MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 18

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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

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TO: All Concerned Persons

1. On July 27, 2000, the Department published notice at pages 1934 through 1971 of the Montana Administrative Register, Issue No. 14, MAR Notice No. 24-11-137, to consider the proposed amendment of 12 existing rules, the adoption of nine new rules and the repeal of seven rules, all related to unemployment insurance matters.

2. On August 22, 2000, at 10:00 a.m. a public hearing was held at the first floor auditorium of the Scott Hart building, 303 North Roberts, Helena, Montana, to consider the proposed amendment of 12 existing rules, the adoption of nine new rules and the repeal of seven rules, all related to unemployment insurance matters.

3. Prior to the end of the public comment period, the Department received a request to extend the comment period because of the length and complexity of the proposed rule changes and the amount of analysis needed before suitable comments could be prepared and submitted. The Department concludes that in the interest of allowing the public a meaningful opportunity to comment on the proposed rule changes, and in light of a delay in the expected October 1, 2000, implementation of the MISTICS system, the comment period can be extended without significant adverse impact to the unemployment insurance program and operations.

4. Written data, views or arguments may be submitted to:

**Roy Mulvaney
Benefits Bureau
Unemployment Insurance Division
Department of Labor and Industry
P.O. Box 8020
Helena, Montana 59604-8011**

and must be received by no later than 5:00 p.m., September 29, 2000. Comments may also be submitted electronically as noted in the original Notice of Public Hearing, so that those comments are received by the Department by no later than 5:00 p.m., September 29, 2000.

/s/ KEVIN BRAUN	**/s/ PATRICIA HAFFEY**
Kevin Braun	**Patricia Haffey, Commissioner**
Rule Reviewer	**DEPARTMENT OF LABOR & INDUSTRY**

Certified to the Secretary of State: September 11, 2000.

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

In the matter of the proposed amendment of ARM 24.11.441, 24.11.445, 24.11.451, and 24.11.468, the proposed adoption of 17 new rules, and the proposed repeal of ARM 24.11.444, 24.11.446, 24.11.480, 24.11.501, 24.11.502, 24.11.503, 24.11.504, 24.11.505 and 24.11.506, all relating to unemployment insurance matters	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF 4 EXISTING RULES, THE PROPOSED ADOPTION OF 17 NEW RULES, AND THE PROPOSED REPEAL OF 9 RULES

TO: All Concerned Persons

1. On October 18, 2000, at 10:00 a.m. a public hearing will be held at the first floor auditorium of the Scott Hart building, 303 North Roberts, Helena, Montana, to consider the proposed amendment of four existing rules, the proposed adoption of 17 new rules and the proposed repeal of nine rules, all related to unemployment insurance matters.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department by not later than 5:00 p.m., October 12, 2000, to advise us of the nature of the accommodation that you need. Please contact the Unemployment Insurance Division, Attn: Mr. Roy Mulvaney, P.O. Box 8020, Helena, MT 59604-8020; telephone (406) 444-9036; TTY (406) 444-0532; fax (406) 444-1394; or e-mail rmulvaney@state.mt.us. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Mr. Mulvaney.

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

24.11.441 CLAIMS FOR BENEFITS ~~CLAIMS~~ (1) To ~~apply for unemployment insurance~~ request a determination of a claimant's eligibility for benefits, the claimant must file ~~the following information with a local office on a form or forms provided by the department:~~ an initial claim by calling the appropriate telephone center and providing such information to a customer service representative as the department may require for the proper administration of the claim. The information required from the claimant includes, but is not limited to:

(a) ~~whether the claimant is totally unemployed~~ the

claimant's name, mailing address, and demographic data;

(b) ~~whether the claimant is able to work, available for work and is seeking work~~ the claimant's social security number;

(c) ~~the amount of earnings and the number of hours of work for any week for which benefits are claimed; and~~ whether the claimant is a United States citizen and, if not, the claimant's alien registration permit number;

(d) ~~any other information the department may require for the proper administration of the claim, including, but not limited to, a statement from a licensed and practicing physician, chiropractor or osteopath verifying whether or not the claimant is medically able to work~~ whether the claimant has an existing benefit year under any state or federal unemployment insurance or unemployment compensation law;

(e) whether the claimant is totally unemployed;

(f) whether the claimant is able to work, available for work and seeking work; and

(g) the names and addresses of all employers for whom the claimant worked in the most recent 18 months, as well as the beginning and ending dates of insured work for each employer and the reasons for the claimant's separation from insured work with each employer.

~~(2) A claim generally must be filed in person at a local office. Application by mail may be permitted if the department finds good cause for not reporting in person or if it is impractical for the department to accept the claim in person.~~

(2) The department may require the claimant to provide verification, written or otherwise, of any information requested from or provided by the claimant in connection with the claim.

(3) If the department determines that the claimant, having filed an initial claim, has base period wages of an amount sufficient to qualify the claimant for benefits under 39-51-2105, MCA, without respect to whether or not the claimant is otherwise qualified or eligible to receive benefits, the claimant is deemed to have established a "valid claim."

~~(3)~~(4) ~~A~~ The claim is effective on the ~~first day~~ Sunday of the ~~calendar~~ week in which the claim is filed and ~~lasts~~ remains in effect ~~for either 52 or 53 weeks as provided in 39-51-201(4), MCA.~~ until:

(a) the end of the benefit year; or

(b) the claim is cancelled as provided in (6).

(5) The claimant may request that the claim be backdated to an earlier effective date. If the department finds that the claimant had good cause for the ~~claimant's~~ delay in filing the initial claim, the claim will be backdated.

~~(4) Each claimant must serve a one-week waiting period to receive benefits. The claimant must be eligible to receive benefits to be credited with serving the waiting period. A continued claim must be submitted for this week. A claimant is required to serve only one waiting period for each benefit year.~~

~~(5)~~(6) A claim may be cancelled if ~~a~~ the claimant ~~requests~~ files a request for cancellation within 10 calendar days ~~of mailing of~~ after the date ~~the~~ an initial or revised monetary determination, as provided in ARM 24.11.442, is mailed

to the claimant's last known address. The request to cancel the claim must be in writing and be signed by the claimant. ~~Any requests for cancellation~~ A request to cancel a claim received after ~~this~~ the time ~~period~~ allowed will be granted only if the department finds that the claimant ~~shows~~ had good cause for the delay in filing the request.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-2101, 39-51-2102, 39-51-2103, 39-51-2104, 39-51-2105, 39-51-2106, 39-51-2107, 39-51-2108, 39-51-2109, 39-51-2110, 39-51-2201, 39-51-2202, 39-51-2203, 39-51-2204, 38-51-2205, 39-51-2207, 39-51-2208, 39-51-2301, 39-51-2302, 39-51-2303, 39-51-2304, 39-51-2305, 37-51-2306, 39-51-2307, 39-51-2401, 39-51-2402, 39-51-2403, 39-51-2404, 39-51-2405, 39-51-2406, 39-51-2407, 39-51-2408, 39-51-2409, 39-51-2410, MCA

24.11.445 INACTIVE CLAIMS--REACTIVATING A CLAIM

(1) and (2) Remain the same.

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

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

24.11.451 SIX-WEEK RULE (1) ~~Except as provided in (3), the~~ The department ~~reviews~~ investigates and adjudicates each separation from ~~employment~~ insured work that occurred during the six weeks immediately preceding the effective date of ~~the~~ an initial or an additional claim ~~to establish whether the claimant is eligible for benefits~~. If the claimant was not separated from ~~employment~~ insured work during ~~this~~ the ~~six-week~~ six week period, the department ~~reviews~~ investigates and adjudicates the claimant's most recent separation from ~~employment~~ insured work that occurred prior to the six weeks immediately preceding the effective date of the claim.

~~(2) Except as provided in (3),if the claimant was separated from employment several times, the most recent disqualification is applied. If this disqualification is removed because of a redetermination or appeal, the next most recent disqualification applies.~~

(2) Except as provided in [NEW RULE VI(1) and (2), as proposed in MAR Notice No. 24-11-137], if there is more than one separation occurring within the time frames specified in (1) involving the same employer, only the last separation involving that employer is investigated and adjudicated.

~~(3) If the department finds that the claimant was discharged for an act of gross misconduct, as defined in 39-51-201, MCA:~~

~~(a) committed at any time from the beginning of the claimant's base period to the effective date of the claim, the 52-week disqualification of 39-51-2303(2), MCA, controls the eligibility determination and is applied forward from the effective date of the first claim filed after the act of gross misconduct leading to the discharge; or~~

~~(b) committed at any time from the effective date of the~~

~~claim to the end of the benefit year, the 52-week disqualification of 39-51-2303(2), MCA, controls the eligibility determination and is applied forward from the date of the act of gross misconduct leading to the discharge.~~

(3) Each employer involved in a claimant's separation is allowed 10 calendar days to respond to the claimant's statement of the reasons for the separation. If the information obtained from any employer is substantially different from that provided by the claimant, the claimant is allowed 10 calendar days to respond to the employer's statement. The 10 calendar days allowed for the employer's or the claimant's response begins on the day following the date the information is mailed, faxed, or communicated by telephone to the employer or to the claimant. In the interest of making timely determinations and redeterminations, department personnel may attempt to provide the parties' statements to each other by telephone and obtain their responses at that time or request that they respond at sometime sooner than the expiration of the 10 days allowed for them to respond. Either party may waive the 10 days by providing their response prior to the expiration of the 10 days.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-2301 through 39-51-2304, MCA

24.11.468 FRAUDULENT BENEFIT OVERPAYMENTS--ADMINISTRATIVE PENALTIES (1) A "fraudulent benefit overpayment" is a~~n~~ benefit overpayment ~~caused by a person who obtains benefits or other payments as described in 39-51-3201, MCA~~ created as the result of a disqualification, ineligibility, or reduction in benefit entitlement imposed on the basis of information not previously known by the department due to the claimant's false statement or representation or failure to disclose a material fact in order to obtain or increase benefits.

~~(2) The phrase "false statement or representation," as used in 39-51-3201 and 39-51-3202, MCA, means a statement made with the purpose to mislead and known by the maker to be untrue.~~

~~(3) The department conducts a preliminary investigation to determine whether there is reason to believe a person made a false statement or representation. If the department finds such a reason, notice is sent to the person containing the same information as the notice in ARM 24.11.466.~~

~~(4) The department considers all the available information, in particular, evidence that:~~

~~(a) the person received wages or other payments that would reduce benefits, but failed to report them;~~

~~(b) the person made a false statement or representation; and~~

~~(c) the person's acts resulting in overpayment were intentional.~~

~~(5) If the evidence convincingly establishes by a preponderance of the evidence that the person made a false statement or representation or knowingly failed to disclose a material fact as described in 39-51-3201, MCA, the department notifies the person of its determination, imposes administrative penalties, and may refer the matter to a county attorney for~~

~~prosecution.~~

~~(6)~~ (2) The penalty referred to in 39-51-3201(1)(b), MCA, ~~will be~~ for the first offense is 33% of the ~~fraudulently obtained benefits~~ fraudulent benefit overpayment. For each subsequent offense within five years of the most recent previous fraudulent benefit overpayment, the penalty referred to in 39-51-3201, MCA, is 100% of the current fraudulent benefit overpayment. ~~Restitution~~ The amount required to be repaid to the department will be an amount equal to the ~~fraudulently obtained benefits~~ fraudulent benefit overpayment plus the penalty. ~~Benefits will not be used to offset the penalty.~~

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-3201, 39-51-3202, 39-51-3203 and 39-51-3206, MCA

REASON: There is reasonable necessity to amend ARM 24.11.441 to reflect the conversion to a telephone claims-taking system implemented by the Department, and to harmonize the terminology with language proposed for change in MAR Notice No. 24-11-137.

There is reasonable necessity to amend ARM 24.11.445 in order for the rule to conform with technical definitions proposed for change in MAR Notice No. 24-11-137, which proposes a new definition rule applicable to unemployment insurance benefit matters.

There is reasonable necessity to amend ARM 24.11.451 in order for the rule to conform with technical definitions proposed for change in MAR Notice No. 24-11-137, which proposes a new definition rule applicable to unemployment insurance benefit matters. In addition, there is reasonable necessity to amend the rule so that it correctly describes the timelines for response in a way that will be consistent with the language proposed in MAR Notice No. 24-11-137.

There is reasonable necessity to amend ARM 24.11.468 in order to establish a higher administrative penalty level for subsequent fraudulent benefit overpayments to further discourage those individuals whose behavior is not modified by application of the 33% administrative penalty. The Department has recently determined that it is seeing an increase of "repeat offenders" fraudulently obtaining benefits to which the claimant is not entitled. The Department notes that it has also been increasing the number of cases referred for criminal prosecution where there is an element of fraud.

4. The Department proposes to adopt 17 new rules as follows:

NEW RULE I DEFINITION OF SUITABLE WORK FOR EXTENDED BENEFITS PURPOSES--CLASSIFICATION AND DETERMINATION OF JOB PROSPECTS (1) For the purposes of this rule, the following definitions apply:

(a) "job prospects" means the likelihood, as determined by the department, of the claimant becoming employed in the

claimant's usual occupation in a reasonably short period of time;

(b) "reasonably short period of time" means within four weeks from the end of the week in which a valid claim is filed;

(c) "suitable work," with respect to a claimant whose job prospects are classified as "good," means work which is determined by the department to be suitable under 39-51-2304, MCA;

(d) "suitable work," with respect to a claimant whose job prospects are classified as "not good," means any work which meets the following criteria:

(i) the work is within the claimant's capabilities;

(ii) the gross average weekly wages for the work exceeds the claimant's extended weekly benefit amount, plus the amount of any supplemental unemployment benefits (as defined in 26 U.S.C. 501(c)(17)(D) of the Internal Revenue Code of 1954, as amended) payable for such week;

(iii) the position does not pay less than the higher of:

(A) the minimum wage provided by section 206(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206), as amended, without regard to any exemption; or

(B) any applicable state or local minimum wage;

(iv) the position was offered to the claimant in writing or was listed with an employment office; and

(v) the work would not be determined by the department to be unsuitable under 39-51-2304(3), MCA;

(e) "valid claim" means a claim for extended benefits filed by a claimant who is an exhaustee, as defined in 39-51-2501, MCA, and who meets the qualifying requirements of 39-51-2508(1)(b), MCA.

(2) With respect to each claimant who establishes a valid claim for extended benefits, the department will classify the claimant’s job prospects as either "good" or "not good" and promptly notify the claimant in writing of its determination. Unless and until the department finds evidence to the contrary, the claimant's job prospects will be deemed to be "not good." The department may, at any time following an initial or subsequent classification and determination of a claimant's job prospects, change the claimant's job prospects classification if it finds that there is sufficient evidence to do so. The department will promptly notify the claimant in writing of its decision to change the classification.

(3) Any employment office located in the claimant’s labor market area will refer a claimant who has filed a valid claim for extended benefits to any suitable work which meets the criteria prescribed in this rule.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-2508, MCA

NEW RULE II SCOPE AND PURPOSE--MODEL LANGUAGE (1) [NEW RULES II through XII] govern the department’s procedures relative to its administrative cooperation with other states adopting similar rules or regulations to implement the interstate benefit payment plan, to which the department is

signatory, to provide for the payment of benefits to interstate claimants. In the interest of promoting uniformity of interpretation and consistency of application between Montana and the other states, the department has adopted, with minor modifications, the model rule language promulgated by the interstate conference of employment security agencies. The duties and responsibilities imposed by this subchapter are binding only on the state of Montana in its role as an agent state or as a liable state.
AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-504, MCA

NEW RULE III DEFINITIONS As used in [NEW RULES II through XII], unless the context clearly requires otherwise:

(1) "Agent state" means any state from or through which an individual files an interstate claim for benefits against another state.

(2) "Benefits" means the compensation payable to an individual, with respect to his unemployment under the unemployment insurance law of any state.

(3) "Interstate benefit payment plan" means the plan approved by the interstate conference of employment security agencies under which benefits are payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(4) "Interstate claimant" means an individual who files an interstate claim for benefits under the unemployment insurance law of a liable state from another state, through the facilities of an agent state, or directly with the liable state. The term "interstate claimant" shall not include any individual who customarily commutes across state lines from a residence in one state to work in a liable state unless the department finds that this exclusion would create undue hardship on such claimants in specified areas.

(5) "Liable state" means any state against which an individual files, from or through another state, an interstate claim for benefits.

(6) "State" means any of the 50 states plus the District of Columbia, Puerto Rico and the Virgin Islands.

(7) "Week of unemployment" means any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.
AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-504, MCA

NEW RULE IV NOTIFICATION OF INTERSTATE CLAIM (1) The liable state will notify the agent state of each initial claim, reopened claim, claim transferred to interstate status, and each week claimed filed from the agent state using uniform procedures and record format pursuant to the interstate benefit payment plan.
AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-504, MCA

NEW RULE V REGISTRATION FOR WORK (1) The agent state shall register for work each interstate claimant who files through the agent state, or upon notification of a claim filed directly with the liable state, as required by the law, regulations and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

(2) Each agent state shall duly report to the liable state in question, each interstate claimant who fails to meet registration or re-employment assistance reporting requirements of the agent state.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-504, MCA

NEW RULE VI BENEFIT RIGHTS OF INTERSTATE CLAIMANT (1) If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, claims for benefits shall be filed only against that state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

(2) For the purposes of this rule, benefit credits are deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-504, MCA

NEW RULE VII CLAIMS FOR BENEFITS (1) Claims for benefits or waiting period filed by an interstate claimant directly with the liable state shall be filed in accordance with the liable state's procedures.

(2) With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept as timely any claim which is filed through the agent state within the time limit applicable to such claims under the law of the agent state.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-504, MCA

NEW RULE VIII PROVIDING ASSISTANCE TO INTERSTATE CLAIMANTS

(1) Each agent state, upon request by an interstate claimant, shall assist the individual with the understanding and filing of necessary notices and documents.

(2) The liable state shall provide interstate claimants with access to information concerning the status of their claims throughout the normal business day.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-504, MCA

NEW RULE IX ELIGIBILITY REVIEW PROGRAM (1) The liable state shall schedule and conduct eligibility review interviews

for interstate claimants.
AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-504, MCA

NEW RULE X DETERMINATION OF CLAIMS (1) The agent state shall, in connection with each claim filed by an interstate claimant, identify to the liable state in question, any potential issue relating to the claimant's availability for work and eligibility for benefits detected by the agent state.

(2) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to the identification of potential issues identified in connection with initial or weeks claimed filed through the agent state and the reporting of relevant facts pertaining to each claimant's failure to register for work or report for re-employment assistance as required by the agent state.
AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-504, MCA

NEW RULE XI APPELLATE PROCEDURE (1) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims when so requested by a liable state.

(2) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date it is received by any qualified officer of the agent state.

