MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 14

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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NOTICE SECTION

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD OF THE STATE OF MONTANA

In the matter of amendment of ARM 2.43.302, 2.43.403, 2.43.406, 2.43.408, 2.43.452, 2.43.520 and 2.43.604 pertaining to the retirement systems administered by the Montana Public Employees' Retirement Board	)))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 21, 2001, the Public Employees' Retirement Board proposes to amend ARM 2.43.302, 2.43.403, 2.43.406, 2.43.408, 2.43.452, 2.43.520 and 2.43.604 which will make the retirement system rules for all retirement systems administered by the Public Employees' Retirement Board consistent with recent statutory changes.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employees' Retirement Board no later than 5:00 p.m. on August 10, 2001, to advise us of the nature of the accommodation that you need. Please contact Lucie Willson; P.O. Box 200131, Helena MT 59620-0131; telephone 406-444-7939; TDD number 406-444-1421; FAX 406-444-5428; e-mail lwillson@state.mt.us.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

2.43.302 DEFINITIONS Undefined terms used in this chapter are consistent with statutory meanings. Defined terms will be applied to the statutes unless a contrary meaning clearly appears. For the purposes of this chapter, the following definitions apply:

(1) "Benefit recipient" means any retired member, contingent annuitant, or survivor who receives a monthly benefit payment from a retirement system. It does not include a beneficiary who receives a lump-sum payment or an annuity.

(2) "Board" means the Montana public employees' retirement board.

~~(2)~~(3) "Contested case" ~~is~~ means a legal proceeding, as set forth in these rules, subsequent to preliminary administrative determination.

~~(3)~~(4) "Contingent beneficiary" means a beneficiary designated to receive payments if all primary beneficiaries are deceased. Contingent beneficiaries will be on a share and share alike basis, unless the member specifies otherwise.

~~(4)~~(5) "Continuous employment" means a member serves in full-time, part-time, or seasonal employment, but does not

terminate service nor withdraw the accumulated contributions from the member's account.

~~(5)~~(6) "Employment" or "reemployment" means the performance of services for an employer by a person other than an independent contractor. If any of the four factors listed in ~~(8)~~(10) indicate control or direction by the employer, an employment relationship exists.

(7) "Filed" or "filed with the board" generally means the mailing of a form or payment in a stamped envelope which is properly addressed to the MPERA or the board. The postmark date will be used to determine the date on which filing occurs. If the form or payment is hand-delivered, it is considered filed on the day it is personally delivered to the MPERA office. If the form is faxed to MPERA or the board, it is considered filed on the day it is received in the MPERA office, provided a hard copy is received in the MPERA office within five working days of the filing date. A form can not be filed by e-mail as a signature is required.

~~(6)~~(8) "Full-time employment" for service credit, means an employer or employers paid the member for at least 160 hours during a calendar month. A member may not receive more than one month credit for months in which the member receives pay for more than 160 hours.

~~(7)~~(9) "Full-time public service employment" means full time employment which when it was performed was not covered by a system referred to in 19-2-302, MCA, and may not otherwise be credited in a retirement system.

~~(8)~~(10) "Independent contractor" means an individual who renders service in the course of an occupation and is both:

(a) engaged in an independent trade, occupation, profession or business; and

(b) under contract and in fact, at all times free from control or direction over the performance of the services. The division may consider but is not limited to the following factors when determining freedom from control and direction:

(i) right or exercise of control of the means by which the work is accomplished;

(ii) method of payment (time basis indicates employment);

(iii) furnishing of equipment; and

(iv) employer's right to fire.

(c) Independent contractor status may only be established by a convincing accumulation of these factors indicating freedom from control or direction over performance of the services.

(11) "MPERA" means the Montana public employee retirement administration.

~~(9)~~(12) "Part-time employment" for service credit, means an employer or employers paid a member for less than 160 hours during a calendar month.

~~(10)~~(13) "PERS" means the public employees' retirement system.

~~(11)~~(14) "Primary beneficiary" means a beneficiary designated to receive payments upon the death of a member.

Primary beneficiaries will be on a share and share alike basis, unless the member specifies otherwise.

~~(12)~~(15) "Seasonal employment" means employment within a calendar or fiscal year which is less than 6 months duration. Seasonal employment occurs on an on going basis during the same months in succeeding years.

~~(13)~~(16) "Service years" or "years of service" means periods of 12 calendar months of membership service which qualify members for retirement or other benefits.

~~(14)~~(17) "Survivor" means the designated or statutory beneficiary of a member who dies while in service.

AUTH: 19-2-403, ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202~~, MCA
IMP: Title 19, Ch. 2, 3, 5, 6, 7, 8, 9, and 13, MCA

REASON: The proposed amendments implement language changes contained in HB 152. Two of the proposed definitions provide terms to be used when referencing the Montana Public Employee Retirement Administration and the Montana Public Employees' Retirement Board. Proposed (7) clarifies that the filing date of a document is the day it is postmarked, not the day it is received in the MPERA office. Reference is also made to filing in person, by fax and through e-mail.

2.43.403 OPTIONAL MEMBERSHIP (1) Employees for which membership in a retirement system is optional may become members by completing an application form provided by the board. The application form must be filed with the board within 180 days of commencement of the employment for which membership is optional, or 180 days of the effective date of the statute permitting optional membership, whichever is later. ~~Once~~ Except as provided in (2), once elected, members may not discontinue membership without termination of employment.

(2) The board may ~~grant an exemption to (1)~~ permit an employee to discontinue optional membership if the employee submits proof that the employee was not ~~given the opportunity to elect membership~~ informed membership was optional. The employee must ~~file this request for exemption~~ submit such proof within 180 days of the employee's first day of employment, or 180 days of the filing of the application form, whichever is later.

(3) ~~If membership is~~ Membership discontinued~~,~~ pursuant to (2) must be treated as a reporting error. ~~the~~ The board ~~will refund~~ shall issue a credit for all contributions, plus interest, to the ~~employee~~ employer. ~~The board will not refund or issue a credit for employer contributions.~~ The employer will be responsible for refunding appropriate contributions to the employee.

AUTH: 19-2-403, ~~19-3-304~~, MCA
IMP: ~~19-2-403, 19-3-304,~~ 19-2-903, 19-3-412, 19-13-301, MCA

REASON: The proposed amendments implement changes made by the 1999 and 2001 legislatures which provide for optional membership elections to be made within 180 days of either the date of employment (1999 Ch. 58) or, if the member is a part-paid firefighter, the date of passage of HB 152 (2001), whichever is later. Proposed amendments to (2) clarify and extend the time for the procedure to be used when employees who qualify for optional membership are treated by employers as members without being offered the option to decline membership.

2.43.406 BASIC ~~UNIT~~ PERIOD OF SERVICE (1) The ~~year~~ month is the basic ~~unit~~ period for the awarding of service ~~credits~~ credit and membership service ~~years~~ for all retirement systems.

~~(2)~~(a) Except as otherwise specified by rule or statute, 12 months of service credit will equal one year of service credit, regardless of the calendar period during which the service ~~credits were~~ credit was earned.

(b) Except as otherwise specified by rule or statute, 160 hours of service credit will equal one month of service credit, regardless of the calendar period during which the service credit was earned.

(c) Service credit of less than 160 hours in a calendar month constitutes part-time service.

~~(3)~~(2) ~~In the case of members with periods of both full-time and part-time covered employment with such fulltime~~ If only compensation for full-time covered employment ~~being~~ is used ~~in the calculation of~~ to calculate "final average ~~salary,~~ compensation" or "highest average compensation" and if the member has full- and part-time service, then the member must be granted proportional service ~~credits shall be granted in each calendar month where the fraction is~~ credit for service in each calendar month. The proportion will be equal to the number of documented hours for which ~~the employee received~~ compensation ~~during a calendar month~~ was reported for the employee, divided by 160 hours~~. In no case may the fraction~~, but may not be greater than ~~1~~ one.

~~(4)~~(3) If ~~a member has~~ only compensation for part-time covered employment~~, or if he has both full-time and part-time covered employment but such full-time employment~~ is ~~not~~ used to calculate "final average ~~salary,~~ compensation" or "highest average compensation" and if the member has full- and part-time service, then the member must ~~proportional service credits shall~~ be granted ~~for each year of continuous part-time employment based upon the months or hours worked during each part-time year and the percentage time worked during the "final average salary" computation period~~ one month of service credit for service in each calendar month regardless the number of hours worked that month.

AUTH: 19-2-403, ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202,~~ MCA

IMP: ~~Title 19, Ch. 3, part 5, Ch. 5, part 3, Ch. 6, part 3, Ch. 7, part 3, Ch. 8, part 3, Ch. 9, part 4, Ch. 13, part 4,~~ 19-2-701, 19-3-904, 19-5-502, 19-6-502, 19-7-503, 19-8-603, 19-9-804, 19-13-704, MCA

REASON: The proposed amendments implement language changes contained in HB 152, define part-time service, and clarify the calculation of final average compensation, highest average compensation, and service credit under various situations. The proposed amendments reflect actual practice as MPERA calculates service credit based on months, not years, of service.

2.43.408 ~~LUMP SUM PAYMENTS OF VACATION OR SICK LEAVE EXCLUDED~~ CALCULATION OF SERVICE CREDIT ON TERMINATION OF EMPLOYMENT (1) ~~No service credit~~ A member terminating employment shall not be granted service credit for lump sum payments of severance pay, including vacation, ~~or~~ sick, or compensatory leave ~~after a member's last day on the employer's payroll~~.

(2) A member who receives compensation in a month after termination of employment may elect to receive appropriate service credit for that month. No member can receive both service credit and a retirement benefit for the same month.

AUTH: 19-2-403~~, 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202~~, MCA
IMP: ~~Title 19, Ch. 2, part 7, Ch. 3, part 5, Ch. 6, part 3, Ch. 7, part 3, Ch. 8, part 3, Ch. 9, part 4, Ch. 13, part 4,~~ 19-3-108~~(5)~~, 19-6-101~~(3)~~, 19-7-101~~(2)~~, 19-8-101~~(2)~~, 19-9-104~~(4)~~, 19-13-104~~(5)~~, MCA

REASON: The proposed amendments to (1) implement language changes contained in HB 294 regarding the definition of "compensation". Subsection (2) provides a member with the option of receiving either service credit or a retirement benefit, but not both, when compensation is paid following termination of employment (e.g. as the result of a grievance or lawsuit). The catch-phrase has been amended to portray the purpose of the administrative rule - to explain the calculation of service credit at the time of termination of employment.

2.43.452 RETURN TO EMPLOYMENT WITHIN SAME JURISDICTION (1) A member who receives additional service under 19-2-706 or 19-3-908, MCA, may again be ~~reemployed~~ employed within the same jurisdiction. However, the member may only work for ~~up to but not including~~ less than 960 hours in a position covered by the public employees' retirement system or 600 hours in a position covered by another Title 19, MCA, retirement system during any calendar year. A retired member must terminate employment and receive at least 1 monthly retirement benefit before returning to active service. An

inactive member may return to active service within the same jurisdiction after a 5-day break in service.

(2) A member who receives the incentive, and returns to employment within the same jurisdiction, must notify the board within 1 week of employment. Service performed under an independent contract that fails the tests set out in ARM 2.43.302 is employment subject to the 600-hour or the 960-hour limitation and reporting requirements.

(3) Employers must report to the board the following information:

(a) a member who took advantage of the provisions of 19-2-706 or 19-3-908, MCA, and who ~~returned~~ returns to work within the same jurisdiction;

(b) current hours worked and amounts paid to the member; and

(c) each member's active service or employment after retirement with an independent contractor or as an independent contractor.

(4) When a member works for 960 or more hours in a position covered by the public employees' retirement system or for 600 or more hours for another Title 19, MCA, retirement system, for the same jurisdiction, the member forfeits the additional service. The board will give employers a credit for the amount they paid for the service minus the total retirement benefits paid to the member. If the employer is paying on an installment contract, the amount due will be the total benefits paid from retirement to forfeiture. The board will charge interest at an effective annual rate of 8%, compounded monthly, for any outstanding balance.

AUTH: 19-2-403, 19-3-908, MCA
IMP: 19-2-706, 19-3-908, MCA

REASON: The proposed amendments implement changes contained in SB 37 regarding the number of hours which may be worked by an individual who returns to work within the same jurisdiction following termination pursuant to 19-2-706, MCA, reduction in force (RIF) or 19-3-908, MCA, the retirement incentive program (RIP).

2.43.520 ELECTION FOR GUARANTEED ANNUAL BENEFIT ADJUSTMENT COVERAGE (GABA) (1) Members, contingent annuitants, and survivors of the following retirement systems must file an election to receive the benefit increases provided by GABA:

(a) judges' retirement system (JRS);

(b) highway patrol officers' retirement system (HPORS);

(c) municipal police officers' retirement system (MPORS); and

(d) firefighters' unified retirement system (FURS).

(2) The election must be made on forms provided by the board and must be ~~received by~~ filed with the board on or before December ~~31~~ 1, ~~1997~~ 2001.

(3) Members, contingent annuitants, and survivors who fail to file the election by December ~~31~~ 1, ~~1997~~ 2001, will not receive benefit increases under GABA. These people will continue to receive the minimum benefits in effect before July 1, 1997. The ~~division~~ MPERA will notify these people that they will receive the minimum benefits but not increases under GABA.

(4) A revocation of an election must be made by the member in writing and must be ~~received by~~ filed with the board on or before December ~~31~~ 1, ~~1997~~ 2001. All elections are irrevocable as of ~~January 1~~ December 2, ~~1998~~ 2001.

AUTH: 19-2-403, 19-2-1101, 19-5-901, 19-6-710, 19-9-1009, 19-13-1010, MCA
IMP: ~~19-2-403,~~ 19-2-1101, 19-5-901, 19-6-710, 19-9-1009, 19-13-1010, MCA

REASON: The proposed amendments implement changes contained in HB 294 which provide for a new guaranteed annual benefit adjustment (GABA) election period for members of the Judges' Retirement System, the Highway Patrol Officers' Retirement System, the Municipal Police Officers' Retirement System and the Firefighters' Unified Retirement System.

2.43.604 DEATH PAYMENTS, SURVIVOR BENEFITS, AND OPTIONAL RETIREMENT BENEFITS (1) Upon the death of a member ~~or retiree~~, the member's designated beneficiary, statutory beneficiary, or contingent annuitant must submit a certificate of death ~~must be submitted to the retirement division along with~~ and a completed MPERA death ~~benefit~~ claim form ~~by the beneficiary on record at~~ to the ~~public employees' retirement division office,~~ MPERA. ~~or in the event of no living~~

(2) If the designated or statutory beneficiary predeceases the member, the member's estate or next of kin ~~beneficiary~~ as defined in ~~statute~~ 19-2-802, MCA, must file the documents required in (1).

~~(2)~~ (3) If the designated or statutory beneficiary renounces their interest in their payment rights, a contingent beneficiary may submit the documents required in (1).

(4) Upon receipt of the ~~above~~ documents required in (1), ~~the retirement division~~ MPERA staff will advise the beneficiary or contingent annuitant of the benefits available ~~to him~~.

(5) ~~Claim~~ Death claim forms ~~for death benefit payments~~ are available at ~~the office of~~ the ~~retirement division~~ MPERA office.

AUTH: Sec. ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202~~ 19-2-403, MCA
IMP: ~~Title 19, Ch. 3, part 12~~ Sec. 19-2-801, 19-3-1201, ~~19-5-603~~ 19-5-801, 19-5-802, ~~19-6-602, 19-6-603, 19-6-604~~ 19-6-901, 19-6-902, 19-6-903, ~~19-7-604~~ 19-7-901, ~~19-8-703, 19-8-704~~ 19-8-1001, 19-8-1002, 19-9-1003, ~~19-9-911, 19-9-912~~ 19-9-1101, 19-9-1102, ~~Title 19, Ch. 13, part 9~~ 19-13-902, 19-13-

903, MCA

REASON: The proposed amendments implement changes contained in HB 152 by providing the process to be followed when a designated or statutory beneficiary renounces their interest in the member's benefits.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendments in writing to Mike O'Connor, Executive Director, Public Employees' Retirement Board, P.O. Box 200131, Helena, Montana 59620-0131; FAX 406-444-5428; e-mail moconnor@state.mt.us no later than August 16, 2001.

5. If persons who are directly affected by the proposed amendments 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 Lucie Willson; P.O. Box 200131, Helena MT 59620-0131; 406-444-7939; FAX 406-444-5428; e-mail lwillson@state.mt.us. A written request for hearing must be received no later than August 16, 2001.

6. If the agency receives requests for a public hearing on the proposed amendments 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 3,183 persons based on 2000 payroll reports of active members.

7. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the 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 that the person wishes to receive notices regarding public retirement rulemaking actions. Such written request may be mailed or delivered to Lucie Willson, Public Employees' Retirement Board, P.O. Box 200131, Helena MT 59620-0131, faxed to the office at 406-444-5428, or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

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

/s/ Terry Teichrow
Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly A. Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on July 9, 2001.

**BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA**

In the matter of the proposed amendment of ARM 4.14.301, 4.14.302, 4.14.303, 4.14.305, 4.14.306, 4.14.307, 4.14.308, 4.14.309, 4.14.310, 4.14.311, 4.14.312, 4.14.313, 4.14.314, 4.14.315, 4.14.316 and 4.14.601 relating to loan qualifications	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLETED

TO: All Concerned Persons

1. On August 18, 2001 the Montana Department of Agriculture proposes to amend the above stated rules relating to loan qualifications.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking 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 August 2, 2001, to advise us of the nature of the accommodation that you need. Please contact Lee Boyer at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2402; TDD: (406) 444-4687; Fax: (406) 444-9442 or E-mail: agr@state.mt.us.

3. The rules as proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

4.14.301 DEFINITIONS ~~(1)~~ When used in these rules, unless the context clearly requires a different meaning:

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

~~(b)~~ (5) The "authority" means the ~~nine member Montana agricultural loan authority created by Title 2, chapter 15, section 2-15-3011, MCA.~~ department of agriculture provided for in 2-15-3001, MCA.

(c) remains the same, but is renumbered (7).

~~(d)~~ (2) "Agricultural improvements" means any improvements, buildings, structure or fixtures suitable for use in farming/ranching which are located on agricultural land and may include an existing dwelling for residence. ~~NOTE: However, the ability to finance a personal residence is severely limited due to internal revenue service regulations; therefore, except in certain limited circumstances (when the value of the residence is clearly less than 5% of the amount of the loan) which would require the prior approval of the authority, it would be necessary to finance the personal residence separately when farmland is being financed with an authority bond.~~

~~(e)~~ (3) "Agricultural land", as defined in ~~Title 80, chapter 12, section~~ 80-12-~~103~~ 102, MCA, means land actively devoted to agricultural use as defined in ~~Title 15, chapter 7, section~~ 15-7-202, MCA.

~~(f)~~ (4) "Application" means a completed instrument on a form approved by the authority. Each application must include the following: beginning farmer/rancher name, address, financial data, ~~evidence of unavailability of alternative credit,~~ description of anticipated use of loan proceeds, amount of loan, cost or purchase price of the item financed (including the interest rate and collateral or other security required), statement of beginning farmer's/rancher's net worth determined in accordance with authority rules, a summary of proposed loan terms and certain certifications of the beginning farmer/rancher and ~~lender~~ financial institution.

~~(g)~~ (6) "Beginning f~~F~~armer/rancher" means an individual who meets all qualifications required under ~~Title 80, Chapter 12, MCA, including a net worth of $250,000 or less and who is a resident of Montana as defined by Title I, Chapter I, Section 1-1-215, MCA and whose primary goal must be directed toward the operation and management of the agricultural pursuit for which the application is made~~ 80-12-203(1) and (2), MCA.

~~All individuals within a partnership, joint venture, or association must meet the definition of a beginning farmer in order to receive a loan through the Authority. The partnership, joint venture or association will not qualify for a loan if any one individual member does not meet the definition of a beginning farmer.~~

~~(h)~~ (8) "Depreciable a~~A~~gricultural p~~P~~roperty" means personal property suitable for use in farming/ranching for which an income tax deduction for depreciation is allowable in computing federal income tax and which is located on agricultural land.

~~(i)~~ (9) "Farming/r~~R~~anching" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock or the production of timber, or sod or other agricultural enterprises on agricultural land. Farming/r~~R~~anching shall not include ~~a processor or distributor of agricultural products or supplies who provides~~ spraying, harvesting, or providing other farm/ranch services on contract.

~~(j)~~ (12) "Net w~~W~~orth" means total assets minus total liabilities as determined by the ~~lender~~ financial institution, in accordance with rules of the a~~A~~uthority and generally accepted accounting procedures.

~~(k)~~ (10) "~~Lender~~ Financial institution or bond purchaser" means any bank, bank holding company, trust company, mortgage company, national banking association, savings and loan association, credit union, life insurance company, any state or federal government agency or instrumentality, ~~or~~ any other ~~financial institution or~~ entity authorized to make mortgage loans or secured loans in this state or any person that obtains

an authority bond under the program in connection with a contract sale or loan to a beginning farmer/rancher.

(11) "Loan agreement" means a loan agreement, financing agreement, installment purchase agreement or any other agreement entered into by the authority with the beginning farmer/rancher or financial institution in connection with the issuance of the authority's bond under this program.

(l) remains the same, but is renumbered (13).

(i) Total assets shall not include items used for personal, family or household purposes by the applicant, but in no event shall such property be excluded to the extent a deduction for depreciation is allowable for federal income tax purposes. All assets shall be valued at fair market value by the ~~participating lender~~ financial institution. Such value shall be what a willing buyer would pay a willing seller in the locality. A deduction of ~~ten percent (10%)~~ may be made from fair market value of farm and other real estate.

(m) remain the same, but is renumbered (14).

AUTH: 80-12-103, MCA
IMP: 80-12-102, MCA

REASON: The definitions were put in alphabetical order for ease of use. (b) The definition of "Authority" needs to be amended due to a 1991 amendment to 80-12-102, MCA which eliminated the nine member board and transferred its responsibilities to the Montana Department of Agriculture.

(d) The definition of "Agricultural Improvements" is amended to remove unnecessary verbiage because the information is contained in IRS regulations relating to Beginning Farmer/Rancher Loans and there is no need to duplicate. Also, wherever the term "ranch" or "ranching" is inserted is to clarify that ranchers also qualify for program loans.

(e) The definition of "Agricultural land" is amended to correct the MCA numbers.

(f) "Application" is amended to remove an unnecessary requirement.

(g) "Beginning Farmer/Rancher" is amended to refer to the definitions in 80-12-203(1) and (2), MCA.

(h) "Depreciable Agricultural Property" is amended to clarify that the definition conforms to IRS rules.

(i) "Farming/Ranching" is amended to provide a clearer definition.

(j) The definition of "Net Worth" is amended to clarify that the definition conforms to that found in the generally accepted accounting procedures (GAAP). "Lender" is amended throughout these rules to "Financial Institution" which is a more accurate description of the parties involved.

(k) "Lender" is amended to read "Financial Institution" or "Bond Purchaser" because these terms more accurately describe that party. The definition is also expanded to include those parties that may qualify to handle a contract transaction.

(n) "Loan Agreement" is defined so participants understand what a loan agreement is.

4.14.302 LOAN POWERS AND ELIGIBLE LOAN ACTIVITIES

(1) Title 80, cChapter 12, MCA, authorizes the aAuthority to provide loans for a variety of purposes. ~~The Authority bond program must meet the requirements of Title 80, Chapter 12, MCA, Administrative Rules of the Authority and the U.S. Internal Revenue Service on use of tax-exempt revenue bond proceeds~~.

(2) Eligible loan activities consist of financing purchases of ~~the following:~~ depreciable agricultural property, agricultural improvements, and agricultural land.

(a) ~~Depreciable Agricultural Property – t~~The aAuthority will finance purchase of personal property suitable for use in farming/ranching for which an income tax deduction for depreciation is allowable in computing federal income taxes and which is located on agricultural land. Examples are: livestock used for breeding purposes, farm/ranch machinery, trucks, etc. Feeder cattle, pigs or lambs do not qualify as depreciable property.

(b) ~~Agricultural Improvements – t~~The aAuthority will finance the purchase of improvements, buildings, structures or fixtures located on agricultural land which are suitable for use in farming/ranching. Examples are: confinement systems for swine, cattle, or poultry, barns and other out buildings, grain storage facilities, silos, tilling and soil conservation practices such as terraces, farm ponds, erosion control structures, waterways, etc.

(c) ~~Agricultural Land – t~~The aAuthority will finance the purchase of land in Montana suitable for farming/ranching and which is or will be operated for farming/ranching purposes by an individual beginning farmer/rancher who will be the principal user of such land and who will materially and substantially participate in the operation and management of the farm/ranch. Purchase of land for speculative purposes is ineligible for loan under this program. The purchase of land that is entirely enrolled in conservation reserve program (CRP) is not permitted. Depending on whether a portion of the loan is used to finance a house (not to exceed 5%), 20 to 25% of the loan proceeds may be used to purchase CRP acres.

(d) through (3) remain the same.

AUTH: 80-12-103, MCA
IMP: 80-12-201, MCA

REASON: (1) Simplifies and clarifies the power of the Authority. (2)(a) Is amended to match the definition of "Depreciable Agricultural Property". (b) Is amended to provide a more concise definition of "Agricultural Improvements." (c) "Agricultural Land" is amended to define the limitations on purchasing land enrolled in the Conservation Reserve Program (CRP) because when the original rules were drafted there was no CRP.

4.14.303 LOAN MAXIMUMS (1) Maximum amounts which may be loaned to a beginning farmer/rancher are:

(a) ~~New depreciable agricultural property and new agricultural improvements loan(s) totaling no more than $500,000 in aggregate.~~ No more than an aggregate of $250,000 may be used to purchase agricultural land, agricultural improvements and depreciable agricultural property; and

(b) ~~Agricultural land and existing agricultural improvements and used depreciable agricultural property loan(s) totaling no more than $250,000 in aggregate.~~ Of the amount specified in (1)(a), no more than $125,000 can be used for depreciable agricultural property of which no more than $62,500 can be for used property.

~~(2) The total amount that may be loaned to any individual and/or partnership and/or joint venture, individually, or in aggregate shall not be more than: $500,000 for new depreciable agricultural property and new improvements to agricultural land and $250,000 for agricultural land and existing agricultural improvements and used depreciable agricultural property.~~

AUTH: 80-12-103, MCA
IMP 80-12-103, MCA

REASON: (1)(a) Is amended to comply with IRS regulations. (b) Is amended to comply with IRS regulations. (2) Is removed because (1)(a) states the maximum loan amount.

4.14.305 APPLICANT ELIGIBILITY (1) Basic ~~Authority~~ program applicant eligibility requirements are:

(a) The beginning farmer/rancher may not have a net worth in excess of $250,000~~.~~;

(b) ~~There are no age limits for borrowers participating in the Authority, however, Title 41, Chapter 1, Part 3, MCA will be followed.~~ The beginning farmer/rancher must be a minimum of 18 years of age;

(c) The beginning farmer/rancher must be a resident of Montana at the time the ~~completed application is submitted to the participating lender~~ loan is closed~~.~~;

(d) The beginning farmer/rancher must have documented, to the satisfaction of the ~~lender~~ financial institution and the aAuthority, sufficient education, training and experience for the anticipated farming/ranching operations for which the loan is sought~~.~~; and

(e) The beginning farmer/rancher must, as a condition of loan closing, demonstrate to the satisfaction of the ~~lender~~ financial institution and the aAuthority, access to the following as may be needed: adequate working capital, farm/ranch machinery, livestock and agricultural land.

~~(f) The beginning farmer intending to purchase agricultural land cannot at any time have had any direct or indirect ownership interest in substantial agricultural land (land which is at least 15% of the median size of a farm/ranch in the county in which such land is located and which while held by the beginning farmer, at no time had a fair market~~

~~value in excess of $125,000) in the operation of which the beginning farmer materially participated. For the purposes of this subsection, any ownership or material participation by the beginning farmer's spouse or minor children is treated as ownership and material participation by the beginning farmer.~~

~~(g) The beginning farmer must intend to materially and substantially participate in the operation of the agricultural land or depreciable assets purchased through the Authority loan.~~

AUTH: 80-12-103, MCA
IMP: 80-12-203, 80-12-204, MCA

REASON: (1) "Authority" is changed to "program" because the eligibility requirement is a program requirement. (b) Because of the maximum loan amount available to applicants, the Authority feels it is appropriate that loan applicants be 18 years of age. (c) Clarifies that the applicant must be a resident of Montana when the loan is closed because this is a Montana program designed for Montana residents. (f) and (g) are deleted because they duplicate federal regulations.

4.14.306 APPLICATION PROCEDURES (1) The a~~A~~uthority will make its loan proceeds available through ~~lenders~~ financial institutions. ~~Lenders~~ Financial institutions interested in the program must complete and sign the Agricultural Loan Bond Program Application and return it to the a~~A~~uthority office in Helena. The following should be noted:

(a) Application and other forms will be provided by the a~~A~~uthority to ~~lenders~~ financial institutions as necessary. ~~Lenders may use their own application forms in addition to the approved Authority forms for their own internal loan review purposes, but must take into account any differences that might occur with respect to the Authority forms.~~ ~~Lenders~~ Financial institutions may ~~also~~ use their own financial statement and other forms deemed necessary to document the eligibility of the beginning farmer's/rancher's ~~or his or her~~ ability to repay principal and interest payments~~.~~; and

(b) There is no formal or defined application period. The loan program is ongoing, therefore, a ~~financial institution may become a lender~~ beginning farmer/rancher may apply at any time.

AUTH: 80-12-103, MCA
IMP: 80-12-103, MCA

REASON: (1)(a) Amended for clarification purposes. Financial institutions will need to use the Authority's application form to insure that applicants meet all IRS regulations. (b) Clarifies that the Beginning Farmer/Rancher applies for the loan, not the financial institution.

