MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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NOTICE SECTION

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

In the matter of the proposed adoption of rules pertaining to Deferred Deposit Lending	) NOTICE OF PUBLIC HEARING ON) THE PROPOSED ADOPTION OF NEW) RULES PERTAINING TO DEFERRED) DEPOSIT LENDING

TO: All Concerned Persons

1. On October 6, 1999, at 10:00 a.m., a public hearing will be held in the Upstairs Conference Room, Department of Commerce, 1424 Ninth Avenue, Helena, Montana, to consider the adoption of rules pertaining to Deferred Deposit Lending.

2. The proposed new rules will read as follows:

I DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Commissioner" means the commissioner of banking and financial institutions provided for in 32-1-211, MCA.

(2) "Department" means the department of commerce established in 2-15-1801, MCA, and includes the commissioner of the division of banking and financial institutions and the division of banking and financial institutions.

Auth: Sec. 31-1-702, MCA; IMP, Sec. 31-1-702, 31-1-711, 31-1-713, MCA

REASON: The department sets forth additional definitions needed to fully inform licensees, borrowers, and the public of the statutory and regulatory requirements. The definitions faithfully follow the statutory definitions and statutory intent.

The definition of "department" was amplified to include the division of banking and financial institutions and commissioner of banking and financial institutions since they are within the department. The department delegates direct regulatory responsibility to the division and the commissioner. The delegation appears legislatively contemplated where the Act refers to the department's "annual examination" and "examiners". Sec. 31-1-711, MCA. The commissioner exercises supervision and control over the activities and employees of the Division as part of his duties.

II APPLICATION PROCEDURE REQUIRED TO ENGAGE IN DEPOSIT LENDING (1) All existing or proposed licensees shall file with the department an application to engage in deferred deposit lending.

(2) An application must be in writing on a form prescribed by the department and verified under oath. Application forms are available from the Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 59620-0546.

(3) In addition to any other information that may be required by 31-1-705, MCA, the application shall contain the following information in the application format prescribed by the department:

(a) biographical data concerning the applicant, the applicant's owners, parent company, affiliates, or subsidiaries as specified by the department;

(b) information concerning the applicant's character, experience, qualifications; and

(c) financial information about the applicant.

Auth: Sec. 31-1-702, MCA; IMP, Sec. 31-1-702, 31-1-705, MCA

REASON: Section 31-1-702, MCA, of the act authorizes the department to adopt rules implementing section 31-1-705, MCA, which requires a license by any person offering to engage on the business of making deferred deposit loans. This rule is needed to generally inform applicants and the public of the application requirements.

III UNENCUMBERED ASSETS AS ADDITIONAL SURETY (1) The statutorily required $25,000 in unencumbered assets shall serve as additional surety for the licensee's operations. These assets shall remain unencumbered.

Auth: Sec. 31-1-702, MCA; IMP, Sec. 31-1-702, 31-1-705, MCA

REASON: Section 31-1-705(3)(b), MCA, provides that the department may not issue a license unless the licensee demonstrates that the applicant has at least $25,000 in unencumbered assets for each location. The rule defines the reason that the assets shall remain unencumbered. The rule defines the true nature of the unencumbered assets as to provide additional surety for the licensee's operation.

IV OWNERSHIP CHANGE IN THE DEFERRED DEPOSIT LENDER (1) In the event there is a change of ownership in a licensee, the owner(s) shall file with the department an application for a new license. For purposes of this rule, a change in ownership includes circumstances when 25% or more of the ownership is transferred to a new owner.

Auth: Sec. 31-1-702, MCA; IMP, Sec. 31-1-702, 31-1-705, MCA.

REASON: Since ownership in the business is transferable, this rule assures that any new owners are identified to the department and that the department knows the ownership structure of the licensee. The department would require new owners to meet the regulatory requirements set forth in law.

V EXAMINATION OF DEFERRED DEPOSIT LENDERS (1) The department shall annually conduct an examination of each deferred deposit loan licensee's lending operations to ensure compliance with both statute and administrative rule.

(2) The examination shall consist of a comprehensive review of the records, operations and affairs of the licensee. The review shall include inquiry into:

(a) accounting and financial records;

(b) records of the borrower's files including:

(i) evidence of required disclosures;

(ii) use of a department approved loan agreement; and

(iii) assurance of continued capital adequacy and bonding.

Auth: Sec. 31-1-702, MCA; IMP, Sec. 31-1-701, 31-1-711, MCA

REASON: Section 31-1-702, MCA, of the act authorizes the department to adopt rules pursuant to section 31-1-711, MCA, regarding annual examination. The rule sets forth the information that will be reviewed by the department examiner during an examination of the licensee.

VI PROCEDURAL RULES FOR HEARINGS AND DISCOVERY

(1) In the case of hearings concerning the issuance, suspension, revocation, or other enforcement actions pertaining to a licensee:

(a) hearings and related discovery shall be done under the Montana Administrative Procedure Act implementing the Revised Attorney General Model Rules effective June 4, 1999.

(2) The department of commerce, division of banking and financial institutions, adopts and incorporates by reference the Attorney General's Model Rules effective June 4, 1999 as found in ARM 1.3.101 through 1.3.233, along with the accompanying forms. A copy of the attorney general rules may be obtained from the Division of Banking and Financial Institutions at 846 Front Street, P.O. Box 200546, Helena, MT 59620-0546.

Auth: Sec. 31-1-702; IMP, Sec. 31-1-702, 31-1-713, MCA

REASON: Section 31-1-702, MCA, of the act authorizes the department to adopt rules pursuant to section 31-1-713, MCA, which requires the department to establish a hearing and compliant process for any member of the public to file a complaint against a licensee or an unlicensed person. The department adopts the attorney general model rules that sets forth a hearing procedure to be afforded to the public and licensee.

3. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this action and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., on September 24, 1999, to advise us of the nature of the accommodation that you need. Please contact Chris Leitheiser, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 444-2091;

Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-4186.

4. Concerned 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 Chris Leitheiser, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546, or by facsimile, number (406) 444-4186, to be received no later than 5:00 p.m., October 8, 1999.

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

6. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Division. 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 that the person wishes to receive notices regarding this Division. Such written request may be mailed or delivered to the Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546, faxed to the office at (406) 444-4186 or may be made by completing a request form at any rules hearing held by the Division of Banking and Financial Institutions.

7. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

DIVISION OF BANKING AND
FINANCIAL INSTITUTIONS

BY: Annie M Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 30, 1999.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.56.1001 pertaining to underground storage tanks fee schedule	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On October 25, 1999, the Department proposes to amend ARM 17.56.1001.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5 p.m., on September 27, 1999, to advise us of the nature of the accommodation you need. Please contact the Department at P.O. Box 200901, Helena, Montana, 59620-0901; phone (406) 444-2544; fax (406) 444-4386.

3. The rule proposed to be amended provides as follows.

17.56.1001 TANK FEE SCHEDULE (1) remains the same.

(2) Owners or operators of the following underground storage tanks shall pay the following annual registration fees in accordance with (1) of this rule before the department will issue a tank certificate under (3) of this rule:

(a) underground storage tanks with a capacity of more than 1,100 gallons, ~~$50.00~~ $70.00 per tank;

(b) through (3) remain the same.

AUTH: 75-11-505, MCA
IMP: 75-11-505, MCA

4. The current registration fee schedule for underground storage tanks was established by rule in 1989 and has remained unchanged for 10 years. At the beginning of the program approximately 20,000 tanks were registered with the Department. Currently, less than 4,000 tanks are registered bringing in revenue of approximately $200,000 per year. Although underground storage tank staff has been reduced over the years as the number of tanks regulated has decreased, a minimum staff is necessary to carry out program functions mandated by law. Without an increase in revenue the program will be underfunded during the next biennium.

Recognizing that an increase in registration fees would be necessary to implement these changes and to fulfill program responsibilities, the Department proposed to the Legislature that it allow an increase in tank fees of $50 per tank for larger tanks and $20 per tank increase for smaller tanks. After debate, the Legislature raised only the fee cap for

larger tanks to $70 per tank. See Chapter 506, Laws of 1999 (HB 158). The Legislature reasoned that the larger tanks are primarily held by commercial enterprises that could better afford the increase than could small farmers, schools and individuals who own the smaller tanks.

The Department is proposing to raise the registration fee for tanks with a capacity of greater than 1,100 gallons by the full $20 per year based on its estimation that the increase would bring in projected revenue of approximately $74,800 per year because this amount is necessary to fund the program. Even with this increased fee revenue and cuts in staffing amounting to an anticipated $100,000 per year savings, the program will only be adequately funded through fiscal year 2002.

The 56th Legislature also mandated several changes to the underground storage tank program through Chapter 506, Laws of 1999, including development of a new compliance inspection program and authority to clean up abandoned underground storage tank sites throughout the state. However, the Legislature did not provide any additional funding for either program. It is anticipated that up to 700 underground storage tanks will not be upgraded or properly closed this year. Some of those tanks will pose such a significant threat to the environment that the Department will be required to expend funds to remove these tanks before harm to public health or the environment occurs. Without the increase in registration fees, funds would not be available for this purpose.

5. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to the Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620-0901, no later than October 7, 1999. To be guaranteed consideration, the comments must be postmarked on or before that date. Written data, views or arguments may also be submitted electronically via email addressed to Debbie G. Allen, Paralegal, at "dallen@state.mt.us", no later than 5 p.m. October 7, 1999.

6. If persons who are directly affected by the proposed amendment wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901. A written request for hearing must be postmarked no later than October 7, 1999. A written request for hearing may also be submitted electronically via email addressed to Debbie G. Allen, Paralegal, at "dallen@state.mt.us", no later than 5 p.m. October 7, 1999.

7. If the Department receives requests for a public hearing on the proposed action(s) from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule

review 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 75 persons based on the 748 owners of currently in-use underground storage tanks with a capacity greater than 1,100 gallons in Montana.

DEPARTMENT OF ENVIRONMENTAL QUALITY

by: *Curt Chisholm*
CURT CHISHOLM, Deputy Director

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State August 30, 1999.

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

In the matter of the proposed amendment of ARM 24.11.442 and 24.11.445, related to unemployment insurance benefit claims	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 24.11.442 AND 24.11.445

TO: ALL CONCERNED PERSONS

1. On October 1, 1999, at 11:00 a.m., a public hearing will be held in the first floor conference room (Room 104) of the Walt Sullivan Building (Department of Labor building), 1327 Lockey, Helena, Montana, to consider the proposed amendment of ARM 24.11.442 and 24.11.445, related to unemployment insurance benefit claims.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., September 27, 1999, to advise us of the nature of the accommodation that you need. Please contact Jon Moe, Unemployment Insurance Division, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624-1728; telephone (406) 444-3783; TTY (406) 444-0532; fax (406) 444-2699. An alternative accessible format of this Notice of Public Hearing for any person needing it to participate in this rule-making action is available upon request.

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

24.11.442 INITIAL MONETARY DETERMINATION--WAGES--REVISIONS

(1) After filing ~~a~~ an initial claim, a claimant will receive an initial monetary determination stating whether the claimant has sufficient wages in the claimant's base period to qualify for benefits.

(a) Base period wages used as the basis for a monetary determination which establishes a benefit year in any state, including Montana, may not be:

(i) used by this state as the basis for another monetary determination; or

(ii) transferred by this state to another state for the purpose of combining wages and employment as provided by 39-51-504, MCA.

(b) For the purposes of this rule, base period wages are deemed to be used as the basis for a monetary determination if:

(i) the base period wages are part of the calculation that establishes the potential amount of benefits the claimant may receive in the benefit year and are of an amount sufficient to qualify the claimant for benefits under 39-51-2105, MCA; and

(ii) the claim has not been canceled as provided in ARM 24.11.441.

(2) through (7) Remain the same.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-504, 39-51-2105, and 39-51-2201 through 39-51-2204, MCA

24.11.445 INACTIVE CLAIMS--REACTIVATING A CLAIM

(1) ~~If a claimant fails to file a continued claim two consecutive weeks in the benefit year, the claim becomes inactive.~~ A claim for benefits becomes inactive if, for any two consecutive weeks within the benefit year, any of the following occur in any combination:

(a) the claimant does not file a continued claim; or

(b) the claimant does file a continued claim, but:

(i) indicates that the claimant does not wish to claim benefits; or

(ii) reports hours of work equal to or greater than 40; or

(iii) reports earnings equal to or greater than twice the claimant's weekly benefit amount.

(2) ~~A claimant may reactivate a claim by contacting the local office.~~ To reactivate an inactive claim, the claimant must call the appropriate telephone center during the telephone center's published business hours and request that the claim be reactivated. A reactivated claim is effective on the first day of the calendar week in which the claimant reactivates the claim. A claimant may request that the department backdate the claim to an earlier effective date. If the department finds that the claimant had good cause for the delay in reactivating the claim, the claim will be backdated.

(3) ~~A~~ When calling to reactivate a claim, a claimant must provide information on any separation from employment as provided in ARM 24.11.451.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-2103, 39-51-2104 and 39-51-2201, MCA

REASON: There is reasonable necessity to amend ARM 24.11.442 as proposed in order to maintain conformity with federal law, so that Montana employers can continue to take credit for their Montana unemployment insurance taxes as against federal FUTA taxes. The U.S. Department of Labor recently advised the Department that it became aware of a decision by a state appeals referee that permitted the second use of base year wages on the basis that because there was no administrative rule prohibiting subsequent uses, it was permissible. The U.S. Department of Labor has notified the Department that the decision appears to be contrary to federal law provisions that determine whether a state (such as Montana) is operating its unemployment insurance program in a manner consistent with federal law. The amendment of the rule is reasonably necessary to avoid the loss of the federal tax credit. The Unemployment Insurance Division expects that the proposed amendment will not change the way claims are processed or the manner in which benefit amounts are calculated.

There is reasonable necessity to amend ARM 24.11.445 to reflect the fact that unemployment insurance claims are all handled via the two telephone claims centers and to clarify how a claim is reactivated. With the introduction of the telephone claims system, local job service offices can no longer reactivate an unemployment insurance claim. The Department has recently become aware that the existing language of the rule may be causing confusion among claimants and others involved in the unemployment insurance system.

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

Jon Moe, Bureau Chief
Benefits Bureau
Unemployment Insurance Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

so that they are received by not later than 5:00 p.m., October 8, 1999.

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

6. The Department is not required to comply with the provisions of 2-4-302, MCA, regarding notification of the bill sponsor about the proposed action regarding these rules.

7. The Department proposes to make the amendment effective on November 7, 1999. The Department reserves the right to adopt only a portion of the proposed changes, or to adopt some or all of the proposed changes at a later time.

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

/s/ KEVIN BRAUN
Kevin Braun,
Rule Reviewer

/s/ PATRICIA HAFFEY
Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: August 30, 1999.

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

In the matter of the proposed adoption of 11 new rules and the proposed repeal of 11 existing rules, related to the workers' compensation administrative assessment for the state fiscal years 1992 through 1999	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF 11 NEW RULES AND THE PROPOSED REPEAL OF 11 EXISTING RULES

TO: ALL CONCERNED PERSONS

1. On October 1, 1999, at 1:30 p.m., a public hearing will be held in the first floor conference room, Room No. 104 of the Walt Sullivan Building (Dept. of Labor building), 1327 Lockey, Helena, Montana, to consider the adoption of 11 new rules and the repeal of 11 existing rules related to the workers' compensation administrative assessment.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., September 27, 1999, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TTD (406) 444-5549; fax (406) 444-4140. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Ms. Wilson.

