the payment was issued.~~

~~(d) Holiday pay is attributable to the quarter in which the holiday occurred.~~

~~(e) Payments received for accrued unused vacation, sick leave, compensatory time or other similar leave when separation has not occurred or during periods of temporary layoff are attributable to the quarter in which the payment was issued. THESE PAYMENTS ARE SOMETIMES ALSO KNOWN AS A "CASH-OUT" OF LEAVE BENEFITS.~~

~~(f) Backpay and settlements, in all cases, will be prorated back over the time the payment represents. Only the portion of the payment that is wages which would have been earned or wages earned and not paid, will be applied to weeks claimed and quarterly wages.~~

~~(g) Strike pay is attributable to the quarter in which it was paid by the employer (union), however, upon request by the claimant the wages will be adjusted to when earned (picket duty performed).~~

~~(h g) Use of vacation or sick leave, compensatory time or other similar leave paid during the course of employment, including periods of temporary layoff, for time off from work for vacation, whether voluntary or mandated, sick leave, or other leave with pay is attributable to the quarter in which the time off from work occurred.~~

~~(i h) Royalties, residual payments, and commissions are attributable to the quarter in which the payment was issued.~~

~~(6) Remains the same.~~

~~(7) The amount of wages may be revised after the initial~~



~~monetary determination becomes final if newly obtained wage information changes the claimant's maximum benefit amount by at least \$50.00.~~

~~(8) (7)~~ Remains the same as proposed.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2105, and 39-51-2201 through 39-51-2204, MCA

24.11.443 CONTINUED CLAIMS (1) through (3) Remain the same as proposed.

(4) ~~A claimant must report all earnings, except for commissions, in the week they were earned and not the week they were paid, except as otherwise provided in this rule. Commissions may be reported when paid. For purposes of this rule, earnings are wages as defined in 39-51-201, MCA, and as further clarified by example in this rule.~~

~~(a) Payments made for termination of employment generally known or described as severance pay, separation pay, termination pay, wages in lieu of notice, continuation of wages for a designated period of time following cessation of work, or other similar payment, and payments made under an incentive, employee buy-out, or similar plan designed to produce a general or specific reduction in force by inducing employees to leave voluntarily or in lieu of involuntary termination, whether paid in a lump sum or incrementally over any period of time, must be reported for the week in which the separation from work occurred.~~

~~(b) Accrued vacation and sick leave paid at or after separation, other than a temporary layoff, must be reported for the week in which the separation from work occurred.~~

~~(c) Bonus, awards, incentives, rewards, profit sharing, and stocks must be reported for the week in which the payment was received.~~

~~(d) Holiday pay and the hours paid must be reported for the week in which the holiday occurred.~~

~~(e) Payments received for accrued unused vacation, sick leave, compensatory time or other similar leave when separation has not occurred or during periods of temporary layoff must be reported by the claimant on the continued claim for the week in which the payment was received. THESE PAYMENTS ARE SOMETIMES ALSO KNOWN AS A "CASH-OUT" OF LEAVE BENEFITS.~~

~~(f) Strike pay must be reported on the continued claim for the week in which picket duty was performed.~~

~~(f) Payments for USE OF vacation or sick leave, compensatory time or other similar leave paid during the course of employment, including periods of temporary layoff, for time off from work for vacation, whether voluntary or mandated, sick leave, or other leave with pay must be reported for the week during which the time off from work occurred.~~

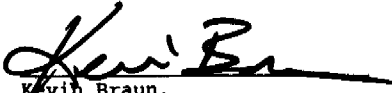
~~(g) Royalties, residual payments, and commissions must be reported as earnings for the week in which the payment was received. The hours must be reported for the week in which the work was performed.~~


~~(5) and (6)~~ Remain the same.

~~(7) A continued claim may be filed by mail.~~

AUTH: 39-51-301, 39-51-302, MCA  
IMP: 39-51-2101 through 39-51-2308, MCA

5. The amendments are effective on November 1, 1998.

  
Kevin Braun,  
Rule Reviewer

  
Patricia Haffey, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 13, 1998.

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

In the matter of the amendment)	CORRECTED NOTICE OF AMENDMENT
of ARM 24.16.9003,	) OF PREVAILING WAGE RULES
ARM 24.16.9004 and	)
ARM 24.16.9007, related	)
to Montana's prevailing wage	)
rates	)

TO ALL INTERESTED PERSONS:

1. On September 24, 1998, the Department published notice at pages 2585 through 2593 of the Montana Administrative Register, Issue No. 18, regarding the amendment of the above-captioned rules.


2. On October 8, 1998, the Department published a corrected notice at page 2755 of the Montana Administrative Register, Issue No. 19, regarding the amendment of the above-captioned rules.

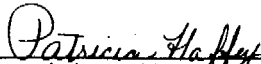
3. The Department has discovered a typographical error (transposition of numbers) made in the Corrected Notice of Amendment for the health/welfare rate for the occupation of "Heat and frost insulator" in District 6. The correct health/welfare rate for the occupation "Heat and frost insulator" for District 6 is \$2.79 per hour.

4. The Department advises interested persons and the public that the correct health/welfare rate for the occupation of "Heat and frost insulator" in District 6 was published in the document entitled "State of Montana Prevailing Wage Rates-Building Construction" for building construction, dated September 15, 1998.

5. This Corrected Notice of Amendment applies only to the amendment of ARM 24.16.9007. The corrected rate identified herein is applicable to public works contracts entered into on or after September 15, 1998.

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

  
Kevin Braun,  
Rule Reviewer

  
Patricia Haffey, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 13, 1998.

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

In the matter of the ) NOTICE OF AMENDMENT OF  
amendment of ARM 24.28.101 and ) ARM 24.28.101 AND 24.28.112  
24.28.112, related to workers' )  
compensation mediation )

TO ALL INTERESTED PERSONS:

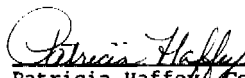
1. On April 30, 1998, the Department published notice at pages 1061 through 1063 of the Montana Administrative Register, Issue No. 8, to consider the amendment of the above-captioned rules.

2. On May 28, 1998, a public hearing was held in Helena concerning the proposed amendments. No oral and written comments were offered at that time. No written comments were received prior to the closing date of June 5, 1998.

3. The Department has amended the rules exactly as proposed.

4. The amendments are effective November 1, 1998.

  
Kevin Braun,  
Rule Reviewer

  
Patricia Haffey, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 13, 1998.

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

In the matter of the	)	NOTICE OF AMENDMENT OF 11 RULES,
amendment of ARM 24.29.207,	)	ADOPTION OF 11 NEW RULES,
24.29.703, 24.29.801,	)	AND REPEAL OF 22 EXISTING RULES
24.29.1201, 24.29.1203,	)	
24.29.1204, 24.29.2329,	)	
24.29.2803 and 24.29.2839,	)	
the adoption of 11 new rules,	)	
and the repeal of ARM	)	
24.29.707, 24.29.708,	)	
24.29.802, 24.29.803,	)	
24.29.805, 24.29.807,	)	
24.29.808, 24.29.2821,	)	
24.29.2824, 24.29.2827,	)	
24.29.2829, 24.29.2834,	)	
24.29.2837, 24.29.3701,	)	
24.29.3703, 24.29.3704,	)	
24.29.3707, 24.29.3711,	)	
24.29.3721, 24.29.3726,	)	
24.29.3731, and 24.29.3741,	)	
all related to workers'	)	
compensation matters	)	

TO ALL INTERESTED PERSONS:

1. On April 30, 1998, the Department published notice at pages 1064 through 1077 of the Montana Administrative Register, Issue No. 8, to consider the amendment, adoption and repeal of the above-captioned rules.