4.14.307 LOANS TO BEGINNING FARMERS/RANCHERS AND SECURITY ARRANGEMENTS (1) Loans to beginning farmers/ranchers involve

the ~~lender,~~ financial institution, beginning farmer/rancher, and the a~~A~~uthority. The program involves either the sale of the individual industrial development bonds, to individual ~~lenders~~ financial institutions or a public bond sale to provide funds for an aggregation of loans. The a~~A~~uthority will make the loan to the eligible beginning farmer/rancher and the ~~lending~~ financial institution will purchase the bond as an investment or the loan will be made from a portion of an aggregate bond sale. To facilitate the servicing of the loan the ~~lender~~ financial institution and the a~~A~~uthority will enter into an agency relationship whereby the ~~lender~~ financial institution agrees to act as agent and fiduciary for the a~~A~~uthority for all purposes in connection with servicing the loan. The ~~lender~~ financial institution will make its own security evaluation of the loan and the beginning farmer's/rancher's ability to repay principal and interest payments. The interest rate and other conditions of the loan are set by the ~~lender~~ financial institution. The interest rate may be either variable or fixed for the term of the loan as long as the method for determining the rate is contained in the loan agreement and the rate is reasonable as determined by the a~~A~~uthority.

(2) In no case may the loan repayment period (term) exceed ~~thirty (~~30~~)~~ years. The principal and interest shall be limited obligations, payable solely out of the revenue derived from the debt obligation, collateral, or other security furnished by or on the behalf of the beginning farmer/rancher (a co-signer on the note is permissible). The bond which is issued by the a~~A~~uthority is a non-recourse obligation. The principal and interest on the bond do not constitute an indebtedness of the a~~A~~uthority or a charge against its general credit or general fund. It should also be noted that any recording or filing fees associated with the loan will be paid by the beginning farmer/rancher or ~~lender~~ financial institution not the a~~A~~uthority.

AUTH: 80-12-103, MCA
IMP: 80-12-201, MCA

REASON: See reason for rule 4.14.301(1)(d) and (k).

4.14.308 USE OF FINANCIAL AND SECURITY DOCUMENTS

(1) The ~~lender~~ financial institution should use its own forms of financial statements and security documents which it may feel necessary and appropriate under particular loan circumstances. These items should be referenced in ~~the Beginning Farmer~~ an exhibit to the bond or l~~L~~oan a~~A~~greement and their provisions incorporated therein. Any additional requirements not specifically provided for in the bond or l~~L~~oan a~~A~~greement, such as insurance coverage and amounts, should be added by means of ~~addition to the appropriate section~~ an exhibit to the bond or loan agreement and their provisions incorporated therein. ~~If there is not sufficient room, then they may be added by exhibit incorporated into that section.~~

(2) ~~The Authority would advise that any~~ Any security documents or guarantees required to be delivered in connection with a loan should clearly state that they are given as additional security for the indebtedness evidenced by the promissory note, the loan agreement, ~~the lender's loan agreement and~~ the a~~A~~uthority 's bond and to further secure the agreements, covenants and obligations of the beginning farmer/rancher contained ~~in the beginning farmer's loan agreement~~ therein. The security documents and any guarantees should run directly between the beginning farmer/rancher and the ~~lender~~ financial institution. The ~~lender~~ financial institution may also wish to add a "cross-default" provision to these documents, making an event of default under the security documents or guarantee and vice versa.

AUTH: 80-12-103, MCA
IMP: 80-12-103, 80-12-201, MCA

REASON: (1) Clarifies the requirement that any documents other than those used by the Authority be listed on an exhibit attached to the Bond or Loan Agreement to insure that all documents are present at loan closing.

4.14.309 REPAYMENT OF LOANS (1) The beginning farmer's/rancher's repayment obligations, under the loan agreement and promissory note, are subject to mandatory prepayment in certain events which are set forth in the loan agreement ~~form~~. ~~These include the Agreement becoming void or unenforceable, and interest on the bond becoming subject to federal income taxation. Loans are subject to immediate repayment if the property for which the loan is made or other collateral used to secure the loan is sold or otherwise disposed of. In addition, the forms provide for optional prepayment (at the discretion of the lender) in the event of damage, destruction or condemnation of all or any part of the financed properties or project~~.

(2) The ~~forms provide for repayment at the option of the beginning farmer,~~ beginning farmer/rancher repayment obligations under the loan agreement and promissory note are subject to optional prepayment under ~~the~~ terms and conditions ~~of which are~~ to be agreed upon between the beginning farmer/rancher and the ~~lender~~ financial institution. ~~The form of bond setting forth optional prepayment contains blanks which need to be completed by the beginning farmer and the lender.~~ The documents and the structure of the financing require any installment payment made under the l~~L~~oan a~~A~~greement and p~~P~~romissory n~~N~~ote to be applied against a like installment payable under the bond and the ~~lender~~ financial institution agrees that any such prepayments will be so applied to the payment of the bond. ~~The documents will provide, in all instances, that any partial prepayments would be applied in inverse order of principal maturity.~~

AUTH: 80-12-103, MCA

IMP: 80-12-103, MCA

REASON: (1) Removes events which are to be established between the Financial Institution and the Beginning Farmer/Rancher and are defined in the Financial Institutions loan agreement. (2) Clarifies that the terms and conditions of the Loan Agreement are to be established between the Financial Institution and the Beginning Farmer/Rancher because the Financial Institution does the due diligence on the Beginning Farmer/Rancher.

4.14.310 ASSIGNMENT OF BONDS (1) ~~Participating lenders~~ Financial institutions may assign a bond in whole or in part to ~~any person~~ another financial institution. Servicing of the loan may also be assigned, but must at all times be with a ~~participating lender~~ financial institution. The a~~A~~uthority must be notified in writing prior to assignment of servicing of the loan.

~~(2) Generally, an investor may participate in the loan if all the participants are involved in the transaction from the very beginning of the loan and named as holders before the bonds are actually issued by the Authority.~~

AUTH: 80-12-103, MCA
IMP: 80-12-103, MCA

REASON: (1) Amended to comply with IRS regulations. (2) Deleted because parties that may participate are already listed in the definition of "Financial Institution".

4.14.311 FEES AND TERMS OF LOAN (1) If a beginning farmer/rancher meets the loan eligibility requirements as set forth in Title 80, c~~C~~hapter 12, MCA, r~~R~~ules of the a~~A~~uthority and IRS rules and regulations, the decision whether to enter into the l~~L~~oan a~~A~~greement is between the beginning farmer/rancher and the ~~lender~~ financial institution. They must agree on terms of the loan such as interest rates, length of loan, down payment, service fees, organization charges and repayment schedule, which may not be any more onerous than that charged to similar customers for similar loans, and take into account the tax-exempt nature of interest on the loan.

(2) In addition, the a~~A~~uthority will receive a non-refundable ~~$100~~ $50 application fee (submitted by the ~~borrower~~ beginning farmer/rancher with the application) and a program participation or loan fee not to exceed ~~two percent (2%)~~ 1 1/2% of the amount of the loan, however, this fee shall not be less than ~~$200~~ $500. The participation fee may be financed with the loan. The ~~lender~~ financial institution shall collect the participation fee and remit to the a~~A~~uthority at the time of loan closing. ~~The application fee would be applied to the loan participation fee if the loan is approved by the Authority.~~

(3) The a~~A~~uthority bond counsel will review each bond for legality and tax exemption. The a~~A~~uthority will pay its bond

counsel and other administrative costs from the fees collected from the beginning farmer/rancher.

AUTH: 80-12-103, MCA
IMP: 80-12-103, 80-12-201, MCA

REASON: (2) The department proposes to lower the application fee to $50 and the program participation fee to 1 1/2% to reflect necessary revenue to administer the program and to better match the fees of analogous programs in surrounding states. The minimum participation fee is increased to $500 to cover Bond Counsel review costs. We do not have an estimate of the number of individuals this will affect.

4.14.312 ~~LENDERS~~ FINANCIAL INSTITUTIONS (1) Any bank, bank holding company, trust company, mortgage company, national banking association, savings and loan association, credit union, life insurance company, any state or federal governmental agency or instrumentality, ~~or~~ any ~~other financial institution or~~ entity authorized to make mortgage loans or secured loans in this state ~~may be with the approval of the Authority, a participating lender~~ or any other person that obtains an authority bond under the program in connection with a contract sale or loan to a beginning farmer/rancher is authorized to participate in the program.

AUTH: 80-12-103, MCA
IMP: 80-12-103, MCA

REASON: (1) Amended to comply with the definition of "financial institution" in 4.14.301(1)(k).

4.14.313 PROCEDURES FOLLOWING BOND ISSUANCE (1) No bond proceeds may be used for a non-qualified purpose or by a non-qualified user. ~~Following disbursement of the bond proceeds, the participating lender~~ The financial institution and beginning farmer/rancher shall certify to the a~~A~~uthority that the proceeds were used or are to be used by a qualified beginning farmer/rancher for a qualified purpose.

AUTH: 80-12-103, MCA
IMP: 80-12-302, MCA

REASON: (1) Amended to clarify the responsibility of the Financial Institution and Beginning Farmer/Rancher to verify the use of the bond proceeds.

4.14.314 ASSUMPTION OF LOANS, SUBSTITUTION OF COLLATERAL AND TRANSFER OF PROPERTY (1) Loans may not be assumed without the prior approval of the a~~A~~uthority and then only if the ~~purchaser of the property is an eligible applicant~~ person assuming the loan is an eligible beginning farmer/rancher. Equipment and other depreciable property may be exchanged or

traded in on similar property, substituted as collateral at the discretion of the ~~lender~~ financial institution without the prior approval of the aAuthority. The benefits of the loan made at the tax-free rate from the proceeds of an aAuthority bond must remain with the qualified beginning farmer/rancher, and no person to whom the property is traded or otherwise transferred may obtain the benefits of the aAuthority loan.

AUTH: 80-12-103, MCA
IMP: 80-12-103, 80-12-201, MCA

REASON: (1) Amended to clarify that a person assuming an existing loan must be an eligible Beginning Farmer/Rancher.

4.14.315 PUBLIC HEARING (1) The aAuthority will conduct public hearings in conjunction with its regularly scheduled aAuthority meetings to consider the ~~sale~~ issuance of bonds. However, in an emergency, some deviation might be made from this procedure. It should be noted that a hearing need not be held before an aAuthority application is approved, but must be held before the bond documents are approved.

AUTH: 80-12-103, MCA
IMP: 80-12-103, MCA

REASON: (1) Amended to clarify that bonds are issued, not sold.

4.14.316 RIGHT TO AUDIT (1) The aAuthority shall have, at any time, the right to audit records of the ~~lender~~ financial institution and the beginning farmer/rancher relating to a loan and bond to insure that the provisions of the "Act" are followed.

AUTH: 80-12-103, MCA
IMP: 80-12-103, MCA

REASON: See reason for rule 4.14.301(1)(d).

4.14.601 TAX DEDUCTION (1) The aAuthority will follow rules of the Montana dDepartment of rRevenue implementing the tax deduction provided in ~~Title 80, Chapter 12, Section~~ 80-12-211, MCA, for the sale of qualifying land on a long term contract to a beginning farmer/rancher. The repayment period (term) of the long term contract must extend for a period of ~~ten (~~10~~)~~ years or more. In addition, the dollar amount of the long term contract must be ~~fifty one percent (~~51%~~)~~ or more of the total purchase price of the land. The transaction must be approved by the authority. The appropriate application for tax deduction must be received by the aAuthority within one year of closing on the respective sale and contract transaction. Applications for sale transactions closed prior to the April 18, 1985 effective date of the law are not eligible for the tax deduction.

(2) Basic aAuthority eligibility requirements for a beginning farmer/rancher are:

(a) The beginning farmer/rancher may not have a net worth in excess of $250,000.;

(b) ~~There are no age limits for borrowers participating in the Authority, however, Title 41, Chapter 1, Part 3, MCA will be followed.~~ The beginning farmer/rancher must be a minimum of 18 years of age;

(c) The beginning farmer/rancher must be a resident of Montana at the time the ~~completed application is submitted to the Authority~~ loan is closed.;

(d) The beginning farmer/rancher must have documented, to the satisfaction of the aAuthority, sufficient education, training and experience for the anticipated farming/ranching operations.; and

(e) through (3) remain the same.

(4) The beginning farmer/rancher need not be a recipient of an aAuthority loan.

(5) remain the same.

AUTH: 80-12-103, MCA
IMP: 80-12-211, MCA

REASON: (2)(b) Because of the maximum loan amount available to applicants, the Authority feels it is appropriate that loan applicants be 18 years of age. (2)(c) Clarifies that the applicant must be a resident of Montana when the loan is closed because this is a Montana program designed for Montana residents.

4. Concerned persons may submit their data, views or arguments concerning this proposed action in writing to Lee Boyer at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-9442; or E-mail: agr@state.mt.us. Any comments must be received no later than August 16, 2001.

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 Lee Boyer at the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2402; TDD: (406) 444-4687; Fax: (406) 444-9442; or E-mail: agr@state.mt.us. A written request for hearing must be received no later than August 16, 2001.

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 30 persons based on the assumption there are 300 individuals desiring to be beginning farmers/ranchers.

7. The Department of Agriculture 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 that the person wishes to receive notices regarding noxious weed seed forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, 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 Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-9442; 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. All department rule making notices and adoptions may also be reviewed at the Department of Agriculture website at www.agr.state.mt.us.

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

DEPARTMENT OF AGRICULTURE

/s/ Ralph Peck	/s/ Tim Meloy
Ralph Peck	Tim Meloy, Attorney
Director	Rules Reviewer

Certified to the Secretary of State July 9, 2001.

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

In the matter of the proposed adoption of new rules I through XVIII pertaining to life insurance illustrations	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On August 8, 2001, at 9:00 a.m., a public hearing will be held in the 2nd floor conference room, State Auditor's Office, 840 Helena Avenue, Helena, Montana, to consider the proposed adoption of New Rules I through XVIII, pertaining to life insurance illustrations.

2. The State Auditor's Office 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 office no later than 5:00 p.m., August 1, 2001, to advise us as to the nature of the accommodation needed. Please contact Pamela Weitz, State Auditor's Office, 840 Helena Ave., Helena, MT 59601; telephone (406) 444-1744; Montana Relay 1-800-332-6145; TDD (406) 444-3246; facsimile (406) 444-3497 or e-mail to pweitz@state.mt.us.

3. The proposed new rules provide as follows:

RULE I PURPOSE (1) The purpose of this subchapter is to provide rules for life insurance policy illustrations that will protect consumers and foster consumer education. The rules provide illustration formats, prescribe standards to be followed when illustrations are used, and specify the disclosures that are required in connection with illustrations. The goals of these rules are to ensure that illustrations do not mislead purchasers of life insurance and to make illustrations more understandable. Insurers will, as far as possible, eliminate the use of footnotes and caveats and define terms used in the illustration in language that would be understood by a typical person within the segment of the public to which the illustration is directed.

AUTH: Sec. 33-1-313 and 33-20-150, MCA
IMP: Sec. 33-18-202 and 33-20-150, MCA

RULE II AUTHORITY (1) This subchapter is issued based upon the authority granted the commissioner under 33-20-150, MCA.

AUTH: Sec. 33-20-150, MCA
IMP: Sec. 33-18-202 and 33-20-150, MCA

RULE III APPLICABILITY AND SCOPE (1) This subchapter applies to all group and individual life insurance policies and certificates except:

(a) variable life insurance;

(b) individual and group annuity contracts;

(c) credit life insurance; or

(d) life insurance policies with no illustrated death benefits on any individual exceeding $10,000.

AUTH: Sec. 33-20-150, MCA
IMP: Sec. 33-18-202 and 33-20-150, MCA

RULE IV DEFINITIONS For the purposes of this subchapter:

(1) "Actuarial standards board" means the board established by the American academy of actuaries to develop and promulgate standards of actuarial practice.

(2) "Contract premium" means the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.

(3) "Currently payable scale" means a scale of non-guaranteed elements in effect for a policy form as of the preparation date of the illustration or declared to become effective within the next 95 days.

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

(a) are consistent with all provisions of this subchapter;

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

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

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

(5) "Generic name" means a short title descriptive of the policy being illustrated such as "whole life," "term life" or "flexible premium adjustable life."

(6) "Guaranteed elements" means the premiums, benefits, values, credits or charges under a policy of life insurance that are guaranteed and determined at issue.

(7) "Illustrated scale" means a scale of non-guaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of:

(a) the disciplined current scale; or

(b) the currently payable scale.

(8) "Illustration" means a presentation or depiction that includes guaranteed and non-guaranteed elements of a policy of life insurance over a period of years and that is one of the three types defined below:

(a) "basic illustration" means a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and non-guaranteed elements;

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

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

(9) "Illustration actuary" means an actuary meeting the requirements of [New Rule XV] who certifies to illustrations based on the standard of practice promulgated by the actuarial standards board.

(10) "Lapse-supported illustration" means an illustration of a policy form failing the test of self-supporting as defined in this subchapter, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five years and 100% policy persistency thereafter.

(11) "Minimum assumed expenses" means the minimum expenses that may be used in the calculation of the disciplined current scale for a policy form. The insurer may choose to designate each year the method of determining assumed expenses for all policy forms from the following:

(a) fully allocated expenses;

(b) a generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the commissioner;

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

(12) "Non-guaranteed elements" means the premiums, benefits, values, credits or charges under a policy of life insurance that are not guaranteed or not determined at issue.

(13) "Non-term group life" means a group policy or individual policies of life insurance issued to members of an employer group or other permitted group where:

(a) every plan of coverage was selected by the employer or other group representative;

(b) some portion of the premium is paid by the group or through payroll deduction; and

(c) group underwriting or simplified underwriting is used.

(14) "Policy owner" means the owner named in the policy or the certificate holder in the case of a group policy.

(15) "Premium outlay" means the amount of premium assumed to be paid by the policy owner or other premium payer out-of-pocket.

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

(17) "Terminal dividends" means dividends paid when a policy terminates.

AUTH: Sec. 33-20-150, MCA
IMP: Sec. 33-18-202 and 33-20-150, MCA

RULE V POLICIES TO BE ILLUSTRATED (1) Each insurer marketing policies to which this subchapter is applicable shall notify the commissioner whether a policy form is to be marketed with or without an illustration. For all policy forms being actively marketed on [the effective date of this subchapter], the insurer shall identify in writing those forms and whether or not an illustration will be used with them. For policy forms filed after the effective date of this subchapter, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the commissioner.

(2) If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary is prohibited.

(3) If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this subchapter is required, except that a basic illustration need not be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals. The illustration furnished an applicant for a group life insurance policy or policies issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

(4) Potential enrollees of non-term group life subject to this subchapter shall be furnished a quotation with the enrollment materials. The quotation shall show potential policy values for sample ages and policy years on a guaranteed and non-guaranteed basis appropriate to the group and the coverage. This quotation shall not be considered an illustration for purposes of this subchapter, but all

information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the certificate to enrollees for non-term group life who enroll for more than the minimum premium necessary to provide pure death benefit protection. In addition, the insurer shall make a basic illustration available to any non-term group life enrollee who requests it.

AUTH: Sec. 33-20-150, MCA
IMP: Sec. 33-18-202 and 33-20-150, MCA

RULE VI GENERAL RULES AND PROHIBITIONS (1) An illustration used in the sale of a life insurance policy shall satisfy the applicable requirements of this subchapter, be clearly labeled "life insurance illustration" and contain the following basic information:

(a) name of insurer;

(b) name and business address of producer or insurer's authorized representative, if any;

(c) name and age of proposed insured, except where a composite illustration is permitted under this subchapter;

(d) underwriting or rating classification upon which the illustration is based;

(e) generic name of policy, the company product name, if different, and form number;

(f) initial death benefit; and

(g) dividend option election or application of non-guaranteed elements, if applicable.

(2) When using an illustration in the sale of a life insurance policy, an insurer or its producers or other authorized representatives shall not:

(a) represent the policy as anything other than a life insurance policy;

(b) use or describe non-guaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;

(c) state or imply that the payment or amount of non-guaranteed elements is guaranteed;

(d) use an illustration that does not comply with the requirements of this subchapter;

(e) use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated;

(f) provide an applicant with an incomplete illustration;

(g) represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact;

(h) use the term "vanish" or "vanishing premium," or a similar term that implies the policy becomes paid up, to describe a plan for using non-guaranteed elements to pay a portion of future premiums;

(i) except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported;" or

(j) use an illustration that is not "self-supporting."

(3) If an interest rate used to determine the illustrated non-guaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.

AUTH: Sec. 33-20-150, MCA
IMP: Sec. 33-18-202 and 33-20-150, MCA

RULE VII STANDARDS FOR BASIC ILLUSTRATIONS FORMAT

(1) A basic illustration shall conform with the following requirements:

(a) the illustration shall be labeled with the date on which it was prepared;

(b) each page, including any explanatory notes or pages, shall be numbered and show its relationship to total number of pages in the illustration (e.g., the fourth page of a seven-page illustration shall be labeled "page 4 of 7 pages");

(c) the assumed dates of payment receipt and benefit pay-out within a policy year shall be clearly identified;

(d) if the age of the proposed insured is shown as a component of the tabular detail, it shall be issue age plus the numbers of years the policy is assumed to have been in force;

(e) the assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay;

(f) guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed;

(g) if the illustration shows any non-guaranteed elements, they cannot be based on a scale more favorable to the policy owner than the insurer’s illustrated scale at any duration. These elements shall be clearly labeled non-guaranteed;

(h) the guaranteed elements, if any, shall be shown before corresponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements (e.g., "see page one for guaranteed elements;")

(i) the account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender;

(j) the value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans and policy loan interest, as applicable;

(k) illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form;

(l) any illustration of non-guaranteed elements shall be accompanied by a statement indicating that:

(i) the benefits and values are not guaranteed;

(ii) the assumptions on which they are based are subject to change by the insurer; and

(iii) actual results may be more or less favorable.

(m) if the illustration shows that the premium payer may have the option to allow policy charges to be paid using non-guaranteed values, the illustration must clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up;

(n) if the applicant plans to use dividends or policy values, guaranteed or non-guaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the impact on future policy benefits and values.

AUTH: Sec. 33-20-150, MCA
IMP: Sec. 33-18-202 and 33-20-150, MCA

RULE VIII STANDARDS FOR NARRATIVE SUMMARY (1) A basic illustration shall include the following:

(a) a brief description of the policy being illustrated, including a statement that it is a life insurance policy;

(b) a brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code;

(c) a brief description of any policy features, riders or options, guaranteed or non-guaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

(d) identification and a brief definition of column headings and key terms used in the illustration; and

(e) a statement containing in substance the following:

(i) "this illustration assumes that the currently illustrated non-guaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

AUTH: Sec. 33-20-150, MCA
IMP: Sec. 33-18-202 and 33-20-150, MCA

RULE IX STANDARDS FOR NUMERIC SUMMARY (1) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay

and contract premium, as applicable. For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium.

(2) This summary shall be shown for at least policy years five, 10 and 20 and at age 70, if applicable, on the three bases shown below. For multiple life policies the summary shall show policy years five, 10, 20 and 30:

(a) policy guarantees;

(b) insurer's illustrated scale;

(c) insurer's illustrated scale used but with the non-guaranteed elements reduced as follows:

(i) dividends at 50% of the dividends contained in the illustrated scale used;

(ii) non-guaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and

(iii) all non-guaranteed charges, including but not limited to, term insurance charges, mortality and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

(3) In addition, if coverage would cease prior to policy maturity or age 100, the year in which coverage ceases shall be identified for each of the three bases.

AUTH: Sec. 33-20-150, MCA
IMP: Sec. 33-18-202 and 33-20-150, MCA

RULE X STANDARDS FOR STATEMENTS (1) Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner in the case of an illustration provided at time of delivery, as required in this rule.

(2) A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any non-guaranteed elements illustrated are subject to change and could be either higher or lower. The agent has told me they are not guaranteed."

(3) A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any non-guaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

AUTH: Sec. 33-20-150, MCA
IMP: Sec. 33-18-202 and 33-20-150, MCA

RULE XI STANDARDS FOR TABULAR DETAIL (1) A basic illustration shall include the following for at least each policy year from one to 10 and for every fifth policy year thereafter ending at age 100, policy maturity or final expiration; and except for term insurance beyond the twentieth

year, for any year in which the premium outlay and contract premium, if applicable, is to change:

(a) the premium outlay and mode the applicant plans to pay and the contract premium, as applicable;

(b) the corresponding guaranteed death benefit, as provided in the policy; and

(c) the corresponding guaranteed value available upon surrender, as provided in the policy.

(2) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.

(3) Non-guaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any non-guaranteed elements are shown they must be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a non-guaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

AUTH: Sec. 33-20-150, MCA
IMP: Sec. 33-18-202 and 33-20-150, MCA

RULE XII STANDARDS FOR SUPPLEMENTAL ILLUSTRATIONS (1) A supplemental illustration may be provided so long as:

(a) it is appended to, accompanied by or preceded by a basic illustration that complies with this subchapter:

(i) the non-guaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;

(ii) it contains the same statement required of a basic illustration that non-guaranteed elements are not guaranteed; and

(iii) for a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

(2) The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information.

AUTH: Sec. 33-20-150, MCA
IMP: Sec. 33-18-202 and 33-20-150, MCA

RULE XIII DELIVERY OF ILLUSTRATIONS AND RECORD RETENTION

(1) If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this subchapter, shall be submitted to the

insurer at the time of policy application. A copy also shall be provided to the applicant.

(2) If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall conform to the requirements of this subchapter, shall be labeled "revised illustration" and shall be signed and dated by the applicant or policy owner and producer or other authorized representative of the insurer no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

(3) If no illustration is used by an insurance producer or other authorized representative in the sale of a life insurance policy or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer. On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application.

(4) If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner:

(a) if the basic illustration or revised illustration is sent to the applicant or policy owner by mail from the insurer, it shall include instructions for the applicant or policy owner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this subsection shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page;

(b) a copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until five years after the policy is no longer in force. A copy need not be retained if no policy is issued.

AUTH: Sec. 33-20-150, MCA
IMP: Sec. 33-18-202 and 33-20-150, MCA

<u>RULE XIV ANNUAL REPORT; NOTICE TO POLICY OWNERS</u>

(1) In the case of a policy designated as one for which illustrations will be used, the insurer shall provide each

policy owner with an annual report on the status of the policy that shall contain at least the following information:

(a) for universal life policies, the report shall include the following:

(i) the beginning and end date of the current report period;

(ii) the policy value at the end of the previous report period and at the end of the current report period;

(iii) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders);

(iv) the current death benefit at the end of the current report period on each life covered by the policy;

(v) the net cash surrender value of the policy as of the end of the current report period;

(vi) the amount of outstanding loans, if any, as of the end of the current report period; and

(b) for fixed premium policies, if, assuming guaranteed interest, mortality and expense loads and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report; or

(c) for flexible premium policies, if, assuming guaranteed interest, mortality and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report;

(d) for all other policies, where applicable:

(i) current death benefit;

(ii) annual contract premium;

(iii) current cash surrender value;

(iv) current dividend;

(v) application of current dividend; and

(vi) amount of outstanding loan;

(e) insurers writing life insurance policies that do not build nonforfeiture values shall only be required to provide an annual report with respect to these policies for those years when a change has been made to non-guaranteed policy elements by the insurer.

(2) If the annual report does not include an in force illustration, it shall contain the following notice displayed prominently: "IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling [insurer's phone number], writing to [insurer's name] at [insurer's address] or contacting your agent. If you do not receive a current illustration of your policy within 30 days from your request, you should contact your state insurance

department." The insurer may vary the sequential order of the methods for obtaining an in force illustration.

(3) Upon the request of the policy owner, the insurer shall furnish an in force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of [New Rule VI(1) and (2)], [New Rule VII] and [New Rule XI]. No signature or other acknowledgment of receipt of this illustration shall be required.

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

AUTH: Sec. 33-20-150, MCA
IMP: Sec. 33-18-202 and 33-20-150, MCA

RULE XV ANNUAL CERTIFICATIONS (1) The board of directors of each insurer shall appoint one or more illustration actuaries.

(2) The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the actuarial standard of practice for compliance with the NAIC model regulation on life insurance illustrations promulgated by the actuarial standards board and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this subchapter.

(3) The illustration actuary shall:

(a) be a member in good standing of the American academy of actuaries;

(b) be familiar with the standard of practice regarding life insurance policy illustrations;

(c) not have been found by the commissioner, following appropriate notice and hearing to have:

(i) violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as an illustration actuary;

(ii) been found guilty of fraudulent or dishonest practices;

(iii) demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or

(iv) resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards.

(d) not fail to notify the commissioner of any action taken by a commissioner of another state similar to that under (3) above;

(e) disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons

other than changes in the experience factors underlying the disciplined current scale. If non-guaranteed elements illustrated for new policies are not consistent with those illustrated for similar in force policies, this must be disclosed in the annual certification. If non-guaranteed elements illustrated for both new and in force policies are not consistent with the non-guaranteed elements actually being paid, charged or credited to the same or similar forms, this must be disclosed in the annual certification; and

(f) disclose in the annual certification the method used to allocate overhead expenses for all illustrations:

(i) fully allocated expenses;

(ii) marginal expenses; or

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

(4) The illustration actuary shall file a certification with the board and with the commissioner:

(a) annually for all policy forms for which illustrations are used; and

(b) before a new policy form is illustrated.

(5) If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the commissioner promptly.

(6) If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the commissioner promptly of his or her inability to certify.

(7) A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

(a) that the illustration formats meet the requirements of this subchapter and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and

(b) that the company has provided its agents with information about the expense allocation method used by the company in its illustrations and disclosed as required in (3)(f).

(8) The annual certifications shall be provided to the commissioner each year by a date determined by the insurer.

(9) If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the commissioner of that fact promptly and disclose the reason for the change.

AUTH: Sec. 33-20-150, MCA
IMP: Sec. 33-18-202 and 33-20-150, MCA

RULE XVI PENALTIES (1) In addition to any other penalties provided by the laws of this state, an insurer or producer that violates a requirement of this subchapter shall be guilty of a violation of 33-18-202, MCA.