3. The Department of Labor and Industry proposes to adopt new rules as follows:

NEW RULE I DEFINITIONS For the purpose of this subchapter, the following definitions apply, unless the context of the rule clearly indicates otherwise:

(1) "Allocation" means the manner in which direct and indirect costs are distributed to an individual plan.

(2) "Administrative assessment" means the workers' compensation administrative assessment provided for by 39-71-201, MCA.

(3) "Associated entity" means a governmental body, other than the department, which has statutory duties related to workers' compensation and occupational disease matters, occupational safety acts, and from July 1, 1995 through April 24, 1997 boiler inspections, and which is funded by the administrative assessment. The workers' compensation court is an example of an "associated entity". The term does not include the state fund or the self-insurers guaranty fund, or any other entity not funded in whole or in part by the administrative

assessment.

(4) "Cost object" means any activity for which a separate measurement of costs is desired for distribution to the plans.

(5) "Department" means the department of labor and industry.

(6) "Direct costs identifiable to a plan" means those costs that can be identified specifically with a particular program and also identified with an individual plan without further allocation.

(7) "Direct costs identifiable to a program" means those costs that can be identified specifically with a particular program, and which are allocated to the plans.

(8) "Indirect costs" means those costs incurred for a common or joint purpose benefiting more than one program, and which are not readily assignable to the program specifically benefited without effort disproportionate to the results achieved.

(9) "Plans" or "the plans" means plan no. 1, plan no. 2, and plan no. 3, under which workers' compensation insurance is to be provided in accordance with Title 39, chapter 71, MCA. It is distinguished from the phrase "individual plan", which means a particular plan, such as plan no. 1, plan no. 2, or plan no. 3.

(10) "Program" means one or more regulatory, adjudicatory, informational, or service functions performed by the department or an associated entity in carrying out statutory directives related to workers' compensation and occupational safety matters. The term does not include the uninsured employers' fund, established by 39-71-502, MCA, the subsequent injury fund, as defined in 39-71-901, MCA, or any other function which is not funded by the administrative assessment.

(11) "Year" means the state government fiscal year, beginning July 1 and ending the following June 30 of the year indicated.

AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

NEW RULE II ADMINISTRATIVE ASSESSMENT METHODOLOGY IN GENERAL (1) The administrative assessment is calculated annually, and is based on the current year's budget for all programs funded by the administrative assessment. The budgeted expenditures are allocated to each individual plan on the same basis as actual expenditures were allocated to that plan in the previous year.

(2) The previous year's administrative assessment income, on a plan-by-plan basis, is compared to the total actual plan-by-plan expenditures of the previous year. Any difference between the income from an individual plan's administrative assessment and the actual expenditures for the plan in the previous year is carried forward as an adjustment to the administrative assessment in the current year.

(3) When an allocation is based on the number of items (such as claims filed, orders sought, files reviewed, disputes heard), the allocation is made in the ratio of number of those

items generated by each plan to the total number of items generated by all plans. As an example, if the mediation program heard 100 disputes involving plan no. 1 claims, 150 disputes involving plan no. 2 claims, and 250 disputes involving plan no. 3 claims in a year, the allocation would be 20% to plan no. 1, 30% to plan no. 2, and 50% to plan no. 3.

(4) Other income from the previous year is credited to the program from which the income was generated. An example of "other income" is revenue generated by the sale of the workers' compensation "blue book" compilation of statutes and rules.

(5) Following calculation of the administrative assessment by plan, the department individually bills each plan member that is liable for a share of the administrative assessment. The bill is the greater of:

(a) the proportionate share of the administrative assessment that is attributable to the individual plan member, based on the plan member's participation in a particular plan during the year; or

(b) the statutory minimum for an individual plan member.

(6) Plan no. 1 members' share shall be levied against the preceding calendar year's gross annual payroll by determining the total gross annual payroll for all plan no. 1 members, determining each plan member's prorata share thereof, and then using that proportion to determine the amount due from each plan no. 1 member. Plan no. 2 members' share shall be levied against the preceding calendar year gross annual direct premiums collected in Montana on workers' compensation policies of plan no. 2 insurers by determining the total gross annual premium for all plan no. 2 insurers, determining each insurer's prorata share thereof, and then using that proportion to determine the amount due from each plan no. 2 member. Plan no. 3 is one member. Therefore the amount calculated is the amount due from plan no. 3.

(7) Payment of the bill for the administrative assessment is due 30 days from the date of the bill.

AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

NEW RULE III RECALCULATION OF ADMINISTRATIVE ASSESSMENTS MADE IN FISCAL YEARS 1992 - 1995 (1) In response to the decision of the workers' compensation court in WCC No. 9309-6893, Montana Schools Group v. Department of Labor and Industry (decided June 16, 1995), the department will recalculate the administrative assessment for the years 1992 through 1995, inclusive, using the general methodology contained in [NEW RULE II] and the year-specific methodologies contained in [NEW RULES IV through VII].

(2) In the event a plan's administrative assessment is changed as a result of the recalculation for years 1992 through 1995, only those plan members that paid a given year's administrative assessment under protest and exercised the appropriate administrative remedies will have their bill for that year recalculated.

(3) An individual plan member that has its assessment

recalculated will be billed for any net increase in the assessment due for years 1992 through 1995. If there is a net decrease in the assessment due, the plan member may choose to apply the net decrease as a credit toward a future administrative assessment or ask for a refund. A refund will be paid as soon as practicable, from whatever funds the department can properly use to pay such a refund.
AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

NEW RULE IV ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1992 (1) This rule provides for a methodology of allocating the 1991 actual expenditures and 1992 budgeted direct costs identifiable to a plan, direct costs identifiable to a program, and the allocation of indirect costs to programs, in order to calculate the administrative assessment for 1992.

(2) The department did not collect data on the number of hours worked on matters on a plan-by-plan basis in 1991 for any of the programs or cost objects identified in (4), (5), (6), (7), or (8), except for (7)(c) and (7)(e). Accordingly, the department does not have any basis other than the indicators identified in this rule upon which to determine the cost allocations.

(3) During 1992, there were no direct costs identifiable to a plan.

(4) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to legal programs:

(a) the number of petitions filed with the workers' compensation court, for the workers' compensation court program; and

(b) the number of workers' compensation and occupational disease case hearings held by the department, for the hearings program.

(5) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to insurance compliance programs:

(a) the number of orders processed and files reviewed, for the claims management program;

(b) the number of reports reviewed, for the files management program;

(c) the number of reports received, for the accident cataloging program;

(d) the number of panels and reviews held, for the department's rehabilitation program;

(e) the number of rehabilitation panels convened, for the department's rehabilitation panel program;

(f) the number of rehabilitation panels convened, for the department of social and rehabilitation services' rehabilitation panel program;

(g) the number of orders processed and files reviewed for file management purposes, for the medical regulation program;

(h) the number of plan no. 2 private insurers and the number of plan no. 1 self-insured entities, for the policy

compliance program;

(i) the number of cases processed, for the mediation program; and

(j) the total amount of compensation paid during 1991 by each individual plan, for administration of the subsequent injury fund program.

(6) The department uses the weighted average of the expenditures in (5), except for (5)(f), expressed as the percentage an individual plan has of the total expenditures for insurance compliance functions, for allocating the indirect costs of providing administration and clerical support for insurance compliance programs.

(7) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to safety programs:

(a) the number of employers enrolled in 1991, for the occupational safety statistics program;

(b) the number of claims processed (except for plan no. 3, using data generated over a seven month period only), for the supplemental data system program;

(c) the number of hours worked (tracked by plan), for the loss control program;

(d) the number of mines inspected, for the mining inspection program; and

(e) the number of hours worked (tracked by plan), for the boiler and crane inspection program.

(8) The department uses the weighted average of the expenditures in (7), expressed as the percentage an individual plan has of the total expenditures for safety functions, for allocating the indirect costs of providing administration for safety programs.

AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

NEW RULE V ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1993 (1) This rule provides for a methodology of allocating the 1992 actual expenditures and 1993 budgeted direct costs identifiable to a plan, direct costs identifiable to a program, and the allocation of indirect costs to programs in order to calculate the administrative assessment for 1993.

(2) The department did not collect data on the number of hours worked on matters on a plan-by-plan basis in 1992 for any of the programs or cost objects identified in (4), (5), (6), (7), or (8), except for (7)(c) and (7)(e). Accordingly, the department does not have any basis other than the indicators upon which to determine the cost allocations.

(3) During 1993, there were no direct costs identifiable to a plan.

(4) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to legal programs:

(a) the number of petitions filed with the workers' compensation court, for the workers' compensation court program; and

(b) the number of workers' compensation and occupational disease case hearings held by the department, for the hearings program.

(5) The department uses the following indicators for allocating to each individual plan indirect costs and direct costs identifiable to insurance compliance programs:

(a) the number of orders processed and files reviewed, for the claims management program;

(b) the number of reports reviewed, for the files management program;

(c) the number of new claim files created, for the accident cataloging program;

(d) the number of rehabilitation panels convened, for the department's rehabilitation panel program;

(e) the number of rehabilitation panels convened, for the department of social and rehabilitation services' rehabilitation panel program;

(f) the same allocation as provided by (5), for the special projects program;

(g) the number of orders processed and files reviewed for file management purposes, for the medical regulation program;

(h) the number of plan no. 2 private insurers and the number of plan no. 1 self-insured entities, for the policy compliance program;

(i) the number of cases processed, for the mediation program;

(j) the total amount of compensation paid in 1991, for administration of the subsequent injury fund program; and

(k) the number of active employers in 1992, for administration of the independent contractor program.

(6) The department uses the weighted average of the expenditures in (5), except for (5)(e) and (5)(f), expressed as the percentage an individual plan has of the total expenditures for insurance compliance functions, for allocating the indirect costs of providing administration and clerical support to the insurance compliance programs.

(7) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable for safety programs:

(a) the number of employers enrolled in 1992, for the occupational safety statistics program;

(b) the number of claims, for the supplemental data system program;

(c) the number of hours worked (tracked by plan), for the loss control program;

(d) the number of mines inspected, for the mining inspection program; and

(e) the number of hours worked (tracked by plan) for the boiler and crane inspection program.

(8) The department uses the weighted average of the expenditures in (7), expressed as the percentage an individual plan has of the total expenditures for safety functions, for allocating the indirect costs of providing administration for safety programs.

AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

NEW RULE VI ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1994 (1) This rule provides for a methodology of allocating the 1993 actual expenditures and 1994 budgeted direct costs identifiable to a plan, direct costs identifiable to a program, and the allocation of indirect costs to programs, in order to calculate the administrative assessment for 1994.

(2) The department did not collect data on the number of hours worked on matters on a plan-by-plan basis in 1993 for any of the programs or cost objects identified in (4), (5), (6), (7) or (8), except (7)(b) and (7)(d). Accordingly, the department does not have any basis other than the indicators upon which to determine the cost allocations.

(3) During 1994, the following programs had direct costs identifiable to a plan, as well as indirect costs associated with that program:

(a) the plan no. 1 policy compliance program, identifiable to plan no. 1; and

(b) the plan no. 2 policy compliance program, identifiable to plan no. 2.

(4) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to legal programs:

(a) the number of petitions filed with the workers' compensation court, for the workers' compensation court program; and

(b) the number of workers' compensation and occupational disease case hearings held by the department, for the hearings program.

(5) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to insurance compliance programs:

(a) the same allocation as in (6)(a) for actual expenditures, and in (6)(b) for budgeted expenditures, for the special projects program;

(b) the number of orders processed and files reviewed, for the claims management program;

(c) the number of reports reviewed, for the files management program;

(d) the number of new claim files created, for the data analysis program;

(e) the number of rehabilitation panels convened, for the department's rehabilitation panel program;

(f) the number of rehabilitation panels convened, for the department of social and rehabilitation services' rehabilitation panel program;

(g) the number of orders processed and files reviewed for file management purposes, for the medical regulation program;

(h) the number of cases processed, for the mediation program;

(i) the total amount of compensation paid in 1992, for administration of the subsequent injury fund program;

(j) the number of active employers insured in 1993, for administration of the independent contractor exemption program;

(k) the amount of premium written during calendar year 1992 for plan no. 2 and the amount of premium written during 1993 for plan no. 3, by plan, for the trade group determination program;

(l) the number of active employers insured during 1993, for the underinsured employers' fund program; and

(m) the same allocation as in (6)(a) for actual expenditures and in (6)(b) for budgeted expenditures, for the management information system program.

(6) In 1994, because of internal reorganization of the department, the department made a distinction between 1993 actual expenditures and 1994 budgeted expenditures for administration and clerical support for the insurance compliance programs.

(a) The department uses the weighted average of the expenditures in (3)(a), (3)(b), and (5)(b) through (5)(i), except for (5)(f), expressed as the percentage an individual plan has of the total actual expenditures, for allocating the indirect costs of providing administration and clerical support for insurance compliance programs.

(b) The department uses the weighted average of the expenditures in (3)(a), (3)(b), (5)(b) through (5)(l) and (7)(b) through (7)(d), except for (5)(f), expressed as the percentage an individual plan had of the total budgeted expenditures for the administration and clerical support for the insurance compliance programs.

(7) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to safety programs:

(a) the number of employers enrolled in 1993, for the occupational safety statistics program;

(b) the number of hours worked (tracked by plan), for the loss control and on-site consultation program;

(c) the number of mines inspected, for the mining inspection program;

(d) the number of hours worked (tracked by plan), for the boiler and crane inspection program;

(e) the same allocation as in (6)(a) for actual expenditures and in (6)(b) for budgeted expenditures, for the Safety Culture Act implementation program; and

(f) the number of new claim files created, for the supplemental data system program.

(8) The department uses the weighted average of the expenditures in (7)(a) through (7)(d) and (7)(f), expressed as the percentage an individual plan has of the total actual expenditures, for administration for safety programs.

AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

NEW RULE VII ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1995 (1) This rule provides for a methodology of allocating the 1994 actual expenditures and 1995 budgeted direct

costs identifiable to a plan, direct costs identifiable to a program, and the allocation of indirect costs to programs, in order to calculate the administrative assessment for 1995.

(2) The department did not collect data on the number of hours worked on matters on a plan-by-plan basis in 1994 for any of the programs or cost objects identified in (4), (5), (6), or (7), except (7)(b) through (7)(d). Accordingly, the department does not have any basis other than the indicators upon which to determine the cost allocations.

(3) The following programs had direct costs identifiable to a plan, as well as indirect costs associated with that program:

(a) the plan no. 1 policy compliance program, identifiable to plan no. 1; and

(b) the plan no. 2 policy compliance program, identifiable to plan no. 2.

(4) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to legal programs:

(a) the number of petitions filed with the workers' compensation court, for the workers' compensation court program; and

(b) the number of workers' compensation and occupational disease case hearings held by the department, for the hearings program.

