

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 4.12.1405)	AMENDMENT
relating to plant inspection)	
fees)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On December 27, 2002 the Montana Department of Agriculture proposes to amend the above stated rule relating to plant inspection fees.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on December 12, 2002 to advise us of the nature of the accommodation that you need. Please contact Gregory H. Ames at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2944; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@state.mt.us.

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

4.12.1405 PLANT INSPECTION CERTIFICATE/SURVEY/TREATMENT COSTS - FEES (1) ~~No inspection certificates shall be issued until inspection has been made and inspection fees are paid.~~ All fees are due within 30 days after billing. The department may assess a collection fee of 10% of any amount past due, after providing written notice of the past due status, with a minimum charge of \$10. The department may require past due payment of fees prior to providing inspection services. The fees shall be as follows:

(a) ~~Annual plant inspection certificates: \$50.00~~ Nursery stock certification, pursuant to 80-7-122, MCA:

(i) annual plant inspection certificates: \$50; and

(ii) nursery tags: 15¢/tag - Nursery tags are issued provided that the commodity is inspected by the department. Costs for the inspection will be charged according to fees in this rule with a minimum \$5 inspection fee.

(b) ~~Phyosanitary certificates: Plant inspection certificates, pursuant to 80-7-108, MCA:~~

(i) \$10.00 if the monetary value of shipment is \$500 or less; phyosanitary certificates: \$23 if the monetary value of the shipment is \$1,250 or less;

(ii) \$20.00 if monetary value of shipment is greater than \$500 and less than \$1,250; phyosanitary certificates: \$50 if monetary value of shipment exceeds \$1,250;

~~(iii) \$30.00 if monetary value of shipment exceeds \$1,250. heat treatment certificates: \$10;~~

~~(iv) certificates of origin: \$30; and~~

~~(v) other documents of quarantine compliance: \$10.~~

~~(c) The department charges for mileage, lodging, per diem, and an hourly rate for certain services to recover costs for expenses that exceed the fees established in (1)(a) and (b). These charges are as follows:~~

~~(i) actual costs for sampling and testing for phytosanitary certification;~~

~~(ii) mileage for inspecting commodities for phytosanitary certification in excess of 50 miles for any certificate;~~

~~(iii) lodging and per diem for phytosanitary certification when travel to inspect requires overnight lodging and per diem;~~

~~(iv) actual cost of trapping, survey, and treatment materials when requested by public or private persons when related to export certification, nursery certification, or nursery stock certification; and~~

~~(v) hourly charge - \$20 per hour with a one hour minimum.~~

~~(d) Charges for lodging, meals, and mileage will be computed in accordance with rates established in 2-18-501, MCA.~~

~~(2) Additional fees shall be as follows:~~

~~(a) Surveys or other services required under 80-7-108, MCA or 80-7-110, MCA:~~

~~(b) Hourly charge - \$20.00 per hour~~

~~(c) Per diem and mileage per ARM Title 2, chapter 4;~~

~~(d) Actual cost of trapping, survey, and treatment materials.~~

~~(e) Nursery tags - 15¢/tag.~~

AUTH: 80-7-108 and 80-7-122, MCA

IMP: 80-7-108 and 80-7-122, MCA

REASON: The department is revising fees for certain services to more closely reflect the costs of providing the services. This is required by Title 80, Chapter 7, Parts 108 and 122, MCA. Under these sections, the department is authorized to issue plant inspection certificates, nursery stock certification, and other certificates of quarantine compliance and to charge fees to pay for the cost of providing the services. These fees have not been increased since 1994. Due to inflation, fixed costs and modest salary increases, it is necessary to raise fees to support the program.

Phytosanitary certificates are federal and state documents that attest to pest and disease status and certify origin of agricultural commodities being exported out of Montana and are issued on request. The costs for providing these services are paid by fees charged to exporters. The Montana Department of Agriculture (MDA) must raise fees because the current fee

schedule is not adequate to cover the costs to operate the program.