AUTH: Sec. 33-18-202 and 33-20-150, MCA
IMP: Sec. 33-18-202 and 33-20-150, MCA

RULE XVII SEVERABILITY (1) If any provision of this subchapter or its application to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the subchapter and its application to other persons or circumstances shall not be affected.

AUTH: Sec. 33-20-150, MCA
IMP: Sec. 33-18-202 and 33-20-150, MCA

RULE XVIII EFFECTIVE DATE (1) This subchapter shall become effective [September 7, 2001, or effective date set in subchapter, whichever is later] and shall apply to policies sold on or after the effective date.

AUTH: Sec. 33-20-150, MCA
IMP: Sec. 33-18-202 and 33-20-150, MCA

4. REASONABLE NECESSITY STATEMENT: The reason for adopting New Rules I through XVIII in this subchapter is contained in 33-20-150, MCA, which was adopted by the legislature, effective October 1999. It states in part, as follows: "(1) The commissioner shall adopt rules providing for and regulating life insurance policy illustrations, annuity disclosure, and sales illustrations that are marketed, issued, or issued for delivery to Montana residents. [...] (3) Rules that are adopted by the commissioner may not go beyond the scope of, or contain material differences from, the national association of insurance commissioners' life insurance illustrations, annuity disclosure, and sales model regulations." In addition, failure to follow these rules would be a violation of 33-18-202, MCA, misrepresentation and false advertising of policies.

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 Christina L. Goe, Attorney, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or be e-mailed to cgoe@state.mt.us, and must be received no later than August 17, 2001.

6. Christina L. Goe, Attorney, has been designated to preside over and conduct the hearing.

7. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules,

or both. Such written request may be mailed or delivered to the State Auditor's Office, 840 Helena Avenue, Helena, MT 59601, faxed to (406) 444-3497, e-mailed to cgoe@state.mt.us, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

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

JOHN MORRISON, State Auditor
and Commissioner of Insurance

By: /s/ Angela Caruso
Angela Caruso
Deputy Insurance Commissioner

By: /s/ Elizabeth L. Griffing
Elizabeth L. Griffing
Rules Reviewer

Certified to the Secretary of State on July 9, 2001.

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

In the matter of the proposed amendment of ARM 6.6.302 through 6.6.309, the repeal of ARM 6.6.310, and the adoption of New Rules I, II and III pertaining to life insurance and annuities replacement	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, REPEAL AND ADOPTION

TO: All Concerned Persons

1. On August 8, 2001, at 9:00 a.m., a public hearing will be held in the 2nd floor conference room, State Auditor's Office, 840 Helena Ave., Helena, Montana, to consider the proposed amendment of ARM 6.6.302 through 6.6.309, the repeal of ARM 6.6.310, and the adoption of New Rules I, II, and III pertaining to life insurance and annuities replacement.

2. The State Auditor's Office 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 office no later than 5:00 p.m., August 1, 2001, to advise us as to the nature of the accommodation needed. Please contact Pamela Weitz, State Auditor's Office, 840 Helena Ave., Helena, MT 59601; telephone (406) 444-1744; Montana Relay 1-800-332-6145; TDD (406) 444-3246; facsimile (406) 444-3497 or e-mail to pweitz@state.mt.us.

3. The rules proposed to amended provide as follows, (stricken matter interlined, new matter underlined):

6.6.302 PURPOSE~~.~~ (1) The purpose of this subchapter is:

~~(1)~~(a) ~~To~~ to regulate the activities of insurers and ~~agents~~ producers with respect to the replacement of existing life insurance and annuities;~~.~~

~~(2)~~(b) ~~To~~ to protect the interests of life insurance and annuity purchasers ~~policy-owners~~ by establishing minimum standards of conduct to be observed in ~~the~~ replacement, ~~or~~ proposed replacement, or ~~of existing life insurance by~~ financed purchase transactions. It will:

~~(a)~~(i) ~~Assuring~~ assure that ~~the policyowner receives~~ purchasers receive information with which a decision can be made in his or her own best interests;

~~(b)~~(ii) ~~Reducing~~ reduce the opportunity for misrepresentation and incomplete disclosures; and

~~(c)~~ (iii) ~~Establishing~~ establish penalties for failure to comply with the requirements of this ~~regulation~~ subchapter.

AUTH: Sec. 33-1-313, MCA

IMP: Sec. 33-18-204, MCA

6.6.303 DEFINITIONS. ~~(1) "Cash dividend" means the current illustrated divi-dend which can be applied toward payment of the gross premium.~~

~~(2) "Conservation" means any attempt by the existing insurer or its agent to continue existing life insurance in force when it has received proper notice as required by 6.6.306(3)(d) of this sub-chapter from a replacing insurer that the existing life insurance is or will be replaced.~~

~~(3)~~(1) "Direct-response ~~sales~~ solicitation" means ~~any sale of life insur-ance where the insurer does not utilize an agent in the sale or delivery of the policy.~~ a solicitation through mailings, telephone, the internet or other mass communication media.

~~(4)~~(2) "Existing insurer" means the insurance company whose policy is or will be changed or ~~terminated~~ affected in ~~such~~ a manner ~~as~~ described within the definition of "replacement".

~~(5)~~(3) "Existing ~~life insurance~~ policy or contract" means ~~any~~ an individual life insurance policy or annuity contract in force, including ~~life insurance~~ a policy under a binding or conditional receipt or a ~~life insurance~~ policy or a contract that is within an unconditional refund period~~, but excluding life insurance obtained through the exercise of a dividend option~~.

(4) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. If a withdrawal, surrender, or borrowing by an individual involves the policy values of an existing policy and is used to pay premiums on a new policy owned by the same policyholder within four months before or 13 months after the effective date of the new policy, it will be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in this subchapter.

(5) "Illustration" means a presentation or depiction that includes non-guaranteed or variable elements of a policy of life insurance over a period of years as described in 33-20-604, MCA.

(6) ~~"Generic Name" means a short title which is descriptive of the premium and benefit patterns of a policy or a rider.~~ "Policy summary," for the purposes of this subchapter:

(a) for policies or contracts other than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information:

(i) current death benefit;

(ii) annual contract premium;

(iii) current cash surrender value;

(iv) current dividend;

(v) application of current dividend; and

(vi) amount of outstanding loan.

(b) for universal life policies, means a written statement that shall contain at least the following information:

(i) the beginning and end date of the current report period;

(ii) the policy value at the end of the previous report period and at the end of the current report period;

(iii) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders);

(iv) the current death benefit at the end of the current report period on each life covered by the policy;

(v) the net cash surrender value of the policy as of the end of the current report period; and

(vi) the amount of outstanding loans, if any, as of the end of the current report period.

(7) "Producer" shall be defined to include agents and producers.

~~(8) "Replacing insurer" means the insurance company that issues a new policy which is a replacement of existing life insurance.~~

(8) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

~~(7)~~(9) "Replacement" means ~~any~~ a transaction in which a new ~~life insurance~~ policy or contract or registered contract is to be purchased, and it is known or should be known to the proposing ~~agent~~ producer, or to the proposing insurer~~,~~ if there is no ~~agent~~ producer, that by reason of such transaction, an existing ~~life in-surance~~ policy or contract has been~~,~~ or is to be:

(a) ~~L~~lapsed, forfeited, surrendered, or partially surrendered, assigned to the replacing insurer or otherwise ~~termina-ted~~ terminated;

(b) ~~C~~converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(c) ~~A~~amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(d) ~~R~~reissued with any reduction in cash values; or

(e) ~~Pledged as collateral or subjected to borrowing, whether in single loan or under a schedule or borrowing over a period of time, in amounts exceeding 25% of the loan value set forth in the policy.~~ used in a financed purchase.

(10) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

~~(9)~~(11) "Sales ~~proposal~~ material" means ~~individualized sales aids of all kinds which are designed to justify the replacement or con-servation of existing life insurance and used by an insurer, agent, or broker for presentation to policyowners. Sales aids of a generally descriptive nature, which are maintained in the insurer's advertising compliance file, shall not be considered a sales proposal within the meaning of this definition~~ a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or producer and used in the presentation to the policy or contract owner related to the policy or contract purchased.

AUTH: Sec. 33-1-313, MCA
IMP: Sec. 33-18-204, MCA

6.6.304 EXEMPTIONS (1) Unless otherwise specifically included, this subchapter shall not apply to transactions involving:

~~(1)~~(a) ~~Annuities~~ credit life insurance;

~~(2)~~(b) ~~Individual credit life insurance~~ group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of ARM 6.6.307;

~~(3)~~(c) ~~group life insurance, group credit life insurance, and life insurance policies issued in connection with a pension, profit sharing or other benefit plan qualifying for tax deducti-bility of premiums, provided, however, that as to any plan described in this rule, full and complete disclosure of all material facts shall be given to the administrator of any plan to be replaced;~~ an application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised;

~~(4)~~(d) ~~Variable life insurance under which the death benefits and cash values vary in accordance with unit values of invest-ments held in a separate account; or~~ proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

~~(5)~~(e) ~~Where the application is made to the existing insurer that issued the existing life insurance and a contractual change or conversion privilege is being exercised; or~~ policies or contracts used to fund:

(i) an employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

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

(iii) a governmental or church plan defined in section 414, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code; or

(iv) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(f) notwithstanding (1)(e), this subchapter shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this rule, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;

~~(6)~~(g) ~~When the~~ existing life insurance that is a non-convertible term life insurance policy ~~which~~ that will expire in five years or less and cannot be renewed;

(h) where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association for which the insured is a member; or

(i) immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this rule; or

(j) structure settlements.

(2) Registered contracts shall be exempt from the requirements of ARM 6.6.306(1)(b) and 6.6.308(1)(b) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

AUTH: Sec. 33-1-313, MCA
IMP: Sec. 33-18-204, MCA

6.6.305 DUTIES OF ~~AGENTS~~ PRODUCERS~~.~~ (1) ~~Each agent shall submit to the replacing insurer with or as part of each application for life insurance:~~ A producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies

or contracts. If the answer is "no," the producer's duties with respect to replacement are complete.

~~(a) A statement signed by the applicant as to whether or not such insurance will replace existing life insurance; and~~

~~(b) A signed statement as to whether or not the agent knows replacement is or may be involved in the transaction.~~

(2) ~~Where a replacement is involved, the agent shall:~~ If the applicant answered "yes" to the question regarding existing coverage referred to in (1), the producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in Appendix A or other substantially similar form approved by the commissioner. However, no approval shall be required when amendments to the notice are limited to the omission of references not applicable to the product being sold or replaced. The notice shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and left with the applicant.

~~(a) Obtain with or as part of each application a list of all existing life insurance to be replaced. Such existing life insurance shall be identified by name of insurer and the policy number. In the event that a policy number has not been assigned by the existing insurer, alternative identification information, such as an application or receipt number, must be listed.~~

~~(b) Present to the applicant, not later than at the time of taking the application, a "Notice Regarding Replacement of Life Insurance" in the form substantially as described in 6.6.310(1) or (2) - Sample form A or B, whichever is applicable. The notice must be signed by the agent and receipt of it acknowledged by the applicant. A copy of the notice must be left with the applicant.~~

~~(c) Submit to the replacing insurer with the application, a copy of the "Notice Regarding replacement of Life Insurance", signed by the agent and receipt of it acknowledged by the appli-cant and a separate statement including the information described in (2)(a) unless such information is included in the application.~~

(3) The notice shall list all life insurance policies or annuities proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(4) In connection with a replacement transaction the producer shall leave with the applicant, at the time an application for a new policy or contract is completed, the

original or a copy of all sales material. With respect to electronically presented sales material, it shall be provided to the policy or contract owner in printed form no later than at the time of policy or contract delivery.

(5) Except as provided in [New Rule I], in connection with a replacement transaction, the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this rule, a statement identifying any preprinted or electronically presented company approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.

AUTH: Sec. 33-1-313, MCA
IMP: Sec. 33-18-204, MCA

6.6.306 DUTIES OF REPLACING INSURERS THAT USE PRODUCERS. (1) ~~Each~~ Where a replacement is involved in the transaction, the replacing insurer shall:

~~(1)~~(a) ~~Inform its field representatives of the requirements of this sub-chapter.~~ maintain a system of supervision and control to assure compliance with the requirements of this subchapter that shall at a minimum, verify that the required forms are received and are in compliance with this subchapter;

(b) notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five business days of a request from an existing insurer;

(c) be able to produce copies of the notification regarding replacement required in ARM 6.6.305(2), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and

(d) provide to the policy or contract owner notice of the right to return the policy or contract within 30 days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract:

(i) such notice may be included in Appendix A or C.

(2) ~~Require with or as part of each completed application for life insurance:~~ In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control,

allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to financed purchases the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

~~(a) A statement signed by the applicant as to whether or not such insurance will replace existing life insurance; and~~

~~(b) A statement signed by the agent as to whether or not he or she knows replacement is or may be involved in the trans-action.~~

(3) ~~Where a replacement is involved~~ If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements of ARM 6.6.305(5) the insurer may:

(a) R~~r~~equire with ~~or as part of~~ each application ~~for life insurance a list of all of the applicant's existing life insur-ance to be replaced. Such existing life insurance shall be identified by name of insurer and the policy number. In the event that a policy number has not been assigned by the exist-ing insurer, alternative identification information, such as an application or receipt number, must be listed.~~ a statement signed by the producer that:

(i) represents that the producer used only company-approved sales material; and

(ii) states that copies of all sales material were left with the applicant in accordance with ARM 6.6.305(4); and

(b) ~~Require from the agent with the application for life insurance a copy of the "Notice Regarding Replacement of Life Insurance" signed by the agent and receipt of it acknowledged by the applicant, and a copy of all sales proposals used for presentation to the applicant.~~ within 10 days of the issuance of the policy or contract:

(i) notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with ARM 6.6.305(4);

(ii) provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and

(iii) stress the importance of retaining copies of the sales material for future reference.

(c) ~~Unless otherwise modified by the provisions of (3)(d) or (3)(e) furnish to the applicant a Policy Summary in accordance with the provisions of the Life Insurance Solicitation Regulation (Sub-Chapter 2).~~ be able to produce a copy of the letter or other verification in the policy file at the home or regional office for at least five years after the termination or expiration of the policy or contract.

~~(d) Delay, if it is not also the existing insurer, the issue of its policy for twenty days after it sends the~~

~~existing insurer a written communication that includes the name of the insured, the identification information with respect to the existing life insurance to be replaced that is obtained pursuant to (3)(a), and a copy of the policy summary, unless it provides in its "Notice Regarding Replacement of Life Insurance" and in either its policy or in a separate written notice that is delivered with the policy that the applicant has a right to an unconditional refund of all premiums paid, which right may be exercised within a period of twenty days commencing from the date of delivery of the policy, and it sends the written com-munication required by this rule to the existing insurer within 3 working days of the date its policy is issued, in which event the replacing insurer may issue its policy immediately.~~

~~(e) Provide, if it is also the existing insurer, the policyowner a Policy Summary for the new policy prepared in accordance with (3)(c), prior to accepting the applicant's initial premium or premium deposit, unless the replacing insurer provides in its "Notice Regarding Replacement of Life Insurance" and in either its policy or in separate written notice that is delivered with the policy that the applicant has a right to an unconditional refund of all premiums paid, which right may be exercised within a period of 20 days commencing from the date of delivery of the policy, in which event, the replacing insurer must furnish the Policy Summary at or prior to delivery of the policy.~~

~~(f) Maintain copies of the written communication required by (3)(d), the "Notice Regarding Replacement of Life Insurance", the policy summary, and all sales proposals used, and a replace-ment register, cross indexed, by replacing agent and existing insurer to be replaced, for at least three years or until the conclusion of the next succeeding regular examination by the insurance department of its state of domicile, whichever is later.~~

AUTH: Sec. 33-1-313, MCA
IMP: Sec. 33-18-204, MCA

6.6.307 DUTIES OF INSURERS WITH RESPECT TO ~~DIRECT-RESPONSE~~ DIRECT RESPONSE SALES. ~~Each insurer shall: (1) Inform its responsible personnel of the requirements of this sub-chapter.~~ In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, a notice regarding replacement in Appendix B, or other substantially similar form approved by the commissioner.

(2) ~~Require with or as part of each completed application for life insurance a statement signed by the applicant as to whether or not such insurance will replace existing life insur-ance.~~ If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

(a) provide to applicants or prospective applicants with the policy or contract a notice, as described in Appendix C, or other substantially similar form approved by the commissioner. In these instances the insurer may delete the references to the producer, including the producer's signature, and references not applicable to the product being sold or replaced, without having to obtain approval of the form from the commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this rule. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this rule; and

(b) comply with the requirements of ARM 6.6.306(1)(b), if the applicant furnishes the names of the existing insurers, and the requirements of ARM 6.6.306(1)(c), (1)(d) and (2).

~~(3) Where no replacement is proposed by an insurer in the solicitation of a direct-response sale and a replacement is involved:~~

~~(a) At the time the policy is mailed to the applicant, include a "Notice Regarding Replacement of Life Insurance" in a form substantially as described in 6.6.310(3)-Sample form C.~~

~~(4) Where a replacement is proposed by an insurer in the solicitation of a direct-response sale a replacement is involved:~~

~~(a) Request from the applicant with or as part of the application a list of all existing life insurance to be re-placed. Such existing life insurance shall be identified by the name of insurer.~~

~~(b) If the applicant furnishes the name of the existing insurers, then the replacing direct-response insurer shall mail the applicant a "Notice Regarding Replacement of Life Insurance" in a form substantially as described in 6.6.310(3)-Sample form C within three working days after receipt of the application and shall comply with all of the provisions of 6.6.306(3)(c)(d)(e) and (f), except that it need not maintain a replacement register required by 6.6.306(3)(f).~~

~~(c) If the applicant does not furnish the names of the existing insurers, then the replacing direct-response insurer shall at the time the policy is mailed to the applicant, in-clude a "Notice Regarding Replacement of Life Insurance" in a form substantially as described in 6.6.310(3)-Sample form C.~~

AUTH: Sec. 33-1-313, MCA
IMP: Sec. 33-18-204, MCA

6.6.308 DUTIES OF THE EXISTING INSURER. ~~Each existing insurer which undertakes a conservation effort shall:~~

~~(1) Furnish the policyowner with a policy summary for the existing life insurance within twenty days from the date it receives the written communication required by 6.6.306(3)(d) from the replacing insurer. Such policy summary shall be com-pleted in accordance with the provisions of the Life Insurance Solicitation Regulation, (Sub-Chapter 2) except that information relating to premiums, cash values, death benefits and dividends, if any shall be computed from the current policy year of the existing life insurance. The policy summary shall include the amount of any outstanding policy indebtedness, the sum of any other dividend, accumulations or additions, and may include any other information that is not in violation of any regulation or statute. Life insurance cost index and equivalent level annual dividend figures need not be included in the policy summary. If index figures are included in the policy summary, the policyowner must be notified at the time the policy summary is delivered that such figures should only be used for comparing the rela-tive costs of similar policies.~~

~~(2) Furnish the replacing insurer with a copy of the policy summary for the existing life insurance within three working days of the date that the policy summary is sent by the existing insurer to either its agent or directly to the policy-owner.~~

~~(3) Maintain a file containing the following:~~

~~(a) Written communication required by 6.6.306(3)(d) received from replacing insurers; and~~

~~(b) Copies of policy summaries prepared pursuant to (1) and all sales proposals used.~~

~~This material shall be indexed by replacing insurer and held for three years or until the conclusion of the next reg-ular examination conducted by the insurance department of its domicile whichever is later.~~ (1) Where a replacement is involved in the transaction, the existing insurer shall:

(a) retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later;

(b) send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced within five business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five business days of receipt of the request from the policy or contract owner;

(c) upon receipt of a request to borrow, surrender or withdraw any policy or contract values, send a notice, advising the policy or contract owner that the release of policy or contract values may affect the guaranteed elements,

non-guaranteed elements, face amount or surrender value of the policy or contract from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policy or contract owner. In the case of consecutive automatic premium loans or systematic withdrawals from a contract, the insurer is only required to send the notice at the time of the first loan or withdrawal.

AUTH: Sec. 33-1-313, MCA
IMP: Sec. 33-18-204, MCA

6.6.309 VIOLATIONS AND PENALTIES. (1) Any insurer, agent, representative, officer or employee of such insurer failing to comply with the requirements of this sub-chapter shall be subject to such penalties as may be appropriate under the Iinsurance Llaws of Montana.

(2) This sub-chapter does not prohibit the use of additional material other than that which is required that is not in violation of this sub-chapter or any other Montana statute or regulation. Any failure to comply with this subchapter shall be considered prima facie evidence of a violation of 33-18-204, MCA, Twisting Prohibited.

(3) The following practices shall be considered violations of this subchapter:

(a) any deceptive or misleading information set forth in sales material;

(b) failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;

(c) the intentional incorrect recording of an answer;

(d) advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or

(e) advising a policy or contract owner to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company.

(3)(4) Policyowners Policy and contract owners have the right to replace existing life insurance policies or annuity contracts after indicating in or as part of the applications for new coverage that replacement life insurance that such is not their intention; however, patterns of such action by policyowners policy or contract owners of the same producer who purchase the re-placing policies from the same agent shall be deemed prima facie prima facie evidence of the agent's producer's knowledge that replacement was intended in connection with the sale of those policies, and such patterns identified transactions, and these patterns of action shall be deemed prima facie prima facie evidence of the agent's producer's intent to violate this subchapter.

(5) Where it is determined that the requirements of this subchapter have not been met, the replacing insurer shall provide to the policy owner an in-force illustration if available or policy summary for the replacement policy or

available disclosure document for the replacement contract and the notice regarding replacements in Appendix A or C.

AUTH: Sec. 33-1-313, 33-1-317, 33-1-318, 33-17-1001, MCA
IMP: Sec. 33-18-204, MCA

4. The rule proposed for repeal is:

6.6.310 SAMPLE FORMS on page 6-112 of the Administrative Rules of Montana.

AUTH: 33-1-313, MCA
IMP: 33-18-204, MCA

5. REASONABLE NECESSITY STATEMENT: ARM 6.6.301 through 6.6.309 are being amended and New Rules I, II, and III are being added because the old rules were adopted in 1980 and are inadequate and outdated for the purpose of regulating the industry's current, more modern practices. The proposed amendments and New Rules I, II, and III conform substantially to the National Association of Insurance Commissioners' [NAIC] model regulation adopted July, 2000, and strive to achieve a uniform nationwide standard for the insurance industry to follow. ARM 6.6.310 is being repealed because those sample forms are outdated, and new sample forms are referenced in New Rule III.

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

RULE I DUTIES OF ALL INSURERS THAT USE PRODUCERS

(1) Each insurer shall:

(a) maintain a system of supervision and control to insure compliance with the requirements of this subchapter that shall include at least the following:

(i) inform its producers of the requirements of this subchapter and incorporate the requirements of the subchapter into all relevant producer training manuals prepared by the insurer;

(ii) provide to each producer a written statement of the company's position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;

(iii) a system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with (1)(a)(ii);

(iv) procedures to confirm that the requirements of this subchapter have been met; and

(v) procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer. Compliance with this rule may include, but shall not be limited to, systematic customer surveys,

interviews, confirmation letters, or programs of internal monitoring.

(b) have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the insurance department. The capacity to monitor shall include the ability to produce records for each producer's:

(i) life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;

(ii) number of lapses of policies by the producer as a percentage of the producer's total annual sales of life insurance;

(iii) annuity contract replacements as a percentage of the producer's total annual annuity contract sales;

(iv) number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by (1)(a)(v) of this rule; and

(v) replacements, indexed by replacing producer and existing insurer.

(c) require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts;

(d) require with each application for life insurance or an annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in Appendix A;

(e) when the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material as required by ARM 6.6.305(5), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;

(f) ascertain that the sales material and illustrations used in the replacement meet the requirements of this subchapter and are complete and accurate for the proposed policy or contract; and

(g) if an application does not meet the requirements of this subchapter, notify the producer and applicant and fulfill the outstanding requirements;

(h) maintain records in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

AUTH: Sec. 33-1-313, MCA
IMP: Sec. 33-19-204, MCA

RULE II SEVERABILITY (1) If any rule or portion of a rule of this subchapter, or its applicability to any person or

circumstances, is held invalid by a court, the remainder of this subchapter, or the applicability of its provision to other persons, shall not be affected.

AUTH: Sec. 33-1-313, MCA
IMP: Sec. 33-19-204, MCA

RULE III SAMPLE FORMS (1) The state auditor's office hereby adopts and incorporates by reference Appendix A, B, and C, which are set forth in the National Association of Insurance Commissioners' (NAIC) Life Insurance and Annuities Replacement Model Regulation, adopted July 2000. Copies of appendices A, B, and C are available for public inspection at the office of the Commissioner of Insurance, 840 Helena Avenue, Helena, MT 59601. Copies of these appendices may be obtained by writing to the State Auditor's Office, Legal Department, 840 Helena Avenue, Helena, MT 59601. Persons obtaining a copy of these appendices must pay the cost of providing such copies.

AUTH: Sec. 33-1-313, MCA
IMP: Sec. 33-18-204, MCA

7. This amendment is intended to become effective September 7, 2001.

8. 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 Christina L. Goe, Attorney, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by e-mail to cgoe@state.mt.us, and must be received no later than August 16, 2001.

9. Christina L. Goe, Attorney, has been designated to preside over and conduct the hearing.

10. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, 840 Helena Avenue, Helena, MT 59601, faxed to (406) 444-3497, e-mailed to cgoe@state.mt.us, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

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

**JOHN MORRISON, State Auditor
and Commissioner of Insurance**

**By: /s/ Angela Caruso
Angela Caruso
Deputy Insurance Commissioner**

**By: /s/ Elizabeth L. Griffing
Elizabeth L. Griffing
Rules Reviewer**

Certified to the Secretary of State on July 9, 2001.

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

In the matter of the proposed amendment of ARM 6.6.802 and 6.6.805 pertaining to annuity disclosures, and updating references to the buyer's guide contained in appendix A	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On August 8, 2001, at 9:00 a.m., a public hearing will be held in the 2nd Floor Conference Room, State Auditor's Office, 840 Helena Ave., Helena, Montana, to consider the proposed amendment of ARM 6.6.802 and 6.6.805 pertaining to annuity disclosures, and updating references to the appendix titled "Buyer's Guide."

2. The State Auditor's Office 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 office no later than 5:00 p.m., August 1, 2001, to advise us as to the nature of the accommodation needed. Please contact Pamela Weitz, State Auditor's Office, 840 Helena Ave., Helena, MT 59601; telephone (406) 444-1744; Montana Relay 1-800-332-6145; TDD (406) 444-3246; facsimile (406) 444-3497 or e-mail to pweitz@state.mt.us.

3. The rules proposed to amended provide as follows, (stricken matter interlined, new matter underlined):

6.6.802 AUTHORITY (1) These rules are issued based upon the authority granted the commissioner under 33-20-150, and 33-20-308, Montana Code Annotated, (MCA).

AUTH: Sec. 33-1-313, 33-20-150 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

6.6.805 STANDARD FOR THE DISCLOSURE DOCUMENT (1) through (1)(b) will remain the same.

(2) The state auditor's office hereby adopts and incorporates by reference the appendix titled "Buyer's Guide" including the section title "Equity-indexed Annuities," which is contained in the National Association of Insurance Commissioners' Annuity Disclosure Model Regulation, adopted April 1999. Copies of this appendix are available for public inspection at the office of the Commissioner of Insurance, 840 Helena Avenue, Helena, MT 59601. A copy of this appendix may be obtained by writing to the State Auditor's Office, Legal Department, 840 Helena Avenue, Helena, Montana 59601.

(2) through (3) will remain the same, but will be renumbered (3) through (4).

AUTH: Sec. 33-1-313, 33-20-150 and 33-20-308, MCA
IMP: Sec. 33-20-308, MCA

4. REASONABLE NECCESSITY STATEMENT: When the original rule was adopted, the correct appendix was not properly referenced. Also, the commissioner's authority to adopt these rules was amended by statute in 1999, and the proposed rule amendment to the authority section reflects that statutory change.

5. This amendment is intended to become effective on September 7, 2001.

6. 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 Christina L. Goe, Attorney, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by e-mail to cgoe@state.mt.us, and must be received no later than August 16, 2001.

7. Christina L. Goe, Attorney, has been designated to preside over and conduct the hearing.

8. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written request may be mailed or delivered to the State Auditor's Office, 840 Helena Avenue, Helena, MT 59601, faxed to (406) 444-3497, e-mailed to cgoe@state.mt.us, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

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

**JOHN MORRISON, State Auditor
and Commissioner of Insurance**

**By: /s/ Angela Caruso
Angela Caruso
Deputy Insurance Commissioner**

**By: /s/ Elizabeth L. Griffing
Elizabeth L. Griffing
Rules Reviewer**

Certified to the Secretary of State on July 9, 2001.

**BEFORE THE TRAVEL PROMOTION AND DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA**

In the matter of the proposed amendment of a rule pertaining to the Tourism Advisory Council) NOTICE OF PROPOSED AMENDMENT

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On August 18, 2001, the Travel Promotion and Development Division proposes to amend ARM 8.119.101 pertaining to the Department of Commerce.

2. The Department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., on August 11, 2001 to advise us of the nature of the accommodation that you need. Please contact Rachel Zeigler, 1424 Ninth Avenue, PO Box 200533, Helena, Montana 59620-0533; telephone (406) 444-2669; facsimile (406) 444-1800; TDD (406) 444-2978; Montana Relay 1-800-253-4091; e-mail to rzeigler@state.mt.us.

3. The rule as proposed to be amended provides as follows: (stricken matter interlined, new matter underlined)

8.119.101 TOURISM ADVISORY COUNCIL (1) will remain the same.

(2) The tourism advisory council hereby incorporates by reference the guide entitled "Regulations and Procedures for Regional/CVB Tourism Organizations, ~~February 2000~~ June 2001," setting forth the regulations and procedures pertaining to the distribution of lodging facility use tax revenue. The guide is available for public inspection during normal business hours at the Montana Travel Promotion and Development Division, Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620. Copies of the guide are available on request.

