MONTANA ADMINISTRATIVE REGISTER

1999 ISSUE NO. 24
DECEMBER 16, 1999
PAGES 2792-2962

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 24

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

TABLE OF CONTENTS

Page Number

NOTICE SECTION

BEFORE THE TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of new rule I and the amendment of rules 2.44.307 and 2.44.515 pertaining to the Teachers' Retirement System	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On January 6, 2000, at 8:30 a.m. a public hearing will be held in the Boardroom of the Teachers' Retirement System at 1500 Sixth Avenue, Helena, Montana, to consider the proposed adoption of new rule I and the amendment of ARM 2.44.307 and 2.44.515.

2. The Teachers' Retirement Board 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 require an accommodation, contact the Teachers' Retirement Board no later than 5:00 p.m. on January 3, 2000, to advise us of the nature of the accommodation that you need. Please contact Penney Clark, 1500 Sixth Avenue, Helena MT, 59620, (406) 444-3134.

3. The proposed new rule provides as follows:

Rule I EXTRA DUTY COMPENSATION (1) As limited by this rule, extra duty compensation includes payment for extra duty assignments provided it is the standard practice of the employer to:

(a) maintain an extra duty schedule;

(b) include extra duty compensation in the member's employment contract; and

(c) specifically include the extra duty in the official job description.

(2) Employers are required to report such extra duty compensation paid to a member and to withhold employee contributions as provided under 19-20-602, MCA, and submit employer contributions as provided under 19-20-605, MCA.

(3) The term does not include:

(a) termination pay;

(b) secondary employment; or

(c) payments for employment or bonus or additional salary paid to an employee on account of his promise, expressed or implied, to retire on a specified date or within a specified period, or any bonus or additional salary paid to an employee predicated upon his eligibility to retire whether promised or not.

(i) Failure to pay a like bonus or additional salary to another employee in like circumstances who has not promised to retire, creates an inference that payment to the first employee was on account of his promise to retire or terminate.

Other probative evidence may be presented to explain away this inference.

(ii) Unless otherwise limited by a specific statute, such payments may be considered termination pay and may not be reportable as earned compensation to the teachers' retirement system.

AUTH: 19-20-201, MCA
IMP: 19-20-602, 19-20-605, 19-20-715, MCA

Employers are required to withhold and pay employee and employer contributions on the earned compensation paid for services for which membership in the Teachers' Retirement System is required. Often members are required to perform ancillary services that may not qualify for membership in the Teachers' Retirement System if they were the only duties assigned. If left up to the discretion of the employer or employee, these earnings would only be reported in the final years prior to retirement. This rule is necessary to ensure that extra duty compensation is reported to the TRS in all like circumstances thus providing actuarial funding as required by the Montana constitution and State statutes.

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

2.44.307 MEMBERSHIP OF TEACHER'S AIDES AND PART-TIME EMPLOYEES (1) Teacher's aides employed after September 1, 1989, are required to participate in the teachers' retirement system provided their predominate duties are those of a teacher's aide and not a substitute teacher or any other position for which membership is mandatory under 19-20-302, MCA and that they are:

(a) employed in an instructional services capacity for ~~50% or more of the academic day~~ at least 3.5 hours per day and;

(b) employed ~~for the equivalent of 30 full time days~~ at least 210 hours during the school year.

(2) Teacher's aides employed prior to September 1, 1989, who remained in the public employees' retirement system are not eligible to participate in the teachers' retirement system while employed as a teacher's aide with the same employer.

(2) through (4) remain the same, but are renumbered (3) through (5).

AUTH: 19-20-201, MCA
IMP: 19-20-302, MCA

Administrative Rule 2.44.401 defines a full day as 7 hours; the proposed amendments are necessary to clarify that 50% of the academic day is 3.5 hours. Section 19-20-302, MCA, requires that an individual be employed for at least 30 days in the fiscal year to be eligible for membership, therefore, a part-time teacher's aide must also be employed for at least 210 hours (7 hours X 30) to be eligible for membership.

2.44.515 CORRECTION OF ERRORS ON CONTRIBUTIONS AND OVERPAYMENTS (1) through (3) remain the same.

(4) Interest shall accrue on contributions not reported or amounts overpaid ~~at the same rate as that credited to member accounts~~ to members at the actuarial assumed rate. Interest will accrue from the date the contributions were due, or the date the error occurred.

(5) If payment is received within 30 days of notification of the amount due, interest may be waived if less than $5.00 or if the board finds that the error was caused by the teachers' retirement system.

AUTH: 19-20-201, MCA
IMP: 19-20-208, MCA

Occasionally a retiree will receive benefits that they are not entitled to because the TRS is not notified that the retiree has returned to full-time employment, or the TRS is not advised of the death of the member or beneficiary and under the option selected at the time of retirement, benefits must be reduced when either the retiree or their beneficiary dies. Also, employers occasionally fail to report an employee who is eligible for membership or fails to report all of the salary the member earned. When these types of errors occur, any overpayment or amounts not reported must be paid to the TRS. The requirements embodied in this amendment are intended to encourage members and employers to promptly pay any amounts owed and to maintain the actuarial funding of the system as required by the Montana Constitution.

5. 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 David L. Senn, Teachers' Retirement System, PO Box 200139, Helena, MT 59620-0139, and must be received no later than January 13, 2000.

6. Penney Clark, Teachers' Retirement System, PO Box 200139, Helena, MT 59601-0139, has been designated to preside over and conduct the hearing.

7. The Teachers' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notice and specifies that the person wishes to receive notices regarding the Teachers' Retirement System. Such written requests may be mailed or delivered to Penney Clark, Teachers' Retirement System, 1500 Sixth Avenue, PO Box 200139, Helena, MT 59620-0139, faxed to the office at (406) 444-2641, or may be made by completing a request form at any rules hearing held by the Teachers' Retirement Board.

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

David L. Senn, Executive Director
Teachers' Retirement Board

Dal Smilie, Rule Reviewer

Certified to the Secretary of State December 6, 1999

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 4.5.202 Category 1 and 4.5.203 Category 2 relating to noxious weeds	)	NOTICE OF PROPOSED AMENDMENT
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 16, 2000, the Montana Department of Agriculture proposes to amend ARM 4.5.202 and 4.5.203 relating to Category 1 and Category 2 Noxious Weeds respectively.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rule making process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on January 2, 2000, to advise of the nature of the accommodation that you need. Please contact Gary Gingery, Administrator, Agricultural Sciences Division, Department of Agriculture at P.O. Box 200201, Helena, MT 59620-0201; Phone: (406)444-2944; TDD Phone: (406)444-4687; FAX: (406)444-7336 or E-mail: agr@state.mt.us.

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

4.5.202 CATEGORY 1 (1) through (2)(j) remain the same.
(k) Common tansy (Tanacetum vulgare)
(l) Ox-eye daisy (Chrysanthemum leucanthemum L.)
(m) Houndstongue (Cynoglossum officinale L.)

AUTH: Sec. 80-7-802, MCA
IMP: Sec. 7-22-2101, MCA

REASON: The Montana Department of Agriculture received petitions from Missoula County to list the common tansy and from the Montana Weed Control Association and Missoula County to list ox-eye daisy and houndstongue as noxious weeds. The department sponsored Montana Noxious Weed List Advisory Committee, including representation from weed districts, the Montana Weed Control Association, Montana Farmers Union, The Nature Conservancy, Montana Stockgrowers, the Montana State University Extension Service, Montana Seed Growers Association, Bureau of Land Management, Montana Farm Bureau Federation, Montana Native Plant Society, U.S. Forest Service, University of Montana, and Montana Department of Agriculture, has reviewed the biology of these and has determined they have the potential for rapid spread and invasion of non-infested

land. These weeds are capable of economically and biologically adversely affecting range, forest, crop, and other lands. These determinations, resulting in the designation as Category 1 noxious weeds, will increase public awareness and recognition of these weeds; encourage education on identification and control; improve monitoring for infestations; improve control and containment of existing infestations; and provide for eradication of new or small infestations.

4.5.203 CATEGORY 2 (1) through (2)(e) remain the same.
(f) Tall buttercup (Ranunculus acris L.)
(g) Tamarisk [saltcedar] (Tamarix spp.)

AUTH: Sec. 80-7-802, MCA
IMP: Sec. 7-22-2101, MCA

REASON: The Montana Department of Agriculture received petitions from the Montana Native Plant Society, The Nature Conservancy, and Missoula County to list tall buttercup and from the Montana Weed Control Association to list tamarisk as noxious weeds. The department sponsored Montana Noxious Weed List Advisory Committee, including representation from weed districts, the Montana Weed Control Association, Montana Farmers Union, The Nature Conservancy, Montana Stockgrowers, the Montana Extension Service, Montana Seed Growers Association, Bureau of Land Management, Montana Farm Bureau Federation, Montana Native Plant Society, U.S. Forest Service, University of Montana, and Montana Department of Agriculture, has reviewed the biology of these and has determined they have the potential for rapid spread and invasion of non-infested land. These weeds are capable of economically and biologically adversely affecting range, forest, crop and other lands. These determinations, resulting in the designation as Category 2 noxious weeds, will increase public awareness and recognition of these weeds; encourage education on identification and control; improve monitoring for infestations; improve control and containment of existing infestations; and provide for eradication of new or small infestations.

4. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to Gary Gingery, Administrator, Department of Agriculture, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406)444-7336, or E-mail: agr@state.mt.us. Any comments must be received no later than January 14, 2000.

5. If persons who are directly affected by the proposed action 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 Gary Gingery, Administrator,

Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, or E-mail: agr@state.mt.us no later than January 14, 2000.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed 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 41 based on a 415-person membership of the Montana Weed Control Association.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies weed seed forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, feed, apiculture, fertilizer, commodity dealers and warehouseman, produce, mint, seed, alternative crops, agriculture heritage program, wheat research and marketing, rural development, and/or hail. Such written request may be mailed or delivered to Gary Gingery, Administrator, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201, faxed to the office at (406) 444-7336, or E-mail: agr@state.mt.us or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

8. The bill sponsor notification requirements of 2-4-302, MCA do not apply. However, the department has taken appropriate steps to notify interested legislators.

DEPARTMENT OF AGRICULTURE

Ralph Peck
Director

Tim Meloy
Attorney
Rule Reviewer

Certified to the Secretary of State December 6, 1999.

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

In the matter of the amendment of ARM 46.12.3804, 46.18.106, 46.18.107, 46.18.109, 46.18.113, 46.18.118, 46.18.122, 46.18.126, 46.18.129, 46.18.134, 46.18.140, 46.18.306, 46.18.309 and 46.18.326 pertaining to Families Achieving Independence in Montana (FAIM)	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On January 5, 2000, 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. This notice replaces MAR Notice No. 37-135 published in the Montana Administrative Register, issue number 21 on page number 2532.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on December 27, 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.

46.12.3804 INCOME ELIGIBILITY, NON-INSTITUTIONALIZED MEDICALLY NEEDY (1) Medically needy income eligibility for SSI and ~~AFDC-related~~ family-related persons and families will be computed using a 1 month prospective budget period.

(a) For groups covered under ARM 46.12.3801(1)(a) through (1)(e), monthly countable income will be determined using FAIM income requirements, in particular those with respect to prospective budgeting and earned income disregards, set forth in ARM 46.18.120.

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

(b) For groups covered under ARM 46.12.3801(4)(a) and (b), countable income will be determined using the SSI income

requirements set forth in 20 CFR, part 416, subpart K, as amended through April 1, 1990, which contains the SSI criteria for evaluating income, including the income of financially responsible relatives. The department hereby adopts and incorporates by reference 20 CFR, part 416, subpart K, as amended through April 1, 1990. A copy of these federal regulations may be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 111 Sanders, P.O. Box 4210, Helena, MT 59604-4210.

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

AUTH: Sec. 53-2-201, 53-4-212, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-4-201, 53-4-231, 53-6-101, 53-6-131 and 53-6-402, MCA

46.18.106 FAIM: FINANCIAL ASSISTANCE, INTENTIONAL PROGRAM VIOLATION AND DISQUALIFICATION HEARINGS (1) through (1)(b) remain the same.

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

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

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

(f) an explanation of the disqualification period and repayment obligation if the individual is found to have committed an IVP at an ADH or signs a waiver of the individual's right to an ADH.

(4) through (13) remain the same.

(14) During the disqualification period, the disqualified individual shall lose ~~medical as well as~~ his or her portion of the monthly cash ~~assistance~~ payment and/or any other FAIM financial benefits.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211, and 53-6-601, MCA

46.18.107 FAIM FINANCIAL ASSISTANCE: FAIM PROGRAMS AND TIME LIMITS (1) and (2) remain the same.

(3) The pathways program is a time limited program comprised of the following elements:

(a) ~~cash~~ assistance for a maximum of 24 months, unless an exemption listed in ARM 46.18.108 applies, which months need not be consecutive;

(3)(b) through (j) remain the same.

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

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

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

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

(a) remains the same.

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

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

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

46.18.109 FAIM FINANCIAL ASSISTANCE: GENERAL ELIGIBILITY REQUIREMENTS (1) remains the same.

(2) The following are not eligible for FFA:

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

(e) teenage parents who are not living with their parent or parents, legal guardian, or other adult relative who would qualify to be a guardian of a minor child under Title 72, chapter 5, ~~of Montana Code Annotated~~ MCA, unless the teenage parent has been authorized to live in an alternative setting by the county's living arrangement review committee because:

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

(j) all members of the assistance unit which includes a caretaker relative or minor child who refuses to comply with

eligibility requirements including providing information and verification needed to determine eligibility;

(i) refusal may occur verbally, in writing, or by not responding in any manner.

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

46.18.113 FAIM FINANCIAL ASSISTANCE: INCLUSION IN ASSISTANCE UNIT (1) through (3) remain the same.

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

(5) remains the same.

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

46.18.118 FAIM FINANCIAL ASSISTANCE: RESOURCES

(1) remains the same.

(2) In determining eligibility for FAIM financial assistance, the department will count the equity value as defined in ARM 46.18.103 of all resources available to any member of the filing unit, unless there is a specific provision for the exclusion of the resource elsewhere in this rule. A resource is considered available both when actually available and when the applicant or participant has a legal interest in the resource and the legal ability to make it available for support and maintenance. In the case of qualified aliens, as defined in ARM 46.18.140, the income and resources of the alien's sponsor and the alien's sponsor's spouse must be considered in determining the eligibility of the alien. A sponsor is any person over the age of 18 who petitions for admission of an alien under section 213 of the Immigration and Nationality Act.

(3) remains the same.

(4) The following resources are not counted in determining eligibility:

(a) the filing unit's home, which is the usual residence of the filing/assistance unit, regardless of its value;

(4)(b) through (d) remain the same.

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

(4)(f) through (o) remain the same but are renumbered (4)(e) through (n).

(5) through (7) remain the same.

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

46.18.122 FAIM FINANCIAL ASSISTANCE: ASSISTANCE STANDARDS; TABLES; METHODS OF COMPUTING AMOUNT OF MONTHLY BENEFIT PAYMENT (1) through (4)(b) remain the same.

(5) The GMI standards, NMI standards and benefits standards used to determine eligibility and amount of cash assistance are as follows:

(a) Gross monthly income standards to be used when adults are included in the assistance unit are compared with the assistance unit's gross monthly income as defined in ARM 46.18.103.

~~GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT~~

~~Number of Persons in Household~~	~~With Shelter Obligation Per Month~~	~~Without Shelter Obligation Per Month~~
~~1~~	~~$ 640~~	~~$ 231~~
~~2~~	~~862~~	~~379~~
~~3~~	~~1,086~~	~~522~~
~~4~~	~~1,308~~	~~664~~
~~5~~	~~1,532~~	~~794~~
~~6~~	~~1,754~~	~~919~~
~~7~~	~~1,976~~	~~1,043~~
~~8~~	~~2,200~~	~~1,158~~
~~9~~	~~2,309~~	~~1,267~~
~~10~~	~~2,414~~	~~1,375~~
~~11~~	~~2,509~~	~~1,467~~
~~12~~	~~2,601~~	~~1,561~~
~~13~~	~~2,686~~	~~1,645~~
~~14~~	~~2,764~~	~~1,722~~
~~15~~	~~2,842~~	~~1,800~~
~~16~~	~~2,908~~	~~1,867~~

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

Number of Persons in Household	With Shelter Obligation Per Month	Without Shelter Obligation Per Month
1	$ 655	$ 237

2	881	385
3	1,104	529
4	1,328	673
5	1,552	805
6	1,776	931
7	2,002	1,056
8	2,226	1,173
9	2,335	1,282
10	2,442	1,389
11	2,536	1,484
12	2,631	1,576
13	2,714	1,661
14	2,794	1,741
15	2,871	1,819
16	2,940	1,885

(b) Gross monthly income standards to be used for child only assistance units are compared with the assistance unit's gross monthly income as defined in ARM 46.18.103.

~~GROSS MONTHLY INCOME STANDARDS TO BE USED FOR CHILD ONLY ASSISTANCE UNITS~~

~~NUMBER OF PERSONS IN HOUSEHOLD~~	~~WITH SHELTER OBLIGATION PER MONTH~~
~~1~~	~~$ 231~~
~~2~~	~~463~~
~~3~~	~~696~~
~~4~~	~~939~~
~~5~~	~~1,162~~
~~6~~	~~1,393~~
~~7~~	~~1,632~~
~~8~~	~~1,861~~
~~9~~	~~1,974~~
~~10~~	~~2,001~~
~~11~~	~~2,187~~
~~12~~	~~2,287~~
~~13~~	~~2,388~~
~~14~~	~~2,481~~
~~15~~	~~2,575~~
~~16~~	~~2,658~~

GROSS MONTHLY INCOME STANDARDS TO BE USED FOR CHILD ONLY ASSISTANCE UNITS

NUMBER OF PERSONS IN HOUSEHOLD	WITH SHELTER OBLIGATION PER MONTH
1	$ 237

2	470
3	707
4	944
5	1,177
6	1,412
7	1,652
8	1,883
9	1,996
10	2,103
11	2,211
12	2,311
13	2,412
14	2,507
15	2,601
16	2,684

(c) Net monthly income standards to be used when adults are included in the assistance unit are compared with the assistance unit's net monthly income as defined in ARM 46.18.103.

~~NET MONTHLY INCOME STANDARDS WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT~~

~~NUMBER OF PERSONS IN HOUSEHOLD~~	~~WITH SHELTER OBLIGATION PER MONTH~~	~~WITHOUT SHELTER OBLIGATION PER MONTH~~
~~1~~	~~$ 346~~	~~$ 125~~
~~2~~	~~466~~	~~205~~
~~3~~	~~587~~	~~282~~
~~4~~	~~707~~	~~359~~
~~5~~	~~828~~	~~429~~
~~6~~	~~948~~	~~497~~
~~7~~	~~1,068~~	~~564~~
~~8~~	~~1,189~~	~~626~~
~~9~~	~~1,248~~	~~685~~
~~10~~	~~1,305~~	~~743~~
~~11~~	~~1,356~~	~~793~~
~~12~~	~~1,406~~	~~844~~
~~13~~	~~1,452~~	~~889~~
~~14~~	~~1,494~~	~~931~~
~~15~~	~~1,536~~	~~973~~
~~16~~	~~1,572~~	~~1,009~~

NET MONTHLY INCOME STANDARDS WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

NUMBER OF PERSONS IN HOUSEHOLD	WITH SHELTER OBLIGATION PER MONTH	WITHOUT SHELTER OBLIGATION PER MONTH
1	$ 354	$ 128

2	476	208
3	597	286
4	718	364
5	839	435
6	960	503
7	1,082	571
8	1,203	634
9	1,262	693
10	1,320	751
11	1,371	802
12	1,422	852
13	1,467	898
14	1,510	941
15	1,552	983
16	1,589	1,019

(d) Net monthly income standards to be used when no adults are included in the assistance unit are compared with the assistance unit's net monthly income as defined in ARM 46.18.103.

~~NET MONTHLY INCOME STANDARDS TO BE USED FOR CHILD ONLY ASSISTANCE UNITS~~

~~NUMBER OF CHILDREN IN HOUSEHOLD~~	~~PER MONTH~~
~~1~~	~~$ 125~~
~~2~~	~~250~~
~~3~~	~~376~~
~~4~~	~~502~~
~~5~~	~~628~~
~~6~~	~~753~~
~~7~~	~~882~~
~~8~~	~~1,006~~
~~9~~	~~1,067~~
~~10~~	~~1,125~~
~~11~~	~~1,182~~
~~12~~	~~1,236~~
~~13~~	~~1,291~~
~~14~~	~~1,341~~
~~15~~	~~1,392~~
~~16~~	~~1,437~~

NET MONTHLY INCOME STANDARDS TO BE USED FOR CHILD ONLY ASSISTANCE UNITS

NUMBER OF CHILDREN IN HOUSEHOLD	PER MONTH
1	$ 128
2	254
3	382

4	510
5	636
6	763
7	893
8	1,018
9	1,079
10	1,137
11	1,195
12	1,249
13	1,304
14	1,355
15	1,406
16	1,451

(e) Benefit income standards to be used when adults are included in the assistance unit~~,~~ are compared with the assistance unit's net countable income as defined in ARM 46.18.103.

~~BENEFITS STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT~~

~~NUMBER OF PERSONS IN HOUSEHOLD~~	~~WITH SHELTER OBLIGATION PER MONTH~~	~~WITHOUT SHELTER OBLIGATION PER MONTH~~
~~1~~	~~$ 272~~	~~$ 98~~
~~2~~	~~366~~	~~161~~
~~3~~	~~461~~	~~221~~
~~4~~	~~555~~	~~282~~
~~5~~	~~650~~	~~337~~
~~6~~	~~744~~	~~390~~
~~7~~	~~838~~	~~443~~
~~8~~	~~933~~	~~491~~
~~9~~	~~980~~	~~538~~
~~10~~	~~1,024~~	~~583~~
~~11~~	~~1,064~~	~~623~~
~~12~~	~~1,104~~	~~663~~
~~13~~	~~1,140~~	~~698~~
~~14~~	~~1,173~~	~~731~~
~~15~~	~~1,206~~	~~764~~
~~16~~	~~1,234~~	~~792~~

BENEFITS STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

NUMBER OF PERSONS IN HOUSEHOLD	WITH SHELTER OBLIGATION PER MONTH	WITHOUT SHELTER OBLIGATION PER MONTH
1	$ 278	$ 100
2	374	163
3	469	225
4	564	286

5	659	341
6	754	395
7	849	448
8	944	498
9	991	544
10	1,036	590
11	1,076	630
12	1,116	669
13	1,152	705
14	1,185	739
15	1,218	772
16	1,247	800

(f) Benefit income standards to be used when no adults are included in the assistance unit~~,~~ are compared to the assistance unit's net countable monthly income as defined in ARM 46.18.103.

~~BENEFIT STANDARDS TO BE USED FOR CHILD ONLY ASSISTANCE UNITS~~

~~NUMBER OF PERSONS IN HOUSEHOLD~~	~~PER MONTH~~
~~1~~	~~$ 98~~
~~2~~	~~196~~
~~3~~	~~295~~
~~4~~	~~394~~
~~5~~	~~493~~
~~6~~	~~591~~
~~7~~	~~692~~
~~8~~	~~790~~
~~9~~	~~838~~
~~10~~	~~883~~
~~11~~	~~928~~
~~12~~	~~970~~
~~13~~	~~1,013~~
~~14~~	~~1,053~~
~~15~~	~~1,093~~
~~16~~	~~1,128~~

BENEFIT STANDARDS TO BE USED FOR CHILD ONLY ASSISTANCE UNITS

NUMBER OF PERSONS IN HOUSEHOLD	PER MONTH
1	$ 100
2	199
3	300
4	400
5	499

6	599
7	701
8	799
9	847
10	893
11	938
12	980
13	1,024
14	1,064
15	1,104
16	1,139

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211, 53-4-241 and 53-4-601, MCA

46.18.126 FAIM FINANCIAL ASSISTANCE: EXCLUDED UNEARNED INCOME (1) This rule governs excluded unearned income for purposes of FAIM financial assistance but not food stamp benefits, which are governed by ARM ~~46.128.401~~ 46.18.401, et seq.

(2) In testing gross monthly income and net monthly income and in determining grant amount, the following unearned income shall be excluded:

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

(r) payments received under the Alaska Native Claims Settlement Act, P.L. 92-203;

(s) payments received under the volunteers in service to America program (VISTA) pursuant to Title I of P.L. 93-113, section 404(g);

(2)(t) remains the same.

(u) supportive services payments to or for an assistance unit who is participating in WoRC~~, AWEP,~~ or any other FAIM employment and training program;

(v) and (w) remain the same.

(x) HUD Section 8 utility payments, regardless of whether the payee is a member of the assistance unit or someone else is the payee; ~~and~~

(y) money received pursuant to a valid loan as defined in ARM 46.18.103; and

(2)(z) remains the same.

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

46.18.129 FAIM FINANCIAL ASSISTANCE: RESTRICTIONS ON ASSISTANCE PAYMENTS (1) Pathways~~,~~ and community services program monthly benefit payments ~~and one-time employment-related payments~~ are made directly to eligible persons for their own use except in cases of protective payees. The check may not be mailed to the grantee in care of a creditor delivered through indirect representation. Payments may not be forwarded from one address to another.

(2) ~~Job supplement program payments and other cash~~ Cash assistance payments, including but not limited to employment and

training supportive services payments, and one-time employment related payments, are made directly to the participant, protective payee or vendor.

(3) and (4) remain the same.

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

46.18.134 FAIM FINANCIAL ASSISTANCE: SANCTIONS (1) If any member of the assistance unit fails without good cause as defined in ARM 46.18.136 to comply with a requirement of the individual's family investment agreement, the participant will be sanctioned by means of the reduction of the monthly FAIM assistance payment by an amount equal to the portion of the payment allocated to the needs of that member ~~and the loss of medicaid coverage for the participant,~~ for a period of time as specified in (2) and (3).

(2) remains the same.

(3) During the penalty period, the income and resources of a sanctioned individual will continue to be considered in determining eligibility and grant amount for the ~~remaining members of the~~ assistance unit.

(4) remains the same.

~~(5) In addition to the loss of financial assistance for the needs of the sanctioned individual as specified in (1) through (3) above, the sanctioned individual will also lose medicaid coverage during the penalty period set forth in (2). However, when the sanctioned individual cures the failure to comply before the applicable sanction period expires, medicaid eligibility will be reinstated back to the first day of the month in which the individual complies, unless the failure to comply involved something which is also an eligibility requirement for medicaid.~~

(5) In addition to the loss of financial assistance as specified in (1), the sanctioned individual will lose medicaid coverage during the penalty period set forth in (2) only when the failure to comply involved child support enforcement, third party liability trauma questionnaires, or program compliance requirements. However, if the sanctioned individual cures the failure to comply by meeting child support enforcement, third party liability trauma questionnaires, or program compliance requirements, medicaid benefits will be reinstated back to the first day of the month in which the sanctioned individual complies if the individual is otherwise medicaid eligible.

~~(6) In addition to the loss of cash and medical assistance, the food stamp allotment for the sanctioned individual's household will be reduced by 25%.~~

(6) The food stamp allotment for a sanctioned individual's household will not increase as a result of cash assistance sanctioning.

(7) During the penalty period, child care assistance will continue if:

(a) child care is necessary to allow the FAIM participant to perform employment-related or training activities, as defined

in (8), which are required by the family investment agreement; and

(b) the sanctioned individual participates in specified employment-related or training activities throughout the penalty period. If the sanctioned individual fails to comply with any employment-related or training activity during the penalty period, child care assistance will be discontinued and will not be reinstated during the penalty period even if the sanctioned individual begins to comply or participate.

(8) "Employment-related or training activities", as specified in (7)(a), means educational or training activities required by the family investment agreement which are directly intended to promote economic self-sufficiency. "Employment-related or training activities" does not include family strengthening activities; child support enforcement; early periodic screening, diagnosis and treatment; program compliance; third party liability; participation log and travel; nor negotiation of a new family investment agreement.

~~(7)~~(9) ~~When~~ If a sanctioned individual requests a hearing to challenge the sanction and receives continued benefits pending the hearing, the sanction will not be imposed until a final decision is issued by the hearing officer or the board of public assistance appeals. ~~When~~ If a final decision upholding the sanction has been issued and it is possible to impose the sanction following the decision, the sanction will then be imposed in the usual manner in a later month or months. Assistance received for the sanctioned individual's needs pending the fair hearing decision will not be considered an overpayment provided the sanctioned individual was otherwise eligible to receive benefits. However, if the sanctioned individual is no longer eligible to receive benefits when the sanction is to be imposed, the benefits paid to the sanctioned individual during the pendency of the appeals process will be considered an overpayment.

AUTH: Sec. 53-4-212, MCA
IMP: Sec. 53-4-211, 53-4-601 and 53-4-608, MCA

46.18.140 FAIM FINANCIAL ASSISTANCE: ELIGIBILITY, CITIZENSHIP REQUIREMENTS (1) Except as provided by this rule ~~in (5)~~, only U.S. citizens and qualified aliens are eligible for FAIM financial assistance.

(2) A qualified alien is a noncitizen who:

(a) remains the same.

(b) was granted asylum under section 208 of the INA;

(c) remains the same.

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

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

~~(ii) is an active member of the U.S. armed services, other than active duty for training;~~

~~(iii) is a spouse or unmarried dependent of a veteran or~~

~~active duty military personnel as described in (2)(d)(i) or (ii); or~~

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

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

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

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

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

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

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

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

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

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

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

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

(d) was granted parole for at least 1 year under section 21(d)(5) of the INA;

(e) was granted conditional entry under immigration law in effect before April 1, 1980;

(f) is a Cuban/Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980, if entry occurred within the last 7 years, including:

(i) any alien granted parole status as a Cuban/Haitian entrant; or

(ii) any alien granted any other special status for nationals of Cuba or Haiti; or

(iii) any alien who is a national of Cuba or Haiti and who:

(A) was paroled into the U.S., but has not acquired any other status; or

(B) is the subject of removal proceedings or has an

application for asylum pending; and

(C) does not have a final order for removal entered;

(q) is an Amerasian immigrant who was admitted to the U.S. pursuant to section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988, if admitted within the last 7 years, including any alien lawfully admitted for permanent residence if the alien was a resident of Vietnam on December 22, 1987 and if the alien was born in Vietnam after January 1, 1962 and before January 1, 1976; and

(i) was fathered by a U.S. citizen; or

(ii) is the spouse, child, natural mother, or who acted as the mother, father or next of kin to the alien described in (2)(q)(i), if accompanying or following the alien described in (2)(q)(i) to the U.S. and if admission is necessary to maintain family unity;

(h) is an American Indian born in Canada if at least 50% American Indian blood and considered lawfully admitted for permanent residence;

(i) is a member of a federally recognized Indian tribe under the Indian Self Determination and Education Assistance Act and considered lawfully admitted for permanent residence;

(j) receives SSI benefits and who retains derivative eligibility for medicaid;

(k) is a battered spouse or child or a person who has been subjected to extreme cruelty in the U.S. pursuant to the requirements of 8 USC 1641(c), if:

(i) the applicant verifies that battery or extreme cruelty was inflicted on the applicant, applicant's child or the child applicant's parent by providing proof that a case was established by INS; and

(ii) there is a substantial connection between the abuse and the applicant's need for benefits; and

(iii) the applicant does not reside with the abuser;

(l) is lawfully admitted to the U.S. for permanent residence and:

(i) the alien entered the U.S. as a refugee within the last 7 years and the alien's status has changed to "lawfully admitted for permanent residence"; or

(ii) the alien was granted asylum within the last 7 years and the asylee's status has changed to "lawfully admitted for permanent residence"; or

(iii) the alien had deportation withheld under section 243(h) of the INA within the last 7 years and the alien's status has changed to "lawfully admitted for permanent residence"; or

(iv) the alien was admitted as a Cuban/Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980 within the last 7 years and the alien's status has changed to "lawfully admitted for permanent residence"; or

(v) the alien was admitted as an Amerasian immigrant under section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988 within the last 7 years and the alien's status has changed to "lawfully admitted for permanent residence"; or

(vi) the alien entered the U.S. before August 22, 1996; or

(vii) the alien entered the U.S. on or after August 22, 1996 and has resided in the U.S. for 5 years and can be credited with 40 qualifying quarters of work, cumulated as defined in (4) and (5);

(m) is a veteran of the U.S. armed forces and who received an honorable discharge not because of alienage;

(n) is a Hmong or other Highland Lao veteran who fought on behalf of the U.S. armed forces during the Vietnam conflict;

(o) is on active duty in the U.S. army, navy, air force, marine corps or coast guard and who is not on active duty for training purposes;

(p) is the spouse of a veteran or an alien on active duty as described in (2)(m) through (o); or

(q) is the unmarried child of a veteran or alien on active duty as described in (2)(m) through (o).

(3) Qualified aliens entering the U.S. on or after August 22, 1996 are not eligible for medicaid benefits for a period of 5 years from the date of entry unless they are:

(a) refugees;

(b) asylees;

(c) aliens whose deportation was withheld under section 243(h) of the INA;

(d) honorably discharged veterans or aliens on active duty in the U.S. armed forces, or the spouse and/or unmarried child of honorably discharged veterans or aliens on active duty; or

(e) American Indians with at least 50% American Indian blood who were born in Canada.

(4) If the alien was a resident of the U.S. prior to August 22, 1996, the work quarter requirement does not apply in determining medicaid eligibility. If the alien entered the U.S. after August 22, 1996, the alien is not eligible for benefits for 5 years from the date of entry. If 5 years have passed since the alien entered the U.S., the work quarter requirement may be met, subject to (5), by cumulating quarters worked by:

(a) the alien;

(b) the alien's living parents (including stepparents) if the quarters were earned while the alien was under age 18;

(c) the alien's deceased parents (including stepparents) if the quarters were earned while the alien was under age 18; or

(d) the alien's spouse if the quarters were earned during the marriage and if the alien is still married to that spouse or if the spouse is deceased.

(5) No work quarters may be credited for any period after December 31, 1996 if the alien or any of the persons listed in (4)(b) through (d) received any federal means-tested benefits during the period the work quarters were earned.

(6) An alien who meets all financial and non-financial eligibility criteria is eligible to receive medicaid benefits only for a period of 7 years from the date INS designates the alien as one of the following and if the alien was:

(a) admitted to the U.S. as a refugee under section 207 of the INA; or

(b) granted asylum under section 208 of the INA; or

(c) withheld from deportation under section 243(h) of the

INA; or

(d) admitted as a Cuban/Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980; or

(e) admitted as an Amerasian immigrant under section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988.

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

46.18.306 FAIM EMPLOYMENT AND TRAINING ACTIVITIES (1) Participants in FAIM employment and training activities, regardless of whether they are members of a single-parent or two-parent family, may, in accordance with their FIA and subject to availability in their community, participate in the following activities:

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

(g) short-term skills training for a period not to exceed 6 months; ~~or~~

(h) individual or group job search~~.~~; or

(i) educational activities to qualify for a high school diploma or GED equivalency and remedial adult educational activities.