Heat treatment certificates, certificates of origin, and other documents of quarantine compliance are issued by the MDA on request. Heat treatment certificates are federal documents issued to customers who are using solid wood packing materials to ship products to China. The packing material must be heated to a certain temperature to ensure that no wood-boring insects are viable in the packing material. Certificates of origin are requested by producers to ship agricultural products to other states, countries or in transit when a phytosanitary certificate may not be required. Costs for providing these services are paid by fees charged to exporters. The MDA must raise fees because the current fee schedule is not adequate to cover the costs of their issuance.

Nursery stock certification is requested by a firm or nursery and is issued by the department in the form of an annual plant inspection certificate. This certificate is issued once a year and certifies the firm or nursery is apparently free from dangerously injurious diseases and pests. It is intended to meet general requirements of importing states.

Producers and exporters may require other or additional services where an hourly fee may be charged. A one-hour minimum will be required to recover costs to provide these services.

The department is also changing our billing system from collection at issuance to a monthly billing system. The monthly billing will allow ease of payment for the citizens served, enable us to manage our accounts receivable more efficiently, and to pay for the time and efforts to service the accounts on a service-for-fee basis.

The department has proposed two fee categories for phytosanitary certificates. These fees are intended to pay for basic services involved in issuing a plant certificate. Basic services may include researching the country or state importing requirements, inspecting the commodity, preparing and issuing the certificate, record maintenance, limited travel (no more than 50 miles), and one day trip meal. 80-7-108, MCA requires that fees charged must cover expenses required to issue the certificate. In some cases, services are required that exceed the basic fee structure. These charges may include actual costs for sampling and testing, mileage in excess of 50 miles, lodging and per diem when required, and actual costs of trapping, survey and treatment materials. The department needs a fee mechanism to recover costs that are not included in the basic fee structure.

There are approximately 81 businesses this fee increase would directly affect. These businesses request export and plant

inspection certificates from the MDA and include nurseries, grain companies, potato growers, decorative bark companies, universities, hay growers, and other individuals. This rule change would increase the department income by approximately \$15,000 per year. This figure is based on a three-year average of the number of certificates issued.

4. Concerned persons may submit their data, views or arguments concerning this proposed amendment in writing to Gregory H. Ames at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@state.mt.us. Any comments must be received no later than December 26, 2002.

5. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Gregory H. Ames at the Montana Department of Agriculture, P.O. Box 200201, 303 N. Roberts, Helena, MT 59620-0201; Phone: (406) 444-2994; TTY: (406) 444-4687; Fax: (406) 444-5409; or E-mail: agr@state.mt.us. A written request for hearing must be received no later than December 26, 2002.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 8 persons based on 81 businesses that export commodities from the following industry groups: nurseries, grain companies, potato growers, decorative bark companies, universities, hay growers, and other individuals.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding noxious weed seed forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, warehouseman, produce, mint, seed, alternative crops, wheat research and marketing, rural development and/or hail. Such written request may be mailed or delivered to Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or E-mail: agr@state.mt.us or may be made by

completing a request form at any rules hearing held by the Department of Agriculture.

8. An electronic copy of this Proposal Notice is available through the Department's website at www.agr.state.mt.us, under the Administrative Rules section. The Department strives to make the electronic copy of the Notice 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.

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

DEPARTMENT OF AGRICULTURE

/s/ Ralph Peck
Ralph Peck
Director

/s/ Tim Meloy
Tim Meloy, Attorney
Rules Reviewer

Certified to the Secretary of State November 18, 2002.

BEFORE THE MONTANA STATE LIBRARY
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of ARM 10.101.201,	)	ON PROPOSED AMENDMENT AND
10.101.206, and 10.102.5102 and	)	REPEAL
the proposed repeal of ARM)	
10.101.204, 10.101.205,)	
10.102.5103, 10.102.5104,)	
10.102.5201 through 10.102.5207,)	
and 10.102.8001 pertaining to)	
the rules for the Montana State)	
Library Commission)	

TO: All Concerned Persons

1. On December 17, 2002, at 9:00 a.m., a public hearing will be held in the conference room of the Montana State Library, at 1515 East 6th Ave., Helena, Montana to consider the amendment and repeal of the above-stated rules.

2. The State Library will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the State Library no later than 5:00 p.m. on December 11, 2002, to advise us of the nature of the accommodation that you need. Please contact Barbara Duke, Montana State Library, 1515 East 6th Ave., P.O. Box 201800, Helena, MT 59620-1800, (406) 444-3384, (406) 444-3005 (TDD), (406) 444-0266 (fax), baduke@state.mt.us (email).