(5) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to insurance compliance programs:

(a) the same allocation as in (6), for the special projects program;

(b) the number of orders processed and files reviewed, for the claims management program;

(c) the number of files reviewed, for the files management program;

(d) the number of new claim files created, for the data analysis program;

(e) the number of rehabilitation panels convened, for the department's rehabilitation panel program;

(f) the number of rehabilitation panels convened, for the department of public health and human services' rehabilitation panel program;

(g) the number of orders processed and files reviewed for file management purposes, for the medical regulation program;

(h) the number of cases processed, for the mediation program;

(i) the number of active employers insured in 1994, for the independent contractor exemption program;

(j) the amount of premium written during calendar year 1993 for plan no. 2 and the amount of premium written during 1994 for plan no. 3, for the trade group determination program;

(k) the number of active employers insured by plan in 1994, for the administration of the underinsured employers' fund program; and

(l) the same allocation as in (6), for the management

information systems program.

(6) The department uses a weighted average of certain specified expenditures, expressed as the percentage an individual plan has of the total expenditures for all of those functions, for administration and clerical support of all of the programs funded by the administrative assessment. The following expenditures are used in creating the weighted average:

(a) (3)(a) and (3)(b);

(b) (5)(b) through (5)(k), except for (5)(f); and

(c) (7)(b) through (7)(d).

(7) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to safety programs:

(a) the number of employers enrolled in 1994, for the occupational safety statistics program;

(b) the number of field hours worked, for the occupational safety and on-site safety consultation program;

(c) the number of field hours worked, for the mining inspection program;

(d) the number of field hours worked, for the boiler and crane inspection program; and

(e) the same allocation as in (6), for the Safety Culture Act implementation program.

AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

NEW RULE VIII ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1996 (1) This rule provides for a methodology of allocating the 1995 actual expenditures and 1996 budgeted direct costs identifiable to a plan, direct costs identifiable to a program, and the allocation of indirect costs to programs, in order to calculate the administrative assessment for 1996.

(2) The department did not collect data on the number of hours worked on matters on a plan-by-plan basis in 1995 for any of the programs or cost objects identified in (4), (5), (6), (7), (8)(a), or (8)(e). Accordingly, the department does not have any basis other than the indicators upon which to determine the cost allocations.

(3) The following programs had direct costs identifiable to a plan, as well as indirect costs associated with that program:

(a) the plan no. 1 policy compliance program, identifiable to plan no. 1; and

(b) the plan no. 2 policy compliance program, identifiable to plan no. 2.

(4) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to legal programs:

(a) the number of petitions filed with the workers' compensation court, for the workers' compensation court program; and

(b) the number of workers' compensation and occupational disease case hearings held by the department, for the hearings program.

(5) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to claims assistance programs:

(a) the same allocation as in (6), for the special projects program;

(b) the number of orders processed and files reviewed, for the claims management program;

(c) the number of new claim files created, for the data analysis program;

(d) the number of rehabilitation panels convened, for the department's rehabilitation panel program;

(e) the number of rehabilitation panels convened, for the department of public health and human services' rehabilitation panel program;

(f) the number of cases processed, for the mediation program;

(g) the same allocation as in (6), for the management information systems program; and

(h) the weighted average of the expenditures in (5)(b) through (5)(d), (5)(f) and (5)(g), expressed as the percentage an individual plan has of the total expenditures, for administration of the claims assistance program.

(6) The department uses a weighted average of certain specified expenditures, expressed as the percentage an individual plan has of the total expenditures for all of those functions, for administration and clerical support of all of the programs funded by the administrative assessment. The following expenditures are used in creating the weighted average:

(a) (3)(a) and (3)(b);

(b) (5)(b) through (5)(d) and (5)(f);

(c) (7)(a) through (7)(d); and

(d) (8)(b) through (8)(d), except (8)(d) only for 1995 actual expenditures, not 1996 budgeted expenditures, because the program was transferred to the department of commerce.

(7) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to regulations bureau programs:

(a) the number of orders processed and files reviewed for file management purposes, for the medical regulation program;

(b) the number of active employers in 1995, for the independent contractor exemption program;

(c) the amount of premium written during calendar year 1994 for plan no. 2 and the amount of premium written during 1995 for plan no. 3, for the trade group determination program;

(d) the number of active employers in 1995, for administration of the underinsured employers' fund program; and

(e) the weighted average of the expenditures in (3)(a), (3)(b), and (7)(a) through (7)(d), expressed as the percentage an individual plan has of the total expenditures, for administration of the regulations bureau programs.

(8) The department uses the following indicators as cost objects for allocating to each plan indirect costs and direct costs identifiable to safety programs:

(a) the number of employers enrolled in 1995, for the

occupational safety statistics program;

(b) the number of field hours worked, for the mandatory inspection and on-site consultation program;

(c) the number of field hours worked, for the mining inspection program;

(d) the number of hours worked, for the boiler inspection program; and

(e) the same allocation as in (6), for the Safety Culture Act implementation program.

AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

NEW RULE IX ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1997 (1) This rule provides for a methodology of allocating the 1996 actual expenditures and 1997 budgeted direct costs identifiable to a plan, direct costs identifiable to a program, and the allocation of indirect costs to programs, in order to calculate the administrative assessment for 1997.

(2) The department did not collect data on the number of hours worked on matters on a plan-by-plan basis in 1996 for any of the programs or cost objects identified in (4), (5), (6), (7)(a), or (7)(e). Accordingly, the department does not have any basis other than the indicators upon which to determine the cost allocations.

(3) The following programs had direct costs identifiable to a plan, as well as indirect costs associated with that program:

(a) the plan no. 1 policy compliance program, identifiable to plan no. 1; and

(b) the plan no. 2 policy compliance program, identifiable to plan no. 2.

(4) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to legal programs:

(a) the number of petitions filed with the workers' compensation court, for the workers' compensation court program; and

(b) the number of workers' compensation and occupational disease case hearings held by the department, for the hearings program.

(5) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to claims assistance programs:

(a) the same allocation as in (8), for the special projects program;

(b) the number of orders, 14 day notices, and claim denials reviewed, plus the number of occupational disease panels convened, for the claims management program;

(c) the number of first reports of injury processed, for the data analysis program;

(d) the number of rehabilitation panels convened, for the department's rehabilitation panel program;

(e) the number of cases processed, for the mediation program;

(f) the same allocation as in (8), for the management information systems program; and

(g) the weighted average of the indicators in (5)(b) through (5)(f), expressed as the percentage an individual plan has of the total expenditures, for administration of the claims assistance programs.

(6) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to regulations bureau programs:

(a) the number of orders processed and files reviewed for file management purposes, for the medical regulation program;

(b) the number of active employers in 1996, for the independent contractor exemption program;

(c) the amount of premium written during calendar year 1995 for plan no. 2 and the amount of premium written during 1996 for plan no. 3, for the trade group determination program;

(d) the number of active employers in 1996, for administration of the underinsured employers' fund program; and

(e) the weighted average of the expenditures in (3)(a), (3)(b) and (6)(a) through (6)(d), expressed as the percentage an individual plan has of the total expenditures, for administration of the regulations bureau programs.

(7) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to safety bureau programs:

(a) the number of employers enrolled in 1996, for the occupational safety statistics program;

(b) the number of field hours worked, for the mandatory inspection and on-site consultation program;

(c) the number of field hours worked, for the mining inspection program;

(d) the number of hours worked from July 1, 1996, through April 24, 1997, for the boiler inspection program administered by the department of commerce; and

(e) the same allocation as in (8), for the Safety Culture Act implementation program.

(8) The department uses a weighted average of certain specified expenditures, expressed as the percentage an individual plan has of the total expenditures for all of those functions, for administration and clerical support of all of the programs funded by the administrative assessment. The following expenditures are used in creating the weighted average:

(a) (3)(a) and (3)(b);

(b) (5)(b) through (5)(e);

(c) (6)(a) through (6)(d); and

(d) (7)(b) and (7)(c).

AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

NEW RULE X ASSESSMENT METHODOLOGY FOR FISCAL YEARS 1998 AND 1999 (1) This rule provides for a methodology of allocating the immediately preceding year's actual expenditures and the current year's budgeted direct costs identifiable to a plan, direct costs identifiable to a program, and the allocation

of indirect costs to programs, in order to calculate the administrative assessment for years 1998 and 1999.

(2) The following programs have direct costs identifiable to a plan, as well as indirect costs associated with that program:

(a) the plan no. 1 policy compliance program, identifiable to plan no. 1; and

(b) the plan no. 2 policy compliance program, identifiable to plan no. 2.

(3) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to legal programs:

(a) the number of petitions filed with the workers' compensation court, for the workers' compensation court program; and

(b) the number of workers' compensation and occupational disease case hearings held by the department, for the hearings program.

(4) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to claims assistance programs:

(a) the same allocation as in (7), for the special projects program;

(b) the number of orders, 14 day notices, and claim denials reviewed, plus the number of occupational disease panels convened, for the claims management program;

(c) the number of first reports of injury processed, for the data analysis program;

(d) the number of rehabilitation panels convened, for the department's rehabilitation panel program;

(e) the number of cases processed, for the mediation program;

(f) the same allocation as in (7), for the management information systems program; and

(g) the weighted average of the indicators in (4)(b) through (4)(f), expressed as the percentage an individual plan has of the total expenditures, for administration of the claims assistance programs.

(5) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to regulations bureau programs:

(a) the number of orders processed and files reviewed for file management purposes, for the medical regulation program;

(b) the number of active employers in the previous year, for the independent contractor exemption program; and

(c) the weighted average of the expenditures in (5)(a) and (5)(b), expressed as the percentage an individual plan has of the total expenditures, for administration of the regulations bureau programs.

(6) The department uses the following indicators as cost objects for allocating to each individual plan indirect costs and direct costs identifiable to safety programs:

(a) the number of employers enrolled in the previous year, for the occupational safety statistics program;

(b) the number of field hours worked, for the mandatory inspection and on-site consultation program;

(c) the number of field hours worked, for the mining inspection program; and

(d) the same allocation as in (7), for the Safety Culture Act implementation program.

(7) The department uses a weighted average of certain specified expenditures, expressed as the percentage an individual plan has of the total expenditures for all of those functions, for administration and clerical support of all of the programs funded by the administrative assessment. The following expenditures are used in creating the weighted average:

(a) (2)(a) and (2)(b);

(b) (4)(b) through (4)(e);

(c) (5)(a) and (5)(b); and

(d) (6)(b) and (6)(c).

(8) For 1998, a credit totaling $3.5 million will be applied to offset the insurer's liability for the assessment as follows:

(a) plan no. 1, $490,000;

(b) plan no. 2, $612,500; and

(c) plan no. 3, $2,397,500.

AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

NEW RULE XI ASSESSMENTS OTHER THAN ADMINISTRATIVE ASSESSMENT (1) In addition to the administrative assessment provided by 39-71-201, MCA, the department may levy other assessments on the plans as permitted by law.

(a) As provided by 39-71-902, MCA, for years 1992 through 1997, the department may assess each insurer an amount not to exceed 5% of compensation paid in the preceding fiscal year by each plan no. 1 self-insurer, plan no. 2 private insurer, or plan no. 3, the state fund, for the purpose of funding the subsequent injury fund. The assessment will not be made when there is a surplus above and beyond projected liabilities and administrative expenditures necessary to fund the liabilities and administrative expenditures of the subsequent injury fund based on the most current actuarial study.

(b) As provided by 39-71-1004, MCA, the department may make an assessment of not more than 1% of compensation paid by each plan no. 1 self-insurer, plan no. 2 private insurer, or plan no. 3, the state fund, for the purpose of funding the industrial accident rehabilitation account.

(c) Beginning January 1, 1998, assessments for the subsequent injury fund will be made as provided by 39-71-915, MCA.

(2) The department may combine the billing for any or all of the other assessments described in this rule with the billing for the administrative assessment.

(3) Payment of the bill for the assessments described in (1)(a) and (1)(b) is due 30 days from the date of the bill.

AUTH: 39-71-203, MCA
IMP: 39-71-902 and 39-71-1004, MCA

REASON: There is reasonable necessity to adopt new rules to implement 39-71-201, MCA, as it appeared in law on April 21, 1999, in order to give effect to section 3 of Chap. 377, L. of 1999 (Senate Bill 117). The proposed new rules are reasonably necessary to provide for a comprehensive methodology for assessing workers' compensation insurers the costs of operating the workers' compensation regulatory functions. The rules finalize the status of the 39-71-201, MCA, administrative assessment for state fiscal years 1992 through 1999, which ended on June 30, 1999. The status of the assessments had been the subject of litigation which was settled during the 1999 legislative session. Adoption of the proposed new rules is reasonably necessary to clarify to all insurers (including self-insurers) operating in Montana in fiscal years 1992 through 1999 the methodology by which each insurer's portion of administrative costs are assessed. While the retroactive applicability of section 3 of Chap. 377, L. of 1999, is specifically provided by section 26, Chap. 377, L. of 1999, the proposed new rules are not retroactive, but will be applied prospectively to the calculation of the administrative assessment for those past years.

4. The Department proposes to formally repeal each of the existing rules listed below. The page number following the rule is the page in the Administrative Rules of Montana on which the rule begins. The "AUTH" citation lists the statutory authority to repeal each rule, while the "IMP" citation lists the statute(s) that the rule implemented.

24.29.901 DEFINITIONS
ARM p. 24-2113
AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

24.29.904 ADMINISTRATIVE ASSESSMENT METHODOLOGY IN GENERAL
ARM p. 24-2114
AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

24.29.909 RECALCULATION OF ADMINISTRATIVE ASSESSMENTS MADE IN FISCAL YEARS 1992 - 1995
ARM p. 24-2115
AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

24.29.912 ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1992
ARM p. 24-2116
AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

24.29.913 ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1993
ARM p. 24-2117

AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

24.29.914 ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1994
ARM p. 24-2119
AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

24.29.915 ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1995
ARM p. 24-2121
AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

24.29.916 ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1996
ARM p. 24-2123
AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

24.29.917 ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1997
ARM p. 24-2125
AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

24.29.918 ASSESSMENT METHODOLOGY FOR FISCAL YEARS 1998 AND 1999
ARM p. 24-2127
AUTH: 39-71-203, MCA
IMP: 39-71-201, MCA

24.29.941 ASSESSMENTS OTHER THAN ADMINISTRATIVE ASSESSMENT
ARM p. 24-2129
AUTH: 39-71-203, MCA
IMP: 39-71-902 and 39-71-1004, MCA

REASON: There appears to be reasonable necessity to formally repeal each of the listed rules, based on rulings issued by the Workers' Compensation Court in *Montana Schools Group v. Department of Labor and Industry*, 1998 MTWCC 31 and 1998 MTWCC 48, invalidating the rules. While the Department believes that the adoption of Chap. 377, L. of 1999, has the effect of legislatively overturning the decisions of the Workers' Compensation Court with respect to the propriety of the Department's administrative assessment methodology and rules, the Department believes there is reasonable necessity to formally repeal the existing rules in order to conform with the judgment ordered by the Court in the *Schools Group* case.

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:

Keith Messmer, Bureau Chief
Workers' Compensation Regulations Bureau
Employment Relations Division
Department of Labor and Industry
P.O. Box 8011
Helena, Montana 59604-8011

and must be received by not later than 5:00 p.m., October 7, 1999.

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

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

8. The Department proposes to make the new rules effective as soon as feasible. The Department reserves the right to adopt only portions of the rules, or to adopt some or all of the rules at a later date.

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

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

/s/ PATRICIA HAFFEY
Patricia Haffey, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: August 30, 1999.

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

In the matter of the amendment of ARM 37.70.406, 37.70.407, 37.70.601, 37.70.901 and 37.70.902 pertaining to low income energy assistance program (LIEAP)	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On September 29, 1999, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

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 September 21, 1999, 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; Email dphhslegal@state.mt.us.