(3) The liable state shall conduct hearings in connection with appealed interstate benefit claims. The liable state may contact the agent state for assistance in special circumstances.
AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-504, MCA

NEW RULE XII EXTENSION OF INTERSTATE BENEFIT PAYMENT PLAN TO INCLUDE CLAIMS TAKEN IN AND FOR CANADA (1) [NEW RULES II through XII] shall apply in all their provisions to claims taken in and for Canada.
AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-504, MCA

NEW RULE XIII SCOPE AND PURPOSE--MODEL LANGUAGE (1) [NEW RULES XIII through XVII] govern the department’s procedures relative to its administrative cooperation with other states adopting similar rules or regulations to implement the interstate reciprocal overpayment recovery arrangement, to which the department is signatory, to provide for the recovery of improper payments of state and federal unemployment compensation benefits from individuals filing under the interstate benefit payment plan, the interstate arrangement for the combining of employment and wages, or intrastate under any state's law. In the interest of promoting uniformity of interpretation and consistency of application between Montana and the other states,

the department has adopted, with minor modifications, the model rule language promulgated by the interstate conference of employment security agencies. The duties and responsibilities imposed by this subchapter are binding only on the state of Montana in its role as a requesting state or a recovering state.
AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-504, 39-51-3201, 39-51-3202 and 39-51-3206, MCA

NEW RULE XIV DEFINITIONS As used in [NEW RULES XIII through XVII], unless the context clearly requires otherwise:

(1) "Liable state" means any state against which an individual files, through another state, a claim for benefits.

(2) "Offset" means the withholding of the overpaid amount against benefits which would otherwise be payable for a compensable week of unemployment.

(3) "Overpayment" means an improper payment of benefits, from a state or federal unemployment compensation fund, that has been determined recoverable under the requesting state's law.

(4) "Participating state" means a state which has subscribed to the interstate reciprocal overpayment recovery arrangement.

(5) "Paying state" means the state under whose law a claim for unemployment benefits has been established on the basis of combining wages and employment covered in more than one state.

(6) "Recovering state" means the state that has received a request for assistance from a requesting state.

(7) "Requesting state" means the state that has issued a final determination of overpayment and is requesting another state to assist it in recovering the outstanding balance from the overpaid individual.

(8) "State" means any of the 50 states, plus the District of Columbia, Puerto Rico and the Virgin Islands.

(9) "Transferring state" means a state in which a combined wage claimant had covered employment and wages in the base period of a paying state, and which transfers such employment and wages to the paying state for its use in determining the benefit rights of such claimant under its law.
AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-504, 39-51-3201, 39-51-3202 and 39-51-3206, MCA

NEW RULE XV RECOVERY OF STATE OR FEDERAL BENEFIT OVERPAYMENTS (1) The requesting state shall:

(a) Send the recovering state a written request for overpayment recovery assistance which includes:

(i) certification that the overpayment is legally collectable under the requesting state's law;

(ii) certification that the determination is final and that any rights to postponement of recoupment have been exhausted or have expired;

(iii) a statement as to whether the state is participating in cross-program offset by agreement with the U.S. secretary of labor; and

(iv) a copy of the initial overpayment determination and a statement of the outstanding balance;

(b) Send notice of this request to the claimant; and

(c) Send to the recovering state a new outstanding overpayment balance whenever the requesting state receives any amount of repayment from a source other than the recovering state, including such events as the interception of tax refund or other state-issued payment.

(2) The recovering state shall:

(a) Issue an overpayment recovery determination to the claimant which includes at a minimum:

(i) the statutory authority for the offset;

(ii) the name of the state requesting recoupment;

(iii) the date of the original overpayment determination;

(iv) the type or basis of the overpayment, such as fraud or non-fraud;

(v) program type, such as state unemployment insurance, unemployment insurance for federal employees, unemployment insurance for former members of the armed services, trade readjustment, etc.;

(vi) total amount to be offset;

(vii) the amount to be offset weekly; and

(viii) the right to request redetermination and appeal of the determination to recover the overpayment by offset;

(b) Offset benefits payable for each week claimed in the amount determined under state law;

(c) Provide the claimant with a notice of the amount offset;

(d) Prepare and forward, no less than once a month, a check representing the amount recovered made payable to the requesting state, except as provided in [NEW RULE XVI]; and

(e) Retain a record of the overpayment balance in its files no later than the exhaustion of benefits, end of the benefit year, exhaustion or end of an additional or extended benefits period, or other extensions of benefits, whichever is later.

(3) The recovering state shall not redetermine the original overpayment determination.

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-504, 39-51-3201, 39-51-3202 and 39-51-3206, MCA

NEW RULE XVI COMBINED WAGE CLAIMS (1) The paying state shall:

(a) Offset any outstanding overpayment in a transferring state(s) prior to honoring a request from any other participating state under this arrangement.

(b) Credit the deductions against the statement of benefits paid to combined wage claimants (form IB-6), or forward a check to the transferring state as described in [NEW RULE XV (2)(d)].

(2) Withdrawal of a combined wage claim after benefits have been paid shall be honored only if the combined wage claimant has repaid any benefits paid or authorizes the new liable state to offset the overpayment.

(3) The paying state shall issue an overpayment determination and forward a copy, together with an overpayment

recovery request and an authorization to offset, with the initial claim to the liable state.

(4) The recovering state shall:

(a) Offset the total amount of any overpayment, resulting from the withdrawal of a combined wage claim, prior to the release of any payments to the claimant;

(b) Offset the total amount of any overpayment, resulting from the withdrawal of a combined wage claim prior to honoring a request from any other participating state under this arrangement;

(c) Provide the claimant with a notice for the amount offset; and

(d) Prepare and forward a check representing the amount recovered to the requesting state as described in [NEW RULE XV (2)(d)].

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-504, 39-51-3201, 39-51-3202 and 39-51-3206, MCA

NEW RULE XVII CROSS-PROGRAM OFFSET (1) The recovering state shall offset benefits payable under a state unemployment compensation program to recover any benefits overpaid under a federal unemployment compensation program (as described in the recovering state's agreement with the U.S. secretary of labor) and vice versa, in the same manner as required by [NEW RULE XV], as appropriate, when both the recovering state and requesting state have entered into an agreement with the U.S. secretary of labor to implement section 303(a) of the Social Security Act, found at 42 U.S.C. 503(a).

AUTH: 39-51-301 and 39-51-302, MCA
IMP: 39-51-504, 39-51-3201, 39-51-3202 and 39-51-3206, MCA

There is reasonable necessity to adopt NEW RULE I in order to clarify the circumstances in which a claimant’s job prospects are either "good" or "not good", and the resulting determination of what is suitable work for a claimant receiving extended benefits, and to establish a basis upon which those determinations are made. There is reasonable necessity to adopt NEW RULE I in order to coordinate with the new terminology used in these rules and the rules proposed in MAR Notice No. 24-11-137.

There is reasonable necessity to adopt NEW RULES II through XII in order to describe the procedures that are involved with interstate claims being processed by the Department or workers that have Montana wage credits being processed in other states. The proposed new rules are needed in conjunction with the expected January 2001 implementation of MISTICS computer system to describe certain automated functions that are a part of that system. Montana is a signatory to the plans and agreements described in the proposed new rules.

There is reasonable necessity to adopt NEW RULES XIII through XVII in order to describe the procedures that are involved with obtaining repayment of overpaid benefits by means of an offset

in an interstate claim, if Montana is either the requesting or recovering state. The proposed new rules are needed in conjunction with the expected January 2001 implementation of MISTICS computer system to describe certain automated functions that are a part of that system. Montana is a signatory to the agreement described in the proposed new rules.

5. The Department proposes to repeal the following rules:

24.11.444 COURTESY CLAIMS
AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2103, 39-51-2104 and 39-51-2201, MCA
ARM page 24-639.1

24.11.446 PARTIAL BENEFITS
AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2201, MCA
ARM page 24-639.2

24.11.480 DEFINITION OF SUITABLE WORK FOR EXTENDED BENEFITS PURPOSES
AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2508, MCA
ARM pages 24-653 and 24-654

24.11.501 DEFINITIONS
AUTH: 39-51-302, MCA
IMP: 39-51-504, MCA
ARM page 24-661

24.11.502 REGISTRATION FOR WORK
AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA
ARM page 24-661

24.11.503 BENEFIT RIGHTS OF INTERSTATE CLAIMANTS
AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA
ARM page 24-661

24.11.504 CLAIMS FOR BENEFITS
AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA
ARM page 24-662

24.11.505 DETERMINATIONS OF CLAIMS
AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504, MCA
ARM page 24-662

24.11.506 APPELLATE PROCEDURE
AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-504 MCA
ARM page 24-662

REASON: There is reasonable necessity to repeal these rules because they are either being replaced by proposed new rules or are otherwise no longer necessary in light of the amendment proposed in this Notice of Public Hearing or in MAR Notice No. 24-11-137.

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

Roy Mulvaney
Benefits Bureau
Unemployment Insurance Division
Department of Labor and Industry
P.O. Box 8020
Helena, Montana 59604-8011

and must be received by no later than 5:00 p.m., October 25, 2000. Comments may also be submitted electronically as noted in the following paragraph.

7. 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., October 25, 2000. 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.

8. 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.

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

10. The Department proposes to make the amendments, new rules and repeals effective December 31, 2000. The Department reserves the right to adopt only portions of the proposed amendments, new rules or repeals, or to adopt some or all of the proposed amendments, new rules or repeals at a later date.

11. 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/ PATRICIA HAFFEY**
Kevin Braun	**Patricia Haffey, Commissioner**
Rule Reviewer	**DEPARTMENT OF LABOR & INDUSTRY**

Certified to the Secretary of State: September 11, 2000.

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

In the matter of the adoption of rules I through XXXV and the repeal of rules from ARM Title 46, chapter 30, subchapters 5 and 6 pertaining to the conduct of contested hearings in child support establishment and enforcement cases	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL

TO: All Interested Persons

1. On October 11, 2000, at 1:30 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and repeal of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on October 2, 2000, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

[RULE I] APPLICABILITY OF RULES (1) The provisions of this chapter set forth the rules pertaining to administrative actions by the child support enforcement division (CSED) under Title IV-D of the Social Security Act, Title 40, chapter 5, MCA, and the applicable provisions of 17-4-105, MCA. Unless specifically provided, other department rules do not apply to CSED actions, notwithstanding any statements of general applicability contained in the rules. The provisions of this chapter do not apply to actions by the department under other chapters.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-201, 40-5-202, 40-5-203, 40-5-205, 40-5-206, 40-5-207, 40-5-208, 40-5-209, 40-5-210, 40-5-213, 40-5-214, 40-5-221, 40-5-222, 40-5-224, 40-5-225, 40-5-226, 40-5-227, 40-5-231, 40-5-232, 40-5-233, 40-5-234, 40-5-235, 40-5-236, 40-5-237, 40-5-238, 40-5-242, 40-5-243, 40-5-244, 40-5-247,

40-5-248, 40-5-251, 40-5-252, 40-5-253, 40-5-254, 40-5-255, 40-5-256, 40-5-257, 40-5-261, 40-5-262, 40-5-263, 40-5-264, 40-5-271, 40-5-272, 40-5-401, 40-5-402, 40-5-403, 40-5-404, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-418, 40-5-421, 40-5-422, 40-5-423, 40-5-424, 40-5-431, 40-5-432, 40-5-433, 40-5-434, 40-5-443, 40-5-701, 40-5-702, 40-5-703, 40-5-704, 40-5-709, 40-5-710, 40-5-711, 40-5-712, 40-5-713, 40-5-801, 40-5-802, 40-5-803, 40-5-804, 40-5-805, 40-5-806, 40-5-807, 40-5-808, 40-5-809, 40-5-810, 40-5-811, 40-5-812, 40-5-813, 40-5-814, 40-5-815, 40-5-816, 40-5-817, 40-5-818, 40-5-819, 40-5-820, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-825, 40-5-901, 40-5-906, 40-5-907, 40-5-908, 40-5-909, 40-5-910, 40-5-911, 40-5-921, 40-5-922, 40-5-923 and 40-5-924, MCA

[RULE II] DEFINITIONS For the purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) Insofar as they are not inconsistent with, or clarified by, the more specific definitions set forth in this chapter, the definitions set forth in 40-5-201, 40-5-403, 40-5-701, 40-5-801 and 40-5-901, MCA are adopted and incorporated herein by reference. Copies of 40-5-201, 40-5-403, 40-5-701, 40-5-801 and 40-5-901, MCA may be obtained from the Department of Public Health and Human Services, Child Support Enforcement Division, P.O. Box 202943, Helena, MT 59620-2943.

(2) "ALJ" means a CSED administrative law judge whose duties are defined in [Rule III].

(3) "Caseworker" means an employee of the CSED who is authorized to initiate and participate in a contested case as provided in these rules and by CSED policy and procedures.

(4) "Child support guidelines" means the administrative rules used to determine child support obligations as provided in ARM Title 37, chapter 62, subchapter 1.

(5) "Contested case" means a proceeding subsequent to service of a contested case notice under the Montana Administrative Procedure Act, the Uniform Interstate Family Support Act and the applicable provisions of Title 40, chapter 5, MCA and 17-4-105, MCA in which a determination of legal rights, duties and responsibilities is to be made after opportunity for hearing. This definition is not intended to include investigations made to determine if formal "contested case" proceedings should be instituted nor does it include proceedings related to the enforcement of support orders unless a statute provides for a hearing before the enforcement action may be taken.

(6) "Contested case notice" means a notice that initiates a contested case under the applicable sections of Title 40, chapter 5, MCA and 17-4-105, MCA and the Montana Administrative Procedure Act. Until a contested case notice is served on a party, there is no contested case and no corresponding right to an administrative hearing. Contested case notice does not apply to procedural notices such as a notice of hearing.

(7) "CSED" means the child support enforcement division, an agency within the department of public health and human

services charged with the responsibility of providing support enforcement services under Title IV-D of the Social Security Act.

(8) "Guidelines" means the child support guidelines defined at (4) of this rule.

(9) "OALJ" means the CSED's office of the administrative law judge as described in [Rule III].

(10) "Party" is defined in [Rule IX].

(11) "Presiding ALJ" means the ALJ assigned to a contested case when a party requests a hearing.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA

IMP: Sec. 17-4-105, 40-5-201, 40-5-202, 40-5-203, 40-5-205, 40-5-206, 40-5-207, 40-5-208, 40-5-209, 40-5-210, 40-5-213, 40-5-214, 40-5-221, 40-5-222, 40-5-224, 40-5-225, 40-5-226, 40-5-227, 40-5-231, 40-5-232, 40-5-233, 40-5-234, 40-5-235, 40-5-236, 40-5-237, 40-5-238, 40-5-242, 40-5-243, 40-5-244, 40-5-247, 40-5-248, 40-5-251, 40-5-252, 40-5-253, 40-5-254, 40-5-255, 40-5-256, 40-5-257, 40-5-261, 40-5-262, 40-5-263, 40-5-264, 40-5-271, 40-5-272, 40-5-401, 40-5-402, 40-5-403, 40-5-404, 40-5-411, 40-5-412, 40-5-413, 40-5-414, 40-5-415, 40-5-416, 40-5-417, 40-5-418, 40-5-421, 40-5-422, 40-5-423, 40-5-424, 40-5-431, 40-5-432, 40-5-433, 40-5-434, 40-5-443, 40-5-701, 40-5-702, 40-5-703, 40-5-704, 40-5-709, 40-5-710, 40-5-711, 40-5-712, 40-5-713, 40-5-801, 40-5-802, 40-5-803, 40-5-804, 40-5-805, 40-5-806, 40-5-807, 40-5-808, 40-5-809, 40-5-810, 40-5-811, 40-5-812, 40-5-813, 40-5-814, 40-5-815, 40-5-816, 40-5-817, 40-5-818, 40-5-819, 40-5-820, 40-5-821, 40-5-822, 40-5-823, 40-5-824, 40-5-825, 40-5-901, 40-5-906, 40-5-907, 40-5-908, 40-5-909, 40-5-910, 40-5-911, 40-5-921, 40-5-922, 40-5-923 and 40-5-924, MCA

[RULE III] ORGANIZATIONAL STRUCTURE (1) Within the CSED there is an independent hearings bureau. For the convenient classification and division of business, the hearings bureau is divided into two administrative units consisting of the administrative law judges (ALJs) and the office of the administrative law judge (OALJ).

(2) The ALJs are responsible for and preside over all hearings in CSED contested cases.

(a) In addition to the powers and duties set forth in 2-4-611(3), MCA an ALJ has the power and duty to carry out, undertake or perform any task or action expressly or implicitly required of an ALJ under these rules including the general authority to regulate the conduct and course of contested cases.

(3) The OALJ is responsible for providing administrative and clerical support to the ALJs:

(a) maintaining all contested case hearing records;

(b) calendaring contested cases for hearing;

(c) assigning cases to respective ALJs;

(d) setting hearing dates;

(e) tracking the progress of a case through the hearing process; and

(f) similar other activities.

AUTH: Sec. 2-4-201, 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE IV] ASSIGNMENT OF CASES TO ALJ, DISQUALIFICATION AND SUBSTITUTION (1) When a hearing is requested by a party to a contested case, the OALJ will allocate the case file to an ALJ. Except as provided in this rule, once a case is assigned to an ALJ, the case shall be the continuing responsibility of that ALJ until a final decision and order is entered and the time for judicial review has expired. If judicial review is filed, the ALJ will lose jurisdiction over the case and will regain jurisdiction only if the district court remands the case to the CSED for further proceedings.

(2) The duties of an ALJ are interchangeable among the judges during the absence or disability of the presiding ALJ. An ALJ making an order for the presiding ALJ will be presumed to have acted with the consent of the presiding ALJ.

(3) A presiding ALJ may transfer a case to another ALJ who will then become the presiding ALJ. Notice of the transfer shall be provided to all parties if the transfer is made subsequent to an assignment notice filed under (5). As an exception to (6)(a), the substitute ALJ shall give the parties reasonable time, determined according to the circumstances of the case, to submit a motion for disqualification.

(4) For the purposes of (6), when a contested case is assigned to a presiding ALJ for hearing, the OALJ will notify the parties of the assignment. This notice will be included as part of the order setting a hearing date.

(5) An ALJ may make an order or give notice of recusal or self-disqualification at any time.

(6) A party may submit a motion for disqualification of a presiding ALJ as provided by 2-4-611(4), MCA. The motion shall be heard and determined by an ALJ other than the one named in the motion.

(a) Motions for disqualification of a presiding ALJ must be filed with the OALJ within 10 calendar days of the effective date of service of the order setting the matter for hearing. If the ALJ fails to rule on the motion before the day set for the hearing, or if the motion is not timely filed, the motion shall be considered denied.