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

10.101.201 INCORPORATION OF MODEL RULES (1) The state library commission has adopted the attorney general's model rules of administrative procedure, as set forth in ARM, Title 1, chapter 3, with the proviso that a hearing on denial of an application for a grant of Library Services and ~~Construction Technology~~ Act funds may be conducted under the commission's rule ARM 10.101.202, or in the alternative, under the model rules of contested case hearing.

AUTH: 22-1-103, MCA
IMP: 22-1-103, MCA

REASON: The Commission finds it is reasonably necessary to amend the rule for clarification as Congress changed the name of the federal act for libraries to the Library Services and Technology Act.

10.101.206 APPEALS PROCESS FOR DENIAL OF A GRANT
(1) remains the same.

(2) Upon receiving a notice of appeal, the state librarian, acting on behalf of the commission, shall convene an independent review committee. The committee shall be composed as follows:

(a) a representative named by the appellant who is not from the appellant's library or governing authority;

(b) a representative chosen by the chair of the ~~Montana library services advisory council~~ commission, who is not a ~~council~~ commission member; and

(c) a representative from the library community who is not connected to the appellant, named by the president-elect of the Montana library association.

(3) and (4) remain the same.

AUTH: 22-1-103, MCA

IMP: 22-1-103, MCA

REASON: The Commission finds it is reasonably necessary to amend the rule for clarification as the reauthorized Library Services and Technology Act does not require the Commission to establish a council. The Governor's Executive Order establishing the council has expired. The Commission finds that the substitution of commission chair for council chair will not change the rule's purpose, which is to appoint members of an independent rule committee composed of a representative from the agency, the appellant, and an impartial member.

10.102.5102 ALLOCATION OF FUNDING BETWEEN FEDERATIONS AND GRANT PROGRAMS (1) At its first meeting following receipt by the library commission of the estimate of the appropriation to public library federations the commission shall allocate all funds received ~~up to \$500,000~~ to library federations according to the following formulas:

(a) through (f) remain the same.

AUTH: 22-1-413, MCA

IMP: 22-1-413, MCA

REASON: The Commission finds it is reasonably necessary to amend the rule for clarification as the Commission receives no funds for federations in excess of \$500,000.

4. The Commission proposes to repeal the following rules:

10.101.204 GRANTS TO LIBRARIES UNDER THE LIBRARY SERVICES AND CONSTRUCTION ACT found on page 10-1207 of the Administrative Rules of Montana.

AUTH: 22-1-103, MCA

IMP: 22-1-103, MCA

REASON: The Commission finds it is reasonably necessary to repeal the rule for clarification as there are no funds available to provide Library Service and Construction Act (or

Library Service and Technology Act) grants to individual libraries at this time and as the reauthorized Library Services and Technology Act does not require the Commission to establish a council. The Governor's Executive Order establishing the council has expired.

10.101.205 LIMITED AND OPEN COMPETITIONS FOR LIBRARY SERVICES AND CONSTRUCTION ACT GRANTS found on page 10-1209 of the Administrative Rules of Montana.

AUTH: 22-1-103, MCA
IMP: 22-1-103, MCA

REASON: The Commission finds it is reasonably necessary to repeal the rule for clarification as there are no funds available to limited and open competitions for Library Service and Construction Act (or Library Service and Technology Act) grants to individual libraries at this time and as the reauthorized Library Services and Technology Act does not require the Commission to establish a council. The Governor's Executive Order establishing the council has expired.

10.102.5103 GRANT PROGRAMS AND APPLICATION PROCEDURE found on page 10-1270 of the Administrative Rules of Montana.

AUTH: 22-1-413, MCA
IMP: 22-1-413, MCA

REASON: The Commission finds it is reasonably necessary to repeal the rule for clarification as the Commission receives no funds for federations in excess of \$500,000.

10.102.5104 PRIORITIZATION OF GRANT APPLICATIONS found on page 10-1270 of the Administrative Rules of Montana.

AUTH: 22-1-413, MCA
IMP: 22-1-413, MCA

REASON: The Commission finds it is reasonably necessary to repeal the rule for clarification as the Commission receives no funds for federations in excess of \$500,000.