2. On May 28, 1998, a public hearing was held in Helena concerning the proposed amendments, adoptions and repeals. Oral and written comments were offered at that time. Additional written comments were received prior to the closing date of June 5, 1998.

3. The Department has thoroughly considered the comments on the proposed new rules and the amendments to the existing rules. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: A commenter stated that units of the Montana university system require that all students be covered by health care insurance. The commenter stated that the rules should provide for payment of student health care insurance if the claimant/student does not otherwise have health care insurance, as a mandatory fee associated with enrollment.

Response 1: The Department agrees and has amended the rules accordingly.

Comment 2: A commenter stated that NEW RULE VIII should provide

for documentation of registration, rather than enrollment, because Montana institutions generally require payment of tuition at registration.

Response 2: The Department has amended the rule to provide for documentation of enrollment or registration, as appropriate.

Comment 3: A commenter stated that extraordinary living expenses, such as having to establish a second dwelling in order to engage in retraining, should be an allowed expense.

Response 3: The Department concludes that in the unlikely case of the actual need for establishing a second dwelling in order to participate in retraining, an insurer will be able to agree to payment of those expenses. The Department believes that it is appropriate to keep its rule disallowing payment for living expenses.

Comment 4: A commenter suggested including in NEW RULE X an express limitation of retraining to not more than 104 weeks, pursuant to § 39-71-1006(2), MCA (1997).

Response 4: The Department concludes that the cited statute is clear on the 104 week limitation, and that inclusion of the suggested language would unreasonably duplicate statutory provisions.

Comment 5: A commenter suggested that NEW RULE X expressly limit tuition costs to those established by a Montana institution for a comparable program.

Response 5: The Department has amended NEW RULE X by limiting tuition to what is "reasonable". While the tuition costs of a Montana school is probably a good indication of what tuition rate is reasonable, there may be cases where the most appropriate option (and perhaps more cost-effective) for a given claimant may involve attendance at an out-of-state retraining program.

Comment 6: A commenter suggested that NEW RULE X be amended to state that an insurer is not liable for current or future tuition or fees when a claimant prematurely discontinues a training program. The same commenter also suggested that any tuition refunds be returned to the insurer, and that the insurer be entitled to possession of any books, tools or equipment that the insurer had paid for.

Response 6: The Department has amended the rule to allow the insurer to take possession of books, tools or equipment furnished by the insurer if the claimant prematurely terminates the retraining program. The Department declines to adopt a "one strike, you're out" rule for a claimant that fails to complete registration or prematurely withdraws (perhaps temporarily) from the agreed upon training program.

Comment 7: A commenter objected to the proposed amendments to ARM 24.29.801, requiring insurers to notify the Department in writing of the change of adjuster, on the basis of time and inconvenience it will place on insurers.

Response 7: The Department receives numerous telephone calls regarding claims from persons trying to get in touch with the office of the adjuster handling the claim. The Department concludes that it is appropriate for insurers to notify the Department of which adjuster (or which office) is handling each claim. The Department notes that some insurers assign claim responsibility to a particular office of a third party adjuster; other claims are handled by the insurer's in-house adjusters. It is the intent of the Department to only require an insurer to notify it when responsibility for a claim is being assigned from one office (with a mailing address and main telephone number) to another office (with a different address and telephone number). The Department does not believe it is necessary at this time to specifically identify by name the person responsible for handling the claim file.

4. After consideration of the comments, the Department has amended the 11 existing rules exactly as proposed.

5. No comments were made concerning any of the proposed repeals. The Department has repealed the 22 rules exactly as proposed.

6. After consideration of the comments received on the proposed new rules, the Department has adopted seven new rules exactly as proposed:

NEW RULE I (24.29.713) EVIDENCE OF INSURANCE COVERAGE

NEW RULE II (24.29.1721) PAYMENT OF REHABILITATION EXPENSES FROM THE INDUSTRIAL ACCIDENT REHABILITATION ACCOUNT FOR CLAIMS ARISING BEFORE JULY 1, 1991

NEW RULE III (24.29.1722) PAYMENT OF REHABILITATION EXPENSES FROM THE INDUSTRIAL ACCIDENT REHABILITATION ACCOUNT FOR CLAIMS ARISING ON OR AFTER JULY 1, 1991 AND BEFORE JULY 1, 1997

NEW RULE IV (24.29.1725) INFORMATION TO BE INCLUDED IN THE REHABILITATION PLAN

NEW RULE V (24.29.1727) DEPARTMENT'S NOTICE OF AUTHORIZATION OR DENIAL OF USE OF TRUST FUNDS

NEW RULE VII (24.29.1733) DISALLOWED REHABILITATION EXPENSES

NEW RULE XI (24.29.1761) DISPUTES OVER REHABILITATION EXPENSES

7. After consideration of the comments received on the proposed new rules, the Department has adopted four new rules exactly as proposed, with the following changes: (deleted matter stricken; new matter underlined)

NEW RULE VI (24.29.1731) ALLOWABLE REHABILITATION EXPENSES

(1) The department will pay, from the trust fund account, tuition required for the agreed upon rehabilitation plan. The department will pay, from the trust fund account, fees, books, supplies and equipment which are a prerequisite for the retraining and required by the provider of the training. Unless otherwise agreed upon between the claimant and insurer, the department will not pay for fees, books, supplies and/or equipment which are optional and not required to complete the retraining plan. For example, the purchase of student health insurance at a Montana university is an optional fee not required for enrollment, unless the claimant does not have health care insurance. If the claimant does not have health care insurance, the purchase of student health insurance is required. The payment of parking fees is required for enrollment at Montana universities.

(a) and (b) Remains the same as proposed.

AUTH: 39-71-203, MCA

IMP: Title 39, chap. 71, part 10, MCA

NEW RULE VIII (24.29.1735) DOCUMENTATION REQUIRED

(1) The department will release payment upon receipt of proof of enrollment or registration, as appropriate, from the provider of the retraining, of the date the funds are needed, and of the payee's federal employer identification number (FEIN). If reimbursement is requested, a copy of the paid invoice or receipt of payment is required.

AUTH: 39-71-203, MCA

IMP: Title 39, chap. 71, part 10, MCA

NEW RULE IX (24.29.1737) INSURER RESPONSIBILITY TO PROVIDE INFORMATION TO THE DEPARTMENT (1) Remains the same as proposed.

(2) The insurer, or its designated rehabilitation provider, is required to notify the department immediately if promptly upon learning that the claimant is not successfully completing his/her responsibilities specified in the rehabilitation plan or is no longer attending the retraining program.

AUTH: 39-71-203, MCA

IMP: Title 39, chap. 71, part 10, MCA

NEW RULE X (24.29.1741) PAYMENT OF REHABILITATION EXPENSES FOR CLAIMS ARISING ON OR AFTER JULY 1, 1997 (1) For claims arising on or after July 1, 1997, a disabled worker is entitled to receive payment for reasonable tuition, fees, books, and other reasonable and necessary retraining expenses, excluding travel and living expenses paid pursuant to the provisions of 39-71-1025, MCA.