(3) Distribution of funds to regional nonprofit tourism corporations and to nonprofit convention and visitors' bureaus is contingent upon compliance with the "Regulations and Procedures for Regional/CVB Tourism Organizations, ~~February 2000~~ June 2001."

**AUTH: Sec. 2-15-1816, MCA
IMP: Sec. 2-15-1816, MCA**

REASON: It is reasonably necessary to amend this rule to provide clarification because the "2001 Regulations and Procedures for the Regional/CVB Tourism Organizations" have been revised.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Travel Promotion and Development Division, Department of

Commerce, 1424 Ninth Avenue, Helena, Montana 59620, no later than 5:00 p.m., August 17, 2001.

5. If persons who are directly affected by the proposed amendment wish to present their data, views or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit the request along with any comments they have to the Travel Promotion and Development Division, Department of Commerce, 1424 Ninth Avenue, Helena, Montana 59620, or by facsimile (406) 444-1800, to be received no later than 5:00 p.m., August 17, 2001.

6. The Travel Promotion and Development Division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Division. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Travel Promotion and Development Division administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Travel Promotion and Development Division, 1424 Ninth Avenue, Helena, Montana 59620 or by phone at (406) 444-2669, or may be made by completing a request form at any rules hearing held by the agency.

7. If the Division receives requests for a public hearing on the proposed amendment from either 10 percent or 25 whichever is less, of those persons who are directly affected by the proposed amendment, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 20 based on 10 Convention and Visitor Bureaus, six Tourism Regions and at least 184 potential applicants for grants of accommodations tax funds.

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

TRAVEL PROMOTION AND DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
MATTHEW COHN

By: /s/ Richard M. Weddle
RICHARD M. WEDDLE, STAFF ATTORNEY
DEPARTMENT OF COMMERCE

By: /s/ Richard M. Weddle
RICHARD M. WEDDLE, RULE REVIEWER

Certified to the Secretary of State July 9, 2001.

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

In the matter of the adoption of new rules I through IV, amendment of ARM 12.9.601, 12.9.602, 12.9.604, 12.9.605, 12.9.701, 12.9.702, 12.9.703, 12.9.704, and 12.9.705, and the repeal of ARM 12.9.603 pertaining to the upland game bird release program	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On August 8, 2001, the Department of Fish, Wildlife and Parks (department) will hold a public hearing at 7:00 p.m. at the Department of Fish, Wildlife and Parks, Lewistown Area Resource Office, 2358 Airport Road, Lewistown, Montana, 59457, to consider the adoption of new rules I through IV, the amendment of ARM 12.9.601, 12.9.602, 12.9.604, 12.9.605, 12.9.701, 12.9.702, 12.9.703, 12.9.704, 12.9.705, and the repeal of ARM 12.9.603, pertaining to the upland game bird release program.

2. The department 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 Department of Fish, Wildlife and Parks no later than 5:00 p.m. on August 2, 2001, to advise us of the nature of the accommodation that you need. Please contact Fay Moore, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701, telephone (406) 444-2612, fax (406) 444-4952.

3. The proposed new rules provide as follows:

NEW RULE I REQUIREMENTS OF PROJECTS INVOLVING WILD TURKEY RELEASES (1) The department may authorize participation in the upland game bird release program projects for turkeys if the proposed project meets the following requirements:

(a) all releases made will be of wild/free ranging stock that have been trapped in Montana or have been moved into Montana under the direction of the department;

(b) all releases outside of Flathead County will be Merriam's turkey only;

(c) eastern turkeys may be moved only within Flathead County;

(d) no new releases will take place until:

(i) an environmental assessment evaluating the release and

the release site has been completed and approved by the commission; and

(ii) the department has secured agreements from adjacent landowners that would be affected by expanded populations indicating consent for the transplant and free public hunting for the species; and

(e) supplemental releases will require an evaluation by the department that will include but is not limited to:

(i) a history of previous releases;

(ii) justification for supplementing the existing population;

(iii) a legal description of the release site;

(iv) a legal description of the area that will be closed to public hunting until the population has become established (two-year minimum); and

(v) agreements from adjacent landowners that would be affected by expanded populations indicating consent for the transplant and free public hunting for the species.

AUTH: 87-1-249, MCA
IMP: 87-1-248, MCA

REASONABLE NECESSITY: This rule is necessary to establish project requirements for turkey releases under the upland game bird release program. Senate Bill 304 of the 2001 legislative session expanded the pheasant release program to include all upland bird species, and the program is no longer limited to only pheasants. As of this rulemaking, turkeys are the only new species proposed by the department as part of the release program. These project requirements conform to the current turkey transplant program.

NEW RULE II PHEASANT RELEASES BY DEPARTMENT (1) In order to meet the spending requirements set forth in 87-1-247, MCA, the department may enter into agreements with private pheasant rearing facilities to provide pheasants for release on areas throughout Montana that meet the habitat requirements as described for releases by private individuals.

AUTH: 87-1-249, MCA
IMP: 87-1-248, MCA

REASONABLE NECESSITY: The new legislative requirements mandate that the department spend a certain percentage of the program funds each year for release of upland birds. If there is a lack of cooperators for the program, the department may have to purchase pheasants for release in order to meet the spending requirements. This rule is necessary to provide for spending of funds in the event of a lack of cooperators.

NEW RULE III SUPPLEMENTAL FEEDING (1) In the case of an emergency situation being declared by the governor due to extreme weather conditions, the department may enter into agreements with individuals, organizations, or other agencies to

provide supplemental feed for upland birds.

AUTH: 87-1-249, MCA
IMP: 87-1-248, MCA

REASONABLE NECESSITY: The new legislation provides for supplemental feeding of upland game birds. While supplemental winter feeding is not necessary during normal winters, extreme winter conditions may require consideration of a feeding program in local areas. This rule implements the legislative provision for supplemental feeding should it become necessary.

NEW RULE IV DEFINITIONS (1) "Upland game bird release program" means the programs established by 87-1-246 through 87-1-248, MCA, for both the compensation to eligible participants for the rearing and release of upland game birds in order to establish viable populations, and the compensation to eligible participants for the trapping and release of wild upland game birds in order to establish viable upland game bird populations.

(2) "Upland game bird habitat enhancement program" means the programs established by 87-1-246 through 87-1-248, MCA, for cost-sharing to eligible cooperators for the establishment of suitable habitats to enhance the establishment of viable upland game bird populations.

AUTH: 87-1-249, MCA
IMP: 87-1-248, MCA

REASONABLE NECESSITY: Definitions which clearly articulate the statutory provisions of the upland game bird release program and the habitat enhance program were needed to eliminate confusing one program with another. One of the purposes of the legislation was to reduce confusion over the intent of the programs.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

12.9.601 DEPARTMENT AUTHORIZATION OF PROJECTS (1) The department may authorize organizations or individuals to participate in the ~~ringneck pheasant enhancement program~~ upland game bird release program following the submission of a written application describing the proposed project on forms provided by the department and a review of that application. ~~Applications must be received by June 30 of the year in which release of the birds is contemplated.~~ All applications must include the following information:

(a) name of the organization or individual applying;

(b) name of the person in charge of the organization's proposed ~~pheasant enhancement~~ upland game bird release project;

~~(c) number of members if the applicant is an organization;~~

~~(d)~~ (c) the applicant's current mailing address;

~~(e)~~ (d) the applicant's current telephone number;

~~(f)~~ (e) the legal description of the release site;

~~(g)~~ (f) clear evidence of either ownership of the release site or landowner permission if the release site is not owned by the applicant;

~~(h)~~ (g) a habitat map (specifying types and percentages) or ~~SCS~~ natural resource conservation service (NRCS) conservation plan or aerial photo covering the land on which the birds are to be released;

~~(i)~~ (h) the number of acres at the release site~~.~~; and

~~(j) the number of birds to be released;~~

~~(k)~~ (i) any other information deemed relevant by the department which is included on the project application form.

AUTH: 87-1-249, MCA
IMP: 87-1-248, MCA

REASONABLE NECESSITY: Changes to this rule were necessary to conform to legislative changes authorizing release of upland game birds other than pheasants and to conform to the definitions specified in new rule IV.

The pheasant release program application formerly required applicants to state the number of birds they were releasing on a site. This requirement has been amended out of this rule as the new legislation requires the department to develop criteria that are used in determining the number of birds that a given site can support. These criteria are spelled out in ARM 12.9.602.

12.9.602 REQUIREMENTS OF PROJECTS INVOLVING PHEASANT RELEASES (1) The department will not authorize participation in the ~~pheasant enhancement program~~ upland game bird release program for pheasants unless the proposed project meets the following requirements:

(a) all birds must be at least ~~8~~ 10 weeks of age at the time of release;

(b) ~~not less than~~ a minimum of 40% of the birds in a release under this program must be cocks;

(c) all birds must be fully feathered;

(d) applications for releases must be postmarked prior to ~~April 1~~ May 15, and all releases must be made between August 1 and September 15;

(e) through (h) remain the same.

(i) all release sites must contain at least 10% winter cover, ~~10%~~ 25% idle cover and ~~25%~~ 10% food sources to be considered for authorization;

(j) through (l)(iii) remain the same.

(m) ~~no more than 200 birds may be released on any approved site;~~ sites will be inspected by department personnel to determine the number of birds that may be released. This number will be determined by:

(i) the acres of the least represented or most limiting required habitat component within a one-mile radius of the release site (woody cover, nesting cover of food sources); and

(ii) the number of birds that the area will support

assuming one bird will require approximately three acres of habitat within a one-mile radius of the release site and there is a 60% mortality rate of released birds.

(n) banding of birds will be required in specified study areas and will be done by the department prior to release;

(o) all releases must be verified at the time of release by a department employee ~~at the time of release~~ who will submit the verification form signed by the landowner for payment to the landowner or their designee; and

(p) no site may be stocked more than ~~twice~~ three times in a ~~5~~ five year period unless unusual environmental conditions warrant reconsideration.

(2) For good cause shown, the department may waive any requirement listed in (1).

AUTH: 87-1-249, MCA
IMP: 87-1-248, MCA

REASONABLE NECESSITY: Change in the age of birds released is proposed in an effort to increase initial survival of released birds. Department investigations and scientific literature indicate a very low survival rate for eight-week-old birds that are released.

The number of birds which may be released has been modified to acknowledge the mortality of pen raised birds in calculating the number of birds authorized in a release. The criteria used in determining the number of birds released on a site are also detailed in this rule. The release program is an effort to establish viable populations and not a release in "front of the gun" similar to shooting preserves.

The limitation of stocking a site was changed from two years in a five year period to three years in five year period. Three releases over a five year period are adequate to meet the intent of the statute if environmental conditions are conducive.

12.9.604 PAYMENT BY DEPARTMENT (1) The department will pay authorized pheasant release projects ~~$3.00 for each bird~~ for live birds released in compliance with all the provisions of ~~ARM 12.9.601 through ARM 12.9.603~~ this subchapter at a rate equivalent to the average cost of 10 to 14 week old pheasants being raised and offered for sale to the public by NPIP certified hatcheries or game bird growers in Montana.

AUTH: 87-1-249, MCA
IMP: 87-1-248, MCA

REASONABLE NECESSITY: Legislation previously specified that the department could not pay more than $3.00 per bird released. The changes to this rule reflect that the statute now provides for the department to set payment amount so adjustments can be made without amending legislation.

12.9.605 EFFECT OF RULE VIOLATIONS (1) Any person found guilty, pleading guilty or forfeiting bond for a violation of any of the ~~ringneck pheasant enhancement program~~ upland game bird release program rules is disqualified from any further participation in the program.

AUTH: 87-1-249, MCA
IMP: 87-1-248, MCA

REASONABLE NECESSITY: This rule was amended to reflect that the program name has been changed from ringneck pheasant enhancement program to upland game bird release program.

12.9.701 PROJECT APPLICATIONS (1) The department may authorize organizations or individuals to participate in the upland game bird habitat enhancement program following submission of a written application describing the proposed project on forms provided by the department and a review of that application. All applications must include and/or be accompanied by the following information:

(a) through (e) remain the same.

(f) clear evidence of ~~either ownership of the project site or~~ landowner's permission if the project site is not owned by the applicant;

~~(g) a habitat map specifying percentages of nesting cover, winter cover and feeding areas or a (soil conservation service) conservation plan covering the land on which the project would occur~~;

~~(h)~~ (g) the number of acres included in the proposed enhancement project;

~~(i)~~ (h) description of the proposed enhancement project including:

(i) agricultural activities~~,~~;

(ii) grazing management~~,~~;

(iii) tree and shrub plantings~~,~~;

(iv) ~~seed mixtures~~ cover plantings; and

(v) fencing; and

~~(j)~~ (i) any other information deemed relevant by the department and requested on the project application form.

AUTH: 87-1-249, MCA
IMP: 87-1-248, MCA

REASONABLE NECESSITY: This proposed rule amendment amends out the requirements that enhancement program participants provide a habitat map specifying winter cover, nesting, etc. as this requirement is now addressed in ARM 12.9.601. The other changes to this rule were for clarification.

12.9.702 PROJECT REQUIREMENTS (1) Projects must meet the following requirements before the department may authorize participation in the program:

(a) projects must be designed to establish or improve habitat components such as nesting cover, winter cover and

feeding areas ~~that are not present on the area. The components do not all need to be present under the same ownership~~;

(b) projects must be located within a suitably sized area, normally a minimum of 100 contiguous acres and shelterbelts cannot be located within 400 feet of occupied buildings or outbuildings used by livestock. ~~The project area~~ All habitat components need not be ~~all~~ under the ownership of the applicant if other of the necessary habitat components (nesting cover, winter cover, feeding areas) are present at suitable distances on adjacent ownerships;

(c) all projects on private land must be implemented through lease, conservation easement or by department cost-sharing with the landowner, project sponsor, or a federal cost-share program;

(d) projects which require the department to purchase fee title to lands will not be considered; ~~and~~

(e) all projects on private lands must be open to public hunting for upland game birds for the duration of the project. Reasonable use limitations on numbers of hunters and areas to be hunted may be allowed; however, user fees may not be changed. Projects located within a leased or commercial hunting operation will not be considered.

AUTH: 87-1-249, MCA
IMP: 87-1-248, MCA

REASONABLE NECESSITY: The changes to this rule were necessary to implement specific legislative requirements which mandate public hunting and the concern for landowner property safety.

12.9.703 PROJECT REVIEW AND APPROVAL (1) Enhancement activities will be reviewed and prioritized based on current species distribution and the potential to increase numbers of upland game birds.

(2) Project proposals will be evaluated before being accepted by the department using the following criteria:

(a) species present on the project and species that would benefit from the project;

(b) the proximity and number of acres of similar or essential habitat components to the project;

(c) the status of adjacent property regarding hunter access and benefits provided upland birds;

(d) the number of acres open to hunting;

(e) expected benefits for upland birds and hunters from the proposed project;

(f) additional consideration will be given to projects that:

(i) offer longer contract terms or additional landowner cost-share; or

(ii) offer lands with special or unique components (such as wetlands) for enhancement.

(3) Emphasis will be given to projects on private lands; however, projects on public land will be pursued where opportunities for cooperative cost-share projects exist.

~~(3)~~ (4) Approved projects will be funded on a first come, first served basis.

~~(4)~~ (5) Projects may not interfere with or duplicate other state or federal assistance programs. However, projects specific to the matching portion of other state or federal assistance programs will be considered.

(6) Participation in federal farm programs, state agricultural programs, hunter management programs, the hunting access enhancement program or other programs that provide for habitat or access enhancement does not preclude eligibility for landowners to also enroll property in the upland bird enhancement program.

AUTH: 87-1-249, MCA
IMP: 87-1-248, MCA

REASONABLE NECESSITY: The additions of sections (2) and (6) were necessary as these are legislative requirements for project review and approval.

12.9.704 REPORTING REQUIREMENTS (1) through (1)(f) remain the same.

(2) The department will assist with preparation of reports~~.~~ in the following ways:

(a) department personnel will develop a monitoring schedule for all projects; and

(b) the program coordinator will maintain a copy of regional monitoring plans and annual status of projects monitored and new projects added to the plan.

AUTH: 87-1-249, MCA
IMP: 87-1-248, MCA

REASONABLE NECESSITY: The additions to the reporting requirements incorporated into this rule were specified in the new legislation.

12.9.705 PAYMENT BY DEPARTMENT (1) The department will compensate individuals or organizations by cost-sharing the actual costs incurred for completed upland game bird habitat enhancement projects as set forth ~~on~~ in a contract. The department's share~~, not to exceed 100%,~~ will be negotiated on an individual project basis for cost-sharing projects. In-kind services such as labor may be used for the programs participants' portion of the cost-share. ~~On cost-share projects, the department will not pay for federal costs received from such programs. The department will reimburse the landowner for up to 100% of his share of other federal, state, and/or private cost-share programs.~~

(a) requests for payments must be accompanied by invoices, receipts or similar proof of expenses; and

(b) all requests for payment must include verification by department personnel that the work for which payment has been requested has been completed.

(2) through (3) remain the same.

(4) For qualified upland game bird habitat enhancement projects sponsored by individuals or organizations, the department may reimburse the sponsor for up to ~~three-fourths~~ 10% of the cost of the project for development and implementation of the project and may cover up to 100% of the cost of the material required for the project.

(a) requests for payment must be accompanied by invoices, receipts or similar proof of expenses; and

(b) all requests for payment must include verification by department personnel that the work for which payment had been requested has been completed.

(5) The following are costs limitations under the upland game bird habitat enhancement program:

(a) department costs for any project may not exceed $100,000 without commission authorization, and no project will be funded for more than $200,000;

(b) department expenses on any project for purchase of land, buildings, or equipment will not exceed $25,000 and all equipment purchased by the department will remain property of the department;

(c) the department will cover no more than 50% of the cost of wells, pipelines, and roads; and

(d) the department will cover no more than 75% of the total cost of any upland game bird habitat enhancement project.

AUTH: 87-1-249, MCA
IMP: 87-1-248, MCA

REASONABLE NECESSITY: In section (1) additions (a) and (b), requiring documentation and verification of completed work on projects, were specified in legislation. Section (4) is necessary to set out criteria for the percentage allowed for projects sponsored by someone other than the landowner and conform this criteria to the criteria set out section (1) on authorized spending amounts for overall project costs or cost share percentages with cooperators. For completeness, section 5 delineates the costs limitations mandated in statute.

5. The department proposes to repeal the following rule:

12.9.603 REPORTING REQUIREMENTS which can be found on page 12-803 of the Administrative Rules of Montana.

AUTH: 87-1-249, MCA
IMP: 87-1-248, MCA

REASONABLE NECESSITY: Changes made to ARM 12.9.602 require a department employee to verify the release and submit a verification form. Therefore, individuals releasing birds no longer need to file a report with the department, as a department employee will submit the verification forms.

6. 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 John McCarthy Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701, telephone (406) 444-2612, fax (406) 444-4952, E-mail fwpwld@state.mt.us, and must be received no later than August 17, 2001.

7. John F. Lynch, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701 has been designated to preside over and conduct the hearing.

8. The agency 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 the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East 6th Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

10. FISCAL IMPACTS: The upland bird release program is required to set aside each year at least 15% of the funds collected for the upland game bird program and must expend at least 25% of the set aside funds for upland bird releases each year. The amount of money appropriated for the program is a percentage of the amount of license dollars available. Therefore, the amount of money available for the program depends on the amount of licenses sold and varies from year to year. The program currently generates approximately $700,000 annually through the sale of upland bird licenses. Using this figure the program would be required to spend at least $26,250 annually but could expend as much as $105,000. Numbers of pheasants released under the program will vary with participation in the program and the cost of raising a pheasant to 10 weeks of age which is the minimum age required for release under these rules. Payments for released pheasants will be based on the average age of 10 week old pheasants sold by commercial hatcheries in the state. See ARM 12.9.604.

/s/ Christian A. Smith
Christian Smith, Chief of Staff
Fish, Wildlife and Parks

/s/ John F. Lynch
John F. Lynch
Rule Reviewer

Certified to the Secretary of State July 9, 2001

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

In the matter of the proposed adoption of new rule I and the repeal of ARM 24.29.1571 and 24.29.1581, relating to workers' compensation fee schedules for chiropractic, physical therapy and occupational therapy services	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL

TO: All Concerned Persons

1. On August 10, 2001, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services building (north entrance), 111 North Sanders Street, Helena, Montana, to consider the proposed adoption of one new rule and the repeal of two existing rules, related to workers' compensation provider fees for chiropractic, physical therapy and occupational therapy services.

2. The Department of Labor and Industry 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 by not later than 5:00 p.m., August 3, 2001, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Attn: Ms. Linda Wilson, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6531; TTY (406) 444-5549; fax (406) 444-4140; or e-mail liwilson@state.mt.us.

3. The proposed new rule provided as follows:

NEW RULE I PROVIDER FEES--PHYSICAL MEDICINE AND MEDICAL REHABILITATION (1) Except as otherwise provided by this rule, fees for the medical specialties of chiropractic, physical therapy and occupational therapy are payable only under the following procedure codes listed below, with the descriptions and unit values listed in the Relative Values for Physicians. The procedure codes, descriptions, and unit values in Relative Values for Physicians apply to chiropractic services for diagnostic x-rays.

(2) Nothing in this rule is to be construed so as to broaden the scope of a provider's practice. Each provider is to limit their services to those which can be performed within the limits and restrictions of the provider's professional licensure. Providers may only charge for services performed that are consistent with the scope of their practice and licensure.

(3) The conversion factor will be adjusted annually to comply with the provisions specified by ARM 24.29.1536. The

conversion factor used depends on the date the service was rendered:

(a) Effective October 1, 2001, the conversion factor for services, other than diagnostic x-rays, performed by a practitioner of chiropractic, physical therapy or occupational therapy is $4.38.

(b) Effective October 1, 2001, the conversion factor for diagnostic x-rays is $19.57.

(c) Effective January 1, 2002, and each year annually thereafter, the conversion factors will increase in the manner specified by ARM 24.29.1536.

(4) The following procedure codes, with the associated description and unit values, are recognized for chiropractic, physical therapy and occupational therapy services: 97010, 97012, 97014, 97016, 97018, 97020, 97022, 97024, 97026, 97028, 97032, 97033, 97034, 97035, 97036, 97039, 97110, 97112, 97113, 97116, 97124, 97139, 97140, 97150, 97504, 97520, 97530, 97535, 97537, 97542, 97545, 97546, 97703, 97750, 97780, 97781, and 97799.

(5) The insurer is obligated to pay only the two highest valued procedures billed per day by the provider of the following procedure codes: 97010, 97012, 97014, 97016, 97018, 97020, 97022, 97024, 97026, 97028, 97032, 97033, 97034, 97035, 97036, 97039, 97110, 97112, 97113, 97116, 97124, 97139, 97140, 97150, 97504, 97520, 97530, 97542, and 97703.

(a) When billed with an office visit (97799), a maximum of two procedures and/or modalities are payable at three quarters (3/4) of the listed relative value. When an office visit is not billed, the two procedures and/or modalities must be paid at the full relative value.

(6) The billing of procedure code 97799 must be accompanied by an explanation of the services provided and demonstrate the difficulty and time it took to perform those services. Only the descriptions and unit values provided by this section may be billed.

(a) For initial visits, if it is necessary to provide services where the presenting problem poses moderate complexity or high complexity, the provider must furnish to the insurer documentation of the reasons justifying that higher level of initial evaluation.

(b) For a routine follow-up visit requiring an examination of an established patient, only the brief office visit, low complexity level of service should be billed. If it is necessary to provide services where the presenting problems poses moderate complexity or high complexity, the provider must furnish to the insurer documentation of the reasons justifying that higher level of office visit on a case-by-case, visit-by-visit basis.

(c) A provider subject to this rule is limited to the following descriptions and relative values listed in the Relative Values for Physicians publication when billing procedure code 97799:

(i) Visit for the evaluation and management of a patient presenting with a problem which has not been evaluated or

treated by the therapist which requires an expanded problem-focused history, an expanded problem-focused examination, and decision making of low complexity. The presenting problem is usually of low complexity. The average time spent with the patient is 25 minutes. The relative value is 11.2 units.

(ii) Visit for the evaluation and management of a patient presenting with a problem which has not been evaluated or treated by the therapist which requires a detailed history, a detailed examination, and decision making of moderate complexity. The presenting problem is usually of moderate complexity. The average time spent with the patient is 45 minutes. The relative value is 16.0 units.

(iii) Visit for the evaluation and management of a patient presenting with a problem which has not been evaluated or treated by the therapist which requires a comprehensive history, a comprehensive examination, and decision making of high complexity. The presenting problem is usually of high complexity. The average time spent with the patient is 70 minutes. The relative value is 20.8 units.

(iv) Visit for the evaluation and management of a patient presenting with a problem which has been evaluated or is being treated by the therapist which requires a problem-focused history, a problem-focused examination, and decision making of low complexity. The presenting problem is usually of low complexity. The average time spent with the patient is 15 minutes. The relative value is 7.2 units.

(v) Visit for the evaluation and management of a patient presenting with a problem which has been evaluated or is being treated by the therapist which requires an expanded problem-focused history, a detailed focused examination, and decision making of moderate complexity. The presenting problem is usually of moderate complexity. The average time spent with the patient is 30 minutes. The relative value is 10.8 units.

(vi) Visit for the evaluation and management of a patient presenting with a problem which has been evaluated or is being treated by the therapist which requires a detailed history, a comprehensive examination, and a decision making of high complexity. The presenting problem is usually of high complexity. The average time spent with the patient is 50 minutes. The relative value is 15.6 units.

(7) Practitioners of chiropractic, physical therapy and occupational therapy must obtain prior authorization for any of the following procedures, and may not bill procedure code 97799 in conjunction with any of the following:

(a) 97535 Self-care home management training;

(b) 97537 Community/work reintegration training;

(c) 97545 Work hardening/conditioning;

(d) 97546 Work hardening/conditioning;

(e) 97750 Physical performance test or measurement with written report;

(f) 97780 Acupuncture; or

(g) 97781 Acupuncture with electrical stimulation.

(8) Diagnostic x-rays are to be billed using the procedure codes and unit values listed in the Relative Values for

Physicians publication. The provider must furnish to the insurer documentation of the reasons justifying the use of the diagnostic x-ray procedure(s) employed.
AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

Reasonable necessity: There is reasonable necessity to adopt proposed NEW RULE I in response to recent requests of various workers' compensation insurers to eliminate the special Montana-only procedure codes for chiropractic services and Montana-only descriptions and unit values for physical therapist and occupational therapist services. The Department has also received requests from a number of chiropractors and the Montana Chiropractic Association to revise the fee schedule which is being used to reimburse chiropractors for services provided to workers' compensation claimants, and to bring those fees more into line with other medical specialties. The proposed new rule is intended to replace two existing rules, both of which are proposed for repeal. Workers' compensation insurers providing coverage in Montana have stated that the special Montana-only procedure codes increase the insurer's costs by requiring special handling and payment for non-standard procedure codes. The insurers have also stated that costs associated with auditing and review of claims is higher because of the use of Montana-only codes.

In addition, there is reasonable necessity for the elimination of Montana-only medical procedure codes because it will likely make installation of the medical reporting module [software] in the Department's workers' compensation database system simpler and less costly due to elimination of special software requirements to handle the Montana-only codes. The Department, in consultation with the International Association of Industrial Accident Boards and Commissions ("the IAIABC") (an organization of workers' compensation regulatory authorities, of which the Department is a member), also believes that elimination of the Montana-only codes will make it easier to make appropriate comparisons between Montana and other state's workers' compensation systems. The Department plans on implementing the medical reporting module as soon as feasible; it is currently awaiting the overdue release of the IAIABC standards manual before completing the final design and implementation of the medical reporting module. Elimination of Montana-only codes will also make it easier for insurers to timely meet Montana's electronic reporting requirements using industry-standard software.

There is also reasonable necessity to group these non-MD providers who perform physical medicine services into a single rule in order to provide greater equity in the reimbursement levels for these providers. The Department recognizes that the services provided by chiropractors, physical therapists and occupational therapists are not identical and that those individuals are licensed in different medical specialties, but

believes that the services provided are similar enough to allow consolidation into a single fee schedule using CPT codes. The Department acknowledges the fact that the CPT codes and RVP system was developed specifically for medical doctors, and not originally intended for use by non-MDs, and balances that against the desire of insurers to have a uniform procedure coding system and integrated fee system, in considering the proposed rule changes. Finally, there is reasonable necessity to change the conversion factor for all of the medical specialties covered by proposed NEW RULE I in order to stay within the mandate of § 39-71-704(4), MCA, that overall medical costs not rise faster than the growth in the state's average weekly wage.

4. The Department proposes to repeal two rules as follows:

24.29.1571 CHIROPRACTIC FEES
AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA
ARM pages 24-2197 through 24-2202

24.29.1581 PROVIDER FEES--OCCUPATIONAL AND PHYSICAL THERAPY SPECIALTY AREA
AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA
ARM pages 24-2205 through 24-2212

Reasonable necessity: There is reasonable necessity to repeal the two rules to implement the adoption of NEW RULE I, as identified above, and to eliminate the special Montana-only procedure codes that are currently in existence, the reasonable necessity of which is described above. In addition, there is reasonable necessity to repeal the two rules in order to make the adjustment of fees for chiropractic services provided in proposed NEW RULE I and stay within the mandate of § 39-71-704(4), MCA, that overall medical costs not rise faster than the growth in the state's average weekly wage.