~~(2) Participants who are members of a two-parent family may also, in accordance with their employability plan or FIA and subject to the approval of their case manager, participate in educational activities to qualify for a high school diploma or equivalency and remedial adult educational activities as determined appropriate by the case manager.~~

(3) and (4) remain the same but are renumbered (2) and (3).

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

46.18.309 FAIM EMPLOYMENT AND TRAINING: WORK EXPERIENCE PROGRAM (WEX) (1) and (2) remain the same.

(3) A participant's assignment to a work experience component site is subject to the following requirements:

~~(a) the participant may request a reassignment at any time which may be granted at the discretion of the participant's case manager;~~

~~(b) the site and the training activities in which the participant is engaged must be in compliance with all applicable federal, state or local health and safety standards;~~

~~(c) the participant's assignment shall take into consideration the following:~~

~~(i) family circumstances;~~

~~(ii) extent of work experience;~~

~~(iii) length of detachment from the labor market; and~~

~~(iv) barriers to employment.~~

(a) the site must be in compliance with all applicable federal, state, or local health and safety standards;

(b) non-displacement should be established; and

(c) the work site and the sponsoring agency have entered into a written agreement.

~~(d)~~(4) ~~a~~ A participant shall not be assigned to a site until the department and the sponsoring agency have entered into an agreement.

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

46.18.326 FAIM EMPLOYMENT AND TRAINING: SUPPORTIVE SERVICES ~~(1) Supportive services for child care and transportation shall be available if they are determined necessary for a person to participate in FAIM employment and training.~~

~~(a) Child care for FAIM employment and training activities may consist of state paid voucher child care or alternative child care developed in each community.~~

~~(b) Reimbursement for transportation may be provided in the pathways program. Reimbursement for transportation will not be provided in the community services program.~~

~~(c) Supportive services for WoRC participants are available as provided in the department's WoRC manual, section 8. The department hereby adopts and incorporates by reference the WoRC manual, section 8, as amended through March 1, 1998. Section 8 of the WoRC manual specifies what supportive services are available to FAIM participants. A copy of the WoRC manual, section 8, as amended through March 1, 1998, may be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 111 N. Sanders, Helena MT 59604 4210.~~

~~(2) Supportive services payments may be made for expenses determined necessary to participate in a FAIM activity or accept or maintain employment which includes but is not limited to:~~

~~(a) transportation costs;~~

~~(b) liability insurance for necessary private transportation;~~

~~(c) auto repair for necessary private transportation;~~

~~(d) tools for employment;~~

~~(e) clothing, personal grooming and hygiene;~~

~~(f) fees, transcripts, applications, birth certificates, GED or equivalency fees;~~

~~(g) medical physicals, prescriptions, eye glasses and immediate dental care; and~~

~~(3) Participants accepting a pathways employment related payment will be ineligible for a pathways or community services monetary grant for a period of 2 months for each month's worth of benefits received.~~

(1) Funds are available to pay expenses that are, or may be, incurred in a benefit month, by a pathways/CSP participant to comply with his/her family investment agreement activities which include the mandatory eligibility requirements and employment/training activities.

(2) Supportive services funds may not be used to pay for:

(a) any medical service or item; or

(b) fines of any type, including traffic, criminal, and

library fines.

~~(4)~~ (3) Supportive services ~~and pathways employment related~~ payments may be provided as appropriate by the FIA coordinator or service provider as defined in the community operating plan.

~~(5) Provision of supportive services and pathways employment related payments is contingent upon the availability of funding~~

(6) through (8) remain the same but are renumbered (4) through (6).

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

3. ARM 46.12.3804

There are 2 separate procedures for determining monthly countable income for the FAIM program. The first considers general FAIM eligibility for households not receiving SSI. The second considers eligibility for households receiving SSI. ARM 46.12.3804 failed to make that distinction. Therefore, the proposed amendment to ARM 26.12.3804 is necessary to reflect the different treatment of cases involving SSI. The proposed amendment clarifies the rule to comply with federal law, and puts potentially eligible FAIM recipients on notice that SSI payments will be handled differently. The rule will not result in significant fiscal impact.

ARM 46.18.106

The FAIM program provides assistance to needy families in Montana with a view toward helping those families become self-sufficient. Persons who intentionally make misrepresentations about eligibility or who purposely violate certain program requirements are disqualified from receiving FAIM assistance. ARM 46.18.106 states the procedure and requirements for disqualification and defines "intentional program violation (IPV)". Currently, the rule states that when a person is disqualified from FAIM for committing an intentional program violation, the person will also be disqualified from Medicaid. The FAIM program and the Medicaid program are two separate programs. Each has its own set of rules. The Department believes that persons should not be deprived of their health benefits simply because they have become disqualified from some other program. Though many of the eligibility requirements for the FAIM and Medicaid programs are the same, one could meet the eligibility requirements for Medicaid even though one has been disqualified from FAIM. Therefore, the proposed amendment is necessary to provide health care services for persons qualifying for Medicaid, even if they have become disqualified from FAIM. This option better protects the health needs of low-income Montanans.

Furthermore, the Department of Public Health and Human Services

has not automatically discontinued Medicaid benefits for persons disqualified under ARM 46.18.106. Thus, the proposed amendment is also necessary to bring the rule into harmony with the Department's current policy. Though the Department could have disqualified those individuals who commit IPVs, that option does not protect the health of persons eligible for Medicaid. The Department estimates the number of persons affected by this rule to be less than 200 per year. However, the Department has not been removing Medicaid benefits for disqualified FAIM participants in the recent past; therefore, the amendment should have no significant impact on affected persons' benefits. In addition, no significant economic impact will result from this amendment.

ARM 46.18.107

The FAIM program is funded, in part, by the federal government. As a consequence, the State is required to abide by certain federal requirements with respect to administration of the program. When the federal government first promulgated its rules governing the program, it provided a time-clock exclusion for some classes of beneficiaries based on the recognition that some classes of persons would have more difficulty becoming self-sufficient. Indians residing in Indian country where unemployment is high is one such class. To address the problem, the federal rules provided a time-clock exclusion for adults residing in "Indian country" where unemployment was 50% or more. The original federal rule defined "Indian country" as the reservations and other "dependent Indian communities". See the Personal Responsibility and Work Reconciliation Act 408(2)(7)(d). No definition of "dependent Indian communities" was provided. Since the TANF statute was silent on the matter, the State looked to a Bureau of Indian Affairs definition and concluded that "dependent Indian communities" equated with a "near reservation" definition provided by the BIA statute. See 25 CFR 20.1(r). As a result, the State permitted persons living in Harlem, Hardin and Dodson, which are near reservation cities with high unemployment, to benefit from the time-clock exclusion.

Recently, the federal Supreme Court defined "dependent Indian communities". See Alaska v. Native Village of Venetie, 522 U.S. 520 (1998). The new definition does not allow the State to include the "near reservation" cities in the time-clock exclusion. The proposed rule amendment is necessary in order for the State to comply with federal law governing the FAIM program under the new definition of "dependent Indian communities". If the State fails to comply with the federal regulations, the State could suffer significant monetary sanction. See TANF Regulation 271.50; Montana Waiver Authority, Waiver Terms and Conditions, 1.0 through 1.2.

Since the new definition will be applied only prospectively, the

proposed amendment will not presently have a significant fiscal impact. Benefits to recipients in near reservation cities will not be impacted until 60 months from October 1, 1999 since that is when the time-clock limitation will take effect. The Department estimates that approximately 25 families will be impacted by this amendment. In addition, when the time-clock exemption is applied, benefits will be reduced by approximately $105,000.

The additional change, to (3)(a), is simply to clarify where in the administrative rules one can find the time-clock exemptions. It affords no substantive change; and has no significant fiscal impact.

ARM 46.18.109

The FAIM program provides assistance to needy families in Montana. Its purpose is to assist families reach the goal of self-sufficiency. It is important, however, that FAIM assistance not be used as a means whereby teenagers can avoid parental supervision by becoming pregnant in order to establish independent living arrangements at the expense of the program. To address that issue, ARM 46.18.109 provides benefits to teen parents who are not living with their parent or guardian only if the teen's independent living arrangement has been approved by the program administrators. ARM 46.18.109 describes what situations constitute adequate grounds for independent living arrangements for teen parents. To ensure that FAIM assistance is not an impetus for teen pregnancy, a living arrangement committee must approve any alternative setting before a teen parent qualifies for assistance. Though the program is administered by the State, each county has its own living arrangement committee. The proposed amendment is necessary to clarify which living arrangement review committee approves a particular alternative setting. The amendment specifies that the committee performing the review will be the county committee.

The proposed amendment will not result in additional costs. The county living arrangement review committee has been performing the reviews under the original rule. The amendment is simply necessary to clarify, in the rule, what has already been occurring in actuality.

ARM 46.18.113

The FAIM program replaced the old Aid to Families with Dependent Children (AFDC) program. As mentioned above, part of the funding for the program is provided by the federal government. Therefore, the program must be administered in accordance with rules established by the federal government. Those rules dictate eligibility requirements, including maximum household

income for defined assistance units. The State of Montana negotiated waivers from some federal rules. Under Medicaid waiver number 1902(a)(17)(D) and FAIM Waiver Terms & Conditions, 2.2 subsection 28, the State is required to include the income and needs of stepparents and children when determining eligibility and benefit amount, but the State may exempt from income foster care payments made to an individual in the assistance unit if the payments are made by a federal, state or local agency. The State was unable to obtain a waiver for adoption assistance payments made to a member of the assistance unit. Therefore, the proposed amendment to ARM 46.18.113 is required to bring the rule into compliance with the negotiated waivers and federal law.

Pursuant to the amendment, the State will include stepparent's and children's income and needs in the assistance unit. It will not, however, count foster care payments from federal, state or local agencies in the assistance unit's income, nor will the State consider the person receiving the foster care payments when determining benefit amount. The State will include adoption assistance payments made to an individual in the assistance unit for purposes of eligibility and will include the recipient's needs in the grant amount, if eligible.

The amendment clarifies what items of income are included in the assistance unit's resources for eligibility purposes and is necessary to comply with federal law and our waiver terms. No significant cost, savings, or benefits are expected to result from this change since only about 6 adoptive families per year apply for FAIM.

ARM 46.18.118

Federal law, as defined by our waiver terms, requires that families with more than $3,000 available resources be deemed ineligible for FAIM assistance. ARM 46.18.118 determines what resources are counted in the assistance unit's "available resources" for purposes of eligibility. The federal rules recently changed to require the Department to include the income and resources of an alien's sponsor when determining eligibility for qualified aliens. See 42 USC 1382j. Thus, the proposed amendment is necessary to incorporate the federal rule change. In addition, the rules currently provide that equity in a house owned by the assistance unit will not be a countable resource when determining eligibility. However, the rule does not address the fact that the assistance unit may own more than one house. The proposed amendment would exempt only that amount of equity associated with the house where the assistance unit usually resides. Thus, under the amended rule, the equity in a second home would be considered available to the assistance unit and would be counted in determining eligibility.

In addition, in the past, the State has permitted households

which would have been eligible for assistance except that the household held real property which put the household's resources over the $3,000 limit to receive temporary assistance (for six months) in exchange for a promise to repay the State benefits once the real property was sold. The assistance unit was required to make a good faith effort to sell the property. The State acknowledges that real property is sometimes difficult to liquidate. However, many households receiving the temporary benefits failed to repay them once their real property was sold. The administrative and legal efforts required by the State to enforce the agreements have simply become too costly. Many times the proceeds from the sale of the real estate are spent before the State can initiate legal action to collect the required repayment under the agreement. Moreover, much of the value of the repayment is lost due to collection costs associated with enforcing the agreement. Therefore, the amendment to ARM 46.18.118 is required in order to discontinue the conditional temporary benefits. Under the proposed amendment, the equity in real property held by a filing unit will be considered in determining eligibility, as required by federal law.

By discontinuing the policy of allowing conditional temporary benefits, the State will save approximately $19,700 in monthly cash benefits. In addition, the State will save a conservative estimate of $3,200 per year in administrative costs associated with efforts to collect the repayments. The Department estimates that the amendment will impact approximately 27 recipients. The remaining proposed amendments to this rule will not result in significant economic impact.

ARM 46.18.122

The legislature sets the amount of benefits to be provided to eligible households through the FAIM program. The individual benefit amounts are given as a percentage of the federal poverty level, i.e. 40.5% of poverty level. Since the federal poverty level is adjusted each year in order to take into consideration variables such as the cost of living, the program's benefit standards must be adjusted each year as well. ARM 46.18.122 lists the benefit standards. The proposed amendment to ARM 46.18.122 is necessary to adjust the benefit standards in order to account for the increase in the federal poverty level and still be in compliance with the legislature's mandate.

Because the benefit standards are increased, the costs of the FAIM program are increased. The Department of Public Health and Human Services estimates that the increase in the benefit standards, as proposed in this rule amendment, will add an additional cost of approximately $470,800 to the FAIM program for fiscal year 2000. The Department estimates that approximately 16,000 people will be impacted by this amendment.

ARM 46.18.126

The FAIM program and Medicaid provide financial assistance and health care to needy families in Montana. In order to be eligible for these programs, households must meet certain criteria. For example, the household's gross and net income must be below named levels. ARM 46.18.126 lists the types of unearned income that will not be included in the household's income amounts when determining eligibility. Some time ago, the AWEP program was incorporated into the FAIM employment and training program. Therefore, the proposed amendment to 46.18.126 is necessary to delete the reference to the AWEP program and correct the rule. The proposed amendment is also necessary to correct the citation to the food stamp rules. ARM 46.128.401 does not exist. The proposed amendment would correctly cite ARM 46.18.401 as the location of the food stamp rules. The remaining amendments to the rule are simply to provide continuity to the language and to correct the grammar so that the rule is clear and easily understood. Because the proposed amendment is simply a clarification of the rule, no significant fiscal impact results from the amendment, and no identifiable group of persons will be impacted by the amendment.

ARM 46.18.129

The Job Supplement Program does not provide monthly cash payments to eligible families. The only cash payment available under that program is a one-time employment related payment to be used to assist the participant in obtaining or maintaining employment. ARM 46.18.129 makes mention of "job supplement program payments"; and thus, needs to be corrected. The proposed amendment to ARM 46.18.129 is necessary to correct the rule. The amendment deletes the reference to "job supplement program payments" while the one-time employment related payment is addressed under "cash assistance payments". No additional costs or benefits will result from the proposed amendment, and no identifiable group of persons will be impacted by the amendment.

ARM 46.18.134

As previously mentioned, the FAIM program provides assistance to low-income Montanans. Its purpose is to assist needy families to become self-sufficient. In order to accomplish that goal, participants must enter into a family investment agreement in which the participant agrees to undertake certain activities directed toward creating self-sufficiency. If the participant fails to meet the obligations of the family investment agreement, the participant will be sanctioned. ARM 46.18.134 describes the means and manner of sanctions.

In 1999, the Montana legislature enacted Senate Bill 353, which is codified at 53-4-717, MCA. That bill provides that sanctioning of FAIM participants will not include the loss of medicaid benefits except as federal law requires. Therefore, the proposed amendment to ARM 46.18.134 is necessary to address the sanction limitations mandated in Senate Bill 353. The amendment lists the three circumstances whereby federal law requires the sanctioning of medicaid benefits and specifies that medicaid benefits will only be lost if non-compliance involves one of the three circumstances.

The remaining amendments clarify the various aspects of sanctioning. For example, child care assistance will continue during any penalty period provided the sanctioned individual is participating in employment-related or training activities in compliance with his or her family investment agreement. Child care assistance, then, serves to motivate the sanctioned individual to comply during the penalty period. The amendment makes it clear that compliance is required throughout the penalty period. If the participant fails to participate in employment-related or training activities, then child care is not necessary as it is provided only for those activities. Subsection (6) clarifies that food stamps allotments will not increase during a penalty period because the household of the sanctioned individual has reduced income due to the sanction.

The current rule states that sanctions would be applied in later months if upheld upon review and would not be treated as overpayment. The Department has encountered a significant number of cases where it is impossible for the Department to impose the sanction at a later date. For example, a FAIM recipient may become ineligible for assistance while the review is pending. In that circumstance, the Department could not apply the sanction after review if the sanction is upheld. Therefore, the continued benefits paid to the recipient must be treated as an overpayment. Otherwise, the Department would have no way to recoup benefits paid to recipients who were not entitled to receive them. The proposed amendment addresses this situation, allowing for overpayment when sanctions cannot be imposed at a later date.

This amendment clarifies the existing sanction procedures and brings them into compliance with 53-4-717, MCA. The Department estimates that approximately 400 individuals are under sanction for the FAIM program at any given time. This amendment may impact the benefits of those 400 individuals if their eligibility for assistance is lost before the sanction can be imposed. However, the amount of additional Medicaid benefits which may be paid during sanctions as a result of this amendment is unknown.

ARM 46.18.140

As previously mentioned, the federal government provides grant

money to assist the State of Montana in funding the FAIM program. Under federal law, only U.S. citizens and certain qualified aliens are eligible to receive benefits from the program. In 1998, the U.S. Congress passed the Balanced Budget Act, redefining the categories of aliens that qualify for assistance under the program. ARM 46.18.140 defines the citizenship requirements for eligibility. It also lists the categories of aliens which are eligible. The proposed amendment to ARM 46.18.140 is necessary to bring the rule into compliance with the new categories of qualified aliens defined by the Balanced Budget Act of 1998. The State is required to follow the guidelines as given by the Balanced Budget Act or risk loss of the federal grant money supporting the program. See TANF regulation 271.50. The proposed amendment to ARM 46.18.140 incorporates the new classes of aliens who are eligible for benefits based on the new federal law.

The proposed amendment clarifies the rule in accordance with federal law. Montana, however, receives applications for assistance from few, if any, persons who fit into the new categories of qualified aliens. As a result, the Department estimates that the proposed amendment will have no significant impact on costs of the program or benefits received.

ARM 46.18.306

In order to qualify for FAIM assistance, adult members of a household must agree to undertake certain activities which will increase the likelihood of self-sufficiency. ARM 46.18.306 lists the kinds of employment and training activities that participants may engage in under their family investment agreement. The rule currently distinguishes between single-parent families and two-parent families with respect to allowing high school equivalency education to qualify as a participating activity. The proposed amendment to ARM 46.18.306 abolishes that distinction in order to allow both single-parents and parents of two-parent households to participate in high school equivalency educational activities. The State acknowledges that self-sufficiency is especially difficult to attain if one does not have a high school diploma or GED equivalent, whether one is a single-parent or not. Though the rule could remain as it is, the State wishes to encourage single-parents to pursue a high school diploma or equivalent. Such educational milestones are often necessary in order to obtain employment. Thus, the proposed amendment to ARM 46.18.306 is necessary in order to further the State's policy of encouraging high school diplomacy or equivalent.

This amendment will not result in significant fiscal impact and the number of persons who may engage in GED or high school equivalency education as a result of this amendment is unknown.

ARM 46.18.309

Under the WEX component, the Department enters into agreements with certain employers to allow FAIM participants to gain on-the-job training at the employers' place of business. The contract between the State and the employer expressly discusses all of the information currently contained in ARM 46.18.309. Consequently, the Department feels it is unnecessary and redundant to include the information in the rule as well. Though the Department could have left ARM 46.18.309 as it currently is, the proposed amendment deletes the information which is already addressed in the agreements. The proposed amended rule is therefore clearer and more easily understood. Since the amendment simply removes duplicate information, no fiscal impact will result from the change in the rule. The Department estimates that there are approximately 280 individuals enrolled in the WEX program on any given month. Those persons will not experience any change in their benefits as a result of this amendment.

ARM 46.18.326

Eligible FAIM participants can receive supportive services funds to pay expenses that are incurred in furtherance of the participant's active pursuit of self-sufficiency. ARM 46.18.326 currently defines how and when those funds are used and distributed. In an effort to allow the various counties to better tailor the program funds to the needs in each particular county, the Department believes the Community Advisory Council should be given the responsibility of developing guidelines regarding how the funds should be used in a particular county. The guidelines must be in accordance with State rules and the federal regulations which prohibit use of the funds for medical services, medical items, and fines. The proposed amendment to ARM 46.18.326 would accomplish that task while listing the federal limitations on use of the funds. Under the proposed amendment, the county or WoRC Contractor can provide funds to a participant as long as funds are available and there is a demonstrated need for enabling funds in order for the participant to comply with his or her family investment agreement. Each county, then, may develop guidelines for specific use of the funds to best meet the needs of participants in the county and the guidelines can vary from county to county. The State could have retained control over the funds, but that option inhibited needs-based, detailed, and responsive use of the funds. Each county is unique and has unique needs. The State cannot develop a single set of guidelines which fits the varied needs in the individual counties. The proposed amendment to ARM 46.18.326 would allow the counties to develop their own set of guidelines so long as they comport with the general use requirements set out in the proposed amendment.

There should be no additional costs associated with this

amendment as the amount of benefits to be distributed remains the same. The entity guiding distribution simply shifts from the State to the county. The Department estimates that there are approximately 4880 individuals enrolled in employment and training activities during any given month. The benefits received by those persons will not change as a result of this amendment.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than January 13, 2000. 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.

Dawn Sliva
Rule Reviewer

Laura Thompson
Director, Public Health and Human Services

Certified to the Secretary of State December 6, 1999.

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

In the matter of the amendment of ARM 46.12.1222, 46.12.1223, 46.12.1226, 46.12.1241, 46.12.1243, 46.12.1245, 46.12.1254, 46.12.1255, 46.12.1258, 4.12.1260, 46.12.1264 and 46.12.1268 pertaining to nursing facilities	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 15, 2000, the Department of Public Health and Human Services proposes to amend the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on January 3, 2000, 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.

46.12.1222 DEFINITIONS Unless the context requires otherwise~~,~~ in this subchapter~~,~~ ~~12~~ the following definitions apply:

(1) through (15)(g) remain the same.

(h) nonemergency routine transportation as defined in ~~(12)~~ (14).

(16) through (20) remain the same.

(21) "RUG-III" means resource utilization group, version III.

(21) and (22) remain the same but are renumbered (22) and (23).

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

46.12.1223 PROVIDER PARTICIPATION AND TERMINATION REQUIREMENTS (1) through (1)(j) remain the same.

(2) A provider which fails to meet any of the requirements of this ~~section~~ rule may be denied medicaid payments, refused

further participation in the medicaid program or otherwise sanctioned or made subject to appropriate department action, according to applicable laws, rules, regulations or policies.

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

AUTH: Sec. 53-6-108, 53-6-111, 53-6-113 and 53-6-189, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-106, 53-6-107, 53-6-111, 53-6-113 and 53-6-168, MCA

46.12.1226 NURSING FACILITY REIMBURSEMENT (1) For nursing facility services, other than ICF/MR services, provided by nursing facilities located within the state of Montana, the Montana medicaid program will pay a provider, for each medicaid patient day, a per diem rate determined in accordance with this ~~section~~ rule, minus the amount of the medicaid recipient's patient contribution. The per diem rate shall be subject to the maximum level, if any, specified in ~~subsections~~ (3) through (3)(c). Except as provided in ~~subsection~~ (4), the per diem rate is the sum of the following components:

(1)(a) through (12)(a) remain the same.

(13) Payments provided under this ~~section~~ rule are subject to all limitations and cost settlement provisions specified in applicable laws, regulations, rules and policies. All payments or rights to payments under this rule are subject to recovery or non-payment, as specifically provided in these rules.

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

46.12.1241 CHANGE IN PROVIDER DEFINED (1) through (3)(c) remain the same.

(4) In determining whether a change in provider has occurred within the meaning of this ~~section~~ rule, the provisions of federal medicare law, regulation or policy or related caselaw regarding changes in ownership under the medicare program are not applicable.

(5) remains the same.

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

46.12.1243 INTERIM PER DIEM RATES FOR NEWLY CONSTRUCTED FACILITIES AND NEW PROVIDERS (1) This ~~section~~ rule specifies the methodology the department will use to determine the interim per diem rate for in-state providers, other than ICF/MR providers, which as of July 1 of the rate year have not filed with the department a cost report covering a period of at least ~~six~~ 6 months participation in the medicaid program in a newly constructed facility or following a change in provider as defined in ARM 46.12.1241.

(2) through (2)(d)(iv)(B) remain the same.

(e) After the provider files a complete and accurate cost report as specified in (2)(d), the department will determine a per diem rate based upon such cost report according to the provisions of ARM 46.12.1226, 46.12.1229, 46.12.1231 and 46.12.1237. Such per diem rate shall be determined using the period covered by the cost report as the provider's base period. The per diem rate determined in accordance with this subsection shall be effective retroactive to the date the interim rate set under (2) became effective. Any overpayment or underpayment shall be adjusted in accordance with the cost settlement rules specified in ARM 46.12.1261.

(3) remains the same.

(a) For providers who have received an interim rate under the provisions of this ~~section~~ rule based upon a change in provider, the provider's direct nursing personnel cost component shall be calculated based upon the fiscal year 1999 average patient assessment score for the previous provider, as though no change in provider had occurred.

(b) For providers who have received an interim rate under the provisions of this ~~section~~ rule based upon provision of services in a new facility or as a new provider, the provider's direct nursing personnel cost component shall be calculated based upon the fiscal year 1999 state wide average patient assessment score.

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

46.12.1245 SEPARATELY BILLABLE ITEMS (1) through (3) remain the same.

(a) If the items listed in (1)(a) through (1)~~(d)~~ (de) are also covered by the medicare program and provided to a medicaid recipient who is also a medicare recipient, reimbursement will be limited to the lower of the medicare prevailing charge or the amount allowed under (2). Such items may not be billed to the medicaid program for days of service for which medicare Part A coverage is in effect.

(3)(b) through (10) remain the same.

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

46.12.1254 BED HOLD PAYMENTS (1) through (9) remain the same.

(10) Approvals or authorizations of bed hold days obtained from county offices will not be valid or effective for purposes of this ~~section~~ rule.

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

46.12.1255 MEDICARE HOSPICE BENEFIT - REIMBURSEMENT (1) remains the same.

(a) This ~~section~~ rule applies where the hospice provider and the nursing facility provider have made a written agreement under which the hospice provider agrees to provide professional management of the individual's hospice care and the nursing facility provider agrees to provide room and board to the individual.

(b) When this ~~section~~ rule applies, the department will pay the hospice provider in accordance with the department's rules governing medicaid reimbursement to hospice providers.

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

46.12.1258 ALLOWABLE COSTS (1) through (3)(b)(v) remain the same.

(c) Administrator compensation is allowable only as determined according to the HIM-15 provisions relating to owner compensation, and as specifically limited in this ~~section~~ rule.

(3)(c)(i) through (3)(d)(iii) remain the same.

(iv) For purposes of this ~~section~~ rule, an employee is one from whose salary or wages the employer is required to withhold FICA. Stockholders who are related parties to the corporate providers, officers of a corporate provider, and sole proprietors and partners owning or operating a facility are not employees even if FICA is withheld for them.

(3)(d)(v) through (4) remain the same.

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

46.12.1260 COST REPORTING, DESK REVIEW AND AUDIT

(1) Providers must use generally accepted accounting principles to record and report costs. The provider must, in preparing the cost report required under this ~~section~~ rule, adjust such costs in accordance with ARM 46.12.1258 to determine allowable costs.

(2) and (3) remain the same.

(4) All providers must report allowable costs based upon the provider's fiscal year and using the financial and statistical report forms designated and/or provided by the department. Reports must be complete and accurate. Incomplete reports or reports containing inconsistent data will be returned to the provider for correction.

(a) A provider must file its cost report:

(i) within 90 days after the end of its designated fiscal year;

(ii) within 90 days after the effective date of a change in provider as defined in ARM 46.12.1241; or

(iii) for changes in providers occurring on or after July 1, 1993, within 90 days after 6 months participation in the

medicaid program for providers with an interim rate established under ARM 46.12.1243. Subsequent cost reports are to be filed in accordance with (4)(a)(i) above and subsequent cost reports shall not duplicate previous cost reporting periods.

(4)(a) through (4)(a)(ii) remain the same but are renumbered (4)(b) through (b)(ii).

~~(b)~~ (c) If a provider files an incomplete cost report or reported costs are inconsistent, the department may return the cost report to the facility for completion or correction, and may withhold payment as provided in (4)~~(c)~~ (d).

(4)(c) through (4)(e) remain the same but are renumbered (4)(d) through (4)(f). (5) through (7) remain the same.

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

46.12.1264 THIRD PARTY PAYMENTS AND PAYMENT IN FULL

(1) remains the same.

(a) This ~~section~~ rule does not apply to payment sources which by law are made secondary to medicaid.

(2) remains the same.

(3) This ~~section~~ rule applies in addition to ARM 46.12.309.

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

46.12.1268 ADMINISTRATIVE REVIEW AND FAIR HEARING PROCEDURES (1) through (3)(e) remain the same.

(4) This ~~section~~ rule applies to all administrative reviews, hearings, appeals to the board, related proceedings and any requests for such proceedings occurring on or after November 1, 1991.

(5) The provisions of this ~~section~~ rule apply in addition to the applicable provisions of ARM 46.2.201, et seq., except that the provisions of this ~~section~~ rule shall control in the event of a conflict with the provisions of ARM 46.2.201, et seq.

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

3. The proposed rule changes are necessary to correct clerical errors and omissions in the Department's nursing facility rules, ARM 46.12.1222 through 46.12.1268. The proposed amendments are not intended to substantively change the meaning or intent of the affected rules.

The definition of "RUG III", the resource utilization group, was inadvertently omitted when the Department adopted its shadow rate methodology at ARM 46.12.1233, effective June 18, 1999. The proposed amendments would add that definition to ARM

46.12.1222.

References to "section" in ARM 46.12.1223, 46.12.1226, 46.12.1241, 46.12.1243, 46.12.1254, 46.12.1255, 46.12.1258, 46.12.1260, 46.12.1264 and 46.12.1268 are changed to "rule", as appropriate. This change of terminology would make the nursing facility rules consistent with the terminology used in the Department's other rules.

References to "subsection" and "subsections" were deleted from ARM 46.12.1226(1). This change would make the style of internal references in that rule consistent with the style of the Department's other rules.

The number "six" in ARM 46.12.1243(1) is changed to the numeral "6" to make the rule consistent with the style used in the Department's other rules.

An incomplete internal reference in ARM 46.12.1243(2)(e) is corrected to "(2)(d)".

An incorrect internal reference in ARM 46.12.1245(3)(a) is corrected to "(1)(de)".

Subsection (4)(a) was inadvertently omitted from ARM 46.12.1260. The proposed amendment would restore it unchanged from its original text and meaning.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on January 13, 2000. 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. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on January 13, 2000.

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

Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 10 based on the 100 providers affected by rules covering nursing facilities.

Dawn Sliva
Rule Reviewer

Laura Fleming
Director, Public Health and Human Services

Certified to the Secretary of State December 6, 1999.

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

In the matter of the repeal of ARM 11.5.201, 11.5.203, 11.5.205, 11.5.206, 11.5.209 and 11.5.210 pertaining to protective services for the developmentally disabled	)	NOTICE OF PROPOSED REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 15, 2000, the Department of Public Health and Human Services proposes to repeal the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on January 3, 2000 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 11.5.201, 11.5.203, 11.5.205, 11.5.206, 11.5.209 and 11.5.210 as proposed to be repealed are on pages 11-171 through 11-177 of the Administrative Rules of Montana.

AUTH: Sec. 53-2-201, MCA
IMP: Sec. 53-5-205, MCA

3. The rules proposed for repeal, ARM 11.5.201, et seq., pertain to protective services for persons with developmental disabilities. Those rules were adopted in 1974. They have remained as adopted.

The proposed repeal of the rules is necessary in that the provisions of the rules are generally not applicable to the current practices necessary and appropriate for the protection of persons with developmental disabilities. The rules are generally inappropriate in the context of the implementing authority and other relevant authorities since they pertain to a single exclusive program of protective services for persons with developmental disabilities. The existing statutory authorities for adult protective services, at 52-3-201, et seq. and 52-3-801, et seq., MCA, however, provide for a unified state program of adult protective services for persons who are aged

and for persons who have developmental disabilities and the program is constituted in that manner.

The proposed repeal of the rules is also necessary in that there exists another separate set of rules to govern adult protective services at ARM 37.47.101, et seq., MCA. That other set of rules was adopted later in time and does pertain to protective services for persons who are aged and for persons who have developmental disabilities. That other set of rules has been transferred to the Department's new ARM title and the Department intends to significantly revise those rules through amendment in the near future. That other rule set is the appropriate set for further and continued implementation of adult protective services matters.

The repeal of the rule set is the most appropriate course. Repeal will remove duplicity and contradiction between the two existing rule sets. To not repeal the rule set would continue to confuse persons as to the applicability of the two sets, the appropriate integration of the provisions of the two sets, and the resolution of conflicting terminology and provisions. Leaving the rule set in place with its irrelevant requirements would also continue to mislead persons as to the actual practices of the adult protective services program.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on January 13, 2000. 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. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on January 13, 2000.

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

Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 50 based on the 500 individuals affected by rules covering protective services for the developmentally disabled.

Dawn Sliva
Rule Reviewer

Carmie Thomas
Director, Public Health and Human Services

Certified to the Secretary of State December 6, 1999.

BEFORE THE TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of new rule I, the amendment of rules 2.44.307, 2.44.401, 2.44.414, 2.44.506, 2.44.511, 2.44.515, 2.44.517 and 2.44.518 and the repeal of rules 2.44.404, 2.44.410, 2.44.415, 2.44.502, 2.44.503, 2.44.510, 2.44.516, and 2.44.519 pertaining to the Teachers' Retirement System	CORRECTED NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 7, 1999, the Teachers' Retirement Board published a notice of the adoption, amendment and repeal of the above-captioned rules concerning the Teachers' Retirement System at page 2243 of the 1999 Montana Administrative Register, Issue Number 19.

2. The reasons for the correction are:

The notice of amendments to administrative rule 2.44.414 did not correct the implementing statutory sites. The amendments included in Section 9 of HB 118, 1999 Session Laws, Chapter Number 111, limited the types of service purchases under Title 19, chapter 20, part 4 that qualify for installment purchase. The corrected rule amendment reads as follows:

2.44.414 INSTALLMENT PURCHASE (1) and (2) remain the same.

AUTH: 19-20-201, MCA
IMP: ~~Title 19, chapter 20, part 4 MCA~~ 19-20-401 through 19-20-411, and 19-20-415, MCA

The notice of amendment did not correct the termination pay option in subsection (2) of rule 2.44.517, i.e., "option (i)", to comply with the amendment adopted in Section 18 of HB 118, 1999 Session Laws, Chapter Number 111. The corrected rule amendment reads as follows:

2.44.517 FORMULA FOR DETERMINING CONTRIBUTIONS DUE ON TERMINATION PAY (1) remains the same.

(2) Upon disability retirement, the contributions due to adequately compensate the system for the additional benefit for termination pay under ~~option (i)~~ Option 1, shall be based on 15 years or the member's total years of creditable service, whichever is greater.