(2) Remains the same as proposed.

(3) The insurer must pay for tuition required for the agreed upon rehabilitation plan. The insurer must pay for fees, books, supplies and equipment which are a prerequisite for the retraining and required by the provider of the training. Unless otherwise agreed upon by the insurer and the claimant, the insurer is not responsible for fees, books, supplies and/or equipment which are optional, not required to complete the retraining plan. For example, the purchase of student health insurance at a Montana university is an optional fee not required for enrollment, unless the claimant does not have health care insurance. If the claimant does not have health care insurance, the purchase of student health insurance is required. The payment of parking fees is required for enrollment at Montana universities.


(a) and (b) Remains the same as proposed.

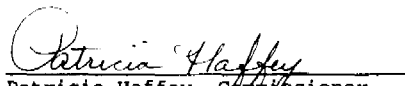
(4) The insurer is not liable for tuition, fees, books or equipment costs incurred if the claimant fails to complete registration requirements or fails to properly withdraw from the agreed upon training program. The insurer is entitled to any refund of tuition or fees that may be paid by the retraining entity upon the early withdrawal of the claimant from the training program. In addition, the insurer is entitled to possession of books, tools or other equipment previously paid for by the insurer upon the pre-graduation withdrawal of the claimant from the agreed upon training program.

AUTH: 39-71-203, MCA

IMP: Title 39, chap. 71, part 10, MCA

8. The amendments, adoptions and repeals are effective November 1, 1998.

  
Kevin Braun,  
Rule Reviewer

  
Patricia Haffey, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 13, 1998.

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

In the matter of the ) NOTICE OF AMENDMENT OF ARM  
amendment of ARM 24.33.121 ) 24.33.121 AND 24.33.131, AND  
and 24.33.131, and the ) REPEAL OF ARM 24.33.141  
repeal of ARM 24.33.141, )  
related to the operation of )  
the construction contractor )  
registration program )

TO ALL INTERESTED PERSONS:

1. On April 30, 1998, the Department published notice at pages 1078 through 1081 of the Montana Administrative Register, Issue No. 8, to consider the amendment and repeal of the above-captioned rules.

2. On May 29, 1998, a public hearing was held in Helena concerning the proposed amendments and repeal. No oral and written comments were offered at that time. However, written comments were received prior to the closing date of June 5, 1998.

3. The Department has thoroughly considered the comments on the proposed amendments. The following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: One commenter stated that the Department should accept a certificate of insurance. The commenter stated that use of a certificate of insurance is the standard practice within the insurance industry.

Response 1: The Department has amended its rule to permit the use of a certificate of insurance, and has deleted the option of using a binder form.

4. After consideration of the comments received on the proposed amendments, the Department has amended ARM 24.33.131 as proposed with the following changes: (deleted matter stricken; new matter underlined; added matter in all capitals)

24.33.131 EVIDENCE OF COMPLIANCE WITH LAWS

(1) Compliance with workers' compensation laws must be demonstrated by either:

~~(a) a certificate of insurance issued by the contractor's workers' compensation insurer (or self-insured group) stating that the contractor's employees are covered for liability under the Montana Workers' Compensation Act and Occupational Disease Act; or~~

(a) verification by the department by use of the National Council on Compensation Insurance (NCCI) national workers' compensation database that the entity applying for construction

contractor registration has current workers' compensation coverage; or

(b) a declarations page from the workers' compensation policy or a binder of coverage, provided all of the following conditions are met:

(i) the insurer is a company authorized to write workers' compensation coverage in Montana;

(ii) the name of the insured as shown on the declaration page or binder is the name of the applicant entity;

(iii) the federal employer identification number as shown on the declaration page or binder is consistent with the federal employer identification number of the applicant entity;

(iv) Montana is listed as the state under which laws the policy affords coverage;

(v) a policy number appears on the declaration page or binder; and

(vi) the declaration page or binder is signed by an authorized agent of the insurer; or

(c) A CERTIFICATE OF INSURANCE ISSUED BY THE CONTRACTOR'S WORKERS' COMPENSATION INSURER (OR SELF-INSURED GROUP) STATING THAT THE CONTRACTOR'S EMPLOYEES ARE COVERED FOR LIABILITY UNDER THE MONTANA WORKERS' COMPENSATION ACT AND OCCUPATIONAL DISEASE ACT, PROVIDED THE FOLLOWING CONDITIONS ARE MET:

(i) THE INSURER IS A COMPANY AUTHORIZED TO WRITE WORKERS' COMPENSATION COVERAGE IN MONTANA;

(ii) THE NAME OF THE INSURED AS SHOWN ON THE CERTIFICATE OF INSURANCE IS THE NAME OF THE APPLICANT ENTITY;

(iii) THE INSURER'S AGENT IS LICENSED TO DO BUSINESS IN MONTANA;

(iv) THERE IS AN ORIGINAL SIGNATURE ON THE CERTIFICATE OF INSURANCE OF AN AGENT OR OTHER PERSON THAT IS AUTHORIZED TO BIND THE INSURER;

(v) THE CERTIFICATE OF INSURANCE SPECIFIES THAT THE WORKERS' COMPENSATION COVERAGE IS UNDER THE LAWS OF MONTANA TO THE SAME NAMED INSURED EMPLOYER THAT IS APPLYING FOR CONSTRUCTION CONTRACTOR REGISTRATION; AND

(vi) THE CERTIFICATE OF INSURANCE MUST BE VALIDATED WITHIN 20 DAYS BY THE SUBMISSION OF A DECLARATION PAGE OR POLICY FROM THE REGISTERING ENTITY; OR

(b)(d) a written statement, made under oath, declaring the basis for each and every exemption to the coverage requirements of the Workers' Compensation Act that the applicant contends applies. If the applicant claims the independent contractor exemption, a copy of the applicant's exemption or an application for exemption must be attached to the registration application form.

~~(2) Compliance with unemployment insurance laws must be demonstrated by either:~~

~~(a) the Montana unemployment insurance account number; or~~

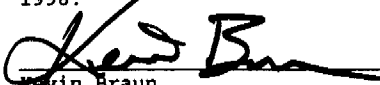
~~(b) a written statement, made under oath, that the contractor does not have any employees that are required to be covered for unemployment insurance purposes.~~

AUTH: 39-9-103, MCA IMP: 39-9-202, MCA

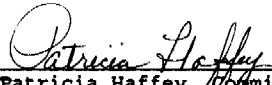
5. The Department has amended ARM 24.33.121 exactly as proposed.

6. The Department has repealed ARM 24.33.141 exactly as proposed.

7. The amendments and repeal are effective November 1, 1998.



Kevin Braun,  
Rule Reviewer



Patricia Haffey, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 13, 1998.

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

In the matter of the	)	NOTICE OF AMENDMENT OF
amendment of ARM 24.35.111,	)	ARM 24.35.111, 24.35.121 AND
24.35.121, and 24.35.141, all	)	24.35.141
related to the independent	)	
contractor exemption	)	

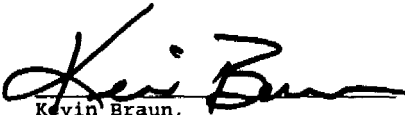
TO ALL INTERESTED PERSONS:

1. On April 30, 1998, the Department published notice at pages 1082 through 1085 of the Montana Administrative Register, Issue No. 8, to consider the amendment of the above-captioned rules.