The Department estimates that up to approximately 1,300 chiropractors, occupational therapists, and physical therapists could be affected by the proposed rule change, based on the number of licensed providers of those specialties in Montana. The Department has designed the rule change to, in the aggregate, neither increase or decrease the amount of reimbursements made for the treatment of injured workers under the Workers' Compensation and Occupational Disease Acts by those providers.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:

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

and must be received by no later than 5:00 p.m., August 17, 2001. Comments may also be submitted electronically as noted in the following paragraph.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://dli.state.mt.us/calendar.htm, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rules via the comment forum, http://forums.dli.state.mt.us, linked to the Notice of Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., August 17, 2001. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

7. The Department maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding any specific topic or topics over which the Department has rule-making authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@state.mt.us, or made by completing a request form at any rules hearing held by the Department.

8. The bill sponsor notice provisions of 2-4-302, MCA, do not apply.

9. The Department proposes to make the new rule and repeals effective on October 1, 2001. The Department reserves the right to make only a portion of the proposed rule changes, or to make some or all of the rule changes effective on a different date.

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

/s/ KEVIN BRAUN	**/s/ MIKE FOSTER**
Kevin Braun	**Mike Foster, Commissioner**
Rule Reviewer	**DEPARTMENT OF LABOR & INDUSTRY**

Certified to the Secretary of State: July 9, 2001.

**BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA**

In the matter of the proposed amendment of ARM 8.30.406, 8.30.502 and 8.30.504 pertaining to examination, continuing education and sponsors and the adoption of new rule I pertaining to renewal	) NOTICE OF PUBLIC HEARING) ON PROPOSED AMENDMENT) AND ADOPTION

TO: All Concerned Persons

1. On September 6, 2001, at 10:00 a.m., a public hearing will be held in the Business Standards Division conference room #487, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry 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 Board of Funeral Service no later than 5:00 p.m., on August 25, 2001 to advise us of the nature of the accommodation that you need. Please contact Cheryl Smith, Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2393, Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail DLIBSDFNR@state.mt.us.

3. The rules as proposed to be amended provide as follows: (new matter underlined, deleted matter interlined).

8.30.406 EXAMINATION (1) The licensing examination shall be the national board examination of the conference of funeral service examining boards and in addition, the statutes and rules under Title 37, chapter 19, MCA, pertinent portions of Title 46, chapter 4, MCA, relating to county coroner's duties, Title 50, chapter 15, MCA, relating to vital statistics and the rules of the Montana state department of public health and human services covering registration of deaths, embalming, transportation, disposition of dead human bodies and funeral directing.

(2) remains the same.

AUTH: 37-19-202, MCA
IMP: 37-19-302, 37-19-303, MCA

REASON: The Board is proposing to amend this rule to specify additional statutes that an applicant must reference in order to take the jurisprudence examination. The Board believes it is reasonably necessary to include the additional statutes so that applicants have fair notice of the subject matter over

which they will be tested.

8.30.502 CONTINUING EDUCATION REQUIREMENTS (1) through (4)(b)(ii) remain the same.

(iii) The board will randomly audit 10% of the licensed morticians each year. ~~A letter of audit will accompany the renewal application.~~ Audited licensees must provide copies of completion certificates to the board as verification of compliance by the renewal deadline date.

(A) through (5) remain the same.

AUTH: 37-1-319, 37-19-202, MCA
IMP: 37-1-306, MCA

REASON: The Board determined that it would be more efficient to have the audit done after licensees have renewed. There is no reason to audit a license that has not been renewed. The Board believes this amendment is reasonably necessary to hold down administrative costs of the relicensing process and thus postponing a need for a fee increase.

8.30.504 SPONSORS (1) The board will recognize courses, programs or other continuing education activities sponsored by Montana funeral directors association (MFDA), ~~national~~ selected ~~morticians (NSM)~~ independent funeral homes (SIFH), national funeral directors association (NFDA), independent funeral directors association (IFDA), federated funeral directors of America, national foundation of funeral service, Montana coroner's association, order of golden rule, Montana department of justice coroner's training programs, Montana funeral services, inc. (MFSI) and funeral industry supplier programs. All other programs must meet the criteria established in ARM 8.30.502.

AUTH: 37-1-319, 37-19-202, MCA
IMP: 37-1-306, MCA

REASON: The Board is proposing the amendment to this rule because the name of the organization has changed. This amendment indicates the new name of the organization.

4. The proposed new rule provides as follows:

NEW RULE I RENEWAL OF LICENSE (1) All licenses, whether individual or establishment, expire annually and may be renewed pursuant to the provisions of this rule. If a license is not renewed, practice by a licensee, whether individual or an establishment, after the renewal date set forth in ARM 8.2.208 will constitute unlicensed practice and will subject the licensee to disciplinary action as provided by statute and rule.

(2) Prior to the renewal date, the board office will mail a renewal form to the licensee's preferred mailing address on file with the board. Failure to receive such renewal form shall not relieve the licensee of the licensee's obligation to renew and pay renewal fees in a timely manner.

(3) Renewal forms that are in any manner incomplete on receipt by the board office will be returned to the licensee for completion and resubmission. To be considered complete, the renewal form must:

(a) bear the original signature of the licensee or, if an establishment, the licensed manager of that establishment;

(b) be accompanied by the appropriate renewal fee. Checks returned to the board for any reason will be returned to the licensee for payment. The license will be considered not renewed until proper payment is received;

(c) be accompanied by a completed and signed affidavit of continuing education if required for the license being renewed as specified in ARM 8.30.502(2); and

(d) be accompanied by any other material or documentation the board may require for renewal as identified on the renewal form.

(4) Complete renewal forms submitted to the board after the date specified in ARM 8.2.208 shall be considered late and subject to a late penalty fee in addition to the renewal fee. In the event of a late renewal, the licensee may be subject to disciplinary action by the board for unlicensed practice.

(5) Licensees who fail to renew, or notify the board of their intent not to renew, before the established renewal date will be notified in writing by the board office of the lapsing of their license.

AUTH: 37-19-202, 37-19-301, 37-19-306, MCA
IMP: 37-19-301, 37-19-306, MCA

REASON: The Board is proposing this new rule to inform the licensees of the procedure for renewal of their licenses and the consequences if a license is not properly renewed. This rule is reasonably necessary in order to put licensees on notice of their obligation for renewing the annual license.

5. An electronic copy of this Notice is available through the Department's site on the World Wide Web at http://discoveringmontana.com/dli/bsd under the health care licensing bureau. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

6. 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 the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to DLIBSDFNR@state.mt.us and must be received no later than the close of the hearing on September 6, 2001. If comments are submitted in writing, the Board requests that the person submit eight copies of their comments.

7. Bruce Spencer, attorney, has been designated to preside over and conduct this hearing.

8. The Board of Funeral Service maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request to the board which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Funeral Service administrative rulemaking or other administrative proceedings. Such written request may be mailed or delivered to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to DLIBSDFNR@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

BOARD OF FUNERAL SERVICE
JEAN RUPPERT, CHAIRMAN

By: /s/ MIKE FOSTER
Mike Foster, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State, July 9, 2001.

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

In the matter of the amendment of ARM 37.86.4401, 37.86.4405, 37.86.4406, 37.86.4407, 37.86.4412, 37.86.4413, 37.86.4414 and 37.86.4420 pertaining to rural health clinics (RHC) and federally qualified health centers (FQHC)	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On August 8, 2001, 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, 1400 Broadway, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on July 31, 2001, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

37.86.4401 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, DEFINITIONS In ~~ARM 37.86.4401 through 37.86.4420~~ this subchapter the following definitions apply:

(1) "Category of service" means a type of medicaid covered service that is furnished in an RHC or FQHC.

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

~~(3) "FQHC" means federally qualified health center.~~

(4) through (6) remain the same.

(7) "Increase or decrease in the scope of service" means the addition of or elimination of a category of service to the clinic or center or an increase or decrease in the intensity of a category of service.

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

(9) "Intensity" means the increase or decrease in the cost of a category of service due to a change in the level of medical care provided to the population served by the clinic or center that may be reasonably expected to span at least one year.

(8) through (10) remain the same but are renumbered (10) through (12).

~~(11) "RHC" means rural health clinic.~~

(12) through (15) remain the same but are renumbered (13) through (16).

~~(16)~~ (17) "Visit" means a face-to-face encounter between a clinic or center patient and a clinic or center health professional for the purpose of providing RHC or FQHC core or other ambulatory services. Encounters with more than one clinic or center health professional, and multiple encounters with the same clinic or center health professional, that take place on the same day and at a single location constitute a single visit, except when after the first encounter, the patient suffers an additional illness or injury requiring additional diagnosis or treatment, or the patient has a mental health visit, dental visit or both with clinic or center health professionals that take place on the same day as a medical visit to the same clinic or center.

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

37.86.4405 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, PROVIDER PARTICIPATION REQUIREMENTS (1) The requirements of ~~ARM 37.86.4401, 37.86.4405 through 37.86.4407, 37.86.4412 through 37.86.4414 and 37.86.4420~~ this subchapter are in addition to those contained in rule provisions generally applicable to medicaid providers.

(2) through (4) remain the same.

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

37.86.4406 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, SERVICE REQUIREMENTS (1) The Montana medicaid program will cover and reimburse under the RHC or FQHC services programs only those services that are RHC services or FQHC services as defined in ARM 37.86.4401 and subject to the provisions of ~~ARM 37.86.4401, 37.86.4405 through 37.86.4407, 37.86.4412 through 37.86.4414 and 37.86.4420~~ this subchapter.

(2) through (4) remain the same.

(5) The Montana medicaid program will cover and reimburse RHC or FQHC services only if the services are provided in accordance with the same requirements that would apply if the service were provided by an individual or entity other than an RHC or an FQHC, except as specifically provided otherwise in ~~ARM 37.86.4401, 37.86.4405 through 37.86.4407, 37.86.4412 through 37.86.4414 and 37.86.4420~~ this subchapter. These requirements include but are not limited to the following:

(a) through (f) remain the same.

(6) A provider must notify the department, in writing, of an addition or elimination of a category of service offered by the RHC or FQHC to medicaid recipients. The department will determine an increase or decrease in the intensity of services

upon request of a provider. ~~at least 30 days in advance of first offering a category of RHC other ambulatory services or FQHC other ambulatory services to medicaid recipients of its intent to do so and must request that the department approve the provider to offer the category of service. A provider may combine more than one category of service in a single approval request.~~

(a) As a condition of approval, the department may require the provider to submit documentation and information necessary to demonstrate compliance with requirements applicable to the category of service or documentation and information necessary to determine the cost of the service.

(b) Medicaid coverage and reimbursement of an additional category of service ~~other ambulatory services~~ will not be available to a provider unless department approval was ~~granted~~ requested prior to provision of the services and unless the services comply with all applicable requirements. Department approval ~~will be prospective only~~ of any increase in the rate of reimbursement will be from date of notification. Any decrease in the rate of reimbursement due to an elimination of a category of service shall be effective from the date of notification or the date the department determines the category of service was eliminated, whichever is first.

(c) Any increase or decrease in the rate of reimbursement due to a change in the intensity of services shall be from the date of notification by the provider to the department.

(d) The department shall complete the determination within 60 days of the written request or within 60 days of receipt of any required documentation and information, whichever is later.

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

37.86.4407 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, RECORD KEEPING AND REPORTS (1) through (3) remain the same.

(4) Upon failure or refusal of the provider to make available and allow access to such records, ~~upon failure or refusal to submit a required cost report or upon submission of a cost report that is incomplete or otherwise not in compliance with department rules and instructions,~~ or to report a change in scope of services, the department may recover in full all payments made to the provider during the reporting period to which such records relate and may suspend any further payments to the provider until such time as the provider fully complies with this rule.

(5) No later than 30 days prior to the beginning of its initial reporting period as a new provider or following a change in ownership~~:~~,

~~(a)~~ a provider ~~that is either an independent entity or a provider-based entity other than an RHC in a rural hospital with less than 50 beds~~ must submit to the department or its agent an estimate of budgeted costs and visits for RHC or FQHC services for the reporting period in the form and detail required by the

department and such other information as the department may require to establish a rate as provided at ARM 37.86.4413. ~~an interim payment rate; and~~

~~(b) a provider that is an RHC in a rural hospital with less than 50 beds, must submit to the department or its agent a copy of the provider's most recent medicare hospital cost report that has been settled by medicare, and such other information as the department may require to establish an interim payment rate.~~

~~(6) All providers must submit to the department or its agent in the form and detail required by the department, a cost report within 150 days after the close of the reporting period. Extensions of the due date for filing a cost report may be granted by the department only when a provider's operations are significantly adversely affected due to extraordinary circumstances over which the provider has no control, such as flood or fire.~~

~~(7) For all providers other than provider-based RHCs in rural hospitals with less than 50 beds, the cost report must be in the form prescribed by the department and must contain the following information:~~

~~(a) the allowable costs actually incurred in providing RHC or FQHC services for the period and the actual number of visits for RHC or FQHC services provided during the period;~~

~~(b) with respect to services provided to medicaid recipients, the amounts of all payments received or due from other payors, including but not limited to medicare and private insurers, with respect to such services; and~~

~~(c) any other information or documentation requested by the department and necessary to determine the reimbursement due to a provider under these rules.~~

~~(8) Provider-based RHCs in rural hospitals with less than 50 beds must submit a copy of the hospital's settled medicare cost report for each reporting period.~~

~~(9) Within 30 days after the end of a provider's reporting period end, the department will mail to the provider the medicaid cost report forms that the provider is required to complete and submit under this rule, along with any related department instructions for completion and submission of the forms. This rule does not require the department to send any medicare hospital cost report or other medicare forms to a provider.~~

~~(10) The department may require a provider to submit any additional information and documentation necessary to determine the provider's interim or final reimbursement rate or amount under ARM 37.86.4401, 37.86.4405 through 37.86.4407, 37.86.4412 through 37.86.4414 and 37.86.4420.~~

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

37.86.4412 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, REIMBURSEMENT ~~FOR CERTAIN PROVIDER-BASED RHCS~~

~~(1) For RHC services provided to a recipient in accordance with these rules by provider-based RHCs in rural hospitals with~~

~~less than 50 beds, the Montana medicaid program will reimburse the provider as specified in this rule. This rule does not apply to independent entities or to provider-based entities other than provider-based RHCs in rural hospitals with less than 50 beds.~~

~~(a) For purposes of this rule, the number of beds in a hospital for the cost reporting period is determined by counting the number of available bed days during the cost reporting period, not including beds or bassinets in the healthy newborn nursery, custodial care beds, or beds in excluded distinct part hospital units, and dividing that number by the number of days in the cost reporting period.~~

~~(b) For purposes of this rule, rural hospitals are those hospitals not located in a metropolitan statistical area~~.

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

~~(a) Based upon the provider's medicare hospital cost report for the reporting period, a medicare cost to charge ratio shall be calculated separately for each cost center for which charges were made by the provider to and paid by the medicaid RHC services program for services provided during the reporting period. The medicare cost to charge ratio for each such cost center shall be calculated by dividing the total charges for all payers for the cost center by the total reasonable cost for the cost center.~~

~~(b) The total medicaid reasonable cost for each cost center shall be calculated by multiplying the provider's total charges in each cost center made by the provider to and paid by the medicaid RHC services program for services provided during the reporting period, by the medicare cost to charge ratio for the cost center, determined as provided in (2)(a).~~

~~(c) The total medicaid charges for all cost centers shall be calculated by adding the total charges in each cost center made by the provider and paid by the medicaid RHC services program for services provided during the reporting period.~~

~~(d) The total medicaid reasonable cost for all cost centers shall be calculated by adding the total medicaid reasonable cost for each cost center, determined as provided in (2)(b), for each cost center for which charges were made by the provider and paid by the medicaid RHC services program for services provided during the reporting period.~~

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

~~(3) For purposes of this rule, the reasonable costs of~~

~~providing rural health clinic services to medicaid recipients shall be determined based upon the provider's medicare hospital cost report for the reporting period, subject to desk review or audit, and according to medicare cost reimbursement principles applicable to provider-based RHCs, as specified in 42 USC 1395x(v), as implemented by 42 CFR 405.2462(a) and 2468, 42 CFR Part 413, and the Medicare Provider Reimbursement Manual, HCFA Pub. 15 (referred to as Pub. 15 or HIM-15). The cited authorities are federal statutes, regulations and manuals specifying the methods and rules used to determine reasonable cost for purposes of the medicare program. For purposes of determining the reasonable costs of providing rural health clinic services to medicaid recipients under this rule, the department hereby adopts and incorporates herein by reference 42 USC 1395x(v) (1995 Supp.), as implemented by 42 CFR 405.2462(a) and 2468 (1997), 42 CFR Part 413 (1997), and the Medicare Provider Reimbursement Manual, HCFA Pub. 15 (referred to as Pub. 15 or HIM-15). Copies of the cited authorities may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, P.O. Box 202951, Helena, MT 59620-2951.~~

~~(a) For purposes of applying the provisions of 42 USC 1395x(v), 42 CFR 405.2462(a) and 2468, 42 CFR Part 413, and the Medicare Provider Reimbursement Manual, HCFA Pub. 15 (referred to as Pub. 15 or HIM-15) as provided in (3), any reference in such authorities to medicare, medicare beneficiary, beneficiary, intermediary or secretary shall be deemed to refer also to medicaid, medicaid recipient, recipient, the department or the department, respectively.~~

~~(b) For purposes of this rule, costs and charges include the reasonable costs of and charges for providing RHC services, regardless of payor source.~~

~~(c) Charges include the costs of and charges for providing mental health services, as defined in ARM 46.20.103, and the cost of providing services covered by a health maintenance organization for an enrolled recipient as provided in ARM Title 37, chapter 86, subchapter 50.~~

~~(4) Reimbursement under (2) will be determined retrospectively based upon the provider's medicare hospital cost report for the corresponding period.~~

~~(5) Until the retrospective determination of reimbursement under (2), the Montana medicaid program will reimburse the provider a temporary interim reimbursement which shall be 100% of the provider's usual and customary charges for RHC services charges.~~

~~(6) Interim payments made to a provider-based RHC in a rural hospital with less than 50 beds during a reporting period will be subject to reconciliation and settlement as provided in ARM 37.86.4420.~~

~~(7) To the extent provided in ARM 37.86.4414, if any, the provider may receive supplemental payments to cover the difference between payments received from a managed care organization or health maintenance organization and the amount the provider would otherwise be entitled to receive for the~~

~~services under this rule.~~

(1) This subchapter specifies requirements applicable to provision of and reimbursement for RHC and FQHC services. These rules are in addition to requirements generally applicable to medicaid providers as otherwise provided in state and federal statute, rules, regulations and policies.

(2) These rules are subject to the provisions of any conflicting federal statute, regulation or policy, whether now in existence or hereafter enacted or adopted.

(3) Unless otherwise provided in these rules, this subchapter applies to rate years beginning on or after January 1, 2001. Reimbursement and other substantive RHC and FQHC requirements for earlier periods are subject to the laws, regulations, rules and policies then in effect. Procedural and other non-substantive provisions of these rules are effective upon adoption.

(4) All RHCs and FQHCs will be reimbursed on a prospective payment system beginning January 1, 2001 and each succeeding calendar year. The prospective payment system will apply equally to provider based and independent RHCs and FQHCs.

(5) The payment for RHCs and FQHCs will be as described in section 1902(a)(2)(B) and (C) of the Social Security Act 42 USC 1396a. For services furnished on or after January 1, 2001, payment for services for an RHC or FQHC shall be calculated on a per visit basis. This payment shall be equal to 100% of the average of the allowable costs of the RHC or FQHC furnishing such services during the RHC's or FQHC's fiscal years 1999 and 2000 which are reasonable and related to the cost of furnishing such services. This rate will be adjusted to take into account any increase or decrease in the scope of such services, as determined by the department, furnished by the RHC or FQHC during fiscal year 2001. Reasonableness shall be determined using the same methodology used under section 1833(a)(3) of the Social Security Act and using medicare allowable cost principles as set forth in 42 CFR 405.2468, HCFA manual provisions applicable to RHCs or FQHCs, including the Medicare Provider Reimbursement Manual, HCFA Pub. 15 and HCFA Pub. 27. The RHC or FQHC shall report any increase or decrease in the scope of services for fiscal year 2001 to date by notifying the department within 60 days of receipt of their estimated prospective payment worksheet from the department. Other changes through the end of calendar year 2001 shall be as in ARM 37.86.4406(6).

(a) The formula for calculating this base per visit rate is: the total cost of core and other ambulatory services for fiscal year 1999 and fiscal year 2000 divided by the total core and other ambulatory visits for fiscal year 1999 and fiscal year 2000, as reported on the providers filed medicaid fiscal year 1999 and fiscal year 2000 cost reports. This base cost per visit rate may be adjusted by a percentage of the total cost increase/decrease due to changes in scopes of services for fiscal year 2001 to date.

(b) If the provider reports only costs of other ambulatory services and not visits on their fiscal year 1999 and/or fiscal

year 2000 cost reports, the costs of the other ambulatory services shall be removed from the calculation, however, the provider may report the number of visits and have the costs and visits added back into the base cost per visit rate by notifying the department within 60 days of receipt of their estimated prospective payment worksheet from the department.

(6) The department shall reimburse the clinic or center retroactive to the effective date of January 1, 2001.

(7) On January first of each succeeding calendar year the rate shall be adjusted by the percentage increase in the medicare economic index (MEI) applicable to primary care services for that calendar year.

(8) The department will reimburse the RHC or FQHC for the rate change in (7) retroactive to the effective date of January first of the calendar year, beginning with January 1, 2002.

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

37.86.4413 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, ~~REIMBURSEMENT FOR OTHER PROVIDER-BASED ENTITIES AND FOR INDEPENDENT ENTITIES~~ ESTABLISHMENT OF INITIAL PAYMENT FOR NEW CLINICS OR CENTERS ~~(1) Independent entities and provider-based entities, other than RHCs in rural hospitals with less than 50 beds, will be reimbursed as provided in this rule. This rule does not apply to provider-based RHCs in rural hospitals with less than 50 beds, which shall be reimbursed as provided in ARM 37.86.4412.~~

~~(2) For RHC or FQHC services provided to eligible recipients by independent entities and by provider-based entities, other than RHCs in rural hospitals with less than 50 beds, the department will reimburse a provider an all-inclusive rate per visit for core services and an all-inclusive rate per visit for each category of other ambulatory services, each rate determined retrospectively in accordance with this rule, less the amount of any medicare and other third party payments and less any applicable medicaid copayment amount. Reimbursement for RHC and FQHC services under this rule is subject to all applicable medicaid requirements.~~

~~(3) The provider's all-inclusive rate per visit for core services shall be the provider's allowable RHC or FQHC cost per visit for core services for the reporting period, subject to applicable tests of reasonableness, including the applicable medicare RHC or FQHC productivity screening guidelines and medicare RHC or FQHC per visit payment caps, as provided in (6) and (7).~~

~~(a) For purposes of (3), the provider's allowable RHC or FQHC costs for RHC or FQHC core services are the provider's costs actually incurred which are reasonable in amount and necessary and proper to the efficient delivery of RHC or FQHC core services. The allowability of costs shall be determined in accordance with medicare reasonable cost principles as set forth in 42 CFR Part 413 and medicare RHC or FQHC allowable cost principles set forth in 42 CFR 405.2468, and Health Care~~

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

~~(i) For purposes of applying the provisions of 42 CFR Part 413, 42 CFR 405.2468, HCFA Pub. 15 and HCFA Pub. 27 as provided in (3)(a), any reference in such authorities to medicare, medicare beneficiary, beneficiary, intermediary or secretary shall be deemed to refer also to medicaid, medicaid recipient, recipient, the department or the department, respectively.~~

~~(b) The provider's total RHC or FQHC costs for core services in the reporting period shall be divided by the provider's total number of visits for core services in the reporting period, subject to any applicable productivity screening guidelines as provided in (6), to determine the cost per visit for core services. The provider's cost per visit for core services is subject to the applicable medicare RHC or FQHC per visit payment cap, as provided in (6) or (7).~~

~~(4) The provider's all-inclusive rate per visit for each category of other ambulatory services shall be the provider's allowable RHC or FQHC cost per visit for the category of other ambulatory services for the reporting period.~~

~~(a) For purposes of (4), the provider's allowable RHC or FQHC costs for each category of other ambulatory services are the provider's costs actually incurred which are reasonable in amount and necessary and proper to the efficient delivery of the category of RHC or FQHC other ambulatory services. The allowability of costs shall be determined in accordance with medicare reasonable cost principles as set forth in 42 CFR Part 413 and medicare RHC or FQHC allowable cost principles set forth in 42 CFR 405.2468, and HCFA manual provisions applicable to RHCs or FQHCs, including the medicare provider reimbursement manual, HCFA Pub. 15 (referred to as Pub. 15 or HIM-15) and HCFA Pub. 27. For purposes of determining the provider's allowable RHC or FQHC cost per visit for each category of other ambulatory services, the department hereby adopts and incorporates by reference 42 CFR Part 413 (1997), 42 CFR 405.2468 (1997), HCFA Pub. 15 and HCFA Pub. 27. The cited authorities are federal statutes, regulations and manuals specifying the methods and rules used to determine reasonable cost for purposes of the medicare program. Copies of the cited regulations and manuals are available upon request from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

~~(i) For purposes of applying the provisions of 42 CFR Part 413, 42 CFR 405.2468, HCFA Pub. 15 and HCFA Pub. 27 as provided in (4)(a), any reference in such authorities to medicare, medicare beneficiary, beneficiary, intermediary or secretary shall be deemed to refer also to medicaid, medicaid recipient, recipient, the department or the department, respectively.~~

~~(b) For purposes of determining allowable costs of each category of other ambulatory services, the provider's costs actually incurred which are reasonable in amount and necessary and proper to the efficient delivery of the category of RHC or FQHC other ambulatory services are allowable, notwithstanding the provisions of any medicare statute, regulation or manual adopted by the Montana medicaid program that might otherwise exclude allowability of such costs because the particular category of service is not covered as an RHC or FQHC service by medicare.~~

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

~~(5) For purposes of (3) and (4), allowable RHC or FQHC cost includes only costs of providing RHC or FQHC services. For providers that provide services other than RHC or FQHC services, the department may apply reasonable methods, including but not limited to a cost to charge ratio methodology to allocate the provider's direct and indirect costs between or among RHC or FQHC services and other services.~~

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

~~(b) For purposes of determining a provider's cost per visit under these rules, costs include the costs of providing mental health services, as defined in ARM 46.20.103, and the cost of providing services covered by a health maintenance organization for an enrolled recipient as provided in ARM Title 37, chapter 86, subchapter 50.~~

~~(c) For purposes of determining a provider's cost per visit under these rules, visits include visits for mental health services, as defined in ARM 46.20.103, and visits covered by a health maintenance organization for an enrolled recipient as provided in ARM Title 37, chapter 86, subchapter 50.~~

~~(6) The provider's allowable cost per visit for RHC and FQHC core services shall be determined using the medicare RHC or FQHC productivity screening guidelines applicable to the provider's reporting period.~~

~~(a) The productivity screening guidelines applicable to the provider's reporting period shall be the applicable RHC or FQHC productivity screening guidelines established by the secretary of the United States department of health and human services pursuant to 42 CFR 405.2468(c), as set forth in section 503 of HCFA Pub. 27. For purposes of determining and applying~~

~~the medicare RHC and FQHC productivity screening guidelines, the department hereby adopts and incorporates by reference 42 CFR 405.2468(c) (1997) and HCFA Pub. 27, section 503. The cited authorities are a federal regulation and manual section pertaining to productivity screening guidelines for RHCs and FQHCs. Copies of the cited regulation and manual are available upon request from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

~~(i) For purposes of applying the provisions of 42 CFR 405.2468(c) and HCFA Pub. 27, section 503, as provided in (6)(a), any reference in such authorities to medicare, medicare beneficiary, beneficiary, intermediary or secretary shall be deemed to refer also to medicaid, medicaid recipient, recipient, the department or the department, respectively.~~

~~(b) If the provider's staffing levels consist of various combinations of physicians and nurse practitioners or physician assistants, a blended screening approach shall be applied to calculate the applicable screening guideline.~~

~~(c) The productivity screening guidelines shall be adjusted as necessary to reflect the applicable medicare RHC and FQHC productivity guidelines published by the Health Care Financing Administration (HCFA).~~

~~(7) The provider's allowable cost per visit for RHC or FQHC core services shall not exceed the applicable medicare RHC or FQHC per visit payment cap for the provider's reporting period.~~

~~(a) The applicable medicare RHC or FQHC per visit payment caps shall be the applicable RHC or FQHC maximum payment per visit established by the secretary of the United States department of health and human services pursuant to 42 CFR 405.2468(c), as set forth in section 505 of HCFA Pub. 27. For purposes of determining and applying the medicare RHC and FQHC maximum payment per visit, the department hereby adopts and incorporates by reference 42 CFR 405.2468(c) (1997) and HCFA Pub. 27, section 505. The cited authorities are a federal regulation and manual section pertaining to payment limitations for RHCs and FQHCs. Copies of the cited regulation and manual are available upon request from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

~~(i) For purposes of applying the provisions of 42 CFR 405.2468(c) and HCFA Pub. 27, section 505, as provided in (7)(a), any reference in such authorities to medicare, medicare beneficiary, beneficiary, intermediary or secretary shall be deemed to refer also to medicaid, medicaid recipient, recipient, the department or the department, respectively.~~

~~(b) The per visit caps shall be adjusted periodically to reflect the per visit medicare RHC and FQHC payment caps published by HCFA.~~

~~(8) The medicare RHC and FQHC productivity screening guidelines and the medicare RHC and FQHC per visit payment caps provided in (6) and (7) do not apply to a provider's all-inclusive per visit rate for RHC or FQHC other ambulatory~~

~~services.~~

~~(9) Costs for which productivity screening guidelines or payment caps have not been established by medicare or by the department may be disallowed pursuant to (3)(b) or (4)(b) if the department determines that the costs are unreasonable or unnecessary or otherwise contrary to the medicare reasonable cost principles adopted in (3)(b) or (4)(b).~~

~~(10) For crossover claims, the medicaid payment will be:~~

~~(a) for RHC crossover claims, up to the full amount of the medicare allowable charge, including applicable medicare deductibles and coinsurance, less any applicable medicaid copayment amount and any other third party payments in addition to medicare; and~~

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

~~(11) The amount of reimbursement due to an FQHC under (2) through (9) shall be determined retrospectively by the department following submission of and based upon review or audit of the reporting period cost report required under ARM 37.86.4407.~~

~~(a) The department will make cost settlements as provided in ARM 37.86.4420 on the provider's fiscal year basis, but in doing so will separately determine the provider's all-inclusive rates per visit for each provider reporting period and for any portion of the provider's reporting period in which the applicable productivity screening guidelines or per visit payment cap differ.~~

~~(12) For providers that are independent entities or provider-based entities, other than RHCs in rural hospitals with less than 50 beds, the department will establish temporary interim rates per visit for each provider reporting period. The interim rates shall be based for the initial period upon the estimate and related information required under ARM 37.86.4407 and based for subsequent years upon the provider's most recent cost report filed as required under ARM 37.86.4407. Separate interim rates will be established for core services and for each category of other ambulatory services.~~

~~(a) The interim rates will be determined by dividing the estimated total allowable costs by estimated total visits for each category of RHC or FQHC services, such as core services and each separate category of other ambulatory services. For purposes of the interim rate determination, the medicare RHC or FQHC tests of reasonableness, including the medicare RHC or FQHC productivity screening guidelines and medicare RHC or FQHC per visit payment caps provided in (6) and (7) shall apply to RHC or FQHC core services but not to RHC or FQHC other ambulatory services.~~

~~(b) Subject to the medicare RHC or FQHC tests of reasonableness, including the medicare RHC or FQHC productivity screening guidelines and medicare RHC or FQHC per visit payment~~

~~caps provided in (6) and (7), the department may, at the request of a provider or on its own initiative, review and increase or decrease any interim rate established under (12) during the reporting period to assure that each interim payment rate approximates the provider's anticipated final average rate per visit for the category of RHC or FQHC services if:~~

~~(i) there is a significant change in the utilization of RHC or FQHC services;~~

~~(ii) actual allowable costs vary materially from the clinic's estimated allowable costs; or~~

~~(iii) the department in its discretion determines that other circumstances warrant an adjustment.~~

~~(c) The interim rates determined under this rule are temporary rates and are subject to adjustment and settlement as provided in (12)(b) and ARM 37.86.4420 upon retrospective determination of the provider's all-inclusive core and other ambulatory service rates per visit as provided in (2) through (9).~~

~~(d) For new providers, including providers new to the Montana medicaid program or new providers after a change in ownership, the department will establish interim rates under this rule based upon the cost report and other information submitted in accordance with ARM 37.86.4407(5). The department will establish the interim rates within 30 days following submission of all information and documentation required under ARM 37.86.4407(5). The provider's claims will not be paid until an applicable interim rate has been established under this rule.~~

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

~~(13) To the extent provided in ARM 37.86.4414, if any, the provider may receive supplemental payments to cover the difference between payments received from a managed care organization or health maintenance organization and the amount the provider would otherwise be entitled to receive for the services under this rule.~~

(1) To determine the initial medicaid prospective payment system base per visit rate for a newly qualified RHC or FQHC, reimbursement shall be equal to 100% of the average prospective payment system rates for other RHCs or FQHCs located in the same or adjacent area with a similar caseload. In the event that there is no such RHC or FQHC, payment shall be made in accordance with the methodology provided in (2) through (4).