By: 

Dal Smilie, Chief Legal Counsel
Rule Reviewer

David L. Senn, Administrator
Teachers' Retirement System

Certified to the Secretary of State December 6, 1999.

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

In the matter of the adoption of ARM 6.6.6701, 6.6.6703, 6.6.6705, 6.6.6707, 6.6.6709, 6.6.6711, and 6.6.6713 pertaining to the Valuation of Life Insurance Policies	))))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On November 4, 1999, the State Auditor and Commissioner of Insurance published notice of the proposed adoption of rules pertaining to valuation of life insurance policies at page 2488 of the 1999 Montana Administrative Register, issue number 21.

2. The Department has adopted the following new rules pertaining to the Valuation of Life Insurance Policies exactly as proposed:

Rule I (6.6.6701) PURPOSE

Rule II (6.6.6703) APPLICABILITY

Rule III (6.6.6705) DEFINITIONS

Rule IV (6.6.6707) GENERAL CALCULATION REQUIREMENTS FOR BASIC RESERVES AND PREMIUM DEFICIENCY RESERVES

Rule V (6.6.6709) CALCULATION OF MINIMUM VALUATION STANDARD FOR POLICIES WITH GUARANTEED NONLEVEL GROSS PREMIUMS OR GUARANTEED NONLEVEL BENEFITS (OTHER THAN UNIVERSAL LIFE POLICIES)

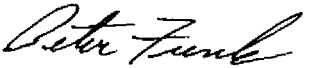
Rule VI (6.6.6711) CALCULATION OF MINIMUM VALUATION STANDARD FOR FLEXIBLE PREMIUM AND FIXED PREMIUM UNIVERSAL LIFE INSURANCE POLICIES THAT CONTAIN PROVISIONS RESULTING IN THE ABILITY OF A POLICYOWNER TO KEEP A POLICY IN FORCE OVER A SECONDARY GUARANTEE PERIOD

Rule VII (6.6.6713) SELECT MORTALITY FACTORS

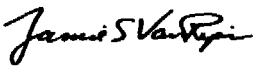
3. No comments or testimony were received.

4. These rules will become effective January 1, 2000.

MARK O'KEEFE, State Auditor
And Commissioner of Insurance



By: _____
Peter Funk
Deputy Insurance Commissioner



By: _____
Janice S. VanRiper
Rules Reviewer

Certified to the Secretary of State December 6, 1999.

BEFORE THE CLASSIFICATION REVIEW COMMITTEE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 6.6.8301, concerning updating references to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance, 1996 ed.	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On October 7, 1999, the Montana Classification Review Committee published notice of the proposed amendment to ARM 6.6.8301 concerning updating references to the NCCI Basic Manual for Workers Compensation and Employers Liability, 1996 edition, at page 2139 of the 1999 Montana Administrative Register, issue number 19.

2. The Classification Review Committee has amended ARM 6.6.8301 exactly as proposed.

3. No comments or requests for hearing were received regarding the proposed amendment.

4. The changes to the NCCI Basic Manual for Workers Compensation and Employers Liability are as follows:

Item B-1359 - Elimination or Enhancement of Selected Basic Manual Classifications and Basic Manual Classification Advisory Notes.

This filing eliminates three classifications that have minimal Montana payroll/credibility. The three codes are:

1470 - Coke Mfg. & Drivers (any existing experience in this code will be moved to Code 1472)

7323F - Stevedoring: Explosive Materials Under Contract (existing experience moved to Code 7309F, 7317F or 7327F depending on type of stevedoring performed)

8710 - Field Bonded Warehousing - All Employees & clerical (existing experience moved to Codes 8291, 8292 or 8293 depending on type of items being warehoused)

Additionally, Item B-1359 modernizes or clarifies selected classification phraseologies and classification advisory notes.

Item B-1361 - Basic Manual Updates of Selected Rules and References.

This filing adds clarifying notes and examples to various Basic Manual Rules.

Specialty Contractor Classifications Flagging Services and Concrete Pumping Services.

This filing assigns specialty contractor flagging services to Code 5506.

CLASSIFICATION AND
REVIEW COMMITTEE

Christy Weikart

By: _____
Christy Weikart
Chairperson

Gary L. Spaeth

By: _____
Gary L. Spaeth

Certified to the Secretary of State December 6, 1999.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I pertaining to comparable/syngas fuel exclusion; NEW RULES II through VII pertaining to remedial action plans; NEW RULES VIII through XIII pertaining to military munitions; and the amendment of ARM 17.54.102, 17.54.105, 17.54.106, 17.54.107, 17.54.110, 17.54.120, 17.54.128, 17.54.131, 17.54.136, 17.54.146, 17.54.150, 17.54.201, 17.54.301, 17.54.302, 17.54.303, 17.54.307, 17.54.308, 17.54.309, 17.54.311, 17.54.322, 17.54.324, 17.54.325, 17.54.326, 17.54.351, 17.54.401, 17.54.402, 17.54.408, 17.54.435, 17.54.501, 17.54.505, 17.54.511, 17.54.526, 17.54.601, 17.54.609, 17.54.610, 17.54.612, 17.54.701, 17.54.702, 17.54.907, 17.54.1101, 17.54.1105, 17.54.1106, 17.54.1107, 17.54.1108, 17.54.1109, 17.54.1113, 17.54.1114, and 17.54.1118 pertaining to hazardous waste management	NOTICE OF ADOPTION AND AMENDMENT (HAZARDOUS WASTE)

TO: All Concerned Persons

1. On September 23, 1999, the Department of Environmental Quality published notice of the proposed adoption of new Rules I through XIII and the amendment of ARM 17.54.102, 17.54.105, 17.54.106, 17.54.107, 17.54.110, 17.54.120, 17.54.128, 17.54.131, 17.54.136, 17.54.146, 17.54.150, 17.54.201, 17.54.301, 17.54.302, 17.54.303, 17.54.307, 17.54.308, 17.54.309, 17.54.311, 17.54.322, 17.54.324, 17.54.325, 17.54.326, 17.54.351, 17.54.401, 17.54.402, 17.54.408, 17.54.435, 17.54.501, 17.54.505, 17.54.511, 17.54.526, 17.54.601, 17.54.609, 17.54.610, 17.54.612, 17.54.701, 17.54.702, 17.54.907, 17.54.1101, 17.54.1105, 17.54.1106, 17.54.1107, 17.54.1108, 17.54.1109, 17.54.1113, 17.54.1114, and 17.54.1118 pertaining to hazardous

waste management, at page 1940 of the 1999 Montana Administrative Register, Issue No. 18.

2. The Department has adopted new Rule III (ARM 17.54.1202), VI (ARM 17.54.1210), VII (ARM 17.54.1211), VIII (ARM 17.54.1301), IX (ARM 17.54.1302), X (ARM 17.54.1303), XI (ARM 17.54.1311), XII (ARM 17.54.1312), and XIII (ARM 17.54.1313) exactly as proposed.

3. The agency has adopted new Rule I (ARM 17.54.353), II (ARM 17.54.1201), IV (ARM 17.54.1205), and V (ARM 17.54.1206) with the following changes:

RULE I [17.54.353] COMPARABLE/SYNGAS FUEL EXCLUSION

(1) Wastes that meet the following comparable/syngas fuel physical specifications are not solid wastes:

(a) The heating value must exceed 5,000 British thermal unit per pound (BTU/lbs) (11,500 Joule per gram (J/g)); and

(b) The viscosity must not exceed 50 centistoke (cs), as-fired.

(2) remains as proposed.

(3) Synthesis gas fuel (i.e., syngas fuel) that is generated from hazardous waste must:

(a) have a minimum BTU value of 100 British thermal unit per standard cubic feet (BTU/Scf);

(b) contain less than 1 part per million by volume (ppmv) of total halogen;

(c) through (e) remain as proposed.

Table 1: Detection and Detection Limit Values for Comparable Fuel Specification

Chemical Name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Total Nitrogen as N	NA	4900	----------
Total Halogens as Cl	NA	540	----------
Total Organic Halogens as Cl	NA	25 or individual halogenated organics listed below	----------
Polychlorinated biphenyls, total [Arocolors, Total]*	1336-36-3	Non-detect	1.4
Cyanide, total	57-12-5	Non-detect	1.0
Metals:			
Antimony, total	7440-36-0	7.9	----------
Arsenic, total	7440-38-2	0.23	----------
Barium, total	7440-39-3	23	----------
Beryllium, total	7440-41-7	1.2	----------
Cadmium, total	7440-43-9	1.2	----------
Chromium, total	7440-47-3	2.3	----------
Cobalt	7440-48-4	4.6	----------
Lead, total	7439-92-1	31	----------
Manganese	7439-96-5	1.2	----------
Mercury, total	7439-97-6	0.24	----------
Nickel, total	7440-02-0	58	----------
Selenium, total	7782-49-2	0.15	----------
Silver, total	7440-22-4	2.3	----------
Thallium, total	7440-28-0	23	----------
Hydrocarbons:			
Benzo[a]antracene	56-55-3	1100	----------
Benzene	71-43-2	4100	----------

Chemical Name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Benzo[b]fluoranthene	205-99-2	960	----------
Benzo[k]fluoranthene	207-08-9	1900	----------
Benzo[a]pyrene	50-32-8	960	----------
Chrysene	218-01-9	1400	----------
Dibenzo[a,h]anthracene	53-70-3	960	----------
7,12-Dimethylbenz[a]anthracene	57-97-6	1900	----------
Fluoranthene	206-44-0	1900	----------
Indeno(1,2,3-cd)pyrene	193-39-5	960	----------
3-Methylcholanthrene	56-49-5	1900	----------
Naphthalene	91-20-3	3200	----------
Toluene	108-88-3	36000	----------
Oxygenes:			
Acetophenone	98-86-2	1900	----------
Acrolein	107-02-8	37	----------
Allyl alcohol	107-18-6	30	----------
Bis(2-ethylhexyl)phthalate (Di-2-ethylhexyl phthalate)	117-81-7	1900	----------
Butyl benzyl phthalate	85-68-7	1900	----------
o-Cresol [2-Methyl phenol]	95-48-7	220	----------
m-Cresol [3-Methyl phenol]	108-39-4	220	----------
p-Cresol [4-Methyl phenol]	106-44-5	220	----------
Di-n-butyl phthalate	84-74-2	1900	----------
Diethyl phthalate	84-66-2	1900	----------
2,4-Dimethylphenol	105-67-9	1900	----------
Dimethyl phthalate	131-11-3	1900	----------
Di-n-octyl phthalate	117-84-0	960	----------
Endothall	145-73-3	100	----------
Ethyl methacrylate	97-63-2	37	----------
2-Ethoxyethanol [Ethylene glycol monoethyl ether]	110-80-5	100	----------
Isobutyl alcohol	78-83-1	37	----------
Isosafrole	120-58-1	1900	----------
Methyl ethyl ketone [2-Butanone]	78-93-3	37	----------
Methyl methacrylate	80-62-6	37	----------
1,4-Naphthoquinone	130-15-4	1900	----------
Phenol	108-95-2	1900	----------
Propargyl alcohol [2-Propyn-1-ol]	107-19-7	30	----------
Safrole	94-59-7	1900	----------
Sulfoted Organics:			
Carbon disulfide	75-15-0	Non-detect	37
Disulfoton	298-04-4	Non-detect	1900
Ethyl methanesulfonate	62-50-0	Non-detect	1900
Methyl methanesulfonate	66-27-3	Non-detect	1900
Phorate	298-02-2	Non-detect	1900
1,3-Propane sultone	1120-71-4	Non-detect	100
Tetraethyldithiopyrophosphate (Sulfotepp)	3689-24-5	Non-detect	1900
Thiophenol [Benzenethiol]	108-98-5	Non-detect	30
O,O,O-Triethyl Phosphorothioate	126-68-1	Non-detect	1900
Nitrogenated Organics:			
Acetonitrile [Methyl cyanide]	75-05-8	Non-detect	37
2-Acetylaminofluorene [2-AAF]	53-96-3	Non-detect	1900
Acrylonitrile	107-13-1	Non-detect	37
4-Aminobiphenyl	92-67-1	Non-detect	1900
4-Aminopyridine	504-24-5	Non-detect	100
Aniline	62-53-3	Non-detect	1900
Benzidine	92-87-5	Non-detect	1900
Dibenz[a,j]acridine	224-42-0	Non-detect	1900

Chemical Name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
O,O-Diethyl O-pyrazinyl Phophoro-thioate [Thionazin]	297-97-2	Non-detect	1900
Dimethoate	60-51-5	Non-detect	1900
p-(Dimethylamino) azobenzens [4-Dimethylaminoazobenzene]	60-11-7	Non-detect	1900
3,3'-Dimethylbenzidine	119-93-7	Non-detect	1900
, -Dimethylphenethylamine	122-09-8	Non-detect	1900
3,3'-Dimethoxybenzidine	119-90-4	Non-detect	100
1,3-Dinitrobenzene [m-Dinitrobenzene]	99-65-0	Non-detect	1900
4,6-Dinitro-o-cresol	534-52-1	Non-detect	1900
2,4-Dinitrophenol	51-28-5	Non-detect	1900
2,4-Dinitrotoluene	121-14-2	Non-detect	1900
2,6-Dinitrotoluene	606-20-2	Non-detect	1900
Dinoseb [2-sec-Butyl-4,6-Dinitrophenol]	88-85-7	Non-detect	1900
Diphenylamine	122-39-4	Non-detect	1900
Ethyl carbamate [Urethane]	51-79-6	Non-detect	100
Ethylenethiourea (2-Imidazolidinethione)	96-45-7	Non-detect	110
Famphur	52-85-7	Non-detect	1900
Methacrylonitrile	126-98-7	Non-detect	37
Methapyrilene	91-80-5	Non-detect	1900
Methomyl	16752-77-5	Non-detect	57
2-Methyllactonitrile [Acetone cyanohydrin]	75-86-5	Non-detect	100
Methyl parathion	298-00-0	Non-detect	1900
MNNG (N-Metyl-N-nitroso-N'-nitroguanidine)	70-25-7	Non-detect	110
1-Naphthylamine [-Naphthylamine]	134-32-7	Non-detect	1900
2-Naphthylamine [-Naphthylamine]	91-59-8	Non-detect	1900
Nicotine	54-11-5	Non-detect	100
4-Nitroaniline [p-Nitroaniline]	100-01-6	Non-detect	1900
Nitrobenzene	98-95-3	Non-detect	1900
p-Nitrophenol [p-Nitrophenol]	100-02-7	Non-detect	1900
5-Nitro-o-toluidine	99-55-8	Non-detect	1900
N-Nitrosodi-n-butylamine	924-16-3	Non-detect	1900
N-Nitrosodiethylamine	55-18-5	Non-detect	1900
N-Nitrosodiphenylamine (Diphenylnitrosamine)	86-30-6	Non-detect	1900
N-Nitroso-N-methylethylamine	10595-95-6	Non-detect	1900
N-Nitrosomorpholine	59-89-2	Non-detect	1900
N-Nitrosopiperidine	100-75-4	Non-detect	1900
N-Nitrosopyrrolidine	930-55-2	Non-detect	1900
2-Nitropropane	79-46-9	Non-detect	30
Parathion	56-38-2	Non-detect	1900
Phenacetin	62-44-2	Non-detect	1900
1,4-Phenylene diamine (p-Phenylenediamine)	106-50-3	Non-detect	1900
N-Phenylthiourea	103-85-5	Non-detect	57
2-Picoline [alpha-Picoline]	109-06-8	Non-detect	1900
Propythioracil [6-Propyl-2-thiouracil]	51-52-5	Non-detect	100
Pyridine	110-86-1	Non-detect	1900
Strychnine	57-24-9	Non-detect	100
Thioacetamide	62-55-5	Non-detect	57
Thiofanox	9196-18-4	Non-detect	100
Thiourea	62-56-6	Non-detect	57

Chemical Name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
Toluene-2,4-diamine [2,4-Diaminotoluene]	95-80-7	Non-detect	57
Toluene-2,6-diamine [2,6-Diaminotoluene]	823-40-5	Non-detect	57
o-Toluidine	95-53-4	Non-detect	2200
p-Toluidine	106-49-0	Non-detect	100
1,3,5-Trinitrobenzene [sym-Trinitobenzene]	99-35-4	Non-detect	2000
Halogenated Organics:[b]			
Allyl chloride	107-05-1	Non-detect	37
Aramite	104-57-8	Non-detect	1900
Benzal chloride [Dichloromethyl benzene]	98-87-3	Non-detect	100
Benzyl chloride	100-44-77	Non-detect	100
Bis-(2-chloroethyl)ether [Dichloroethyl ether]	111-44-4	Non-detect	1900
Bromoform [Tribromomethane]	75-25-2	Non-detect	37
Bromomethane [~~Methy bomide~~ Methyl Bromide]	74-83-9	Non-detect	37
4-Bromophenyl phenyl ether [p-Bromo diphenyl ether]	101-55-3	Non-detect	1900
Carbon tetrachloride	56-23-5	Non-detect	37
Chlordane	57-74-9	Non-detect	14
p-Chloroaniline	106-47-8	Non-detect	1900
Chlorobenzene	108-90-7	Non-detect	37
Chlorobenzilate	510-15-6	Non-detect	1900
p-Chloro-m-cresol	59-50-7	Non-detect	1900
2-Chloroethyl vinyl ether	110-75-8	Non-detect	37
Chloroform	67-66-3	Non-detect	37
Chloromethane [Methyl chloride]	74-87-3	Non-detect	37
2-Chlorophthalene [beta-Chlorophthalene]	91-58-7	Non-detect	1900
2-Chlorophenol [o-Chlorophenol]	95-57-8	Non-detect	1900
Chloroprene [2-Chloro-1,3-butadiene]	1126-99-8	Non-detect	37
2,4-D [2,4-Dichlorophenoxyacetic acid]	94-75-7	Non-detect	7.0
Diallate	2303-16-4	Non-detect	1900
1,2-Dibromo-3-chloropropane	96-12-8	Non-detect	37
1,2-Dichlorobenzene [o-Dichlorobenzene]	95-50-1	Non-detect	1900
1,3-Dichlorobenzene [m-Dichlorobenzene]	541-73-1	Non-detect	1900
1,4-Dichlorobenzene [p-Dichlorobenzene]	106-46-7	Non-detect	1900
3,3'-Dichlorobenzidine	91-94-1	Non-detect	1900
Dichlorodifluoromethane [CFC-12]	75-71-8	Non-detect	37
1,2-Dichloroethane [Ethylene dichloride]	107-06-2	Non-detect	37
1,1-Dichloroethylene [Vinylidene chloride]	75-35-4	Non-detect	37
Dichloromethoxy ethane [Bis(2-chloroethoxy) methane]	111-91-1	Non-detect	1900
2,4-Dichlorophenol	120-83-2	Non-detect	1900
2,6-Dichlorophenol	87-65-0	Non-detect	1900
1,2-Dichloropropane [Propylene dichloride]	78-87-5	Non-detect	37
cis-1,3-Dichloropropylene	10061-01-5	Non-detect	37
trans-1,3-Dichloropropylene	10061-02-6	Non-detect	37

Chemical Name	CAS No.	Concentration limit (mg/kg at 10,000 BTU/lb)	Minimum required detection limit (mg/kg)
1,3-Dichloro-2-propanol	96-23-1	Non-detect	30
Endosulfan I	959-98-8	Non-detect	1.4
Endosulfan II	33213-65-9	Non-detect	1.4
Endrin	72-20-8	Non-detect	1.4
Endrin aldehyde	7421-93-4	Non-detect	1.4
Endrin Ketone	53494-70-5	Non-detect	1.4
Epichlorohydrin [1-Chloro-2,3-epoxy propane]	106-89-8	Non-detect	30
Ethylidene dichloride [1,1-Dichloroethane]	75-34-3	Non-detect	37
2-Fluoroacetamide	640-19-7	Non-detect	100
Heptachlor	76-44-8	Non-detect	1.4
Heptachlor expoxide	1024-57-3	Non-detect	2.8
Hexachlorobenzene	118-74-1	Non-detect	1900
Hexachloro-1,3,butadiene [Hexachlorobutadiene]	87-68-3	Non-detect	1900
Hexachlorocyclopentadiene	77-47-4	Non-detect	1900
Hexachloroethane	67-72-1	Non-detect	1900
Hexachlorophene	70-30-4	Non-detect	1000
Hexachloropropene [Hexachloropropylene]	1888-71-7	Non-detect	1900
Isodrin	465-73-6	Non-detect	1900
Kepone [Chlordecone]	143-50-0	Non-detect	3600
Lindane [gamma-Hexachlorocyclohexane] [gamma-BHC]	58-89-9	Non-detect	1.4
Methylene chloride [Dichloromethane]	75-09-2	Non-detect	37
4,4'-methylene-bis (2-chloroaniline)	101-14-4	Non-detect	100
Methyl iodide [Iodomethane]	74-88-4	Non-detect	37
Pentachlorobenzene	608-93-5	Non-detect	1900
Pentachloroethane	76-01-7	Non-detect	37
Pentachloronitrobenzene [PCNB] [Quintobenzene] [Zuintozene]	82-68-8	Non-detect	1900
Pentachlorophenol	87-86-5	Non-detect	1900
Pronamide	23950-58-5	Non-detect	1900
Silvex [w,4,5-Trichlorophenoxypropionic acid]	93-72-1	Non-detect	7.0
2,3,7,8-Tetrachlorodibenzo-p-dioxin [2,3,7,8-TCDD]	1746-01-6	Non-detect	30
1,2,4,5-Tetrachlorobenzene	95-94-3	Non-detect	1900
1,1,2,2-Tetrachloroethane	79-34-5	Non-detect	37
Tetrachloroethylene [Perchloroethylene]	127-18-4	Non-detect	37
2,3,4,6-Tetrachlorophenol	58-90-2	Non-detect	1900
1,2,4-Trichlorobenzene	120-82-1	Non-detect	1900
1,1,1-Trichloroethane [Methyl chloroform]	71-55-6	Non-detect	37
1,1,2-Trichloroethane [Vinyl trichloride]	79-00-5	Non-detect	37
Trichloroethylene	79-01-6	Non-detect	37
Trichlorofluoromethane [Trichlormonofluoromethane]	75-69-4	Non-detect	37
2,4,5-Trichlorophenol	95-95-4	Non-detect	1900
2,4,6-Trichlorophenol	88-06-2	Non-detect	1900
1,2,3-Trichloropropane	96-18-4	Non-detect	37
Vinyl Chloride	75-01-4	Non-detect	37

[4]Absence of PCBs can also be demonstrated by using appropriate screening methods, e.g., immunoassay kit for PCB in oils (Method 4020) or colorimetric analysis for PCBs in oil (Method 9079).

[b]Some minimum required detection limits are above the total halogen limit of 540 ppm. The detection limits reflect what was achieved during EPA testing and analysis and also analytical complexity associated with measuring all halogen compounds in Appendix VIII at low levels. EPA recognizes that in practice the presence of these compounds will be functionally limited by the molecular weight and the total halogen limit of 540 ppm.

(4) Waste that meets the ~~comparable or syngas~~ comparable/syngas fuel specifications provided by (1) or (3) of this rule (constituent levels are achieved by the comparable fuel when generated, or as a result of treatment or blending, as provided in (7) or (8) of this rule) is excluded from the definition of waste provided that the following requirements are met:

(a) For purposes of this ~~section~~ rule, the person claiming and qualifying for the exclusion is called the comparable/syngas fuel generator and the person burning the comparable/syngas fuel is called the comparable/syngas burner. The person who generates the ~~comparable fuel or syngas~~ comparable/syngas fuel must claim and certify to the exclusion.

(i) through (14)(f) remain as proposed.

(g) ~~Syngas fuel and comparable~~ Comparable/syngas fuel that has not been blended in order to meet the kinematic viscosity specifications must be analyzed as generated.

(h) through (19) remain as proposed.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

RULE II [17.54.1201] REMEDIAL ACTION PLANS (1) and (1)(a) remain as proposed.

(b) Notwithstanding any other provision of ARM Title 17, chapter 54, subchapters 1 or 9, any document that meets the requirements in this ~~section~~ rule constitutes a RCRA permit under 42 USC 6925(c).

(c) through (5) remain as proposed.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

RULE IV [17.54.1205] GETTING A RAP APPROVED (1) through (7)(d) remain as proposed.

(e) a brief description of the comment procedures in this ~~section~~ rule, and any other procedures by which the public may participate in the RAP decision;

(f) through (9)(d) remain as proposed.

(e) When the department issues the final RAP decision, the department must refer to the procedures for appealing the decision under ARM 17.54.1205~~(6)~~(10).

(f) through (12) remain as proposed.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

RULE V [17.54.1206] MODIFICATION, REVOCATION AND REISSUANCE, OR TERMINATION OF RAPS (1) In the RAP, the department shall specify, either directly or by reference, procedures for future modifications, revocations and reissuance, or terminations of the RAP. These procedures must provide adequate opportunities for public review and comment on any modification, revocation and reissuance, or termination that would significantly change the owner/operator's management of the remediation waste, or that otherwise merits public review and comment. If the RAP has been incorporated into a traditional RCRA permit, as allowed under ARM 17.54.1201~~(2)(e)~~(4), then the RAP will be modified according to the applicable requirements in ARM 17.54.125, 17.54.126, and 17.54.128; revoked and reissued according to the applicable requirements in ARM 17.54.126 and 17.54.127; or terminated according to the applicable requirements of ARM 17.54.127.

(2) remains as proposed.

(3) Notwithstanding any other provision in this rule, when the department reviews a RAP for a land disposal facility under ARM 17.54.1206~~(6)~~(10), the department may modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in ARM 17.54.1201 through 17.54.1211.

(4) through (6) remain as proposed.

(7) Any commentor on the modification, revocation and reissuance or termination, or any person who participated in any hearing(s) on these actions, may appeal the department's decision to approve a modification, revocation and reissuance, or termination of the RAP, according to ARM 17.54.1205~~(6)~~(10). Any person who did not file comments or did not participate in any public hearing(s) on the modification, revocation and reissuance or termination, may only petition for administrative review of the changes from the draft to the final RAP decision.

(8) Any commentor on the modification, revocation and reissuance or termination, or any person who participated in any hearing(s) on these actions, may informally appeal the department's decision to deny a request for modification, revocation and reissuance, or termination to the ~~department~~ board of environmental review (BER). Any person who did not file comments, or did not participate in any public hearing(s) on the modification, revocation and reissuance or termination may petition for administrative review only of the changes from the draft to the final RAP decision.

(9) The process for informal appeals of RAPs is as follows:

(a) The person appealing the decision shall send a letter to the ~~department~~ BER. The letter must briefly set forth the relevant facts.

(b) The ~~department~~ BER has 60 days after receiving the letter to act on it.

(c) If the ~~department~~ BER does not take action on the letter within 60 days after receiving it, the appeal shall be considered denied.

(d) through (12) remain as proposed.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

4. The Department has amended ARM 17.54.102, 17.54.105, 17.54.106, 17.54.107, 17.54.110, 17.54.120, 17.54.131, 17.54.136, 17.54.146, 17.54.150, 17.54.201, 17.54.301, 17.54.302, 17.54.303, 17.54.308, 17.54.311, 17.54.322, 17.54.324, 17.54.325, 17.54.326, 17.54.351, 17.54.401, 17.54.402, 17.54.408, 17.54.435, 17.54.501, 17.54.511, 17.54.526, 17.54.601, 17.54.609, 17.54.610, 17.54.612, 17.54.701, 17.54.702, 17.54.907, 17.54.1101, 17.54.1105, 17.54.1106, 17.54.1107, 17.54.1113, and 17.54.1118 exactly as proposed.

5. The Department has amended ARM 17.54.128, 17.54.307, 17.54.309, 17.54.505, 17.54.1108, 17.54.1109, and 17.54.1114, with the following changes:

17.54.128 MINOR MODIFICATIONS OF PERMITS; TEMPORARY AUTHORIZATIONS FOR MODIFICATIONS; AND AUTHORIZATIONS FOR MANAGEMENT OF NEWLY IDENTIFIED WASTES (1) through (4) remain as proposed.

(5) The following procedures apply to hazardous waste combustion facility permit modifications requested under Appendix I of 40 CFR 270.42, section L(9):

(a) Facility owners or operators shall comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1211 before a permit modification can be requested under this rule~~.~~; and

(b) remains as proposed.

AUTH: 75-10-405, MCA
IMP: 75-10-405, 75-10-406, MCA

17.54.307 EXCLUSIONS (1) through (1)(m) remain as proposed.

(n) ~~(i)~~ oil-bearing hazardous secondary materials (i.e., sludges, byproducts, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911 including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (i.e., cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this subsection, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this subsection. Except as

provided in (1)~~(n)(ii)~~(o), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (i.e., from sources other than petroleum refineries) are not excluded under this subsection. Residuals generated from processing or recycling materials excluded under this subsection, where such materials as generated would have otherwise met a listing under 40 CFR part 261, subpart D, or subchapter 3, are designated as F037 listed wastes when disposed of or intended for disposal.

~~(ii)~~ (o) recovered oil that is recycled in the same manner and with the same conditions as described in (1)(n)~~(i)~~ of this rule. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172). Recovered oil does not include oil-bearing hazardous wastes listed in 40 CFR part 261, subpart D, or subchapter 3; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in ARM 17.54.201.

(o) through (v) remain as proposed, but are renumbered (p) through (w).

(2) through (5) remain as proposed.

AUTH: 75-10-405, MCA
IMP: 75-10-403, 75-10-405, MCA

17.54.309 REQUIREMENTS FOR RECYCLABLE MATERIALS; REQUIREMENTS FOR THE MANAGEMENT OF USED OIL (1)(a) through (c)(i) remain as proposed.

(ii) scrap metal that is not excluded under ARM 17.54.307(1)~~(p)~~(o);

(iii) fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under ARM 17.54.307(1)~~(o)~~(n));

(iv) through (5) remain as proposed.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.505 MANIFEST SYSTEM (1) A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest, that is signed by the generator in accordance with subchapter 4 of this chapter.

(2) In the case of exports other than those subject to subpart H of 40 CFR part 262, a transporter may not accept such waste from a primary exporter or other person:

(a) if he knows the shipment does not conform to the EPA acknowledgment of consent; and

(b) unless, in addition to a manifest signed in accordance with provisions of ARM 17.54.408, such waste is also accompanied by an EPA acknowledgment of consent which, except for shipment by rail, is attached to the manifest (or shipping paper for exports by water [bulk shipment]).

(3) For exports of hazardous waste subject to the requirements of subpart H of 40 CFR part 262, a transporter may not accept hazardous waste without a tracking document that includes all information required by 40 CFR 262.84.

(2) through (8) remain as proposed, but are renumbered (4) through (10).

AUTH: 75-10-404, 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.1108 STANDARDS TO CONTROL METALS EMISSIONS

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

(b) ~~(i)~~ The feed rates of arsenic, cadmium, beryllium, and chromium in all feed streams, including hazardous waste, fuels, and industrial furnace feed stocks shall not exceed values derived from the screening limits specified in 40 CFR part 266, Appendix I (as incorporated by reference in ARM 17.54.1118).

(i) The feed rate of each of these metals is limited to a level such that the sum of the ratios of the actual feed rate to the feed rate screening limit specified in Appendix I shall not exceed 1.0, as provided by the following equation:

$$\sum_{i=1}^{n} \frac{AFR_{(i)}}{FRSL_{(i)}} \leq 1.0$$

where:

n=number of carcinogenic metals
AFR=actual feed rate to the device for metal "i"
$FRSL_{(i)}$=feed rate screening limit provided by 40 CFR part 266, Appendix I (as incorporated by reference in ARM 17.54.1118) for metal "i"

(ii) through (11) remain as proposed.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.1109 STANDARDS TO CONTROL HYDROGEN CHLORIDE (HCL) AND CHLORINE GAS (CL_2) EMISSIONS (1) remains as proposed.

(2) ~~(a)~~ Tier I feed rate screening limits are specified for total chlorine in 40 CFR part 266, Appendix II (as incorporated by reference in ARM 17.54.1118), as a function of terrain-adjusted effective stack height and terrain and land use in the vicinity of the facility. The feed rate of total chlorine and chloride, both organic and inorganic, in all feed

streams, including hazardous waste, fuels, and industrial furnace feed stocks shall not exceed the levels specified.

~~(b)~~ (3) Tier II emission rate screening limits for HCl and Cl_2 are specified in 40 CFR part 266, Appendix III (as incorporated by reference in ARM 17.54.1118), as a function of terrain-adjusted effective stack height and terrain and land use in the vicinity of the facility. The stack emission rates of HCl and Cl_2 shall not exceed the levels specified.

(c) and (d) remain as proposed, but are renumbered (4) and (5).

~~(3)~~ (6) Conformance with the tier III controls must be demonstrated by emissions testing to determine the emission rate for HCl and Cl_2, air dispersion modeling to predict the maximum annual average off-site ground level concentration for each compound, and a demonstration that acceptable ambient levels are not exceeded.

(a) ~~Acceptable ambient levels.~~ 40 CFR part 266, Appendix IV (as incorporated by reference in ARM 17.54.1118), lists the reference air concentrations (RACs) for HCl (7 micrograms per cubic meter) and Cl_2 (0.4 micrograms per cubic meter).

(b) remains as proposed.

(4) through (8) remain as proposed, but are renumbered (7) through (11).

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

17.54.1114 REGULATION OF RESIDUES (1) through (b)(i) remain as proposed.

(ii) The concentrations of each nonmetal toxic constituent of concern (specified in (1)(b)(i) of this rule) in the waste-derived residue must not exceed the health-based level specified in 40 CFR part 266, Appendix VII (as incorporated by reference in ARM 17.54.1118), or the level of detection (using analytical procedures prescribed in SW-846), whichever is higher. If a health-based limit for a constituent of concern is not listed in Appendix VII, then a limit of 0.002 micrograms per kilogram or the level of detection (using analytical procedures prescribed in SW-846), whichever is higher, shall be used.

(A) The levels specified in 40 CFR part 266, Appendix VII (incorporated by reference in ARM 17.54.1118(1)) (and the default level of 0.002 micrograms per kilogram or the level of detection for constituents as identified in note 1 of 40 CFR part 266, Appendix VII [incorporated by reference in ARM 17.54.1118(1)]) are administratively stayed under the condition, for those constituents specified in (1)(b)(i) of this rule, that the owner or operator complies with alternative levels defined as the land disposal restriction limits specified in 40 CFR 268.40 (incorporated by reference in ARM 17.54.150) for F039 nonwastewaters. In complying with those alternative levels, if an owner or operator is unable to detect a constituent despite documenting use of best good-

faith efforts as defined by applicable EPA guidance or standards, the owner or operator is deemed to be in compliance for that constituent. Until new guidance or standards are developed, the owner or operator may demonstrate such good-faith efforts by achieving a detection limit for the constituent that does not exceed an order of magnitude above the level provided by 40 CFR 268.40 (incorporated by reference in ARM 17.54.150) for F039 nonwastewaters. The stay will remain in effect until further administrative action is taken and notice is published in the federal register and the code of federal regulations; and

(A) and (B) remain as proposed, but are renumbered (B) and (C).