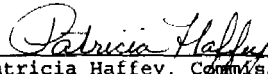
2. On May 29, 1998, a public hearing was held in Helena concerning the proposed amendments. No oral and written comments were offered at that time. No written comments were received prior to the closing date of June 5, 1998.

3. The Department has amended the rules exactly as proposed.

4. The amendments are effective November 1, 1998.



Kevin Braun,  
Rule Reviewer



Patricia Haffey, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 13, 1998.

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

In the matter of the transfer	)	CORRECTED NOTICE OF
of rules 11.14.101 through	)	TRANSFER
11.14.519 except for repealed	)	
and reserved rules	)	
pertaining to the licensure	)	
of child care facilities and	)	
16.24.406 through 16.24.417	)	
pertaining to requirements	)	
for child care centers	)	

TO: All Interested Persons

1. On September 24, 1998, the Department of Public Health and Human Services published notice of the transfer of the above-stated rules on page 2594 of the 1998 Montana Administrative Register, issue number 18, pertaining to the licensure of child care facilities and requirements for child care centers.

2. The department inadvertently cited the incorrect legislative chapter as its authority to transfer the above-stated rules. The incorrect citation to chapter 418 Laws of Montana 1995, is hereby replaced with chapter 546, Laws of Montana 1995.

3. All other rule changes adopted and repealed within the transfer of the licensure of child care facilities and requirements for child care centers notice remain the same.

4. The replacement pages for this transfer notice were submitted to the Secretary of State on September 30, 1998.

Dana Elia  
Rule Reviewer

Russell E. Coker  
Director, Public Health and  
Human Services

Certified to the Secretary of State October 13, 1998.

VOLUME NO. 47

OPINION NO. 19

CITIES AND TOWNS - Public works employee or director as city council member;  
CONFLICT OF INTEREST - Hospital district employee as hospital district trustee;  
CONFLICT OF INTEREST - Public works employee or director as city council member;  
COUNTY OFFICERS AND EMPLOYEES - Hospital district employee as hospital district trustee;  
HEALTH BOARDS AND DISTRICTS - Hospital district employee as hospital district trustee;  
HEALTH CARE FACILITIES - Hospital district employee as hospital district trustee;  
HOSPITAL DISTRICTS - Hospital district employee as hospital district trustee;  
LOCAL GOVERNMENT - Hospital district employee as hospital district trustee;  
LOCAL GOVERNMENT - Public works employee or director as city council member;  
PUBLIC OFFICERS - Hospital district employee as hospital district trustee;  
PUBLIC OFFICERS - Public works employee or director as city council member;  
MONTANA CODE ANNOTATED - Section 7-34-2120;  
OPINIONS OF THE ATTORNEY GENERAL - 46 Op. Att'y Gen. No. 26 (1996), 43 Op. Att'y Gen. No. 47 (1989), 41 Op. Att'y Gen. No. 81 (1986), 37 Op. Att'y Gen. No. 102 (1977).

- HELD: 1. A hospital district employee cannot be a hospital district trustee.
2. A public works employee or director cannot be a member of the city council. The positions are incompatible.

October 13, 1998

Mr. Allin H. Cheetham  
Chouteau County Attorney  
P.O. Box 112  
Fort Benton, MT 59442-0112

Mr. Richard L. Burns  
Glendive City Attorney  
P.O. Box 6  
Glendive, MT 59330

Dear Mr. Cheetham and Mr. Burns:

You have recently asked my opinion on questions which are closely related and require similar analysis. I am therefore

Montana Administrative Register

20-10/22/98

responding to both requests with one opinion. The related questions are:

1. May a hospital district employee be a trustee of the hospital district?
2. May a public works employee be a city council member?
3. May a public works director, or any other appointed city officer, hold the position of city council member?

Two employees of the Missouri River Medical Center, a hospital district health care facility, have filed for election to that hospital district's board of trustees. Mr. Cheetham questions whether serving in both positions creates a conflict of interest or is prohibited for any reason. A public works employee for the City of Glendive is also an elected alderman and sits on the Glendive city council. Mr. Burns asks first whether this presents a conflict of interest, and second, whether the two positions are incompatible.

As noted in Mr. Burns' letter, the question of whether a city employee sitting on the city council presents a conflict of interest was previously addressed in 41 Op. Att'y Gen. No. 81 (1986). In that opinion, former Attorney General Mike Greely held that there is no inherent conflict of interest when an employee of the City of Glendive is also an elected member of the city council. That opinion provides the controlling answer to Mr. Burns' initial question regarding a possible conflict of interest.

However, adoption of a conflict-of-interest statute in no way abrogates the common law rule against the holding of incompatible positions. Tarpo v. Bowman Pub. Sch. Dist. No. 1, 232 N.W.2d 67, 71 (N.D. 1975). Because I conclude that the doctrine of incompatible offices prevents a public works employee or director from serving as a city council member, as well as a hospital employee from serving as a trustee of the hospital district, it is not necessary to further analyze the conflict of interest issue.

The Montana Supreme Court has recognized that two offices are incompatible when one has the power of removal over the other, when one is in any way subordinate to the other, when one has the power of supervision over the other, or when the nature and duties of the two offices are such as to render it improper, from considerations of public policy, for one person to retain both. State ex rel. Klick v. Wittmer, 50 Mont. 22, 144 P. 648 (1914).



The doctrine of incompatible public offices eliminates the public policy concerns inherent in the simultaneous holding of multiple public offices or positions by:

(1) preventing multiple position-holding, so that offices and positions of public trust do not accumulate in a single person; (2) preventing individuals from deriving, directly or indirectly, any pecuniary benefit by virtue of their dual position-holding; (3) avoiding the inherent conflict which occurs when an employee's elected position has revisory power over the employee's superior in another position; and (4) ensuring, generally, that public officeholders and public employees discharge their duties with undivided loyalty.

46 Op. Att'y Gen. No. 26 (1996), citing 43 Op. Att'y Gen. No. 47 at 165 (1989), which cites Acevedo v. City of North Pole, 672 P.2d 130, 134 (Alaska 1983).

In 46 Op. Att'y Gen. No. 26, I also concluded that the common law doctrine of incompatible public offices applies to public employees, as well as to public office holders, and that a county employee appointed by a board of county commissioners and paid by the county cannot serve on the board of commissioners for the same county.

The common-law doctrine of incompatibility extends to positions of public employment as well as public offices. See, e.g., Otradovec v. City of Green Bay, 347 N.W.2d 614 (Wis. Ct. App. 1984). As the Wyoming Supreme Court has stated, it is "inimical to the public interest for one in public employment to be both the employer and the employee or the supervisor and the supervised." Thomas v. Dremmel, 868 P.2d 263, 264 (Wyo. 1994), quoting Haskins v. State ex rel. Harrington, 516 P.2d 1171 (Wyo. 1973).