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

37.70.406 TABLES OF INCOME STANDARDS (1) The income standards in the table in (2) below are the ~~1998~~ 1999 U.S. government office of management and budget poverty levels for households of different sizes. This table applies to all households, including self-employed households.

(a) Households with annual gross income at or below 125% of the ~~1998~~ 1999 poverty level are financially eligible for low income energy assistance. Households with an annual gross income above 125% of the ~~1998~~ 1999 poverty level are ineligible for low income energy assistance.

(2) Annual income standards for all households:

~~Family Size~~	~~Poverty Guideline~~	~~125 Percent~~	~~150 Percent~~
~~One~~	~~8,050~~	~~10,063~~	~~12,075~~
~~Two~~	10,850	~~13,563~~	~~16,275~~
~~Three~~	~~13,650~~	~~17,063~~	~~20,475~~
~~Four~~	~~16,450~~	~~20,563~~	~~24,675~~
~~Five~~	~~19,250~~	~~24,063~~	~~28,875~~
~~Six~~	~~22,050~~	~~27,563~~	~~33,075~~
~~Additional member add~~	~~2,800~~	~~3,500~~	~~4,200~~

Family Size	Poverty Guideline	125 Percent	150 Percent
One	$ 8,240	$10,300	$12,360
Two	11,060	13,825	16,590
Three	13,880	17,350	20,820
Four	16,700	20,875	25,050
Five	19,520	24,400	29,280
Six	22,340	27,925	33,510
Additional member add	2,820	3,525	4,230

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.407 CALCULATING INCOME (1) through (1)(t) remain the same.

(2) Out-of-pocket dependent care expenses as defined in ARM 37.70.401(9) may be deducted from income only if:

(a) the household's annual gross income is between 125% and 150% of the ~~1998~~ 1999 U.S. government office of management and budget poverty level for the particular household size;

(2)(b) and (2)(c) remain the same.

(3) Medical and dental costs may be deducted from income only if:

(a) the household's annual gross income is between 125% and 150% of the ~~1998~~ 1999 U.S. government office of management and budget poverty level for the particular household size;

(3)(b) through (3)(c)(x) remain the same.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.601 BENEFIT AWARD MATRICES (1) through (2)(a) remain the same.

(b) A household whose gross annual income is above 125% of the ~~1998~~ 1999 poverty level but is eligible for benefits because of dependent care deductions and/or medical and dental deductions provided in ARM 37.70.407(3) and (4) will receive a benefit which is 40% of the maximum benefit.

(2)(c) remains the same.

(d) The following table of base benefit levels takes into account the number of bedrooms in a house, the type of dwelling structure, and the type of fuel used as a primary source of heating:

TABLE OF BENEFIT LEVELS

~~(i) SINGLE FAMILY~~

~~# BEDROOMS~~	~~NATURAL GAS~~	~~ELECTRIC~~	~~PROPANE~~	~~FUEL OIL~~	~~WOOD~~	~~COAL~~
~~ONE~~	~~$318~~	~~$ 471~~	~~$ 492~~	~~$ 375~~	~~$282~~	~~$257~~
~~TWO~~	~~463~~	~~684~~	~~716~~	~~546~~	~~410~~	~~374~~
~~THREE~~	~~630~~	~~933~~	~~975~~	~~744~~	~~558~~	~~510~~
~~FOUR~~	~~867~~	~~1,283~~	~~1,341~~	~~1,023~~	~~768~~	~~701~~

~~(ii) MULTI FAMILY~~

~~# BEDROOMS~~	~~NATURAL GAS~~	~~ELECTRIC~~	~~PROPANE~~	~~FUEL OIL~~	~~WOOD~~	~~COAL~~
~~ONE~~	~~$269~~	~~$ 398~~	~~$ 416~~	~~$ 399~~	~~$238~~	~~$217~~
~~TWO~~	~~405~~	~~600~~	~~627~~	~~601~~	~~358~~	~~317~~
~~THREE~~	~~595~~	~~880~~	~~920~~	~~882~~	~~526~~	~~480~~
~~FOUR~~	~~695~~	~~1,028~~	~~1,075~~	~~1,030~~	~~614~~	~~561~~

~~(iii) MOBILE HOME~~

~~# BEDROOMS~~	~~NATURAL GAS~~	~~ELECTRIC~~	~~PROPANE~~	~~FUEL OIL~~	~~WOOD~~	~~COAL~~
~~ONE~~	~~$268~~	~~$397~~	~~$415~~	~~$332~~	~~$237~~	~~$217~~
~~TWO~~	~~392~~	~~580~~	~~606~~	~~485~~	~~347~~	~~317~~
~~THREE~~	~~520~~	~~769~~	~~804~~	~~643~~	~~460~~	~~420~~
~~FOUR~~	~~580~~	~~858~~	~~897~~	~~717~~	~~514~~	~~469~~

(i) SINGLE FAMILY

# BEDROOMS	NATURAL GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	$321	$ 489	$ 420	$344	$287	$262
TWO	467	711	610	500	418	381
THREE	637	969	831	681	569	520
FOUR	876	1,334	1,144	937	783	715

(ii) MULTI-FAMILY

# BEDROOMS	NATURAL GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	$272	$ 414	$355	$365	$243	$222
TWO	409	623	534	550	365	334
THREE	601	915	784	808	536	490
FOUR	702	1,069	916	944	627	572

(iii) MOBILE HOME

# BEDROOMS	NATURAL GAS	ELECTRIC	PROPANE	FUEL OIL	WOOD	COAL
ONE	$271	$412	$354	$304	$242	$221
TWO	396	603	517	444	354	323
THREE	525	799	685	589	469	429
FOUR	586	892	765	657	524	478

(2)(e) remains the same.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.901 EMERGENCY ASSISTANCE (1) Emergency assistance under the low income energy assistance program may be provided to an eligible household in the following circumstances only when such circumstances present an imminent threat to the health and safety of the household:

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

(d) any other home ~~heating related~~ energy-related conditions caused by severe weather conditions, fuel shortages and/or acts of God.

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

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

37.70.902 SUPPLEMENTAL ASSISTANCE (1) To the extent funds are available, one-time supplemental assistance to pay an outstanding energy bill in an amount up to $150 is available to households which have received LIEAP benefits pursuant to ARM 37.70.601 for the current heating season, subject to the following conditions: ~~for the amount of the outstanding heat bill for costs incurred between October 1 and April 30 of the current heating season, not to exceed $150.00 is available to LIEAP households who have paid at least 5% of their income, as defined in ARM 37.70.407, toward their home heating costs for the 12 months previous to the date supplemental assistance is requested by the LIEAP client or fuel vendor. Requests for supplemental assistance and documentation of the amount of an outstanding fuel bill must be submitted by June 15.~~

~~(a) Request for supplemental assistance is voluntary. All documentation necessary to process the request for supplemental assistance, including proof of client payment and amount of the outstanding heat bill, is the responsibility of the fuel vendor and/or LIEAP client.~~

(a) Request for supplemental assistance is voluntary;

(b) Request for supplemental assistance and all documentation necessary to process the request must be submitted by June 15;

(c) It is the responsibility of the fuel vendor and/or the LIEAP household to provide all documentation necessary to process the request;

(d) The household must have paid at least 5% of its LIEAP calculated income, as defined in ARM 37.70.407, toward its primary and/or secondary home energy costs within the 12 consecutive months immediately preceding the date of the request; and

(e) The outstanding bill must be for home energy costs incurred between October 1 and April 30 of the current heating season.

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

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-2-201, MCA

3. The Low Income Energy Assistance Program (LIEAP) is a federally funded program to help low income households pay their home heating costs. Emergency assistance, such as funds for the repair or replacement of a furnace or other part of a home heating system, is also available under certain circumstances.

Income requirements to be eligible for LIEAP benefits are based on the household's income in relation to the federal poverty levels published by the U.S. Office of Management and Budget (OMB). ARM 37.70.406 currently provides that households with a gross annual income at or below 125% of the 1998 federal poverty level meet the income requirements for LIEAP eligibility. ARM 37.70.406 also contains tables of income standards expressed in dollar amounts for different sized households based on the 1998 poverty levels. These income standards show the maximum amount of income a household may have to be eligible for LIEAP assistance.

ARM 37.70.407 specifies what types of income are excluded in determining income eligibility and specifies dependent care and medical expenses which may be deducted from income for households whose gross income is between 125% and 150% of the federal poverty level. ARM 37.70.407 currently provides that the 1998 poverty levels are used to determine whether a household's income is between 125% and 150% of the poverty level.

ARM 37.70.601 contains matrices of benefit amounts payable to eligible households. The benefit amounts are based on various

factors such as the household's income, dwelling type, and method of heating. This rule currently provides that the household's income in relation to the 1998 poverty levels is used in determining benefit amount.

The OMB updates the federal poverty levels each year to take into account increases in the cost of living. If the Department does not use the higher 1999 poverty levels, some households may be determined ineligible for LIEAP or receive a smaller LIEAP benefit due to inflationary increases in the household's income which do not reflect an increase in actual buying power. The amendment of ARM 37.70.406, 37.70.407, and 37.70.601 is therefore necessary to provide that the 1999 poverty levels rather than the 1998 poverty levels will be used to determine LIEAP eligibility and benefit amount beginning October 1, 1999, which is the beginning of the LIEAP fiscal year.

ARM 37.70.901(1)(d) currently provides that emergency assistance may be provided when there is an imminent threat to the health or safety of a household due to any home heating-related conditions caused by severe weather conditions, fuel shortages, and/or acts of God. The Department proposes to amend subsection (1)(d) by replacing the term "heating-related conditions" with the term "energy-related" so that emergency assistance may be provided when a household is endangered by a damaged or malfunctioning appliance or equipment which is not used for heating, such as a gas range which is emitting carbon monoxide. The Department has opted to expand coverage for LIEAP emergency assistance because the Department believes it is important to protect low income individuals from dangers to health or safety caused by any energy-related condition, not only heating-related conditions.

ARM 37.70.902 provides for supplemental assistance in addition to the regular LIEAP benefits provided in ARM 37.70.601. Subsection (1) of 37.70.902 currently provides that supplemental assistance may be provided to pay an outstanding heat bill if a household has paid at least 5% of its annual income for home heating costs. The Department proposes to amend this subsection to provide that supplemental assistance can be used to pay an outstanding energy bill, not just a heating bill, and to provide that amounts paid for home energy costs, not just heating costs, are used to determine if the household has spent 5% of its annual income. The substitution of the word "energy" for the words "heat" and "heating" is being made because many power companies bill all energy costs on a single statement which does not separate heating costs from other energy costs. For example, if a household has gas heat and also a gas range for cooking, it will not be possible to tell from the household's gas bill how much of the gas was used for heating. The amendment of the rule will allow the Department to use the entire amount of the household's energy bill to determine eligibility for supplemental assistance and benefit amount.

Subsection (1) of 37.70.902 is also being amended to provide that the necessary documentation to support the application for supplemental assistance, as well as the application itself, must be filed by June 15. This amendment is necessary so that processing of applications for supplemental assistance can be completed more expeditiously. Finally, additional changes in the wording and organization of ARM 37.70.902(1) are being made to make the rule easier to read and understand.

The estimated costs of the proposed changes to the LIEAP rules are as follows:

It is estimated that the amendment of ARM 37.70.901 to allow emergency assistance when there is an energy-related rather than a heating-related threat to the household's health or safety will affect 200 households. The cumulative cost of this change in policy is estimated to be an increase of $100,000.

It is estimated that the amendment of ARM 37.70.902 to allow supplemental assistance to be used to pay outstanding energy bills rather than only outstanding heating bills and to allow expenditures for any energy expenses, not only heating expenses to be used to determine whether a household has spent 5% of its annual income will affect 550 households. The cumulative cost of this change in policy is estimated to be an increase of $71,500.

The amendment of the income standards in ARM 37.70.406 and the change to the 1999 poverty levels throughout the LIEAP rules is not expected to increase the cumulative amount of LIEAP benefits paid or the number of households eligible for LIEAP benefits, as the changes in the poverty levels merely reflect increases in the cost of living. It is estimated that the amendment of the benefit matrices in ARM 37.70.601 will result in a decrease of $3 in the average LIEAP benefit paid for the upcoming heating season. It is estimated that there will be an increase of 500 households for the upcoming heating season and that the cumulative increase in LIEAP benefits paid for the upcoming heating season will be $299,000.

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 October 7, 1999. Data, views or arguments may also be submitted by facsimile (406) 444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. 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 August 30, 1999.

BEFORE THE BUILDING CODES DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment and adoption of rules pertaining to the Building Codes Division	)	NOTICE OF AMENDMENT AND ADOPTION OF RULES PERTAINING TO THE BUILDING CODES DIVISION

TO: All Concerned Persons

1. On May 20, 1999, the Building Codes Division of the Department of Commerce published a notice of public hearing on the proposed amendment and adoption of rules pertaining to the Building Codes Division at page 1001, 1999 Montana Administrative Register, issue number 10.

2. Effective October 1, 1999, the Department amends 8.70.105, 8.70.203, 8.70.208, 8.70.217, 8.70.302, 8.70.304, 8.70.402, 8.70.407, 8.70.409, 8.70.502, 8.70.505, 8.70.601, 8.70.902, and adopts Rule I (8.70.221) and Rule II (8.70.222) exactly as proposed. Effective October 1, 1999, the Department amends 8.70.101, 8.70.215, 8.70.216, 8.70.401 and adopts Rule III (8.70.223) and new Rule IV (8.70.220) with the following changes. New Rule IV was adopted in response to comments received with regard to the proposed amendment to ARM 8.70.216. (See comment number 16 below.) (new matter underlined, deleted matter interlined; unless otherwise indicated authority and implementing sections will remain the same as proposed)

"8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) through (8) will remain the same as proposed.

~~(9) Subsection 106.3.2 of the Uniform Building Code is amended for the division by the addition of the following: "Plans, computations and specifications for buildings or structures with a calculated valuation of $100,000 or more, or when located in seismic zones 3 or 4, with a calculated valuation of $50,000 or more, shall be stamped and designed by an engineer or architect licensed to practice in the state of Montana. These requirements are guidelines for the division to establish when owner produced plans, computations and specifications are not acceptable and do not in any way address when a licensed engineer or architect is required by Title 39, chapters 65 and 67, MCA."~~

(10) through (43) will remain the same as proposed but will be renumbered as (9) through (42)."

"8.70.215 STAFF QUALIFICATION (1) Local plumbing and electrical inspectors must be either Montana licensed journeymen or inspector certified in the craft being inspected. ~~In addition, local plumbing permit inspection program must have a person to perform medical gas piping inspections, either as an employee or contracted, who possesses a Montana medical gas endorsement or has 30 hours of~~

~~medical gas piping installation inspection training which is acceptable to the division.~~

(2) Local building and mechanical inspectors must be either inspector certified or have a construction related engineering or architecture degree~~.~~ or license. A mechanical inspector may also be qualified by having a Montana plumbing license.

(3) Plans examiners must be either plans examiner certified, or be building inspector ~~certified~~ qualified as allowed in (2)~~.~~ , ~~or have related engineering or architecture degree.~~

(4) through (7) will remain the same as proposed.

(8) A local government may opt to have a medical gas piping permit and inspection program as part of a plumbing permit and inspection program. If the local government does not opt to have a medical gas permit and inspection program then such program will be administered by the division. Medical gas piping inspectors must either possess a Montana medical gas piping endorsement or have 30 hours of medical gas piping inspection training acceptable to the division."