10.102.5201 LOAN SERVICES found on page 10-1273 of the Administrative Rules of Montana.

AUTH: 22-1-103, MCA
IMP: 22-1-103, MCA

REASON: The Commission finds it is reasonably necessary to repeal the rule as the Commission has determined that the rule is unnecessary to effectuate the purpose of its statutes. The Commission finds that its policy, "Information Services Policy," regarding the use of the library is sufficient to explain the Commission's position on loan services.

10.102.5202 ADVISORY SERVICES found on page 10-1273 of the Administrative Rules of Montana.

AUTH: 22-1-103, MCA
IMP: 22-1-103, MCA

REASON: The Commission finds it is reasonably necessary to repeal the rule as the Commission has determined that the rule is unnecessary to effectuate the purpose of its statutes. The Commission finds that its policy statements contained in the agency's strategic plan are sufficient to explain the Commission's position on advisory services.

10.102.5203 ACCESS TO CIRCULATION RECORDS found on page 10-1274 of the Administrative Rules of Montana.

AUTH: 22-1-103, MCA
IMP: 22-1-103, MCA

REASON: The Commission finds it is reasonably necessary to repeal the rule as the Commission has determined that the rule is unnecessary to effectuate the purpose of its statutes and that the rule repeats statutory language in the Library Records Confidentiality Act, 22-1-1101, 22-1-1102, 22-1-1103, 22-1-1111, MCA.

10.102.5204 SELECTION OF MATERIALS found on page 10-1274 of the Administrative Rules of Montana.

AUTH: 22-1-103, MCA
IMP: 22-1-103, MCA

REASON: The Commission finds it is reasonably necessary to repeal the rule as the Commission has determined that the rule is unnecessary to effectuate the purpose of its statutes. The Commission finds that its policy, "Collection Development Policy," regarding the selection of library materials is sufficient to explain the library's procedures on selecting material.

10.102.5205 CRITERIA FOR SELECTION OF MATERIALS found on page 10-1275 of the Administrative Rules of Montana.

AUTH: 22-1-103, MCA
IMP: 22-1-103, MCA

REASON: The Commission finds it is reasonably necessary to repeal the rule as the Commission has determined that the rule is unnecessary to effectuate the purpose of its statutes. The Commission finds that its policy, "Collection Development Policy," regarding the selection of library materials is sufficient to explain the library's procedures and practices with selecting material.

10.102.5206 PROCEDURES FOR CHALLENGING MATERIALS found on page 10-1276 of the Administrative Rules of Montana.

AUTH: 22-1-103, MCA
IMP: 22-1-103, MCA

REASON: The Commission finds it is reasonably necessary to repeal the rule as the Commission has determined that the rule is unnecessary to effectuate the purpose of its statutes. The Commission finds that its policy, "Collection Development Policy," regarding the complaints about library materials is sufficient to explain the library's procedures.

10.102.5207 CHARGES FOR LOST OR DAMAGED BOOKS found on page 10-1276 of the Administrative Rules of Montana.

AUTH: 22-1-103, MCA
IMP: 22-1-103, MCA

REASON: The Commission finds it is reasonably necessary to repeal the rule as the Commission has determined that the rule is unnecessary to effectuate the purpose of its statutes. The Commission finds that its policy, "Information Services Policy," regarding library use is sufficient to explain the library's procedures on charging for lost or damaged materials.

10.102.8001 GRADUATE SCHOLARSHIP PROGRAM found on page 10-1289 of the Administrative Rules of Montana.

AUTH: 22-1-103, MCA
IMP: 22-1-103, MCA

REASON: The Commission finds it is reasonably necessary to repeal the rule as the Commission has determined that the Commission has no such funds available and no such program.

5. Interested parties 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 Barbara Duke, Montana State Library, 1515 East 6th Ave., P.O. Box 201800, Helena, MT 59620-1800 no later than 5:00 p.m. on December 27, 2002. Data, views or arguments may also be submitted by facsimile to (406) 444-0266 or by email to baduke@state.mt.us.

6. An electronic copy of this Notice of Public Hearing is available through the State Library's website at <http://msl.state.mt.us>. The State Library 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 State Library 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 email address does not excuse late submission of comments.