(b) Except as may be provided by 2-4-701, MCA determinations of motions for disqualification are not subject to judicial review but may be considered as part of a judicial review of the final decision and order in a contested case.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and

40-5-906, MCA

[RULE V] UNIFORMITY, CONSISTENCY AND INDEPENDENCE (1) To achieve and maintain uniformity and consistency in determining contested cases, contested case decisions shall be guided by:

(a) applicable sections of the Montana Code Annotated;

(b) case law decisions of the Montana supreme court;

(c) the administrative rules, procedures and policies set out in this chapter;

(d) precedent created by other ALJ final decisions and orders in contested cases where the facts are essentially the same; and

(e) to determine the nature, extent, amount or duration of a support order issued by a tribunal of another state, the statutory and case law of the issuing state and the federal Full Faith and Credit for Child Support Orders Act (28 USC 1738 B).

(2) When there is no statute, case law or administrative rule directly pertinent to a particular contested issue, or when the law is unsettled, and to the extent the following are of general applicability and do not conflict with the rules for ex parte communication, the ALJ's discretion shall be guided by:

(a) written policy directives; and

(b) the CSED policy and procedures manual.

(3) Notwithstanding (2), each ALJ has independent authority to hear and decide contested cases. Under the unique circumstances of a particular case and upon a showing of facts or law sufficient to rebut application of a particular policy, an ALJ may depart from established CSED policy. Any departure shall be supported by reasoned explanation.

(4) An ALJ presiding over a contested case does not have general powers of equity similar to those of the district courts. Consequently, except in those specific circumstances requiring such equitable relief as is defined by statute or case law, an ALJ may not depart from applicable law and rule to grant equitable relief to a party even when such relief may appear proper under the circumstances.

(5) During the course of a hearing, if a particular policy applicable under (2) will affect a certain matter at issue and if that issue is disputed, the ALJ will give the parties an opportunity to show cause why the policy is not applicable under the circumstances of that case.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE VI] EX PARTE COMMUNICATIONS (1) Except as provided in (3), or unless expressly authorized by any rule under this chapter, a presiding ALJ shall not initiate or participate in ex parte communications, directly or indirectly, with any party or

with any person who has a direct or indirect interest in the outcome of the case.

(2) For the purpose of this rule, a prohibited ex parte communication is any oral or written information that could intentionally or unintentionally influence any issue in a pending case or that directly or indirectly furnishes, diminishes or modifies any evidence in the case without notice and opportunity for all parties to participate in the communication.

(3) A presiding ALJ may consult with and receive aid from OALJ staff or another ALJ concerning the merits of a contested case if those persons do not receive ex parte communications of a type that the presiding ALJ would be prohibited from receiving.

(4) A presiding ALJ may engage in communications concerning administrative or procedural matters when the communication is necessary under the circumstances and does not affect the substantive rights of a party.

(5) If the presiding ALJ receives an improper ex parte communication, any decision and order entered in that case must include the ALJ's reason for concluding that the communication did not prejudice the substantial rights of any party.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE VII] CONTESTED CASE PROCEEDINGS, ANSWER OR RESPONSE AND REQUEST FOR HEARING (1) Contested cases are initiated by service of a notice as provided in the Montana Administrative Procedure Act, applicable sections of Title 40, chapter 5, MCA and 17-4-105, MCA. Absent service of such notice there is no contested case, no jurisdiction and no corresponding right to an administrative hearing.

(2) A person served with a contested case notice may request an administrative hearing as provided in (5). Except as provided in (3) and (4), no additional answer or responsive pleading to any contested case notice is required.

(3) When the contested case notice is to initiate income withholding proceedings under 40-5-412 and 40-5-414, MCA, any request for hearing must allege a mistake of fact. If a mistake of fact is not alleged, the request for hearing may be denied. Notwithstanding the omission of a mistake of fact, a person may be entitled to a hearing for the purpose of contesting the jurisdiction of the CSED to withhold the person's income.

(4) When requesting a hearing, the person must include with the request a brief statement of any affirmative defense the party may have to the contested case notice.

(5) To request a hearing, the person must:

(a) make the request in writing; and

(b) within the time permitted by statute or these rules

for requesting the hearing, file the request with the OALJ as provided in [Rule VIII].

(6) In addition to the provisions of (4) through (5)(b), the written request must include the name, mailing address and telephone number at which the person requesting the hearing can be reached for service of subsequent documents and orders.

(7) The CSED will make hearing request forms consistent with this rule available for use by persons requesting a hearing. Except a request for hearing that omits a mistake of fact required by (3), a timely request for hearing that is generally in compliance with this rule shall not be dismissed solely for failure to strictly satisfy the requirements of this rule.

(8) A request for hearing is not deemed as made until a written request is actually received by the OALJ. The OALJ shall deny untimely requests for hearing.

(9) Informal contact with the CSED or OALJ, whether written or oral, will not constitute a hearing request, and will not extend the time in which a hearing must be requested.

(10) The CSED, as the party initiating a contested case proceeding, does not need to request a hearing. If no other party requests a hearing, a default decision and order may be entered. However, if no other party requests a hearing, the CSED may at its discretion request a hearing.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE VIII] FILING AND PROOF OF SERVICE (1) Whenever a rule or statute requires or permits a request for hearing, motion, brief, responsive answer or other document relating to the hearing to be filed with the department or the CSED, the place of filing shall be the OALJ. The location, mailing address and fax number of the OALJ shall be provided on the contested case notice and on each order, subsequent notice or other document mailed by the OALJ to a party. Excluding legal holidays, the hours for filing papers are between 8:00 a.m. and 5:00 p.m., Monday through Friday. Any papers presented or delivered after 5:00 p.m. shall be stamped the next business day. All original papers shall be filed with the OALJ and not the ALJ.

(2) Facsimile (fax) filings may be accepted. If the fax copy is offered to prove a fact, the fax copy will be stamped "received" by the OALJ and the original document must be filed with the OALJ within 5 business days in order to be filed as of the received date of the fax copy. The fax copy and the original document must be identical, or the filing is void. If the original is not timely filed, the received fax copy shall be void.

(3) Filing with the OALJ is effective upon actual receipt

at the OALJ and not upon mailing. Filing with the OALJ does not constitute service on the CSED and service on the CSED does not constitute a filing with the OALJ.

(4) Whenever service of a document is required by [Rule XI], an original certificate of service shall be attached to each document filed under this rule including fax filings. The copies served on other parties or entities entitled to service shall also attach certificates of service. Certificates of service shall be affixed to the document and shall include the date the document was served, and the name of each party and entity served.

(5) Failure to provide a certificate of service does not affect the validity of service provided that service can be substantiated by other proof, if necessary.

(6) If the document presented for filing was prepared by an attorney representing a party, the attorney's name, complete mailing address and telephone number shall appear at the top, left-hand corner on the document's first page.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE IX] PARTIES (1) Except as provided in (3), a party includes any person served with a CSED contested case notice.

(2) As the entity initiating the proceedings, the CSED is automatically a party in all contested case proceedings. However, the CSED, at its discretion, may limit its participation in the case. When the CSED does participate as a party, it will do so through a CSED caseworker or CSED attorney as provided in [Rule X].

(3) An interested person who receives an informational copy of the contested case notice is not a party.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE X] REPRESENTATION (1) Any person appearing in a CSED proceeding may, at the person's own expense, be accompanied, represented and advised by an attorney.

(a) To represent a party in a contested case, the attorney must be licensed to practice law in this state or be admitted pro hac vice.

(b) If the attorney files a notice of appearance or signs and files a request for hearing or other responsive pleading with the OALJ in that contested case action, the attorney shall be designated as the attorney of record and all further

communication, mailings and notices made in that contested case action will be directed to the attorney. However, the OALJ will mail or deliver copies of all decisions and orders to both the party and the party's attorney. If there is no attorney of record, the OALJ, CSED and other parties will make all communications directly to the party.

(c) An attorney of record may withdraw from a pending case, however the attorney shall give notice of the withdrawal to the OALJ, the CSED and all other parties. Upon receipt of notice the OALJ, the CSED and all other parties will redirect all subsequent communications to the party formerly represented by the attorney.

(d) Unless the attorney sooner withdraws and gives notice thereof, an attorney of record will continue as the attorney of record until the final decision and order is entered in the case.

(2) A party to a contested case may be accompanied, assisted and advised by a person who is not an attorney or who is an attorney not admitted to practice law in this state; however, that person may not represent the party during the hearing or give statements or make arguments on the party's behalf. The OALJ will direct all communications to the party.

(3) A party who chooses not to be represented by counsel and who represents himself or herself must substantially comply with the provisions of these rules. An ALJ may modify the strict application of these rules to an unrepresented party to the extent that strict application is not necessary to assure a fair hearing, and the modification does not affect the substantive rights of any other party.

(4) Through the use of pre-approved legal forms and written CSED policies and procedures, and under the ultimate direction of and in consultation with a CSED attorney, and consistent with rules 5.3 and 5.5 of the Montana Rules of Professional Conduct, a CSED caseworker may initiate, appear in and participate in a contested case. A caseworker's assertion in a contested case notice is sufficient to constitute the caseworker's authority to participate in the case. When in a particular case a mailing, service, or other communication with the CSED is required by these rules, the mailing, service or other communication must be directed to the participating caseworker.

(5) At the discretion of the CSED, a CSED attorney may personally appear and take an active role in a contested case at any phase in the proceedings. The CSED attorney may also cease taking an active role at any time. When a CSED attorney does appear in the case, the attorney will not need to file a notice of appearance or sign any pleading as provided in (1)(b). The CSED attorney's appearance is sufficient to establish the attorney's authority to provide counsel and representation. When requested by a CSED attorney appearing in the case, all other parties shall direct all further communication, mailings and notices made in that case to the attorney.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272,

40-5-273, 40-5-405, 40-5-713, 40-5-825, and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XI] SERVICE OF SUBSEQUENT NOTICE, MOTIONS, BRIEFS, AND OTHER PAPERS (1) After service of a contested case notice, all subsequent notices including amendments to a contested case notice, motions, briefs and other papers pertaining to a pending administrative action must be served on all parties. Service may be made by regular U.S. mail, postage prepaid, addressed to each party at:

(a) The mailing address provided by the party in the request for hearing or a subsequent mailing address provided by the party;

(b) The party's last known mailing address if no request for hearing was made, or if the request for hearing failed to include an address; or

(c) The address of the place where service of the original contested case notice was achieved, if the party's mailing address is not known to the CSED.

(2) Proof of service must be attached to each document as provided by [Rule VIII].

(3) When the requirements of this rule are met, service by mail is complete upon mailing.

(4) Service on the CSED does not constitute a filing with the OALJ and filing with the OALJ does not constitute service on the CSED.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XII] NOTICE OF HEARING, SCHEDULING ORDER AND LOCATION OF HEARING (1) If a request for hearing is timely and properly filed according to these rules, the OALJ shall assign the case to an ALJ and schedule a time, date and place for the conduct of the hearing. The OALJ shall serve a notice of hearing and scheduling order on all parties. In support enforcement, paternity establishment, and support order establishment cases where the obligee is not a party, the OALJ shall also send a copy of the notice of hearing to the obligee. In those instances, the obligee is not a party to those proceedings but may attend as a nonparty observer or witness.

(2) The notice of hearing and scheduling order shall:

(a) set the date, time and place for the hearing;

(b) set the date by which the witness and exhibit list must be filed with the OALJ and by which a copy of the list must be served on all other parties;

(c) set the date by which exhibits must be exchanged with

other parties if exhibits are not served as attachments to the witness and exhibit list;

(d) set the date by which a party must request discovery or request subpoenas for the attendance of witnesses or the production of documents;

(e) inform the party that the hearing will initially be held by telephone conference;

(f) if the hearing is by telephone conference, inform the party that before the hearing record is closed, the party will have an opportunity, at the party's request or upon a showing that a party's case was prejudiced by the lack of an in-person hearing, to request a de novo in-person hearing;

(g) give the party directions for the conduct of telephone hearings;

(h) direct the party to provide a telephone number at which the party will be available for the hearing and further direct that if the party does not provide the number or fails to be at the number when called for the hearing, the ALJ may either enter the party's default or proceed with the hearing in absentia; and

(i) inform the party that if the party does not have a telephone available for a telephone hearing, at the party's request, a telephone will be made available to the party at the nearest regional CSED office or at the public assistance office in the county where the party resides.

(3) The time of the hearing will be during the CSED's regular business hours. The place of the hearing may be:

(a) for a telephone hearing, at the location of the telephone number provided by each party and, if applicable, the obligee; or

(b) for an in-person hearing, as provided in 40-5-231(3), MCA.

(4) The parties may agree to an in-person hearing in another location which is mutually convenient to all the parties and the CSED.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XIII] MOTIONS (1) Prior to entry of an order resolving a contested case notice, a party may seek relief in that case by means of an appropriate motion. Appropriate motions may include motions to dismiss, motions for summary judgment, motions for continuance and similar other motions.

(2) Motions shall state:

(a) the relief sought by the party;

(b) the grounds and authority supporting the motion; and

(c) any prejudice which could result if the motion is not granted.

(3) All motions which assert factual matters not of record

must be accompanied by affidavits or exhibits which show the facts that are the grounds for the proposed relief. The failure to provide affidavits or exhibits shall be deemed an admission that the asserted facts do not exist.

(4) Each motion must also be accompanied by a brief or memorandum of law showing the moving party's entitlement to relief.

(5) Upon receipt of a filed motion the ALJ will set a schedule for the other parties to file responses to the motion and to file answer or reply briefs or memorandums of law.

(6) The failure of a party to file a brief or memorandum of law may subject the motion to summary ruling, and failure of a moving party to file a brief in support of the motion may be treated as an admission the motion is without merit. The failure to file an answer brief may be treated as an admission the motion is well taken and should be granted. The filing of a reply brief by a party who is not the moving party is optional.

(7) If the moving party wants the ALJ to take immediate action on a motion, the motion should state that opposing parties have been contacted and have no objection to the motion; the moving party should advise the OALJ of the contact and non-objection when filing the motion, so the motion can be immediately brought to the attention of the ALJ. All uncontested motions should be accompanied by a proposed order with sufficient copies for the OALJ to mail to all other parties. If another party objects to the motion or if there is no indication whether another party objects, the motion will be decided as provided in (5), (6) and (8).

(8) Unless the ALJ determines that oral argument would be beneficial to determination of the motion, oral arguments will not be permitted. Motions will be decided on the briefs and other papers submitted in support of the motion. Motions will be deemed submitted at the time set for filing the final brief.

(9) If the ALJ does not render a decision with regard to the motion before entering an order resolving the contested case notice, the motion shall be deemed denied.

(10) Nothing in this rule shall be construed to preclude the oral presentation of motions or objections related to evidence, motions for summary judgment or other matters arising at the hearing.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XIV] EXTENSIONS OF TIME AND CONTINUANCES

(1) Because CSED contested cases must proceed on an expedited basis, requests for extensions of time and continuances are disfavored and shall not be routinely granted. Extensions of time and continuances will be granted only upon a

showing of extraordinary circumstances beyond the party's control which will cause substantial prejudice to the party if the extension or continuance is not granted.

(2) A request for an extension of time may be filed with the OALJ at any time prior to the day an activity or time frame is set by order, rule or statute for completion. The request shall contain:

(a) a statement of the reason for the extension of time;

(b) a statement showing extraordinary circumstances beyond the party's control which will cause substantial prejudice to the party if the extension or continuance is not granted; and

(c) a statement indicating the positions of every other party regarding the request for an extension of time.

(3) Uncontested requests for extensions of time or continuances which include the above statements may be granted by the OALJ. If the request is contested for any reason the request will be submitted to the ALJ for determination as if the request were a motion under [Rule XII]. If the ALJ does not render a decision on the request by the day the activity or time frame is due to be completed, the request shall be deemed denied.

(4) All uncontested requests for extensions of time or continuances must be accompanied by an appropriate proposed order with sufficient copies for the OALJ to mail to all parties.

(5) An order for extension of time to file papers, briefs and other materials will include a provision for extending the time for other parties to file and serve opposing briefs and reply briefs and other responding materials.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XV] AMENDMENTS (1) A contested case notice may be amended by the CSED at any time before an order is issued resolving the notice. Except when the notice is amended during hearing, the amended notice shall be served on all parties in accordance with [Rule XI].

(a) Except as provided in (1)(c), a party who has responded to the contested case notice as provided in [Rule VII] does not need to respond to or request a hearing on the amended notice.

(b) If a party did not respond to the original notice as provided in [Rule VII], the party may respond to the amended notice within the time frames provided in the amended notice.

(c) If a party did respond to the original notice and the party's request for hearing was denied for any reason, the party may respond to the amended notice as provided in [Rule VII] and request a new hearing with regard to the issues claimed in the amended notice.

(d) The response time shall be the same number of days as allowed by statute or rule for requesting a hearing on the original notice. The time for responding to an amended notice begins on the day after the amended notice is served.

(2) During a hearing a party may seek to offer evidence relating to new issues not raised in the contested case notice or in the party's response to the notice. With the express or implied consent of the parties, the contested case notice or response may be deemed amended to conform to evidence which is relevant and material to issues within the scope of the CSED's authority.

(3) If a party objects to evidence offered at a hearing on grounds that the evidence is not within the issues raised by the contested case notice or the response to the notice, the ALJ may allow the notice or response to be amended upon a showing that the evidence is relevant and material to issues within the scope of the CSED's authority. If the amendment causes a surprise element to be introduced during a hearing, the ALJ may recess or adjourn the hearing to enable the objecting party to meet, refute, or rebut such evidence and may also order the exchange of additional relevant information or exhibits. The hearing record shall remain open and the ALJ shall set a specific time and date for the hearing to be reconvened. When a hearing is reconvened, it will be for the limited purpose of allowing the objecting party to meet, refute or rebut the evidence submitted by surprise in the prior hearing. This remedy may be had in addition to, or in conjunction with, any other remedy provided by these rules.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XVI] EVIDENCE (1) The evidence received and considered in CSED contested cases shall conform to the common law, the statutory rules of evidence and the provisions of 2-4-612, MCA.

(2) A presiding ALJ may receive any evidence offered by a party without ruling on its admissibility at the time it is offered. After the matter is submitted for decision, the ALJ will then consider and determine the admissibility and sufficiency of the evidence, giving due regard to its materiality, relevance, and trustworthiness. Evidence may be excluded even though no objection was raised at hearing. If the ALJ takes evidence under advisement and rules on its admissibility later, a party may object to the inclusion or exclusion of evidence under this rule by filing a motion to review the proposed order as provided for in [Rule XXVIII].