"8.70.216 ANNUAL REPORT (1) through (3)(g)(iv) will remain the same as proposed.

(h) a list of employees inspecting, reviewing plans or approving any installation with description of responsibilities and qualification status of each employee as provided in ARM 8.70.215~~.~~;

~~(4) Local government programs, which are certified for the enforcement of building codes, shall remit to the department no later than the September 1 due date of the required annual report the payment of~~

(i) a calculation of the payment to the division of 0.5% of building fees or charges collected in the previous fiscal year for the building codes education fund, calculated ~~as follows:~~

~~(a) the 0.5% of building fees and charges are to be calculated~~ using building permit, inspection and plan review fees and charges only and ~~do~~ not ~~include~~ those fees and charges collected for plumbing, mechanical and electrical permits, plan review and inspections~~; and~~

~~(b) the first local government contribution to the building codes education fund shall be made no later than September 1, 2000, and shall be calculated for the period of October 1, 1999, through June 30, 2000.~~"

"8.70.401 NATIONAL ELECTRICAL CODE (1) The department of commerce, by and through the building codes division, adopts and incorporates by reference herein the national fire protection association standard NFPA 70, National Electrical Code, 1999 Edition, referred to as the National Electrical Code unless another edition date is specifically stated. The National Electrical Code is a nationally recognized model code setting forth minimum standards and requirements for electrical installations. A copy of the National Electrical

Code may be obtained from the ~~Montana Chapter of IABI c/o~~ Building Codes Division, P.O. Box 200517, Helena, Montana, 59620-0517 or the National Fire Protection Association, One Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101."

"III (8.70.223) SINGLE FAMILY DWELLING PLAN REVIEW AND APPROVAL OF MODEL PLANS (1) will remain the same as proposed.

(2) Single family dwelling model construction plans will be reviewed utilizing the applicable provisions of the current editions of the model codes or their replacement codes as may be adopted by the division and approval of the plans will be limited for use in areas with the same or lesser design factors as submitted on the plans (snow load, wind load, seismic zone, etc.).

(3) will remain the same as proposed.

(4) The fee for approval of a single family dwelling model plan is a one time approval fee as established in ARM 8.70.566. ~~and approved model~~ Model plans for single family dwellings are considered approved until a subsequent edition or replacement of the code applicable to construction of single family dwellings is adopted. ~~Previously approved~~ Approved plans ~~may~~ must be resubmitted for plan review and approval under the provisions of ~~the~~ any newly adopted plumbing, electrical or mechanical code and shall be assessed the applicable plan ~~review and approval fees~~ revision fee as established in ARM 8.70.566.

(5) Approved plans with current electrical, plumbing and mechanical components shall be acceptable on a statewide basis as established in (2) above with no further examination other than as provided in 50-60-118. Any alteration or deviation during construction from the approved plans voids the model plan approval status and the alteration or deviation shall be addressed on a case-by-case basis by the applicable local building official."

"IV (8.70.220) BUILDING CODES EDUCATION FUND ASSESSMENT (1) Local government programs, which are certified for the enforcement of building codes, shall remit to the department, 0.5% of building fees or charges collected for the building codes education fund.

(2) Local governments with annual revenues from building fees and charges of $100,000 or more shall make the payment to the building codes education fund in two semi-annual installments, the first half on or before February 1, for revenues collected between the preceding July 1 and December 31, and the second half on or before September 1 for revenues collected between the preceding January 1 and June 30. Local governments with annual revenues from building fees and charges of less than $100,000 may make one annual payment on or before September 1 for revenues collected between the preceding July 1 and June 30.

(3) The first local government contribution to the building codes education fund shall be calculated for the nine month period of October 1, 1999, through June 30, 2000. A

first prorated semi-annual payment is due on or before February 1, 2000, for those local governments required to make semi- annual payments. Contributions made thereafter shall be calculated for full fiscal years or portions thereof."

Auth: Sec. 50-60-203, 50-60-302, MCA; IMP, 50-60-302, 50-60-106, MCA

3. A public hearing was held on June 23, 1999. Oral and written testimony was received. Written comments were also accepted until 5:00 p.m., June 23, 1999. Not all proposals received a comment. However, the Department has thoroughly considered all comments received. Those comments and the Departments responses thereto, are as follows: (referred to by rule about which the comment was received)

Rule 8.70.101(1)(n)(i) and (ii):

COMMENT NO. 1: The proposed fee increase for building permits is not justified because there was a fee increase in 1998.

RESPONSE: Despite the fee increase in September 1998, fee revenues in the building standards program continued to fall short of program expenses. Revenues projected for Fiscal Years 2000 and 2001 fall short of meeting program expenses without the fee increase.

Rule 8.70.101(9):

COMMENT NO. 2: The reference to Title 39, chapters 65 and 67, MCA was incorrect.

RESPONSE: The reference to Title 39 was a clerical error. The correct reference is Title 37, chapters 65 and 67, MCA.

COMMENT NO. 3: Requiring the services of a licensed engineer or architect based upon the value of a building bears no rational relationship to the requirement for licensed design services and unlawfully and unfairly discriminates against owners using their own resources. In addition, it was suggested that the Division's staff was sufficiently qualified to determine the correctness of plans without requiring the owner to hire a design professional.

RESPONSE: The Division has decided not to offer a clarification to this particular section of the rules and has further decided that the existing amendment of Section 106.3.2, Uniform Building Code, creating rigid guidelines for a determination of when a design professional is required is counterproductive. Section 106.3.2, Uniform Building Code, grants the building official the authority and option to require plans, computations and specifications to be prepared by state licensed design professionals even if not otherwise required by state law. ARM 8.70.101(9) is therefor deleted in its entirety with the Division relying upon the authority granted by Section 106.3.2, Uniform Building Code, in its non-amended form to require plans by licensed design professionals on an as needed, case by case basis.

Rule 8.70.203(1):

COMMENT NO. 4: Striking the day limitation requirement when local governments must report adoption of code update ordinances would "blind" the Division.

RESPONSE: The proposal does not delete the requirement for a time for local governments to report updates of code adoption ordinances. The ordinance must still be adopted within 90 days of notice from the Division. Notice to the Division of the adoption must now be given when the ordinance is adopted rather than some future date.

Rule 8.70.215(1):

COMMENT NO. 5: Special qualifications for medical gas piping inspectors is unnecessary and redundant given that installers must hold a special endorsement from the Board of Plumbers and third party inspection is also required.

RESPONSE: Special qualifications for inspectors are necessary due to the technical nature of the installation. Only licensed health care facilities require third party inspections, leaving many medical and dental offices without third party inspection.

COMMENT NO. 6: Medical gas piping inspections should not be a mandatory part of the local plumbing inspection program. Local jurisdictions should be allowed to opt out of the medical gas piping inspection program and allow the State to handle such permits and inspections, due to the expense of maintaining such an inspection program and the limited need by individual local governments.

RESPONSE: The Division agrees with this comment. The proposed rule is modified to allow local governments to opt out of the medical gas piping inspection program. In such instances the permit and inspection program will be administered by the Division.

Rule 8.70.215(2):

COMMENT NO. 7: An engineering degree or architecture degree does not qualify the holders to perform building inspections and that if such individuals are qualified then passing the inspector certification should be easy.

RESPONSE: No single piece of paper guarantees that the holder is knowledgeable enough to perform building inspections. The purpose of requiring either certification or a degree is to generally raise the training level of the persons who are performing inspections to have the skills and knowledge to use the code resources available.

COMMENT NO. 8: The use of the term "related field" is not sufficiently defined and therefor "ripe for abuse."

RESPONSE: The term is modified to read: "construction related field." There are too many different degrees with major and minor combinations to specifically name all possibilities.

COMMENT NO. 9: Professional licensure in engineering or architecture should be included as qualifications for a building inspector as there are some licensed professional architects and engineers who do not have degrees but are otherwise qualified.

RESPONSE: The Division agrees. The same rationale which is the basis for allowing a degree in lieu of certification also justifies professional licensure. However, experience in a "construction related field" must also be shown. The proposal is modified accordingly.

COMMENT NO. 10: Plumber licensure should be included as a qualification for a mechanical inspector.

RESPONSE: The Division agrees. Licensed plumbers typically have training in such common mechanical installations as fuel gas piping, boilers and hot water heat. The same rationale for allowing related engineering or architectural degrees as sufficient qualification to act as a building inspector applies to licensed plumbers. However, merely having plumbing inspector certification is not sufficient to perform mechanical inspections.

Rule 8.70.215(3):

COMMENT NO. 11: An engineering degree or architecture degree does not qualify the holders to perform building inspections and that if such individuals are qualified then passing the inspector certification should be easy.

RESPONSE: No single piece of paper guarantees that the holder is knowledgeable enough to perform building inspections. The purpose of requiring either certification or a degree is to generally raise the training level of the persons who are performing inspections to have the skills and knowledge to use the code resources available.

COMMENT NO. 12: Use of the term "related field" is not sufficiently defined and therefor "ripe for abuse."

RESPONSE: The term is modified to read: "construction related field." There are too many different degrees with major and minor combinations to specifically name all possibilities.

COMMENT NO. 13: Striking the language that specifically references the contracting out of plan reviews limits the flexibility of local government plan review services.

RESPONSE: The authority of local governments to contract out plan reviews is independent from this rule. There is no requirement that plan reviewers or even building inspectors be local government employees. Contracted services have been and will continue to be acceptable as long as the contracted person meets the qualifications provided in statute and rule. The rule is deleted because the language is superfluous and unnecessary.

Rule 8.70.216(4)(a):

COMMENT NO. 14: The Division can not require a local government to make a contribution to the building code education fund. The statutory language provides that local governments are to contribute an amount "not to exceed 0.5 percent" to the building code education fund thus the exact amount contributed was optional at the discretion of the local government.

RESPONSE: Section 50-60-116, MCA (1999) provides that the Department of Commerce shall collect the fees for the building codes education fund. Section 50-60-106(2)(g)(iii), MCA (1999) merely limits that amount collected by the Department to no more than 0.5%. The statute does not grant any authority to the local government to choose the amount of the allocation. The amount being collected pursuant to this rule is not in excess of the statutory limit of 0.5% and is within the authority of the Department.

COMMENT NO. 15: The intent of HB 245 was for an educational program for all building trades and the educational fund was to include a percentage of all construction related fees (i.e. plumbing, electrical and mechanical) not just building permit fees.

RESPONSE: The language of HB 245 was specifically amended to limit the fees collected to "building" fees. In addition, the codification instructions stated that only the provisions of Title 50, chapter 60, part 1, MCA, apply. The plumbing code and plumbing fees are found in Title 50, chapter 60, part 5 and the electrical code and electrical fees are found in Title 50, chapter 60, part 6. The building code educational fund applies only to building standards and not the plumbing and electrical programs.

Rule 8.70.216(4)(b):

COMMENT NO. 16: Local governments should contribute quarterly to building code education fund to keep the program funded in a timely fashion.

RESPONSE: There are currently 42 local governments certified to enforce building codes. Of these 42 local governments, 23 would contribute less than $100.00 per year to the building codes education fund. The top 8 local governments which would contribute more than $500 per year would account for 85% of the fund. The total amount of annual revenue projected is no more than $23,000. The Division agrees that collecting revenues more frequently than once a year would assist in the operation of an educational program. The Department also recognizes that quarterly payments from all local governments would be an administrative burden with limited advantage. Therefor the Division is modifying this proposed rule to provide for 2 semi-annual payments from local governments whose anticipated annual payment exceeds $500. All other local governments have the option of remitting annually at the end of the fiscal year. In order to accommodate the modification of this rule a New Rule IV

(8.70.220) is added.

COMMENT NO. 17: The Division can not require a local government to make a contribution to the building code education fund. The statutory language provides that local governments are to contribute an amount "not to exceed 0.5 percent" to the building code education fund thus the amount contributed was optional at the discretion of the local government.

RESPONSE: Ch. 473, Sec. 2(2), L. 1999 provides that the Department of Commerce shall collect the fees for the building codes education fund. Section 50-60-106(2)(g)(iii), MCA (1999), merely limits that amount collected by the Department to no more than 0.5%. The statute does not grant any authority to the local government to choose the amount of the allocation. The amount being collected pursuant to this rule is not in excess of the statutory limit of 0.5% and is within the authority of the Department.

Rule 8.70.401(1):

COMMENT NO. 18: The Montana Chapter of IAEI is no longer a source for obtaining the National Electrical Code.

RESPONSE: The reference to the Montana Chapter of IAEI is deleted.

Rule 8.70.407(1):

COMMENT NO. 19: The electrical permit renewal fee should be lowered because the services for which the fee was paid have not been provided.

RESPONSE: The Division's electrical inspectors, due to the large geographic areas they cover, perform inspections on a circuit system, i.e. they inspect locations with electrical permits when they are in the area and not only in response to a request for inspection from the permit holder. Thus the longer an electrical permit is open, the more visits the site will receive. After the standard 12 month expiration of a permit, services have been provided even if the project is not complete. Charging the equivalent of a 1 hour inspection is a reasonable additional fee for the extra work an extended permit requires.

Rule I:

COMMENT NO. 20: The process for obtaining an opinion is too long and not responsive enough to fit within the tight construction season. The proposed system is acceptable for very major issues but is not workable for day to day issues.

RESPONSE: Code interpretations by the Division are not intended to be substitutes for the appeals procedure available in every jurisdiction for resolving differences of opinion over code interpretations between a building official and a builder. The threshold question for a code interpretation is the existence of inconsistent interpretation between the Division and local jurisdictions or between local

jurisdictions. The statutory requirements of the system require consultation with the building codes council which in and of itself makes a quick turn around time impractical. If an opinion is to be binding on all jurisdictions, full review and support by local jurisdictions is essential. Code technical advisories, addressed in New Rule II are designed to provide a quicker response time but are not binding on all jurisdictions.

Rule II:

COMMENT NO. 21: The turn around time is too long.

RESPONSE: Code technical advisories by the Division are not intended to be substitutes for the appeals procedure available in every jurisdiction for resolving differences of opinion over code interpretations between a building official and a builder. The statutory requirements of the system require consultation with the Building Codes Council which in and of itself makes a quick turn around time impractical.

Rule III:

COMMENT NO. 22: If the intent of the proposed rule is for the State to assume authority of plan review and approval of single family dwellings then more public information and education of the proposal should be provided.

RESPONSE: The rule does not affect the statutory exemption of 50-60-102, MCA, that the state building code does not apply to residential buildings containing less than 5 dwelling units located in the State's jurisdiction. The rule provides for centralized plan review by the Division for single family dwellings located in local government jurisdictions which have the authority to apply building codes to single family residential structures.

COMMENT NO. 23: Plans are considered approved until the subsequent edition of the construction code is adopted. There will not be a subsequent edition of the currently adopted 1995 edition of the CABO One and Two Family Dwelling Code but rather a replacement code, the 1998 edition of the International One and Two Family Dwelling Code.

RESPONSE: The rule is modified to include the replacement edition of the construction code.

COMMENT NO. 24: New editions and replacement editions of the plumbing, electrical and mechanical codes do not come out at the same time as the new editions or replacement editions of the construction code. Must plans with outdated plumbing, electrical or mechanical components be resubmitted?