46 Op. Att'y Gen. No. 26.

Unlike the office of county commissioner, the office of hospital district trustee is not compensated. Mont. Code Ann. § 7-34-2120. Nevertheless, the office of trustee is incompatible with employment by the hospital district. The trustee position has substantial powers over employees of the hospital district. Hospital district trustees employ (and discharge) hospital district employees. The trustees determine, within state guidelines, the salaries and benefits received by hospital district employees. Mont. Code Ann. § 7-34-2122(1); 37 Op. Att'y Gen. No. 102 (1977). Mr. Cheetham has indicated that the trustees also have direct supervision over the individuals who supervise district employees. Thus, an individual serving in the dual roles of employee and trustee would be in the position of controlling actions and decisions of his or her supervisor

which could directly affect his or her job duties and compensation. Likewise, an individual serving as a public works employee and a member of the city council is in the position of controlling the actions and decisions of the employee's supervisor, the public works director.

In each situation, the individual must choose between the clashing duties of two positions, a choice the doctrine of incompatibility of offices was designed to avoid. Township of Belleville v. Fornarotto, 549 A.2d 1267 (N.J. 1988). Such scenarios are clearly "inimical" to the public interest and thus prohibited by the doctrine of incompatible offices.

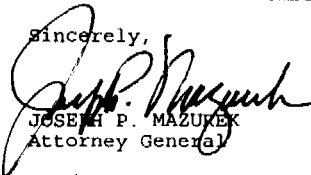
Mr. Burns' third question concerns whether a public works director, or any other city officer, can be elected to the city council. According to Mr. Burns, the Glendive City Council has supervisory power and the power of removal over the public works director. Thus, the simultaneous holding of the office of city council member and the office of public works director presents a concern similar to that addressed in 46 Op. Att'y Gen. No. 26. There, the positions of county commissioner and county coordinator of disaster and emergency services were found to be incompatible as the county commission has the powers of supervision, revision, and removal over the position of DES coordinator. Similarly, the office of city council member is incompatible with either the office or the position of public works director.

The determination whether other appointed city offices and positions are incompatible with the office of city council member is fact-dependent and must be made on a case-by-case basis.

THEREFORE, IT IS MY OPINION:

1. A hospital district employee cannot be a hospital district trustee.
2. A public works employee or director cannot be a city council member. The positions are incompatible.

Sincerely,



JOSEPH P. MAZUREK  
Attorney General

jpm/mas/dm

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1998. This table includes those rules adopted during the period July 1, 1998 through September 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 June 30, 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.

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## BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in September 1998, appear. Vacancies scheduled to appear from November 1, 1998, through January 31, 1999, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of October 13, 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 APPOINTERS FROM SEPTEMBER, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Alternative Health Care Board	(Commerce)		
Ms. Ann H. Pasha	Governor	Rasmussen	9/1/1998
Highwood			9/1/2002
Qualifications (if required):	public member		
Ms. Kathee Dunham	Governor	reappointed	9/1/1998
Arlee			9/1/2002
Qualifications (if required):	direct midwife		
Board of Investments (Commerce)			
Ms. Joy N. Ott	Governor	Vaughn	9/16/1998
Billings			1/1/2001
Qualifications (if required):	representative of the financial community		
Board of Medical Examiners (Commerce)			
Mr. David B. Huebner	Governor	reappointed	9/1/1998
Great Falls			9/1/2002
Qualifications (if required):	licensed podiatrist		
Dr. Donald Grewell	Governor	reappointed	9/1/1998
Billings			9/1/2002
Qualifications (if required):	doctor of osteopathy		
Dr. Anne M. Williams	Governor	Bonnet	9/1/1998
Glasgow			9/1/2002
Qualifications (if required):	doctor of medicine		
Board of Psychologists (Commerce)			
Dr. Marian Martin	Governor	not listed	9/1/1998
Billings			9/1/2003
Qualifications (if required):	psychologist		

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Family Support Services Advisory Council (Public Health and Human Services)			
Ms. Sylvia Danforth	Governor	not listed	9/14/1998
Miles City			9/14/2000
Qualifications (if required):	representing Part C Contractors		
Mr. Ted Maloney	Governor	not listed	9/14/1998
Missoula			9/14/2000
Qualifications (if required):	representing the public		
Mr. Dan McCarthy	Governor	not listed	9/14/1998
Helena			9/14/2000
Qualifications (if required):	representing Office of Public Instruction		
Ms. Sandi Marisdotter	Governor	not listed	9/14/1998
Helena			9/14/2000
Qualifications (if required):	representing Part C contractor agencies		
Ms. Beth Kenny	Governor	not listed	9/14/1998
Helena			9/14/2000
Qualifications (if required):	representing families of children with disabilities		
Ms. Linda Botten	Governor	not listed	9/14/1998
Bozeman			9/14/2000
Qualifications (if required):	representing physical, occupational speech therapists		
Ms. Sue Forest	Governor	not listed	9/14/1998
Missoula			9/14/2000
Qualifications (if required):	representing higher education/personnel preparation		
Ms. Chris Volinkaty	Governor	not listed	9/14/1998
Missoula			9/14/2000
Qualifications (if required):	representing Part C contractor agencies		

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Support Services Advisory Council (Public Health and Human Services) cont.			
Ms. Barbara Stefanic	Governor	not listed	9/14/1998
Laurel			9/14/2000
Qualifications (if required):	representing public preschool service providers		
Mr. John Holbrook	Governor	not listed	9/14/1998
Helena			9/14/2000
Qualifications (if required):	representing technical expertise on private insurance issues		
Ms. Colleen Thompson	Governor	not listed	9/14/1998
Glasgow			9/14/2000
Qualifications (if required):	representing Head Start		
Ms. Christine Gutschenritter	Governor	not listed	9/14/1998
Great Falls			9/14/2000
Qualifications (if required):	representing services to children with sensory impairments		
Ms. Jackie Jandt	Governor	not listed	9/14/1998
Helena			9/14/2000
Qualifications (if required):	representing Medicaid programs for children		
Ms. Sharon Wagner	Governor	not listed	9/14/1998
Helena			9/14/2000
Qualifications (if required):	representing services for children with special health care needs		
Ms. Millie Kindle	Governor	not listed	9/14/1998
Malta			9/14/2000
Qualifications (if required):	representing families of children with disabilities		
Ms. Gwen Beyer	Governor	not listed	9/14/1998
Polson			9/14/2000
Qualifications (if required):	representing families of children with disabilities		

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1998

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Support Services Advisory Council (Public Health and Human Services) cont. Rep. Gerald Pease Lodge Grass Qualifications (if required): representing families of children with disabilities	Governor not listed		9/14/1998 9/14/2000
Ms. Lynda Korth Helena Qualifications (if required): representing child care/adoption issues for children with disabilities	Governor not listed		9/14/1998 9/14/2000
Fish, Wildlife and Parks Commission (Fish, Wildlife and Parks) Mr. Tim Mulligan Whitehall Qualifications (if required): representing District 2	Governor Tash		9/2/1998 1/1/1999
Montana Historical Records Advisory Council (Historical Society) Mr. Timothy Bernardis Crow Agency Qualifications (if required): public member	Governor not listed		9/14/1998 9/14/2000
Mr. Robert M. Clark Helena Qualifications (if required): public member	Governor not listed		9/14/1998 9/14/2000
Ms. Kathryn Otto Helena Qualifications (if required): state archivist	Governor not listed		9/14/1998 9/14/2000
Ms. Ellen Crain Butte Qualifications (if required): public member	Governor not listed		9/14/1998 9/14/2000
Ms. Peggy Bourne Great Falls Qualifications (if required): public member	Governor not listed		9/14/1998 9/14/2000