(3) This rule shall not be construed to prevent the ALJ from limiting cumulative, irrelevant or other inadmissible testimony or evidence during the hearing.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XVII] OFFICIAL NOTICE (1) Official notice may be taken of:

(a) federal law, including the constitution of the United States, congressional acts, resolutions, records, journals, and committee reports, the decisions of federal courts and administrative agencies, executive orders and proclamations, and all rules, orders and notices published in the federal register;

(b) state law, including the constitution, acts of the legislature, resolutions, records, journals and committee reports, decisions of the administrative agencies of the state of Montana, executive orders and proclamations by the governor, and all rules, orders and notices published in the Montana administrative register;

(c) department and CSED organization, including administration, officers, personnel, official publications and official acts of the department and the CSED;

(d) any fact that could be judicially noticed in the district courts including generally recognized technical and scientific facts obtained from treatises of learned scholars and public documents to the extent allowed by the rules of evidence;

(e) the records of other CSED proceedings;

(g) codes, regulations, standards, action transmittals, policy interpretation questions and information transmittals issued or adopted by a federal agency pursuant to Title IV-D of the Social Security Act;

(h) written policy directives;

(i) the CSED policy and procedures manual;

(j) records, reports, statements, and data compilations in any form of a clerk of court, public office or state agency of this or any other state or federal agency which are part of the regularly conducted activities of that clerk of court, public office or state agency;

(k) payment histories originated by the CSED or obtained from clerks of court, the child support agencies of other states or other public records sources, and CSED-prepared abstracts of those histories including computerized data compilations; and

(l) child support guidelines worksheets and similar documents, completed CSED case related forms, and other papers within the scope of the CSED's technical knowledge as a body of experts and within the scope of its duties, responsibilities and jurisdiction.

(2) Officially noticed law may be admitted during a hearing without the necessity of foundation testimony or formal proof of the existence of the law. Officially noticed facts, if relevant to a determination of the matter at issue, may be admitted as evidence without the necessity of foundation testimony. A party is entitled upon timely request to an

opportunity to rebut any facts officially noticed or to contest the application of an officially noticed law before the matter is resolved by a final decision or order of the ALJ. If official notice is taken during a hearing without prior notice, the request for opportunity to rebut or contest must be presented during that hearing. If official notice of facts or law is taken in a proposed written hearing decision and order without prior mention during the hearing or otherwise, the request for an opportunity to rebut or contest must be made within 20 days after the proposed decision is first issued as provided for in [Rule XXVIII].

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XVIII] PRESUMPTIONS (1) The ALJ may apply the following presumptions when consistent with all surrounding facts and circumstances:

(a) the presumptions both conclusive and rebuttable which are set forth in Title 26, chapter 1, part 6, MCA and 40-5-234, 40-6-105 and 40-6-201, MCA and any other presumption created by law;

(b) that mail or other communications properly addressed and transmitted to the post office or other common carrier with all postage, tolls or charges properly prepaid, is or has been delivered to the addressee or consignee in the ordinary course of business; and

(c) that a person who receives or received public assistance is eligible or was eligible for such assistance.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XIX] INVESTIGATIVE SUBPOENA (1) The CSED may issue an investigative subpoena whenever the CSED has a duty to investigate any matter relating to the location of an obligor, the establishment of paternity and support orders, and the enforcement or modification of a support order. A contested case as defined in [Rule II] need not be initiated before an investigative subpoena is issued.

(2) The investigative subpoena is used to obtain information leading to the determination of an obligor or obligee's:

(a) prior and current residential and mailing addresses;

(b) social security number;

(c) past and present employment and dates of employment;

and

(d) real or personal property, including but not limited to, wages, salaries, earnings, tips, bonuses, profits, draws and advances against earnings, severance pay, trust income, pensions, workers compensation benefits, unemployment benefits, commissions, disability payments, distributions from retirement plans, alimony or spousal maintenance, contract proceeds, rents received, interest earned, royalties, dividends, accounts as defined by 40-5-924, MCA, loan applications made, and any other similar information, regardless of source, related to the obligor's or obligee's assets and liabilities as may be contained in the records and files of the subpoenaed person or entity.

(3) The investigative subpoena may be directed to, but not limited to, public utility companies, financial institutions as defined by 40-5-904, MCA, accountants and bookkeepers, cable television providers, unions, and payors as defined by 40-5-403, MCA.

(4) In addition to (3), when a person with a support order requests the CSED to review that order for a possible modification, the CSED may direct an investigative subpoena to a parent for the purpose of determining during the review process whether there is a sufficient change of circumstances to warrant commencement of formal modification proceedings.

(5) The investigative subpoena shall order the subpoenaed person or representative of the subpoenaed entity to appear before the CSED at a set time and produce the requested information and, if necessary, to permit the pertinent parts of the record and files to be inspected and copied. By mutual agreement between the CSED and the subpoenaed person or entity, the time, place and method for production of the information may be modified.

(6) The CSED shall issue an investigative subpoena only when the person who is the subject of the investigation fails to voluntarily provide the information and the information is otherwise unavailable to the CSED through less intrusive means.

(7) If the person or entity to whom an investigative subpoena is directed objects to the subpoena before the time specified for compliance with the subpoena, that person or entity may contact the OALJ in writing concerning the objection. The OALJ will refer the matter to an ALJ for resolution. After providing the parties with an opportunity to present argument, the ALJ may, in writing or at a hearing:

(a) sustain the subpoena;

(b) quash or modify the subpoena if it is unreasonable, or unduly burdensome; or

(c) impose additional conditions as may be just and reasonable.

(8) Investigative subpoenas issued under this rule may be enforced as provided by 2-4-102(2) and 40-5-226(13), MCA.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208,

40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XX] HEARING SUBPOENA AND SUBPOENA DUCES TECUM (1) A hearing subpoena is issued in a contested case and directs a person to appear at a particular time and place to testify as a witness. A subpoena duces tecum may also require the person to produce any records, books, documents, or other materials under the person's control which may be relevant to facts at issue in the pending case.

(2) Any party to a contested case may request a hearing subpoena or subpoena duces tecum. Except as provided in (7), a request for a subpoena must be made in writing to the OALJ. Such a request must be made within the time set by the [Rule XII] scheduling order.

(3) A request for a subpoena must be accompanied by an affidavit which includes:

(a) the name and address of the witness or the person or entity having control over the material to be subpoenaed;

(b) a brief statement as to why the testimony of the witness or production of the subpoenaed material is reasonable, necessary and relevant to an issue of fact; and

(c) if the request is for a subpoena duces tecum, the affidavit must also include:

(i) a short, plain statement identifying or specifying the information requested by the subpoena; and

(ii) a statement as to why the information cannot be reasonably obtained by other less intrusive means.

(4) A request for subpoena under this rule that is not timely or not accompanied by a supporting affidavit shall be denied by the OALJ.

(5) Upon receipt of a request meeting the requirements of this rule, the OALJ shall issue the subpoena and deliver it to the requesting party. The requesting party is responsible for having the subpoena served on the witness or the person or entity having control of the subpoenaed material. The requesting party is also responsible for the costs of service, the costs of witness fees and mileage if requested by the witness, and the costs of preparing, copying and transmitting documentary materials. The method of service of subpoenas and the provisions for witness fees and mileage shall be the same as required in district court civil actions.

(6) If the person to whom a subpoena is directed objects to the subpoena before the time specified for compliance with the subpoena, that person may contact the OALJ in writing concerning the objection. The OALJ will refer the matter to the presiding ALJ. After providing the parties with an opportunity to present argument, the ALJ may:

(a) sustain the subpoena;

(b) quash or modify the subpoena if it is unreasonable or requires evidence not relevant or material to any matter in issue; or

(c) impose additional conditions as may be just and

reasonable.

(7) Subpoenas issued under this rule may be enforced as provided by 2-4-102(2) and 40-5-226(13), MCA.

(8) An order denying, quashing or modifying a subpoena is not a final agency decision for purposes of the judicial review but may be considered as part of the judicial review of the final decision and order in the contested case.

(9) Except for the enforcement provisions of (7), this rule does not apply to genetic testing subpoenas issued under 40-5-233, MCA.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XXI] OTHER DISCOVERY (1) In addition to subpoenas, other methods of discovery shall be available to the parties prior to a contested case hearing. Discovery other than by subpoena is referred to in this rule as "other discovery". Parties may obtain other discovery by one or more of the following methods:

(a) depositions upon oral examination or written questions;

(b) interrogatories;

(c) request for production of documents and other written materials; and

(d) request for admissions.

(2) Because CSED contested case proceedings are heard on an expedited basis, other discovery may unreasonably delay the hearing. For this reason other discovery may not be had except upon request. A request for other discovery must be made according to and within the time set by the [RULE XII] scheduling order. When other discovery is requested, the OALJ will convene a discovery conference by telephone with all parties. At the conference the OALJ will establish dates for the accelerated completion of each phase of other discovery. Time tables for other discovery set out in the Montana Rules of Civil Procedure may be substantially shortened.

(a) If a party objects to the schedule or scope of other discovery, the OALJ will refer the matter to an ALJ for resolution of the dispute and, if appropriate, the setting of a revised discovery schedule. The party seeking discovery has the burden of showing that the discovery is needed for the proper presentation of the party's case. The ALJ may order such other discovery as is deemed appropriate or may deny the request for other discovery.

(3) Without need for other discovery or subpoena, specific identifiable CSED records that are relevant to a disputed material fact, upon request and payment of any necessary copying fees, may be made available to a party unless the requested records are expressly exempt or protected from disclosure by

state or federal law.

(4) When other discovery or subpoenas cannot be effectively completed prior to a hearing because of shortened time tables or limitations on the scope of discovery, and the incompleteness causes a surprise element to be introduced during a hearing, the ALJ may order the exchange of additional relevant information or exhibits. The hearing record shall remain open until the time set for the exchange has passed; the ALJ may order the hearing to be reconvened within 10 days after the record is closed. When a hearing is reconvened, it will be for the limited purpose of taking further testimony, or to cross-examine with regard to the exchanged information or exhibits. This remedy may be had in addition to, or in conjunction with, any other remedy provided by these rules.

(5) When necessary to protect records that are confidential or exempt from disclosure by state or federal law, or to protect a party or person from undue annoyance, excessive embarrassment, oppression or undue burden or expense, upon motion by a party or by the person from whom other discovery is sought, the presiding ALJ may make any order including one or more of the following:

(a) that other discovery not be had;

(b) that the other discovery may be had only on specified terms and conditions;

(c) that other discovery be had only if the discovery is by a method other than that selected by the party seeking discovery;

(d) that certain matters should not be inquired into, or that the scope of other discovery be limited to certain matters; and

(e) that other discovery be conducted with no one present except persons designated by the ALJ.

(6) The product of other discovery or subpoena shall not be routinely filed with the OALJ. A party who makes a motion referring to or supported by the product of other discovery or subpoena must support the motion by copies or abstracts of the discovery relied upon. A party who seeks to introduce the product of discovery or subpoena as a part of the record must identify such documents in the witness and exhibit list provided for in [Rule XXII]. The use of depositions at hearing or in lieu of testimony by a witness shall be governed by the Montana Rules of Civil Procedure. Where consideration of only a portion of a deposition is necessary the ALJ may order the preparation of excerpts to avoid a bulky record or consideration of irrelevant or prejudicial matter.

(7) The party requesting other discovery is responsible for preparing and making all arrangements for the conduct of the requested discovery. The requesting party is also responsible for the costs of serving the discovery on other parties, deposition costs, the preparation of transcripts of depositions, and the costs of preparing, copying and transmitting discovered materials.

(8) If a party or other person fails or refuses, without good reason, to be sworn or to answer or respond to a discovery

request or subpoena, the ALJ, after directly ordering the party or person to obey the discovery request, may enter an appropriate order that:

(a) deems that the facts are established in accordance with the claim of the party seeking to establish such facts through the discovery process;

(b) refuses to allow the disobedient party to support or oppose designated claims or defenses, or prohibits that party from introducing designated matters in evidence;

(c) invokes the enforcement provisions of 2-4-104(1) and 40-5-226(13), MCA; or

(d) assesses sanctions under 40-5-226(14), MCA.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XXII] WITNESS AND EXHIBIT LIST AND EXCHANGE OF EXHIBITS (1) A party must prepare and file with the OALJ a witness and exhibit list when the party intends to present, use, or refer to at hearing:

(a) the testimony of any witness other than the party; or

(b) any exhibit or other documentary evidence.

(2) The witness and exhibit list must include:

(a) for each witness, including the party if the party intends to testify, the name, address and telephone number at which the witness can be reached for the hearing;

(b) a brief summary of the testimony to be given by each non-party witness;

(c) a listing of each exhibit separately identified by number or alphabet letter; and

(d) attached to the list, the original copy of each exhibit identified in the witness and exhibit list. If an original copy is not reasonably available, a clear photocopy of the original may be substituted for the original. Each attached exhibit must be numbered consistent with the list and, in addition, each exhibit must include some marking to identify the party offering the exhibit.

(3) Within the time set by the [Rule XII] scheduling order the witness and exhibit list with attachments must be filed with the OALJ. Within the same time the party must also serve copies of the list and copies of the attached exhibits on all parties as provided by [Rule XI]. If a witness is to give testimony with regard to a particular exhibit, the party should deliver a copy of that exhibit to the witness within this same time.

(4) If a party fails without good reason to file a witness and exhibit list or fails to serve a copy of the list on another party as provided in this rule, the ALJ may prevent the witness from testifying at the hearing or may exclude the exhibit as evidence. Upon a showing of good reason, the ALJ may allow a late witness or exhibit. If a party objects to the late entry,

the ALJ may, upon motion by the party, delay the hearing or final decision and order and reconvene the hearing at a later date to allow the moving party to adequately cross-examine or rebut the late witness's testimony or late exhibit.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XXIII] PREHEARING STATUS CONFERENCE (1) After a hearing is opened on the record and immediately preceding the presentation of evidence, the presiding ALJ shall conduct, on the record, a case status conference. The purpose of the conference is to:

(a) identify those facts which the parties agree to be true and which will require no proof during the hearing;

(b) identify those hearing exhibits which the parties agree may be entered without objection;

(c) identify the contentions of the parties;

(d) identify and clarify those issues of fact or law, including possible defenses, that remain to be determined by the ALJ during the hearing;

(e) identify any unusual legal or evidentiary issues;

(f) identify and exclude any matter raised by a party that is outside the scope of the hearing or which the ALJ has no authority to determine; and

(g) address such other matters as will promote the orderly and prompt conduct of the hearing.

(2) Based on the information identified in (1) the ALJ shall issue an order directing the course of the hearing as specified in [Rule XXV].

(3) If the status conference demonstrates that there are no facts at issue, the ALJ may convert the status conference to a proceeding for summary disposition of the case.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XXIV] BURDEN OF PROOF AND STANDARD OF PROOF (1) In all hearings conducted under this chapter, the party proposing that a certain action be taken must prove the facts at issue by a preponderance of the evidence unless the substantive law provides a different burden or standard. A party asserting an affirmative defense has the burden of proving the existence of the defense.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272,

40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XXV] PROCEDURE AT HEARING (1) The presiding ALJ shall direct the order of presentation of evidence and cross-examination and shall limit the scope of the hearing in conformity with the prehearing status conference.

(2) The ALJ may enter appropriate oral orders during the hearing to control the conduct of witnesses, the parties or their attorneys, including conduct which is disruptive or constitutes contempt of the ALJ or the administrative hearing process.

(3) The hearing may be continued with recesses as determined by the presiding ALJ.

(4) With the exception of matters limited by the prehearing status conference or excluded under [Rule XXI], to the extent necessary for full disclosure of relevant facts and issues, the presiding ALJ shall afford all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence. Evidence that is incompetent, irrelevant, immaterial, or unduly repetitious may be excluded.

(5) Evidence may be presented through exhibits and testimony of the parties or other witnesses. Testimony may be given in narrative fashion by witnesses or by question and answer. All oral testimony must be under oath or by affirmation. The presiding ALJ may exclude witnesses from the hearing so that they cannot hear the testimony of other witnesses.

(a) Under the provisions of [Rule XVII], officially noticed facts and law may be admissible without requiring foundation testimony.

(6) When there are multiple parties in the case, after the opportunity provided for under (4), at the ALJ's discretion a party may be excused and allowed to withdraw from any remaining part of the hearing which is not specific to that party.

(7) During the course of the hearing the ALJ may:

(a) question the parties and their witnesses to elicit full disclosure of all pertinent facts; and

(b) inquire into any circumstance or other matter the ALJ may find pertinent and relevant.

(8) Only evidence that is offered and received during the hearing or submitted following the hearing with the permission of the presiding ALJ may be considered in rendering a decision.

(9) At the conclusion of a hearing, the presiding ALJ may leave the record open and may order or permit submission of additional evidence or post hearing briefs. The ALJ shall set a schedule for the exchange of such additional evidence or briefs. The record is considered closed either at the conclusion of the hearing or, if ordered or permitted, upon the due date for the submission of the materials. Evidence and

other materials submitted after the due date or without permission of the presiding ALJ may be returned to the submitting party and may not be considered by the ALJ when deciding the case.

(10) The ALJ shall cause the hearing to be recorded on audio tape at the CSED's expense. The CSED is not required to prepare a transcript at its own expense. Any interested person, at the person's expense, may request a typed transcription of the tape recording or may cause additional audio, video or stenographic recordings to be made during the hearing if the making of additional recordings does not cause distraction or disruption.

(11) CSED hearings are open to public observation, except for the parts that the presiding ALJ declares to be closed pursuant to a provision of law authorizing closure. If the hearing is conducted by telephone, the availability of public observation is satisfied by allowing interested persons to observe and listen to the hearing at the location of any one of the participants or to listen to or inspect the audio tape record or to inspect any transcript obtained by the CSED.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XXVI] INTERPRETERS (1) Whenever a party or a witness is unable to understand or speak the English language, and the presiding ALJ determines that this inability may impair the substantial rights of any party to a fair hearing, the ALJ may adjourn the hearing and appoint ex parte an interpreter at the CSED's expense. The hearing will be reconvened after an interpreter is obtained.

(2) Every person appointed as an interpreter under this rule, before entering upon his or her duties, shall take an oath or affirmation to give a true verbatim translation.

(3) Interpreters are subject to the rules of evidence relating to their qualifications as experts.

(4) No interpreter shall be appointed who has a personal interest in any matter at issue, or who is related to any party, or who has a personal or business relationship with any party.

(5) In addition to and not in substitution for an interpreter appointed by the ALJ, a person who is a party or witness may appear in any contested proceeding with the person's own interpreter at the person's expense. If the person's interpreter is to make translations on the record, (2) and (3) of this rule shall apply to the interpreter. The interpreter may be a relative of or may have a personal relationship with the party or witness, however, the relationship shall be noted in the record of the case.

(6) Interpreters for the hearing impaired shall be appointed as provided in 49-4-501 through 49-4-511, MCA.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XXVII] PROPOSED DECISION, FINAL DECISION AND ORDER

(1) Following the close of hearing and the receipt of post-hearing briefs and other evidence ordered by the ALJ, the presiding ALJ shall prepare a proposed decision and order. Copies of the proposed decision and order shall be served on each party as provided in [Rule XI]. A proposed decision and order is interim in effect and does not become a final CSED decision and order except as provided in (2) of this rule and by [Rule XXVIII(6)].