RESPONSE: The rule is modified to clarify that plans may be resubmitted for revision of the plumbing, electrical or mechanical component without being resubmitted for the structural component.

4. The amendment and adoption of these rules is effective October 1, 1999.

BUILDING CODES DIVISION

BY: Annie M Bartos

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: Annie M Bartos

ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, August 30, 1999.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I and amendment of 17.38.101 and 17.38.249 pertaining to public water and sewage system requirements	NOTICE OF AMENDMENT (PUBLIC WATER SUPPLY)

TO: All Concerned Persons

1. On April 8, 1999, the Board of Environmental Review published notice of the proposed adoption of NEW RULE I and amendment of 17.38.101 and 17.38.249 pertaining to public water and sewage system requirements at page 578 of the 1999 Montana Administrative Register, Issue No. 7.

2. The Board did not adopt new Rule I.

3. The Board has amended ARM 17.38.249 as proposed.

4. The Board has amended ARM 17.38.101 with the following changes:

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR WASTEWATER SYSTEM (1) through (4)(f) remain as proposed.

(g) The applicant must identify to the satisfaction of the department or a delegated division of local government that a legal entity exists that is responsible for the ownership, maintenance, operation and perpetuation of the public water supply system or wastewater system. ~~Public systems must be owned by an individual, a water and sewer district, an incorporated city or town, a county or city-county government, or a private entity currently incorporated in accordance with Montana laws and regulations.~~ If a change of ownership occurs, the new owner of the public water supply system shall notify the department, in writing, within 30 days after the change of ownership occurs. ~~If a responsible entity ceases to exist, the system will be considered a non-complying system.~~

(5) through (13) remain as proposed.

AUTH: 75-6-103, MCA
IMP: 75-6-103, 75-6-112, and 75-6-121, MCA

5. The Board received the following comments pertaining to both the proposed rule amendments and to the circular amendments; board responses follow:

DEQ-2, Section 24.12:

COMMENT #1: One commentor stated that the DEQ Deviation Committee should be made up of three licensed professional engineers, all qualified in the specific field of expertise from which the deviation request originates.

RESPONSE: Although the Department has always tried to maintain

a group of 3 professional engineers for the committee, it is not possible to make this a regulatory requirement as the staff engineering position descriptions do not require professional engineers. Also, requiring the deviation committee structure to include separate committees for water and wastewater is not feasible due to limited staff and it is not always possible to provide 3 professional engineers in each field.

DEQ-2, Section 56.61:

COMMENT #2: One commentor stated that the requirement for influent and effluent flow measurements on all systems, particularly lagoons, could be very costly and may not be warranted. He suggested that the standard state a recommendation only.

RESPONSE: MPDES permits generally require a minimum percent removal, which can be determined only if the influent and effluent flows, as well as concentration, are known. The information obtained from both influent and effluent flow monitoring will facilitate the system operator's ability to determine collection system inflow and infiltration as well as whether the lagoon is leaking to ground water. Also, the nationally recognized "Recommended Standards for Wastewater Facilities" requires influent and effluent monitoring for facilities such as lagoons.

DEQ-2, Section 92.332:

COMMENT #3: One commentor recommended that the Board use more accurate engineering equations and methods for determining wastewater oxygen transfer efficiency rather than simply assuming a 50% transfer rate relative to clean water transfer.

RESPONSE: The amendment sets forth a conservative default value for cases where experimentally determined alpha and beta factors are not available. It does not preclude the designer from using more accurate equations.

DEQ-2, Section 93.2:

COMMENT #4: One commentor recommends that the 1/4 mile separation between wastewater treatment lagoons and habitation remain a requirement rather than being changed to a recommendation. He states that locating a lagoon near housing should be a primary public health and safety concern.

RESPONSE: The 1/4 mile separation provision can be imposed as a requirement only in cases where it is necessary to protect human health or water quality. For new systems, which are the subject of these rules, human health and water quality impacts are adequately addressed by other design requirements. Consequently, the circular is being amended to change the 1/4 mile separation provision from a requirement to a recommendation.

DEQ-2, Table 93-1:

COMMENT #5: One commentor strongly opposes the provision that states that less than 6 inches of leakage from lagoons may be required if a nondegradation analysis indicates that this is warranted. The commentor states that a nondegradation analysis requires costly collection of ground water information, nitrate sensitivity analysis and the use of specialized consultants. He goes on to say that the ability to construct a lagoon system to leak less than 6 inches may not be practically possible and the ability to measure this amount of leakage, or portions thereof, is not possible with any degree of accuracy. The commentor states that the original development of the non-degradation rules considered certain activities or construction methods as being non-significant. The 6 inches of annual leakage was one such activity.

RESPONSE: The Board concurs with the commentor that incidental leakage from a sewage treatment system designed and constructed in accordance with Title 75, Chapter 6, MCA, is considered a nonsignificant activity (75-5-317(2)(i), MCA) and the Board has deleted this provision.

DEQ-2, Section 93.442:

COMMENT #6: One commentor stated that the section discussing lagoon piping takeoffs should require that the intake be located 1 to 2 feet from the top of the lagoon rather than 2 feet from the bottom. Also, the commentor recommends that the requirement that the intake be located 10 feet from the toe of the dike should be changed due to the need for costly support pipes. The commentor also questions the requirement of 3 withdrawal pipes for multi-level takeoffs and states that the standard should remain a recommendation only.

RESPONSE: The Board has reworded the entire section for clarity. Regarding the distance off the bottom of the pond for single takeoffs, the Board has amended the standard to require that the takeoff be located a minimum of 2 feet from the bottom. This allows for a takeoff at a higher elevation if quality of effluent is a concern. For multi-level takeoffs, the Board agrees with the longtime requirement in Ten State Standards that the lowest takeoff be located 2 feet from the bottom.

Regarding the distance from the toe of the dike for multi-level takeoffs, the Department agrees that the upper level takeoffs should be allowed nearer to the dike and has amended the standard to 2 feet. The low-level drawoff must remain at 10 feet from the toe and 2 feet from the bottom to maintain the drawoff above the sludge level in the pond.

Regarding the multi-level takeoffs, the original amendment did not require 3 pipes, but rather it remained as a recommendation. The wording has been further clarified.

DEQ-2, Appendix B:

COMMENT #7: One commentor recommended that the Board add provisions to the standard for spray irrigation of golf courses and parks, as well as standards for spray of effluent for snow making.

RESPONSE: The standards do currently provide for the irrigation of golf courses and landscape in B.61 and B.62. As for snow making, standards are not currently in place. The comment is noted, and the Board will continue to make an effort to develop such standards. Until standards are added to the rule, the Department will continue to rely on its best professional judgement and the applicable portions of Appendix B for review of snow making systems.

DEQ-2, Appendix E:

COMMENT #8: One commentor found the capacity development appendix useful, but recommends that it be set forth in a separate document.

RESPONSE: The appendix was located in Circular DEQ-1 for convenience and easy reference. The Board inserted this as an appendix in DEQ-2 for consistency with DEQ-1.

COMMENT #9: One commentor stated that homeowner associations should be allowed to own and operate public systems. The commentor further stated that the Board should take a more active role in reviewing homeowner associations' documents.

RESPONSE: The Board agrees with the comment. Under the rules as proposed and adopted, Appendix A of DEQ-1 and DEQ-3 and Appendix E of DEQ-2 request information on homeowners' associations.

COMMENT #10: One commentor stated that the requirements in ARM 17.38.101(7) regarding the time allowed to complete construction, should be changed from 3 years to 4 years. The commentor thinks it will be difficult for developers to complete a project in 3 years and that 4 years for completion would be consistent with the Sanitation and Platting Act.

RESPONSE: This section will not be modified as per the comment since the 1999 Legislature added a 3-year requirement for construction completion to Title 75, Chapter 6, Part 1, MCA. The proposed rule will remain to be consistent with the statute.

COMMENT #11: One commentor stated that the Board should have more stringent requirements for completion of an operations and maintenance (O&M) manual. The commentor suggested that the Board require the applicant to retain a professional engineer for construction inspection, preparation of as-builts, and preparation of an O&M manual.

RESPONSE: The Board agrees with the comment. Under the rules as proposed and adopted, Appendix A of DEQ-1 and DEQ-3 and Appendix E of DEQ-2 require an O&M manual as part of the approval process. In addition, the Board will be revising ARM Title 17, chapter 38, subchapter 1, in the near future to further define when a professional engineer is required for design of public systems. This revision will be done in conjunction with the rewrite of the subdivision rules.

COMMENT #12: One commentor stated that Section 3.2.3.1 of DEQ-1 and DEQ-3 should be changed to allow sewer lines within 100 feet of a well. The commentor stated that sewer lines are inspected for leakage prior to use and should not pose a threat to a well.

RESPONSE: Sewer lines should not be allowed within 100 feet of a well. Sewer lines are not always properly tested, have the potential for leakage or failure, and are allowed a minimal amount of leakage per the testing requirements in Montana Public Works Specifications. All potential sources of pollution should be prohibited within 100 feet of a well.

COMMENT #13: One commentor stated that the Board did not have the authority to require associations to be incorporated as proposed in ARM 17.38.101(4)(g), based on the definition of "person" in 75-6-102(13), MCA.

RESPONSE: The Board agrees with the commentor and has modified the proposed amendment of ARM 17.38.101(4)(g), to reflect this comment.

COMMENT #14: The Department commented that DEQ-3, Section 1.1.6.g requiring design reports to include a source water protection plan should be amended to specify that it applies only to non-community systems to remain consistent with the requirements of the Source Water Protection Section of the Department and the Environmental Protection Agency. The Environmental Protection Agency is targeting only public (community and non-community) systems as part of the source water protection and delineation efforts under the Safe Drinking Water Act Amendments of 1996. The Department neglected to specify non-community systems in DEQ-3 as part of the proposed rules. DEQ-3, Section 3.2.3.2 should also be modified since it references DEQ-3, Section 1.1.6.g.

RESPONSE: The Board has modified the sections as requested.

COMMENT #15: The Source Water Protection Section of the Department provided the following comments on circular PWS-6 to coincide with recent recommendations from the Environmental Protection Agency and the Source Water Protection Task Force:

(a) On Page 1, SECTION 1.0-PURPOSE, first paragraph, sixth line, add, "or other regulated contaminants". This is needed since the Source Water Assessment Plan is directed by the Safe

Drinking Water Act to manage the origins of regulated contaminants.

(b) On Page 1, SECTION 1.0-PURPOSE, third paragraph, delete the last sentence. This language is inappropriate here since the circular targets public water supplies (PWS) or their technical consultants complying with a regulatory requirement.

(c) On Page 2, SECTION 1.1-REPORT CRITERIA, subsection (c)(3), add the word, "treatment". This is needed since treatment provides barriers to contamination and therefore should be described.

(d) On Page 3, SECTION 1.1-REPORT CRITERIA, subsection (c)(4), third line, the phrase "near the public water system" is not precise. This phrase should be modified to "10-mile radius". A 10-mile radius would include the inventory region for most surface and ground water based PWSs. Specifying a distance would assist those attempting to comply with circular requirements.

(e) On Page 4, SECTION 2.0-DELINEATION OF GROUND WATER SOURCES, subsection (A), add to end of first paragraph, "The aquifer sensitivity should be described in terms needed to assess compliance with the federal ground water rule. Aquifers in fractured bedrock, karst formations, or unconsolidated deposits are sensitive."

(f) On Page 5, SECTION 2.0-DELINEATION OF GROUND WATER SOURCES, subsection (D), a blank table should be inserted as a guide to circular users.

(g) On Page 7, SECTION 3.0-INVENTORY, subsection (A), delete, "or spill response regions," and replace with, "in the inventory or spill response regions." It appears that some text was omitted and is needed for clarification.

(h) On Page 7, SECTION 4.0-SUSCEPTIBILITY, should include a footnote that states, "Contact Montana DEQ for worksheets intended to assist in the completion of this section." The process of estimating susceptibility is dynamic due to advances in the understanding of contaminant transport, changes in federal law, and modifications to the Montana Source Water Assessment Program. Worksheets have been developed to guide circular users through the process of susceptibility assessment but these will be most useful if they can be adjusted occasionally to meet the needs of the technical community.

(i) The title of the section on Page 10, SECTION 4.1-METHODS AND CRITERIA FOR DELINEATION OF SOURCE WATER PROTECTION REGIONS FOR PWSs, should be changed. The title of this section is not descriptive of the text. It should be modified to "Methods and Criteria for Hazard Determination".

(j) On Page 14, SECTION 4.1-METHODS AND CRITERIA FOR DELINEATION OF SOURCE WATER PROTECTION REGIONS FOR PWSs, subsection (D), the table should be updated as per changes to the Montana Source Water Assessment Plan document.

(k) On Page 15, SECTION 4.1-METHODS AND CRITERIA FOR DELINEATION OF SOURCE WATER PROTECTION REGIONS FOR PWSs, subsection (E)(1), the numbers in parentheses should read, "(640, 128, and 32 per square mile)". The phrase, "If well density" should be changed to, "If septic system density". The

phrase, "estimated from well" should be changed to "estimated from population within census blocks and based on the state average of 2.4 persons per rural household". This is needed since population density derived from US census data is a more accurate manner to estimate septic system density.

(l) On Page 17, SECTION 4.1-METHODS AND CRITERIA FOR DELINEATION OF SOURCE WATER PROTECTION REGIONS FOR PWSs, subsection (F), delete, "by proximity to a surface water source or by upstream time of travel" and replace with "by source type (or population density in the case of urban land use)". The table title should be changed to, "Hazard of potential contaminant sources according to source type or population density within a spill response region". This would reflect the change in the Source Water Protection Program.

(m) On Page 19, SECTION 4.1-METHODS AND CRITERIA FOR DELINEATION OF SOURCE WATER PROTECTION REGIONS FOR PWSs, subsection (H), the criteria and minimum values should be changed as noted below.

(i) Community Unconfined...Inventory...Distance-larger of 1,000 feet upgradient or 3-year TOT.

(ii) Community Confined...Inventory...Distance-1,000 feet for flowing and one-half mile for non-flowing, must include any aquifer formation outcrop that occurs within a 3-year TOT.

Also, this table should be moved to SECTION 2.0(c), Methods and Criteria.

RESPONSE: The Board agrees with all of comment #15 except (d) and Circular PWS-6 has been modified to reflect these comments. With regard to comment (d), the Board agrees that the phrase "near the public water system" is not precise. However, the Board has replaced the quoted language with the phrase "as recommended in the Methods and Criteria Table on page 6 of this document". The effect of this modification is to limit the 10-mile requirement to surface water sources only and to apply more appropriate standards to ground water.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

David Rusoff by: *Joe Gerbase*

David Rusoff
Rule Reviewer

JOE GERBASE, Chairperson

Certified to the Secretary of State August 30, 1999.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I through XLIV pertaining to the operation and physical condition of a private correctional facility and the security, safety, health, treatment and discipline of persons confined in a private correctional facility	NOTICE OF ADOPTION OF NEW RULES I THROUGH XLIV

TO: All Concerned Persons

1. On June 17, 1999, the Department of Corrections published notice of the proposed adoption of new Rules I through XLIV at page 1276 of the 1999 Montana Administrative Register, issue number 12.

2. The Department has adopted the following new rules with the following changes. Matter to be added is underlined. Matter to be deleted is interlined.