7. Karen Strege, State Librarian, has been designated to preside over and conduct this hearing.

8. The Montana State Library maintains a list of persons who wish to receive notices of rulemaking actions proposed by the State Library. 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 State Library administrative rulemaking proceedings or other administrative proceedings. Such written requests may be mailed to the Montana State Library, 1515 East 6th Ave., P.O. Box 201800, Helena, MT 59620-1800, faxed to the Library at (406) 444-0266, emailed to baduke@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

By: /s/ Rosemary Garvey
State Library Commission
Rosemary Garvey, Chairperson

By: /s/ Karen Strege
Karen Strege, State Librarian
Montana State Library

Certified to the Secretary of State November 18, 2002.

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

In the matter of the adoption)	NOTICE OF PROPOSED
of new rule I authorizing the)	ADOPTION
director to extend)	
deadlines for purchasing or)	NO PUBLIC HEARING
applying for a license)	CONTEMPLATED
or permit)	

TO: All Concerned Persons

1. On January 9, 2003, the Fish, Wildlife and Parks Commission (commission) proposes to adopt new rule I authorizing the director to extend deadlines for purchasing or applying for a license or permit.

2. The commission 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 commission no later than 5:00 p.m. on December 10, 2002, to advise us of the nature of the accommodation that you need. Please contact Brandi Fisher, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456.

3. The proposed rule provides as follows:

NEW RULE I EXTENSION OF DEADLINES (1) The director has the authority to extend a deadline for purchasing or applying for a license or permit if, in the director's discretion, a significant event occurs that hinders the public from purchasing or applying for licenses or permits. A significant event is an occurrence that has widespread impacts of sufficient magnitude to warrant, in the director's opinion, the extension of purchasing and application deadlines. Some examples of a significant event include:

- (a) automated licensing system failure;
- (b) natural disaster; or
- (c) major national or state emergency.

(2) The director has the discretion to determine the amount of time to extend a deadline after consideration of all the circumstances surrounding the significant event. The director may determine that the totality of circumstances makes an extension impractical.

(3) All other rules and statutes pertaining to licenses and permits are still in effect when the director extends a deadline.

AUTH: 87-1-301, 87-1-304, MCA
IMP: 87-1-301, 87-1-304, MCA

4. On March 1, 2002, the Montana Department of Fish, Wildlife, & Parks (department), under direction of the commission, implemented Phase 1 of an automated licensing system (ALS). Through this system, all general hunting and fishing licenses are sold by approximately 400 license vendors in the state. As with any new, complex system, some problems have been encountered and some of these have been at license deadline times. Some licenses have purchase deadlines and others are prerequisites in order to meet special drawing deadlines. Unfortunately, when system problems occur at these times, license buyers are prevented from obtaining these licenses or applying for special licenses and drawings.

On March 1, 2003, the department will implement Phase 2 of this automated system, which will handle all of the special drawing processes. Although the department plans extensive testing of the system prior to production and is optimistic about its success, there is also experience to indicate that unforeseen problems may occur. Consequently, the public's ability to apply for drawings may again be affected.

Since the commission has the authority under 87-1-301, MCA, to establish hunting, fishing and trapping rules, including rules for hunting license sales, the director has twice been forced to call emergency phone conferences with the commission to extend license sales deadlines because of ALS failure. This rule will delegate authority to the director to extend deadlines when and if ALS failure occurs. Implementation of this rule will allow the director to address these situations on a case-by-case basis to determine if extension of a deadline is possible and/or feasible. On a broader basis, this rule will also allow for consideration of this option when events outside of the department's control occur, such as natural disasters or major national or state emergencies.

5. Concerned persons may submit their data, views or arguments concerning the proposed adoption in writing to Hank Worsch, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone 444-2663; fax (406) 444-7456; email beprice@state.mt.us. Any comments must be received no later than December 27, 2002.

6. If persons who are directly affected by the proposed adoption wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for and submit this request along with any written comments they have to Hank Worsch, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701. A written request for hearing must be received no later than December 27, 2002.