(2) During the RHC's or FQHC's first two fiscal years, the RHC or FQHC will be reimbursed on a per visit basis equal to the RHC's or FQHC's total projected costs divided by the RHC's or FQHC's total projected visits. The provider must submit to the department or its agent an estimate of budgeted costs and visits for the RHC or FQHC for the reporting period in the form and

detail required by the department and such other information as the department may require to establish a rate.

(3) At the end of the RHC's or FQHC's first two fiscal years, a new per visit rate shall be established that is equal to 100% of the allowable costs of the RHC or FQHC furnishing such services during the RHC's or FQHC's first two fiscal years which are reasonable and related to the cost of furnishing such services. The provider must submit to the department or its agent the costs and visits for the RHC or FQHC for the reporting period in the form and detail required by the department and such other information as the department may require to establish a rate.

(a) The formula for calculating this new base per visit rate is: the total cost of core and other ambulatory services for the first two fiscal years divided by the total core and other ambulatory visits for the first two fiscal years. This base cost per visit rate may be adjusted by a percentage of the total cost increase/decrease due to changes in scopes of services for the third fiscal year to date.

(b) The department shall reimburse the RHC or FQHC this new base rate retroactive to the effective date of their enrollment as an RHC or FQHC.

(4) Reimbursement for the third year forward shall be as in ARM 37.86.4406(6) and 37.86.4412(7) and (8).

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

37.86.4414 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, SUPPLEMENTAL PAYMENTS ~~FOR MENTAL HEALTH SERVICES AND HEALTH MAINTENANCE ORGANIZATION (HMO) SERVICES~~ IN CASE OF MANAGED CARE ~~(1) A provider may submit a request to the department for the difference between payments under a contract with an MCO or HMO and the rates it would receive under ARM 37.86.4412 or 37.86.4413. A request to the department must include:~~

~~(a) documentation of the type of services provided, e.g., physician services or licensed clinical psychologist services;~~

~~(b) documentation of the managed care or health maintenance organization's payment amount per service made to the provider, separately stated for each type of service;~~

~~(c) documentation of the number of visits provided, separately stated for each type of service;~~

~~(d) the provider's medicaid reimbursement rate or amount for each type of service, if known; and~~

~~(e) the total amount of supplemental payment claimed by the provider.~~

~~(2) The department may require the provider to submit any additional information or documentation necessary to determine the amount of supplemental payment, if any, due the provider.~~

~~(3) The department will determine the amount of supplemental payment, if any, to which the provider is entitled under section 4712(b)(1)(B) of the Balanced Budget Act of 1997, P.L. 105-33 and will make payment to the provider within 30 days~~

~~of receipt of the provider's claim.~~

~~(4) If the department makes supplemental payment to a provider under this rule prior to a determination of the provider's final reimbursement rate or amount, the department will reconcile and settle the amount of such supplemental payments in accordance with the provisions of ARM 37.86.4420.~~

~~(5) This rule shall not be construed to permit or require any payment to a provider that is not required by section 4712(b)(1)(B) of the Balanced Budget Act of 1997, P.L. 105-33.~~

(1) In the case of services furnished by an RHC or FQHC pursuant to a contract between the RHC or FQHC and a managed care entity (as defined in section 1932(a)(1)(B) and 1932(a)(1)(C) of the Social Security Act), payment to the RHC or FQHC shall be a supplemental payment equal to the amount (if any) by which the amount determined under medicaid prospective payment system exceeds the amount of the payments provided under the contract.

(2) The supplemental payment required shall be made quarterly.

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

37.86.4420 RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS, ~~RECONCILIATION AND SETTLEMENT OF INTERIM RATE PAYMENTS~~ ALTERNATIVE PAYMENT METHODOLOGIES ~~(1) For all providers, following submission as required by ARM 37.86.4407 of a complete and accurate cost report and any other information and documentation necessary to determine the provider's final reimbursement for a reporting period, the department will determine the provider's final reimbursement for the reporting period.~~

~~(2) Following determination of the provider's final reimbursement for the reporting period, the department will compare the provider's final reimbursement for the reporting period with the interim reimbursement for the reporting period and determine whether an overpayment or underpayment has been made to the provider.~~

~~(a) If the department has made supplemental payment to a provider under ARM 37.86.4414(3) prior to a determination of the provider's final reimbursement rate or amount, as part of the reconciliation and settlement provided in this rule, the department will reconcile and settle the amount of such supplemental payments to assure that such supplemental payments are consistent with the actual payments made by the managed care or health maintenance organization and with the final medicaid reimbursement rates and/or amounts determined in accordance with these rules.~~

~~(3) In addition to the determinations required under (1) and (2), the department may in its discretion perform earlier partial reconciliations or settlements as the department deems necessary or appropriate to assure that interim payments more closely approximate final payments or to limit or reduce the amount of overpayment or underpayment that would otherwise~~

~~require adjustment at the time of reconciliation and settlement under (1) and (2).~~

~~(4) Overpayments and underpayments will be collected or paid as provided in ARM 46.12.509(7) and references in that rule to a "hospital" shall be deemed to be references to an RHC or FQHC. The department shall notify the provider in writing of the overpayment or underpayment.~~

~~(5) A provider's cost report and/or reconciliation and settlement of rates may be reopened or amended as provided in section 2931 of the medicare provider reimbursement manual, HCFA Pub. 15 (referred to as Pub. 15 or HIM-15). For purposes of governing reopening and amendment of cost reports and rate reconciliations and settlement, the department hereby adopts and incorporates by reference section 2931 of HCFA Pub. 15 (referred to as Pub. 15 or HIM-15), which is a medicare manual provision addressing reopening and amendment of cost reports and rate reconciliations and settlement under the medicare program. Copies of the cited manual section are available upon request from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

~~(a) For purposes of applying the provisions of section 2931 of HCFA Pub. 15 (referred to as Pub. 15 or HIM-15), as provided in (6), any reference in such authorities to medicare, medicare beneficiary, beneficiary, intermediary or secretary shall be deemed to refer also to medicaid, medicaid recipient, recipient, the department or the department, respectively.~~

~~(6) Nothing in this rule shall be construed to prevent the department or its agents from performing a desk review, audit or other review or investigation of a provider's costs, cost report, claims or other submissions and making any appropriate adjustments or recoveries at any time.~~

~~(7) A provider who is aggrieved by an adverse department action with respect to an interim rate determination, overpayment or underpayment determination or other adverse determination may request an administrative review or fair hearing subject to the department's administrative rules regarding administrative review and fair hearing for medical assistance providers.~~

(1) In the case of a catastrophic event or extraordinary circumstance that would directly impact the cost of medical services provided by an RHC or FQHC, or upon mutual agreement of the department and the RHC or FQHC the department may provide for payment in any year to an RHC or FQHC for services described in section 1905(a)(2)(B) and (C) of the Social Security Act in an amount determined under an alternative payment methodology that:

(a) is agreed to by the department and the RHC or FQHC; and

(b) results in payment to the RHC or FQHC of an amount which is at least equal to the amount otherwise required to be paid to the RHC or FQHC under the medicaid prospective payment system.

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

3. The proposed amendments are necessary to implement a prospective payment system (PPS) for Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) serving Montanans eligible for Medicaid benefits. These rules are in response to the requirements of the Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) Benefits Improvement and Protection Act 2000 (BIPA) which requires states to adopt a PPS effective January 1, 2001. The new Medicaid PPS for FQHCs and RHCs differs from the current Medicaid reasonable cost system. BIPA requires states to use the new PPS mechanism to calculate a minimum Medicaid per visit rate. The proposed rule amendments would change the Medicaid FQHC/RHC reimbursement methodology as follows:

1. Reimbursement of RHC/FQHCs would be made through a prospective payment system based on 100% of average costs reported by the center or clinic during years 1999 and 2000.

2. The initial year payment for new clinics would be equal to 100% of average costs of similar clinics in the same or an adjacent area with a similar caseload. In the event that there is no such RHC or FQHC, payment would be based on estimates of cost and utilization.

3. Supplemental payments to clinics participating in a managed health care plan would be equal to the amount (if any) by which the amount determined under the Medicaid prospective payment system exceeds the amount of the payments provided under the managed care plan contract.

ARM 37.86.4401

The Department proposes an amendment that clarifies the definition of circumstances justifying allowable multiple visits to a single facility in the same day. The clarification is necessary to address confusion expressed by providers. The proposed amendment is based on federal rules and memoranda. The new definition was crafted by the Department in consultation with the Centers for Medicare and Medicaid Services (formerly HCFA), the Montana Primary Care Association (MPCA) and the Montana Hospital Association (MHA) and expands the allowable circumstances that would constitute a multiple visit.

New definitions were added and the existing provisions renumbered to accommodate the PPS methodology. Once a baseline rate has been established for each clinic under the proposed rules, the only future adjustments to the rate would be for changes in the Medicare Economic Index and changes in the provider's scope of service. As a result, a definition of the term "increase or decrease in scope of services" is necessary. The Department consulted with MPCA and MHA and determined that

scope of service could be affected in only two ways:

1. by the addition or elimination of a category of service; or

2. by an increase or decrease in the intensity or level of services. The proposed definition of scope of service was patterned on Montana and federal statutes and rules.

The Department also proposes a simplification to clarify applicability of the definitions. The proposed amendment is not intended to be a substantive change.

ARM 37.86.4405:

The proposed simplification is intended to clarify applicability of the rule. The proposed amendment is not intended to be a substantive change.

ARM 37.86.4406:

The Department proposes simplification of (1) and (5) to clarify applicability of the rule. The proposed amendments are not intended to be a substantive change. The proposed changes to (6) are necessary to implement rate adjustments in response to an increase or decrease in scope of services under the new PPS. The Department proposes that other ambulatory services be included in the per visit rate and that the only rate adjustments would be to reflect changes in the Medicare Economic Index or a provider's scope of services. The proposed amendment to (6)(c) is intended to give providers notice of a time frame within which they can expect notification of rate changes.

ARM 37.86.4407:

The Department proposes amendments to encourage timely and accurate reporting of changes in a provider's scope of services. The adjustment to rates for provider-based rural health clinics and independent rural health clinics would be calculated using the same methodology as PPS under ARM 37.86.4413.

ARM 37.46.4412:

The proposed amendments are necessary to establish a Prospective Payment System, as required by BIPA. RHCs and FQHCs would be reimbursed a per visit payment rate that includes reimbursement for costs "incident to" and incorporating fees for Other Ambulatory Services. In order to comply with BIPA, the initial payment rate must be equal to 100% of the provider's average reasonable cost per visit reported for years 1999 and 2000.

The proposed rule would allow the Department to adjust a provider's rate taking into account any increase or decrease in scope of services that the clinic or center anticipates or has implemented. The rule would also set out the guidelines the

Department will use to determine "reasonable costs". These proposed guidelines are the same as under the previous rule and conform to federal regulations.

The proposed rule also establishes a methodology, required by BIPA, to calculate future year payments and establishes the effective dates of these payment adjustments.

ARM 37.46.4413:

The proposed amendments are necessary to implement a system of payment meeting BIPA requirements for establishing initial year and future year payments for new clinics or centers. Since many clinics or centers in Montana do not have other clinics or centers with similar case loads located in the same area, the Department, in consultation with provider organizations, determined that it was important to add a mechanism to adjust a new clinic or center's payment to reflect actual cost per visit. The Department proposes that the calculation of future year payments for new clinics and centers follow the same methodology and effective date for established providers.

ARM 37.46.4414:

The Department proposes amending the method of establishing supplemental payments for centers and clinics participating in a managed health care plan to conform to BIPA. Montana Medicaid currently has no managed care entities, however, managed care systems have been used in the past, and the Department deems it prudent to provide for managed health care in these rules.

ARM 37.46.4420:

The Department proposes an amended alternative payment methodology to conform to BIPA. BIPA allows alternative payment methodologies that result in payment to centers and clinics that is equal to the payment they would receive under PPS. While the Department has elected to implement a PPS, by incorporating the amendments to this rule, it allows the Department to elect an alternative payment methodology in the future should it be necessary to do so.

4. The proposed amendments will be applied to rate years beginning on or after January 1, 2001. The Department will reimburse clinics and centers retroactive to the effective date of January 1, 2001. The process for the adoption of these rules was started as the result of recent federal law State Children's Health Insurance Program Benefits Improvement and Protection Act 2000 (BIPA) changes which made certain provisions effective January 1, 2001. The law was signed by President Clinton during the latter part of December and State agencies were not notified until January, 2001. The Health Care Financing Administration (HCFA) is requiring that states apply the rate changes retroactive to January, 2001. These mandatory federal law

changes did provide certain options of achieving changes in reimbursement rates. The Department needed the extra time to seek advice from affected providers prior to the proposed rule notice. Delays were also caused by the shortage of staff and the extra work associated with the recent Montana legislative session. Reimbursement and other substantive RHC and FQHC requirements for earlier periods are subject to the laws, regulations, rules and policies then in effect. Procedural and other non-substantive provisions of these rules would be effective upon adoption.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on August 16, 2001. 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.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State July 9, 2001.

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

In the matter of the adoption of a new rule limiting the number of class B-1 nonresident upland game bird licenses that may be sold each hunting season	)))))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On January 25, 2001, the Montana Fish, Wildlife and Parks Commission (commission) published notice of the proposed adoption of new rule I concerning limiting the number of class B-1 nonresident upland game bird licenses that may be sold each hunting season at page 151 of the 2001 Montana Administrative Register, Issue Number 2.

2. The agency has adopted new rule I (ARM 12.9.305) exactly as proposed.

3. The department received 50 written statements and 29 oral comments. A summary of the comments and the commission's responses appear below:

COMMENT 1: Several persons opposed the 11,000 cap to the B-1 sales because they believe that a limit on the number of nonresident pheasant licenses sold could result in economic loss to local communities and businesses.

RESPONSE: In 1999, 10,969 nonresident bird licenses were sold, and in 2000, 8226 nonresident bird licenses were sold. Additionally, the 2001 legislature increased the price of a nonresident bird license from 55 dollars to 110 dollars. The decrease in the number of nonresident bird licenses being sold coupled with the increase in the price of a license, make it doubtful that the nonresident bird license cap will be reached before the statute authorizing this rule expires on January 1, 2003. If the bird license sales do not even reach the 11,000 cap as predicted, the cap will not have negative economic impacts on local communities.

COMMENT 2: One person raised concerns that former native Montanans and family members may not receive licenses under the restriction.

RESPONSE: Former native Montanans or family members would not be guaranteed a license under the proposed system. This is the same circumstance that exists for other nonresident licenses which are restricted by the legislature.

COMMENT 3: Several people were concerned that the proposed cap of 11,000 is too high and favored a lower number.

RESPONSE: The commission does not wish to limit nonresident hunting licenses anymore than is necessary. Setting the nonresident license cap at 11,000 may not result in less leasing of land or less land closed to resident hunters, but it does establish an upper limit and will hopefully limit expansion of leasing.

COMMENT 4: Several people commented on the first come/first served method of selling the licenses and preferred a lottery system with no guarantees for outfitters.

RESPONSE: Implementing a first come/first served sale of B-1 licenses is less difficult than a lottery drawing system. When license sales are below the 11,000 level, there is nothing gained by a lottery system. The legislation authorizing the commission to implement the nonresident cap specifically states that there will be no set-aside for clients of outfitters.

COMMENT 5: Numerous individuals questioned whether the 11,000 cap would solve the problem of leasing and offered other alternatives such as increased license fees, limiting days or changing season dates.

RESPONSE: The commission acknowledges that placing a cap of 11,000 will not solve the problem of hunting access to land where pheasant hunting is available and has taken action to implement other measures such as a differential opening and nonresident pheasant hunting.

COMMENT 6: Two individuals stated that the real problem was hunters' inability to gain access to pheasant hunting and there was no need to cap licenses relating to other upland birds.

RESPONSE: The analysis provided for in HB 476 indicated that access to lands where pheasant hunting was available was the primary access problem, however, other upland species were also showing significant decreases in hunter accessibility and were a concern expressed by several sportsmen.

COMMENT 7: Two individuals stated that the problem of access to pheasant hunting could be solved by improving habitat and releasing pheasants.

RESPONSE: The issue expressed by sportsman was not the number of pheasants, but access to pheasant habitat. Increasing pheasant habitat is a long-term endeavor. The habitat would have to be open to hunting to address the issue. Stocking birds in front of the gun is available to hunters already under the privately operated shooting preserve program.

COMMENT 8: One person suggested limiting the acreage outfitters could lease rather than limiting the number of hunters.

RESPONSE: The commission does not have authority over outfitters, nor does it set criteria for limitations of outfitters. The Board of Outfitters within the Department of Labor is responsible for licensing of outfitters.

COMMENT 9: One person indicated that the Fish, Wildlife and Parks Block Management program was responsible for the large number of nonresident bird hunters.

RESPONSE: The Block Management program has become very popular with both residents and nonresidents. While it may be partly responsible for an increasing number of nonresidents, the nonresident has been contributing nearly 100% of the funding for the Block Management program.

COMMENT 10: One person considered it odd that there was so much money being spent on tourism and at the same time the commission was proposing restrictions on nonresident bird hunters.

RESPONSE: Tourism promotion and restricting the numbers of nonresidents for upland bird hunting is only contradictory if the promotion is directed at bird hunting. Local businesses often promote services for economic reasons, so it is not inconsistent to have differing points of view among business owners, hunters, landowners etc.

COMMENT 11: One person suggested restricting the total number of days a nonresident could hunt and the total number of birds allowed.

RESPONSE: Restricting either the total number of days or the number of birds that a nonresident can take was discussed by the commission during its season setting process. It opted to implement a differential opening date for pheasant hunting as an alternative.

COMMENT 12: Several people commented that implementing a cap would not open land that is closed or leased.

RESPONSE: The commission realizes that the cap of 11,000 would not likely open land that is currently leased or closed to hunting. The 11,000 cap may discourage additional lands from being closed to hunting.

COMMENT 13: One person felt that Montanans should have exclusive rights to hunting.

RESPONSE: The commission is required to provide Montana citizens with equitable opportunities, however, this does not mean exclusive rights.

COMMENT 14: One person suggested the state work with producers enrolled in the Conservation Reserve Program (CRP) and get hunting access in exchange for the cost share of seed.

RESPONSE: The department has the Upland Bird Habitat Enhancement program which is a cost share program with landowners to develop upland bird habitat which can include CRP. Lands developed under this program already require reasonable public hunting.

COMMENT 15: Several people raised concern about the bird licenses included in the nonresident combination license. These individuals wanted to know if the cap on the number of nonresident pheasant licenses sold would affect the price of the combination license.

RESPONSE: The cap on the B-1 nonresident bird license has no effect on the number or price of the nonresident combination license which includes an upland bird license. The 11,000 cap on bird licenses sold does not include the bird licenses sold as a part of the nonresident combination license.

COMMENT 16: One person suggested there would be no reason to limit nonresidents if the state implemented preserves like South Dakota.

RESPONSE: The limit on the B-1 license is an access issue rather than a bird resources concern. Implementing preserves for upland birds would not address the access concern.

COMMENT 17: One person indicated he would no longer hunt in Montana under the cap and would spend his money in other states.

RESPONSE: Nonresidents are free to choose where they wish to hunt. Since the current sales level has not reached the 11,000 cap, there is no reason for a nonresident not to hunt in Montana unless the nonresident chooses not to.

COMMENT 18: Several comments were expressed about outfitters and ability to get licenses or guaranteed licenses.

RESPONSE: Under this rule, outfitters and guides cannot be guaranteed licenses for their clients. In 87-2-402(1)(c), MCA, the commission is prohibited from setting aside any number of nonresident upland game bird licenses issued under this statute, which is the authority for the rule, for the clients of licensed outfitters.

COMMENT 19: One person suggested we shouldn't allow

Canadians to hunt pheasants since we cannot hunt in Canada.

RESPONSE: The commission did not propose the idea of prohibiting sales to residents of Canada. While there are Canadians who hunt in Montana, the greatest numbers are United States citizens.

COMMENT 20: One person said that since this was a pheasant issue the solution was to create a pheasant stamp which should be used for habitat.

RESPONSE: The commission agrees that pheasant hunting is the primary species of concern. Pheasant habitat is primarily privately owned lands associated with agriculture. The idea of a pheasant stamp is outside the authority of the commission and would require legislative action.

COMMENT 21: One person believed that the nonresident combination license should be included in the restriction.

RESPONSE: The commission did not include the nonresident combination license in the overall cap since surveys by the department indicate that the number of hunters hunting birds with the combination license is very limited.

COMMENT 22: One person opposed the cap since the issue is access to bird hunting and department analysis indicated the cap would not solve the access problem since Montana residents also lease lands for pheasant hunting, and these lands are closed to those who do not pay to lease them.

RESPONSE: The commission agrees that the cap will not solve the entire access problem caused by leasing. Residents do lease lands, but it is believed that the nonresident is a larger component either directly or by outfitters catering to nonresidents.

COMMENT 23: One person stated that restricting access to public land was unfair since it is for all United States Citizens, not just Montanans.

RESPONSE: Public land is open equally to everyone so long as they have a state license to hunt. The existence of public land hunting does not guarantee a hunting license.

COMMENT 24: One person recognized the role of the department to provide fair and equitable opportunities but stated that the interests of Montana citizens should be considered first.

RESPONSE: The commission is required to provide Montana citizens with equitable opportunities, however, this does not mean Montana citizens have exclusive hunting opportunities.

By: /s/ Rich Lane
Rich Lane
Commission Chairman

By: /s/ John F. Lynch
John F. Lynch
Rule Reviewer

Certified to the Secretary of State July 9, 2001

**BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA**

In the matter of the temporary emergency amendment of ARM 23.15.101, 23.15.102, 23.15.201, 23.15.202, 23.15.203, 23.15.205, 23.15.301, and 23.15.310, creating the office of victims services	NOTICE OF AMENDMENT OF TEMPORARY EMERGENCY RULES

TO: All Concerned Persons

1. Senate Bill 254, which was passed by the legislature and signed by the Governor during the 2001 legislative session, created within the Department of Justice the office of victims services. Effective July 1, 2001, the office of victims services replaces the division of crime control as the entity charged with administering the Crime Victims Compensation Act, Title 53, chapter 9, sections 101 to 133, through the crime victims unit. The current administrative rules governing the procedures by which crime victims submit claims for compensation and by which the crime victims unit determines compensability require changes prior to the Act's July 1, 2001 effective date. It is necessary for these rules to be amended in order for the unit to continue to carry out its duties of compensating innocent victims of criminal acts. If the necessary amendments are not accomplished prior to July 1, 2001, the public safety and welfare of crime victims will be in peril because their ability to obtain benefits to which they are entitled will be in jeopardy. Benefits that would be in jeopardy include but are not limited to medical, burial, death, mental health, and wage loss. Public safety and welfare considerations surrounding crime victims' access to benefits are in imminent peril because rules adopted under regular procedures could not be in place prior to the July 1, 2001 effective date of the Act. Therefore, the Department of Justice intends to amend the following emergency rules.

2. The temporary emergency rules will be effective July 1, 2001.

3. The text of the temporary emergency rules is as follows, stricken matter interlined, new matter underlined:

23.15.101 FUNCTION OF THE ~~DIVISION~~ OFFICE OF VICTIMS SERVICES (1) The ~~division of crime control~~ office of victims services and restorative justice administers the Crime Victims Compensation Act, Title 53, chapter 9, ~~sections~~ parts 101 ~~to~~ through 133, MCA, through the crime victims unit.

AUTH: 53-9-104, MCA
IMP: 53-9-103, MCA

23.15.102 GENERAL DEFINITIONS (1) ~~"Division"~~ "Office" is the ~~division of crime control~~ office of victims services and restorative justice.

(2) through (6) remain the same.

(7) "Deputy director" is the deputy director/chief of staff of the department of justice.

AUTH: 53-9-104, MCA
IMP: 53-9-103, 53-9-125, 53-9-127, 53-9-128, MCA

23.15.201 CLAIM AND INITIAL DETERMINATION (1) through (4) remain the same.

(5) The ~~division~~ office will issue its initial determination accepting, denying, or reconsidering claims for compensation benefits.

AUTH: 53-9-104, MCA
IMP: 53-9-122, 53-9-124, 53-9-127, 53-9-128, MCA

23.15.202 REQUEST FOR HEARING (1) remains the same.

(2) The claimant's request must be in writing and state the action the claimant wishes the ~~division~~ office to take and the reasons the ~~division~~ office should take such action.

(3) The ~~unit's administrative officer~~ office administrator will review the request and all relevant evidence provided by the claimant~~, and~~ . After review, the office administrator will recommend whether a hearing should be held or a revised order issued.

AUTH: 53-9-104, MCA
IMP: 53-9-122, 53-9-130, 53-9-131, MCA

23.15.203 HEARING (1) The ~~administrator may act as the hearing examiner or appoint a hearing examiner.~~ office administrator will refer the claim to a hearing examiner.

(2) through (4) remain the same.

(5) Within 20 days of the issuance of the proposed order, either party may file written exceptions to the order and request a review by the ~~division administrator if the division administrator did not act as hearing examiner, or a reconsideration by the division administrator if the division administrator acted as hearing examiner.~~ deputy director or the deputy director's designee.

(6) The ~~division~~ deputy director will issue a final order which is a final determination ~~by the division~~ as set forth in 53-9-131, MCA. This order is final for purposes of judicial review only if a review under (5) has been held.

AUTH: 53-9-104, MCA
IMP: 53-9-122, 53-9-130, 53-9-131, MCA

23.15.205 RECONSIDERATION OF CLAIMS UNDER 53-9-130, MCA (1) The ~~division~~ office may reconsider a claim at the request of the claimant when no informal hearing under 53-9-122,

MCA, was held, and when the time for requesting such hearing has expired.

(2) remains the same.

(3) and (3)(a) remain the same.

(b) state the reason why the ~~division's~~ office's prior decision should be reconsidered; and

(c) remains the same.

(4) The ~~unit's administrative officer~~ office administrator will review the request and all relevant evidence provided by the claimant and recommend whether the request should be granted or denied.

(5) The recommendation will be reviewed by the ~~division administrator~~ deputy director who may concur, reject, or modify the recommendation.

(6) A reconsideration may be done at any time if requested by the crime victims unit. The request will be reviewed by the ~~division administrator~~ deputy director who may grant, deny, or modify the determination requested as provided in (5).

AUTH: 53-9-104, MCA
IMP: 53-9-130, MCA

23.15.301 ATTORNEY FEES (1) The time, effort, involvement, and complexity of a claim are considered in determining whether or not attorney fees will be granted for attorneys representing claimants before the unit or ~~division~~ office.

(2) remains the same.