(1)(c) remains as proposed.

AUTH: 75-10-405, MCA
IMP: 75-10-405, MCA

6. The Department received the following comments; Department responses follow:

The page numbers referenced in the following comments refer to the Montana Administrative Register.

COMMENT #1: PAGE 1958; Rule IV(9)(e) should refer to Rule IV(10), not Rule IV(6).

PAGE 1959; Rule V(1) The reference should be to Rule II(4). (There is no II(2)(c).)

PAGE 1960; Rule V(3) The reference should be to Rule V(10), not Rule V(6).

PAGE 1960; Rule V(7) The reference should be to Rule IV(10), not Rule IV(6).

PAGE 2001; The proposed rule 17.54.309(1)(c)(iii) should reference ARM 17.54.307(1)(n)(i), not ARM 17.54.307(1)(o).

PAGE 2001; To be consistent with 40 CFR 261.6(a)(3)(ii), the proposed change to ARM 17.54.309(1)(c)(ii) should read, "scrap metal that is not excluded under ARM 17.54.307(1)(o)."

RESPONSE: These comments address clerical cross-reference errors made in propounding various editions of the rules. The Department has amended the erroneous cross-references as suggested.

COMMENT #2: PAGE 1954; Rule III - states that the Department shall respond to significant comments. We suggest that a time frame be provided in which the Department will respond.

RESPONSE: The Department is unable to find any such provision on page 1954. Therefore, the Department has not altered Rule III in accordance with Comment #2.

COMMENT #3: PAGE 1961; Rule V(9) - Process of informal appeal. In order to comport with Mont. Code Ann. § 75-10-406(4), the letter should be sent to the Board of Environmental Review, not the Department. This would also be consistent with 40 CFR 270.190(c) which provides that the letter is sent to Environmental Appeals Board.

RESPONSE: After reviewing 40 CFR 270.190 and 63 FR 229, the Department has concluded that the informal appeal should indeed be to the Board of Environmental Review (BER). The BER is the Montana equivalent of the Environmental Appeals Board referenced in 40 CFR 270.190 and 63 FR 229. Therefore, the appropriate references in Rule V(9) have been amended to reflect appeal to the BER.

COMMENT #4: PAGE 1962; It would be helpful to the regulated community to add the time computation examples found at 40 CFR 270.215.

RESPONSE: The Department does not believe that the ARM is an appropriate forum to set forth examples of the rules as applied. The ARM sets forth the standard, and the Department can resolve any confusion through supplemental guidance, or by reference to the rule's corollary at 40 CFR 270.215.

COMMENT #5: PAGE 1962; Rule VI(5) refers to 40 CFR 270.5; is that section incorporated by reference? Please reference the ARM section, if applicable.

RESPONSE: Section 40 CFR 270.5 is only referenced in Rule VI(5). There is no comparable ARM section to reference in place of 40 CFR 270.5.

COMMENT #6: Is Montana incorporating by reference all of 40 CFR 270 in ARM 17.54.102(6)? This would provide two sets of Montana rules; the new rules of the subject rulemaking, and, a state promulgated duplicate of the federal rules incorporated by reference. Perhaps the Department intends to incorporate by reference 40 CFR 270-270.79, which are the rules up to, but not including, the RAP rules. This same concern occurs for parts 260, 261, 264, 265, and 268. Montana should not broadly incorporate by reference entire parts of the federal rules if Montana has their own set of rules on the same subject matter. Just one example is the definition of solid waste found at 40 CFR 261.2. This definition of solid waste differs from that in the current Montana regulation of ARM 17.50.403(21). In addition, incorporation by reference of the same CFR part appears more than once in the rules, and in some cases they conflict. One example is proposed rule ARM 17.54.102(6), which appears to incorporate by reference 40 CFR 265 in its

entirety. However, ARM 17.54.609(5) appears to exclude subparts H and R of 40 CFR 265. Incorporation by reference should be done with extreme care so that there are not two sets of Montana rules on the same subject.

RESPONSE: ARM 17.54.102(6) is merely a guide to the CFR sections incorporated by reference in the hazardous waste rules, and incorporation by reference is not accomplished within ARM 17.54.102(6). The Department is unable to find any instance of inconsistent incorporation by reference within the scope of the proposed rulemaking as indicated in this comment. However, the Department will review ARM 17.54.102(6) for accuracy and will revise as appropriate in the next RCRA rulemaking.

COMMENT #7: PAGE 1979; In ARM 17.54.105(14) the reference to 17.54.609 appears incorrect.

RESPONSE: The reference to ARM 17.54.609 is correct. 40 CFR 265.121 is in 40 CFR 265, subpart G, which is incorporated by reference in ARM 17.54.609(5).

COMMENT #8: PAGE 2000; "Requirements for the Management of Used Oil" should be deleted from the heading of ARM 17.54.309. It causes confusion and is inconsistent with 40 CFR 261.6.

RESPONSE: The proposed alterations to ARM 17.54.309 do not eliminate from ARM 17.54.309 all requirements pertaining to the management of used oil. Specifically, subsection (5) incorporates the used oil provisions of 40 CFR 279, "Standards for the Management of Used Oil". Therefore, the heading of ARM 17.54.309 is correct and the Department has not altered it in accordance with Comment #8.

DEPARTMENT OF ENVIRONMENTAL QUALITY

by: *Mark A. Simonich*
MARK A. SIMONICH, Director

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State December 6, 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 AMENDMENT (UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On September 9, 1999, the Department of Environmental Quality published notice of the proposed amendment of ARM 17.56.1001 pertaining to underground storage tanks fee schedule at page 1853 of the 1999 Montana Administrative Register, Issue No. 17.

2. The Department has amended ARM 17.56.1001 as proposed.

3. The Department received the following comments; Department responses follow:

COMMENT #1: The registration fee should not be raised because fees are already too high, owners cannot afford to pay additional fees and owners have spent considerable amounts of money upgrading their tanks.

RESPONSE: The Department took the fact that over the last 10 years owners have had to spend considerable sums to upgrade their facilities into consideration when it chose not to raise fees over the last 10 years. According to the Consumers Price Index inflation has increased 41.8 percent between the time the original fee rules were published and the present. In order to simply keep pace with inflation the fee would need to be raised to approximately $71.00. Such an adjustment would not take into account additional program duties or expected budget shortfalls. Accordingly, the Department believes an increase to $70.00 is reasonable.

COMMENT #2: Fees should be based on the throughput (amount of fuel sold or used) of fuel from each tank at the facility, rather than the size of the tank.

RESPONSE: Although an increase in fees based on the throughput of the facility has been implemented in other states, the Department is without appropriate legislative authority to implement such a program. The Department will consider such a proposal for the next legislative session.

COMMENT #3: Fees should be increased on smaller tanks as well as larger tanks.

RESPONSE: The legislature did not provide the Department with the authority to raise registration fees on tanks with a capacity of less that 1,100 gallons.

DEPARTMENT OF ENVIRONMENTAL QUALITY

by: *Mark A. Simonich*
MARK A. SIMONICH, Director

Reviewed by:

John F. North
John F. North, Rule Reviewer

Certified to the Secretary of State December 6, 1999.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of a new rule regarding insurance required prior to the public display of fireworks, the transfer and amendment of ARM 23.7.113, and the amendment of ARM 23.7.102 through 23.7.104, 23.7.106 through 23.7.110, 23.7.112, 23.7.201 through 23.7.203, 23.7.301 through 23.7.310 of the fire code.	NOTICE OF ADOPTION, TRANSFER AND AMENDMENT

TO: All Concerned Persons

1. On October 7, 1999, the Department of Justice published notice of the proposed adoption of new RULE I regarding insurance required prior to the public display of fireworks, the proposed transfer and amendment of ARM 23.7.113 containing definitions pertinent to the fire code, and the proposed amendment of ARM 23.7.102 through 23.7.104, 23.7.106 through 23.7.110, 23.7.112, 23.7.201 through 23.7.203, 23.7.301 through 23.7.310 of the fire code at pages 2190 through 2223 of the 1999 Montana Administrative Register, Issue Number 19.

2. The Department of Justice has adopted new RULE I, ARM 23.7.204, exactly as proposed.

3. The Department of Justice has amended ARM 23.7.102 through 23.7.104, 23.7.106, 23.7.112, and 23.7.203 exactly as proposed.

4. The Department of Justice has transferred and amended ARM 23.7.113 (23.7.101A), and amended 23.7.107 through 23.7.110, 23.7.201 and 23.7.202, and 23.7.301 through 23.7.310 with the following changes, stricken matter interlined, new matter underlined:

23.7.101A DEFINITIONS Unless the context requires otherwise, the following definitions apply to the rules in ARM Title 23, chapter 7:

(1) "Building code" means the latest edition (1997) of the Uniform Building Code (UBC) adopted by the department of commerce. Whenever a provision of the building code is incorporated within the Uniform Fire Code (UFC) by reference, such provision is hereby adopted for application to all buildings within the jurisdiction of the fire prevention and investigation program (FPIP), unless the state fire marshal determines otherwise in accordance with 1997 UFC 103.1.2. Copies of the ~~UBC~~ building code may be obtained from the Building Codes Division of the Department of Commerce, 1218 East

Sixth Avenue, P.O. Box 200517, Helena, Montana 59620-0517.

(2) same as proposed.

(3) "Certificate of approval" means a letter of approval issued by the fire prevention and investigation program, or its representative.

(4) through (8) same as proposed.

(9) "Fire code" means the ~~latest~~ edition of the Uniform Fire Code (UFC) currently adopted by the fire prevention and investigation program (FPIP) and any additions thereto currently adopted by the ~~fire prevention and investigation program~~ FPIP.

(10) through (18) same as proposed.

(19) "Mechanical code" means the latest edition (1997) of the Uniform Mechanical Code (UMC) adopted by the department of commerce. Whenever a provision of the ~~UMC~~ mechanical code is incorporated within the Uniform Fire Code (UFC) by reference, such provision is hereby adopted for application to all buildings within the jurisdiction of the fire prevention and investigation program (FPIP), unless the state fire marshal determines otherwise in accordance with 1997 UFC ~~2.301~~ 103.1.2. Copies of the mechanical code may be obtained from the Building Codes Division of the Department of Commerce, 1218 East Sixth Avenue, P.O. Box 200517, Helena, Montana 59620-0517.

~~(20) "Nationally recognized standards" includes but is not limited to any of the standards referenced in UFC Article 90, National Fire Protection Association (NFPA) standards, Underwriters Laboratories Inc. (UL) standards, American Petroleum Institute (API) standards, American Society for Testing and Materials (ASTM) standards, and American National Standards Institute (ANSI) standards.~~

(21) through (26) remain the same as proposed but are renumbered (20) through (25).

AUTH: 50-3-102, ~~50-39-107,~~ MCA
IMP: 50-3-102, MCA

23.7.107 FIRE ESCAPES FOR PUBLIC BUILDINGS (1) same as proposed.

(a) 1997 UFC Appendix I-A, Section 2.4 Fire Escapes; and

(b) 1997 UFC Appendix I-C ~~applies to existing buildings~~ Stairway Identification.

AUTH: ~~50-3-103,~~ 50-3-102, MCA
IMP: ~~50-61-105,~~ 50-3-106, MCA

23.7.108 SMOKE DETECTORS IN RENTAL UNITS (1) and (2) same as proposed.

(3) 1997 UFC Appendix I-A, - SECTION 6-SMOKE DETECTORS ~~of the~~ shall govern the installation of smoke detectors in all dwelling units rented to another person.

AUTH: 50-3-102, 70-24-303, MCA
IMP: 50-3-102, 70-24-303, MCA

23.7.109 CERTIFICATE OF APPROVAL FOR DAY CARE CENTERS FOR 13 OR MORE CHILDREN (1) and (2) same as proposed.

(3) Upon receipt of an application for certificate of approval, the ~~state~~ fire marshal or a representative shall conduct an inspection of the proposed day care center.

(4) same as proposed.

(5) Day care centers shall comply with the following provisions of the building code which are hereby incorporated by reference: 1997 UBC 305.2.3, 305.3, 305.8, 305.9, chapter 8, chapter 10, 904.2.4.2, and 904.2.4.3. Copies of the ~~1997 UBC~~ building code may be obtained from the Building Codes Division, Department of Commerce, 1218 East Sixth Avenue, P.O. Box 200517, Helena, MT 59620-0517.

(6) same as proposed.

(7) If the proposed day care center is in compliance with these rules, the ~~state~~ fire marshal shall issue a certificate of approval. If the center is not in compliance, the ~~state~~ fire marshal shall issue a notice of corrective action needed to bring the center into compliance. Additional inspections may be conducted as needed until compliance is achieved.

(8) and (9) same as proposed.

AUTH: 50-3-102, 52-2-734, MCA
IMP: 50-3-102, 52-2-733, 52-2-734, MCA

23.7.110 CERTIFICATE OF APPROVAL FOR COMMUNITY HOMES

(1) through (3) same as proposed.

(4) Upon receipt of an application for certificate of approval, the ~~state~~ fire marshal or a representative shall conduct an inspection of the community home, and shall promptly thereafter issue findings indicating whether the fire code has been met. ~~If the community home is in compliance with these rules, the state fire marshal shall issue a certificate of approval. If the community home is not in compliance, the state fire marshal shall issue a notice of corrective action needed to bring the community home into compliance. Additional inspections may be conducted as needed until compliance is achieved.~~

(5) For purposes of determining compliance with the fire code, all community homes shall comply with the 1997 Uniform Fire Code as adopted and with all other rules promulgated by the fire prevention and investigation program.

(6) If the proposed community home is in compliance with these rules, the fire marshal shall issue a certificate of approval. If the home is not in compliance, the fire marshal shall issue a notice of corrective action needed to bring the home into compliance. Additional inspections may be conducted as needed until compliance is achieved.

~~(6)~~ (7) The state fire marshal shall notify the department of public health and human services when a community home has been certified.

AUTH: ~~52-4-204, 53-20-307,~~ 50-3-102, MCA
IMP: 52-4-204, 53-20-307, MCA

23.7.201 RETAIL FIREWORKS SALE (1) same as proposed.

(2) The retail sale of permissible fireworks may occur only from approved retail business establishments or approved fireworks stands as defined in ARM 23.7.101A. Fireworks shall not be sold from or stored in any tent, canopy, or temporary membrane structure (1997 UFC 3215.2), sold from a mobile trailer which is designed for the transportation of goods, or sold from a fireworks stand or mobile trailer which permits entry of the public.

(3) through (9) same as proposed.

(10) Electrical wiring shall be in a safe condition, and if found upon inspection to be unsafe shall be upgraded to comply with the applicable provisions of the National Electrical Code (NEC) currently adopted by the building codes division of the department of commerce.

(11) and (12) same as proposed.

(13) All fireworks stands ~~must~~ shall be ~~inspected~~ subject to inspection by the chief, or the chief's representative, in accordance with 1997 UFC 103.2.1.1. Violations shall be handled in accordance with 50-61-115, MCA. If immediate action is necessary to safeguard life and property, the chief may issue an order to remedy in accordance with 50-62-102, MCA.

AUTH: 50-3-102, MCA
IMP: 50-3-102, MCA

23.7.202 FIREWORKS REPACKAGING, STORAGE AND SHIPPING (1) All buildings where fireworks are stored, opened for repacking, repackaged, or prepared for shipping shall conform to the provisions of the 1997 building code and the 1997 fire code. Where those codes are silent, National Fire Protection Association (NFPA) pamphlet 1124 (1998) shall be applied.

(2) ~~(~~NFPA~~)~~ pamphlet 1124 (1998), which is the code governing the manufacture, transportation, and storage of fireworks, and which can be found in the ~~1999 edition of the~~ National Fire Code (NFC), is hereby incorporated by reference. Copies may be obtained from the Fire Prevention and Investigation Program, 1310 East Lockey, Helena, Montana 59620.

AUTH: 50-3-102, MCA
IMP: 50-3-102, MCA

23.7.301 ADOPTION OF UNIFORM FIRE CODE (1) The fire prevention and investigation program (FPIP) hereby adopts and incorporates by reference the Uniform Fire Code and appendices, 1997 edition (UFC), and the Uniform Fire Code Standards, 1997 edition (UFC Standards), with the additions, amendments, and deletions enumerated in this subchapter. Copies of the 1997 UFC and related materials may be obtained from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, CA 90601-2298, 1-800-423-6587, www.icbo.org~~, or~~. Copies of the 1997 UFC and Montana's amendments thereto may be obtained from the ~~MSU~~ Fire Services Training School, 2100 16th Avenue South, Great Falls, MT 59405-4997, (406) 771-4336.

(2) and (3) same as proposed.

AUTH: 50-3-102, MCA
IMP: 50-3-103, MCA

23.7.302 ADMINISTRATION (1) and (1)(a) same as proposed.
(b) 1997 UFC 105.8-Permit Required and any other subsection of the 1997 UFC referring to permits are not adopted. This subsection applies to UFC permitting requirements only, not to permitting requirements contained in Montana law.
(2) same as proposed.
(a) 1997 APPENDIX II-C MARINAS Section 3-Permits is not adopted. The remainder of 1997 Appendix II-C is adopted in its entirety;
(b) through (d) same as proposed.
(e) 1997 APPENDIX I-A is not adopted, except Section 2.4 Fire Escapes is adopted as stated at ARM 23.7.107 and SECTION 6-SMOKE DETECTORS is adopted as stated at ARM 23.7.108.

AUTH: 50-3-102, MCA
IMP: 50-3-103, MCA

23.7.303 ADDITIONAL DEFINITIONS (1) and (1)(a) same as proposed.
(b) "Nationally recognized standards" as used in the Uniform Fire Code (UFC), means any of the following standards referenced in 1997 UFC Article 90; National Fire Protection Association (NFPA) standards; Underwriters Laboratories Inc. (UL) standards; American Petroleum Institute (API) standards; American Society for Testing and Materials (ASTM) standards; and American National Standards Institute (ANSI) standards.
(b) same as proposed except renumbered (c).
~~(c)~~ (d) "Rural area" means those areas located three miles or more beyond (outside) the corporate limits of a Class 1 or Class 2 city, as defined in 7-1-4111, MCA, and one and one-half miles or more beyond (outside) the corporate limits of a Class 3 city, as defined in 7-1-4111, MCA, when the Class 3 city's population is more than 1,500 residents. In the case of ~~an~~ any unincorporated place, city, community, or town, the unincorporated place, city, community, or town will be considered rural if it has a population of less than 1,500 and a density of less than 800 persons per square mile, according to the most recent U.S. census.

AUTH: 50-3-102, 50-61-102, MCA
IMP: 50-3-102, 50-61-102, MCA

23.7.304 GENERAL PROVISIONS FOR SAFETY (1) Articles 9 through 13 of the 1997 UFC are adopted with the following exceptions:
(a) and (b) same as proposed.

AUTH: 50-3-102, MCA
IMP: 50-3-103, MCA

23.7.305 SPECIAL OCCUPANCY USES (1) Articles 24 through 36 of the 1997 UFC are adopted without change.

AUTH: 50-3-102, MCA
IMP: 50-3-103, MCA

23.7.306 SPECIAL PROCESSES (1) Articles 45 through 52 of the 1997 UFC are adopted with the following exceptions and amendments:

(a) UFC 5201.1 Scope is amended by adding the following statement at the end of the subsection: "For public automotive motor vehicle fuel-dispensing stations located in rural areas, see Article 53 of the UFC~~, below~~";

(b) UFC 5201.2 Definitions~~, is amended by adding the definition of "bulk plant or terminal" found in Article 2 of the UFC and the definition of "rural area" found in Arm 23.7.303~~ For definitions of BULK PLANT or TERMINAL, CNG, COMBUSTIBLE LIQUID, FLAMMABLE LIQUID and MOTOR VEHICLE FUEL-DISPENSING STATION, see 1997 UFC Article 2. For the definition of RURAL AREA, see ARM 23.7.303;

(c) through (d) same as proposed.

(e) UFC 5201.4.1.3 is amended as follows:

5201.4.1.3 Bulk plants. 1. Motor vehicle fuel-dispensing stations are not permitted at bulk plants which are not located in a rural area. EXCEPTION: Existing bulk plants which are not located in rural areas if the motor vehicle fuel-dispensing dispensers were installed prior to February 9, 1996, and if the dispensers are in compliance with ~~UFC 5302.4.1~~ 1997 UFC Article 52.

2. through (h) same as proposed.

(i) UFC 5202.3.4 is amended as follows:

5202.3.4 Fuel tanks at bulk plants. Storage tanks used for fueling operations shall not be connected to or serve as bulk plant tanks. EXCEPTION: Storage tanks which are located at bulk plants in rural areas and which are constructed and installed in accordance with 1997 UFC Articles 53 and 79 ~~below~~;

(j) same as proposed.

(k) UFC 5202.4.1 Aboveground tanks is amended as follows: Class I and II liquids shall not be dispensed into the fuel tank of a motor vehicle from aboveground tanks except when such tanks are installed inside special enclosures in accordance with UFC 5202.3.6. See also Appendix II-F, UFC. EXCEPTION: Aboveground tanks located at public automotive motor vehicle fuel-dispensing stations located in rural areas and bulk plants located in rural areas. See 1997 UFC Article 53 ~~below~~;

(l) through (o) same as proposed.

(p) The following entire Article 53 is added to the 1997 fire code:

Article 53-Rural Motor Vehicle Fuel-Dispensing Stations

SECTION 5301 - GENERAL

5301.1 Scope. Public automotive motor vehicle

fuel-dispensing stations located in rural areas, including publicly accessible operations but excluding farms and ranches, shall be in accordance with 1997 UFC Articles 52 and 53 ~~of the UFC~~. Private operations, other than farms and ranches, shall comply with 1997 UFC Article 52 ~~above~~. Flammable and combustible liquids and LP-gas shall also be in accordance with 1997 UFC Articles 79 and 82~~, UFC~~.

5301.2 through 5301.3 same as proposed.

5301.3.1 Plans submittal. Plans submittal is required for ~~rural~~ public automotive motor vehicle fuel-dispensing stations located in rural areas.

5301.3.2 through 5301.4.1.1 same as proposed.

5301.4.1.2 Dispensing devices. ~~Dispensing devices shall be subject to UFC 5201.4 through 5201.11.~~ See UFC 5201.4.1.2.

5301.4.1.3 Bulk plants. See UFC 5201.4.1.3.

5301.4.2 Storage vessels. See UFC 5201.4.2.

5301.5 Installation of Dispensing Devices. ~~Spill Control, Drainage Control, and Secondary Containment. Spill control and secondary containment shall be provided in accordance with UFC 7901.8. Drainage control and diking shall be provided as set forth in UFC 7902.2.8.~~

5301.5.1 Protection of dispensers. See UFC 5201.5.1.

5301.5.2 Dispenser installation. See UFC 5201.5.2.

5301.5.3 Emergency shutdown devices. See UFC 5201.5.3.

5301.5.4 Dispenser electrical disconnects. See UFC 5201.5.4.

5301.6 Supervision of Dispensing Operations

5301.6.1 General. The dispensing of fuel into fuel tanks of automotive or portable containers shall be consistent with UFC 5201.6.1.

5301.6.2 Attendants. See UFC 5201.6.2.

5301.6.3 Unsupervised dispensing. See UFC 5201.6.3 with the exception that the posted sign may provide an emergency telephone number rather than a telephone number for a fire department.

5301.7 Sources of Ignition. See UFC 5201.7.

5301.8 Signs. See UFC 5201.8.

5301.9 Fire Protection. See UFC 5201.9.

5301.10 Clearance from Combustible Materials. See UFC 5201.10.

5301.11 Maintenance. See UFC 5201.11.

5301.12 Spill Control, Drainage Control, and Secondary Containment. Spill control and secondary containment shall be provided in accordance with UFC 7901.8. Drainage control and diking shall be provided as set forth in UFC 7902.2.8.

~~5301.6~~ 5301.13 Leaking Aboveground Storage Tanks. A leaking tank shall be reported to the local fire official and the department and may be replaced with an approved tank of the same volume without prior written approval as required in 5302.2.4.1. Subsequent inspection and approval shall be made by the local fire official.

SECTION 5302 -- PUBLIC FLAMMABLE AND COMBUSTIBLE LIQUID AUTOMOTIVE MOTOR VEHICLE FUEL-DISPENSING STATIONS LOCATED IN

RURAL AREAS

5302.1 General. Public automotive motor vehicle fuel-dispensing stations located in rural areas and utilizing flammable or combustible liquids shall be in accordance with 1997 UFC 5301 and 5302. See also 1997 UFC Article 79~~, UFC~~.

5302.2 through 5302.3 same as proposed.

5302.3.1 General.

1. same as proposed.

2. Storage tanks, at the option of the owner, may be installed in accordance with the requirements of UFC 5202.3.1, Appendix II-F, or Appendix II-J of the ~~1994 Edition, Uniform Fire Code~~ 1997 UFC.

5302.3.2 and 5302.3.3 same as proposed.

5302.3.4 Fuel tanks at bulk plants. Storage tanks storing Class I, II, and III-A liquids at bulk plants located in "rural areas~~,~~" as defined in ARM 23.7.303 and which are interconnected for use at motor vehicle fuel-dispensing stations, shall be installed in accordance with 1997 UFC 5302 and shall have no capacity restrictions.

5302.3.5 through 5302.4.1 same as proposed.

5302.4.2 Filling of portable containers, tanks, and cargo tanks. Class I, II, and III-A liquids shall not be dispensed into portable containers unless such container is of approved material and construction, and has a tight closure with screwed or spring cover so designed that the liquid can be dispensed into the container without spilling. Cargo tanks shall be filled at ~~either~~ bulk plants or terminals.

5302.4.3 through 5302.4.3.2 same as proposed.

5302.4.4 Supervision. In addition to the requirements in 5301.6, dispensing equipment used at unsupervised locations shall comply with ~~one of the following:~~

~~1. The amount of fuel being dispensed is limited in quantity by a preprogrammed card.~~

~~2. Dispensing devices are programmed or set to limit uninterrupted fuel delivery to 25 gallons (94.6 L) and require a manual action to resume continued delivery, or~~

~~3. Product delivery hoses are equipped with a listed emergency breakaway device designed to retain liquid on both sides of the breakaway point. Such devices shall be installed and maintained in accordance with the manufacturer's instructions~~ 1997 UFC 5202.4.3 and 5202.4.5.

5302.4.5 through 5302.10.4.2 same as proposed.

AUTH: 50-3-102, MCA
IMP: 50-3-103, MCA

23.7.307 EQUIPMENT (1) Articles 61, 62, 63, and 64 of the 1997 UFC are adopted without change.

AUTH: 50-3-102, MCA
IMP: 50-3-103, MCA

23.7.308 SPECIAL SUBJECTS (1) Articles 74 through 88 of

the 1997 UFC are adopted with the following exceptions, and those in ARM 23.7.309:

(a) through (e)(ii) same as proposed.

(iii) API documents can be obtained from the American Petroleum Institute, 1220 "L" Street, N.W., Washington, D.C., 20005.

(f) same as proposed.

AUTH: 50-3-102, MCA
IMP: 50-3-102, MCA

23.7.309 FLAMMABLE AND COMBUSTIBLE LIQUIDS (1) The following subsections are added to 1997 UFC ARTICLE 79-FLAMMABLE AND COMBUSTIBLE LIQUIDS~~, of the UFC~~:

7904.8 through 7904.8.5.3 same as proposed.

7904.8.5.4 Vents. Each new tank shall be provided with a free-opening vent of a size not less than specified in UFC Table 7904.2-A to relieve vacuum or pressure which could develop in normal operation or from fire exposure. Venting shall be in accordance with UFC 7902.1.11 and 7902.1.12. Vents shall be arranged to discharge in a manner which prevents localized overheating or flame impingement on any part of the tank in the event vapors from such vents are ignited.

7904.8.5.5 and 7904.8.5.5.1 same as proposed.

7904.8.5.5.2 Locations ~~where~~ of aboveground tanks ~~are prohibited~~.

1. Aboveground storage tanks are not prohibited on "farms" and "ranches." All new and existing aboveground storage tanks on farms and ranches must be installed in accordance with ARM 23.7.309. EXCEPTION: Pursuant to 50-3-103(6), MCA, there are no requirements regarding diked areas, or heat-actuated or other shut-off devices for storage tanks containing Class I or Class II liquids intended only for private use.

2. through 7904.8.5.6.2 same as proposed.

~~7904.7.5.6.3~~ 7904.8.5.6.3 Tanks for gravity discharge. Horizontal and vertical tanks with a connection in the bottom or end for gravity dispensing liquids shall be mounted and equipped with supports and foundations which are in accordance with UFC 7902.1.14.

7904.7.6 and 7904.7.6.1 same as proposed, but are renumbered 7904.8.6 and 7904.8.6.1.

AUTH: ~~50-3-103,~~ 50-3-102, MCA
IMP: 50-3-102, MCA

23.7.310 STANDARDS (1) The 1997 Uniform Fire Code Standards (Vol. 2 of the 1997 UFC) are adopted, with the following amendments:

UNIFORM FIRE CODE STANDARD 10-1
SELECTION, INSTALLATION, INSPECTION, MAINTENANCE AND TESTING OF PORTABLE FIRE EXTINGUISHERS

See 1997 UFC 1002.1, 1006.2.7, 1102.5.2.3, 2401.13, 3208, 3407,

4502.8.2, 4503.7.1, 5201.9, 7901.5.3, 7902.5.1.2.1, 7903.4.7.1, 7904.5.1.2, 8102.11, and 8211.2. This standard, with certain deletions, is based upon the National Fire Protection Association Standard for Portable Fire Extinguishers, NFPA Standard 10 (1998), which can be obtained from the National Fire Protection Association, P.O. Box 9101, Batterymarch Park, Quincy, MA 02269.

SECTION 10.101 -- AMENDMENTS same as proposed.

AUTH: ~~50-3-103,~~ 50-3-102, MCA
IMP: 50-3-103, MCA

5. The following comments were received and appear in chronological order with the Department of Justice's responses:

COMMENT 1: Current and former staff for the Fire Prevention and Investigation Program (hereinafter FPIP) commented that both the FPIP and local entities representing the FPIP issue certificates of approval to inspect day care centers and community homes.

RESPONSE: The Department of Justice (hereinafter Department) agrees and has amended the definition of "certificate of approval" to include letters issued by representatives of the FPIP.

COMMENT 2: A representative of the Fire Services Training School, Butch Weedon, thought the term "latest edition of the Uniform Fire Code" could be interpreted to mean the 2000 edition of that code. He proposed alternate language to clarify that the rule refers to the edition of the UFC currently adopted by the Department of Justice.

RESPONSE: The Department of Justice agrees and has amended the definition of "fire code" accordingly.

COMMENT 3: R & S Marketing, the largest distributor of fireworks in Montana, and various owners of fireworks stands commented that the definition of "nationally recognized standards" is too open-ended in that it is not limited to national standards adopted by reference under the Montana Administrative Procedure Act.

RESPONSE: The term "nationally recognized standards" is used throughout the original Uniform Fire Code. The term is used when the UFC is silent regarding a process or procedure to be followed when doing a particular act. For instance, the UFC does not contain a provision setting forth the proper way to line an aboveground storage tank. The user of the UFC is directed to standards established by the American Petroleum Institute. FPIP is merely attempting to clarify the term as it is used in the UFC only. The Department has no intention of using this term in those rules which are unique to Montana's

fire code, including Montana's fireworks rules. The Department has amended the definition and moved it to ARM 23.7.303, Additional Definitions to clarify that the definition applies only to the term as it is used in the UFC, and is limited to the standards listed in the UFC.

COMMENT 4: Butch Weedon commented that a "fire service area" is merely an entity created to raise funds for fire protection purposes. He proposed to substitute "fire companies" for "fire service areas" in ARM 23.7.102's list of those responsible for the enforcement of fire codes.

RESPONSE: The Department of Justice disagrees. Mont. Code Ann. § 50-61-102(2) permits fire service areas to approve fire codes and plans to enforce those codes.

COMMENT 5: Two comments were received regarding the rationale for the proposed changes to ARM 23.7.102. Paul Gerber, Billings Fire Marshal, disagreed with the statement that fire service areas were first created by the 1997 legislature. Butch Weedon of the Fire Services Training School questioned whether the fire incident reports are on federally-mandated forms.

RESPONSE: The Department of Justice appreciates and agrees with both comments. Fire service areas have been in existence since at least 1987, when the Montana legislature adopted Mont. Code Ann. §§ 7-33-2401 to -2404. The fire incident report forms and information contained therein are prescribed by the state pursuant to Mont. Code Ann. § 50-63-203(3), and are consistent with the National Fire Incident Reporting System.

COMMENT 6: The Building Codes Division, Department of Commerce, commented that the language in ARM 23.7.107(1)(b) regarding application of 1997 UFC Appendix I-C to existing buildings is confusing.

RESPONSE: The Department agrees and has deleted the confusing language.

COMMENT 7: The Billings Fire Marshal and the Bozeman Fire Marshal each expressed their dissatisfaction with FPIP's inability to adopt the majority of Appendix I-A of the UFC absent approval of the Building Codes Division, Department of Commerce.

RESPONSE: Rules adopted by the FPIP which relate to building codes are effective upon approval of the Department of Commerce. See Mont. Code Ann. § 50-3-103(2) and ARM 23.7.160. 1997 UFC Appendices I-A and I-B are the same as 1997 UBC Appendix Chapter 34, Divisions I and II. The Building Codes Division has adopted Divisions I and II for use by local governments but not for use by the Building Codes Division. The adoption of 1997 UFC Appendices I-A and I-B would conflict with

Building Codes Division's adoption of Appendix Chapter 34, Divisions I and II. Therefore, FPIP cannot adopt these Appendices except as indicated herein.

COMMENT 8: Several individuals commented that the changes to ARM 23.7.108(3) are not grammatically correct.

RESPONSE: The Department of Justice agrees and has amended that subsection.

COMMENT 9: Bruce Suenram of Fire Logistics, Inc., and former state fire marshal, commented that specific reference to the 1998 version should be omitted when referring in ARM 23.7.109(6) to the National Fire Protection Association's standard for portable fire extinguishers. NFPA's standards are revised every three years so Montana's rule would eventually be out-of-date.

John MacMaster, attorney for the Law, Justice and Indian Affairs Interim Legislative Committee, commented that there are many places in the existing and the proposed rules where a code, standard, or similar regulation is adopted and incorporated by reference without reference to the year or edition of the applicable code, standard, or regulation. The year or edition is required by Montana law.