These rules will be applied retroactively to September 1, 1999. The reason for retroactive application is that the first Montana private prison must open the first week in September 1999 in order to be operational and receiving inmates by mid-September. A private prison is prohibited from operating without a license. In order to do a licensing review and award a license the department must have these rules in place.

Rule I (20.27.201) PURPOSE (1) These rules establish the licensing requirements for the operation, security, and physical condition, as well as for the safety, health, treatment and discipline of persons confined in a private correctional facility within the state of Montana pursuant to 53-30-604, MCA, providing that a private correctional facility conforms to applicable American correctional association (ACA), and national commission of correctional health care (NCCHC) standards ~~(NCCHC)~~, and providing that a facility achieves accreditation from ACA and NCCHC within three years of the date it begins operation, and maintains ACA and NCCHC accreditation thereafter.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule II (20.27.202) DEFINITIONS (1) remains as proposed.

(3) remains as proposed, but is renumbered (2).

~~(2)~~ (3) "Private correctional facility" means a correctional facility that is either privately operated or

privately owned and operated. ~~The term includes a regional correctional facility, as defined in 53-30-503, MCA, if privately operated or privately owned and operated.~~ ~~(a)~~ The term does not include a private detention center or a regional jail governed by Title 7, chapter 32, part 22, MCA.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule III (20.27.203) FACILITY LICENSE (1) remains as proposed.

(2) The department shall issue a one-year private prison license to any private correctional facility that has fulfilled the requirements of law, ~~and~~ these rules~~.~~, and the private prison siting and construction standards contained in ARM Title 20, chapter 27, subchapter 1.

(3) remains as proposed.

(4) The department ~~may~~ shall issue a provisional license for up to six months to any license applicant which:

(a) through (5) remain as proposed.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule IV (20.27.206) LICENSING PROCEDURES (1) through (4) remain as proposed.

(5) The department's licensing agent may make periodic visits between licensing reviews to ensure the facility is remaining compliant with these rules. The scope of these visits is the same as for a licensing review.

(5) through (5)(b) remain as proposed but are renumbered (6) through (6)(b).

(7) If the licensing agent determines that the facility is not in compliance with these rules, the licensing agent shall notify the warden or superintendent in writing of the:

(a) exact nature of the licensing violations;

(b) action necessary to come into compliance with the rules; and

(c) time frame within which the facility must have attained full compliance.

(8) In no case may the time allowed for the facility to attain compliance exceed one year.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule V (20.27.207) LICENSE REVOCATION AND DENIAL

(1) through (1)(b) remain as proposed.

(c) has failed to comply with its plan to correct areas of noncompliance identified by a license review as required in ARM 20.27.204 within the allotted time;

(d) has failed to remedy practices or procedures identified by the department which continue to place the public, staff or offenders in imminent risk of escape, serious bodily harm or property damage; ~~and~~

(e) has failed to become accredited by both ACA or NCCHC within the first three years of operation;

~~(c)~~ (f) is in default of the contract with the state under which it is operating the facility~~.~~; or

(g) has failed to comply with the provisions of 53-30-601, et seq., MCA.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule VI (20.27.208) HEARING (1) remains as proposed.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule VII (20.27.210) PURPOSE AND MISSION (1) remains as proposed.

(2) The facility must be established by being ~~subject~~ party to a current contract with the state of Montana ~~or one of its subdivisions~~ to operate a private correctional facility ~~prison~~ which complies with 53-30-608, MCA.

(3) and (4) remain as proposed.

(5) The facility must obtain accreditation by both ACA and NCCHC by the expiration of the third year of the facility's operation, and maintain ACA and NCCHC accreditation thereafter.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule VIII (20.27.212) FACILITY WARDEN (1) through (3) remain as proposed.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule IX (20.27.213) FACILITY ORGANIZATION (1) remains as proposed.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule X (20.27.214) POLICY AND PROCEDURE MANUAL (1) and (2) remain as proposed.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XI (20.27.216) MEDIA ACCESS (1) The facility must have ~~a~~ written policy, procedure and practice which:

(a) allow~~s~~ representatives of the media access to the facility consistent with preserving inmates' right to privacy and maintaining order and security; and

(b) provide~~s~~ for the dissemination of information about the facility to the public, governmental agencies, and the media.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XII (20.27.217) INMATE FUNDS (1) The facility must ~~have~~ control ~~of~~ inmate personal funds held by the facility ~~by~~ in accordance with accepted accounting procedures.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XIII (20.27.218) STAFFING REQUIREMENTS (1) remains as proposed.
AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XIV (20.27.219) BACKGROUND/CRIMINAL RECORD CHECK (1) and (2) remain as proposed.
AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XV (20.27.221) DRUG-FREE WORKPLACE (1) The facility must have ~~a~~ written policy and procedure that ~~specifies~~ supports ~~for~~ a drug-free workplace for all employees. The policy must:
(a) and (b) remain as proposed.
AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XVI (20.27.222) PERSONNEL FILES (1) The facility must maintain on the premises a current, accurate, and confidential personnel record on each employee.
AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XVII (20.27.223) TRAINING AND STAFF DEVELOPMENT (1) The facility must provide staff training and development in accordance with ~~Montana~~ state law.
AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XVIII (20.27.225) INMATE POPULATION MOVEMENT (COUNT) (1) through (3) remain as proposed.
AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XIX (20.27.227) BUILDING AND SAFETY CODES (1) remains as proposed.
AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XX (20.27.229) INMATE HOUSING (1) and (2) remain as proposed.
AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XXI (20.27.230) EXERCISE AND RECREATION (1) and (2) remain as proposed
AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XXII (20.27.231) VISITING AREAS (1) remains as proposed.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XXIII (20.27.232) FIRE AND LIFE SAFETY (1) and (2) remain as proposed.

(3) The facility must have ~~a~~ written policy, procedure and practice which:

(a) ~~specifies~~ specify the facility's fire prevention regulations and practices; and

(b) provide~~s~~ for a comprehensive and thorough monthly inspection of the facility by a qualified fire and life safety officer.

(4) through (6)(c) remain as proposed.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XXIV (20.27.233) EMERGENCY RESPONSE PLAN (1) The facility must have a written emergency response plan that complies with the department's emergency preparedness plan~~, and~~ The plan must provide~~s~~:

(a) through (2) remain as proposed.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XXV (20.27.235) USE OF FORCE, RESTRAINTS AND CHEMICAL AGENTS (1) remains as proposed.

(2) The facility must have ~~a~~ written policy and procedure governing the use of firearms which is approved by the department.

(3) and (4) remain as proposed.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XXVI (20.27.237) SECURITY MANUAL (1) remains as proposed.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XXVII (20.27.238) CONTROL OF CONTRABAND (1) The facility must have ~~a~~ written policy, procedure and practice to provide for search of the facility and inmates to control contraband and provide for its disposition which is approved by the department.

(2) remains as proposed.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XXVIII (20.27.239) KEY AND TOOL CONTROL (1) The facility must have ~~a~~ written policy, procedure and practice controlling the use of keys, tools, culinary and medical equipment.

AUTH: 53-30-603 and 53-30-604, MCA

IMP: 53-30-604 and 53-30-606, MCA

Rule XXIX (20.27.241) INJURIES INCURRED IN A FACILITY INCIDENT (1) The facility must have ~~a~~ written policy, procedure and practice to provide that all persons involved in an incident where chemical agents are used must ~~injured in an incident~~ receive immediate medical examination and treatment.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XXX (20.27.242) FACILITY SECURITY THREATS, ESCAPES (1) and (2) remain as proposed.

(3) The facility must have ~~a~~ written policy, procedure and practice to ensure that pedestrians and vehicles leave and enter the facility at designated points in the perimeter.

(4) through (4)(b) remain as proposed.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XXXI (20.27.243) RULES AND DISCIPLINE (1) The facility must have written ~~policies~~ policy, ~~procedures~~ and ~~practices~~ regarding disciplinary actions, approved by the department which:

(a) through (c) remain as proposed.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XXXII (20.27.245) SPECIAL MANAGEMENT (1) The facility must have ~~a~~ written policy and procedure, approved by the department, to provide for removal from general population of inmates who threaten the secure and orderly management of the facility or persons that must be protected from harm by other inmates by placement in special units.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XXXIII (20.27.246) INMATE CLASSIFICATION (1) The facility must have ~~a~~ written policy and ~~procedures~~, approved by the department, for the objective classification of inmates remanded to its custody.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XXXIV (20.27.248) INMATE RIGHTS (1) The facility must have ~~a~~ written policy, procedure and practice to ensure the right of inmates to have:

(a) through (d) remain as proposed.

(2) The facility must have ~~a~~ written policy, procedure and practice that ~~protects~~ inmates from personal abuse, corporal punishment, personal injury, disease, property damage, and harassment.

(3) remains as proposed.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XXXV (20.27.250) ADMISSION (1) The facility must have ~~a~~ written policy and procedure that governs~~~~ the admission of inmates to the system approved by the department.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XXXVI (20.27.251) PERSONAL PROPERTY (1) The facility must have ~~a~~ written policy and procedure governing the control of inmate personal property and funds.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XXXVII (20.27.252) MENU, DIETS, FOOD SERVICE (1) remains as proposed.

(2) The facility must have ~~a~~ written policy, procedure and practice that:

(a) requires~~~~ food service staff take into consideration food flavor, texture, temperature, appearance and palatability; and

(b) provides~~~~ for special diets as prescribed by appropriate medical or dental personnel.

(3) remains as proposed.

(4) The facility must have ~~a~~ written policy, procedure and practice for adequate health protection for all inmates and staff in the facility, and inmates and other persons working in the food service, including the following:

(a) through (c) remain as proposed.

(5) The facility must have ~~a~~ written policy, procedure and practice requiring weekly inspections of all food service areas, including dining and food preparation areas and equipment, by administrative, medical or dietary personnel. These may include the person supervising food service operations or designee. Administrative, medical or dietary personnel must check refrigerator and water temperatures daily.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XXXVIII (20.27.253) SANITATION AND HYGIENE (1) The facility must have ~~a~~ written policy, procedure and practice requiring the following inspections:

(a) through (4) remain as proposed.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XXXIX (20.27.254) HEALTH CARE (1) The facility must have ~~a~~ written policy, procedure and practice providing that all medical, psychiatric, and dental matters involving medical judgment are the sole province of the responsible physician, mental health provider, and dentist, respectively.

(2) through (3) remain as proposed.

(4) The facility must have ~~a~~ written policy, procedure and practice that provides~~~~ for emergency care and meets~~~~ or

exceeds the ACA standards for adult correctional facilities.

(5) The facility must have a written policy and practice that prohibits the use of inmates for medical, pharmaceutical, or cosmetic purposes. ~~This~~ pPolicy may not preclude individual treatment of an inmate based on his or her need for a specific medical procedure that is not generally available.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XL (20.27.255) PHARMACEUTICALS (1) The facility must have a written policy, procedure and practice approved by the department which provide for the proper management of pharmaceuticals and address the following subjects:

(a) through (g) remain as proposed.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XLI (20.27.256) HEALTH SCREENING (1) The facility must have a written policy, procedure and practice requiring medical, dental and mental health screening to be performed pursuant to ACA standards for adult correctional facilities.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XLII (20.27.258) INMATE WORK PROGRAMS (1) The facility must have a written policy, procedure and practice that:

(a) requires all able-bodied inmates to work unless assigned to an approved education or training program; and

(b) provides that inmates receive pay comparable to that received by inmates in the department's adult correctional facilities.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XLIII (20.27.260) MAIL, TELEPHONE, VISITING (1) The facility must have a written policy and procedure governing the following:

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

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

Rule XLIV (20.27.261) RELIGIOUS PROGRAMS (1) The facility must have a written policy, procedure and practice that provides for inmates to have the opportunity to participate in practices of their religious faith deemed essential by the faith's governing body, limited only by documentation showing threat to the safety of persons involved in such activity or that the activity itself disrupts order in the facility.

AUTH: 53-30-603 and 53-30-604, MCA
IMP: 53-30-604 and 53-30-606, MCA

3. The Department has thoroughly considered all

commentary received. The comments received and the department's response to each follow:

COMMENT #1: Rule II section 2. The last sentence was deleted from 53-30-503, MCA, Senate Bill 33, and should be deleted from these rules.

RESPONSE: The rule is amended to reflect this change.

COMMENT #2: Private prison siting and construction standards are contained in ARM Title 20, chapter 27, subchapter 1. Providing notice in these rules about the siting and construction standards would provide continuity.

RESPONSE: These rules are amended to incorporate reference to ARM Title 20, chapter 27, subchapter 1.

COMMENT #3: 53-30-606, MCA, references the legislative requirements for licensing a private correctional facility. Referencing that code section would provide continuity. Those requirements should also be listed under the implementation references within the rules.

RESPONSE: The rules are amended to include reference to 53-30-606, MCA, by including rules that incorporate each subsection. The implementation references have been amended to include that statutory reference.

COMMENT #4: There does not appear to be any language that requires yearly inspection or allows for entry by the licensing agent for inspection during the licensing year.

RESPONSE: Rule IV(4) has been amended to include the provision for entry by the licensing agent for inspection during the licensing year.

COMMENT #5: In Rule II, Definitions, should be clarified that these definitions apply only to this chapter.

RESPONSE: The rule is amended to reflect this change.

COMMENT #6: There is no requirement in the rules that the facility be American correctional association (ACA) and national commission on correctional health care (NCCHC) accredited within 3 years of operation.

RESPONSE: The statutory language, 53-30-606(3), MCA, states that a facility must comply with all applicable ACA and NCCHC standards. This is not the same as being ACA or NCCHC accredited. The statutory language also states that during the initial 3-year period a private correctional facility is not required to be accredited by the ACA or NCCHC. The statute undoubtedly means to say that the facility must be accredited after the initial grace period of three years. The rules are

amended to include the requirement that after the initial 3-years the facility must have obtained ACA and NCCHC accreditation.

COMMENT #7: Rule V states the department may restrict a license. What would a restricted license be?

RESPONSE: The department might want to restrict a license if only a portion of the facility was permitted to operate, or if a facility was restricted to take only a certain custody level of inmate. It allows the department some latitude in placing restrictions on the license without revoking it.

COMMENT #8: Rule V does not address the language in 53-30-611, MCA, where it requires a specified time period within which deficiencies must be remedied.

RESPONSE: Rule V has been amended to include this requirement.

COMMENT #9: Rule VII(2) is unclear as to establishing a facility by contract. Rule XII, Inmate Funds, the language is not clear. Rule XV, "specify support" is not clear. Rule XXIX, "incident" is vague.

RESPONSE: These rules have been amended for clarity. Rule XXIX incorporates ACA standards for Adult Correctional Institutions 3-4195 and has been amended to describe use of a chemical agent as the incident requiring medical attention in accordance with the standard.

COMMENT #10: Rule V, the department should be able to revoke a license for failure to comply with the law.

RESPONSE: "Comply with the law" is overly broad, however, the rule has been amended to state that failure to comply with the provisions of 53-30-601, MCA, may result in a license revocation.

COMMENT #11: 53-30-607, MCA, refers to siting requirements for private prisons. This statute should be referenced in these rules to provide continuity.

RESPONSE: These rules have been changed to include reference to ARM Title 20, chapter 27, subchapter 1, which incorporates the requirements of 53-30-607, MCA.

COMMENT #12: 53-30-608, MCA, refers to contracting requirements between the department and a contractor. This statute should be referenced in these rules to provide continuity.