AUTH: 53-9-104, MCA
IMP: 53-9-106, MCA

23.15.310 SUBROGATION AND ATTORNEY FEES (1) remains the same.

(2) The claimant or his or her attorney must provide a copy of the fee agreement between the claimant and attorney to the unit. The unit will provide a copy of the ~~division's~~ office's determination or order awarding or denying compensation benefits and any necessary documents to the attorney.

(3) At the conclusion of the civil action, if the ~~division~~ office recovers under its subrogation interest and the claimant wishes to recover a proportional share of costs and attorney fees from the ~~division~~ office, the claimant or his or her attorney must provide an itemized list of the litigation costs and attorney fees to the ~~division~~ office.

(a) After receiving its subrogation interest, the ~~division~~ office will authorize payment of its share of costs and attorney fees to the claimant as reimbursement if the claimant has properly paid all fees and costs, or to the attorney if the claimant has not paid such fees and costs.

AUTH: 53-9-104, MCA
IMP: 53-9-132, MCA

4. The rationale for the emergency rules is as set forth in paragraph 1.

5. A standard rulemaking procedure will be undertaken prior to the expiration of these temporary emergency rules.

6. Interested persons are encouraged to submit their comments during the upcoming standard rulemaking process. If interested persons wish to be personally notified of that rulemaking process they should submit their name and addresses to Ali Sheppard, Assistant Attorney General, Attorney General's Office, P.O. Box 201401, Helena, MT 59620-1401, FAX (406) 444-3549, by surface mail or electronically to contactdoj@state.mt.us.

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 that the person wishes to receive notices regarding motor carrier safety rules. Such written request may be mailed or delivered to the Attorney General's Office, Attn: Interested Party List, P.O. Box 201401, Helena, MT 59620, faxed to the office at (406) 444-3549, e-mailed to contactdoj@state.mt.us or may be made by completing a request form at any rules hearing held by the Department.

8. The Law and Justice Interim Committee has been notified of the adoption of these temporary emergency rules.

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

By: /s/ MIKE McGRATH
MIKE McGRATH, Attorney General
Department of Justice

/s/ ALI SHEPPARD
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State June 28, 2001.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the transfer of ARM 8.57.101 through 8.57.422 pertaining to the Board of Real Estate Appraisers	))))	NOTICE OF TRANSFER

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Real Estate Appraisers is transferred from the Department of Commerce to the Department of Labor and Industry ARM Title 24, Chapter 207.

2. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

OLD	NEW	
8.57.101	24.207.101	Board Organization
8.57.201	24.207.201	Procedural Rules
8.57.202	24.207.202	Public Participation
8.57.403	24.207.501	Examination
8.57.404	24.207.502	Application Requirements
8.57.405	24.207.503	Experience - Number of Hours Required
8.57.406	24.207.504	Qualifying Education Requirements
8.57.407	24.207.505	Qualifying Education Requirements for Licensed Real Estate Appraisers
8.57.408	24.207.506	Qualifying Education Requirements for Residential Certification
8.57.409	24.207.507	Qualifying Education Requirements for General Certification
8.57.411	24.207.2101	Continuing Education
8.57.412	24.207.401	Fees
8.57.413	24.207.402	Adoption of USPAP by Reference
8.57.417	24.207.508	Ad Valorem Tax Appraisal Experience
8.57.418	24.207.509	Qualifying Experience
8.57.419	24.207.515	Inactive License/Certification
8.57.420	24.207.516	Reactivation of License
8.57.421	24.207.403	Regulatory Reviews
8.57.422	24.207.404	Appraisal Review

3. The transfer of rules is necessary because this board was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

BOARD OF REAL ESTATE APPRAISERS
TIMOTHY MOORE, CHAIRMAN

By: /s/ MIKE FOSTER
Mike Foster, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State, July 9, 2001.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 8.57.409 pertaining to qualifying education requirements for general certification	**NOTICE OF AMENDMENT**

TO: All Concerned Persons

1. On April 26, 2001, the Board of Real Estate Appraisers published a notice of proposed amendment of the above-stated rule at page 593, 2001 Montana Administrative Register, issue number 8. The hearing was held May 22, 2001.

2. The Board has amended ARM 8.57.409 exactly as proposed.

3. No comments or testimony were received.

4. In another notice in this issue, ARM 8.57.409 is being transferred to ARM 24.207.507.

BOARD OF REAL ESTATE APPRAISERS
TIMOTHY MOORE, CHAIRMAN

By: /s/ MIKE FOSTER
Mike Foster, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State, July 9, 2001.

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

In the matter of the amendment of ARM 24.11.443, relating to unemployment insurance benefit claims	) NOTICE OF AMENDMENT)))

TO: All Concerned Persons

1. On May 24, 2001, the Department published notice of the proposed amendment to ARM 24.11.443 concerning unemployment insurance benefit claims at page 822 of the 2001 Montana Administrative Register, Issue No. 10.

2. On June 15, 2001, a public hearing was held in Helena to consider the proposed amendment. No members of the public attended the hearing. No member of the public commented on the proposed amendment.

3. The Department has amended ARM 24.11.443 exactly as proposed.

/s/ KEVIN BRAUN	/s/ MIKE FOSTER
Kevin Braun	Mike Foster, Commissioner
Rule Reviewer	DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: July 9, 2001.

**BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA**

In the matter of amendment of ARM 32.2.502 as it relates to Specially Qualified Deputy Stock Inspectors	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 24, 2001, the board of livestock published notice of the proposed amendment to ARM 32.2.502 as it relates to Specially Qualified Deputy Stock Inspectors, at page 828 of the 2001 Montana Administrative Register, Issue Number 10.

2. The board has amended ARM 32.2.502, exactly as proposed.

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges
Marc Bridges, Exec. Officer,
Board of Livestock
Department of Livestock

By: /s/ Bernard A. Jacobs
Bernard A. Jacobs, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State July 9, 2001.

**BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA**

In the matter of the adoption of a new rule pertaining to Ruminant Feeds for Livestock Prohibition	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On May 24, 2001, the board of livestock published notice of the proposed adoption of new RULE I pertaining to Ruminant Feeds for Livestock Prohibition, at page 825 of the 2001 Montana Administrative Register, Issue Number 10.

2. The board has adopted new RULE I (ARM 32.6.104) exactly as proposed.

AUTH: 81-2-102, MCA
IMP: 81-2-102, MCA

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

By: /s/ Marc Bridges
Marc Bridges, Exec. Officer,
Board of Livestock
Department of Livestock

By: /s/ Bernard A. Jacobs
Bernard A. Jacobs, Rule Reviewer
Livestock Chief Legal Counsel

Certified to the Secretary of State July 9, 2001.

**BEFORE THE BOARD OF LAND COMMISSIONERS
AND THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION
OF THE STATE OF MONTANA**

In the matter of the adoption of a temporary rule on biodiversity and old growth management	))))	NOTICE OF ADOPTION OF TEMPORARY RULE

TO: All Concerned Persons

1. On May 24, 2001, the Board of Land Commissioners and the Department of Natural Resources and Conservation published notice of the proposed adoption of a temporary rule concerning biodiversity and old growth management at page 831 of the 2001 Montana Administrative Register, Issue Number 10.

2. The agency has adopted new RULE I BIODIVERSITY AND OLD GROWTH STANDARDS with the following changes, stricken matter interlined, new matter underlined:

RULE I BIODIVERSITY AND OLD-GROWTH MANAGEMENT STANDARDS

(1) The department of natural resources and conservation herein adopts and incorporates by reference "Montana Department of Natural Resources and Conservation 2001. State Forest Land Management Plan Biodiversity Guidance, June 18, 2001," which sets forth the biodiversity guidance (2001) addressing the management of timber from state trust forests, including but not limited to the following:

(a) coarse filter methodology;
(b) appropriate cover type and structure conditions;
(c) snag and snag recruit retention;
(d) emulation of natural disturbance processes;
(e) patch sizes;
(f) a definition of old growth; and
(g) a discussion of how old growth stands could be leased, licensed, sold, or exchanged to achieve fair market value.

(2) A copy of the biodiversity guidance may be obtained from Scott McLeod, Supervisor, Forest Improvement Section, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804.

AUTH: 76-12-112, 77-1-202, 77-1-209, 77-5-201, 77-5-202, and 77-5-204, MCA
IMP: 77-5-101, MCA (SB 354)

3. The following comments were received and appear with the agency's responses:

COMMENT 1: The DNRC is following a flawed process in making temporary rules.

RESPONSE 1: The DNRC has undertaken development of temporary rules in response to two recent developments regarding state forest land management. The first occurred with the February ruling of Judge Sherlock that the State's Biodiversity Guidance represented a faithful interpretation of the State Forest Land Management Plan (SFLMP). His decision concurred with the DNRC position that the Biodiversity Guidance did not alter any of the commitments made in the SFLMP. However, he also ruled that the guidance needs to comply with the Montana Administrative Procedure Act (MAPA); in other words he ruled that we had to undertake a rule making procedure. His ruling states that, "The Court temporarily enjoins the department from harvesting old-growth timber until such time as the department can comply with the procedural requirements of MAPA." No reference is made to either permanent or temporary rules.

At about the same time, SB 354 was being passed by both the Senate and the House of Representatives. With the Governor's signature, this law became effective on April 16, 2001 as 77-5-101, MCA. The gist of the law is that neither the DNRC nor the State Board of Land Commissioners can defer lands for the preservation of old growth or for other purposes without receiving 'fair market value'. This new law (77-5-101, MCA) alters commitments made in the SFLMP by requiring the DNRC to receive revenue in amounts not less than the fair market value for old growth deferrals.

Laws of the State of Montana allow us to pursue the development of temporary rules. According to 2-4-303(2), MCA,

> A statute enacted or amended to be effective prior to October 1 of the year of enactment or amendment may be implemented by a temporary administrative rule, adopted before October 1 of that year, upon any abbreviated notice or hearing that the agency finds practicable, but the rule may not be filed with the secretary of state until at least 30 days have passed since publication of the notice of the proposal to adopt the rule. The temporary rule is effective until October 1 of the year of adoption. The adoption of an identical rule under 2-4-302 is not precluded during the period that the temporary rule is effective.

This law, 2-4-303(2), MCA, is interpreted by the DNRC to allow implementation of 77-5-101, MCA, to occur through a temporary rule making process using whatever public involvement process the DNRC feels is practicable. We have allowed a 29-day comment period and held 2 public hearings. Given the extensive public input into our procedures over the last five years we feel this is adequate to gauge public interest and assess concerns.

COMMENT 2: What is the purpose of the Temporary Rules?

RESPONSE 2: The primary purpose of the temporary rules is to comply with Judge Sherlock's ruling in order to lift the injunction on harvesting old growth timber. The sales that are currently enjoined were approved by the previous Land Board, and as such complied with every commitment made in the SFLMP. Furthermore, these sales were explicitly in compliance with the old growth retention requirements of the SFLMP. Although some contention exists regarding the new law, the DNRC is bound to follow the laws passed by the legislature and signed by the Governor.

COMMENT 3: The Temporary Rules change the SFLMP.

RESPONSE 3: The temporary rules are a streamlined version of the 1998 Biodiversity Guidance that Judge Sherlock found to be a faithful interpretation of the SFLMP. They have, as such, gone through considerable public review in the form of individual timber sales developed over the last three years, and in the form of the extensive public involvement process the DNRC undertook regarding old-growth management. Because of 77-5-101, MCA, the temporary rules make some clarifying statements regarding old growth. In particular, they revise RMS 6 to reflect the new law. It is not within the purview of the DNRC to ignore the new law; we must assume that all laws passed by the Legislature are constitutional unless deemed otherwise through judicial review.

The content of the rules does not change any of the Biodiversity Guidance other than removing a numeric commitment to retain old growth.

All the sales enjoined already went through extensive public scrutiny as part of the full MEPA process. All the sales were developed under the direction provided for in the Biodiversity Guidance that Judge Sherlock ruled was a legitimate interpretation of the SFLMP. None of the sales were litigated or protested during the MEPA process. The temporary rules will allow the DNRC to have the injunction lifted so that the school trusts can be made whole and the purchasers of these sales can continue their operations. No new sales that harvest old growth will be brought forward under the temporary rules.

COMMENT 4: The temporary rules ignore the Old Growth Technical Review Committee Recommendations.

RESPONSE 4: Some comments alluded to the recommendations made by the Technical Review Committee (TRC). Their (TRC) recommendations were centered around a definition for old growth, which the Temporary Rule adopts. They also commented on the 'best' way to assess naturally occurring amounts of old growth to determine our one/half commitment amount. The one/half of naturally occurring amounts of old growth commitment

of the former RMS 6 now appears to be contrary to the law given 77-5-101, MCA. As such, the DNRC feels compelled to develop a rule which does not contravene the law. The remainder of the TRC's recommendations largely coincided with language in the Biodiversity Guidance that Judge Sherlock ruled did not change the intent of the SFLMP. The DNRC does not believe it would be prudent to make major adjustments to the Biodiversity Guidance after already having been vindicated in the courts.

We emphasize that Judge Sherlock found that the Biodiversity Guidance, under which these sales were developed, did not change the intent of the SFLMP. Consequently, each of these sales represents a good faith implementation of the SFLMP biodiversity resource management standards, including the former RMS 6 that required retention of old growth. The temporary rule simply adopts the content of the Biodiversity Guidance by reference.

COMMENT 5: There has been no opportunity for public involvement.

RESPONSE 5: All of the timber sales that will be affected by this temporary rule have already gone through the complete MEPA public involvement process. They were scoped, draft and/or final environmental documents were sent out, comments were received and responded to, a final was distributed, and a record of decision/decision notice was signed. The sales then went to the Board of Land Commissioners where the public had additional opportunity to comment on them. Each sale was approved unanimously by the Land Board before being offered for sale in the competitive bidding process. Each sale has been sold in good faith to the high bidder according to all applicable laws, rules, and guidance. Thus, the DNRC does not accept that this rule is being ushered through without regard to public involvement. Indeed, given the extensive efforts the DNRC has undertaken with regard to old growth management, the involvement of the state legislature, working with the Land Board, and the lawsuit, it could be argued that very few state actions have experienced greater public involvement.

COMMENT 6: The DNRC is assuming that forests have value only for their timber, and that trust land can be managed for the attainment of other worthy objects.

RESPONSE 6: The DNRC routinely evaluates its lands for revenue generating potential for projects other than timber sales. Examples include cabin leases, gravel, etc. The partial statement from the Montana Code Annotated regarding attainment of other worthy objects is a misrepresentation of the law. The law (77-1-202, MCA) actually reads as follows:

> Powers and duties of board. (1) The board shall exercise general authority, direction, and control over the care, management, and disposition of state lands and, subject to the investment authority of the board of investments, the funds arising from the

leasing, use, sale, and disposition of those lands or otherwise coming under its administration. In the exercise of these powers, the guiding principle is that these lands and funds are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of this state as provided in The Enabling Act. The board shall administer this trust to secure the largest measure of legitimate and reasonable advantage to the state.

COMMENT 7: The DNRC is harvesting 8.5 million board feet (MMbf) of old growth with these temporary rules.

RESPONSE 7: The injunction has prevented the harvesting of 8.5 MMbf of timber that has already been sold to the highest bidder. Of that total, only about 2.5 MMbf is in old growth stands. The largest effect is caused by a small portion of an access road that goes through an old growth stand. Due to the injunction, the road cannot be built and approximately 6 MMbf of non old-growth timber is therefore inaccessible. The DNRC has carefully investigated every other opportunity at alternative access to the parcel, but there are no other options for relocating the road.

BOARD OF LAND COMMISSIONERS

/s/ Judy Martz
JUDY MARTZ
Chair

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Arthur R. Clinch
ARTHUR R. CLINCH
Director

/s/ Donald D. MacIntyre
DONALD D. MACINTYRE
Rule Reviewer

Certified to the Secretary of State June 29, 2001.

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

In the matter of the adoption of rules I through XII pertaining to quality assurance for managed care plans	)))))	NOTICE OF ADOPTION

TO: All Interested Persons

1. On March 8, 2001, the Department of Public Health and Human Services published notice of the proposed adoption of the above-stated rules at page 381 of the 2001 Montana Administrative Register, issue number 5.

2. The Department has adopted rules I [37.108.501], VII [37.108.511], XI [37.108.520] and XII [37.108.521] as proposed. The Department is not adopting rule X.

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

RULE II [37.108.502] DEFINITIONS The following definitions, in addition to those contained in 33-36-103, MCA, apply to this subchapter:

(1) "HEDIS" means health plan employer data and information set, a standardized set of performance measures used by the national committee for quality assurance to assess ~~quality in managed care plans' health delivery systems~~ and report on quality assurance activities of offered managed care plans.

AUTH: Sec. 33-36-105, MCA
IMP: Sec. 33-36-105, MCA

RULE III [37.108.506] WRITTEN DESCRIPTION OF QUALITY ~~ASSURANCE~~ ASSESSMENT PLAN (1) The health carrier shall implement a written quality ~~assurance~~ assessment plan that is evaluated annually and updated as necessary. The plan must be submitted to the department by October 1 of each year. The plan must describe:

(a) the plan's mission, goals, and objectives;

(b) the plan's organizational structure and the job titles of the personnel responsible for quality ~~assurance~~ assessment;

(c) the scope of the quality ~~assurance~~ assessment plan's activities, including:

(i) specific diagnoses, conditions, or treatments targeted for review to improve health care services and health outcomes;

(ii) mechanisms to evaluate enrollees' health and health care services in relation to current medical research,

knowledge, standards, and practices;

(iii) communication processes by which the findings generated by the quality ~~assurance~~ assessment program are communicated to providers and consumers to improve the health of enrollees; and

(iv) mechanisms to evaluate the service performance of the health carrier and primary care physicians.

(2) The written quality ~~assurance~~ assessment plan must be signed by the health carrier's corporate officer certifying that the plan meets the department's requirements.

(3) The department and each health carrier will meet annually to review and approve the written quality ~~assurance~~ assessment plans and their outcomes.

AUTH: Sec. 33-36-105, MCA
IMP: Sec. 33-36-105 and 33-36-302, MCA

RULE IV [37.108.505] QUALITY ASSURANCE STRUCTURE AND ACCREDITATION (1) The health carrier shall appoint, prior to commencing operation, a medical physician licensed to practice in the state of Montana to advise, oversee, and actively participate in the implementation and operation of the quality assurance program.

(2) The health carrier may delegate quality assurance activities. The health carrier shall retain responsibility for the performance of all delegated activities and shall develop and implement review and reporting requirements to assure that the delegated entity performs all delegated quality assurance activities.

(3) A health carrier whose managed care quality assurance plan has been accredited by a nationally recognized accrediting organization shall initially provide a copy of the accreditation certificate or outcome report and the accrediting standards used by the accrediting organization to the department.

(a) If the department finds that the standards of the nationally recognized accrediting organization meet or exceed the department's standards, the department will approve the health carrier's quality assurance program.

(b) After approval by the department, the accredited health carrier shall provide proof of its continued accreditation annually to the department.

(c) An accredited health carrier whose quality assurance plan is approved by the department is not required to comply with ARM 37.108.506. If the accredited health carrier offers a closed or combination managed care plan, the health carrier must comply with ARM 37.108.510 and 37.108.515. All accredited health carriers, regardless of their offering of closed, combination, or open plans, must comply with ARM 37.108.507, 37.108.515, 37.108.516 and 37.108.520.

(d) The department will maintain a list of its approved accrediting organizations whose standards have been determined by the department to meet or exceed the department's quality assurance standards.

AUTH: Sec. 33-36-105, MCA
IMP: Sec. 33-36-105 and 33-36-302, MCA

RULE V [37.108.507] COMPONENTS OF QUALITY ~~ASSURANCE~~ ASSESSMENT ACTIVITIES (1) Annually, the health carrier shall evaluate its quality ~~assurance~~ assessment activities by using the following HEDIS year 2001 measures:

(a) childhood immunization;

(b) breast cancer screening;

(c) cervical cancer screening;

(d) comprehensive diabetes care; and

(e) HEDIS/consumer assessment of health plan ~~studies~~ survey (CAHPS) ~~adult survey~~ for adults.

(2) The health carrier shall record organizational components that affect accessibility, availability, comprehensiveness, and continuity of care, including:

(a) referrals;

(b) case management;

(c) discharge planning;

(d) appointment scheduling and waiting periods for all types of health care services;

(e) second opinions, as applicable;

(f) prior authorizations, as applicable;

(g) ~~prior reimbursement arrangements~~ provider reimbursement arrangements that contain financial incentives that may affect the care provided; and

(h) other systems, procedures, or administrative requirements used by the health carrier that affect the delivery of care.

(3) The health carrier may meet the requirements in (2) of this rule by submitting information to the department regarding network adequacy as specified in ARM 37.108.201, et seq., as long as the information is consistent with what is required in (2) of this rule.

AUTH: Sec. 33-36-105, MCA
IMP: Sec. 33-36-105 and 33-36-302, MCA

RULE VI [37.108.510] QUALITY IMPROVEMENT (1) By October 1 of each year, the health carrier shall provide documentation on its quality improvement activities and an evaluation of the effectiveness of the previous year's quality improvement activities. Such documentation must include the health carrier's identification of quality ~~assurance~~ assessment problems and opportunities for improving care through:

(a) ongoing monitoring of process, structure, and outcomes of patient care or clinical performance;

(b) evaluation of the data collected from ongoing monitoring activities to identify problems in patient care or clinical performance using criteria developed and applied by health care professionals;

(c) measurable objectives for each improvement action within the reporting year, including the degree of expected change in persons or situations;

(d) time frames for quality improvement action; and

(e) ~~persons~~ parties responsible for implementing quality improvement action.

AUTH: Sec. 33-36-105, MCA
IMP: Sec. 33-36-105 and 33-36-303, MCA

RULE VIII [37.108.515] ENROLLEE COMPLAINT SYSTEM (1) The health carrier shall have an internal complaint system for enrollees. ~~that complies~~ Such a system shall comply with the requirements of 33-31-303, MCA, and ARM 6.6.2509(4).

(2) The health carrier shall conduct ongoing evaluations of all enrollee complaints, including complaints about the health carrier's services filed with participating providers. Ongoing evaluations must be conducted in accordance with ARM 37.108.510. The data on complaints must be reported and evaluated by the health carrier at least quarterly.

(3) Evaluation methods must permit the health carrier to track specific complaints, assess trends, and establish that corrective action is implemented and effective in improving the identified problem(s).

(4) The health carrier shall document and monitor the effectiveness of its evaluation of the enrollee complaint system and communicate it to the involved providers, enrollees, and the department upon request. The information is subject to the confidentiality requirements provided in 33-36-305, MCA.

AUTH: Sec. 33-36-105, MCA
IMP: Sec. 33-36-303, MCA

RULE IX [37.108.516] RECORDING CONSUMER SATISFACTION (1) The health carrier shall record consumer components that identify enrollees' perceptions on the quality of the health ~~plan's~~ carrier's services, including:

(a) enrollee satisfaction surveys; and

(b) enrollee complaints, including:

(i) the health carrier's resolution of the complaints through its internal procedures;

(ii) independent peer reviewers' decision pursuant to 33-37-103, et seq., MCA, and ARM 37.108.301, et seq.;

(iii) arbitration decisions; and

(iv) court decisions.

(2) The health carrier shall submit documentation of its handling of consumer satisfaction to the department by October 1 of each year.

(3) The health carrier may meet the requirements in (1)(a) of this rule regarding enrollee satisfaction surveys by submitting to the department the information required for network adequacy as specified in ARM 37.108.201, et seq., as long as the information is consistent with what is required in (1)(a) of this rule.

(4) The identities of enrollees involved in recording consumer satisfaction are subject to the confidentiality requirements provided in 33-36-305, MCA.

AUTH: Sec. 33-36-105, MCA
IMP: Sec. 33-36-303, MCA

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

COMMENT #1: Rule I [37.108.501] states that the ensuing rules only apply to managed care plans in Montana. The department should consider the impact on health care providers because insurance carriers could force providers to keep data reporting requirements. Many hospitals, physicians and other health care providers in Montana do not have the resources or inclination to add more reporting requirement systems into their cost structure, which may lead to providers declining to participate in managed care plans.

RESPONSE: The department disagrees. The scope of the rules is limited to that specified in Title 33, chapter 36, part 3, MCA, regarding the quality assurance activities of health carriers offering managed care plans in Montana. The statutes do not give the department authority to regulate the activities between insurance carriers and providers with respect to managed care plans. The purpose of Rule I [37.108.501] is solely to reiterate what the statutes provide for in the ensuing rules.

COMMENT #2: Under Rule II(1) [37.108.502] regarding the definition of "HEDIS", the department should change the last part of the paragraph, "to assess quality in managed care plans' health delivery systems" to "allow for the reliable comparison of the performance of managed health care plans". This latter phrase is used by National Community for Quality Assurance (NCQA) in its own definition of HEDIS.

RESPONSE: The rules were drafted by the department in conjunction with other parties, including representatives from Montana health carriers offering managed care plans. These representatives opined that it would be impossible to allow for HEDIS comparisons between the insurance plans because managed care is in its infancy in Montana, and one carrier may offer different services than another. The department, however, agrees to change Rule II(1) [37.108.502] to read that HEDIS is a standardized set of performance measures used by the national committee for quality assurance to assess "and report on quality assurance activities of offered managed care plans". This phrasing recognizes that managed care plans may have differences and that the HEDIS measures may apply differently to each one of them.

COMMENT #3: The department should implement 33-36-301, MCA, into its rules. Section 33-36-301, MCA deals with the accreditation of managed care quality assurance activities by a nationally-recognized accrediting organization whose standards meet or exceed those of the department. The department should

implement a rule outlining a process for recognizing accreditation by nationally-recognized accrediting organizations.

RESPONSE: The commentor provided a draft rule as to how its suggested change should be made. The department agrees with providing guidelines for managed care plans who are seeking accreditation or are already accredited, and have incorporated some of the commentor's draft into Rule IV [37.108.505]. The rule clarifies how accreditation proof is submitted to the department, and what rules accredited carriers must abide by pursuant to Title 33, chapter 36, part 3, MCA.

COMMENT #4: Rule IV [37.108.505], regarding written quality assurance plan should require a "quality assessment program description" rather than "written quality assurance plan". The department should require two separate documents: A written quality assessment program, and a quality improvement plan. Section 33-36-103, MCA, defines "quality assurance" as "quality assessment and quality improvement". Having a "written quality assurance plan" as Rule IV [37.108.505] provides for, lumps assessment and improvement together, which may create confusion. This is especially true when 33-36-302(4), MCA, requires a "written description of the quality assessment program" and 33-36-303(3), MCA, requires a "quality improvement program plan". Separating the two in the department's rules would reflect the statutory requirements.

RESPONSE: The department agrees and has made the changes needed, along with other changes in ARM 37.108.507, components of quality assurance activities and ARM 37.108.510, quality improvement. Also, original ARM 37.108.505 and 37.108.506 have been given ARM numbers which promote better readability. ARM 37.108.505 provides more general requirements, while ARM 37.108.506 provides specifics on the quality assessment requirements.

COMMENT #5: Rule V(1)(e) [37.108.507] regarding components of quality assurance activities should be changed from "HEDIS/consumer assessment of health plan studies (CAHPS) adult survey" to "HEDIS/consumer assessment of health plan survey (CAHPS) for adults". HEDIS specifies that the assessments are that of "surveys", not "studies".

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

COMMENT #6: Rule V(2)(d) [37.108.507] regarding quality assurance activities mentions "appointment scheduling and waiting periods for all types of health care services". This rule is based on Minnesota's regulation. However, Minnesota has staff model managed care systems, and they have the capability within a single organization to capture and report appointment scheduling and waiting periods. Montana does not have a similar

system. Implementation of subsection (2)(d) would have an onerous impact on providers, therefore (2)(d) should be eliminated.

RESPONSE: The department disagrees. The health carriers bear the brunt of responsibility in collecting statistics for appointment scheduling and waiting periods. The health carriers offering managed care plans already are doing this pursuant to the department's network adequacy rules found at ARM Title 37, chapter 108, subchapter 2. Also, the department understands that health carriers have contracts with providers to keep statistics on appointment scheduling and waiting periods. The department feels Rule V(2)(d) [37.108.507] does not impose any new duties on either health carriers or providers.

COMMENT #7: Under Rule V(2)(g) [37.108.507] regarding components of quality assurance activities it is recommended that "prior reimbursement arrangements" be changed to "provider reimbursement arrangements that contain financial incentives that could adversely affect quality of care". This change would require managed care plans to provide more specific information about reimbursement arrangements meant to control utilization, and it would help the department with its role of protecting consumers.

RESPONSE: The department agrees and has made the recommended change.

COMMENT #8: Although Rule V [37.108.507] regarding components of quality assurance activities contains measures that are consistent with current HEDIS measures, the measures should be annually evaluated by the department to reflect any changes made in the HEDIS measures because the measures may change annually.

RESPONSE: The department agrees, however it will make no changes to Rule V [37.108.507] at this time. The department will amend Rule V [37.108.507] as needed to reflect the changes of HEDIS, and it will go through the formal rule making process as required by the Montana Administrative Procedure Act, found in Title 2, chapter 4, part 3, MCA, each time.

COMMENT #9: Rule VI [37.108.510] regarding quality improvement should be stated as regulating quality improvement plans and require a separate document.

RESPONSE: The department agrees and has made the recommended changes.

COMMENT #10: Rule VI(1) [37.108.510] regarding quality improvement should be changed to read that by October 1 of each year, the health carrier shall provide documentation on its quality improvement plan "and an evaluation of the effectiveness of the previous year's quality improvement activities".

RESPONSE: The department agrees and has made the recommended

changes.

COMMENT #11: In Rule VI(1)(e) [37.108.510] regarding quality improvement, the term "persons", as in "persons responsible for implementing quality improvement action", should be changed to "parties". "Persons" indicate specific names and the term may not be appropriate for the level of documentation required by the rule.

RESPONSE: The department does not find the distinction between "persons" and "parties" to be significant, but has made the recommended change.

COMMENT #12: Rule VII [37.108.511] regarding clinical focused study should be combined with Rule V [37.108.507] as a component of quality assurance activities.