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1998

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Historical Records Advisory Council (Historical Society) cont.			
Ms. Jodi L. Allison-Bunnell	Governor	not listed	9/14/1998
Missoula			9/14/2000
Qualifications (if required):	public member		
Ms. Kathy Mosdal O'Brien	Governor	not listed	9/14/1998
Billings			9/14/2000
Qualifications (if required):	public member		
Mr. Kim Allen Scott	Governor	not listed	9/14/1998
Bozeman			9/14/2000
Qualifications (if required):	public member		
Water and Wastewater Operators' Advisory Council (Environmental Quality)			
Ms. Joanne Hall Emrick	Governor	Myran	9/10/1998
Kalispell			10/16/2004
Qualifications (if required):	representative of a municipality		
Western Presidential Primary			
Sec. of State Mike Cooney	Governor	not listed	9/1/1998
Helena			0/0/0
Qualifications (if required):	none specified		
Yellowstone River Task Force (Fish, Wildlife and Parks)			
Mr. Martin Davis	Governor	Hildebrand	9/1/1998
Livingston			7/1/1999
Qualifications (if required):	representative of the Conservation District		



VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1998 through JANUARY 31, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
AIDS Advisory Council (Public Health and Human Services)		
Mr. Frank Gary, Butte	Governor	11/26/1998
Qualifications (if required): public member		
Mr. Steven C. Yeakel, Helena	Governor	11/26/1998
Qualifications (if required): public member		
Mr. David G. Rice, Havre	Governor	11/26/1998
Qualifications (if required): public member		
Ms. Verbena Savior, Poplar	Governor	11/26/1998
Qualifications (if required): public member		
Ms. Pam Carter, Bozeman	Governor	11/26/1998
Qualifications (if required): public member		
Dr. Connie O'Connor, Helena	Governor	11/26/1998
Qualifications (if required): public member		
Mr. David Herrera, Billings	Governor	11/26/1998
Qualifications (if required): public member		
Ms. Rita Munzenrider, Kalispell	Governor	11/26/1998
Qualifications (if required): public member		
Ms. Terri Dunn, Whitefish	Governor	11/26/1998
Qualifications (if required): public member		
Rep. John Bohlinger, Billings	Governor	11/26/1998
Qualifications (if required): legislator		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1998 through JANUARY 31, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
AIDS Advisory Council (Public Health and Human Services)	cont.	
Ms. Jeri Snell, Miles City	Governor	11/26/1998
Qualifications (if required): public member		
Ms. Pam Bragg, Helena	Governor	11/26/1998
Qualifications (if required): public member		
Dr. R.D. Marks, Missoula	Governor	11/26/1998
Qualifications (if required): public member		
Ms. Kim Kovanda, Columbus	Governor	11/26/1998
Qualifications (if required): student representative		
Dr. Raymond Geyer, Great Falls	Governor	11/26/1998
Qualifications (if required): public member		
Mr. Kevin Petersen, Clancy	Governor	11/26/1998
Qualifications (if required): public member		
Ms. Shelly Johnson, Fairfield	Governor	11/26/1998
Qualifications (if required): public member		
Alfalfa Seed Committee (Agriculture)		
Mr. John Markegard, Laurel	Governor	12/21/1998
Qualifications (if required): representing alfalfa seed growers and alfalfa leaf-cutting bee industry		
Mr. Ernest Johnson, Chinook	Governor	12/21/1998
Qualifications (if required): seed producer		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1998 through JANUARY 31, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Appellate Defender Commission (Administration) Ms. Randi Hood, Helena Qualifications (if required): public defender	Governor	1/1/1999
Mr. Daniel Donovan, Great Falls Qualifications (if required): public defender	Governor	1/1/1999
Board of Aeronautics (Transportation) Mr. Leland F. Ford, Bigfork Qualifications (if required): public member	Governor	1/1/1999
Mr. Robert M. Hector, Billings Qualifications (if required): representative of commercial airline operators	Governor	1/1/1999
Ms. Josephine Eisenzimer, Cascade Qualifications (if required): involved in aviation education	Governor	1/1/1999
Mr. Arnold Lindberg, Cut Bank Qualifications (if required): fixed base operator	Governor	1/1/1999
Board of Chiropractors (Commerce) Dr. Patrick Montgomery, Missoula Qualifications (if required): chiropractor	Governor	1/1/1999
Board of Crime Control (Justice) Mr. Craig Anderson, Glendive Qualifications (if required): representative of youth justice	Governor	1/1/1999
Mr. Gary Buchanan, Billings Qualifications (if required): public member	Governor	1/1/1999

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1998 through JANUARY 31, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Crime Control (Justice) cont. Ms. Jani McCall, Billings Qualifications (if required): representative of the Youth Justice Council	Governor	1/1/1999
Ms. Sherry Matteucci, Billings Qualifications (if required): U.S. Attorney	Governor	1/1/1999
Sen. Debbie Shea, Butte Qualifications (if required): member of the State Senate	Governor	1/1/1999
Rep. Sylvia Bookout, Albertain Qualifications (if required): member of the House of Representatives	Governor	1/1/1999
Mayor Laurel Hegstad-Deschamps, Hamilton Qualifications (if required): representative of local government	Governor	1/1/1999
Board of Environmental Review Mr. Daniel Dennehy, Butte Qualifications (if required): public health officer	Governor	12/31/1998
Ms. Kim Lacey, Glasgow Qualifications (if required): public member	Governor	12/31/1998
Board of Health and Environmental Sciences (Health and Environmental Sciences) Dr. Dennis Schreffler, Billings Qualifications (if required): health care professional	Governor	1/1/1999
Board of Horse Racing (Commerce) Dr. Sheldon John "Skip" Score, Helena Qualifications (if required): representing District 4	Governor	1/20/1999