RESPONSE: These rules have been changed to include reference to 53-30-608, MCA.

Rick Day, Director
Department of Corrections

Lois Adams
Rule Reviewer

Certified to the Secretary of State August 30, 1999.

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

In the matter of the adoption of Rules I through VII pertaining to the use of automated external defibrillators	)))))	NOTICE OF ADOPTION

TO: All Interested Persons

1. On July 22, 1999, the Department of Public Health and Human Services published notice of the proposed adoption of the above-stated rules at page 1643 of the 1999 Montana Administrative Register, issue number 14.

2. The Department has adopted the Rules II (16.30.604), III (16.30.605) and VII (16.30.616) as proposed.

3. The Department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I (16.30.601) DEFINITIONS ~~In addition to the definitions contained in 50-6-501, MCA, the~~ The following definitions apply to this chapter ~~(Note: 50-6-501, MCA, includes definitions for "automated external defibrillator (AED)" and "entity.")~~ , in addition to the definitions contained in 50-6-501, MCA:

~~(1) "Automated external defibrillator (AED)" means a medical device that:~~

~~(a) has received approval for marketing from the U.S. food and drug administration;~~

~~(b) is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and of determining, without intervention by an operator, whether defibrillation should be performed;~~

~~(c) upon determining that defibrillation should be performed, automatically charges and indicates that it is ready to deliver an electrical impulse to an individual's heart; and~~

~~(d) may be used by an operator of the device to deliver an electrical impulse to an individual's heart.~~

(2) and (3) remain as proposed but are renumbered (1) and (2).

~~(4) "Entity" means a public agency, department, office, board, or commission or other governmental organization or a private corporation, partnership, group or business or other private organization.~~

AUTH: Sec. 50-6-503, MCA
IMP: Sec. 50-6-501, MCA

RULE IV (16.30.606) REPORTS (1) remains as proposed.

(2) Every time an AED is attached to a patient, the supervising physician or their designee shall provide to the department, on a form provided by the department, the following information:

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

(k) the total number of shocks and joules delivered;

(2)(l) and (m) remain as proposed.

AUTH: Sec. 50-6-503, MCA
IMP: Sec. 50-6-502 and 50-6-503, MCA

RULE V (16.30.610) TRAINING (1) through (1)(b) remain as proposed.

(2) AED training programs developed by the following organizations are approved by the department:

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

(d) ~~medic first aid, and~~ EMP international, inc.

~~(e) American safety.~~

AUTH: Sec. 50-6-503, MCA
IMP: Sec. 50-6-502 and 50-6-503, MCA

RULE VI (16.30.615) MEDICAL PROTOCOL (1) A medical protocol for defibrillation use must be consistent with the energy requirements for defibrillation set out on pages 2211 through 2212 of "Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiac Care, Recommendations of the 1992 National Conference" published in the Journal of the American Medical Association on October 28, 1992, Volume 268, Number 16~~.~~, or with the 1998 American Heart Association Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiac Care.

(2) The department hereby adopts and incorporates by reference the energy requirements for defibrillation referred to in (1), which set standards for proper defibrillation. A copy of the ~~document~~ documents referred to in (1) may be obtained from the Department of Public Health and Human Services, Emergency Medical Services and Injury Prevention Program, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: Sec. 50-6-503, MCA
IMP: Sec. 50-6-502, MCA

4. The Department has made a change in the definitions contained in Rule I (16.30.601). Proposed Rule I (16.30.601) contained two definitions that were reiterations of statutory definitions. However, 2-4-305(2), MCA, states that administrative rules "may not unnecessarily repeat statutory language". Thus, the definitions of "automated external defibrillator" and "entity" are being removed from the rule. The definitions can be found in HB 126 (Chapter 335, 1999 Montana Legislature) as codified at 50-6-501, MCA.

5. The Department has thoroughly considered all

commentary received. The comments received and the department's response to each follow:

COMMENT #1: It was suggested that the list of items that Rule IV (16.30.606) requires to be reported every time an AED is used should include, not only the number of shocks delivered, but the joules delivered as well, since different AED's deliver different joule levels.

RESPONSE: The Department agrees and has made the requested change.

COMMENT #2: The Department should include in Rule IV (16.30.606) a reporting requirement that, each time an AED is attached to a patient, the supervising physician or the physician's designee would have to submit to the Department a report six months thereafter indicating the morbidity or mortality of the patient.

RESPONSE: While the Department agrees that the information in question would be extremely useful to the Department in program evaluation, it declines to include a requirement that it be reported because the confidentiality and logistical issues would be enormous barriers to collecting the information.

COMMENT #3: The listing in Rule V (16.30.610) of programs approved for training of those using AED's is incorrect.

RESPONSE: The Department agrees and has made the changes noted.

COMMENT #4: The fact that the American Red Cross recertifies annually may conflict with Rule V's (16.30.610) requirement to recertify every two years.

RESPONSE: The Department has not changed the rule's language because it does not think a conflict exists. The rule requires AED users to complete one of the listed training programs and to renew the training at intervals of not more than two years. In other words, the rule sets an outside time limit for renewed training, which the Red Cross clearly would meet since it requires recertification more often. As for requiring renewal annually rather than biannually, the Department did not do so because, based on available information, a two year recertification requirement seems most commonly accepted across the country and the most reasonable.

COMMENT #5: In Rule VI (16.30.615), the wrong AHA Standard reference is identified as the one that should be used as a standard for defibrillation energy requirements in medical protocols.

RESPONSE: The Department agrees in part. The 1992 standards which are referenced in the proposed rules are still acceptable for a damped sinusoidal waveform; however, these standards are

not applicable to the biphasic truncated exponential waveform. Therefore, the Department has also adopted in Rule VI (16.30.615) the 1998 standards that specifically refer to the biphasic truncated exponential waveform.

Other comments submitted supported the rules as proposed.

Dawn Sliva
Rule Reviewer

Laurie Ekanger
Director, Public Health and Human Services

Certified to the Secretary of State August 30, 1999.

VOLUME NO. 48 OPINION NO. 6

HIGHWAYS - Permits for oversize/weight vehicles carrying reducible loads;
HIGHWAYS - Compliance with federal law regarding oversize/weight permits;
TRANSPORTATION, DEPARTMENT OF - Permits for oversize/weight vehicles carrying reducible loads;
TRANSPORTATION, DEPARTMENT OF - Compliance with federal law regarding oversize/weight permits;
MONTANA CODE ANNOTATED - Sections 61-10-109, 61-20-121;
REVISED CODES OF MONTANA, 1947 - Sections 32-1123(5)(f), 32-1127;
UNITED STATES CODE - 23 U.S.C. § 127.

HELD: The Montana oversize/weight vehicle permit provisions of title 61 of the Montana Code Annotated, as applied to reducible loads, comply with federal law and regulations because they became grandfathered exceptions after July 1, 1956.

August 31, 1999

Mr. Marvin Dye, Director
Department of Transportation
2701 Prospect Avenue
P.O. Box 201001
Helena, MT 59620-1001

Dear Mr. Dye:

You have requested my opinion on the following question:

> Do the Montana oversize/weight vehicle permit provisions of title 61 of the Montana Code Annotated comply with federal law and regulations as applied to reducible loads because they became "grandfathered" exceptions after July 1, 1956?

The Federal Highway Administration has questioned Montana's statutory compliance with federal law as it pertains to issuing permits for oversize/weight vehicles carrying "reducible loads." You have asked my opinion on whether Montana's statutes comply with federal law.

Reducible loads can be decreased in size to avoid being transported by oversize/weight trucks.

The 1958 Congress enacted Public Law 85-767, which is codified as amended at 23 U.S.C. § 127. That law established weight and size limits for vehicles driven on interstate roads, subject to state limits existing as of July 1, 1956:

> No funds authorized to be appropriated for any fiscal year under section 108(b) of the Federal-Aid Highway Act of 1956 shall be apportioned to any State within the boundaries of which the Interstate System may lawfully be used by vehicles with weight in excess of eighteen thousand pounds carried on any one axle, or with a tandem-axle weight in excess of thirty-two thousand pounds, or with an over-all gross weight in excess of seventy-three thousand two hundred and eighty pounds, or with a width in excess of ninety-six inches, or the corresponding maximum weights or maximum widths permitted for vehicles using the public highways of such State under laws or regulations established by appropriate State authority in effect on July 1, 1956, whichever is greater. . . . This section shall not be construed to deny apportionment to any State allowing the operation within such State of any vehicles or combinations thereof that could be lawfully operated within such State on July 1, 1956.

Pub. L. No. 85-767. Despite numerous amendments and additions to 23 U.S.C. § 127, the provisions recognizing and grandfathering state limits, with certain additions, continue today. See Pub. L. No. 100-17 (1989); 23 U.S.C. § 127 (1999).

As of July 1, 1956, two Montana statutes addressed the issue of special permits for oversize/weight vehicles. The Revised Codes of Montana 1947, § 32-1123 (1947), contained tables of maximum weights per axle combinations which exceeded federal maximum weights and provided:

> (f) The operation of vehicles or combinations of vehicles having dimensions or weights in excess of the maximum limits herein recommended shall be permitted only if and when authorized by special permit issued by the state highway commission or its officers, supervisors or agents acting pursuant to duly delegated authority from said commission, including the state highway patrol.

Rev. Codes Mont. 1947 § 32-1123(5)(f).

In contrast, Rev. Codes Mont. 1947, § 32-1127 (1955), provided that "no permits are to be issued for movement of vehicles carrying built-up or reducible loads in excess of nine (9) feet in width or exceeding the length, height, or weight specified in this act." Thus, one statute contained no limitation on the issuance of special permits to oversize/weight vehicles while the other statute barred the issuance of special permits to oversize/weight vehicles with reducible loads.

You have indicated that prior to December 1973, the Montana State Highway Commission believed it could issue special permits to oversize/weight vehicles only if they carried a nonreducible

load. This position was questioned in December 1973, in the midst of a nation-wide fuel shortage. The Montana Department of Highways initially determined that permits could be issued whether or not the load could be reduced, then reconsidered and determined permits could not be issued to vehicles carrying reducible loads. The reconsideration was prompted by the Federal Highway Administration's disagreement with the Department's interpretation of Montana law.

Thereafter, two truck companies requested the Montana Supreme Court to issue a declaratory judgment regarding oversize/weight permits. The Court analyzed the two conflicting statutes discussed above and ruled as follows:

> We find the interpretations placed upon these Montana statutes by the federal highway administration, and since acquiesced in by respondents, if concurred in by this Court, would constitute a repeal of the provisions of sub-paragraph (5)(f) of section 32-1123, R.C.M. 1947. This sub-paragraph, which was in effect July 1, 1956, and which has been repeatedly reenacted into law each time other provisions of the section were changed, clearly provides the authority which is now denied by the Commission and further grants such authority exclusively to the State Highway Commission and its agents. We find the only reasonable resolution of the conflict between this sub-paragraph and section 32-1127, R.C.M. 1947, is by a construction of these statutes together, to the effect that sub-paragraph (5)(f) of section 32-1123 is an expansion of the powers granted in section 32-1127.
>
> . . . .
>
> We hold the State Highway Commission had the authority to issue such permits on July 1, 1956, for either non-reducible or reducible loads and, accordingly, it has the power to do so now, without jeopardizing the right of the State of Montana to receive federal funds for highway purposes.

State ex rel. Dick Irvin, Inc. v. Anderson, 164 Mont. 513, 523, 524, 525 P.2d 564, 570 (1974).

Anderson remains good law. Sections 32-1123(5)(f) and 32-1127, Rev. Codes Mont. 1947, are recodified and continue to exist, as amended, at Mont. Code Ann. §§ 61-10-109 and -121, respectively. Additionally, Mont. Code Ann. § 61-10-107(3) provides that current maximum gross weight limits do not apply to interstate highways if application would result in the failure to receive federal funds for highway purposes.

The federal law has been amended several times, but continues to recognize, with two additions, the grandfathering of state limits which existed on July 1, 1956. Federal law now states:

> This section shall not be construed to deny apportionment to any State allowing the operation within such State of any vehicles or combinations thereof, other than vehicles or combinations subject to subsection (d) of this section which the State determines could be lawfully operated within such State on July 1, 1956, except in the case of the overall gross weight of any group of two or more consecutive axles, on the date of enactment of the Federal-Aid Highway Amendments of 1974.

23 U.S.C. § 127(a) (1999).

Subsection (d) governs "longer combination vehicles" and grandfathers longer combination vehicle state limits in existence on or before June 1, 1991. 23 U.S.C. § 127(d)(1)(A). Thus, with the exception of any Montana laws regarding "longer combination vehicles," which are subject to 1991 law, and groups of two or more consecutive axles, whose overall gross weight is subject to state law in existence on the date of enactment of the Federal-Aid Highway Amendments of 1974, Montana's oversize/weight vehicle permit provisions in effect July 1, 1956, may be applied to vehicles carrying reducible loads.

THEREFORE, IT IS MY OPINION:

> The Montana oversize/weight vehicle permit provisions of title 61 of the Montana Code Annotated, as applied to reducible loads, comply with federal law and regulations because they became grandfathered exceptions after July 1, 1956.

Sincerely,

JOSEPH P. MAZUREK
Attorney General

jpm/mas/bjh

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Business and Labor Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Department of Public Service Regulation; and
- Office of the State Auditor and Insurance Commissioner.

Education Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law, Justice, and Indian Affairs Interim Committee:

- Department of Corrections; and
- Department of Justice.

Revenue and Taxation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have 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. They also 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, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

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

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter

1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department

2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1999. This table includes those rules adopted during the period July 1, 1999 through September 30, 1999 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, 1999, 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 1998 and 1999 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions.

GENERAL PROVISIONS, Title 1

1.3.101 and other rules - Model Rules of Procedure - Amendment of the Sample Forms Attached to the Model Rules, p. 600, 1225

ADMINISTRATION, Department of, Title 2

I Acquiring Services to Operate the State Charitable Giving Campaign, p. 561, 1292

(Public Employees' Retirement Board)
2.43.403 and other rules - Membership, Service Credit, and Service Purchases in Retirement Systems Administered by the Board - Service Purchases - Social Security Coverage for the Employees of the State and Its Political Subdivisions, p. 932, 1504

(Teachers' Retirement Board)
I and other rules - Teachers' Retirement System, p. 1565

AGRICULTURE, Department of, Title 4

4.10.1001 and other rules - Pesticide Enforcement, p. 1, 404
4.12.1428 Assessment Fees on All Produce, p. 2934, 507

4.12.3501 and other rules - Grading of Seed Potatoes, p. 677, 1505

(Agriculture Development Council)
4.16.701 Agricultural Marketing Development Program; Purpose, Goals, and Criteria, p. 1458, 1764

STATE AUDITOR, Title 6

6.6.126 Unethical Practices, p. 1272
6.6.302 and other rules - Life Insurance and Annuities Replacement, p. 1575
6.6.801 and other rules - Annuity Disclosures, p. 16, 508
6.6.1110 Determination of Reasonableness of Benefits in Relation to Premium Charged in Credit Disability and Credit Life Insurance, p. 1717
6.6.1105 Allowable Exclusions and Restrictions, p. 1274
6.6.4001 Valuation of Securities, p. 205, 639
6.6.4102 Continuing Education Fees, p. 1600

(Classification Review Committee)
6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 Edition, p. 3174, 509

COMMERCE, Department of, Title 8

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