RESPONSE: The Department of Justice disagrees with Mr. Suenram. The 1998 edition of NFPA-10 is properly referenced. Mont. Code Ann. § 2-4-307(3) provides that a rule originally adopting by reference any model code may not adopt any later amendments or edition of that code.

The Department agrees with Mr. MacMaster. Mont. Code Ann. § 2-4-307(3) provides that a rule originally adopting by reference any model code may not adopt any later amendments or edition of that code. Thus, the rule by which the model code is adopted should specify the year or edition of the adopted version to avoid any misunderstanding and to clarify which code is being adopted. The rule must also state where the adopted code, standard, or regulation can be obtained.

The Department of Justice adopts the UFC by reference in ARM 23.7.301. That rule specifies that the Department is adopting the 1997 version of the code and its standards, and where those documents can be obtained. To ensure no misunderstanding, the Department has, in ARM 23.7.302 to 23.7.310, added 1997 before the initial references to the UFC, its articles, and its appendices. When necessary for clarification purposes, the Department has also added 1997 before certain other references to the UBC, the UFC, its articles, and its appendices.

The year has usually not been added in the definitions rule (ARM 23.7.101A) as that rule is general in nature and incorporates only the Uniform Building Code (UBC) and the Uniform Mechanical Code (UMC) by reference. The year 1997 has been added to the references to the UBC and the UMC. Citation

corrections have also been made in the subsection defining mechanical code.

The National Fire Code has no date or edition number. It is compiled of publications with individual dates.

COMMENT 10: Bruce Suenram questioned whether the FPIP has the manpower necessary to certify day care centers and community homes without the assistance of local fire officials.

RESPONSE: The Department agrees. The Department did not intend to alter the rules to completely assume these responsibilities. ARM 23.7.109 and 23.7.110 have been modified to reflect the current practice of allowing local fire officials to assist the state fire marshal in the certification of day care centers and community homes.

COMMENT 11: The Billings Fire Marshal questioned why ARM 23.7.110(6) was deleted. The subsection addresses the issuance of certificates of approval to community homes which are in compliance with the fire code.

RESPONSE: ARM 23.7.110 was rewritten in an effort to clarify the certification process. The language in subsection (6) was moved to subsection (4), as subsection (4) addresses the findings which must be made prior to the issuance of a certificate of approval. The proposed change has obviously not clarified the process. ARM 23.7.110 has been modified to reinsert the original subsection (6). Proposed subsection (6) is now subsection (7).

COMMENT 12: R & S Marketing and various owners of fireworks stands commented that, contrary to conversations between the previous state fire marshal and representatives of R & S Marketing, the proposed rules fail to address the issue of what constitutes an "inhabitable area" for purposes of ARM 23.7.201(5).

RESPONSE: The current state fire marshal was not a party to those conversations, and was not aware that the term needed further development. The state fire marshal and a representative of R & S Marketing have agreed that this issue will be the subject of additional rule-making in the near future.

COMMENT 13: R & S Marketing and various owners of fireworks stands commented that the amendments to ARM 23.7.201(13) constitute a substantial change in existing law. Inspections of fireworks stands would be mandatory under the proposed change, and must be conducted by a chief who may or may not be available to conduct every needed inspection.

RESPONSE: The Department agrees with the comment. The intent of the proposed change was to replace the word "shall" with the word "must" for grammatical purposes. FPIP did not intend to make inspections mandatory. The proposed changes have been deleted and the original language restored. The section

has also been modified to permit a chief's representative to conduct the inspection.

COMMENT 14: Bruce Suenram commented that ARM 23.7.202(2) improperly cites the National Fire Codes. There is no 1999 edition of the National Fire Codes.

RESPONSE: The Department agrees. The National Fire Codes is a compilation of various codes and standards, each with its own date of publication. The appropriate changes have been made.

COMMENT 15: Butch Weedon of the Fire Services Training School commented that the version of the UFC available from the International Conference of Building Officials (ICBO) differs from the version of the UFC available from his office. He requested that reference to the ICBO be deleted.

RESPONSE: The Department agrees that ICBO provides a different version of the 1997 UFC than does the Fire Services Training School. The ICBO version is the official Uniform Fire Code. The Fire Services Training School provides copies of the Uniform Fire Code as amended by the FPIP. The Department believes it is important to let people know how to obtain each version. ARM 23.7.301 has been modified to explain the differences between the available fire codes.

COMMENT 16: The Billings Fire Marshal commented that FPIP's decision not to adopt any subsection of the UFC referring to permits is confusing in light of FPIP's fireworks permitting process.

RESPONSE: The fireworks permitting process is set out in Montana statute. It is not a UFC permitting process. The Department has modified ARM 23.7.302 to clarify that it addresses UFC permitting processes only, not permitting processes required by Montana law.

COMMENT 17: FPIP's staff attorney commented that the rationale for the proposed modifications to ARM 23.7.302 contains a typographical error. Subsection (2)(e), not (2)(c), is proposed to be amended to comply with the proposed amendments to ARM 23.7.107 and 23.7.108.

RESPONSE: The Department agrees.

COMMENT 18: FPIP's staff attorney commented that the definition of "rural area" may be interpreted to omit unincorporated cities or towns with a population of less than 1,500.

RESPONSE: The Department agrees. ARM 23.7.303(1)(c) has been modified to include "any unincorporated place, city, community, or town" whose population is less than 1,500.

COMMENT 19: The Billings Fire Marshal questioned why FPIP has specifically chosen to not adopt UFC 1302.3 regarding false alarms.

RESPONSE: False alarms are adequately addressed in Montana law at Mont. Code Ann. § 45-7-204. Adoption of the UFC's false alarm provision is unnecessary.

COMMENT 20: The former state fire marshal, Bruce Suenram, commented that the use of the terms "above" and "below" in ARM 23.7.306 could be confusing, depending on the insertion of Articles 53 and 79 in the UFC.

RESPONSE: The Department agrees and has deleted the term "below" and "above" when used to direct the reader to various articles in the UFC.

COMMENT 21: Bruce Suenram believes that the wording of ARM 23.7.306(1)(b) should be consistent with the language used in UFC 5301.2.

RESPONSE: The Department agrees that consistency is important for interpretation purposes and has modified ARM 23.7.306(1)(b) accordingly.

COMMENT 22: Bruce Suenram commented that the citation to UFC 5302.4.1 in ARM 23.7.306(1)(e) is confusing. He recommended that the rule reference UFC Article 52 instead.

RESPONSE: The Department agrees and has made the necessary modification.

COMMENT 23: Bruce Suenram commented that ARM 23.7.306(1)(p) does not contain the modified use of the word "rural" used in other subsections of that rule.

RESPONSE: The Department agrees and has corrected this oversight.

COMMENT 24: Bruce Suenram commented that the proposed changes to ARM 23.7.306, UFC 5301.4.1.2 regarding dispensing devices are confusing and illogical.

RESPONSE: The Department agrees that its proposed treatment of UFC 5301.4.1.2 through 5301.12 may be confusing. However, it disagrees that the references to UFC Article 52 are illogical. The Department proposed to delete UFC 5301.4.1.2 through 5301.12, replacing them with one encompassing reference to UFC Article 52. The Department has now modified ARM 23.7.306 so that UFC 5301.4.1.2 through 5301.12 remain listed in ARM 23.7.306, with each section referencing its appropriate counterpart in UFC Article 52.

COMMENT 25: Retired Deputy Fire Marshal Rich Levandowski commented that the Department should include the word "only" in the last sentence of ARM 23.7.306 UFC 5302.4.2 to clarify that cargo tanks can be filled only at bulk plants or at terminals.

RESPONSE: The Department disagrees. The word "only" is unnecessary. By using the word "shall", the sentence already mandates that cargo tanks must be filled at bulk plants or at terminals. There is no other option. The Department has also determined that the word "either" is also unnecessary. The sentence is now identical to one contained in 1997 UFC 5202.4.2.

COMMENT 26: Rich Levandowski commented that the language in ARM 23.7.306 UFC 5302.4.4 is unnecessary. The Department need only reference UFC 5202.4.5.

RESPONSE: The Department agrees in part. Reference must also be made to UFC 5202.4.3 as that section covers breakaway devices which are now required on all dispensing devices.

COMMENT 27: State Fire Marshal Terry Phillips commented that the proposed amendment to ARM 23.7.309 UFC 7904.8.5.5.2 fails to consider Mont. Code Ann. § 50-3-103(6), which prevents the FPIP from adopting rules requiring diked areas or heat-actuated or other shutoff devices for storage tanks containing class I or class II liquids, intended only for private use on farms and ranches.

RESPONSE: The Department agrees and has modified ARM 23.7.309 UFC 7904.8.5.5.2 accordingly.

By: Joseph P. Mazurek
JOSEPH P. MAZUREK, Attorney General
Department of Justice

Peter S. Blouke
Dr. PETER S. BLOUKE, Director
Department of Commerce

Melanie Symons
MELANIE SYMONS, Rule Reviewer
Department of Justice

Certified to the Secretary of State December 6, 1999

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

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

TO: All Concerned Persons

1. On September 9, 1999, the Department published notice to consider the amendment of ARM 24.11.442 and 24.11.445, related to unemployment insurance benefit claims at pages 1856 through 1858 of the Montana Administrative Register, Issue No. 17.

2. On October 1, 1999, a public hearing was held in Helena concerning the proposed rules. No oral and written comments were offered at that time by members of the public. No written comments were received prior to the closing date of October 8, 1999.

3. The Department has amended the rules exactly as proposed.

4. The amendments are effective December 26, 1999.

/s/ KEVIN BRAUN
Kevin Braun,
Rule Reviewer

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

Certified to the Secretary of State: December 6, 1999.

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

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

TO: All Concerned Persons

1. On September 9, 1999, the Department published notice to consider the adoption of new rules I through XI, and the repeal of 11 existing rules related to the workers' compensation administrative assessment for the state fiscal years 1992 through 1999, at pages 1859 through 1876 of the Montana Administrative Register, Issue No. 17.

2. On October 1, 1999, a public hearing was held in Helena concerning the proposed rule changes. No oral and written comments were offered at that time by any members of the public. No written comments were received prior to the closing date of October 8, 1999.

3. The Department has adopted the 11 new rules exactly as proposed. The new rules are numbered as follows:

24.29.902 [NEW RULE I] DEFINITIONS

24.29.905 [NEW RULE II] ADMINISTRATIVE ASSESSMENT METHODOLOGY IN GENERAL

24.29.921 [NEW RULE III] RECALCULATION OF ADMINISTRATIVE ASSESSMENTS MADE IN FISCAL YEARS 1992 - 1995

24.29.922 [NEW RULE IV] ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1992

24.29.923 [NEW RULE V] ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1993

24.29.924 [NEW RULE VI] ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1994

24.29.925 [NEW RULE VII] ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1995

24.29.926 [NEW RULE VIII] ADMINISTRATIVE ASSESSMENT METHODOLOGY FOR FISCAL YEAR 1996

24.29.927 [NEW RULE IX] ADMINISTRATIVE ASSESSMENT

METHODOLOGY FOR FISCAL YEAR 1997

24.29.928 [NEW RULE X] ASSESSMENT METHODOLOGY FOR FISCAL YEARS 1998 AND 1999

24.29.929 [NEW RULE XI] ASSESSMENTS OTHER THAN ADMINISTRATIVE ASSESSMENT

4. The Department has repealed the 11 existing rules exactly as proposed.

5. The adoption and repeals are effective December 17, 1999.

/s/ KEVIN BRAUN
Kevin Braun,
Rule Reviewer

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

Certified to the Secretary of State: December 6, 1999.

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

In the matter of the amendment of ARM 16.24.107 pertaining to orthodontia care for children special health services (CSHS) recipients	)))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On November 4, 1999, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rule at page 2529 of the 1999 Montana Administrative Register, issue number 21.

2. The Department has amended the rule ARM 16.24.107 as proposed.

3. No comments or testimony were received.

Rule Reviewer

Director, Public Health and Human Services

Certified to the Secretary of State December 6, 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 V pertaining to independent review of health care decisions	))))	NOTICE OF ADOPTION

TO: All Interested Persons

1. On October 21, 1999, the Department of Public Health and Human Services published notice of the proposed adoption of the above-stated rules at page 2344 of the 1999 Montana Administrative Register, issue number 20.

2. 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 (37.108.301) INDEPENDENT REVIEW OF HEALTH CARE DECISIONS: DEFINITIONS The following definitions, in addition to those contained in 33-37-101, MCA, apply to this chapter:

(1) "Expedited review" means an accelerated appeal of an adverse ~~health care treatment decision~~ determination made by a managed care entity involving an enrollee with urgent medical needs whose life or health would be seriously threatened by the delay of a standard appeals process.

(2) "Independent review organization" means a network of peers conducting an independent review of an adverse ~~health care treatment decision~~ determination made by a managed care entity.

(3) "Internal appeals process" means a process established by a managed care entity by which a party affected by an adverse ~~health care treatment decision~~ determination made by a managed care entity may appeal the adverse decision within the deciding agency.

AUTH: Sec. 33-37-105, MCA
IMP: Sec. 33-37-101 and 33-37-105, MCA

RULE II (37.108.310) INDEPENDENT REVIEW OF HEALTH CARE DECISIONS: NOTICE OF ADVERSE ~~HEALTH CARE DECISION~~ DETERMINATION AND INDEPENDENT REVIEW RIGHTS (1) A managed care entity shall notify an enrollee and the ~~treating physician~~ health care provider of any adverse ~~health care treatment decision~~ determination within 10 calendar days from the date the decision is made if the decision involves routine medical care. A managed care entity shall notify an enrollee and the ~~treating physician~~ health care provider of any adverse ~~health care treatment decision~~ determination within 48 hours from the date the decision is made, excluding Sundays and holidays, if the decision involves a medical care determination which qualifies

for expedited review.

(2) The notice shall:

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

(c) explain the reasons for the adverse ~~health care treatment decision~~ determination; and

(d) include an explanation of the enrollee's right to appeal the ~~decision~~ adverse determination or to submit the ~~decision~~ adverse determination for independent review and instructions on how an enrollee may initiate an appeal or independent review.

(3) ~~If the enrollee is eligible for expedited review, the~~ The notice shall inform the enrollee that the expedited review process is available and shall explain how an enrollee initiates an expedited review.

AUTH: Sec. 33-37-105, MCA
IMP: Sec. 33-37-102, MCA

RULE III (37.108.315) INDEPENDENT REVIEW OF HEALTH CARE DECISIONS; INTERNAL APPEALS PROCESS (1) If a managed care entity has an internal appeals process in place, the internal appeals process provided by the managed care entity shall be exhausted before the enrollee or the enrollee's authorized representative can submit a decision for independent review, unless:

(a) the internal appeals process is not completed within ~~15~~ 60 calendar days from the date the request for appeal is ~~requested~~ received, in which case the internal appeals process shall be interrupted and the case forwarded for independent review; or

(b) the health care treatment decision results in a serious threat to the health, or threatens the life of, the enrollee, in which case, upon certification by the health care provider as defined in (1)(b)(i), the internal appeals process shall be bypassed and the matter shall immediately be submitted for expedited review~~; or~~ .

~~(c)~~(i) If the enrollee's health care provider determines that the adverse determination involves a condition which seriously threatens the life or health of the enrollee, the enrollee's ~~physician~~ health care provider ~~certifies~~ shall certify in writing, facsimile or by electronic mail that the life or health of the enrollee would be seriously threatened by the delay of an internal appeals process~~, in which case the internal appeals process shall by bypassed and the matter shall immediately be submitted for expedited review~~.

(2) The managed care entity shall maintain written records of all requests for appeal and shall retain all related data for a period of ~~5~~ 3 years unless a claim, audit, or litigation involving the records and data is pending, then the records and data shall be retained until the claim, audit, or litigation is finally resolved, or 3 years, whichever is longer.

(3) The peer or independent review organization shall retain all records and data generated by the peer or independent review organization for the purposes of completing the review

for no less than 3 years, unless a claim, audit or litigation is pending, then the records or data shall be retained until the claim, audit or litigation is finally resolved or for 3 years, whichever is longer.

(4) The department shall have reasonable access to the records and data for quality assurance purposes, to perform an evaluation of the independent review process, or for any other lawful purpose of the department.

AUTH: Sec. 33-37-105, MCA
IMP: Sec. 33-37-102, MCA

RULE IV (37.108.305) INDEPENDENT ~~PEER~~ REVIEW OF HEALTH CARE DECISIONS; PEER REVIEW PROCESS (1) A managed care entity and an enrollee may agree on a peer to conduct an independent review, as specified in these rules, of any adverse ~~health care treatment decision~~ determination made by the managed care entity. If the managed care entity and the enrollee are unable to agree on a peer to conduct the independent review, then the managed care entity shall forward the case file to the independent review organization designated by the department.

(2) The ~~chosen~~ peer or the independent review organization designated by the department shall ~~confirm~~ ensure that the case file contains the information listed in 33-37-102(2)(a) through (2)(d), MCA, and that it otherwise is eligible for independent review.

(3) In the case of routine health care decisions, the peer or independent review organization shall notify the managed care entity, the enrollee, and the ~~treating physician~~ health care provider of its decision within 30 calendar days after receiving the case file. The notification shall include a statement of the basis for the decision and shall list the evidence the peer or independent review organization considered in making the decision. If the peer or independent review organization requires additional time to complete its review, it shall request an extension in writing from the department. The request for extension shall include the reasons for the request and state the specific time the review is expected to be completed.

(4) In the case of expedited review, the enrollee's ~~physician~~ health care provider must certify in writing, facsimile, or by electronic mail the need for the expedited review. Within ~~48~~ 72 hours from the date the request for expedited review is received, the peer or independent review organization shall notify the managed care entity, the enrollee, and the ~~treating physician~~ health care provider of its decision. The notification shall include a statement of the basis for the decision and shall list the evidence the peer or independent review organization considered in making the decision.

(5) A peer or independent review organization may not review any adverse determination in which the peer or independent review organization has an interest in the outcome. The peer or independent review organization must notify the managed care entity and enrollee if there is a potential

conflict of interest. The peer or independent review organization may not review any adverse determination which involves a potential conflict of interest unless the managed care entity and enrollee provide a written acknowledgment of the conflict and waiver.

AUTH: Sec. 33-37-105, MCA
IMP: Sec. 33-37-102 and 33-37-103, MCA

RULE V (37.108.306) INDEPENDENT REVIEW OF HEALTH CARE DECISIONS: CONFIDENTIALITY (1) All health care information provided to a peer or independent review organization is confidential and is subject to ~~the Health Care Information Act~~ the provisions of, Title 50, chapter 16, MCA, and 33-19-306, MCA.

AUTH: Sec. 33-37-105, MCA
IMP: Sec. 33-37-102 and 33-37-103, MCA

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

COMMENT #1: A number of commenters pointed out that 33-37-101 through 33-37-106, MCA, contain no mention of "expedited review". The commenters are concerned that the Department has exceeded its rulemaking authority by developing a process for expedited review.

RESPONSE: Section 33-37-105, MCA, expressly requires the Department to adopt rules to implement the independent review process. We are convinced that an expedited review of matters involving a serious threat to the life or health of an enrollee must be in place in order to give effect to the protections afforded by the statute. If the enrollee is suffering under a serious health concern, what use is the right to have an adverse determination reviewed if the process takes so long, the enrollee cannot risk the delay the process entails? Furthermore, as mentioned in the rule rationale, 12 of the 13 states we reviewed, plus Medicare, have an expedited review process in place. We feel that Montanans, likewise, should be afforded similar protection, and that expedited review is appropriate to fulfill the intent of the statute when serious threats to the life or health of the enrollee would result from the delay of the standard appeals process. Consequently, we disagree with the assertion that we have exceeded our rulemaking authority.

COMMENT #2: One commenter asked the department to define the standard of review for an external review. The commenter also asked whether the review is limited to the information used by the managed care entity in making its decision.

RESPONSE: Unfortunately, our rulemaking authority does not permit us to define the standard of review which should be applied by the reviewer. We assume, from the statute, that the legislature intended for the reviewer to exercise his or her professional judgment, using the knowledge and expertise which qualified the peer as a "peer" in the first place. The reviewer should apply that knowledge and expertise in order to determine whether the managed care entity made an appropriate decision, applying the provisions of the statute. We also believe traditional negligence standards, i.e. the prudent professional standard, would apply. Furthermore, we do not believe our rulemaking authority permits us to limit the review to that information on which the managed care entity based its determination. We believe imposing such a limitation would exceed our authority, and thus, we decline to accept the commenter's invitation to make such a rule.

COMMENT #3: Two commenters raised the issue of whether the independent peer review process, in its entirety, had been preempted by the Employee Retirement Income Security Act (ERISA) when health insurance was made available through an employer. If preemption had occurred, the commenters believe that the independent review process would be available in only a limited number of cases which are exempt from ERISA's reach.

RESPONSE: ERISA provides certain protections with a view toward ensuring that employees receive the benefits they expect from their employee benefit plans. Though ERISA primarily covers pension plans, group health insurance coverage, provided through an employer, comes under certain of the protections afforded by ERISA. For example, ERISA requires that covered employees be given specific information about their benefit plans, that the plan administrator make particular disclosures and meet reporting requirements, and that plan fiduciaries act in a prudent manner with respect to plan funds and assets. ERISA also provides some regulation of claims procedure. ERISA does require that every employee benefit plan "afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review" of the denial. See 29 USC 1133(2).

However, ERISA also states: "Except as provided in subparagraph (b), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any state which regulates insurance...". See 29 USC 1144(2)(A). Therefore, the ERISA statute contemplates state regulation of the insurance industry, as an industry.

If as the commenters suggest, ERISA preempts even the kind of regulation undertaken by these rules (an assertion that the department cannot presently agree with), then 33-37-101 through 33-37-106, MCA, are likewise preempted, except in a very narrow class of cases exempt from ERISA. Given the language of Section 29 USC 1144, quoted above, and ERISA's deference to state

regulation of insurance, the department cannot agree that preemption has occurred.

While ERISA clearly preempts regulation of employee benefits plans, the proposed rules do not seek to regulate employee benefits plans, per se. These rules seek to regulate the health insurance industry, as an industry. Furthermore, 33-37-101 through 33-37-106, MCA, and these rules, were enacted to afford consumer protection pursuant to the State's police powers. Those powers are broad and include ensuring the health, safety, and well being of the State's citizens. Nothing in the MCA sections, nor in these rules, contravenes the protections afforded by ERISA. If anything, the independent review process furthers and enhances the protections of ERISA.

Thus, until a court of competent jurisdiction determines that preemption has occurred, the department intends to carry out the mandate of 33-37-105, MCA, and do its best to protect consumers of health care insurance. And, until a court of competent jurisdiction determines otherwise, the department intends that these rules apply to all adverse determinations made by managed care entities, whether or not the consumer's health insurance was made available through an employer.

COMMENT #4: A commenter stated that the rules appear to lack a definition of "expedited review". The commenter asked if expedited review is done internally. The commenter also felt that if the expedited review was an external review, the time frames are unrealistic.

RESPONSE: Refer to RULE I (37.108.301) for the definition of "expedited review". The department does not have authority to regulate the internal appeals process, thus these rules apply only to the external appeals process. The internal grievance procedures are established by the Commissioner of Insurance - - 33-31-303, MCA, and ARM 6.6.2509. In response to the comment regarding the time frames, we have changed the rule to allow 72 hours, as opposed to 48, for an expedited review to be completed.

COMMENT #5: A few commenters noted that the 15-day time limit for internal appeals, provided by RULE III(1)(a) (37.108.315), conflicts with the 60-day limit permitted by 33-32-203, MCA (utilization review standards) and potentially with ERISA.

RESPONSE: We accept the comments and have changed the rule to allow 60 days for internal review of those cases which do not involve conditions qualifying for expedited review.

COMMENT #6: A commenter stated that RULE IV(4) (37.108.305(4)) needs clarification. The commenter specifically asked if a physician must notify the health carrier and request an expedited review. The commenter was also unsure about who received the request for expedited review.

RESPONSE: First, it should be noted that the enrollee must request both the internal and external review. In all cases where the adverse determination involves a condition which seriously threatens the life or health of the enrollee, the health care provider must certify the need for any expedited review upon request of the enrollee or the enrollee's authorized representative. The managed care entity would then provide the medical records and any documents used in making the determination to the reviewer. Please refer to 33-37-102(2)(a) through (d), MCA.

COMMENT #7: One commenter asked about a situation where the peer reviewer determined that a specific procedure was medically necessary, however, the insurance policy did not cover the specific procedure. The commenter wanted to know whether the peer's decision prevailed, requiring the managed care entity to pay for the procedure, or whether the policy prevailed, requiring the managed care entity to refuse the claim.

RESPONSE: If one reviews the legislative history of 33-37-101 through 33-37-106, MCA, one notes that the legislature did not intend for the independent peer review process to be utilized to determine coverage/contractual questions. The question posed by the commenter actually involves 2 different issues.

The first issue is the question of medical necessity. If the managed care entity determines that the procedure is not medically necessary, the enrollee has a right to submit that decision to independent peer review under the statute and these rules.

The second issue is one of coverage. Not all medically necessary procedures are covered by a particular insurance policy. For example, an insurance policy may not cover organ transplants, though an organ transplant certainly may be medically necessary for a particular enrollee. The question of coverage should be defined by the policy, the contract between the parties. If the enrollee disagrees with the managed care entity's interpretation or application of the contract provisions, he or she may resort to the courts to enforce the contract, or may file a complaint with the Insurance Commissioner's office. However, independent peer review is unavailable to address coverage/contractual complaints. Independent peer review is intended only to reach the appropriateness and medical necessity of procedures which the managed care entity has determined to be inappropriate and/or medically unnecessary.

COMMENT #8: A number of commenters asked whether "managed care entities", the term used in the rules, means only Health Maintenance Organizations ("HMOs").

RESPONSE: The term "managed care entity" is defined by the

statute. See 33-37-102(9)(a) and (b), MCA. The term is not limited to HMOs, but includes health carriers, as that term is defined in 33-37-103(13), MCA. Therefore, it is not necessary for us to use both "managed care entity" and "health carrier" in the rule, as one commenter suggests, since the statute defines "managed care entity" to include "health carrier".

COMMENT #9: One commenter suggested that the rules would be clearer if they included a definition of "peer". The commenter also asked how a peer is identified within an independent review organization (IRO) for purposes of an appeal.

RESPONSE: The definition for "peer" is given in the statute 33-37-101(10), MCA and is not repeated in the rule. The statute describes the requirements of a peer and the IRO will be responsible for ensuring that the reviewer assigned a particular case meets the definition of "peer" provided by the statute.

COMMENT #10: A number of commenters noted that the statute provided for independent peer review of "adverse determinations" and that term was defined at 33-37-101(1), MCA. The rules, however, mention "adverse health care treatment decision" and "adverse health care decision". The commenters thought the rules would be more consistent with the statute if we used the term "adverse determination".

RESPONSE: We accept the comments and have amended the rules to consistently use the term "adverse determination". Based on the foregoing, it is unnecessary to provide a definition of "adverse health care treatment decision" or "adverse health care decision", as one commenter suggested.

COMMENT #11: One commenter suggested that "established or recognized" network of peers be added to the definition of "IRO".

RESPONSE: If the definition for "peer" (that appears in statute) is read in conjunction with the definition for "IRO", we believe it is clear that the network of peers in the IRO is both established and recognized.

COMMENT #12: One commenter raised some concern about expedited review. The commenter noted that if the enrollee was experiencing a health crisis, the health care provider may be liable if treatment is not provided immediately, whether or not the treatment was covered by insurance.

RESPONSE: While we appreciate the comment, we believe the comment to concern matters outside the scope of these rules.

COMMENT #13: A commenter asked if RULE II (37.108.310) applies to notification that a service is not covered or notification that a service is not considered medically necessary or both?

RESPONSE: The rule does not apply to what is not covered by a health benefit plan. It applies to health care services that were furnished or are proposed to be furnished to an enrollee which the health carrier or managed care entity considers to be inappropriate and medically unnecessary. See comment number 7.

COMMENT #14: A few commenters disliked our use of the term "treating physician". They noted that the statute used the term "health care provider" and that term was defined to include providers who may not necessarily be "physicians".

RESPONSE: We accept the comments and agree that the rules would be improved by use of the term "health care provider". We have amended the proposed rules accordingly.

COMMENT #15: A few commenters found RULE II (37.108.310) confusing. They asked if RULE II (37.108.310) contemplates 2 separate notices; the first following the initial denial of a claim, in which case, the enrollee will be notified of his or her right to appeal internally; the second to be sent notifying the enrollee of his or her right to request independent review if the result of the internal appeal is not satisfactory to the enrollee.

RESPONSE: We contend that RULE II (37.108.310) applies to both of the notices mentioned by the commenter. RULE II(2)(d) (37.108.310) states "include an explanation of the enrollee's right to appeal the decision or to submit the decision for independent review...". The key word is "or". Whether the managed care entity includes information about the internal appeal or includes information about the independent review process depends on where the matter is in the dispute process. The managed care entity has a responsibility under its internal complaint plan, which is approved by the Commissioner of Insurance, to notify an enrollee of their right to appeal a decision. It is also the intent of HB 607 that the internal complaint process be exhausted before the enrollee can submit a decision for independent review. Once the internal complaint process has been utilized, the enrollee must be notified of his or her right to seek independent review of an adverse determination. The provisions of RULE II (37.108.310) would apply to both notices.

COMMENT #16: Two commenters asked whether RULE II(1) (37.108.310) required the managed care entity to determine whether an adverse determination qualified for expedited review, as opposed to a routine medical care determination which would be subject to the standard appeals process.

RESPONSE: We suggest that RULE II(1) (37.108.310) does require the managed care entity to make an initial determination with respect to whether an adverse determination qualifies for expedited review. In order to determine how long the managed care entity has to notify an enrollee of an adverse

determination, the managed care entity must make an initial decision about whether the condition involved is subject to expedited review. To make that determination, the managed care entity should apply the definition of "expedited review" given in RULE I(1) (37.108.301). We suggest that any doubt be resolved in favor of an expedited review.

COMMENT #17: One commenter suggested that we define "routine medical care" in RULE I (37.108.301).

RESPONSE: We do not intend for "routine medical care" to indicate a specific level of care. The term is used only to differentiate routine care from that which is subject to expedited review. In other words, routine medical care is all care which does not qualify for expedited review as that term is defined. Consequently, we do not feel that a definition of routine medical care would be particularly helpful and we decline to accept the commenter's invitation to define the term.

COMMENT #18: One commenter disliked the requirement in RULE II(2) (37.108.310) that notices be written in 12 point font. The commenter noted that the Insurance Commission permits insurance policies to be written in 10 point font. The commenter requested that we change the requirement in RULE II(2) (37.108.310) to be consistent with the Commissioner's requirements.

RESPONSE: We note that ARM 6.6.2509 requires that HMOs provide specific notices in 12 point font. The larger font size is easier to read and better ensures that the notice is effective. Moreover, while the Insurance Commission has good reasons for allowing policies to be in 10 point font, i.e. the size of the document, we do not believe that those same concerns apply to the notice contemplated by RULE II (37.108.310). The notice of an adverse determination certainly will not be as lengthy as an insurance policy. Thus, the concern surrounding conservation of paper is not implicated by RULE II (37.108.310). Furthermore, since some notices are already required to be in 12 point font, we do not believe requiring one additional notice to be in 12 point font will result in significant administrative costs. We consider the effectiveness of the notice to be extremely important. Therefore, though we appreciate the commenters concern, we have decided to retain the 12 point font requirement.

COMMENT #19: One commenter asked why the treating physician must also be notified of adverse determinations, suggesting that the requirement is an unnecessary added burden, as the enrollee will likely be in touch with his or her health care provider.

RESPONSE: The Department believes it is appropriate and in the best interest of the enrollee that the health care provider also be notified of an adverse determination. It has not been demonstrated that the task of mailing one additional copy of the

notice sent to the enrollee to the health care provider adds a significant burden.

COMMENT #20: A commenter noted that RULE II (37.108.310) requires the managed care entity to notify an enrollee of an adverse determination involving a condition which qualifies for expedited review within 48 hours. The commenter noted that the short time limit may present a problem, for example, if the notice is mailed on Friday, but not received until Monday or Tuesday.

RESPONSE: We accept the comment and have added language to the rule excluding Sundays and Holidays as mail is not delivered on those days.

COMMENT #21: Some commenters criticized the Department for not including a time limit within which the managed care entity must make its initial determination.

RESPONSE: We do not have the rulemaking authority to regulate in the area suggested by the commenters. Our authority only extends to regulating the independent peer review process after an adverse determination has been made. We note that the managed care entities are subject to regulation by the State Auditor, and that the managed care entities have contractual obligations under the insurance policies. We do not believe, then, that a managed care entity can avoid its obligations by simply refusing to make an initial determination without suffering significant consequences.

COMMENT #22: A commenter requested that we change the language in RULE III (37.108.315) to reflect that the time limits run from the date the request is received, rather than the date of the request.

RESPONSE: We accept the comment and have changed RULE III (37.108.315) accordingly.

COMMENT #23: One commenter suggested that RULE III(1)(b) and (c) (37.108.315) contemplate 2 different scenarios. The commenter asked us to clarify whether a physician's certification is required before the start of any expedited review.

RESPONSE: A health care provider's certification is required before any expedited review of an adverse determination. The Department has clarified the language in RULE III(1)(b) and (c) (37.108.315).

COMMENT #24: Some commenters noted that RULE III (37.108.315) requires managed care entities to maintain records of appeals for 5 years while the Insurance Commission only requires retention of complaint records for 3 years pursuant to 33-31-303, MCA.

RESPONSE: We accept the comment and have changed the language in RULE III (37.108.315) to require retention of the records for 3 years unless the matter is involved in a claim, audit, or litigation.

COMMENT #25: A commenter also suggested that we require the reviewer to retain any records or data generated by the reviewer during the review for the same period of time that we require the managed care entity to retain its records or data.

RESPONSE: We agree and we have added such a requirement to the rules.

COMMENT #26: A commenter asked what we mean by "quality assurance purposes" in RULE III (37.108.315).

RESPONSE: Quality assurance purposes could include, but are not limited to: identifying what type of disputes are proceeding to independent review; timely response of an independent review; confidentiality of medical records transmitted to an IRO; qualifications and independence of each health care provider making review determinations; and timely notice to enrollees of the results of the independent review. Also, as the program is implemented, the legislature may wish to study the operation and/or successfulness of the program.

COMMENT #27: One commenter suggested that RULE III(2) (37.108.315) be eliminated in its entirety. The commenter asserts that RULE III(2) (37.108.315) lacks authority and is of questionable merit.

RESPONSE: The Department is changing the period of records retention to 3 years, instead of 5 years, in order to be consistent with provisions in the law pertaining to the Commissioner of Insurance.

COMMENT #28: A commenter asked the Department to impose a maximum time limit on the enrollee, limiting the time in which the enrollee must request a review.