(2) The parties shall have 20 days following service of the proposed decision and order to review the order. At the end of the 20 days, the presiding ALJ may enact the proposed decision and order as a final CSED order unless a party, within the 20 day review period, files a motion to review the proposed order as provided by [Rule XXVIII]. A decision and order that becomes final under this rule takes effect as to its terms on the date it is enacted. Copies of the final decision and order shall be delivered or mailed to each party, and to each party's attorney if any.

(3) Proposed and final decisions and orders must include findings of fact, conclusions of law and the policy reasons for the decision if the decision is based on an exercise of CSED discretion as referenced in [Rule V(1)(b)].

(a) Findings of fact must be accompanied by a concise and explicit statement of each of the underlying facts in the record or officially noticed that support those findings.

(b) Each conclusion of law must be supported by cited authority or by a reasoned explanation.

(c) If a party attempted to or did rebut the applicability of any policy, fact or other material officially noticed under [Rule XVII], the order must include appropriate findings and conclusions.

(d) If the admissibility of an exhibit or other evidence was not ruled on during the hearing as provided by [Rule XVI], the order must contain a ruling on the evidence and state the reasons why the evidence was accepted or rejected.

(e) If a party submitted a motion under [Rule XXVIII], the final order must include a ruling, separately stated, on each issue raised, each finding of fact or ruling of law requested, each policy consideration raised or contested, and any other matter permitted by [Rule XXVIII] as a ground for revising a proposed order.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431,

40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XXVIII] MOTION TO REVIEW PROPOSED ORDER (1) Within 20 days after service of a proposed decision and order any party may file a motion to review the order.

(2) A motion to review must set out, with specificity, one or more of the following grounds upon which a proposed order may be reviewed:

(a) Through inadvertence or mistake, the ALJ overlooked an important fact presented at the hearing which could affect the decision;

(b) The ALJ considered some fact that is not in the hearing record;

(c) A party requested a specific finding of fact or conclusion of law which was not made;

(d) The ALJ failed to consider a law, a policy or other material under [Rule V] which the ALJ should have included as a matter of course;

(e) The ALJ inappropriately applied official notice to a fact or other material under [Rule XVII];

(f) When the admissibility of evidence was ruled upon after a matter was submitted for decision, the ALJ improperly accepted or rejected the evidence;

(g) New evidence was discovered or became accessible after the hearing was closed and that evidence was not reasonably available at the time of the hearing;

(h) The ALJ based the order on a mistake of fact or law; or

(i) There have been intervening changes in controlling law.

(3) A motion to review is not for the purpose of:

(a) allowing the parties to present the case under new theories;

(b) presenting arguments which the ALJ has already considered and rejected;

(c) raising arguments which could or should have been made before the initial decision was rendered; or

(d) rehearing the case on the merits.

(4) The motion must be considered by the same presiding ALJ who issued the proposed decision and order.

(5) The presiding ALJ may, upon the ALJ's own initiative and without need for a motion, initiate a review under this rule. The provisions of (6) then apply as if a timely motion to review had been made by a party.

(6) Upon receipt of a timely filed motion to review which specifies one or more of the grounds set out in (2), the presiding ALJ shall afford each party an opportunity to respond to the motion and, upon request, to present oral argument and submit written briefs on the matters raised by the motion. After considering the motion and the responses to the motion, the ALJ may affirm the proposed decision or correct, amend or modify it as necessary. If affirmed, the proposed order shall be enacted as a final CSED order. The enacted order takes

effect as to its terms on the date it is enacted. If corrected, amended or modified, the ALJ shall issue a revised decision and order that is consistent with the proposed order as corrected, amended or modified. The revised decision and order shall be effective as a final CSED decision and order on the day it is signed by the ALJ. Copies of decisions and orders that become final under this rule shall be delivered or mailed to each party, and to each party's attorney if any.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XXIX] BENCH RULINGS (1) In order to more promptly deliver decisions and orders following any hearing in a case, particularly when the hearing does not involve complex factual questions or unique questions of law, the ALJ may, at his or her discretion, issue a bench ruling following the close of testimony and the closing arguments of the parties.

(2) The ALJ will announce the decision or order orally to the parties, on the record, outlining the factual and legal reasons for the decision. Except as provided in (3), the ALJ will prepare and issue a written decision or order within 20 days after the announcement of the bench ruling.

(3) A bench ruling which is to be a final disposition in a contested case shall be in lieu of the proposed order provided for in [Rule XXVII]. A party may move to review the bench ruling and the review may be conducted as provided in [Rule XXVIII], except the time for filing the motion shall be within 20 days after the announcement of the bench ruling. When the time for filing a motion to review has expired and no motion is filed or following resolution of a motion to review, the ALJ will prepare and issue a written final decision and order.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XXX] HEARING RECORD (1) The contested case hearing record shall include all the items required by 2-4-614(1), MCA.

(2) Except for parts of the file admitted as evidence during the hearing, the CSED case file maintained by the CSED caseworker, including computerized and hard copy versions, is not a part of the hearing record.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208,

40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XXXI] CLERICAL ERRORS AND EFFECT OF CORRECTION

(1) Clerical mistakes, typographical errors, and errors in mathematical calculations in any decision or order in a contested case arising from oversight or omission may be corrected by the ALJ at any time upon the ALJ's own initiative or upon the motion of any party and after notice to all other parties and the opportunity for such other parties to object.

(2) The ALJ will decide a motion to correct clerical errors based on the contents of the administrative hearing record and without a hearing. No new evidence will be accepted or considered with regard to the motion.

(3) Unless the ALJ orders otherwise, a corrected decision and order relates to and is effective from the date of the original decision or order.

(4) A motion to correct clerical errors does not:

(a) stay the effect of a final decision and order pending determination of the motion; or

(b) extend the time for filing a petition for judicial review of a final decision and order.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XXXII] INFORMAL DISPOSITION AND CONSENT ORDERS

(1) The parties to a contested case may informally resolve the case, any motion concerning the case, or any issue pending resolution in the case, by stipulation, agreed settlement, or consent order. Except as provided in (3), all informal dispositions must be in writing and must be submitted to the presiding ALJ for review. The ALJ will review the matter for conformity with applicable law and for jurisdiction of the CSED to enter an order or resolve the matter based on the informal disposition. Upon concurrence the ALJ will make any appropriate order based on the informal disposition including dismissing or vacating any pending hearing.

(2) If an informal disposition is reached at the hearing or just before, the parties may orally communicate the terms of the informal disposition to the presiding ALJ. As long as the terms of the informal disposition are stated on the record, there is no need to follow the oral communication with a written communication. The ALJ may vacate the hearing and enter an order adopting the terms of the informal disposition.

(3) Informal dispositions of any issue of fact or law in a matter set for hearing shall be made according to [Rule XXIII].

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XXXIII] REHEARING OR NEW HEARING (1) After a final decision and order is issued, a motion or request for rehearing or new hearing on the merits of the contested case will not be considered. The filing of a motion or request for rehearing or new hearing does not extend the time for judicial review of the final decision and order. This rule does not abrogate the authority of a district court to remand the matter for a new hearing or additional hearing as the result of judicial review of a final decision and order.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XXXIV] COMPUTATION OF TIME AND ENLARGEMENT (1) In computing any period of time for acts required by any of the rules in this chapter, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period is the last day computed, unless it is a Saturday, Sunday or legal holiday. In that event, the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and holidays are excluded in the computation. A half-day holiday will be considered as other days and not as a holiday.

(2) Whenever a party has a right or is required to do some act under these rules within a prescribed period after service of a notice, order or other paper upon the party, and the notice, order or other paper is served upon the party by regular mail, 3 calendar days shall be added to the prescribed period.

(3) Except for dates or prescribed times fixed by statute and not subject to modification, an ALJ, for good cause shown, may enlarge the time to perform an act if the request or motion for enlargement is made before the expiration of the prescribed period for the act. If the request or motion is made after the prescribed time has expired, enlargement may be allowed only upon a showing of excusable neglect in the failure to act. Requests or motions for enlargement of time must be made as provided in [Rule XIII].

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA
IMP: Sec. 17-4-105, 40-5-157, 40-5-202, 40-5-208,

40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

[RULE XXXV] DISMISSAL OF CONTESTED CASE OR WITHDRAWAL OF HEARING REQUEST (1) The CSED or a CSED staff attorney may ex parte dismiss a contested case proceeding at any time prior to entry of a final decision and order. A copy of the ex parte dismissal shall be served on all parties served with a contested case notice. The OALJ shall vacate any hearing that may be pending in the case. A dismissal under this rule is without prejudice and the CSED may initiate a new contested case proceeding at any time.

(2) A party requesting a hearing may withdraw the request at any time prior to or during the hearing. Prior to the hearing the request must be withdrawn in writing; during the hearing the request may be withdrawn orally with the ALJ.

(a) If the reason for the dismissal or withdrawal is based on an agreement between the parties that settles the contested case, the dismissal or request to withdraw will be made according to [Rule XXXII].

(b) Except as provided for in (2)(a), when the OALJ or the presiding ALJ receives a request to withdraw, the ALJ will vacate the hearing provided that no other party has also requested a hearing in the same case. If no other party has requested a hearing, before vacating the hearing the ALJ will give the other parties an opportunity to request a hearing. If no party accepts this opportunity, the ALJ will vacate the hearing and the matter will be resolved as a default of the pending contested case notice or, if applicable, by stipulation. If another party requests or has requested a hearing, the request to withdraw will be deemed denied; the contested case will proceed to hearing and to a final decision and order based on the testimony and arguments of the parties who appear and participate at the hearing.

(c) If a party who has requested a hearing fails to appear at a scheduled hearing, the presiding ALJ may, unless prohibited by a statute, deem the party's request for hearing to be withdrawn. When a request is deemed withdrawn, the ALJ will proceed as provided in (2)(b).

(d) When a scheduled hearing is vacated as a result of a failure in (2)(c), the ALJ, upon a showing of good cause by the requesting party, may revive the withdrawn hearing request and schedule a hearing. The request to revive must be made in writing within 10 days after the hearing was vacated and must explain in detail why the requesting party was unable to appear at a scheduled hearing.

(3) A scheduled hearing and a final decision and order may be vacated and dismissed at any time by the ALJ upon a showing that the CSED did not or does not have jurisdiction over the subject matter of the hearing or the final decision and order.

AUTH: Sec. 2-4-201, 17-4-105, 40-5-202, 40-5-262, 40-5-272, 40-5-273, 40-5-405, 40-5-713, 40-5-825 and 40-5-906, MCA

IMP: Sec. 2-4-201, 17-4-105, 40-5-157, 40-5-202, 40-5-208, 40-5-226, 40-5-233, 40-5-261, 40-5-271, 40-5-273, 40-5-414, 40-5-431, 40-5-703, 40-5-710, 40-5-821, 40-5-822, 40-5-823, 40-5-824 and 40-5-906, MCA

3. The rules 46.30.501, 46.30.503 and 46.30.505 as proposed to be repealed are on pages 46-8077 and 46-8078 of the Administrative Rules of Montana.

AUTH: Sec. 17-4-105, 40-5-202, 40-5-262 and 40-5-405, MCA
IMP: Sec. 17-4-105, 40-5-201 through 40-5-264 and 40-5-401 through 40-5-434, MCA

The rule 46.30.509 as proposed to be repealed is on page 46-8081 of the Administrative Rules of Montana.

AUTH: Sec. 40-5-202 and 40-5-405, MCA
IMP: Sec. 40-5-205, 40-5-412 and 40-5-421, MCA

The rule 46.30.601 as proposed to be repealed is on page 46-8111 of the Administrative Rules of Montana.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405, MCA
IMP: Sec. 17-4-105, 40-5-222, 40-5-225, 40-5-226, 40-5-232 and 40-5-413, MCA

The rule 46.30.603 as proposed to be repealed is on page 46-8111 of the Administrative Rules of Montana.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405, MCA
IMP: Sec. 17-4-105, 40-5-208, 40-5-222, 40-5-223, 40-5-225, 40-5-232, 40-5-413 and 40-5-414, MCA

The rules 46.30.605 found on page 46-8112; 46.30.607 and 46.30.609 on page 46-8113; 46.30.611 on page 46-8114; 46.30.613 and 46.30.615 on page 46-8125; 46.30.617 and 46.30.619 on page 46-8126; 46.30.621 and 46.30.623 on page 46-8135; 46.30.625 and 46.30.627 on page 46-8136; 46.30.629 and 46.30.631 on page 46-8137; 46.30.633 on page 46-8138; 46.30.635, 46.30.637 and 46.30.639 on page 46-8147; 46.30.641 and 46.30.643 on page 46-8148 of the Administrative Rules of Montana are proposed to be repealed.

AUTH: Sec. 17-4-105, 40-5-202 and 40-5-405, MCA
IMP: Sec. 17-4-105, 40-5-208, 40-5-222, 40-5-223, 40-5-225, 40-5-232 and 40-5-413, MCA

4. The proposed new rules are necessary to govern the procedure, practice and expedited resolution of administrative hearings conducted by the CSED.

Proceedings in district courts are guided by an amalgam of the Montana Rules of Civil Procedure, the Uniform District Court Rules and the operational rules adopted by individual judicial districts. While those rules do not apply to administrative

proceedings, they are good models for agencies like the CSED to follow. For example, the Attorney General's model rules of practice for agencies parallels closely the Montana Rules of Civil Procedure. However, CSED hearing proceedings are required by various federal rules to be expedited. This means that many of the time frames in the district court rules need to be compressed. Other district court procedures need to either be disallowed or allowed only under restricted circumstances. Procedures not contemplated by the district court rules need to be implemented to insure that the parties will get a fair hearing notwithstanding compressed schedules and restrictive rules.

Many agencies adopt by reference the Attorney General's model rules and supplement those rules only as needed for specific unique circumstances. Accordingly, their number of hearing rules are maintained at minimal level. Because of the demands of the expedited process, the CSED cannot do the same. The CSED is in need of a procedural rule for each step of the process from initiation to final resolution. This does not mean that the district court rules are not good models to follow. The proposed rules are adaptations of many of the same rules used by the courts. In this sense, attorneys and other legal professionals should find many of the proposed rules familiar even though they are dissimilar in detail.

The proposed rules are intended to replace existing hearing rules which are codified as ARM Title 46, chapter 30, subchapters 5 and 6. New child support enforcement remedies and duties have rendered many of the existing rules either inadequate or obsolete. It was also necessary to reorganize the existing rules to more closely follow a contested CSED case from initiation to the final decision. Many of the existing rules did not sufficiently inform the parties and particularly their attorneys of the differences between the CSED's hearing procedures and district court proceedings. This has caused some unnecessary confusion for those who assumed administrative rules were the same as district court rules. Rather than amend the existing rules to address these and similar problems, new hearing rules are proposed. The proposed new rules will be placed in ARM 37, chapter 62, which pertains to child support enforcement.

[RULE I] is necessary to establish that the proposed hearing rules apply to all hearings conducted by the CSED. To avoid confusion, this rule also provides that the proposed rules apply only to CSED hearings and not to hearings conducted by other divisions within the department. Conversely, this rule provides that rules applicable to any other division do not apply to CSED hearings.

[RULE II] is necessary to define certain phrases and abbreviations commonly used throughout the proposed rules.

[RULE III] is necessary to define the organizational structure of the CSED Hearing Bureau. This rule also informs parties and other interested persons of the general duties and responsibilities of the OALJ and the ALJ, respectively, to avoid confusion over responsibilities.

[RULE IV] continues to expand upon the organization structure described in [RULE III] by further defining an ALJ's responsibility as a presiding officer over a particular case and the duration of that responsibility. Further, this rule establishes the procedure and time for a party to substitute or disqualify an ALJ assigned to that party's case.

[RULE V] is necessary because it sets the standard for decision making by an ALJ. In essence, a presiding ALJ will be guided by applicable laws, rules and regulations. Where no law or rule applies or when more than one law or rule could arguably apply, and the ALJ is called upon to use discretion to determine the matter, this rule informs the parties that the ALJ's discretion will be guided by written CSED policy unless an express exception to that policy is made. So that there is no confusion between what district court judges can do and what an ALJ can do, this rule defines the ALJ's power to apply or not apply equity in deciding a case.

[RULE VI] is a necessary supplement to 2-4-613, MCA which prohibits ex parte communications. This rule gives greater definition to what does and does not constitute an improper ex parte communication.

[RULE VII] is necessary for the reason that it sets the procedure and place for filing requests for hearing and it defines the information that must be submitted with each request. This rule specifies that to be effective, a request for hearing must be filed with the OALJ. Without this rule a person could send a hearing request to any of the department's CSED or non-CSED offices, anywhere in the state. Under this arrangement the CSED would not be able to insure a timely right to a hearing.

[RULE VIII] is necessary for the reason that it sets the procedure and place for filing of documents, briefs or other materials that parties are required to file in CSED cases. As the rationale to [RULE VII] explains, without this rule, documents could conceivably be filed in any department office. This rule also allows for FAX filing. A correlating part of this rule describes how proof of service of the filed material on other parties is accomplished.

[RULE IX] is necessary to define who are and are not the parties in contested CSED cases. This will help avoid confusion as to participant's roles during a contested case action and upon judicial review, if any.

[RULE X] is necessary to inform non-CSED parties and their legal counsel of the procedures for confirming an attorney's representation of a party. The rule also defines the duration of representation and provides a method for the attorney to withdraw representation. Similar procedures define the representation of the CSED by CSED attorneys and caseworkers. Without this rule, a non-CSED party or the party's attorney will not know when to communicate directly with a caseworker and when to communicate with the CSED attorney. This rule also sets procedures for non-CSED parties who want or need the assistance of persons who are not admitted to the practice of law in Montana. While a person may choose to appear without an attorney, that person must essentially comply with the procedural rules for CSED hearings. However, this rule is necessary to give the ALJ the ability to relax the strict application of procedural rules if it becomes necessary to assure a fair hearing.

[RULE XI] is necessary to assure the fair exchange of motions, documents, briefs and like materials between parties. This rule together with [RULE VII] is the functional equivalent of Rule 5, M.R.Civ.P., concerning service of subsequent pleadings.

[RULE XII] is necessary to provide a procedure for informing the parties of a scheduled hearing. Because CSED hearings are held by telephone, the notice of hearing also informs the parties of the necessary procedures for the conduct of telephone hearings. This rule also combines the notice of hearing with a scheduling order. A scheduling order, because of the shortened time frames surrounding CSED hearings, is necessary to give the parties adequate opportunity to request discovery and submit and exchange witness and exhibit lists. Scheduling orders are common procedures in district courts. For example, see Rule 8 of the local rules of practice for the Fourth Judicial District Court.

[RULE XIII] is necessary to set a procedure for motion practice in contested CSED cases. In the assortment of possible hearings available in CSED cases, pre- and post-hearing motions are common and occur with the same frequency as may be expected in similar district court cases. This rule borrows from Rule 2 of the Uniform District Court Rules.

[RULE XIV] is necessary to inform the parties that extensions of time are a disfavored part of the expedited case but will be allowed upon a showing of circumstances beyond a party's control. The rule sets procedures for determining whether a request for an extension of time is indeed necessary to prevent substantial prejudice to a party's case.