RESPONSE: The department disagrees. The department believes clinical focus studies should be tied in with quality improvement. Also, for clarity's sake, the department believes having one subject per rule results in better readability as to what the department requires.

COMMENT #13: Rule VIII [37.108.515] regarding the enrollee complaint system requires the tracking and reporting of complaints filed with participating providers. This rule should read "complaints against the carrier". Additionally, if there are any types of complaints that might be excludable from Rule VIII [37.108.515]'s requirements, it would be best to list those in the rule.

RESPONSE: The department agrees and has made the recommended change.

COMMENT #14: Rule VIII [37.108.515] regarding the enrollee complaint system and Rule IX [37.108.516] regarding recording consumer satisfaction should be combined with Rule V [37.108.507] as components of quality assurance activities.

RESPONSE: The department disagrees. For clarity's sake, the department believes having one subject per rule results in better readability as to what the department requires.

COMMENT #15: Rule IX [37.108.516] regarding the recording of consumer satisfaction mentions enrollee satisfaction measures. This rule should be clarified to mean satisfaction with the carrier's services.

RESPONSE: The department agrees and has made the recommended change.

COMMENT #16: Rule X (1) regarding disclosure requirements of quality assurance activities should be modified to read that the carrier's disclosure of quality assurance activities while

assuring the confidentiality of enrollees pursuant to 33-36-305, MCA, and "other applicable state and federal confidentiality and privacy statutes and regulations".

RESPONSE: The department has decided not to adopt Rule X because it feels that 33-36-304, MCA, adequately addresses in detail what is required for disclosure. The department does not believe it needs to repeat the statute in rule format.

COMMENT #17: Rule X(1) should eliminate the language regarding disclosure of quality assurance activities to the "public". This provision regarding disclosure to the public is already addressed in 33-36-304(3), MCA, which requires a health carrier to make available, upon request and payment of a reasonable fee, its quality assurance activities except for materials subject to the confidentiality requirements of 33-36-305, MCA. Rule X(1) as written imposes an additional obligation on carriers to "disclose" and "make available" the material which is more burdensome than what is required by statute.

RESPONSE: The department has decided not to adopt Rule X because it feels that 33-36-304, MCA, adequately addresses in detail what is required for disclosure. The department does not believe it needs to repeat the statute in rule format.

COMMENT #18: Further clarification of Rule X is needed. What is required from a health plan to fulfill the obligation to disclose information on its quality assurance activities? Is this something that needs to be done on an annual basis to each enrollee, or is this to be done on a case-by-case basis when requested by the enrollee?

RESPONSE: The department has decided not to adopt Rule X because it feels that 33-36-304, MCA, adequately addresses in detail what is required for disclosure, including the information needed to be disclosed and when the disclosure must be done. The department does not believe it needs to repeat the statute in rule format.

/s/ Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and Human Services

Certified to the Secretary of State July 9, 2001.

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.

Economic Affairs 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 and Local Government 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 and Justice Interim Committee:

- **Department of Corrections; and**
- **Department of Justice.**

Revenue and Transportation Interim Committee:

- **Department of Revenue; and**
- **Department of Transportation.**

State Administration, 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	**1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.**
Statute Number and Department	**2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.**

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2001. This table includes those rules adopted during the period April 1, 2001 through June 30, 2001 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2001, 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 2000 and 2001 Montana Administrative Registers.

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

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6.6.8301 Updating References to the NCCI Basic Manual for Workers Compensation and Employers Liability Insurance 1996 ed. - Adoption of New and Amended Classifications, p. 132, 842

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(Travel Promotion and Development Division)
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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in June 2001, appear. Vacancies scheduled to appear from August 1, 2001, through October 31, 2001, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of July 9, 2001.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2001

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Personnel Appeals (Labor and Industry)			
Mr. Steve Johnson	Governor	Vagner	6/30/2001
Missoula			1/1/2003
Qualifications (if required): representative of management in collective bargaining			
Board of Veterans' Affairs (Military Affairs)			
Mr. Donald Bogut	Governor	Mayer	6/1/2001
Kalispell			5/18/2006
Qualifications (if required): veteran			
Commission on Practice of the Supreme Court (Supreme Court)			
Mr. James A. Hubble	elected	not listed	6/5/2001
Stanford			6/5/2005
Qualifications (if required): none specified			
Drought Advisory Committee (Natural Resources and Conservation)			
Mr. Harold Blattie	Governor	not listed	6/19/2001
Columbus			0/0/0
Qualifications (if required): nonvoting representative of local government			
Electronic Government Advisory Council (Administration)			
Mr. David A. Galt	Governor	not listed	6/18/2001
Helena			6/18/2003
Qualifications (if required): state agency representative			
Mr. Greg Gianforte	Governor	not listed	6/18/2001
Bozeman			6/18/2003
Qualifications (if required): public member			
Mr. M. Jeff Hagener	Governor	not listed	6/18/2001
Helena			6/18/2003
Qualifications (if required): state agency representative			

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2001

Appointee	Appointed by	Succeeds	Appointment/End Date
Electronic Government Advisory Council (Administration) cont.			
Mr. James E. Reno	Governor	not listed	6/18/2001
Billings			6/18/2003
Qualifications (if required): local government official			
Mr. Gene Vuckovich	Governor	not listed	6/18/2001
Anaconda			6/18/2003
Qualifications (if required): public member			
Rep. Karl A. Waitschies	House Speaker	none specified	6/18/2001
Peerless			6/18/2003
Qualifications (if required): not listed			
Governor's Advisory Council on Disability (Administration)			
Mr. David Diehl	Governor	Shearer	6/26/2001
East Helena			11/14/2002
Qualifications (if required): public member			
Montana Fetal Alcohol Syndrome Advisory Council (Public Health and Human Services)			
Ms. Mary Behrendt	Governor	not listed	6/13/2001
Columbia Falls			6/13/2003
Qualifications (if required): high school instructor in family and consumer science			
Ms. Kathy Boutilier	Governor	not listed	6/13/2001
Helena			6/13/2003
Qualifications (if required): school nurse			
Ms. Rebecca Burt	Governor	not listed	6/13/2001
Great Falls			6/13/2003
Qualifications (if required): therapeutic foster parent			

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2001

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Fetal Alcohol Syndrome Advisory Council (Public Health and Human Services) cont.			
Ms. Leita Cook	Governor	not listed	6/13/2001
Helena			6/13/2003
Qualifications (if required): specialist for FAS diagnosis			
Mr. Billford Curley, Sr.	Governor	not listed	6/13/2001
Lame Deer			6/13/2003
Qualifications (if required): Northern Cheyenne Tribal representative			
Dr. Suzanne Dixon	Governor	not listed	6/13/2001
Great Falls			6/13/2003
Qualifications (if required): behavioral developmental pediatrician			
Ms. Allison Failing	Governor	not listed	6/13/2001
Poplar			6/13/2003
Qualifications (if required): Fort Peck Tribal Council representative			
Ms. Jacalyn Ironmaker	Governor	not listed	6/13/2001
Box Elder			6/13/2003
Qualifications (if required): specialist in human services with concentration in chemical dependency			
Ms. Diane Jeanotte	Governor	not listed	6/13/2001
Billings			6/13/2003
Qualifications (if required): participant in the Four State FAS Consortium			
Dr. John Johnson	Governor	not listed	6/13/2001
Helena			6/13/2003
Qualifications (if required): director of Medical Genetics at Shodair Hospital			
Ms. Crystal LaPlante	Governor	not listed	6/13/2001
Browning			6/13/2003
Qualifications (if required): Blackfeet Nation Tribal Council representative			

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2001

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Fetal Alcohol Syndrome Advisory Council (Public Health and Human Services) cont.			
Dr. Ted Laine	Governor	not listed	6/13/2001
Missoula			6/13/2003
Qualifications (if required): pediatrician with a special interest in neonatology			
Ms. Irene Lake	Governor	not listed	6/13/2001
St.Ignatius			6/13/2003
Qualifications (if required): site manager for the University of New Mexico Fetal Alcohol Prevention Program on the Flathead Reservation			
Mr. Mike Lande	Governor	not listed	6/13/2001
Billings			6/13/2003
Qualifications (if required): officer of the Indian Health Board of Billings			
Ms. Carole Lankford	Governor	not listed	6/13/2001
Pablo			6/13/2003
Qualifications (if required): Confederated Salish and Kootenai Tribal Council representative			
Ms. Terry McAnally	Governor	not listed	6/13/2001
Poplar			6/13/2003
Qualifications (if required): Fort Peck Tribal Council representative			
Ms. Myrna Medicine Horse	Governor	not listed	6/13/2001
Crow Agency			6/13/2003
Qualifications (if required): Crow Tribal Council representative			
Ms. Jill Plummage	Governor	not listed	6/13/2001
Harlem			6/13/2003
Qualifications (if required): Fort Belknap Agency Tribal Council representative			

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2001

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Fetal Alcohol Syndrome Advisory Council (Public Health and Human Services) cont.			
Mr. Thomas Price Eureka Qualifications (if required): parent of two FAS affected children and is an outgoing member of the DDPAC)	Governor	not listed	6/13/2001 6/13/2003
Ms. Cindy Schamberg Libby Qualifications (if required): executive director of Families in Partnership	Governor	not listed	6/13/2001 6/13/2003
Ms. Sandy Sorrell Pablo Qualifications (if required): Confederated Salish and Kootenai Tribal Council representative	Governor	not listed	6/13/2001 6/13/2003
Ms. Linda Tarinelli Bozeman Qualifications (if required): coordinator/director of the Young Parents Program in Bozeman	Governor	not listed	6/13/2001 6/13/2003
Mr. Richard Williams Bozeman Qualifications (if required): parent of an alcohol affected child	Governor	not listed	6/13/2001 6/13/2003
Ms. Margaret Ann Yellow Kidney Browning Qualifications (if required): representative of the Blackfeet Nation	Governor	not listed	6/13/2001 6/13/2003
Montana-Alberta Bilateral Advisory Council (Commerce)			
Mr. Bob Davis Townsend Qualifications (if required): representing private citizens	Governor	not listed	6/12/2001 4/27/2003

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2001

Appointee	Appointed by	Succeeds	Appointment/End Date
Motor Fuel Tax Collection Enforcement and Refund Advisory Council (Transportation)			
Ms. Gail Abercrombie Helena Qualifications (if required): public member	Governor	not listed	6/29/2001 12/31/2002
Mr. Wes Choc Helena Qualifications (if required): public member	Governor	not listed	6/29/2001 12/31/2002
Ms. Ronna Christman Helena Qualifications (if required): public member	Governor	not listed	6/29/2001 12/31/2002
Sen. Dan W. Harrington Butte Qualifications (if required): legislator	Governor	not listed	6/29/2001 12/31/2002
Mr. Cary Hegreberg Townsend Qualifications (if required): public member	Governor	not listed	6/29/2001 12/31/2002
Sen. Ric Holden Glendive Qualifications (if required): legislator	Governor	not listed	6/29/2001 12/31/2002
Mr. Patrick McNulty Buffalo Qualifications (if required): public member	Governor	not listed	6/29/2001 12/31/2002
Rep. John L. Musgrove Havre Qualifications (if required): legislator	Governor	not listed	6/29/2001 12/31/2002

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2001

Appointee	Appointed by	Succeeds	Appointment/End Date
Motor Fuel Tax Collection Enforcement and Refund Advisory Council (Transportation) cont.			
Mr. Keith Olson Kalispell Qualifications (if required): public member	Governor	not listed	6/29/2001 12/31/2002
Mr. Steve Pilcher Helena Qualifications (if required): public member	Governor	not listed	6/29/2001 12/31/2002
Rep. Roger Somerville Kalispell Qualifications (if required): legislator	Governor	not listed	6/29/2001 12/31/2002
Sen. Barry "Spook" Stang St. Regis Qualifications (if required): public member	Governor	not listed	6/29/2001 12/31/2002
Mr. Bob Stephens Dutton Qualifications (if required): public member	Governor	not listed	6/29/2001 12/31/2002
State Lottery Commission (Commerce)			
Mr. Bob Lake Hamilton Qualifications (if required): public member	Governor	Pavlovich	6/6/2001 1/1/2005
Transition Advisory Committee (Legislative Services)			
Mr. Stephen E. Bradley Crow Agency Qualifications (if required): representing Montana's Indian tribes	Governor	not listed	6/7/2001 1/1/2003

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2001

Appointee	Appointed by	Succeeds	Appointment/End Date
Transition Advisory Committee (Legislative Services) cont.			
Mr. Jerry Driscoll Helena Qualifications (if required): representing organized labor	Governor	not listed	6/7/2001 1/1/2003
Mr. Paul Farr Billings Qualifications (if required): representing the electric power market industry	Governor	not listed	6/13/2001 1/1/2003
Mr. Gene Leuwer Helena Qualifications (if required): representing a low-income program provider	Governor	not listed	6/7/2001 1/1/2003
Mr. Russ Ritter Helena Qualifications (if required): representing the industrial community	Governor	not listed	6/7/2001 1/1/2003
Ms. Kathie Roos Helena Qualifications (if required): representing the environmental and conservation community	Governor	not listed	6/7/2001 1/1/2003
Upper Missouri River Breaks National Monument Task Force (Governor)			
Ms. Carol Kienenberger Dodson Qualifications (if required): representative of Phillips County	Governor	not listed	6/27/2001 1/1/2002
Mr. Arthur Kleinjan Chinook Qualifications (if required): representative of Blaine County	Governor	not listed	6/27/2001 1/1/2002
Mr. Joe McConnell Harlem Qualifications (if required): tribal representative	Governor	not listed	6/27/2001 1/1/2002

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2001

Appointee	Appointed by	Succeeds	Appointment/End Date
Upper Missouri River Breaks National Monument Task Force (Governor) cont.			
Mr. Carl Seilstad Roy Qualifications (if required): representative of Fergus County	Governor	not listed	6/27/2001 1/1/2002
Sen. Jon Tester Big Sandy Qualifications (if required): legislator	Governor	not listed	6/27/2001 1/1/2002
Rep. Bill Thomas Hobson Qualifications (if required): legislator	Governor	not listed	6/27/2001 1/1/2002
Mr. Harvey Worrall Loma Qualifications (if required): representative of Chouteau County	Governor	not listed	6/27/2001 1/1/2002
Western Interstate Commission for Higher Education (Education)			
Mr. Richard A. Crofts Helena Qualifications (if required): educator engaged in the field of higher education	Governor	reappointed	6/19/2001 6/19/2005
Youth Justice Council (Justice)			
Judge Gary Acevedo Pablo Qualifications (if required): representing Native Americans and the judiciary	Governor	not listed	6/15/2001 6/15/2003
Mr. Brock Albin Bozeman Qualifications (if required): representing defense of youth in the court system	Governor	not listed	6/15/2001 6/15/2003

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2001

Appointee	Appointed by	Succeeds	Appointment/End Date
Youth Justice Council (Justice) cont.			
Mr. Dan Anderson	Governor	not listed	6/15/2001
Helena			6/15/2003
Qualifications (if required): representing a public agency dealing with high risk youth			
Mr. Marc Aune	Governor	not listed	6/15/2001
Missoula			6/15/2003
Qualifications (if required): representing youth and those involved in the juvenile justice system			
Ms. Peggy Beltrone	Governor	not listed	6/15/2001
Great Falls			6/15/2003
Qualifications (if required): representing local government officials			
Ms. Shanna Chism	Governor	not listed	6/15/2001
Great Falls			6/15/2003
Qualifications (if required): representing a public agency dealing with detention services			
Ms. Jessica Marie Cooper	Governor	not listed	6/15/2001
Missoula			6/15/2003
Qualifications (if required): representing youth and those involved in the juvenile justice system			
Ms. Jennifer Crane	Governor	not listed	6/15/2001
Bozeman			6/15/2003
Qualifications (if required): representing youth and youth development			
Ms. Carmen Hotvedt	Governor	not listed	6/15/2001
Helena			6/15/2003
Qualifications (if required): representing youth and volunteers			

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2001

Appointee	Appointed by	Succeeds	Appointment/End Date
Youth Justice Council (Justice) cont.			
Mr. Chuck Hunter	Governor	not listed	6/15/2001
Helena			6/15/2003
Qualifications (if required): representing a public agency dealing with high risk youth			
Mr. Marko Lucich	Governor	not listed	6/15/2001
Butte			6/15/2003
Qualifications (if required): representing the Juvenile Probation Association			
Ms. Donna Maddux	Governor	not listed	6/15/2001
Kalispell			6/15/2003
Qualifications (if required): representing local education			
Rep. Jeff Mangan	Governor	not listed	6/15/2001
Great Falls			6/15/2003
Qualifications (if required): representing the legislature			
Ms. Jani McCall	Governor	not listed	6/15/2001
Billings			6/15/2003
Qualifications (if required): representing mental health services			
Mr. Steve Nelson	Governor	not listed	6/15/2001
Bozeman			6/15/2003
Qualifications (if required): represents nonprofit organization dealing with delinquency prevention			
Ms. Winifred M. Ore	Governor	not listed	6/15/2001
Helena			6/15/2003
Qualifications (if required): representing Department of Corrections			
Ms. Misti Robertson	Governor	not listed	6/15/2001
Billings			6/15/2003
Qualifications (if required): representing law enforcement			

BOARD AND COUNCIL APPOINTEES FROM JUNE, 2001

Appointee	Appointed by	Succeeds	Appointment/End Date
Youth Justice Council (Justice) cont.			
Mr. Spencer Sartorius	Governor	not listed	6/15/2001
Helena			6/15/2003
Qualifications (if required): representing educational services			
Ms. Sally Stansberry	Governor	not listed	6/15/2001
Missoula			6/15/2003
Qualifications (if required): represents nonprofit organization dealing with delinquency prevention			
Mr. Thomas Sullivan	Governor	not listed	6/15/2001
Kalispell			6/15/2003
Qualifications (if required): representing a nonprofit organization dealing with prevention			
Mr. Ron Whitmoyer	Governor	not listed	6/15/2001
East Helena			6/15/2003
Qualifications (if required): representing local school administration			
Ms. Katie Yother	Governor	not listed	6/15/2001
Miles City			6/15/2003
Qualifications (if required): representing youth and those involved in juvenile justice system			

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2001 through October 31, 2001

Board/current position holder	Appointed by	Term end
Alternative Health Care Board (Commerce)		
Ms. Dolly Browder, Missoula	Governor	9/1/2001
Qualifications (if required): direct midwife		
Board of Medical Examiners (Commerce)		
Dr. Kay E Dorr, Glasgow	Governor	9/1/2001
Qualifications (if required): public member		
Dr. Van Kirke Nelson, Kalispell	Governor	9/1/2001
Qualifications (if required): Doctor of Medicine		
Ms. Linda Melick, Lewistown	Governor	9/1/2001
Qualifications (if required): licensed nutritionist		
Mr. Daniel Muniak, Jordan	Governor	9/1/2001
Qualifications (if required): licensed physician assistant-certified		
Ms. Susan McRae, Dillon	Governor	9/1/2001
Qualifications (if required): public member		
Board of Outfitters (Commerce)		
Mr. Jack Billingsley, Glasgow	Governor	10/1/2001
Qualifications (if required): hunting and fishing outfitter		
Board of Private Security Patrol Officers and Investigators (Commerce)		
Mr. Gary Gray, Great Falls	Governor	8/1/2001
Qualifications (if required): representative of contract security organizations		
Mr. Michael Ames, Colstrip	Governor	8/1/2001
Qualifications (if required): representative of a proprietary security organization		

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2001 through October 31, 2001

Board/current position holder	Appointed by	Term end
Board of Psychologists (Commerce)		
Dr. Michael J. McLaughlin, Great Falls	Governor	9/1/2001
Qualifications (if required): licensed psychologist in public health		
Dr. Dawn Birk, Miles City	Governor	9/1/2001
Qualifications (if required): psychologist		
Burial Preservation Board (Indian Affairs)		
Mr. Carl Fourstar, Poplar	Governor	8/22/2001
Qualifications (if required): representative of the Assiniboine Tribe		
Dr. Randall Skelton, Missoula	Governor	8/22/2001
Qualifications (if required): physical anthropologist		
Ms. Jennie Parker, Ashland	Governor	8/22/2001
Qualifications (if required): representative of the Northern Cheyenne Tribe		
Mr. Melbert Eaglefeathers, Butte	Governor	8/22/2001
Qualifications (if required): public member		
Mr. Tony Incashola, Pablo	Governor	8/22/2001
Qualifications (if required): representative of the Confederated Salish and Kootenai Tribes		
Mr. Stephen S. K. Platt, Helena	Governor	8/22/2001
Qualifications (if required): representative of the State Historic Preservation Office		
Mr. Ken Talksabout, Browning	Governor	8/22/2001
Qualifications (if required): representative of the Blackfeet Tribe		
Flathead Basin Commission (Governor)		
Ms. Elna Darrow, Big Fork	Governor	10/1/2001
Qualifications (if required): public member		

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Board/current position holder	Appointed by	Term end
Flathead Basin Commission (Governor) cont.		
Mr. Bruce Tutvedt, Kalispell	Governor	10/1/2001
Qualifications (if required): public member		
Mr. Arthur Vail, Whitefish	Governor	10/1/2001
Qualifications (if required): public member		
Governor's Council on Tobacco Use Prevention (Public Health and Human Services)		
Rep. Verner L. Bertelsen, Helena	Governor	9/22/2001
Qualifications (if required): representing senior citizens		
Sen. Bea McCarthy, Anaconda	Governor	9/22/2001
Qualifications (if required): representing the Montana Senate		
Rep. Loren Soft, Billings	Governor	9/22/2001
Qualifications (if required): representing the Montana House of Representatives		
Ms. Nancy Ellery, Helena	Governor	9/22/2001
Qualifications (if required): representing the director of Department of Public Health & Human Services		
Dr. Robert M. Shepard, Helena	Governor	9/22/2001
Qualifications (if required): representing the American Lung Association		
Ms. Jeri Domme, Helena	Governor	9/22/2001
Qualifications (if required): representing the American Heart Association		
Ms. Nancy Davis Walker, Great Falls	Governor	9/22/2001
Qualifications (if required): representing Tobacco Free Montana Coalition		
Rep. Trudi Schmidt, Great Falls	Governor	9/22/2001
Qualifications (if required): representing the Montana House of Representatives		

VACANCIES ON BOARDS AND COUNCILS -- August 1, 2001 through October 31, 2001

Board/current position holder	Appointed by	Term end
Governor's Council on Tobacco Use Prevention (Public Health and Human Services) cont.		
Ms. Joan Miles, Helena	Governor	9/22/2001
Qualifications (if required): representing county health officers		
Sen. Dale E. Berry, Hamilton	Governor	9/22/2001
Qualifications (if required): representing the Montana Senate		
Ms. Kristianne Wilson, Billings	Governor	9/22/2001
Qualifications (if required): representing the MHA (Association of Health Care Providers)		
Ms. Gail M. Michelotti, Great Falls	Governor	9/22/2001
Qualifications (if required): representing the American Cancer Society		
Dr. J. Bruce Robertson, Bozeman	Governor	9/22/2001
Qualifications (if required): representing the Montana Medical Association		
Ms. Linda Lee, Missoula	Governor	9/22/2001
Qualifications (if required): representing the Montana Campaign for Tobacco Free Kids		
Ms. Laura Gebhart, Kalispell	Governor	9/22/2001
Qualifications (if required): representing the Montana Public Health Association		
Mr. Todd Thun, Deer Lodge	Governor	9/22/2001
Qualifications (if required): representing the Montana Nurses Association		
Mr. Tim Solomon, Havre	Governor	9/22/2001
Qualifications (if required): representing Montana Law Enforcement		
Mr. Russell Hill, Helena	Governor	9/22/2001
Qualifications (if required): representing private business		

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Board/current position holder	Appointed by	Term end
Governor's Council on Tobacco Use Prevention (Public Health and Human Services) cont.		
Dr. Jon Hauxwell, Billings	Governor	9/22/2001
Qualifications (if required): representing Indian Health Service		
Commissioner Dale Sheldon, Conrad	Governor	9/22/2001
Qualifications (if required): representing the Montana Association of County Officials		
Dr. David Johnson, Great Falls	Governor	9/22/2001
Qualifications (if required): representing the Montana Dental Association		
Ms. Lori Ryan, Helena	Governor	9/22/2001
Qualifications (if required): representing Montana's American Indians		
Ms. Katie Beltrone, Great Falls	Governor	9/22/2001
Qualifications (if required): representing Montana's youth		
Mr. Michael McKown, Poplar	Governor	9/22/2001
Qualifications (if required): representing local tobacco coalitions		
Lewis and Clark Bicentennial Commission (Montana Historical Society)		
Colonel Harold Stearns, Missoula	Governor	10/1/2001
Qualifications (if required): public member		
Mr. Curley Youpee, Poplar	Governor	10/1/2001
Qualifications (if required): member of a Montana Indian Tribe		
Lewis and Clark Bicentennial Commission (Historical Society)		
Ms. Marilyn J. Ryan, Missoula	Governor	10/1/2001
Qualifications (if required): public member		
Mental Disabilities Board of Visitors (Governor's Office)		
Mr. Robert W. Visscher, Livingston	Governor	8/1/2001
Qualifications (if required): professional		

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Board/current position holder	Appointed by	Term end
Mental Disabilities Board of Visitors (Governor's Office) cont.		
Dr. John Sampsel, Miles City	Governor	8/1/2001
Qualifications (if required): professional		
Ms. Jennifer Pryor, Boulder	Governor	8/1/2001
Qualifications (if required): representative of organization concerned with mentally retarded		
Mr. Steve Cahill, Clancy	Governor	8/1/2001
Qualifications (if required): representative of organization concerned with welfare of mentally ill		
Ms. Kathleen Driscoll Donovan, Hamilton	Governor	8/1/2001
Qualifications (if required): consumer representative		
Montana Reserved Water Rights Compact Commission (Justice)		
Mr. Chris D. Tweeten, Helena	Attorney General	9/13/2001
Qualifications (if required): none specified		
Montana State Historic Preservation Review Board (Historical Society)		
Ms. J. Rebecca Kallevig, Sidney	Governor	10/1/2001
Qualifications (if required): public member		
Montana Wheat and Barley Committee (Agriculture)		
Mr. Fred Elling, Rudyard	Governor	8/20/2001
Qualifications (if required): representative of District II and a Republican		
Ms. Judy Vermulm, Cut Bank	Governor	8/20/2001
Qualifications (if required): representative of District III and a Democrat		

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Board/current position holder	Appointed by	Term end
Noxious Weed Seed Free Forage Advisory Council (Agriculture)		
Mr. W. Ralph Peck, Helena	Director	9/18/2001
Qualifications (if required): Director of the Department of Agriculture		
Mr. Harry Woll, Kalispell	Director	9/18/2001
Qualifications (if required): forage producer		
Mr. LaMonte Schnur, Townsend	Director	9/18/2001
Qualifications (if required): forage producer		
Mr. Kerry Kovanda, Columbus	Director	9/18/2001
Qualifications (if required): forage producer		
Mr. Don Walker, Glendive	Director	9/18/2001
Qualifications (if required): forage producer		
Mr. Dennis Perry, Choteau	Director	9/18/2001
Qualifications (if required): feed pellets/cubes products		
Ms. Marjorie Schuler, Carter	Director	9/18/2001
Qualifications (if required): livestock/agriculture		
Mr. Robert Carlson, Butte	Director	9/18/2001
Qualifications (if required): weed districts		
Mr. Bob McNeill, Dillon	Director	9/18/2001
Qualifications (if required): outfitters and guides		
Mr. Dennis Cash, Bozeman	Director	9/18/2001
Qualifications (if required): extension service		
Mr. Ray Ditterline, Bozeman	Director	9/18/2001
Qualifications (if required): agricultural experiment station		

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Board/current position holder	Appointed by	Term end
Noxious Weed Seed Free Forage Advisory Council (Agriculture) cont.		
Mr. Clay Williams, Livingston	Director	9/18/2001
Qualifications (if required): weed districts		
SABHRS Executive Council (Administration)		
Mr. Dennis O. Blackketter, Bozeman	Director	10/28/2001
Qualifications (if required): Tier 4		
Mr. Curt Nichols, Helena	Director	10/28/2001
Qualifications (if required): Tier 1		
Mr. Mike Billings, Helena	Director	10/28/2001
Qualifications (if required): Tier 2		
Ms. Karen Munro, Helena	Director	10/28/2001
Qualifications (if required): Tier 3		
Ms. Cathy Muri, Helena	Director	10/28/2001
Qualifications (if required): Tier 1		
Ms. Sharon McCabe, Helena	Director	10/28/2001
Qualifications (if required): Tier 6		
Ms. Kathy Neils, Helena	Director	10/28/2001
Qualifications (if required): Tier 2		
Ms. Tammy Peterson, Helena	Director	10/28/2001
Qualifications (if required): Tier 3		
Ms. Ann Bauchman, Helena	Director	10/28/2001
Qualifications (if required): Tier 4		

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Board/current position holder	Appointed by	Term end
Vocational Rehabilitation Advisory Council (Public Health and Human Services)		
Mr. Ian Elliot, Billings	Director	10/1/2001
Qualifications (if required): representing people with disabilities		
Mr. Robert P. Shuckahosee, Polson	Director	10/1/2001
Qualifications (if required): representing people with disabilities		
Mr. Dale Davis, Missoula	Director	10/1/2001
Qualifications (if required): representing people from business, industry and labor		
Mr. Mike Crater, Glasgow	Director	10/20/2001
Qualifications (if required): representing people from business industry and labor		
Ms. Jan Duffy, Billings	Director	10/1/2001
Qualifications (if required): representing the Parent Training Organization		
Water and Wastewater Operators Advisory Council (Environmental Quality)		
Mr. Steven Ruhd, Conrad	Governor	10/16/2001
Qualifications (if required): water treatment operator		
Mr. Scott Anderson, Helena	Governor	10/16/2001
Qualifications (if required): ex-officio representative of the Department of Environmental Quality		