RESPONSE: The Department does not believe it has authority to impose such a time limit as Montana law specifically defines the statute of limitations for various claims. We assume that as long as the enrollee requests a review within the appropriate statute of limitations, the request is timely, and should proceed. Therefore, we decline the commenters suggestion.

COMMENT #29: One commenter stated that DPHHS is trying to bypass internal review procedures if they take longer 15 days.

RESPONSE: The Department is extending the time for routine medical care to 60 days. See Comment #5.

COMMENT #30: One commenter noted that a health care provider

can certify expedited review only in the internal review process. The commenter asked what happens if there is no internal review process.

RESPONSE: It is the purpose of the certification process to bypass the internal appeals process in cases whereby a delay could result in a serious threat to the health or threaten the life of an enrollee. If there is no internal appeals process, there would be no need to bypass it.

COMMENT #31: A commenter stated that the rules lack specificity regarding the process to be engaged for the independent review and that they do not clearly distinguish normal independent review from expedited review. The commenter asked if the only difference is how quickly the review takes place.

RESPONSE: The Department did not contemplate 2 different levels of review. The reviewer should conduct the same sort of review in cases involving expedited review as it would if the matter involved routine medical care. The only difference is, as the commenter points out, how quickly the review is completed.

COMMENT #32: A commenter suggested that the Department add the language "which shall arrange for a peer to conduct the review" following the word "Department" in RULE IV (37.108.305).

RESPONSE: The Department has contracted with Mountain-Pacific Quality Health Foundation to perform the reviews if the parties cannot agree upon a "peer". Mountain-Pacific has a network of 600 qualified peers in Montana. Therefore, the IRO will not be arranging for a peer outside of the Foundation to conduct the review, a member physician of the IRO's network of "peers" will conduct the review. Thus, we decline to accept the commenters suggestion. See Comment #40.

COMMENT #33: A commenter suggested that we delete the words "it" and "its" from RULE IV (37.108.305), and use "peer" or "peers" instead.

RESPONSE: We believe such a change would add clarity to RULE IV (37.108.305), and therefore, we have substituted "peer or IRO" for "it". We appreciate the comment.

COMMENT #34: A commenter suggested that we add a provision to the rules which said "The Department may contract with an IRO to provide review by appropriate peers of adverse determinations".

RESPONSE: The Department has designated Mountain-Pacific Quality Health Foundation as the IRO which will perform independent reviews when the parties are unable to agree on a "peer". Mountain-Pacific has a network of 600 qualified peers in the State. Therefore, it is unnecessary to add the language suggested and we decline to do so.

COMMENT #35: One commenter suggested that a check-off form be developed listing the information that the managed care entity must provide to the reviewer so that the enrollee and the physician are not stuck sending in information they deem to be sufficient for the independent review.

RESPONSE: The statute, 33-37-102, MCA, provides direction as to what documentation is provided and by what date the information is to be provided. Therefore, we believe it is unnecessary to develop a checklist.

COMMENT #36: A few commenters stated that the rules do not adequately ensure that the review is "independent" and they suggested we add a provision barring review by any peer or IRO which has a conflict of interest or is interested in the outcome.

RESPONSE: We accept the comment and have added a provision to RULE IV (37.108.305). We expect that Montana law governing conflict of interest would apply to the independent review process just as it does to all other situations where a conflict of interest may jeopardize a just result.

COMMENT #37: A commenter asked us to clarify the provision in RULE IV(2) (37.108.305) which requires the reviewer to confirm that the case file contains the information listed in 33-37-102(2)(a) through (2)(d), MCA. The commenter asked to whom the confirmation must be made.

RESPONSE: We did not intend to require the reviewer to provide confirmation to anyone. As a result, we have changed the word "confirm" to "ensure". We simply intend for the reviewer to peruse the case file and make sure that none of the information required by the statute is missing. If the required information is lacking, we assume the reviewer will contact the managed care entity and the enrollee to obtain the missing information.

COMMENT #38: A commenter asks if the managed care entity and the enrollee are to attempt to reach agreement on a peer before forwarding the case file to the IRO?

RESPONSE: The statute and the rule say that a managed care entity and an enrollee may agree on a peer to conduct an independent review. It is not necessary that the parties must first attempt to reach consensus on a peer.

COMMENT #39: The commenter asks what standards or requirements will be used to select the IRO? What happens if there is no available peer in state or they refuse to participate.

RESPONSE: The IRO will be responsible for assuring that the reviewer meets the definition of "peer" as defined by the statute, 33-37-102(10), MCA. If the enrollee and the managed care entity agree on a peer to conduct an independent review,

they are responsible for assuring that the reviewer meets the definition of peer, as defined by the statute. The reason the Department selected an IRO to conduct an independent review was to prevent the problem of not having an available pool of qualified reviewers within the state who were willing to participate.

COMMENT #40: Some commenters asked if the Department will select an IRO on a sole source basis or via a request for proposal? The commenters also asked who would negotiate the terms of the contract and whether the review will be made by a single peer or a panel. The commenters asked if there would be more than one IRO; if the IRO will be designated by rule; when the IRO will be designated; and who will conduct the reviews if the parties cannot agree before the IRO is designated.

RESPONSE: The Department has identified Mountain-Pacific Quality Health Foundation as the IRO in Montana. Mountain-Pacific reviews adverse determinations for Medicare. They have a network of 600 qualified peers within the State of Montana. The Department believes that Mountain-Pacific is the only review organization within the State which has a significant network of peers and the capacity to carry out the review in a timely manner. Because our time lines are tight (72 hours turn around) we believe it is necessary to use a peer review organization within the state. We further believe that Mountain-Pacific has significant experience performing reviews and is highly qualified. Mountain-Pacific is a non-profit organization which has been conducting Medicare reviews since 1975.

The Department will not negotiate the terms for the review with Mountain-Pacific. The terms, such as payment rate, will be negotiated between the managed care entity and the IRO. No maximum payment rate has been established by the Department and we decline to do so. In most cases, the review will be conducted by a single qualified peer. Depending on the complexity of the issue and how the managed care entity made its initial determination, a panel of up to three peers may conduct the review.

The Department shall not designate more than one IRO as we believe there is only one qualified peer review organization within the state. We do not intend to designate Mountain-Pacific as the IRO in the rules. The Department will monitor the services and rates of Mountain-Pacific on an on-going basis. If problems arise, the Department will review the need to appoint a different organization to conduct the peer reviews.

We do not feel it is necessary to address the issue of what happens if the parties cannot agree on a peer before the IRO is designated. We have designated the IRO and know of no pending cases awaiting independent review.

COMMENT #41: A commenter asked where the review takes place.

RESPONSE: The IRO is located in Helena, Montana. Where the review occurs is a matter to be negotiated between the parties.

COMMENT #42: A commenter asked what procedures the reviewer would have in place to ensure confidentiality and quality assurance.

RESPONSE: All reviewers, whether chosen by the parties or designated by the Department, must abide by the statute and rules with respect to confidentiality and quality assurance. All reviewers are required to maintain records which are subject to audit for quality assurance purposes.

COMMENT #43: A commenter suggested that we require the managed care entity to cite specific policy language in support of its adverse determination in the notice it provides to the enrollee.

RESPONSE: In RULE II(2)(c) (37.108.310), we already require the managed care entity to "explain the reasons for the adverse determination". We believe that the managed care entity will cite the policy if any policy provisions are the basis for its determination in order to comply with RULE II(2)(c) (37.108.310). Therefore, we decline to incorporate the additional language suggested by the commenter.

COMMENT #44: A commenter asked what standards or requirements will be used in selecting an IRO. The commenter asked us to include the following standards in the rule: standards governing the selection of qualified and impartial peers; standards to ensure quality assurance; standards to ensure confidentiality; standards to ensure that the IRO is capable of receiving and responding to information 24 hours a day, seven days a week; and standards to ensure that the IRO abides by law.

RESPONSE: Please refer to Comment #40. The peers used by the IRO must, of course, meet the statutory definition of "peer". Quality assurance is also already addressed in the rule. The records and data must be available to the Department in order to ensure quality. The IRO is subject to the applicable Montana law regarding confidentiality of health care information. The IRO does have a voice mail system and a website which is capable of receiving information at all times. The website is www.mt.net/-mtwy. The toll free number is 800-497-8232. The fax is (406) 443-4585. The local phone number is 443-4020. Furthermore, the IRO is, of course, required to abide by all applicable Montana law. Therefore, we do not feel it is necessary to address these matters in the rules. A provision to avoid conflict of interest has already been incorporated into RULE IV (37.108.305).

COMMENT #45: A commenter asked what the phrase "otherwise eligible" means in RULE IV(2) (37.108.305).

RESPONSE: Because the legislative history of 33-37-101 through

33-37-106, MCA, indicates that the legislature did not intend to provide independent peer review of contractual issues or coverage questions, we felt that it was necessary for the reviewer to address the matter of whether the adverse determination involved was one appropriate to review. To be "otherwise eligible" for review, then, the adverse determination must implicate an issue intended to be subject to independent peer review, i.e. the medical necessity or appropriateness of a particular procedure.

COMMENT #46: One commenter asked if internal review is an option for managed care plans. Also, if each plan is responsible for setting forth its own "expedited review" procedure and if the Department will set standards?

RESPONSE: The statute (33-37-102, MCA) states: "if the health carrier or managed care entity does not maintain an appeals process, permit any party receiving an adverse determination to seek independent review of that determination". This seems to suggest an internal appeal is optional, when such a complaint system is mandatory under 33-31-303 and 33-36-204, MCA, and ARM 6.6.2509. Refer to RULE III (37.108.315) regarding the Department's expedited review procedures and how the rule is applied to the internal appeals process. Once the internal appeals process has been exhausted, without successful resolution, the next step is RULE IV (37.108.305). The managed care entity and an enrollee may agree on a peer to conduct an independent review or the case file will be forwarded to the Department's IRO for review.

COMMENT #47: A commenter suggested that we require the reviewer to state the reasons for the reviewer's decision in the notice provided to the managed care entity, health care provider, and enrollee. The commenter further suggested that we require the reviewer to list the evidence the reviewer considered in making the decision.

RESPONSE: We accept the comment and agree that providing such information would be useful. Consequently, we have added language to RULE IV (37.108.305) requiring the information suggested.

COMMENT #48: A commenter indicated confusion regarding who was to initiate an independent peer review of an adverse determination.

RESPONSE: The request for independent peer review would be made by the enrollee after receiving notice of an adverse determination. In cases involving expedited review, the enrollee's health care provider would certify the need for an expedited review, if appropriate, at the request of the enrollee. The certification and request for expedited review would be submitted to the managed care entity, and subject to the time limit provided in 33-37-102(2), MCA, the managed care

entity would be responsible for compiling the information listed in the statute and forwarding it to the appropriate reviewer.

COMMENT #49: A commenter asked if the Department can seek a peer from outside Montana if a particular specialty is not available in-state, or a more qualified peer resides out-of-state.

RESPONSE: The statute defines peer and requires the peer to be actively practicing within the state of Montana.

COMMENT #50: A commenter indicated that RULE V (37.108.306) made mention of the Health Care Information Act, but cited additional sections of the Code. A commenter also noted that the Insurance Commission regulates disclosure of patient information at 33-19-306, MCA.

RESPONSE: We accept the comments and have adjusted the language of RULE V (37.108.306) accordingly.

COMMENT #51: A commenter asked whether health care information could be shared with a reviewer without express authorization from the enrollee.

RESPONSE: Title 50, chapter 16, MCA and 33-19-306, MCA, address when health care information may be disclosed. According to 50-16-529 and 33-19-306, MCA, express consent to disclose is not required to release patient information for the purpose of a peer review.

COMMENT #52: A commenter noted that we allow reviewers to request an extension of time to complete the review for routine health care matters. The commenter was concerned that we did not include any standards for when we would grant such an extension.

RESPONSE: The Department intends to look at each request on an individual basis. We will weigh the potential harm involved in granting additional time and make a determination on a case-by-case basis. Interpretative guidelines will be developed if they become necessary.

Dawn Sliva
Rule Reviewer

Laurie Ekanger
Director, Public Health and Human Services

Certified to the Secretary of State December 6, 1999.

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

In the matter of the amendment of ARM 46.12.605 and 46.12.606 pertaining to orthodontia for medicaid recipients	))))	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On November 4, 1999, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 2522 of the 1999 Montana Administrative Register, issue number 21.

2. The Department has amended the rule ARM 46.12.605 as proposed.

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

46.12.606 DENTAL SERVICES, COVERED PROCEDURES (1) through (6) remain the same.

(7) remains as proposed.

(8) Unless otherwise provided by these rules, interceptive orthodontia is limited to children 12 years of age or younger with one or more of the following condition(s):

(a) and (b) remain as proposed.

~~(c) anterior deep bite at 80% or greater vertical incisor overbite;~~

~~(d) Class II malocclusion greater than 5 mm.~~

(9) remains as proposed.

(10) Orthodontic treatment not progressing to the extent of the treatment plan because of non-compliance by the recipient and which jeopardizes the health of the recipient may result in termination of orthodontic treatment. If termination of orthodontic treatment occurs because of non-compliance by the recipient, medicaid will not authorize any future orthodontic requests for that recipient.

(11) remains as proposed.

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

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

COMMENT #1: Two comments were received from providers regarding conditions for Medicaid coverage related to interceptive orthodontia. Both providers feel interceptive orthodontia

should be limited to anterior crossbite and posterior crossbite. Eliminating the proposed coverage of anterior deep bite and Class II malocclusions greater than 5 mm will result in a cost savings and avoidance of initiating therapy that lacks a clearly defined end point of treatment.

RESPONSE: The department conferred with our orthodontia and dental consultants and they agreed with the comments received from dental providers. Therefore, the department will strike conditions related to the overbite and class II malocclusion as these diagnoses cannot be corrected with interceptive intervention alone. The department will allow interceptive orthodontia for anterior crossbite and posterior crossbite with shift.

COMMENT #2: Verbal comment received regarding 46.12.606(10). Dental provider felt this should indicate termination would result if patient is non-compliant with treatment.

RESPONSE: The Department agrees with commenter and 46.12.606(10) will be reworded to reflect the change.

Dawn Sloan
Rule Reviewer

Laurie Ekanger
Director, Public Health and Human Services

Certified to the Secretary of State December 6, 1999.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I (42.2.613), New Rule II (42.2.614), New Rule III (42.2.615), New Rule IV (42.2.616), New Rule V (42.2.617), New Rule VI (42.2.618), New Rule VII (42.2.619), New Rule VIII (42.2.620), New Rule IX (42.2.621), and Repeal of ARM 42.2.601 through 42.2.612 relating to the Office of Dispute Resolution	)	NOTICE OF ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On October 21, 1999, the Department published notice of the proposed adoption of new rules I through IX, and the repeal of ARM 42.2.601 through 42.2.612 relating to the Office of Dispute Resolution at page 2374 of the 1999 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 17, 1999, where written and oral comments were received.

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

COMMENT NO. 1: Ken Morrison, private mediator presented testimony on behalf of himself and the Montana Taxpayers Association. Mr. Morrison commended the department for moving in the direction of the new dispute resolution process. He stated that this is a more favorable environment for the taxpayers. He specifically expressed approval of the provisions found in new rule II where the department states that "its primary objective of the resolution procedure is to make dispute resolution as unintimidating and inexpensive as possible to parties appearing before the department".

RESPONSE NO. 1: The department appreciates these comments and will strive to achieve this objective for all its customers.

COMMENT NO. 2: In regard to the unintimidating statement in rule II and the language of rule VI, Mr. Morrison commented that the department should consider using a private mediator rather than a mediator from within the department. He stated that an outside mediator would appear more neutral than a department employee would. Mr. Morrison further presented written testimony from the Montana Taxpayers Association regarding this same issue.

RESPONSE NO. 2: The mediator is a neutral party in all instances. It does not matter if they are an employee of the agency, because they do not have decision-making authority. They are only acting as a facilitator between the parties.

Therefore, the department believes that using its mediators will be beneficial to the parties.

COMMENT NO. 3: To further address the statement in rule II and rule VI, Mr. Morrison and the Montana Taxpayers Association also suggested the cost of hiring an outside private mediator should be split by the parties rather than requiring the requesting party to pay for the service.

RESPONSE NO. 3: The department is a government entity and the taxpayers pay for its overhead expenses through their tax dollars. Therefore, the department does not believe that the taxpayers of Montana should pay for a private mediator to negotiate a dispute for a single taxpayer.

COMMENT NO. 4: Mr. Morrison testified that both parties must have settlement authority when they enter mediation. He suggested that the rule be amended to remove the last line in rule VI (4) which states "If the director does not approve the agreement, the matter may proceed to a hearing."

RESPONSE NO. 4: The department agrees with this statement and the rule will be amended accordingly.

COMMENT NO. 5: Terry B. Cosgrove, Crowley, Haughey, Hanson, Toole & Dietrich presented written comments regarding the informal process surrounding a dispute with the department.

RESPONSE NO. 5: The department appreciates the comments provided by Mr. Cosgrove regarding the informal process surrounding a tax dispute and those comments will be provided to the various process leaders for consideration. However, the rules covered in MAR Notice No. 42-2-644 address the procedures to be used in the Office of Dispute Resolution and do not govern the "informal" procedures for a tax review at the department's process level. Those procedures will be addressed through alternative methods in the various processes.

4. The department has amended new rule VI (42.2.618) as follows:

RULE VI (42.2.618) MEDIATION PROCEDURES (1) through (3) remain the same.

(4) If mediation produces a settlement agreement the written agreement shall be prepared by the parties and if necessary, with the assistance of the mediator. The settlement shall be signed by the parties and the mediator and it shall be filed with the director or director's designee for approval. ~~If the director does not approve the agreement, the matter may proceed to a hearing.~~

(5) remains the same.

AUTH: 15-1-201 and 15-1-211, MCA
IMP: 15-1-211, MCA

5. The department has adopted new rule VI (42.2.618) with the amendment shown above, and new rules I (42.2.613), II (42.2.614), III (42.2.615), IV (42.2.616), V (42.2.617), VII

(42.2.619), VIII (42.2.620), and IX (42.2.621) as proposed.

6. The department has repealed the following rules as proposed:

42.2.601 UNIFORM TAX REVIEW PROCEDURE - DEFINITIONS - APPLICABILITY DATE found at page 42-261 of the Administrative Rules of Montana.
AUTH: 15-1-201, MCA
IMP: 15-1-211, MCA

42.2.602 NOTICE TO TAXPAYERS found at page 42-262 of the Administrative Rules of Montana.
AUTH: 15-1-201, MCA
IMP: 15-1-211, MCA

42.2.603 TAXPAYER OBJECTIONS TO AUDITOR'S ASSESSMENT OR REFUND DENIAL, OR DENIAL, OR DENIAL OF WAIVER OF PENALTY AND INTEREST found at page 42-263 of the Administrative Rules of Montana.
AUTH: 15-1-201, MCA
IMP: 15-1-211, MCA

42.2.604 CONSEQUENCES OF FAILURE TO OBJECT TO AN ASSESSMENT IN A TIMELY MANNER found at page 42-263 of the Administrative Rules of Montana.
AUTH: 15-1-201, MCA
IMP: 15-1-211, MCA

42.2.605 DIVISION ADMINISTRATOR'S DECISION found at page 42-264 of the Administrative Rules of Montana.
AUTH: 15-1-201, MCA
IMP: 15-1-211, MCA

42.2.606 TAXPAYER OBJECTION TO DECISION OF THE DIVISION ADMINISTRATOR found at page 42-265 of the Administrative Rules of Montana.
AUTH: 15-1-201, MCA
IMP: 15-1-211, MCA

42.2.607 ALTERNATIVE PROCEDURES found at page 42-265 of the Administrative Rules of Montana.
AUTH: 15-1-201, MCA
IMP: 15-1-211, MCA

42.2.608 DIRECTOR OF THE DEPARTMENT OF REVENUE'S DECISION found at page 42-265 of the Administrative Rules of Montana.
AUTH: 15-1-201, MCA
IMP: 15-1-211, MCA

42.2.609 TAXPAYER APPEALS TO THE STATE TAX APPEAL BOARD found at page 42-266 of the Administrative Rules of Montana.
AUTH: 15-1-201, MCA
IMP: 15-1-211, MCA

42.2.610 DIRECTOR INITIATED REVIEW found at page 42-266 of the Administrative Rules of Montana.
AUTH: 15-1-201, MCA
IMP: 15-1-211, MCA

42.2.611 SETTLEMENT OF TAX DISPUTES found at page 42-267 of the Administrative Rules of Montana.
AUTH: 15-1-201, MCA
IMP: 15-1-211, MCA

42.2.612 DEPARTMENTAL PROCEDURES found at page 42-267 of the Administrative Rules of Montana.
AUTH: 15-1-201, MCA
IMP: 15-1-211, MCA

Cleo Anderson
CLEO ANDERSON
Rule Reviewer

Mary Bryson
MARY BRYSON
Director of Revenue

Certified to Secretary of State December 6, 1999

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.14.101, 42.14.102, 42.14.103, 42.14.104, 42.14.105, 42.14.106, 42.14.107, 42.14.108, 42.14.109, and 42.14.111; and repeal of ARM 42.14.112 relating to Lodging Facility Use Tax Rules	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On November 4, 1999, the department published notice of the proposed amendments to ARM 42.14.101, 42.14.102, 42.14.103, 42.14.104, 42.14.105, 42.14.106, 42.14.107, 42.14.108, 42.14.109, and 42.14.111, and repeal of ARM 42.14.112 relating to lodging facility use tax rules at page 2561 of the Montana Administrative Register, issue no. 21.

2. A public hearing was held on November 30, 1999. No comments or testimony were received regarding the rules.

3. The Department has amended and repealed the rules as proposed.

Cleo Anderson
CLEO ANDERSON
Rule Reviewer

Mary Bryson
MARY BRYSON
Director of Revenue

Certified to Secretary of State December 6, 1999

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I (42.20.514), New Rule II (42.20.515), New Rule III (42.20.516), New Rule IV (42.20.517), and New Rule V (42.20.518); amendment of ARM 42.20.501, 42.20.503, 42.20.505, 42.20.506, and 42.20.507; and repeal of ARM 42.20.508 relating to Property Tax Assessment	NOTICE OF ADOPTION, AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On October 21, 1999, the department published notice of the proposed adoption of new rules I through V, amendment of ARM 42.20.501, 42.20.503, 42.20.505, 42.20.506, and 42.20.507, and the repeal of ARM 42.20.508 relating to property tax assessments for real property at page 2385 of the 1999 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 15, 1999, where written and oral comments were received.

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

COMMENT NO. 1: The Montana Taxpayers Association and the Montana League of Cities and Towns commented that a separate calculation of the value for newly taxable property in all other categories was provided in Rule II (ARM 42.20.515) except Class 13. They recommended amending the rule to include Class 13.

RESPONSE NO. 1: The department agrees and has amended (2) and (5) of Rule II (ARM 42.20.515) to include Class 13 property.

COMMENT NO. 2: The Montana Taxpayers Association wants an assurance that the application of Class 5 property shown in (2) of ARM 42.20.501 does not apply to centrally assessed taxpayers.

RESPONSE NO. 2: The rules found in Chapter 20 of Title 42 only pertain to locally assessed real property. Therefore, the amendment to ARM 42.20.501(2) would not apply to centrally assessed property.

COMMENT NO. 3: Representative Robert Story and the Montana Taxpayers Association stated that the new definition found in ARM 42.20.501(7) defines effective tax rate as the total taxable value of a class of property divided by the total reappraisal value of the same class of property. The Montana Taxpayers

Association indicated that the term "effective tax rate" already has a well-established meaning in the field of taxation.

Representative Story indicated that the term "effective tax rate" is a term that has common use. It measures the association between market value and tax liability. Although the concept of the "effective tax rate" used in the new rules is similar, it does not refer to tax liability. He said, "It is possible that readers of the new rule II will see this term and not realize that it means something other than its more common use." Representative Story suggested a better phrase might be "reappraisal-to-taxable value conversion rate".

RESPONSE NO. 3: The department does not agree that confusion will occur over this definition. As stated above in Response No. 2, these rules only apply to the rules contained in Chapter 20, and the terms used in this chapter are defined accordingly. The term "effective tax rate" was used to develop the formulas for this rule and that term made the best sense to the department since it was a commonly understood term.

COMMENT NO. 4: The Montana Taxpayers Association requested the Department further amend ARM 42.20.506 to provide for the treatment of non-mill revenues and reimbursements to ensure all revenues of the taxing jurisdiction are accounted for when determining the certified mill levy.

RESPONSE NO. 4: The department believes that it is in compliance with the law and does not believe the rule should be amended. Section 15-10-202, MCA, which governs the certified mill calculations is different from the calculated mill levy in section 1 of SB 184 and the department does not believe it is necessary to address that issue in these rules. However, the department does believe the term "previous tax year revenue" should be defined. A new definition will be added to ARM 42.20.501 to clarify this phrase.

COMMENT NO. 5: The City of Glendive commented that centrally assessed properties, which represent new property, should be included in the calculation of newly taxable property.

RESPONSE NO. 5: The department believes they are included in Class 5, 9, 12, and 13 and there are calculations for newly taxable property in these classes.

COMMENT NO. 6: The City of Glendive also stated that the provisions of SB 184 do not provide for the practice of offsetting newly taxable property with eliminated property or any other adjustments. They feel that new property, no matter what type or class, not previously taxed, should be included in the calculation of "newly taxable property".

RESPONSE NO. 6: The department agrees that new property, no matter what type or class, not previously taxed, should be included. In addition, pursuant to the rules, the department

does not offset newly taxable property with eliminated property when certifying taxable values. Rather, local government receives the full taxable value of both newly taxable property and eliminated property. Therefore, it is not necessary to amend the rule.

4. The department has amended new rule II (ARM 42.20.515) and ARM 42.20.501 as follows:

NEW RULE II (42.20.515) DETERMINATION OF TOTAL TAXABLE VALUE OF NEWLY TAXABLE PROPERTY (1) remains the same.

(2) For tax year 1999 and subsequent tax years, the department will calculate for each taxing jurisdiction the total taxable value of newly taxable property that is classified as class 5, 6, 8, 9, ~~and~~ 12 and 13 property. Except as provided in (3) of this rule, the taxable value of newly taxable property of class 5, 6, 8, 9, ~~and~~ 12 and 13 property shall be determined as follows:

(a) The department shall determine the total market value of newly taxable property in a taxing jurisdiction. The total market value of newly taxable property is calculated as the difference between the current year total reappraisal value for each class of property and the previous year total reappraisal value of the same class of property.

(b) For each class of property, the total taxable value of newly taxable property for the current tax year is determined by multiplying the current year total market value of newly taxable property by the current year tax rate for that class of property.

(3) and (4) remain the same.

(5) The total taxable value of all newly taxable property in a taxing jurisdiction shall be determined by adding together:

(a) the separate taxable values as determined above for class 3, 4, 5, 6, 8, 9, 10, ~~and~~ 12 and 13 property for that taxing jurisdiction; and

(b) the total taxable value of eliminated property for the taxing jurisdiction.

AUTH: 15-1-201 and 15-7-111, MCA
IMP: 15-40-420, MCA

42.20.501 DEFINITIONS The following definitions apply to this subchapter:

(1) through (18) remain the same.

(19) THE "PREVIOUS YEAR TAX REVENUE" IS DETERMINED BY MULTIPLYING THE PREVIOUS TAX YEAR TOTAL TAXABLE VALUE FOR EACH TAXING JURISDICTION BY THE PREVIOUS YEAR MILL LEVY FOR THAT TAXING JURISDICTION.

(19) through (21) remain the same but are renumbered (20) through (22).

AUTH: 15-1-201 and 15-7-111, MCA
IMP: 15-6-201 and 15-7-111, MCA

5. Therefore, the department adopts new rule II (42.20.515) and ARM 42.20.501 with the amendments listed above.

The department adopts new rules I (42.20.514)), III (42.20.516), IV (42.20.517), V (42.20.518); amends ARM 42.20.503, 42.20.505, 42.20.506 and 42.20.507, and repeals ARM 42.20.508 as proposed.

CLEO ANDERSON
Rule Reviewer

MARY BRYSON
Director of Revenue

Certified to Secretary of State December 6, 1999

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I (42.21.115), New Rule II (42.21.125), and New Rule III (42.21.116); and amendment of ARM 42.21.112, 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, 42.21.158, 42.21.159, 42.21.160, and 42.21.162 relating to Class Eight Property Exemption and Depreciation Schedules for Personal Property	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On October 21, 1999, the department published notice of the proposed adoption of new rules I through III, and amendment of ARM 42.21.112, 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, 42.21.158, 42.21.159, 42.21.160, and 42.21.162 relating to class eight property exemption and depreciation schedules for personal property at page 2351 of the 1999 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 15, 1999, where written and oral comments were received.

3. The comments received during and subsequent to the hearing are summarized as follows along with the response of the department:

COMMENT NO. 1: Mary Whittinghill, President of the Montana Taxpayers Association, presented testimony at the hearing requesting clarification that the personal property tax rate will be reduced by a full percent per year and not on a reduction based on one percent of the current tax rate.

RESPONSE NO. 1: The department is amending new rule I (42.21.115) to include a table which reflects the tax rate reduction per year.

COMMENT NO. 2: Ms. Whittinghill also testified that new rule III and ARM 42.21.158 exempt intangible personal property for commercial and industrial property, and the Montana Taxpayers Association is concerned that commercial and industrial taxpayers in Montana might not be aware or

understand the installed costs or what equipment qualifies as intangible. They requested the department to clearly explain the intangible reporting requirements on the department's business reporting forms. They further requested the assurance that the department clearly identifies those components that qualify as intangible personal property.

RESPONSE NO. 2: Like with all property, the department requires the taxpayer to identify and specify the value of that property on its accounting records. New rule III (42.21.116) is needed to clarify the reporting requirements for intangible personal property. To further clarify the requirements, the department has amended new rule III (42.21.116) to indicate the review and verification process.

COMMENT NO. 3: The Montana Taxpayers Association stated that the amendment to ARM 42.21.159 adds language that allows the department to utilize department-developed models or comparative studies to determine the taxable value of property subject to taxation under the department's audit and review program. They requested clarification of the intent of the new language.

RESPONSE NO. 3: The department is still developing the models and comparative studies. At this time, they will only be used for comparative purposes. If the department determines in the future that it would be beneficial to use the models and comparative studies for other purposes we will advise the taxpayers.

COMMENT NO. 4: The Montana Taxpayers Association requested that the intangible personal property exempt under 15-6-218, MCA, be excluded from the amendments shown in ARM 42.21.162. They stated that the reporting requirements on the department's business reporting forms or centrally assessed filings should be sufficient reporting requirements to obtain the exemptions.

RESPONSE NO. 4: The department will amend ARM 42.21.162 to reflect the exemption of intangible property pursuant to 15-6-218, MCA.

COMMENT NO. 5: Brad Griffin, representing the Montana Equipment Dealers Association testified regarding new rule II and ARM 42.21.160(9). Mr. Griffin offered amendments to both rules and stated that there is no standard form called a "purchase incentive rental program". He recommended that the assessors should request a rental document from the dealer that shows the beginning date of the rental, the amount of the rent due, and the equipment identification number.

RESPONSE NO. 5: The department agrees with the proposed amendments submitted by the Montana Equipment Dealers Association to both rules and amends the rules accordingly.

4. The department has amended new rules I (ARM 42.21.115), II (ARM 42.21.125), III (ARM 42.21.116) and ARM 42.21.160 and 42.21.162 as follows:

NEW RULE I (42.21.115) ADJUSTED TAX RATE (1) Beginning with tax year 2004, if the percent growth in inflation-adjusted Montana wage and salary income is 2.85% or greater from the prior year, as defined in 15-6-138, MCA, the tax rate for class eight property will be reduced by 1%. Each subsequent year, the tax rate for class eight property will be decreased by 1% per year until it reaches 0%. If the inflation-adjusted Montana wage and salary income factor, 2.85%, is not met in year 2004, the tax rate will remain the same as the previous year.

(2) THE FOLLOWING TABLE ILLUSTRATES THE PHASE OUT OF PERSONAL PROPERTY:

PHASE OUT OF PERSONAL PROPERTY

TAX YEAR	CLASS 8 TAX RATE
1999	6%
2000	3%
2001	3%
2002	3%
2003	3%*
2004	2%
2005	1%
2006	0%

*TAX RATE WILL DECREASE IF THE ADJUSTED MONTANA WAGE AND SALARY INFLATION GROWTH IS 2.85% OR GREATER.

(3) ~~However, in~~ IN year 2005 if the inflation factor is met, then the tax rate will decrease by 1% per year. Each subsequent year the tax rate for class eight property will be decreased by 1% per year until it reaches 0%. If the inflation factor is not met in 2005 the same process will be ~~gone through~~ REPEATED for each succeeding year ~~thereafter~~.

AUTH: 15-1-201, MCA
IMP: 15-6-138, MCA

NEW RULE II (42.21.125) BUSINESS EQUIPMENT (1) and (2) remain the same.

(3) Business equipment held pursuant to a purchase incentive rental program shall remain in the dealer's business inventory subject to the following criteria:

(a) The equipment is rented to ~~a single~~ ONE OR MORE consumers as part of a purchase incentive program~~, not to exceed one year~~; ~~and~~

(b) THE RENTAL TO A CONSUMER SHALL NOT EXCEED ONE YEAR; AND

(c) There is no depreciation allocated to the equipment ~~from any source or~~ for the purpose of filing MONTANA income tax or corporation tax returns. (REFERENCE IRS RULE 167-G6)

(4) and (5) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-6-202, MCA

NEW RULE III (42.21.116) EXEMPT INTANGIBLE PERSONAL PROPERTY DEDUCTION FOR COMMERCIAL AND INDUSTRIAL PROPERTY

(1) The value of exempt intangible personal property will be for the amount stated in the taxpayer's accounting records SUBJECT TO REVIEW AND VERIFICATION BY THE DEPARTMENT.

AUTH: 15-1-201, MCA
IMP: 15-6-202, MCA

42.21.160 DEFINITIONS For purposes of this chapter the following definitions apply:

(1) through (8) remain the same.

(9) "Purchase incentive rental program" is a program operated by equipment dealerships where the equipment is owned by the dealer, held for sale and is rented to ~~a consumer~~ ONE OR MORE CONSUMERS ~~for a period not to exceed one year~~ as an incentive for sales of the equipment.

(10) remains the same.

AUTH: 15-1-201, MCA
IMP: 15-6-138 and 15-8-104, MCA

42.21.162 PERSONAL PROPERTY TAXATION DATES (1) remains the same.

(2) In order to obtain an exemption for personal property, other than class eight property that is exempt ~~under~~ PURSUANT TO 15-6-138, MCA, OR INTANGIBLE PERSONAL PROPERTY THAT IS EXEMPT PURSUANT TO 15-6-218, MCA, an application for exemption must be filed before March 1 of the year for which the exemption is sought, except if the applicant acquires the personal property after January 1, they must submit an application for exemption:

(a) by March 1;

(b) within 30 days of acquisition of the property; or

(c) within 30 days of receipt of an assessment list, whichever is later.