[RULE XV] is necessary to establish procedures allowing amendments to a contested case notice to reflect changes of circumstance or new information obtained since the original contested case notice was issued. Without this rule, the original notice would need to be dismissed and a new contested

case notice issued. This would cause an unwarranted loss of time in getting support money for a child. This rule also contains a provision similar to Rule 15(b), M.R.Civ.P., which allows amendments to conform to the evidence produced at hearing.

[RULE XVI] is necessary to give a presiding ALJ the authority to take evidence under advisement. This rule is particularly necessary in many CSED cases where the value of evidence offered by a pro se party cannot be ascertained until all the evidence is on the record. This rule also gives a party a method to make objections when the admissibility of evidence taken under advisement is later decided.

[RULE XVII] is necessary to inform the parties and all interested persons of the laws and facts that the ALJ will take judicial notice of when deciding a case. This list includes many of the "facts" that are within the expertise of the CSED. Unlike district courts that have only the ability to take notice of facts commonly recognized as unquestionable by the general public, MAPA allows agencies to take notice of facts within the agencies' expertise even though those facts may not be known to the general public, or may not be recognized as unquestionable. Because of this latitude allowed the CSED, to avoid unnecessary surprise to other parties, this rule identifies most of the items that an ALJ can take notice of during a hearing. This rule also provides a method for a party to rebut any law or fact so noticed by the ALJ.

[RULE XVIII] is necessary to incorporate the numerous legal presumptions of fact that are found throughout the Montana code. Subsection (3) of this rule is particularly important. In public assistance based cases, a party will attempt to contest the CSED's authority to take action on the ground that the custodial parent was not entitled to public assistance. The CSED has no direct information to confirm public assistance status. Therefore, without this rule the CSED would, in all public assistance cases, need a witness from the public assistance bureau to establish this fact.

[RULE XIX] and [RULE XX] are necessary to establish procedures for the issuance, service, scope and enforcement of subpoenas. The major difference between these two rules is that [RULE XIX] pertains to investigative subpoenas which allow the CSED to determine with a minimum of intrusion whether initiation of a contested case is proper. [RULE XX] has a broader application that allows a party to discover and obtain any information necessary to prepare for a contested case hearing.

[RULE XXI] is necessary to set the times and procedures for discovery in contested cases by means other than subpoenas. In district courts this other discovery is generally available at the will of the parties. Trial and hearing dates are often set far enough in the future to allow ample opportunity for other

discovery. By contrast, because of the expedited process, in CSED cases other means of discovery are controlled and the times compressed so as not to delay hearings. When other discovery is scheduled, the procedures for filing, copying and distribution of discovered materials are the same as in Rule 4 of the Uniform District Court Rules.

[RULE XXII] is necessary to establish procedures requiring the preparation and prehearing exchange of witness and exhibit lists. These lists are intended to avoid surprises during the actual hearing by alerting the parties in advance of each party's intended witnesses and evidentiary exhibits. This allows the parties to adequately prepare for the hearing and for cross-examination or rebuttal of witnesses and exhibits.

[RULE XXIII] is necessary to promote the orderly and prompt conduct of CSED hearings. This rule accomplishes that purpose by requiring the ALJ to identify what issues are contested and which are not. Hearing time can then be saved by addressing only those issues that are contested. If it turns out that no issues are contested, the case can speedily be resolved accordingly. This is a process common to the district courts under Rule 5 of the Uniform District Court Rules.

[RULE XXIV] is necessary to inform the parties to CSED actions of the burden of proof and the standard of proof that will be applied is deciding contested cases. This assists the parties in their hearing preparation.

[RULE XXV] is necessary to define and establish for the benefit of the parties the full range of practice and procedures for the conduct of CSED hearings. This rule allows the ALJ to conform and limit the hearing to the issues identified during the prehearing status conference; to enter orders controlling the conduct of the parties and witnesses; to order continuances and recesses at the ALJ's discretion; to take testimony in narrative form as well as through the traditional question and answer format; to excuse a party early in multiple party cases after the need for that party is considered; to permit the inclusion of late evidence; and to take an active role in assuring full disclosure of all evidence. This rule also confirms that CSED hearings, except for paternity cases, are open to public observation.

[RULE XXVI] is necessary to provide for parties and witnesses who do not understand or speak the English language. When it becomes apparent that this could impair the right to a fair hearing, the ALJ is authorized to engage, at CSED expense, the translation services of a neutral interpreter. While a party or witness is still authorized to appear with his or her own personal interpreter, an interpreter appointed by the ALJ will give a more neutral, unbiased translation than what could be expected from a personal interpreter.

[RULE XXVII] is necessary to define the contents of final decisions and orders. This rule is particularly important because it creates a two-part order process. A "proposed" final order is sent to the parties. They have 20 days to review the order for correctness. If there is a problem, a party can ask for reconsideration under [RULE XXVIII]. This process gives the party the opportunity to correct errors without need for judicial review. This saves the time and costs related to judicial review in district court. If there is no objection to the proposed order, it becomes final without further proceedings. If the party does seek reconsideration, the reason for reconsideration is decided by the ALJ and a new final decision is issued.

[RULE XXVIII] is a necessary correlation to [RULE XXVII]. Again, a motion for reconsideration allows the parties an opportunity to avoid the time and expense of a judicial review. It provides for a "motion to review proposed order". This rule sets out nine grounds for review and reconsideration of a proposed order. These grounds range from correcting mistakes of law and fact to providing an avenue for a party to protest when evidence is taken under advisement as provided in [RULE XVI] and subsequently admitted or omitted as evidence. When a motion for review is made, each party is given an opportunity to respond. Oral arguments and written briefs may be offered. After considering the motion and the responses to the motion, the ALJ may affirm the proposed order or amend, correct or modify it.

[RULE XXIX] is necessary as an exception to [RULE XXVII] to allow an immediate decision when the facts so warrant. This rule saves time when a hearing involves only simple matters for decision. Rather than wait until the ALJ can make a written order, the ALJ can enter an oral order at the end of the hearing. If the oral order is to be a final disposition of a contested case, the parties will have the opportunity to file a motion for review under [RULE XXVIII] as if the oral order were a written proposed order.

[RULE XXX] is necessary to differentiate between what is and what is not a part of the hearing record, to avoid confusion between the CSED case file and the hearing record. A party must understand that submission of a document to a caseworker for the CSED case file does not necessarily result in that document becoming part of the hearing record. In addition, often a party to a contested case will attempt to acquire the entire CSED case file including all the confidential information that may be in the file. This rule informs the parties that the only part of the CSED file that is part of the hearing record is that material which was submitted in accordance with [Rules XVI, XVII and XXII] and used as actual evidence in the hearing.

[RULE XXXI] is necessary to establish a procedure to allow for the correction of clerical mistakes and typographical errors, which avoids the time and expense of a judicial review to

correct an error. A critical part of this rule is that it informs parties that a motion to correct clerical errors does not extend the time for judicial review or operate as a stay of the order. Without this rule some parties have argued that the corrected order is a new order subject to judicial review. This argument, if successful, has the effect of extending the statutory time for filing judicial review.

[RULE XXXII] is necessary to establish procedures allowing the disposition of a contested case without a hearing when the parties are in agreement or give their consent to entry of a final order. This resolves a contested case more quickly, saving time and expense.

[RULE XXXIII] is necessary to inform the parties that the CSED will not consider motions for rehearing on the merits or a new hearing involving the same issues. Without this rule a contested case could continue indefinitely pending a series of motions for rehearing or new hearing. This possibility is contrary to the purposes of the expedited process and can result in a delay in obtaining support for the child or a final resolution of the issues for all parties.

[RULE XXXIV] is necessary to define "time" as used in the rules. Without this rule, there will be arguments as to when a time period begins and ends and whether weekends or holidays are counted or not counted as part of the time period. This rule also allows for enlargement of time periods when necessary under [RULE XIII]. This rule is essentially the same as Rule 6, M.R.Civ.P.

[RULE XXXV] is necessary to provide procedures to dismiss a contested case. It is also necessary to define when and under what conditions a party may withdraw that party's request for hearing and the consequences of a withdrawal. As a corollary, the rule includes provisions for reinstating a hearing after a party's hearing request is deemed withdrawn.

The department proposes to repeal the rules in ARM Title 46, chapter 30, subchapters 5 and 6, which pertain to CSED contested case proceedings, and to replace the repealed rules with the proposed rules in this notice which cover the same area.

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 October 19, 2000. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on

the mailing lists, 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/ Laurie Ekanger
Director, Public Health and Human Services

Certified to the Secretary of State September 11, 2000.

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

In the matter of the amendment of ARM 46.20.106 pertaining to mental health services plan eligibility	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On October 11, 2000, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rule.

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. If you need to request an accommodation, contact the department no later than 5:00 p.m. on October 2, 2000, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

46.20.106 MENTAL HEALTH SERVICES PLAN, MEMBER ELIGIBILITY

(1) through (11)(a)(ii) remain the same.

(12) If the department determines that the average per-case cost of mental health services plan expenditures times the number of enrollees will exceed total appropriations, it will suspend enrollment of new recipients.

(a) the department will place the names of persons applying for enrollment who would be eligible but for the suspension of new enrollments on a waiting list.

(b) when total MHSP enrollment falls below the number which, when multiplied by the average per-case cost, equals total appropriations, the department will enroll persons whose names appear on the waiting list. Enrollment from the waiting list will be made in order of severity of need, with qualified applicants whose needs are most severe first as determined by the department based on the following:

(i) diagnosis;

(ii) functional impairment as evaluated by a licensed mental health professional designated by the department; or

(iii) availability of appropriate alternative means to obtain treatment.

(c) no person enrolled in the MHSP on September 4, 2000,

shall be determined ineligible solely as a result of the determination by the department provided for in (12)(a).

(d) notwithstanding the provisions of (12)(a) through (c) of this rule, the department may enroll a qualified applicant if the applicant is:

(i) enrolled as a beneficiary of the children's health insurance plan (CHIP);

(ii) a patient at Montana state hospital (MSH) ready for discharge; or

(iii) in imminent physical danger due to a life-threatening mental health emergency.

AUTH: Sec. 41-3-1103, 53-2-201, 53-6-113, 53-6-131, 53-6-701 and 53-6-706, MCA
IMP: Sec. 41-3-1103, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-6-706, 53-21-139 and 53-21-202, MCA

3. The proposed amendment will allow the department to limit enrollment for the Mental Health Services Plan (MHSP)to current levels. It provides for a "waiting list" from which persons with the greatest severity of need are enrolled whenever total MHSP enrollment falls below the number which, when multiplied by the average per-case cost, equals total appropriations. No one currently enrolled in the MHSP will lose benefits as a result of this rule.

The rule also gives the department the ability to make exceptions to the enrollment limit for applicants who are eligible for the Children's Health Insurance Program (CHIP), who are ready for discharge from the Montana State Hospital (MSH) or who are in physical danger due to a life-threatening mental health emergency. When the cost of MHSP comes within appropriation limits, the enrollment limit will be removed and newly qualified applicants will be enrolled, beginning with persons whose names appear on the waiting list.

The amendment is necessary to prevent imminent harm to the public health, safety and welfare of children who have a serious emotional disturbance and adults with severe and disabling mental illnesses who are currently receiving services through the MHSP, as well as the general public.

Because of imminent and substantial budget deficits in State Fiscal Year 2000, the Department is required to immediately limit MHSP enrollment in order to halt growth of the program. In the absence of immediate action to halt growth, the Department would be required to make deep reductions in the scope of MHSP services. As a result, a significant number of children and adults who are currently enrolled and receiving benefits would no longer have coverage for the costs of their mental health treatment. The Department finds that the lack of coverage would pose an imminent danger to the public health and welfare because the affected persons would not receive necessary

mental health treatment.

The Department has taken several steps to address the MHSP budget deficits. On August 10, 2000, in Montana Administrative Register Issue No. 15, page 2105, the Department adopted a temporary emergency rule amendment to ARM 46.20.106 requiring persons under the age of 19 to apply for CHIP eligibility at the same time as they apply for MHSP eligibility. The Department proposed that the CHIP application requirement be made a permanent rule amendment in MAR notice number 37-167 dated August 24, 2000 in MAR Issue No. 16, page 2202. The Department also adopted another temporary emergency rule amendment to ARM 46.20.106 on September 5, 2000, in this issue of the Register, which the Department seeks to make a permanent rule amendment through this proposal notice.

The Department believes the savings resulting from this rule will allow the Department to avoid an immediate and potentially permanent reduction of the upper income limit for the MHSP program and may mitigate the need for such reductions or other cost-cutting measures in the future. This rule amendment will allow the Department to avoid immediate suspension of current MHSP enrollees whose income exceeded a lower income standard. Such a suspension would mean individuals who are currently enrolled in the program and receiving benefits would lose MHSP eligibility. Without eligibility, a significant number of seriously mentally ill individuals may have had to delay or go without treatment. Without timely, adequate and appropriate treatment, mentally ill individuals would suffer exacerbation of their symptoms and a deterioration in their ability to function within the community, posing an imminent risk of harm to the health and safety of those individuals, as well as to the safety of their families and communities.

The alternatives to this rule would be to reduce the upper income limit for the MHSP program from 150% of the federal poverty level to 120% of poverty. Such a reduction would result in over 700 individuals losing MHSP eligibility. All of these are children who have been identified as having a serious emotional disturbance or adults who have been identified as having a severe and disabling mental illness.

The Department rejected other options because they would have had potentially severe impacts on currently enrolled individuals who would have been dropped from service. Without adequate and appropriate treatment, mentally ill individuals will suffer exacerbation of symptoms and a deterioration in their ability to function within the community, posing a certain and imminent risk of harm to the health and safety of those individuals, as well as to the safety of their families and communities.

The Department estimates the fiscal impact of this rule amendment has the potential to achieve the cost reductions required with the least negative impact on the system of care

and the persons currently enrolled in the program. The Department anticipates that the alternative measures reducing the upper income limit would have saved approximately $4.1 million in State Fiscal Year 2001. The individuals affected would obviously not have been able to pay for the services no longer covered by MHSP because they do not have the resources to do so. A revised income standard would have had a substantial financial impact on the individuals and families affected and upon county and local governments.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on October 19, 2000. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing lists, please write the person at the address above.

5. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and Human Services

Certified to the Secretary of State September 11, 2000.

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to records, unprofessional conduct, testing and recording procedures, definitions and transactional documents	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On March 30, 2000, the Board of Hearing Aid Dispensers published a notice of the proposed amendment of the above-stated rules at page 777, 2000 Montana Administrative Register, issue number 6.

2. The Board has amended ARM 8.20.407, 8.20.408 and 8.20.417 exactly as proposed.

3. The Board has amended ARM 8.20.412 and 8.20.418 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.20.412 MINIMUM TESTING AND RECORDING PROCEDURES

(1) through (1)(c) will remain as proposed.

(d) at the time of fitting or during the course of the trial period, the dispenser will verify and/or validate the hearing aid fitting and document the results.

(1)(d)(i) through (3) will remain as proposed.

8.20.418 TRANSACTIONAL DOCUMENT REQUIREMENTS - FORM AND CONTENT (1) through (4) will remain as proposed.

(5) Notice of cancellation must be given to the seller in writing within 30 days of the date of delivery of the hearing aid or related device. The notice of cancellation may be delivered by mail or in person, and must indicate the purchaser's intent not to be bound by the sale. The purchaser shall return the hearing aid or related device in substantially the same condition as it was received. Under this provision, the hearing aid dispenser shall refund to the purchaser the amount paid, minus a dispensing fee, within 10 days of receipt of the written notice of cancellation. All fees to be retained by the dispenser, in the event the hearing aid(s) is returned, shall be prominently displayed in a dollar amount on all transactional documents.

4. The Board received three comments. The comments received and the Board's response are as follows:

COMMENT NO. 1: One comment was received expressing concern regarding the changes to 8.20.412 requiring verification of fitting at the time of the fitting.

RESPONSE: The Board discussed the proposed amendment and the commentor's concerns and added the language "or during the course of the trial period" to 8.20.412(1)(d).

COMMENT NO. 2: One commentor expressed concerns regarding changing "client" to "patient."

RESPONSE: The Board feels that for consistency with the Federal terminology, the wording should stay as proposed.

COMMENT NO. 3: One commentor stated that he felt to remove the words "in writing" from 8.20.418 was not in the public interest as it opened the door to misinterpretation of the rule.

RESPONSE: The Board agrees with the comment and will add "in writing" back to 8.20.418(5).

BOARD OF HEARING AID DISPENSERS
DUDLEY ANDERSON, CHAIRMAN

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 11, 2000.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to guide or professional guide licensure	) NOTICE OF THE TEMPORARY) EMERGENCY AMENDMENT OF) ARM 8.39.514 LICENSURE -) GUIDE OR PROFESSIONAL) GUIDE LICENSE

TO: All Concerned Persons

1. Due to the forest fires this year the Governor has declared a state of emergency. The fires have diminished the number of guides available for utilization by outfitters because licensed guides are fighting fires, working for the Forest Service or working out of state. Closed areas have been or will be opened with short notice. Due to short notice the ability to obtain a guide license is restricted. These adverse circumstances have caused a threat to the public health, safety and welfare through the potential use of unlicensed guides. Many outfitters, guides, clients, motels, restaurants and the state will suffer economic loss with the lack of licensed guides. This rule amendment will allow outfitters to use additional guides operating under temporary licenses. As these circumstances cannot be averted or remedied any other way, the board intends to adopt the following emergency amendments to ARM 8.39.514. The rule as amended will be mailed to all Board of Outfitters licensees and commenting parties and published as an emergency amendment in the next issue of the register.

2. The Department of Commerce 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 Board of Outfitters no later than 5:00 p.m., September 28, 2000, to advise us of the nature of the accommodation that you need. Please contact Henry Worsech, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail compolout@state.mt.us.

3. The temporary emergency amendment to ARM 8.39.514 will be effective September 11, 2000.

4. The text of the temporary emergency amendment is as follows: (new matter underlined, deleted matter interlined)

8.39.514 LICENSURE - GUIDE OR PROFESSIONAL GUIDE LICENSE

(1) through (5)(a) will remain the same.

(b) ~~One~~ Temporary guide forms will be provided to each outfitter annually. The board will permit the outfitter to use one temporary guide license per licensure period, unless under state or federal emergency, the number of temporary guide licenses may be increased to a number determined by the

board. An outfitter is prohibited from sharing temporary guide licenses with another outfitter.

(c) and (d) will remain the same.

Auth: Sec. 37-1-131, 37-47-201, MCA
IMP: Sec. 37-47-201, 37-47-301, 37-47-307, MCA

5. The rationale for the temporary emergency amendment is as set forth in paragraph 1.

6. A standard rulemaking procedure will be undertaken prior to the expiration of this temporary rule.

7. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process they should submit their names and addresses to Henry Worsech, Executive Director, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513, by facsimile to (406) 841-2305, or by e-mail to compolout@state.mt.us.