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1998 through JANUARY 31, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Housing (Commerce)</b>		
Mr. Bob Thomas, Stevensville	Governor	1/1/1999
Qualifications (if required): public member		
<b>Ms. Barbara Hamlin, Helena</b>		
Qualifications (if required): public member	Governor	1/1/1999
<b>Ms. Maneeta Farris, Forsyth</b>		
Qualifications (if required): public member	Governor	1/1/1999
<b>Board of Investments (Commerce)</b>		
Ms. Maureen J. Fleming, Missoula	Governor	1/1/1999
Qualifications (if required): represents labor		
<b>Mr. F. Lee Robinson, Malta</b>		
Qualifications (if required): represents business	Governor	1/1/1999
<b>Mr. Douglas Bardwell, Missoula</b>		
Qualifications (if required): represents the financial community	Governor	1/1/1999
<b>Mr. Calvin Willson, Busby</b>		
Qualifications (if required): attorney and public member	Governor	1/1/1999
<b>Board of Labor Appeals (Labor and Industry)</b>		
Ms. Carol Donaldson, Billings	Governor	1/1/1999
Qualifications (if required): public member		
<b>Board of Occupational Therapy Practice (Commerce)</b>		
Ms. Lynn Davis, Billings	Governor	12/31/1998
Qualifications (if required): licensed occupational therapist		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1998 through JANUARY 31, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Oil and Gas Conservation (Natural Resources and Conservation) Mr. Warren H. Ross, Chinook Qualifications (if required): landowner with mineral rights	Governor	1/1/1999
Mr. Dean A. Swanson, Polson Qualifications (if required): in the oil and gas industry	Governor	1/1/1999
Mr. Denzil Young, Baker Qualifications (if required): landowner with no mineral rights	Governor	1/1/1999
Board of Pardons (Corrections and Human Services) Mr. Patrick T. Fleming, Butte Qualifications (if required): attorney	Governor	1/1/1999
Board of Personnel Appeals (Labor and Industry) Mr. Leonard A. McKinney, Lewistown Qualifications (if required): labor-management experience	Governor	1/1/1999
Board of Personnel Appeals (Labor and Industry) cont. Ms. Jean Hagan, Hamilton Qualifications (if required): representative of management in collective bargaining activities	Governor	1/1/1999
Mr. Tom Foley, Helena Qualifications (if required): substitute board member representing labor	Governor	1/1/1999
Mr. Lloyd Doney, East Helena Qualifications (if required): substitute member representing management	Governor	1/1/1999
Board of Science and Technology Development (Commerce) Mr. Larry Gianchetti, Missoula Qualifications (if required): representative of the public sector	Governor	1/1/1999

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VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1998 through JANUARY 31, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Science and Technology Development</b> (Commerce) cont. Dr. Rebecca Mahurin, Bozeman Qualifications (if required): representing the private sector	Governor	1/1/1999
<b>Mr. Dolph Harris, Sidney</b> Qualifications (if required): representative of private business	Governor	1/1/1999
<b>Ms. Susan Riplett, Billings</b> Qualifications (if required): knowledgeable about private business financing	Governor	1/1/1999
<b>Board of Social Work Examiners and Professional Counselors</b> (Commerce) Dr. Leta Livoti, Helena Qualifications (if required): licensed professional counselor	Governor	1/1/1999
<b>Ms. Antoinette Rosell, Billings</b> Qualifications (if required): licensed professional counselor	Governor	1/1/1999
<b>Board of Social Work Examiners and Professional Counselors</b> (Commerce) cont. Judge Richard A. Simonton, Glendive Qualifications (if required): attorney and public member	Governor	1/1/1999
<b>Board of Social and Rehabilitation Appeals</b> (Social and Rehabilitation Services) Ms. Donna Heggem, Lolo Qualifications (if required): public member	Governor	1/1/1999
<b>Board of Speech Pathologists and Audiologists</b> (Commerce) Mr. Norman Peters, Townsend Qualifications (if required): public member	Governor	12/31/1998
<b>Coal Board</b> (Commerce) Ms. Janice Riebhoff, Belgrade Qualifications (if required): has expertise in education and represents District 2	Governor	1/1/1999

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1998 through JANUARY 31, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Coal Board (Commerce) cont. Ms. Linda Price, Lewistown Qualifications (if required): has expertise in education and represents District 3	Governor	1/1/1999
Mr. John Sutton, Butte Qualifications (if required): residing in District 4 and having engineering experience	Governor	1/1/1999
Commission for Human Rights (Labor and Industry) Mr. Jack Copps, Seeley Lake Qualifications (if required): public member	Governor	1/1/1999
Department of Public Health and Human Services Advisory Council (Public Health and Human Services) Mr. Jim Adams, Helena Qualifications (if required): none specified	Director	12/1/1998
Ms. Ann Bartel, Great Falls Qualifications (if required): none specified	Director	12/1/1998
Ms. Nancy Espy, Broadus Qualifications (if required): none specified	Director	12/1/1998
Ms. June Hermanson, Polson Qualifications (if required): none specified	Director	12/1/1998
Ms. Sally Johnson, Missoula Qualifications (if required): none specified	Director	12/1/1998
Ms. Wendy Keating, Billings Qualifications (if required): none specified	Director	12/1/1998
Dr. Michael J. McLaughlin, Great Falls Qualifications (if required): none specified	Director	12/1/1998



VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1998 through JANUARY 31, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Department of Public Health and Human Services Advisory Council (Public Health and Human Services) cont.		
Dr. Bill Peters, Bozeman	Director	12/1/1998
Qualifications (if required): none specified		
Ms. Alicia Pichette, Helena	Director	12/1/1998
Qualifications (if required): none specified		
Mr. Bob Runkel, Helena	Director	12/1/1998
Qualifications (if required): none specified		
Sen. Vivian M. Brooke, Missoula	Director	12/1/1998
Qualifications (if required): none specified		
Rep. Ernest Bergsagel, Malta	Director	12/1/1998
Qualifications (if required): none specified		
Ms. Fern Hart, Missoula	Director	12/1/1998
Qualifications (if required): none specified		
Mr. Ken Caruso, Huson	Director	12/1/1998
Qualifications (if required): none specified		
Mr. Randy Haight, Bozeman	Director	12/1/1998
Qualifications (if required): none specified		
Ms. Joan Miles, Helena	Director	12/1/1998
Qualifications (if required): none specified		
Mr. Fred Patton, Helena	Director	12/1/1998
Qualifications (if required): none specified		

## VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1998 through JANUARY 31, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services)		
Ms. Deb Wade, Helena	Director	12/1/1998
Qualifications (if required): none specified		
Ms. Sara Hudson, Billings	Director	12/1/1998
Qualifications (if required): none specified		
Sen. Sharon Estrada, Billings	Governor	1/1/1999
Qualifications (if required): member of the State Senate		
Rep. Bob Lawson, Whitefish	Governor	1/1/1999
Qualifications (if required): member of the State House of Representatives		
Fish, Wildlife and Parks Commission (Fish, Wildlife and Parks)		
Ms. Darlyne Dascher, Fort Peck	Governor	1/1/1999
Qualifications (if required): representative of District IV		
Mr. Tim Mulligan, Whitehall	Governor	1/1/1999
Qualifications (if required): representing District 2		
Governor's Vision 2005 Task Force on Agriculture (Agriculture)		
Mr. Peter Blouke, Helena	Governor	12/31/1998
Qualifications (if required): representative of the Department of Commerce		
Rep. Ernest Bergsagel, Malta	Governor	12/31/1998
Qualifications (if required): representative of the state legislature		
Rep. Linda J. Nelson, Medicine Lake	Governor	12/31/1998
Qualifications (if required): representative of the state legislature		
Mr. W. Ralph Peck, Helena	Governor	12/31/1998
Qualifications (if required): representative of the Department of Agriculture		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1998 through JANUARY 31, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<u>Governor's Vision 2005 Task Force on Agriculture</u> (Agriculture) cont.		
Mr. David Sagmiller, Ronan	Governor	12/31/1998
Qualifications (if required): representative of the Montana Agricultural Business Association		
Ms. Esther McDonald, Philipsburg	Governor	12/31/1998
Qualifications (if required): representative of the Montana Cattle Women's Association		
Mr. Tim Huls, Corvallis	Governor	12/31/1998
Qualifications (if required): representative of the Montana Dairymen's Association		
Mr. Thad Willis, Big Sandy	Governor	12/31/1998
Qualifications (if required): representative of the Montana Farm Bureau Federation		
Mr. Ken Maki, Great Falls	Governor	12/31/1998
Qualifications (if required): representative of the Montana Farmers Union		
Mr. Merlin R. Boxwell, Cut Bank	Governor	12/31/1998
Qualifications (if required): representative of the Montana Grain Growers Association		
Mr. Harold Clarke, Columbia Falls	Governor	12/31/1998
Qualifications (if required): representative of the Montana Mint Growers Association		
Mr. Loren Wolery, Turner	Governor	12/31/1998
Qualifications (if required): representative of the Montana Pork Producers Council		
Ms. Marilyn E. Johnson, Kalispell	Governor	12/31/1998
Qualifications (if required): representative of the Montana State Grange		
Mr. Lynn Cornwell, Glasgow	Governor	12/31/1998
Qualifications (if required): representative of the Montana Stockgrowers Association		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1998 through JANUARY 31, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Vision 2005 Task Force on Agriculture (Agriculture) cont.		
Mr. Ron Devlin, Terry	Governor	12/31/1998
Qualifications (if required): representative of the Montana Wool Growers Association		
Ms. Sharon Kindler, Malta	Governor	12/31/1998
Qualifications (if required): representative of Women Involved in Farm Economics		
Mr. Chris Reigum, Bozeman	Governor	12/31/1998
Qualifications (if required): representative of the Montana Bankers Association		
Mr. Kenneth M. Walsh, Twin Bridges	Governor	12/31/1998
Qualifications (if required): representative of the Montana Independent Bankers Association		
Ms. Linda Reed, Helena	Governor	12/31/1998
Qualifications (if required): representative of the Governor's Office		
Dr. Tom McCoy, Bozeman	Governor	12/31/1998
Qualifications (if required): representative of Montana State University		
Mr. Kerry Schaefer, Great Falls	Governor	12/31/1998
Qualifications (if required): representative of the Montana Chamber of Commerce		
Mr. Bud Leuthold, Billings	Governor	12/31/1998
Qualifications (if required): representative of the public		
Mr. Chuck Merja, Sun River	Governor	12/31/1998
Qualifications (if required): representative of the public		
Mr. Bob Quinn, Fort Benton	Governor	12/31/1998
Qualifications (if required): representative of the public		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1998 through JANUARY 31, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Vision 2005 Task Force on Agriculture (Agriculture) cont. Mr. Greg Rauschenbender, Poplar Qualifications (if required): representative of the public	Governor	12/31/1998
Mr. Ron Ueland, Belgrade Qualifications (if required): representative of the public	Governor	12/31/1998
Hard-Rock Mining Impact Board (Commerce) Mr. David Young, Troy Qualifications (if required): representative of the industry	Governor	1/1/1999
Ms. Betty Aye, Broadus Qualifications (if required): school board trustee	Governor	1/1/1999
Human Rights Commission (Labor and Industry) Ms. Kathy Ogren, Missoula Qualifications (if required): public member	Governor	1/1/1999
Judicial Nomination Commission (Justice) Mr. Frank Stock, Polson Qualifications (if required): public member	Governor	1/1/1999
Milk Control Board (Commerce) Dr. Robert Greer, Bozeman Qualifications (if required): Democrat	Governor	1/1/1999
Mr. Michael F. Kleese, Stevensville Qualifications (if required): Democrat and an attorney	Governor	1/1/1999
Montana Health Facility Authority Board (Commerce) Mr. Sidney K. Brubaker, Terry Qualifications (if required): public member	Governor	1/1/1999

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1998 through JANUARY 31, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Health Facility Authority Board (Commerce) cont. Ms. Dallyce K. Flynn, Townsend Qualifications (if required): public member	Governor	1/1/1999
Mr. Greg Hanson, Missoula Qualifications (if required): attorney	Governor	1/1/1999
Montana Highway Commission (Transportation) Mr. Ed Smith, Helena Qualifications (if required): Republican residing in District 4	Governor	1/1/1999
Mr. Dan Larson, Libby Qualifications (if required): Democrat in District 1	Governor	1/1/1999
Montana State Lottery Commission (Commerce) Mr. Robert Crippen, Butte Qualifications (if required): certified public accountant	Governor	1/1/1999
State Employee Group Benefits Advisory Council (Administration) Mr. Tom Burgess, Helena Qualifications (if required): none specified	Director	1/1/1999
State Tax Appeal Board (Administration) Mr. Patrick E. McKelvey, Helena Qualifications (if required): none specified	Governor	1/1/1999
Vocational Rehabilitation Divisions Advisory Council (Public Health and Human Services) Ms. Jane Tremper, Missoula Qualifications (if required): none specified	Director	12/15/1998
Workers' Compensation Regulation Advisory Council (Labor and Industry) Mr. Jim Adams, Helena Qualifications (if required): labor representative	Governor	12/31/1998

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1998 through JANUARY 31, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<u>Workers' Compensation Regulation Advisory Council</u> (Labor and Industry)		
Ms. Ann Bartel, Great Falls	Governor	12/31/1998
Qualifications (if required): labor representative		
Sen. Bob Brown, Whitefish	Governor	12/31/1998
Qualifications (if required): public member		
Mr. Gordon Hage, Helena	Governor	12/31/1998
Qualifications (if required): public member		
Rep. Chase Hibbard, Helena	Governor	12/31/1998
Qualifications (if required): member of the Montana House of Representatives		
Ms. Pat Haffey, Helena	Governor	12/31/1998
Qualifications (if required): representative of the Department of Labor and Industry		
Rep. Vicki Cocchiarella, Missoula	Governor	12/31/1998
Qualifications (if required): member of the Montana House of Representatives		
Sen. Fred Thomas, Stevensville	Governor	12/31/1998
Qualifications (if required): member of the Montana Senate		
Mr. David Owen, Helena	Governor	12/31/1998
Qualifications (if required): an employer		
Sen. Debbie Shea, Butte	Governor	12/31/1998
Qualifications (if required): member of the Montana Senate		
Mr. Bob Olsen, Helena	Governor	12/31/1998
Qualifications (if required): representative of the Montana Hospital Association		
Mr. Mark Barry, Helena	Governor	12/31/1998
Qualifications (if required): workers' compensation insurer		

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 1998 through JANUARY 31, 1999

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Workers' Compensation Regulation Advisory Council (Labor and Industry) cont.		
Ms. Pam Egan, Helena	Governor	12/31/1998
Qualifications (if required): labor representative		
Ms. Michele Fairclough, Helena	Governor	12/31/1998
Qualifications (if required): insured employer		
Mr. Tom Kiely, Butte	Governor	12/31/1998
Qualifications (if required): self-insured employer		
Ms. Jacqueline Lenmark, Helena	Governor	12/31/1998
Qualifications (if required): insured employer		
Mr. Ray Linder, Helena	Governor	12/31/1998
Qualifications (if required): employee representative		
Reverend Gayle Sandholm, Helena	Governor	12/31/1998
Qualifications (if required): public member		
Mr. J. David Slovak, Great Falls	Governor	12/31/1998
Qualifications (if required): employee representative		
Mr. Brian Zins, Helena	Governor	12/31/1998
Qualifications (if required): representative of the Montana Medical Association		