(3) through (7)(b) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-8-201, 15-16-613, 15-24-301, and 15-24-303, MCA

5. The department adopts new rule I (42.21.115), new rule II (42.21.125), new rule III (42.21.116), ARM 42.21.160 and 42.21.162 with the amendments listed above. The department amends ARM 42.21.112, 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140,

42.21.151, 42.21.153, 42.21.155, 42.21.158, and 42.21.159 as proposed.

CLEO ANDERSON
Rule Reviewer

MARY BRYSON
Director of Revenue

Certified to Secretary of State December 6, 1999

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I (42.22.201), New Rule III (42.22.202), New Rule IV (42.31.502), New Rule V (42.31.503), New Rule VI (42.31.504), New Rule VII (42.31.506) and New Rule VIII (42.31.507) and amendment of ARM 42.22.101, 42.22.102, 42.22.103, 42.22.104, 42.22.106, 42.22.108, 42.22.111, 42.22.112, 42.22.113, 42.22.115, 42.22.116, 42.22.117, 42.22.121, 42.22.122, 42.22.1311, 42.22.1312, 42.31.501, 42.31.505, 42.31.510, and 42.31.515 relating to Centrally Assessed Property and Telecommunications Excise Tax	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On October 21, 1999, the department published notice of the proposed adoption of new rules I through VII and amendment of ARM 42.22.101, 42.22.102, 42.22.103, 42.22.104, 42.22.106, 42.22.108, 42.22.111, 42.22.112, 42.22.113, 42.22.115, 42.22.116, 42.22.117, 42.22.121, 42.22.122, 42.22.1311, 42.22.1312, 42.31.501, 42.31.505, 42.31.510, and 42.31.515 relating to centrally assessed property and telecommunications excise taxes at page 2405 of the 1999 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 16, 1999, where written and oral comments were received. At the hearing the department presented another rule to clarify the telecommunications excise tax that was referenced as New Rule VIII (42.31.507) Taxation of Internet Revenue.

3. The comments received during and subsequent to the hearing are summarized as follows along with the response of the department:

COMMENT NO. 1 - New Rule I (42.22.201): The Montana Electric Cooperatives' Association questioned the reason for the "other associated property" definition in new rule I and stated that it was not referenced in the law.

Pennsylvania Power and Light and the Montana Power Company stated they had some concern about new rule I (42.22.201). The location where the electricity is delivered is the basis for determining the designation. If the initial buyer takes delivery outside the state, it is electricity

produced for delivery outside the state. They further stated that it is their position that title transfer within the state constitutes an "interruption" before the electricity leaves the state.

Pennsylvania Power and Light also noted that this rule includes a term "transmission line" that is not defined in the law.

Pennsylvania Power and Light and the Montana Power Company stated they were not clear why the definition for "other associated property" was located in new rule I (42.22.201).

RESPONSE NO. 1: The term is used in 15-6-156(3), MCA, and the department believed it necessary to provide a definition for this term.

New rule I (42.22.201) was developed to address a problem in Eastern Montana where energy goes out of the state and then comes back into the state for distribution. The department has amended the rule as shown below to address the issue of "transmission line".

The comment on "other associated property" is well taken and the department will move (3) of new rule I (42.22.201) to ARM 42.22.101 so that it applies to the property portion of this chapter.

COMMENT NO. 2 - New Rule II: The Montana Power Company testified that an amendment should be made to new rule II to make certain that the tax is applied fairly to in-state and out-of-state transactions.

RESPONSE NO. 2: After further review of this rule and the comments received, the department has decided not to adopt new rule II.

COMMENT NO. 3 - New Rule III (42.22.202): The Montana Electric Cooperatives' Association commented that the department had prepared clear and concise rules that carefully seek to avoid conflict with the intent of the new Wholesale Energy Transaction Tax as passed by the 1999 Legislature. They stated that if an in-state distribution services provider purchases a block of power from an in-state generator and takes delivery of that block of power in-state, then the payment of the tax on that entire block of power becomes the responsibility of the distribution services provider at the point at which it takes delivery in-state. They believe that the taxpayer for that block of power is the distribution services provider, regardless of whether it purchases a portion of that power block with the intent to export it outside Montana.

The Montana Electric Cooperatives' Association urged the department to stay focused on the fact that wholesale energy transaction tax is intended to be a tax on "each kilowatt hour of electricity transmitted in the state." They stated that it

is not the responsibility of the department to make distinctions between different types of electricity transactions.

The Montana Electric Cooperatives' Association stated that the wholesale energy tax must be based on actual load not on scheduled load.

RESPONSE NO. 3: The department believes the law is clear and speaks for itself in this area. The law defines who is required to collect the tax and the rules do not address this issue. The department agrees that the tax must be based on actual load.

COMMENT NO. 4 - New Rule VI (42.31.504): The Montana Taxpayers Association and the Montana Power Company commented on new rule VI (42.31.504) and stated that the rule defines who must collect the telecommunications excise tax but language is needed to provide a credit for bad debts. They also indicated that there is no mention of the treatment of bad debts for the wholesale energy tax.

U S West Communications testified that the telecommunications provider is not technically liable for the tax, but must collect the tax. The rule should use the same terminology as the law.

U S West Communications further stated their concerns that an agent of the department may enter any office or other area where the provider maintains business records to examine the records and other supporting data. They felt that the rule should be amended to provide for some restrictions.

U S West Communications voiced concern about being required to maintain records for a period of 5 years.

RESPONSE NO. 4: The department believes that both 15-53-140 and 15-72-113, MCA, are clear and no further clarification is needed.

The department agrees that U S West's concern is partly correct. The telecommunications provider is not technically liable for the tax but is liable for the collection of the tax. The rule, as shown below, has been amended to add clarification that they are responsible and liable for the collection of the tax itself.

The department does not believe the rule should be amended as indicated by U S West Communications. Under the law the department has the authority to conduct drop-in audits. However, in most cases the department will contact the taxpayer to make arrangements for the audit, well in advance of the visit.

The provision for retaining the records for 5 years is simply a clarification that the records must be maintained for the 5 year period since the law requires a review through the previous 5 years.

COMMENT NO. 5 - New Rule VII (42.31.506): U S West Communications testified that a time should be stated as to when the 60 day period referred to in this rule commences. Further, the department should not have arbitrary authority to reject an application and if a request is rejected, the taxpayer should be informed of the basis for the rejection.

RESPONSE NO. 5: The department agrees with the comments and has amended the rule to address the approval and denial issues.

COMMENT NO. 6 - ARM 42.22.101: The Montana Taxpayers Association and U S West Communications testified that they felt the amendments to ARM 42.22.101 were outside the scope of the law regarding telecommunications companies. They further stated that amendments should define a definition for the unit value after the intangibles have been removed from each indicator of value.

Robert Strong, Tax Director representing AT&T questioned the change to (25) which changes the description of the "unit method of valuation". The change removes reference to "operating property". They suggested not removing this, as it is the operating property unit the department is trying to value.

AT&T stated the second definition of unit value as shown in (26) is redundant and only adds confusion which could lead to litigation by adding the undefined terms "reasonable and necessary" to the definition.

AT&T testified that a specific name had been given to the value that is determined to be in Montana after an allocation of a unit or system value. They stressed the need for consistency throughout the rules though and pointed out that there is repeated reference to the "Montana unit value" which causes confusion. They suggested that the term "Montana unit value" be changed to "state allocated value" for clarity.

The Montana Power Company stated that it is unclear why a definition was added for "related services" for telecommunications.

The Montana Power Company stated that clarification was needed on how wire mileage is measured.

AT&T testified that the references to Title 15, Chapter 53 in ARM 42.22.101 are related to central assessment which is in Title 15, Chapter 23.

RESPONSE NO. 6: The amendments to this rule clarify Class 13 and are not an expansion of the law. They are just a clarification of past practice. The department will amend the rule to strike (24) defining "two-way transmission" and further amend ARM 42.22.101(26) to include "system".

The department is not suggesting doing away with "operating property" throughout the rules. That is still a requirement.

The definition in (26) should not cause any confusion since one is unit and the other is unit or system value. The department will amend the rules throughout to reflect the term "state allocated value" consistently.

The definition for "related services" is necessary to clarify a term used in the law.

The department will amend ARM 42.22.101 to add a definition for "wire miles".

The department agrees in part with AT&T's conclusion with regard to the authority and implementing citations in ARM 42.22.101. Both Chapter 23 and 53 are applicable because this is a definition rule and the definitions contained in this rule refer to both chapters, as well as, Chapter 72. The history notes will be corrected because the reference to Chapter 23 was inadvertently omitted when the amendments were made to the rule.

COMMENT NO. 7 - ARM 42.22.102(1): The Montana Taxpayers Association, U S West Communications and AT&T suggested that the amendment to ARM 42.22.102(1)(g) which adds cable television was not contemplated during the legislative session and the industry had not been informed of the department's intent to add that portion to this rule.

RESPONSE NO. 7: The department does not believe that this is an expansion of the law. However, the department has further determined that cable television and telephone are covered under the inclusion of telecommunications as found in (1)(d). Therefore, the department will amend ARM 42.22.102 to delete (e) and (g). If they are included under (1) of the rule it will be classified as centrally assessed.

COMMENT NO. 8 - ARM 42.22.102(3): The Montana Taxpayers Association, U S West Communications, the Montana Power Company, AT&T and the Montana Electrical Cooperatives' Association requested clarification of the purpose of ARM 42.22.102(3).

AT&T further stated that the expansion of the definitions "for property tax purposes" of telecommunications and of related services is an attempt to centrally assess wireless communications of all types and greatly expand what is centrally assessed. There is no need for this because the law is very clear on what is centrally assessed.

RESPONSE NO. 8: The purpose of (3) is to spell out its use by the department for unit valuation. This is generally housekeeping and clarification of current practice and is not based on new law.

With regard to AT&T's comment, the department does not believe we are expanding the definition of centrally assessed property. The clarification is to reflect current practice and is based on existing law. As stated above, this is

general housekeeping to bring the rules into compliance with department practice.

COMMENT NO. 9 - ARM 42.22.105: PacifiCorp, the Montana Taxpayers Association, U S West Communications, and the Montana Electric Cooperatives' Association stated that they believe language should be inserted in ARM 42.22.105(2)(p) to clarify that the value of exempt intangible personal property is not limited to the net book value of a taxpayer's assets. They believe the language of the rule is more restrictive than the law.

The Montana Taxpayers Association requested the amendment found in (2)(p) be removed and included in MAR Notice No. 42-2-649.

AT&T testified that they did not think (2)(p) was necessary. They questioned how a company would document computerized records and accounting practices? Also, they believe that this section would limit the intangibles to only those items for which there was a documented net book value, even though the department may include intangibles via the income and stock and debt indicators for which there are no "documented" net book values.

AT&T pointed out the word "operating" had been stricken in (2)(o) which gives the indication that the department intends to value something other than the operating property of the centrally assessed companies. They object to deleting the word "operating".

RESPONSE NO. 9: ARM 42.22.105(2)(p) refers to documentation of the net book value as accounted for in the accounting records of the taxpayer.

The department believes that a company would document their computerized records and accounting practices through the use of accepted accounting principles, the same way they would other records.

With regard to the deletion of the term "operating", the department values all property in the state of Montana and needs to know the total value of the property to correctly assess these properties.

The department has determined that the proposed amendments to ARM 42.22.105 should not be adopted at this time. This rule was further amended in MAR Notice No. 42-2-649 and all the amendments, including the housekeeping amendments, were addressed at the hearing set forth on December 16, 1999.

COMMENT NO. 10 - ARM 42.22.108: PacifiCorp, the Montana Power Company and the Montana Taxpayers Association provided comments regarding the proposed amendments to ARM 42.22.108. They stated that the value assigned to Montana pollution control equipment should logically bear the same relationship to its net book value as does the value assigned to other classes of Montana tangible property relative to their net

book value. This requires an allocation of value among taxable classes. Also, they addressed proposed rules found in MAR Notice No. 42-2-649 for intangible personal property.

RESPONSE NO. 10: This is clarification of past practice and the department believes that it is appropriate. The amendments to ARM 42.22.108 reflect general housekeeping changes. The concerns to proposed rule actions as found in MAR Notice No. 42-2-649 should be addressed at the rule hearing and not in this notice.

COMMENT NO. 11 - ARM 42.22.113: Terry Cosgrove, Attorney commented that he objects to the department continuing to use ARM 42.22.113 as a market indicator for centrally assessed property unit value, in light of the legislature's exemption of intangible assets from property tax. Mr. Cosgrove further stated that he understands that the department is developing a future proposal for a new regulation providing a mechanism for valuing intangible assets.

RESPONSE NO. 11: The department continues to believe that the market indicator is a valid indicator. The department will use all three approaches when determining value.

COMMENT NO. 12 - ARM 42.22.116: The Montana Taxpayers Association and Stan Kaleczyc, Attorney, representing Burlington Northern Santa Fe testified to their concerns regarding ARM 42.22.116. They requested the department reconsider deleting (4)(c) at this time. They stated that "removing this section at a time when there will be numerous and ongoing changes to the classes of property in Montana could increase the potential for litigation". They stated that this particular portion of the rules assures the department follows the requirements set forth in the 4R Act regarding the taxation of railroad property.

RESPONSE NO. 12: The department has amended ARM 42.22.116 as shown below to address these concerns.

COMMENT NO. 13 - ARM 42.22.122: PacifiCorp and the Montana Taxpayers Association submitted comments regarding the rules pertaining to HB 174 (Wholesale Energy Transaction Tax). They stated the allocation (apportioned) of Montana value among property classes should be based on the ratio of net book value of Montana property within a given class relative to the net book value of all Montana property.

RESPONSE NO. 13: The property will be included in the unit valuation and then assigned to a specific class code and there is not a reason to do a separate valuation. ARM 42.22.122(2) gives guidance for how the value is apportioned.

COMMENT NO. 14 - ARM 42.22.1311: The Montana Taxpayers Association and Pennsylvania Power and Light commented on the amendment to ARM 42.22.1311 regarding the change of the life cycle of the hydroelectric generation equipment from 20 to 40 years. They wanted an assurance that all affected taxpayers would be notified of this change.

Pennsylvania Power and Light further wanted clarification that this life period starts at the time the equipment is installed and not when it is acquired.

RESPONSE NO. 14: This is a housekeeping change and all taxpayers will be notified. The life period can start when the equipment is either installed or acquired. The use of installed or acquired cost/year depends on the property owner's reports.

COMMENT NO. 15 - ARM 42.31.501: U S West Communications commented that since the tax is imposed upon the "purchasers" and must be collected by the "telecommunications service providers", the definition doesn't appear to fit. The term "purchaser" should be used instead.

U S West Communications proposed language for the department to amend (7)(b).

RESPONSE NO. 15: The definition is required to define a term found in 15-53-129(1), MCA. The term "purchaser" is defined in the law. Therefore, clarification regarding its meaning is not necessary in the rules.

The department disagrees with the suggested change to (7)(b) made by U S West Communications. However, the department will amend the rule as shown below for further clarification.

COMMENT NO. 16 - Trending Tables: Advanced Silicon Materials, Inc., commented that the amendments to the trending tables should be reviewed and adjusted further to reflect the current classifications, trending tables, and depreciation schedules properly value high technology equipment such as machinery and equipment which is used in high technology industries.

RESPONSE NO. 16: All the changes to the trending rules were developed based on the annual updates using the same formulas and reference materials that have been used for several years. The department reviewed this reference material and failed to find a more appropriate life than those already in the rules.

COMMENT NO. 17 - Wholesale Energy Transaction Tax (General): The Montana Electric Cooperatives' Association questioned whether a rule should be adopted granting inclusion of a standard 5% (or other percent) tax adjustment for line loss on power delivered in-state. They further stated that

they agreed with the department that "the line loss provision is only applicable to energy transmitted out-of-state."

Pennsylvania Power and Light suggested that the department provide language providing for a single tax on electricity to be levied when it is transmitted for the purpose of a sale. This could be accomplished by exempting like-kind exchanges where the exchange agreement calls for the electricity to be taken from and returned to Montana.

U S West Communications suggested that telecommunication providers be required to provide evidence for the basis of excluding any revenue from taxation. Specifically, sales to resellers, the federal government and Native Americans should provide exemption certificates.

RESPONSE NO. 17: The department does not believe that a rule is needed to clarify the suggestion made by the Montana Electric Cooperatives' Association to grant an inclusion of the standard 5% tax adjustment for line loss on power delivered in-state. The department believes this matter is clearly covered in the law.

The law is clear that the tax is imposed when electricity is transmitted. The department believes the requested procedure goes beyond the scope of the law.

The evidence of the excluded revenue will be identified on the form and verification will be completed through a follow-up process by the department. Further, as stated in Response No. 2 above, the department is not adopting proposed new rule II because we believe the law is clear on this issue.

4. The department has amended new rule I (42.22.201), new rule IV (42.31.502), new rule VII (42.31.506), ARM 42.22.101, 42.22.102, 42.22.104, 42.22.108, 42.22.116, 42.22.122, and 42.31.501 and adopted another new rule VIII (42.31.507) as follows:

NEW RULE I (42.22.201) DEFINITIONS The following definitions apply to this sub-chapter:

(1) "Electricity produced in the state for delivery outside of the state" AS USED IN 15-72-104, MCA, means electricity that is produced at an electrical generation facility in Montana, ~~placed on a transmission line,~~ and delivered immediately and without interruption to entities beyond Montana borders VIA A TRANSMISSION FACILITY.

(2) "Electricity produced in the state for delivery within the state," means electricity that is not produced for delivery outside of the state.

~~(3) "Other associated property" includes appurtenant land and improvements and personal property that are normally operated together to produce electric power as defined in the Code of Federal Regulations.~~

AUTH: 15-72-117, MCA
IMP: 15-72-104, MCA

NEW RULE IV (42.31.502) TAXPAYER RECORDS (1) For the telecommunications excise tax, each telecommunications service provider who is RESPONSIBLE AND liable for the COLLECTION OF THE tax under this sub-chapter will keep records showing the total retail revenue to support the tax liability as required in these rules.

(2) and (3) remain the same.

AUTH: 15-53-155, MCA
IMP: 15-53-150, MCA

NEW RULE VII (42.31.506) APPLICATION FOR REPORTING ON AN ACCRUAL BASIS (1) For purposes of the telecommunications excise tax, a telecommunication service provider will make an application for permission to report the tax on an accrual basis in writing on a form prescribed by the department.

(2) The department will respond to all applications in writing within 60 days OF RECEIPT. THE RESPONSE WILL INDICATE REASONABLE JUSTIFICATION OF ANY APPROVAL OR DENIAL TO REPORT ON AN ACCRUAL BASIS.

(3) THE DEPARTMENT WILL ACCEPT ELECTRONIC REMITTANCE OF RETURNS AS DEFINED ON THE FORM DESCRIBED IN (1) ABOVE.

AUTH: 15-53-155, MCA
IMP: 15-53-137, MCA

NEW RULE VIII (42.31.507) TAXATION OF INTERNET REVENUE (1) IMPOSITION OF THE RETAIL TELECOMMUNICATION EXCISE TAX SHALL NOT BE APPLIED TO INTERNET REVENUE THAT MAY BE INCLUDED IN THE SALES PRICE, UNTIL THE FEDERAL MORATORIUM HAS BEEN LIFTED. IMPOSITION OF THE TAX WILL OCCUR AFTER THE FEDERAL MORATORIUM IS LIFTED AND IF NO FEDERAL LAW PROHIBITS THE TAXATION OF INTERNET REVENUE.

(2) TELECOMMUNICATION SERVICES PROVIDERS MUST SEPARATELY ACCOUNT FOR INTERNET REVENUE IF IT IS INCLUDED IN THE SALES PRICE. IF NO SEPARATE ACCOUNTING FOR THE INTERNET REVENUE IS REPORTED, THE IMPOSITION OF THE RETAIL TELECOMMUNICATION EXCISE TAX WILL APPLY TO THE TOTAL SALES PRICE. THE DEPARTMENT MAY REQUEST THE DETAIL VERIFICATION OF HOW THE INTERNET REVENUE IS ACCOUNTED FOR BY THE TELECOMMUNICATION SERVICES PROVIDER.

AUTH: 15-53-155, MCA
IMP: 15-53-137, MCA

42.22.101 DEFINITIONS The following definitions apply to this chapter:

(1) through (12) remain the same.

(13) "OTHER ASSOCIATED PROPERTY" INCLUDES APPURTENANT LAND AND IMPROVEMENTS AND PERSONAL PROPERTY THAT ARE NORMALLY OPERATED TOGETHER TO PRODUCE ELECTRIC POWER AS DEFINED IN THE CODE OF FEDERAL REGULATIONS AS PUBLISHED IN TITLE 18, CFR, CH. 1 (4-1-99), PT. 1.

(13) through (16) remain the same but are renumbered (14) through (17).

(17) through (23) remain the same but are renumbered (18) through (24).

~~(24) "Two way transmission" for property tax purposes, means all forms of telecommunications except those forms of telecommunications that are only capable of one-way transmission and are not related services as defined in (6).~~

(25) remains the same.

(26) "Unit OR SYSTEM value" is the value of all tangible and intangible property ~~which~~ THAT is reasonable and necessary to the maintenance and operation of a centrally assessed company's interstate or inter-county business.

(27) "WIRE MILES" MEANS, BUT IS NOT LIMITED TO, ROUTE MILES OR FIBER MILES.

AUTH: 15-23-108, 15-53-155, and 15-72-117, MCA
IMP: 15-6-156, 15-23-101, 15-23-104, 15-53-145, 15-53-147 and 15-72-104, MCA

42.22.102 CENTRALLY ASSESSED PROPERTY (1) The department shall centrally assess the interstate and inter-county continuous properties of the following types of companies:

(a) railroad;
(b) railroad car;
(c) microwave;
(d) telecommunications;
~~(e) telephone;~~
~~(f)~~(e) telephone cooperatives;
~~(g) cable television;~~

(h) through (p) remain the same but are re-earmarked (f) through (n).

(2) and (3) remain the same.

AUTH: 15-23-108, MCA
IMP: Title 15, chapter 23, part 1, and 15-23-211, MCA

42.22.104 TREATMENT OF MOTOR VEHICLES AND MOBILE EQUIPMENT (1) through (5) remain the same.

(6) The total net book value for equipment defined in (2) shall be deducted on a market to cost basis from the ~~Montana unit value~~ STATE ALLOCATED VALUE, as defined in ARM 42.22.111. THE MARKET TO BOOK RATIO SHALL BE DETERMINED BY DIVIDING THE SYSTEM OR UNIT MARKET VALUE AFTER DEDUCTION OF THE EXEMPT INTANGIBLE PERSONAL PROPERTY BY THE SYSTEM NET BOOK VALUE AFTER DEDUCTION OF THE EXEMPT INTANGIBLE PERSONAL PROPERTY.

(7) The total market value for equipment defined in (1) is deducted from the ~~Montana unit value~~ STATE ALLOCATED VALUE, as defined in ARM 42.22.111, to determine the amount of the ~~Montana unit value~~ STATE ALLOCATED VALUE to be allocated under the provisions of ARM 42.22.122.

AUTH: 15-23-107 and 15-23-108, MCA
IMP: Title 15, chapter 23, part 1, and 15-23-101, MCA

42.22.108 MARKET VALUE OF POLLUTION CONTROL EQUIPMENT (1) The market value of approved class 5 pollution control equipment shall be determined by multiplying the ~~net book~~ DEPRECIATED value of the APRPOVED CLASS 5 pollution control equipment in Montana by a market to book ratio. The market to book ratio shall be determined by dividing the system or unit market value after deduction of the exempt intangible personal property by the system net book value after deduction of the exempt intangible personal property. This value shall then be deducted from the Montana value and certified to the counties as class 5 property.

(2) remains the same.

AUTH: 15-23-108, MCA
IMP: 15-6-135, MCA

42.22.116 DETERMINATION OF TAX RATE FOR CLASS 12 PROPERTY (1) through (3) remain the same.

(4) In the event that the required information is not available to the department, the taxable value for all commercial, industrial or centrally assessed property will be estimated.

(a) The department will use the reported market and taxable value for all commercial, industrial and centrally assessed property for the previous tax year in estimating the total market VALUE and APPLY THE CURRENT TAXABLE PERCENTAGE TO ARRIVE AT THE CURRENT taxable value of all commercial, industrial and centrally assessed property for the present tax year.

(b) This estimation may be challenged by the taxpayer in the event of litigation or in the event of an assessment appeal.

(c) IF THE DEPARTMENT SHOULD ESTIMATE THE CLASS 12 TAX RATE PURSUANT TO (4)(a), THE DEPARTMENT SHALL REVIEW THE ESTIMATED TAX RATE BY COMPARING IT WITH THE ACTUAL CLASS 12 TAX RATE TO BE COMPUTED BY THE DEPARTMENT NO LATER THAN SEPTEMBER 1 OF THE PRESENT YEAR. IF THE ACTUAL TAX RATE VARIES FROM THE ESTIMATED TAX RATE BY MORE THAN 5%, THE DEPARTMENT SHALL ISSUE REVISED ASSESSMENTS TO THE AFFECTED PROPERTY TAXPAYERS PURSUANT TO 15-8-601, MCA.

AUTH: 15-1-201, MCA
IMP: 15-6-145, MCA

42.22.122 APPORTIONMENT PROCEDURE (1) remains the same.

(2) To determine the amount of value available for distribution to the taxing units, the department shall deduct the Montana situs property value from the ~~Montana unit value~~ STATE ALLOCATED VALUE.

(a) through (c) remain the same.

(3) through (5) remain the same.

AUTH: 15-23-108, MCA
IMP: Title 15, chapter 23, part 1, and 15-23-201, MCA

42.31.501 DEFINITIONS The following definitions will apply to terms used in this subchapter:

(1) through (6) remain the same.

(7) "Person" for telecommunications excise tax purposes, means an individual, estate, trust, receiver, cooperative association, corporation, limited liability company, firm, partnership, joint venture, syndicate or other entity.

(a) A person may not include federal government entities or their subdivisions.

(b) A PERSON MAY NOT INCLUDE ENROLLED Native American entities, including tribal offices, businesses owned by the tribe and operating on the tribal reservation, and enrolled tribal members residing on their reservation, are exempt from the tax.

(8) through (10) remain the same.

(11) "Two-way transmission" for telecommunications excise tax purposes, means all forms of telecommunications except those forms of telecommunications that are only capable of one-way transmission and are not related services as defined in ~~(6)~~ (8).

(12) INTERNET REVENUE IS REVENUE GENERATED FROM THE ACTIVITY OF PROVIDING INTERNET ACCESS BY AN INTERNET SERVICE PROVIDER.

AUTH: 15-53-104 and 15-53-155, MCA
IMP: 15-53-101, 15-53-104, 15-53-111, 15-53-145, and 15-53-147, MCA

5. The department adopts new rules I (42.22.201), IV (42.31.502), VII (42.31.506), ARM 42.22.101, 42.22.102, 42.22.104, 42.22.108, 42.22.116, 42.22.122 and 42.31.501 with the amendments listed above. The department adopted an additional rule presented at the hearing, which was identified as new rule VIII (42.31.507) as shown above.

6. The department adopts new rules III (42.22.202), V (42.31.503), VI (42.31.504) and amends ARM 42.22.103, 42.22.106, 42.22.111, 42.22.112, 42.22.113, 42.22.115, 42.22.117, 42.22.121, 42.22.1311, 42.22.1312, 42.31.505, 42.31.510, and 42.31.515 as proposed. Based on the comments received the department will not adopt new rule II.

Cleo Anderson
CLEO ANDERSON
Rule Reviewer

Mary Bryson
MARY BRYSON
Director of Revenue

Certified to Secretary of State December 6, 1999

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I (42.29.101), New Rule II (42.29.102), New Rule III (42.29.103), New Rule IV (42.29.104), New Rule V (42.29.105), New Rule VI (42.29.106), New Rule VII (42.29.107), New Rule VIII (42.29.108), New Rule IX (42.29.109), New Rule X (42.29.110), New Rule XI (42.29.111), and New Rule XII (42.29.112) relating to Universal System Benefits Programs	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On October 21, 1999, the department published notice of the proposed adoption of new rules I through XII relating to universal system benefits (USB) programs at page 2396 of the 1999 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 12, 1999, where written and oral comments were received.

3. Oral and written comments received during and subsequent to the hearing were generally positive and emphasized the appreciation of the opportunity to participate in a negotiated rulemaking process. There were only a few areas where the participants felt changes should occur. The following provides the areas of concern by topic matter, along with the responses of the department:

COMMENT NO. 1 - Internal Expenditures and Activities: Testimony was presented by Energy Northwest, Inc.; Flathead Electric Cooperative, Inc.; Montana Electric Cooperatives' Association; Montana Power Company; Montana-Dakota Utilities Company; Columbia Falls Aluminum Company and Donald Quander, Attorney at Law, representing the Montana Large Customer Group (LCG) (ASARCO Inc., Ash Grove Cement West, Conoco, Inc., Exxon Company, U.S.A., Golden Sunlight Mines, Inc., Holnam, Inc., Louisiana Pacific Corp., Montana Refining Company, Montana Tunnels Mining, Inc., Smurfit-Stone Container Corp., and Stillwater Mining Company). These parties all presented testimony requesting the department delete (3) of new rule XI because it restricts the expenditures to an "internal" program and disqualifies expenditures made to "external programs." The comments indicated that the rules could result in the rejection of a vast majority of the credits, particularly the low-income credits, being claimed by large customers and utilities. Some participants indicated that the statutory provision clearly

provides that both a utility's internal program costs and its other expenditures in support of renewables, conservation, and low-income are creditable universal system benefits.

The Electric Utility Industry Restructuring Transition Advisory Committee submitted written comments addressing this issue. The Committee recommended that the department recognize that expenditures made by utilities (regulated and cooperatives) and large customers which are consistent with the Transition Advisory Committee (TAC) Guidelines for the Universal System Benefits Programs Funding Credits and Expenditures, adopted in September 1998, or the department's emergency temporary rules adopted August 31, 1999, should guide what is allowable for USB credits.

The Committee also stated that it is their understanding and recommendation that qualifying programs, activities and expenditures must include, but are not limited to, internal expenditures.

The Northwest Power Planning Council testified that this rule appears to prohibit Montana utilities and electric consumers from participating in and reaping the benefits of the program. The Council recommended the department define "external" in a manner that would allow as a qualified expenditure the funding of preexisting public purpose programs defined in the legislation and previously undertaken by utilities.

Columbia Falls Aluminum Company stated that the Negotiated Rule Making Committee's report to the department dated September 28, 1999 and the rules as proposed by that report made it clear that the intent of the Legislature, the interpretation of the TAC in reviewing that legislative intent, and the parties to the negotiated rule making itself, all confirmed that "qualifying expenditures specifically include, but are not limited to, donations by a utility or large customer, to a qualifying low-income energy assistance program such as Energy Share of Montana or the State's low-income energy assistance program."

Debbie Smith, Attorney at Law, representing the Natural Resources Defense Council and the Renewable Northwest Project, testified that the department should further distinguish between the "internal programs and activities" to public and cooperative utilities and the "internal expenditures and activities" of large industrial customers.

RESPONSE NO. 1: The department has amended new rule XI (42.29.111)(3) as shown below. The amendment clarifies the application of what is considered to be an internal program or expenditure. The rule also provides examples of expenditures or contributions that may qualify for the credit, such as contributions to Energy Share of Montana or the state's low-income energy assistance program.

COMMENT NO. 2 - Definitions: Energy Northwest, Inc.; Flathead Electric Cooperative, Inc.; Montana Electric Cooperatives' Association; Montana Power Company; Montana-Dakota Utilities Company; and the Large Customer Group commented that

(4) and (5) of rule I (42.29.101) should be deleted because they were too restrictive. They suggested that the department follow the Transition Advisory Committee (TAC) guidelines, which were developed for the Universal System Benefits Programs and presented as the basis for HB 337 at the 1999 legislative session.

National Resources Defense Council and the Renewable Northwest Project testified that the definitions lump utilities and large customers together, with the implication that utilities, like large customers, in order to receive the USBP credit must operate, develop and organize all USB programs within their individual organizational structures. While it is not entirely clear what this language means, it is clear that the statute requires something different and more explicit. They further stated that there is no legislative intent allowing large customers to receive credit for donations made to other customers.

RESPONSE NO. 2: The department has amended new rule I (42.29.101) (4) and (5) to make the definition of the term "internal" less restrictive which is perceived to be consistent with the legislative intent.

COMMENT NO. 3 - Restricting Hydro Resources to Local: Energy Northwest, Inc., and Flathead Electric Cooperative, Inc., and the Natural Resources Defense Council and the Renewable Northwest Project testified that inserting the word "local" in rule VIII(1)(e) unduly restricts the scope of qualifying renewable hydro resources. As drafted, the proposed regulation could exclude this resource, which would be contrary to the legislative intent and to public policy.

RESPONSE NO. 3: The department agrees. The rule will be amended to delete the word "local".

COMMENT NO. 4: Debt Service Issue: Montana Electric Cooperatives' Association testified that they would strongly oppose any language designed to further "clarify" or narrow creditable USBP costs contained in wholesale power purchases. They further testified that some parties now contend debt-service costs contained in amortized or "old" USBP-type investments included in such power purchases should not be eligible for credits; this position is unsupported by legislative intent. No evidence exists that the language contained in 69-8-402(1), MCA, was intended to deny current costs being paid for USBP activities. Amortization of USBP costs, including debt service, does not diminish the significance or benefits received from those activities just as amortization of the purchase of a house, including debt services does not diminish the current and future benefits received from ownership of that house over the lifetime of the amortization.

Columbia Falls Aluminum Company testified that the statute and legislative history do not make a distinction that only embedded costs of power which relate to renewable energy or

conservation-related activities qualify for credits. They testified that 69-8-402(7)(a)(ii)(B), MCA, provides that a large customer shall receive a credit toward its USB obligation for "those portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities." This section does not qualify or limit either the scope of such activities or the time frame within when these activities occurred. They stated that the intent of the Legislature was to maintain the same level of support for the USB activities, which existed prior to the enactment of Senate Bill 390.

The Montana Power Company testified that the legislation provides for distinct and separate recovery methods for each. The USB funds are for continued funding of existing programs and activities, and for new activities - not for "old" conservation debt servicing. If the broad interpretation were allowed to fund historic conservation costs through the USBC, public purpose activities would be reduced, not sustained or expanded as the legislation envisions. The legislative intent was not to reduce public purpose activities in Montana.

They further testified that the language in rule XI (42.29.111)(2)(b)(ii) should be clarified to exclude the debt servicing portion of power at retail or wholesale associated with historic public purpose activities for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance as qualifying USB credits or expenditures.