8. The Board of Outfitters 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 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 Outfitters administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to compolout@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

9. The Business and Labor Interim rule review committee has been notified of the adoption of this temporary emergency rule.

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

BOARD OF OUTFITTERS
ROBIN CUNNINGHAM, CHAIRMAN

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

By: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, September 11, 2000.

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

In the matter of the repeal of rules 12.3.117 through 12.3.119 and adoption of new rules pertaining to special permits and special license drawings and establishing a license preference system.	))))))))	NOTICE OF REPEAL AND ADOPTION

TO: All Concerned Persons

1. On June 29, 2000, the Montana Fish, Wildlife and Parks Commission (commission) published notice of the proposed repeal of ARM 12.3.117 through 12.3.119 and adoption of new rules I through VIII concerning special permits and special drawings and establishing a license preference system at page 1552 of the 2000 Montana Administrative Register, Issue Number 12.

2. The commission has adopted new rules II (12.3.140), III (12.3.150), IV (12.3.155), V (12.3.160), VI (12.3.165), VII (12.3.170), and VIII (12.3.175) exactly as proposed and new rule I (12.3.135) with the following changes:

NEW RULE I BONUS POINTS: AWARD AND ACCUMULATION

(1) There is a bonus point program.

(2) An applicant for a permit/license drawing who is unsuccessful shall be awarded a bonus point for that species for each year the applicant is unsuccessful, if the applicant has elected to participate in the bonus point program. The bonus point is awarded to the species, not the hunting district.

(3) through (6) same as proposed.

3. The commission has repealed ARM 12.3.117 through 12.3.119 as proposed.

**AUTH: 87-2-506, MCA
IMP: 87-2-506, MCA**

4. The commission received 36 comments supporting the proposal or supporting the proposal but requesting changes, 8 opposing the proposal, and 3 comments neither supporting nor opposing. The following is a summary of the negative comments and appear with the commission's responses.

COMMENT 1: Two of the public comments asked why non-resident hunters were allowed by the rule to purchase bonus points while resident hunters were not allowed to purchase bonus points.

RESPONSE: Senate Bill 59, as passed by the 1999

legislature and signed by Governor Racicot controls the circumstances under which bonus points may be purchased. The proposed ARM rules merely incorporate the provisions of Senate Bill 59 in this regard. Only those non-residents who are unsuccessful in obtaining a "prerequisite" elk (B-10) or deer (B-11) license, which are only available by a drawing, are given an opportunity to participate in the deer or elk permit drawing. The right to purchase bonus points goes only to those non-residents who don't obtain the "prerequisite" license. Residents, on the other hand, do not have to participate in a drawing to get a "prerequisite" license but can simply buy one without having to go through a drawing process.

COMMENT 2: A number of individuals expressed opinions that Montana's preference system should match the preference system of another state (Nevada, Colorado and Arizona were specified), adopt a particular feature of another state's preference system (such as how points are accumulated at an accelerated rate) or that all states should adopt the same type of preference system.

RESPONSE: Beginning in August 1998, the Preference 2001 Advisory Committee evaluated the preference systems currently being utilized or proposed in all states that responded to a request for information concerning preference systems. The states responding included Arizona, Colorado and Nevada, as well as seven other states. All state's responses were evaluated as to why their particular approach was used with regards to individual species management and sportsman opportunity and fairness. The information provided by all the states that responded to our request was evaluated with regards to what seemed positive or negative about that system. The final recommendation by the Preference 2001 Advisory Committee includes pieces of the preference systems of responding states that matched the goals of the Preference 2001 Advisory Committee. Preference systems from other states will also likely be considered when modifications or expansions to Montana's preference systems are proposed.

COMMENT 3: Some individuals felt there should be some type of waiting period if a hunter successfully draws a license. The idea of the waiting period was to improve the odds for those who were unsuccessful in future drawings. Opinion varied as to length of time (5 years, 7 years, once in a life time) and species.

RESPONSE: There currently is a 7-year waiting period for those who draw a moose, sheep, or goat license. The legislature addressed this issue and the requirement can be found in 87-2-702, MCA. Since the issue was specifically addressed by the legislature it is not within the scope of commission rulemaking to alter the requirement.

COMMENT 4: There were a number of comments about license fees. Some felt the license fees for moose, sheep, and goat be

non-refundable; hunting fees be increased for both nonresident and resident; and there be no fee to participate in the bonus point system.

RESPONSE: The commission does not have authority to raise or lower the fees in question. That authority rests with the legislature. The fees related to the participation in the voluntary bonus point preference system will be used to administer the system. There will be periodic mailings to all hunters notifying them of accumulated bonus points, a process to correct mistakes, and electronic filing of applications for future reference.

COMMENT 5: Several individuals requested that only residents be allowed to participate in the bonus point system, thus creating an advantage for resident hunters.

RESPONSE: 1999 legislative amendments to 87-2-113, MCA provide for optional participation by both residents and nonresidents in a bonus point system. Furthermore, the legislature addressed allocation of licenses between residents and nonresidents in 87-2-506, MCA. This section allows up to 10% of the quota of special permits/licenses in any hunting district to be allocated to nonresident applicants. The remaining 90% or more goes to residents.

COMMENT 6: Four responders urged the department to include all species in the first phase of the bonus point system to be implemented in 2001. Another person suggested antelope, deer, and elk not be included in the bonus point system. At the same time, they urged the department to keep the system simple and efficient.

RESPONSE: The department recommended implementing the bonus point system through a phased-in process, beginning with resident/nonresident moose, sheep, and goat; nonresident general big game; and nonresident deer combination licenses. There are approximately 38,500 applications for moose, sheep, and goat and 25,000 for nonresident general big game. For deer, elk, and antelope licenses, we receive approximately 141,000 applications. By phasing in these smaller categories of licenses, the department and commission will have a year of experience to evaluate the rules before adding other species to the program. It will also give the public an opportunity to adjust to the system.

Accurately linking hunter records from year to year will be a critical part of the bonus point system. The department's new automated licensing system will assign each hunter an ID number comprised of the person’s date of birth and a unique 4-5 digit extension. The hunter’s responsibility in assuring the success of the program will be to provide their unique number when applying in the bonus point system. This number will then be used to access that person’s application records and retrieve

bonus point information.

COMMENT 7: One individual thought that language should be added to the rules so that it is clear that bonus points are awarded to the species, not the hunting district.

RESPONSE: The commission agrees and added language to new rule I to clarify that bonus points are awarded to the species.

COMMENT 8: Two of the public comments received offered support for additional bonus points for senior applicants or applicants providing proof of passage of recognized hunter safety/education courses.

RESPONSE: Initial development of program concepts involved an advisory council composed of a wide cross-section of stakeholders (resident and nonresident hunters, commission and legislative members, archery groups, sports clubs, landowners, outfitters, etc.) The advisory council debated this particular issue at great length. In the end, it was agreed that it was likely better to not initially include "special interest groups" because of the potential for more complexity and continual requests for change by interests not yet included. Rather, it was felt that consistent application, for all applicants, was a more equitable long term solution.

COMMENT 9: Three of the public comments recognized that, for the difficult to receive licenses (moose, sheep, goat, bull elk permits), the proposed system will likely not increase an individual’s chances tremendously. The proposed system was seen as no better or minimally different than previous preference systems in Montana. Two suggested multiplying (squaring, cubing) points as a way to separate applicants more widely.

RESPONSE: The advisory council and the department quickly recognized and agreed that with large numbers of applicants and small numbers of licenses very few things could be done to dramatically improve one’s chance of receiving a license in a given category. The proposed system was never designed, nor has been described or represented, as a system to "guarantee" licenses. Experience by all states has shown that preference systems, in general, seldom achieve perceptions and expectations of the entire applying public. The goal of this system is to simply "better the odds" of those who apply consistently year after year, while still leaving a chance for sporadic or first-time applicants. All involved expressed an interest in initiating a system which is relatively simple to understand, participate in, and operate. The expectation is to evaluate the entire system within a few years with the understanding that future changes may likely occur, such as mathematically exaggerating points for consistent long term applicants.

BY: /s/ S.F. Meyer /s/ John F. Lynch

S.F. MEYER
Commission Chairman

JOHN F. LYNCH
Rule Reviewer

Certified to the Secretary of State September 11, 2000.

**BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA**

In the matter of the adoption of new rules concerning the use of a full legal name on a driver's license; change of name on a driver record; collection of an applicant's social security number; proof of residence; and the amendment of ARM 23.3.131, 23.3.140 and 23.3.147	))))))))))	NOTICE OF ADOPTION AND AMENDMENT OF RULES

To: All Concerned Persons

1. On June 29, 2000, the Department of Justice published notice of the proposed adoption of new RULES I through V and amendment of rules 23.3.131, 23.3.140 and 23.3.147 relating to driver licenses and identification cards. The notice was published at page 1559 of the 2000 Montana Administrative Register, Issue Number 12.

2. On July 27, 2000, a public hearing was held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana. No comments were received at the hearing or submitted separately in writing or by e-mail.

3. The Department has adopted new RULES II, ARM 23.3.128; IV, ARM 23.3.130; and V, ARM 23.3.150 exactly as proposed. The Department has adopted new RULES I, ARM 23.3.127 and III, ARM 23.3.129 as proposed with the following changes:

RULE I (ARM 23.3.127) FULL LEGAL NAME, NAME COMBINATION AND LENGTH (1) through (2) remain the same.

(3) The space provided for recording a full legal name on a driver record or driver's license may not exceed ~~28~~ 31 characters, ~~exclusive of~~ including up to three field delimiters.

(a) If the full legal name exceeds ~~28~~ 31 characters on an original or renewal application, the name will be truncated by the department in a manner that will permit proper record storage and printing on the license.

(i) remains the same.

(ii) If, after truncating the middle name(s), the full name still exceeds ~~28~~ 31 characters, truncation will continue starting with the last character of the first name and proceeding, as necessary, through the second letter of the first name. The first initial of the first name must be recorded.

(b) through (4) remain the same.

RULE III (ARM 23.3.129) COLLECTION AND VERIFICATION OF SOCIAL SECURITY NUMBER ON DRIVER'S LICENSE APPLICATIONS; PROCESSING OF AN APPLICANT WHO DOES NOT HAVE A SOCIAL SECURITY

NUMBER (1) through (6) remain the same.

(7) This rule takes effect October 1, 2000.

4. The Department has amended rules 23.3.131, 23.3.140 and 23.3.147 as proposed.

5. The change in new RULE I, ARM 23.3.127, is made due to a misunderstanding as to whether the number of spaces available on the face of a driver's license for a full legal name included or excluded up to three field delimiters. The Department has determined that the correct allocation is thirty-one spaces, including up to three field delimiters.

The change in new RULE III, ARM 23.3.129, is made to clarify that the Department's obligation under state law to collect social security numbers of driver's license applicants does not commence until October 1, 2000, in accordance with 1999 Mont. Laws ch. 29, § 6(2). The Department notes, however, that, as an identification aide, voluntary collection of social security numbers has been ongoing for several years.

MONTANA DEPARTMENT OF JUSTICE

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

/s/ Elizabeth S. Baker
ELIZABETH S. BAKER
Rule Reviewer

Certified to the Secretary of State September 5, 2000.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of new Rules I through XII relating to control of timber slash and debris	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On April 13, 2000, the Department of Natural Resources and Conservation published notice of the proposed adoption of New RULES I through XII concerning control of timber slash and debris at page 928 of the 2000 Montana Administrative Register, Issue Number 7. Hearings were held May 31, June 1, June 5, June 6 and June 7, 2000.

2. The agency has adopted new RULES I through VII (ARM 36.11.221 through 36.11.227) and new RULES IX through XII (ARM 36.11.229 through 36.11.232) exactly as proposed.

3. The agency has adopted new RULE VIII (ARM 36.11.228) with the following change, new matter underlined:

<u>NEW RULE VIII (ARM 36.11.228) HELICOPTER LOGGING SMA</u>

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

<u>(c) The department may approve other methods when such methods would maintain public and firefighter safety.</u>

AUTH: Sec. 76-13-403, MCA
IMP: Sec. 76-13-403, 76-13-406, 76-13-407, 76-13-408 and 76-13-410, MCA

4. The following comments were received and appear with the agency's responses:

<u>COMMENT 1</u>: At the public hearing, a representative of the department's Service Forestry Bureau and the Forest Management Advisory Committee, proposed adding subsection (c) to New Rule VIII because similar language is in New Rules IV and VI and felt it would be appropriate for Helicopter Logging SMA.

<u>RESPONSE 1</u>: The department agreed the language would allow flexibility in the methods of slash reduction on helicopter units and amended the rule accordingly.

<u>COMMENT 2:</u> A letter from an Extension Forestry Specialist at Montana State University stated new Rule III(4) does not allow alternatives for slash pile treatments other than burning, and suggested allowing piles to be chipped or similarly treated to comply with general standard.

<u>RESPONSE 2:</u> The department considered the comment and

decided 76-13-401, MCA, defines a healthy variety of hazard abatement methods. If piling is chosen as the preferred method, there is a presumption the pile must be burned, and a legal requirement to do so within the terms of the hazard reduction agreement. The suggested amendment was not incorporated.

COMMENT 3: Another comment stated under new Rule XI a DNRC forester can trespass on property at any time under the pretense of assessing slash, and suggested language that the inspection take place on private land with a current HRA or with 7 days' written notice on properties without an HRA.

RESPONSE 3: The department has no intention of acting capriciously or frivolously to access private property. Typically the department conducts inspections on request, usually from an HRA holder. Attempts are made to contact the landowner if inspections of their private property are requested by parties other than the landowner or their agents. Requiring seven-day advance notice to landowners would unnecessarily encumber the efficient, yet considerate, process in place. Additionally the new inspection language parallels the current Streamside Management Zone inspection authority. The suggested amendment was not incorporated.

/s/ Donald D. MacIntyre
DONALD D. MACINTYRE
Rule Reviewer

/s/ Arthur R. Clinch
ARTHUR R. CLINCH
Director

Certified to the Secretary of State September 11, 2000.

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

In the matter of the adoption of Rule I; the amendment of ARM 16.28.101, 16.28.201, 16.28.202, 16.28.203, 16.28.204, 16.28.305, 16.28.306, 16.28.307, 16.28.601, 16.28.605D, 16.28.606C, 16.28.607, 16.28.608A, 16.28.609A, 16.28.610A, 16.28.610B, 16.28.612, 16.28.616A, 16.28.616C, 16.28.623, 16.28.624, 16.28.625, 16.28.626A, 16.28.628A, 16.28.629, 16.28.630, 16.28.632C, 16.28.632D, 16.28.638B and 16.28.1001 pertaining to communicable disease control	)	NOTICE OF ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On July 27, 2000, the Department of Public Health and Human Services published notice of the proposed adoption and amendment of the above-stated rules at page 1972 of the 2000 Montana Administrative Register, issue number 14.

2. The Department has adopted Rule I [16.28.239] and amended rules 16.28.101, 16.28.201, 16.28.202, 16.28.203, 16.28.204, 16.28.305, 16.28.306, 16.28.307, 16.28.601, 16.28.605D, 16.28.606C, 16.28.607, 16.28.608A, 16.28.609A, 16.28.610A, 16.28.610B, 16.28.612, 16.28.616A, 16.28.616C, 16.28.623, 16.28.624, 16.28.625, 16.28.626A, 16.28.628A, 16.28.629, 16.28.630, 16.28.632C, 16.28.632D, 16.28.638B and 16.28.1001 as proposed.

3. No comments or testimony were received.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and Human Services

Certified to the Secretary of State September 11, 2000.

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

In the matter of the adoption of the temporary emergency amendment of ARM 46.20.106 pertaining to mental health services plan eligibility	)))))	NOTICE OF ADOPTION OF TEMPORARY EMERGENCY RULE

TO: All Interested Persons

1. The Department of Public Health and Human Services is adopting the following temporary emergency rule amendment to prevent imminent harm to the public health, safety, and welfare of children who have a serious emotional disturbance, adults with severe and disabling mental illnesses and the general public. Imminent and substantial budget deficits in the Mental Health Services Plan (MHSP) for State Fiscal Year 2000 require the Department to take immediate action to limit enrollment in order to halt growth of the program. Without the emergency rule, the Department would be required to reduce MHSP eligibility. Such a reduction would result in individuals currently enrolled in the program and receiving benefits losing MHSP eligibility. Without eligibility, a significant number of seriously mentally ill individuals may have had to delay or go without treatment. Without timely, adequate and appropriate treatment, mentally ill individuals would have suffered exacerbation of their symptoms and a deterioration in their ability to function within the community, posing an imminent risk of harm to the health and safety of those individuals, as well as to the safety of their families and communities.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you request an accommodation, contact the department no later than 5:00 p.m. on October 10, 2000, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; E-mail dphhslegal@state.mt.us.

2. The text of the temporary emergency rule is as follows. Matter to be added is underlined. Matter to be deleted is interlined.

46.20.106 MENTAL HEALTH SERVICES PLAN, MEMBER ELIGIBILITY

(1) through (11)(a)(ii) remain the same.

(12) If the department determines that the average per-case cost of mental health services plan expenditures times the number of enrollees will exceed total appropriations, it will suspend enrollment of new recipients.

(a) the department will place the names of persons

applying for enrollment who would be eligible but for the suspension of new enrollments on a waiting list.

(b) when total MHSP enrollment falls below the number which, when multiplied by the average per-case cost, equals total appropriations, the department will enroll persons whose names appear on the waiting list. Enrollment from the waiting list will be made in order of severity of need, with qualified applicants whose needs are most severe first as determined by the department based on the following:

(i) diagnosis;

(ii) functional impairment as evaluated by a licensed mental health professional designated by the department; or

(iii) availability of appropriate alternative means to obtain treatment;

(c) no person enrolled in the MHSP on September 4, 2000, shall be determined ineligible solely as a result of the determination by the department provided for in (12)(a).

(d) notwithstanding the provisions of (12)(a) through (c) of this rule, the department may enroll a qualified applicant if the applicant is:

(i) enrolled as a beneficiary of the children's health insurance plan (CHIP);

(ii) a patient at Montana state hospital (MSH) ready for discharge; or

(iii) in imminent physical danger due to a life-threatening mental health emergency.

AUTH: Sec. 41-3-1103, 53-2-201, 53-6-113, 53-6-131, 53-6-701 and 53-6-706, MCA
IMP: Sec. 41-3-1103, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-6-706, 53-21-139 and 53-21-202, MCA

3. The proposed amendment will allow the department to limit enrollment for the Mental Health Services Plan (MHSP) to current levels. It provides for a "waiting list" from which persons with the greatest severity of need are enrolled whenever total MHSP enrollment falls below the number which, when multiplied by the average per-case cost, equals total appropriations. No one currently enrolled in the MHSP will lose benefits as a result of this rule.

The rule also gives the department the ability to make exceptions to the enrollment limit for applicants who are eligible for CHIP, ready for discharge from MHSP or who are in physical danger due to a life-threatening mental health emergency. When the cost of MHSP comes within appropriation limits, the enrollment limit will be removed and newly qualified applicants will be enrolled, beginning with persons whose names appear on the waiting list.

The amendment is necessary to prevent imminent harm to the public health, safety and welfare of children who have a serious emotional disturbance and adults with severe and disabling

mental illnesses who are currently receiving services through the MHSP, as well as the general public.

Because of imminent and substantial budget deficits in State Fiscal Year 2000, the Department is required to immediately limit MHSP enrollment in order to halt growth of the program. In the absence of immediate action to halt growth, the Department would be required to make deep reductions in the scope of MHSP services. As a result, a significant number of children and adults who are currently enrolled and receiving benefits would no longer have coverage for the costs of their mental health treatment. The Department finds that the lack of coverage would pose an imminent danger to the public health and welfare because the affected persons would not receive necessary mental health treatment.

The Department believes the savings resulting from this rule will allow the Department to avoid an immediate and potentially permanent reduction of the upper income limit for the MHSP program and may mitigate the need for such reductions or other cost-cutting measures in the future. This rule amendment will allow the Department to avoid immediate suspension of current MHSP enrollees whose income exceeded a lower income standard. Such a suspension would mean individuals who are currently enrolled in the program and receiving benefits would lose MHSP eligibility. Without eligibility, a significant number of seriously mentally ill individuals may have had to delay or go without treatment. Without timely, adequate and appropriate treatment, mentally ill individuals would suffer exacerbation of their symptoms and a deterioration in their ability to function within the community, posing an imminent risk of harm to the health and safety of those individuals, as well as to the safety of their families and communities.

The alternatives to this rule would be to reduce the upper income limit for the MHSP program from 150% of the federal poverty level to 120% of poverty. Such a reduction would result in over 700 individuals losing MHSP eligibility. All of these are children who have been identified as having a serious emotional disturbance or adults who have been identified as having a severe and disabling mental illness.

The Department rejected other options because they would have had potentially severe impacts on currently enrolled individuals who would have been dropped from service. Without adequate and appropriate treatment, mentally ill individuals will suffer exacerbation of symptoms and a deterioration in their ability to function within the community, posing a certain and imminent risk of harm to the health and safety of those individuals, as well as to the safety of their families and communities.

The Department estimates the fiscal impact of this rule amendment has the potential to achieve the cost reductions required with the least negative impact on the system of care

and the persons currently enrolled in the program. The Department anticipates that the alternative measures reducing the upper income limit would have saved approximately $4.1 million in State Fiscal Year 2001. The individuals affected would obviously not have been able to pay for the services no longer covered by MHSP because they do not have the resources to do so. A revised income standard would have had a substantial financial impact on the individuals and families affected and upon county and local governments.

4. The temporary emergency amendment will be effective September 5, 2000.

5. A standard rulemaking procedure will be undertaken by the Department prior to the expiration of the temporary emergency rule changes.

6. Interested persons may submit their data, views or arguments during the standard rulemaking process. 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 to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and Human Services

Certified to the Secretary of State September 5, 2000.

VOLUME NO. 48 OPINION NO. 19

COUNTY ATTORNEYS - Longevity salary increase for part-time deputies;
COUNTY GOVERNMENT - Longevity salary increase for part-time deputy county attorneys;
COUNTY OFFICERS AND EMPLOYEES - Longevity increments for part-time deputy county attorneys;
LOCAL GOVERNMENT - Longevity salary increase for part-time deputy county attorneys;
SALARIES - Longevity increase for part-time deputy county attorneys;
STATUTORY CONSTRUCTION - Plain meaning of statutes;
MONTANA CODE ANNOTATED - Sections 2-18-304(2), 7-4-2503(3)(d), -2510;
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 77 (1990) (overruled to the extent it relies on 39 Op. Att'y Gen. No. 78), 40 Op. Att'y Gen. No. 61 (1984) (overruled to the extent it relies on 39 Op. Att'y Gen. No. 78), 39 Op. Att'y Gen. No. 78 (1982) (overruled).

HELD: 1. Part-time deputy county attorneys are entitled to longevity pay under Mont. Code Ann. § 7-4-2503(3)(d).

2. The term "years of service" contained in Mont. Code Ann. § 7-4-2503(3)(d) means a calendar year, not 2080 hours of employment.

September 5, 2000

Mr. Ed Amestoy
Phillips County Attorney
P.O. Box 1279
Malta, MT 59535-1279

Dear Mr. Amestoy:

You have requested a letter of advice concerning the following questions:

1. Are part-time deputy county attorneys entitled to longevity pay under Mont. Code Ann. § 7-4-2503(3)(d)?

2. Does the term "years of service" contained in Mont. Code Ann. § 7-4-2503(3)(d) mean a calendar year or 2080 hours of employment?

Since the issues you raise have significance statewide, I have chosen to respond to your letter with a formal opinion.

With respect to your first question, I have concluded that Mont. Code Ann. § 7-4-2503(3)(d) entitles part-time deputy county attorneys to longevity pay. That subsection provides in relevant part:

> 7-4-2503. Salary schedule for certain county officers.
> . . . .
> (3) (d) (i) After completing 4 years of service as a deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of service thereafter up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

Mont. Code Ann. § 7-4-2503(3)(d) draws no distinction between part-time and full-time deputy county attorneys. The words of the statute are plain, unambiguous and direct. According to the principles of statutory construction, it is my function to follow the plain meaning of those words. Dunphy v. Anaconda Co., 151 Mont. 76, 438 P.2d 660 (1968). It is not my function in such a circumstance to insert what has been omitted by the legislature or to omit what has been inserted by the legislature. See Mont. Code Ann. § 1-2-101. Therefore, since the legislature did not distinguish full-time deputy county attorneys from part-time deputy county attorneys for the purpose of the longevity pay granted by Mont. Code Ann. § 7-4-2503(3)(d), I conclude that the statute does grant longevity pay to part-time deputy county attorneys.

I have further concluded that the term "years of service" employed in Mont. Code Ann. § 7-4-2503(3)(d) refers to a calendar year, rather than 2080 hours of employment. I base this conclusion on the fact that Mont. Code Ann. § 7-4-2503(3)(d) contains language similar to that found in Mont. Code Ann. § 7-4-2510, a statute which provides for longevity pay to deputy sheriffs after the completion of each year of service. Although neither Mont. Code Ann. § 7-4-2503(3)(d) nor Mont. Code Ann. § 7-4-2510 defines the term "years of service," the Montana Supreme Court has held that the term as employed in the latter statute refers to the calendar year, rather than 2080 hours of service. Phillips v. Lake County, 222 Mont. 42, 52, 721 P.2d 326, 332 (1986). In so holding, the Court noted that if the legislature had intended to define the term "years of service" to mean 2080 hours of employment, it would have explicitly done so. Id.; cf. Mont Code Ann. § 2-18-304(2) (defining "years of service" as 2080 hours for state employee longevity allowance). The Court consequently determined that the term "years of

service" should be given its ordinary meaning, i.e., the calendar year.

I note that 39 Op. Att'y Gen. No 78 (1982) reached a contrary opinion regarding the definition of the term "years of service" contained in Mont. Code Ann. § 7-4-2510. Phillips operates to overrule that opinion. See Mont. Code Ann. § 2-15-501(7). To the extent that they rely on 39 Op. Att'y Gen. No. 78 (1982), two subsequent opinions--40 Op. Att'y Gen. No. 61 (1984) and 43 Op. Att'y Gen. No. 77 (1990)--should also be considered overruled in light of Phillips.

The logic of Phillips has equal application to Mont. Code Ann. § 7-4-2503(3)(d). The legislature did not define the term "years of service" as 2080 hours of employment for the purpose of that statute. Accordingly, under Phillips the term should be given its ordinary meaning, i.e., the calendar year rather than 2080 hours of employment.

THEREFORE, IT IS MY OPINION:

1. Part-time deputy county attorneys are entitled to longevity pay under Mont. Code Ann. § 7-4-2503(3)(d).

2. The term "years of service" contained in Mont. Code Ann. § 7-4-2503(3)(d) means a calendar year, not 2080 hours of employment.

Sincerely,

/s/ Joseph P. Mazurek
JOSEPH P. MAZUREK
Attorney General

jpm/jet/dm

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Business and Labor Interim Committee:

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

Education Interim Committee:

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

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

- **Department of Public Health and Human Services.**

Law, Justice, and Indian Affairs Interim Committee:

- **Department of Corrections; and**
- **Department of Justice.**

Revenue and Taxation Interim Committee:

- **Department of Revenue; and**
- **Department of Transportation.**

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

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

Environmental Quality Council:

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

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	**1. Consult ARM topical index. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.**
Statute Number and Department	**2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.**

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2000. This table includes those rules adopted during the period July 1, 2000 through September 30, 2000 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2000, 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 1999 and 2000 Montana Administrative Registers.

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in August 2000, appear. Vacancies scheduled to appear from October 1, 2000, through December 31, 2000, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of September 6, 2000.

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 AUGUST, 2000

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Medical Examiners (Commerce)			
Dr. Van Kirke Nelson	Governor	Brooke	8/8/2000
Kalispell			9/1/2001
Qualifications (if required): doctor of medicine			
Board of Physical Therapy Examiners (Commerce)			
Ms. Judy Cole	Governor	Jensen	8/11/2000
Hysham			7/1/2003
Qualifications (if required): public member			
Dr. B. John Heetderks	Governor	reappointed	8/11/2000
Belgrade			7/1/2003
Qualifications (if required): physician			
Ms. Brenda Mahlum	Governor	Hancock	8/11/2000
Missoula			7/1/2003
Qualifications (if required): physical therapist			
Board of Private Security Patrol Officers and Investigators (Commerce)			
Mr. Gary Dent	Governor	reappointed	8/9/2000
Conrad			8/1/2003
Qualifications (if required): representative of a city police department			
Mr. Jeffrey Patterson	Governor	Blackwell	8/9/2000
Missoula			8/1/2003
Qualifications (if required): private investigator			
Sheriff Ronald Rowton	Governor	not listed	8/9/2000
Lewistown			8/1/2003
Qualifications (if required): representative of a county sheriff's department			

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 2000

Appointee	Appointed by	Succeeds	Appointment/End Date
Capital Finance Advisory Council (Administration)			
Mr. Troy W. McGee	Governor	Vaughan	8/23/2000
Helena			2/11/2002
Qualifications (if required): representative of the Board of Investments			
Mr. Mark Semmens	Governor	not listed	8/23/2000
Great Falls			2/11/2002
Qualifications (if required): representative of the Board of Regents			
Governor's Advisory Council on Tobacco Use Prevention (Public Health and Human Services)			
Ms. Katie Beltrone	Governor	Donovan	8/9/2000
Great Falls			9/22/2001
Qualifications (if required): representing Montana's youth			
Ms. Lori Ryan	Governor	Belcourt	8/9/2000
Helena			9/22/2001
Qualifications (if required): representing Montana's American Indians			
Independent Living Council (Public Health and Human Services)			
Ms. Carol LaRocque	Director	not listed	8/7/2000
Great Falls			8/7/2002
Qualifications (if required): representative from state agencies who provide service to the disabled			
Mr. Robert D. Liston	Director	Dunagan	8/7/2000
Missoula			8/7/2002
Qualifications (if required): representing advocates and consumers			

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 2000

Appointee	Appointed by	Succeeds	Appointment/End Date
Microbusiness Advisory Council (Commerce)			
Ms. Nancy Arnold **Missoula** **Qualifications (if required): representing Congressional District 1 and an expert on self-employment**	**Governor**	**Bond**	**8/14/2000** **6/30/2004**
Ms. Jenna Caplette **Bozeman** **Qualifications (if required): representing Congressional District 1 and cities over 15,000**	**Governor**	**reappointed**	**8/14/2000** **6/30/2004**
Mr. Robert J. Jahner **Clancy** **Qualifications (if required): representing Congressional District 1 and an expert on self-employment**	**Governor**	**Ohs**	**8/14/2000** **6/30/2004**
Ms. Denise Jordan **Billings** **Qualifications (if required): representing Congressional District 2 and experts in revolving loan fund management**	**Governor**	**Eckel**	**8/14/2000** **6/30/2004**
Ms. Andrea Main **Billings** **Qualifications (if required): representing Congressional District 2 and minorities**	**Governor**	**reappointed**	**8/14/2000** **6/30/2004**
Mr. Pat McDermott **Ramsay** **Qualifications (if required): representing Congressional District 1 and cities over 15,000**	**Governor**	**reappointed**	**8/14/2000** **6/30/2004**

BOARD AND COUNCIL APPOINTEES FROM AUGUST, 2000

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Wheat and Barley Committee (Agriculture)			
Mr. Dan DeBuff	Governor	reappointed	8/20/2000
Shawmut			8/20/2003
Qualifications (if required): representing District V and being a Republican			
Mr. Brian Kaae	Governor	Arneklev	8/20/2000
Dagmar			8/20/2003
Qualifications (if required): representing District I and being a Democrat			
Mr. Frank Mosdal	Governor	reappointed	8/20/2000
Broadview			8/20/2003
Qualifications (if required): representing District VI and being a Democrat			
Vocational Rehabilitation Center (Public Health and Human Services)			
Mr. Jim Daily	Director	Jones	8/7/2000
Butte			8/7/2002
Qualifications (if required): none specified			
Ms. Bonnie Rollins	Director	Nelson	8/7/2000
Glendive			8/7/2002
Qualifications (if required): none specifed			
Mr. Hans L. Schweighauser	Director	Birkenbuel	8/7/2000
Miles City			8/7/2002
Qualifications (if required): none specifed			

VACANCIES ON BOARDS AND COUNCILS -- October 1, 2000 December 31, 2000

Board/current position holder	Appointed by	Term end
Alfalfa Seed Committee (Agriculture)		
Mr. Thomas Matchett, Billings	Governor	12/21/2000
Qualifications (if required): alfalfa seed grower		
Mr. Gayle Patrick, Malta	Governor	12/21/2000
Qualifications (if required): alfalfa seed grower and seller		
Board of Environmental Review (Environmental Quality)		
Mr. Roger Perkins, Laurel	Governor	12/31/2000
Qualifications (if required): hydrologist		
Mr. Joe Gerbase, Billings	Governor	12/31/2000
Qualifications (if required): local government planner		
Mr. Russell Hudson, Libby	Governor	12/31/2000
Qualifications (if required): public member		
Dr. Garon Smith, Missoula	Governor	12/31/2000
Qualifications (if required): scientist		
Board of Occupational Therapy Practice (Commerce)		
Ms. Linda Botten, Bozeman	Governor	12/31/2000
Qualifications (if required): occupational therapist		
Board of Outfitters (Commerce)		
Mr. Robin Cunningham, Gallatin Gateway	Governor	10/1/2000
Qualifications (if required): fishing outfitter		
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs)		
Mr. James F. Jacobsen, Helena	Director	11/10/2000
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- October 1, 2000 December 31, 2000

Board/current position holder	Appointed by	Term end
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs) cont.		
Mr. Tony Harbaugh, Miles City Qualifications (if required): Custer County Sheriff's Office	Director	11/10/2000
Governor's HIV/AIDS Advisory Council (Public Health and Human Services)		
Mr. David Herrera, Billings Qualifications (if required): public member	Governor	11/23/2000
Ms. Pam Bragg, Helena Qualifications (if required): public member	Governor	11/23/2000
Ms. Rita Munzenrider, Lolo Qualifications (if required): public member	Governor	11/23/2000
Ms. Verbena Savior, Poplar Qualifications (if required): public member	Governor	11/23/2000
Mr. Frank Gary, Butte Qualifications (if required): public member	Governor	11/23/2000
Ms. Teresa Louise Dunn, Whitefish Qualifications (if required): public member	Governor	11/23/2000
Ms. Geraldine (Jeri) Snell, Miles City Qualifications (if required): public member	Governor	11/23/2000
Dr. Paul Kathrein, Great Falls Qualifications (if required): public member	Governor	11/23/2000
Mr. Steven C. Yeakel, Helena Qualifications (if required): public member	Governor	11/23/2000

VACANCIES ON BOARDS AND COUNCILS -- October 1, 2000 December 31, 2000

Board/current position holder	Appointed by	Term end
Governor's HIV/AIDS Advisory Council (Public Health and Human Services) cont.		
Sen. John Bohlinger, Billings	Governor	11/23/2000
Qualifications (if required): legislator		
Historical Preservation Review Board (Historical Society)		
Mr. Kirk Michels, Livingston	Governor	10/1/2000
Qualifications (if required): architectural historian		
Mr. Dennis L. Deppmeier, Billings	Governor	10/1/2000
Qualifications (if required): historical architect		
Lewis and Clark Bicentennial Commission (Historical Society)		
Ms. Jeanne Eder, Dillon	Governor	10/1/2000
Qualifications (if required): enrolled member of a Montana Indian Tribe		
Ms. Edythe McCleary, Hardin	Governor	10/1/2000
Qualifications (if required): public member		
Mr. John G. Lepley, Fort Benton	Governor	10/1/2000
Qualifications (if required): public member		
Montana Vocational Rehabilitation Council (Public Health and Human Services)		
Ms. Arlene Templer, St. Ignatius	Director	11/30/2000
Qualifications (if required): none specified		
Motor Fuel Tax Collection, Enforcement and Refund Advisory Council (Transportation)		
Rep. Gary Beck, Deer Lodge	Governor	12/31/2000
Qualifications (if required): legislator		
Sen. Debbie Shea, Butte	Governor	12/31/2000
Qualifications (if required): legislator		

VACANCIES ON BOARDS AND COUNCILS -- October 1, 2000 December 31, 2000

Board/current position holder	Appointed by	Term end
Motor Fuel Tax Collection, Enforcement and Refund Advisory Council (Transportation) cont.		
Mr. Joel T. Long, Billings	Governor	12/31/2000
Qualifications (if required): representative of the Montana Contractors Association		
Ms. Rona Alexander, Bozeman	Governor	12/31/2000
Qualifications (if required): representative of the Montana Petroleum Marketers Association		
Rep. Roger Somerville, Kalispell	Governor	12/31/2000
Qualifications (if required): legislator		
Sen. Ric Holden, Glendive	Governor	12/31/2000
Qualifications (if required): legislator		
SABHRS Executive Council (Administration)		
Mr. Terry Johnson, Helena	Director	10/29/2000
Qualifications (if required): Tier 1		
Mr. Tony Herbert, Helena	Director	10/29/2000
Qualifications (if required): Tier 1		
Mr. William Salisbury, Helena	Director	10/29/2000
Qualifications (if required): Tier 2		
Water and Wastewater Operators Advisory Council (Health and Environmental Sciences)		
Mr. Lee Leivo, Bigfork	Governor	10/16/2000
Qualifications (if required): wastewater plant operator		