The Natural Resources Defense Council and the Renewable Northwest Project testified that the rules are properly written to include as valid USB program expenditures to acquire and support renewable energy. The reason for implementing a USB charge was to fund new and continued public-purpose programs on a going-forward basis throughout the transition period and into the future. They testified that the utilities are expressly allowed to recover regulatory assets and other deferred charges that exist because of regulatory practices prior to the enactment of SB 390 (1997) through separate charges imposed on customers referred to as "transition charges". These transition charges include a recovery of debt-servicing costs for old conservation, renewable, and low-income assistance programs. Further, the statute allows utilities to raise their rates to cover universal system benefit program charges. It also allows cooperatives to collect increased costs, above those in rates existing prior to the enactment of SB 390 (1997), to cover USB charges.

They recommended the department clarify rule XI to explain that USB charges may only be used to fund new conservation, renewable, or low-income services, either through direct investment in such programs, or through a portion of a power rate that recovers the costs of such programs.

RESPONSE NO. 4: The department agrees with the Montana Power Company and the Natural Resources Defense Council and the Renewable Northwest Project. New rule XI (42.29.111) was

amended to exclude debt-servicing costs as an allowable USB expenditure.

COMMENT NO. 5 - Consistency in Terminology: The Montana Power Company suggested that the department review the "catchphrases" for rules VIII, IX, and X to determine consistency in the use of the terms "credits" and "expenditures".

RESPONSE NO. 5: The department believes that the catchphrases in rules VIII (42.29.108), IX (42.29.109), and X (42.29.110) are correct and consistent with the statutory definitions found in 69-8-103, MCA.

COMMENT NO. 6 - Timeframe of Effective Date for Permanent versus Emergency Temporary Rules: The Northwest Power Planning Council and the Large Customer Group testified that expenditures for calendar year 1999 for utilities and large customers should be governed by either the department's temporary rules or the Transformation Advisory Council (TAC) guidelines, depending on when the expenditure was made. They further requested the department allow the expenditures that are consistent with and qualify under the emergency temporary rules, regardless of the new rules' content for 1999.

RESPONSE NO. 6: The department declines to change the proposed effective date of the rules. The proposed permanent rules are generally consistent with the department's emergency rules, the proposed rules developed by the Negotiated Rule Making Committee, and the Transition Advisory Committee's Guidelines. In the absence of conflict between the emergency temporary rules and the proposed permanent rules, it is not necessary to change the effective date of the rules.

4. As a result of the comments received the department has amended new rules I (42.29.101), VIII (42.29.108), and XI (42.29.111) as shown below:

RULE I (42.29.101) DEFINITIONS The following terms will be used in this chapter:

(1) through (3) remain the same.

(4) "Internal activities OR PROGRAMS" are those activities or programs operated, developed, ~~and~~ OR organized within the organizational structure of a utility or large customer.

(5) "Internal expenditure" means ~~internal~~ FINANCIAL commitments made by a utility or large customer to ~~an internal~~ A QUALIFYING activity or program.

(6) through (13)(f) remain the same.

AUTH: 69-8-413, MCA
IMP: 69-8-402, MCA

RULE VIII (42.29.108) RENEWABLE RESOURCE PROJECTS AND APPLICATIONS (1)(a) through (d) remain the same.

(e) ~~local~~ micro hydro projects that are on streams outside protected areas as defined by the northwest power planning council or state or federal law, or that are irrigation ditch projects.

(2) and (3) remain the same.

AUTH: 69-8-413, MCA
IMP: 69-8-402, MCA

RULE XI (42.29.111) QUALIFYING EXPENDITURES AND TIMING

(1) remains the same.

(2) ~~Credits or expenditures permitted in support of annual universal system benefits programs funding requirements include but are not limited to:~~

~~(a) A utility's internal programs or activities that qualify as universal system benefits programs, including but not limited to those portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, or conservation related activities or low income energy assistance; and~~

~~(b) A large customer's internal expenditures or activities that qualify as universal system benefits programs expenditures, including but not limited to:~~

~~(i) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and~~

~~(ii) those portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy, or conservation related activities, or low income energy assistance.~~

QUALIFYING EXPENDITURES SPECIFICALLY INCLUDE, BUT ARE NOT LIMITED TO AN EXPENDITURE OR FINANCIAL COMMITMENT BY A UTILITY OR LARGE CUSTOMER TO A QUALIFYING LOW-INCOME ENERGY ASSISTANCE PROGRAM SUCH AS ENERGY SHARE OF MONTANA OR THE STATE'S LOW INCOME ENERGY ASSISTANCE PROGRAM.

(3) A qualifying expenditure by a utility or large customer includes a commitment of funds or resources to a universal system benefits program as defined at 69-8-103, MCA. ~~Qualifying expenditures do not include financial commitments to an external activity or program.~~

(4) WHEN AN EXPENDITURE IS MADE AS DESCRIBED IN (1) ABOVE, IT MAY QUALIFY FOR THE CALENDAR YEAR IN WHICH IT IS MADE. IF, FOR EXAMPLE, A LARGE CUSTOMER EXPENDS FUNDS TO THE STATE WEATHERIZATION PROGRAM ANY TIME PRIOR TO DECEMBER 31, THE EXPENDITURE MAY QUALIFY AS SUCH A CREDIT IN THAT YEAR. THE STATE OF MONTANA NEED NOT EXPEND THE FUNDS BY DECEMBER 31 IN ORDER FOR THE CLAIMANT TO RECEIVE A CREDIT FOR THE EXPENDITURE.

(5) A QUALIFYING EXPENDITURE IS AN EXPENDITURE OR FINANCIAL COMMITMENT MADE DURING THE CURRENT YEAR AND DOES NOT INCLUDE COSTS FOR DEBTS INCURRED IN A PRIOR YEAR.

AUTH: 69-8-413, MCA
IMP: 69-8-402 and 69-8-414, MCA

5. Therefore, the department adopts new rules I

(42.29.101), VIII (42.29.108), and XI (42.29.111) as amended above, and adopts Rules II (42.29.102), III (42.29.103), IV (42.29.104), V (42.29.105), VI (42.29.106), VII (42.29.107), IX (42.29.109), X (42.29.110), and XII (42.29.112) as proposed originally.

CLEO ANDERSON
Rule Reviewer

MARY BRYSON
Director of Revenue

Certified to Secretary of State December 6, 1999

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.10.331 pertaining to limitations on receipts from political committees to legislative candidates	)))))	NOTICE OF AMENDMENT OF ARM 44.10.331

TO: All Concerned Persons.

1. On October 7, 1999, the Commissioner of Political Practices published notice of the proposed amendment to ARM 44.10.331 that pertains to limitations on receipts from political committees to legislative candidates at page 2241 of the 1999 Montana Administrative Register, Issue Number 19.

2. The Commissioner has amended ARM 44.10.331 as proposed.

3. No comments or testimony were received.

4. Authority for amending rules is section 13-37-114, MCA. The amendment to ARM 44.10.331 implements section 13-37-218, MCA.

Linda L. Vaughey
Commissioner

Jim Scheier
Rule Reviewer

Certified to the Secretary of State December 6, 1999.

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 September 30, 1999. This table includes those rules adopted during the period October 1, 1999 through December 31, 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 September 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

1.2.419 Scheduled Dates for the Montana Administrative Register, p. 2432, 2777
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 and other rules - State Procurement, p. 2124
I Acquiring Services to Operate the State Charitable Giving Campaign, p. 561, 1292
2.21.306 and other rule - Disaster Leave for Trained American Red Cross Volunteers, p. 2315
2.21.1423 and other rules - Persons with Disabilities Preference Policy, p. 2312
2.21.3602 and other rules - Veterans' Employment Preference Policy, p. 2304

(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

(Board of Clinical Laboratory Science Practitioners)
8.13.301 and other rules - Applications for License - Fees - Minimum Standards for Licensure - Continuing Education Requirements, p. 2675

(Board of Cosmetologists)
8.14.814 Fees - Initial, Renewal, Penalty and Refund Fees, p. 439, 2043

(State Electrical Board)
8.18.407 Fee Schedule, p. 441, 1200

(Board of Hearing Aid Dispensers)
8.20.402 Fees, p. 443, 1765

(Board of Landscape Architects)
8.24.409 Fee Schedule, p. 445, 1122

(Board of Medical Examiners)
8.28.420 and other rules - Fee Schedule - Fees, p. 447, 1766
8.28.1501 and other rules - Definitions - Post-Graduate Training Program, p. 2143
8.28.1508 Quality Assurance of Advanced Practice Registered Nurse Practice, p. 22, 1294

(Board of Funeral Service)
8.30.407 Fee Schedule, p. 450, 1201

(Board of Nursing)
8.28.1508 Quality Assurance of Advanced Practice Registered Nurse Practice, p. 22, 1294
8.32.301 and other rules - Nurse Practitioner Practice - Standards Relating to the Licensed Practical Nurse's Role in Intravenous (IV) Therapy - Prohibited IV Therapies, p. 1467
8.32.1409 Prohibited IV Therapies, p. 563, 680, 2437
8.32.1702 and other rules - Nursing Tasks that may be Delegated - General Nursing Tasks that may not be Delegated - Nursing Tasks Related to Gastrostomy Feeding that may be Delegated, p. 2150

(Board of Nursing Home Administrators)
8.34.414 and other rule - Examinations - Fee Schedule, p. 453, 1123

(Board of Optometry)
8.36.417 and other rules - Licensure of Out-of-State Applicants - Approved Programs or Courses - Therapeutic Pharmaceutical Agents - Approved Course and Examination - Approved Drugs, p. 2153, 2760
8.36.804 Approved Drugs, p. 1187

(Board of Outfitters)
8.39.501 and other rules - Outfitter Licenses - Qualifications - Examinations - Outfitter Acting as Guide - Renewal - Amendment to Operations Plan -

Inactive - Guide or Professional Guide License - Fees for Outfitter Operations Plan - N.C.H.U. - Guide or Professional Guide - Outfitter Records - Safety Provisions - Standards for Outfitters - Guides and Professional Guides - Unprofessional Conduct and Misconduct - Moratorium - Review of New Operations Plan - Proposed Expansion of Net Client Hunting Use Under Existing and New Operations Plans - Sale and Purchase of an Outfitting Operation, p. 2318

8.39.508 and other rules - Licensure--Renewal - Guide or Professional Guide License - Safety Provisions - Standards for Outfitters, Guides and Professional Guides - Unprofessional Conduct and Misconduct, p. 241, 809

(Board of Pharmacy)

8.40.404 Fee Schedule, p. 455, 1124

8.40.608 and other rules - Renewals - Non-compliance - Application for Registration - Wholesale Drug Distributor Licensing, p. 1721, 2438

8.40.702 Definitions, p. 2330

(Board of Professional Engineers and Land Surveyors)

8.48.1105 Fee Schedule, p. 1936

(Board of Private Security Patrol Officers and Investigators)

8.50.437 Fee Schedule, p. 459, 2044

(Board of Psychologists)

8.52.616 Fee Schedule, p. 461, 1125

(Board of Public Accountants)

8.54.410 and other rule - Fee Schedule - Statement of Permit Holders, p. 463, 1203, 1508

8.54.416 and other rules - Licensure of Foreign-Trained Applicants - Credit for Formal Individual Study Programs - Basic Requirement, p. 2332

(Board of Real Estate Appraisers)

8.57.101 and other rule - Board Organization - Continuing Education, p. 1189, 2624

8.57.406 and other rules - Qualifying Education Requirements - Adoption of USPAP by Reference - Regulatory Reviews, p. 2679

8.57.412 Fees, p. 465, 1657

(Board of Realty Regulation)

8.58.415A Continuing Real Estate Education, p. 2337

(Board of Respiratory Care Practitioners)

8.59.402 Definitions, p. 997

(Board of Sanitarians)

8.60.413 Fees, p. 999, 2248

(Board of Speech-Language Pathologists and Audiologists)
8.62.407 and other rules - Qualifications for Probationary License - Fees - Unlicensed Person, p. 1470, 2249

(Board of Veterinary Medicine)
8.64.402 Fee Schedule, p. 467, 1126
8.64.508 and other rule - Unprofessional Conduct - Record-keeping Standards, p. 565, 1509

(Building Codes Division)
8.70.101 and other rules - Building Codes Division, p. 1001, 1885

(Weights and Measures Bureau)
8.77.103 Weights and Measures Bureau - NIST Handbook 44, p. 469, 1295

(Division of Banking and Financial Institutions)
I-VI Deferred Deposit Lending, p. 1849, 2570

(Board of County Printing)
8.91.301 and other rules - County Printing, p. 2339

(Local Government Assistance Division)
I 2000/2001 Treasure State Endowment Program (TSEP), p. 2342
I Administration of the 1999 Treasure State Endowment Program (TSEP), p. 1473, 2761
I Administration of the 1999 Federal Community Development Block Grant Program, p. 3245, 1204, 1511
8.94.3001 and other rules - Monumentation of Surveys - Form, Accuracy, and Descriptive Content of Records Survey, p. 2156

(Board of Investments)
8.97.910 and other rules - INTERCAP Program, p. 2169
8.97.1101 and other rules - Board of Investments, p. 2682
8.97.1101 and other rules - Board of Investments, p. 1018

(Travel Promotion and Development Division)
8.119.101 Tourism Advisory Council, p. 471, 1296

EDUCATION, Title 10

(Office of Public Instruction)
10.21.101A and other rules - School Funding, Budgeting, and Transportation, p. 2694

(Board of Public Education)
I-CCLXXXIV and other rules - Content and Performance Standards for Literature, Writing, Speaking and Listening, Media Literacy, Science, Health, Technology, World Languages, Reading and Mathematics, p. 1030, 2440

(State Library Commission)
10.102.101 and other rules - Library Standards, p. 1724, 2626

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

12.9.602 and other rule - Pheasant Enhancement Program, p. 2719

(Fish, Wildlife, and Parks Commission)
12.6.901 Limiting the Motor-Propelled Water Craft to No-Wake Speed on the Fort Peck Dredge Cut Trout Pond, p. 2722
12.6.901 Limiting the Motor-Propelled Water Craft to No-Wake Speed from Porcupine Bridge to the Mouth of the Swan River, p. 1732, 1938, 2763
12.9.801 Creating Game Damage Hunt Rosters, p. 473, 1297

ENVIRONMENTAL QUALITY, Department of, Title 17

I-IV Solid Waste - Payment of Certain Abandoned Vehicle Removal Charges, p. 1791, 2452
I-VI CECRA - Listing, Delisting and Ranking Rules for Comprehensive Environmental Cleanup and Responsibility Act (CECRA) Facilities, p. 1264, 2941, 837
I-XIII and other rules - Comparable/Syngas Fuel Exclusion - Remedial Action Plans - Military Munitions - Hazardous Waste Management, p. 1940
17.40.203 and other rule - Certification - Fees for Water and Wastewater Operators, p. 2596
17.40.203 Wastewater Operator Certification, p. 1494, 1804
17.56.101 and other rule - Underground Storage Tanks - Underground Storage Tank Repairs, p. 1496, 2046
17.56.1001 Underground Storage Tanks - Underground Storage Tanks Fee Schedule, p. 1853

(Board of Environmental Review)
I and other rules - Public Water Supply - Public Water and Sewage System Requirements, p. 578, 1895
I Water Quality - Temporary Water Quality Standards for Daisy Creek, the Stillwater River, and Fisher Creek, p. 482, 1218
I & II and other rules - Air Quality - Air Quality Transportation - General Conformity Determinations, p. 244, 1216
I-XIV and other rules - Air Quality - Air Quality Compliance Assurance Monitoring - Requirements for Air Quality Operating Permit Content, p. 2725
17.8.101 and other rule - Air Quality - Implementation of Revised Federal Air Quality Standards for Particulate Matter, p. 2750
17.8.102 and other rules - Air Quality - Air Quality Incorporation by Reference Rules, p. 1191, 2250, 2767
17.8.301 and other rules - Air Quality - Maximum Achievable Control Technology (MACT) Approval for Hazardous Air Pollutants, p. 572, 1658

17.8.504 and other rule - Air Quality - Air Quality Permit Application Operation Fees, p. 1612, 2254
17.8.601 and other rules - Air Quality - Open Burning, p. 568, 1660
17.8.705 and other rules - Air Quality - De Minimis Changes that may be made to a Facility without an Application to Revise the Facility's Air Quality Permit, p. 261, 1206
17.8.1201 and other rule - Air Quality - Title V Air Quality Operating Permits, p. 2747
17.24.101 and other rules - Metal Mines - Metal Mines Reclamation Act, p. 2178
17.24.301 and other rules - Coal and Uranium Mining Program Rules for the Industrial and Energy Minerals Bureau, p. 2995, 811
17.24.303 and other rules - Coal and Uranium - Coal and Uranium Mining Organizational Changes, p. 1782, 2768
17.30.105 and other rule - Water Quality - Certification Options - General Prohibitions to Surface Water Quality Standards and Procedures, p. 1608, 2256
17.30.602 and other rules - Water Quality - Trigger Values p. 1603, 2275
17.30.602 and other rules - Water Quality - Montana Surface Water Quality Standards - Nondegradation - Ground Water Pollution Control System, p. 477, 1617, 2257
17.30.705 Water Quality - Nondegredation Requirements for Outstanding Resource Waters, p. 2753
17.30.1341 Water Quality - Permit Requirements of Lagoons, p. 1198, 1661
17.38.215 Public Water Supply - Bacteriological Quality Samples for Public Water Supply Systems, p. 257, 1222

(Department of Environmental Quality and Board of Environmental Review)
17.4.101 Incorporation by Reference of the Attorney General's Model Rules, p. 2173

(Petroleum Tank Release Compensation Board)
17.58.101 and other rules - Procedures and Criteria for Compensation of Petroleum Tank Remedial Costs, p. 1475, 2279
17.58.336 and other rules - Review and Determination of Claims and Charges, p. 682, 1512

TRANSPORTATION, Department of, Title 18

I-IV and other rules - Special Fuel Users Tax, Dealers and LPG Tax, p. 2797, 645, 1298

CORRECTIONS, Department of, Title 20

I-XLIV Operation and Physical Condition of a Private Correctional Facility - Security, Safety, Health, Treatment and Discipline of Persons Confined in a Private Correctional Facility, p. 1276, 1902, 2629

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

PUBLIC SERVICE REGULATION, Department of, Title 38

BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in November 1999, appear. Vacancies scheduled to appear from January 1, 2000, through March 31, 2000, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of December 7, 1999.

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

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER, 1999

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Outfitters (Commerce)			
Ms. Elaine Allestad Big Timber Qualifications (if required): sportsperson	Governor	not listed	11/1/1999 10/1/2002
Ms. Jennifer J. Cote Missoula Qualifications (if required): sportsperson	Governor	Allestad	11/26/1999 10/1/2002
Mr. Leslie K. Dolezal Billings Qualifications (if required): public member	Governor	Orr	11/1/1999 10/1/2002
Mr. Mel Montgomery Lima Qualifications (if required): big game outfitter	Governor	not listed	11/1/1999 10/1/2002
Mr. Wayne Underwood Billings Qualifications (if required): sportsperson	Governor	not listed	11/1/1999 10/1/2002
Board of Personnel Appeals (Labor and Industry)			
Mr. Jack Holstrom Clancy Qualifications (if required): attorney with labor-management experience	Governor	Rice	11/16/1999 1/1/2000
Developmental Disabilities Planning Advisory Council (Public Health and Human Services)			
Ms. Marlene Disburg Helena Qualifications (if required): representing vocational rehabilitation	Governor	Turner	11/26/1999 1/1/2001

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER, 1999

Appointee	Appointed by	Succeeds	Appointment/End Date
Developmental Disabilities Planning Advisory Council (Public Health and Human Services) cont.			
Mr. Jon Hesse Livingston Qualifications (if required): attorney	Governor	Lynaugh	11/26/1999 1/1/2001
Mr. Kevin Kosmann Billings Qualifications (if required): representing Region III	Governor	Kimball	11/26/1999 1/1/2003
Mr. Dan McCarthy Helena Qualifications (if required): representing the Office of Public Instruction	Governor	Runkel	11/26/1999 1/1/2001
Ms. Suzie Twedt Great Falls Qualifications (if required): representing Region II	Governor	Green	11/26/1999 1/1/2003
Governor's Council on Organ Donor Awareness (Public Health and Human Services)			
Ms. Mary Hainlin Helena Qualifications (if required): representative of organ donor families	Governor	not listed	11/22/1999 2/12/2000
Governor's Council on Tobacco Use Prevention (Public Health and Human Services)			
Dr. David Johnson Great Falls Qualifications (if required): representing the Montana Dental Association	Governor	Hemion	11/8/1999 9/22/2001
Sen. Bea McCarthy Anaconda Qualifications (if required): representing the Montana Senate	Governor	not listed	11/8/1999 9/22/2001

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER, 1999

Appointee	Appointed by	Succeeds	Appointment/End Date
Historical Preservation Review Board (Montana Historical Society)			
Ms. Kathy Doeden Miles City Qualifications (if required): public member	Governor	Johns	11/10/1999 10/1/2003
Mr. Chris King Winnett Qualifications (if required): public member	Governor	reappointed	11/10/1999 10/1/2003
Mrs. Germaine White St. Ignatius Qualifications (if required): public member	Governor	Wetzel	11/10/1999 10/1/2003
Independent Living Council (Public Health and Human Services)			
Ms. Cecilia C. Cowie Helena Qualifications (if required): none specified	Director	Olsen	11/22/1999 11/22/2001
Ms. Nancy Dunagan Helena Qualifications (if required): none specified	Director	Baril	11/22/1999 11/22/2001
Ms. Patricia Lockwood Laurel Qualifications (if required): none specified	Director	Osborn	11/22/1999 11/22/2001
Mr. James Meldrum Helena Qualifications (if required): none specified	Director	Mayer	11/22/1999 11/22/2001

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER, 1999

Appointee	Appointed by	Succeeds	Appointment/End Date
Microbusiness Advisory Council (Commerce)			
Ms. Jenna Caplette	Governor	Brydich	11/16/1999
Bozeman			6/30/2000
Qualifications (if required): representing cities with populations over 15,000			
Montana State Historic Preservation Officer (Montana Historical Society)			
Mr. Mark F. Baumler	Governor	not listed	11/22/1999
Helena			0/0/0
Qualifications (if required): appointed			
Montana Workforce Investment Board (Labor and Industry)			
Ms. Caroline Brown	Governor	Pease	11/1/1999
Harlem			0/0/0
Qualifications (if required): representing Native Americans			
Mr. Donald L. "Louie" Clayborn	Governor	not listed	11/1/1999
Helena			0/0/0
Qualifications (if required): representing Native Americans			
Peace Officers Standards and Training Advisory Council (Justice)			
Ms. Shanna Bulik	Governor	not listed	11/1/1999
Great Falls			2/13/2000
Qualifications (if required): juvenile detention administrator			
Private Land/Public Wildlife Advisory Council (Fish, Wildlife and Parks)			
Mr. Bryan Dunn	Governor	McCurdie	11/9/1999
Great Falls			6/30/2002
Qualifications (if required): sportsperson			
Public Employees' Retirement Board (Administration)			
Mr. Jay Klawon	Governor	not listed	11/1/1999
Hamilton			4/1/2004
Qualifications (if required): experienced in investment management			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER, 1999

Appointee	Appointed by	Succeeds	Appointment/End Date
Rangeland Resources Committee (Natural Resources and Conservation)			
Mr. Bob Anderson Culbertson	Governor	Davies	11/8/1999 0/0/0
Qualifications (if required): rancher from northern Montana			
State Compensation Insurance Fund Board of Directors (Administration)			
Ms. Margaret Maronick Sample Missoula	Governor	Shadoan	11/16/1999 4/28/2003
Qualifications (if required): representing private enterprise			

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2000 through MARCH 31, 2000

Board/current position holder	Appointed by	Term end
Appellate Defender Commission (Administration)		
Judge Dorothy B. McCarter, Helena Qualifications (if required): district judge	Governor	1/1/2000
Board of Architects (Commerce)		
Mr. John W. Peterson, Kalispell Qualifications (if required): registered architect	Governor	3/27/2000
Board of Chiropractors (Commerce)		
Ms. Patti Mitchell, Dillon Qualifications (if required): public member	Governor	1/1/2000
Dr. Karlene Berish, Billings Qualifications (if required): licensed chiropractor	Governor	1/1/2000
Board of Dentistry (Commerce)		
Dr. Thad Langford, Bozeman Qualifications (if required): dentist	Governor	3/29/2000
Board of Hail Insurance (Agriculture)		
Mr. W. Ralph Peck, Helena Qualifications (if required): Director of the Department of Agriculture	Governor	1/1/2000
Auditor Mark O'Keefe, Helena Qualifications (if required): State Auditor	Governor	1/1/2000
Board of Horse Racing (Commerce)		
Ms. Isabelle Devlin, Terry Qualifications (if required): resident of District 1	Governor	1/20/2000

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2000 through MARCH 31, 2000

Board/current position holder	Appointed by	Term end
Board of Horse Racing (Commerce) cont.		
Dr. James A. Scott, Great Falls	Governor	1/20/2000
Qualifications (if required): resident of District 3		
Board of Public Education (Education)		
Ms. Barbara Keim, Billings	Governor	2/1/2000
Qualifications (if required): resides in District IV		
Board of Regents of Higher Education (Education)		
Mr. Patrick P. Davison, Billings	Governor	2/1/2000
Qualifications (if required): Republican residing in Eastern District		
Board of Respiratory Care Practitioners (Commerce)		
Mr. Rich Lundy, Billings	Governor	1/1/2000
Qualifications (if required): respiratory care practitioner		
Dr. Richard Blevins, Great Falls	Governor	1/1/2000
Qualifications (if required): physician		
Capital Finance Advisory Council (Administration)		
Dr. Peter Blouke, Helena	Governor	2/25/2000
Qualifications (if required): Director of the Department of Commerce		
Mr. Bob Thomas, Stevensville	Governor	2/25/2000
Qualifications (if required): member of the Board of Housing		
Mr. Mark A. Simonich, Helena	Governor	2/25/2000
Qualifications (if required): Director of the Department of Environmental Quality		
Mr. Marvin Dye, Helena	Governor	2/25/2000
Qualifications (if required): Director of the Department of Transportation		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2000 through MARCH 31, 2000

Board/current position holder	Appointed by	Term end
Capital Finance Advisory Council (Administration) cont.		
Rep. Royal C. Johnson, Billings	Governor	2/25/2000
Qualifications (if required): legislator		
Mr. Jim Kaze, Havre	Governor	2/25/2000
Qualifications (if required): member of the Board of Regents		
Mr. Dave Lewis, Helena	Governor	2/25/2000
Qualifications (if required): Director of the Office of Budget and Program Planning		
Dr. Amos R. Little Jr., Helena	Governor	2/25/2000
Qualifications (if required): member of the Health Facility Authority		
Mr. Bud Clinch, Helena	Governor	2/25/2000
Qualifications (if required): Director of the Department of Natural Resources and Conservation		
Ms. Lois A. Menzies, Helena	Governor	2/25/2000
Qualifications (if required): Director of the Department of Administration		
Rep. Ray Peck, Havre	Governor	2/25/2000
Qualifications (if required): State Representative in the Montana Legislature		
Mr. Warren Vaughan, Billings	Governor	2/25/2000
Qualifications (if required): member of the Board of Investments		
Governor's Council on Organ Donor Awareness (Public Health and Human Services)		
Mr. Lowell Bartels, Helena	Governor	2/12/2000
Qualifications (if required): representative of business		

Board/current position holder	Appointed by	Term end
Governor's Council on Organ Donor Awareness (Public Health and Human Services) cont.		
Ms. Nancy Ellery, Helena	Governor	2/12/2000
Qualifications (if required): representative of the Department of Public Health and Human Services		
Lt. Governor Judy Martz, Helena	Governor	2/12/2000
Qualifications (if required): representative of state government and donor families		
Judicial Nomination Commission (Supreme Court)		
Mr. Tony Harbaugh, Miles City	Governor	1/1/2000
Qualifications (if required): public member		
Martin Luther King Holiday Commemorative Commission (Commerce)		
Ms. Kay Maloney, Great Falls	Governor	1/20/2000
Qualifications (if required): public member		
Ms. Cristina Medina, Helena	Governor	1/20/2000
Qualifications (if required): public member		
Ms. Carol Murray, Browning	Governor	1/20/2000
Qualifications (if required): public member		
Mr. Brian Schnitzer, Billings	Governor	1/20/2000
Qualifications (if required): public member		
Ms. Michelle Wilkerson, Great Falls	Governor	1/20/2000
Qualifications (if required): public member		
Mr. Robert Fourstar, Wolf Point	Governor	1/20/2000
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2000 through MARCH 31, 2000

Board/current position holder	Appointed by	Term end
Martin Luther King Holiday Commemorative Commission (Commerce) cont.		
Mrs. Pat Ojo, Missoula Qualifications (if required): public member	Governor	1/20/2000
Dr. Frederick Gilliard, Great Falls Qualifications (if required): public member	Governor	1/20/2000
Mr. Benjamin Pease Jr., Billings Qualifications (if required): public member	Governor	1/20/2000
Mr. Anthony Caldwell, Great Falls Qualifications (if required): public member	Governor	1/20/2000
Ms. Angelina Vallejo Cormier, Billings Qualifications (if required): public member	Governor	1/20/2000
Mr. Gary Conti, Bozeman Qualifications (if required): public member	Governor	1/20/2000
Montana Abstinence Education Advisory Council (Public Health and Human Services)		
Sen. Bea McCarthy, Anaconda Qualifications (if required): public member	Governor	2/13/2000
Rep. Loren Soft, Billings Qualifications (if required): state legislator	Governor	2/13/2000
Montana Arts Council (Education)		
Mr. Bill Frazier, Livingston Qualifications (if required): public member	Governor	2/1/2000

Board/current position holder	Appointed by	Term end
Montana Arts Council (Education) cont.		
Mr. Jack Hines, Big Timber	Governor	2/1/2000
Qualifications (if required): public member		
Mr. Monte Dolack, Missoula	Governor	2/1/2000
Qualifications (if required): public member		
Ms. Marilyn Olson, Sidney	Governor	2/1/2000
Qualifications (if required): public member		
Ms. Kathy Doeden, Miles City	Governor	2/1/2000
Qualifications (if required): public member		
Montana Higher Education Student Assistance Corporation (Education)		
Ms. Shirley Warehime, Helena	Governor	1/1/2000
Qualifications (if required): public member		
Montana-Alberta Boundary Advisory Council (Commerce)		
Rep. Ernest Bergsagel, Malta	Governor	3/9/2000
Qualifications (if required): representing the legislative branch		
Mr. Brian Cockhill, Helena	Governor	3/9/2000
Qualifications (if required): representing the Montana Historical Society		
Rep. George Heavy Runner, Browning	Governor	3/9/2000
Qualifications (if required): representing the legislative branch		
Rep. Linda J. Nelson, Medicine Lake	Governor	3/9/2000
Qualifications (if required): representing the legislative branch		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2000 through MARCH 31, 2000

Board/current position holder	Appointed by	Term end
Montana-Alberta Boundary Advisory Council (Commerce) cont.		
Ms. Lisa Perry, Shepherd	Governor	3/9/2000
Qualifications (if required): representative of the Tourism Advisory Council		
Peace Officers Standards and Training Advisory Council (Justice)		
Chief Robert Jones, Great Falls	Governor	2/13/2000
Qualifications (if required): representing Montana Chief's Association		
Sheriff Lee Edmisten, Virginia City	Governor	2/13/2000
Qualifications (if required): representing Montana Sheriff's Association		
Sen. Debbie Shea, Butte	Governor	2/13/2000
Qualifications (if required): representing Montana Board of Crime Control		
Mr. Jack Lynch, Butte	Governor	2/13/2000
Qualifications (if required): representing Montana League of Cities and Towns		
Colonel Craig Reap, Helena	Governor	2/13/2000
Qualifications (if required): representing Montana Highway Patrol		
Mr. Greg Noose, Helena	Governor	2/13/2000
Qualifications (if required): representing Montana Law Enforcement Academy		
Mr. Donald R. Houghton, Bozeman	Governor	2/13/2000
Qualifications (if required): representing Montana Deputy Sheriff's Association		
Mr. Dennis McCave, Billings	Governor	2/13/2000
Qualifications (if required): representing Montana detention officers		
Mr. Chris Miller, Deer Lodge	Governor	2/13/2000
Qualifications (if required): representing Montana Attorney's Association		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2000 through MARCH 31, 2000

Board/current position holder	Appointed by	Term end
Peace Officers Standards and Training Advisory Council (Justice) cont.		
Ms. Surry Latham, Helena	Governor	2/13/2000
Qualifications (if required): representing Montana communications officers		
Prison Ranch Advisory Council (Corrections)		
Rep. Francis Bardanouve, Harlem	Director	2/1/2000
Qualifications (if required): rancher		
Sen. Thomas Beck, Deer Lodge	Director	2/1/2000
Qualifications (if required): rancher		
Mr. Don Davis, Deer Lodge	Director	2/1/2000
Qualifications (if required): rancher		
Rep. Bill Tash, Dillon	Director	2/1/2000
Qualifications (if required): rancher		
Rep. Edward (Ed) J. Grady, Canyon Creek	Director	2/1/2000
Qualifications (if required): rancher		
Sen. Francis Koehnke, Townsend	Director	2/1/2000
Qualifications (if required): rancher		
Mr. Ray Lybeck, Kalispell	Director	2/1/2000
Qualifications (if required): dairyman		
Rep. Robert Thoft, Stevensville	Director	2/1/2000
Qualifications (if required): rancher		
Resource Conservation Advisory Council (Natural Resources and Conservation)		
Mr. Dennis L. DeVries, Polson	Director	1/30/2000
Qualifications (if required): conservation districts		

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2000 through MARCH 31, 2000

Board/current position holder	Appointed by	Term end
Resource Conservation Advisory Council (Natural Resources and Conservation) cont.		
Ms. Jamie Doggett, White Sulphur Springs Qualifications (if required): Western Montana	Director	1/30/2000
Mr. Sever Enkerud, Glasgow Qualifications (if required): grazing districts	Director	1/30/2000
Mr. Robert Fossum, Richland Qualifications (if required): Eastern Montana	Director	1/30/2000
Mr. Tom Stelling, Fort Shaw Qualifications (if required): North Central Montana	Director	1/30/2000
Mr. Ellis Hagen, Westby Qualifications (if required): general public	Director	1/30/2000
Ms. Marieanne Hanser, Billings Qualifications (if required): South Central Montana	Director	1/30/2000
State Employees' Combined Campaign Steering Committee (Administration)		
Ms. Barbara Proulx, Helena Qualifications (if required): none specified	Director	3/30/2000
Ms. Joy McGrath, Helena Qualifications (if required): none specified	Director	3/30/2000
Vocational Rehabilitation Advisory Council (Public Health and Human Services)		
Ms. Betty Van Tighem, Great Falls Qualifications (if required): none specified	Director	2/10/2000