7. If the commission receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by

the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 28,000 persons based on the estimated number of resident and non-resident hunters for the year 2000.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

By: /s/ Dan Walker
Dan Walker
Commission Chairman

By: /s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

Certified to the Secretary of State November 18, 2002

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

In the matter of the	)	NOTICE OF PROPOSED
amendment of ARM 12.3.140,	)	AMENDMENT
12.3.150 and 12.3.175,)	
pertaining to the bonus	)	NO PUBLIC HEARING
point program	)	CONTEMPLATED

TO: All Concerned Persons

1. On January 9, 2003, the Fish, Wildlife and Parks Commission (commission) proposes to amend ARM 12.3.140, 12.3.150 and 12.3.175 pertaining to the bonus point program.

2. The commission 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 commission no later than 5:00 p.m. on December 10, 2002, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-5907; fax (406) 444-9733.

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

12.3.140 APPLICATION FOR DRAWINGS (1) through (6) remain the same.

(7) If an application for any species is rejected by the department pursuant to this rule:

(a) the application must not be included in the procedure for awarding the permits/licenses applied for;

(b) the applicant must not be awarded a bonus point for that drawing for that species; and

(c) the drawing fee, and any bonus point fee, once the application is entered into the drawing, will be retained by the department. Applications not processed in the drawing because of errors will be returned to the applicant with all fees.

AUTH: 87-1-304, 87-2-704, MCA

IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-705, MCA

12.3.150 COMPUTERIZED SYSTEM OF DRAWING BONUS POINT PROGRAM (1) through (4) remain the same.

~~(5) Nonresidents who fail to obtain a nonresident combination license in any one license year will have the opportunity to purchase elk and/or deer permit bonus points for the appropriate fee for that year.~~

(5) Nonresidents who are unsuccessful in the nonresident combination license drawing will have the opportunity to participate in the bonus point system for special elk and/or deer permits for the appropriate fee for that year without being eligible to draw the permit.

AUTH: 87-1-301, MCA

IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-705, MCA

12.3.175 PHASE-IN PROCESS (1) Bonus points shall be collected for resident and nonresident moose, sheep, and goat licenses and nonresident B-10 (general big game combination) and B-11 (general deer combination) licenses beginning in the 2001 license year.

(2) Bonus points shall be collected for resident and nonresident special deer and elk permits, deer B, antelope, and swan licenses beginning in the 2003 license year.

~~(2)~~(3) Bonus points for other permit/license drawings shall be phased in to this program as established by the department.

AUTH: 87-2-113, MCA

IMP: 87-2-113, MCA

4. It was the intention of the legislature, and the request of the commission that the bonus point system be phased into the drawing process for the special deer and elk permits, deer B, antelope and swan licenses. These rule amendments will give applicants in these drawings the option to participate in the bonus points system, and accumulate bonus points for these species.

5. Concerned persons may submit their data, views or arguments concerning the proposed amendments in writing to Wayne Johnston, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-5907; fax (406) 444-9733; e-mail wjohnston@state.mt.us. Any comments must be received no later than December 27, 2002.

6. If persons who are directly affected by the proposed amendments wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Wayne Johnston, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-5907; fax (406) 444-9733. A written request for hearing must be received no later than December 27, 2002.

7. If the commission receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; from the appropriate administrative rule review committee of the legislature; from a governmental

subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 28,000 persons based on the estimated number of resident and nonresident hunters for the year 2000.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

By: /s/ Dan Walker
Dan Walker
Commission Chairman

By: /s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

Certified to the Secretary of State November 18, 2002

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PUBLIC HEARING ON
of ARM 17.58.311 and 17.58.342) PROPOSED AMENDMENT
pertaining to reimbursable)
expenses from the Petroleum)
Tank Release Compensation Fund) (PETROLEUM BOARD)

TO: All Concerned Persons

1. On December 18, 2002 at 10:00 a.m., a public hearing will be held in the Lewis Room of the Phoenix Building, 2209 Phoenix Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., December 9, 2002, to advise us of the nature of the accommodation that you need. Please contact the Board at 2209 Phoenix Avenue, P.O. Box 200902, Helena, Montana 59620-0902; phone (406) 444-0925; fax (406) 444-1902.

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

17.58.311 DEFINITIONS Unless the context clearly indicates otherwise, the following definitions, in addition to those in 75-11-302, MCA, apply throughout this chapter:

(1) and (2) remain the same.

(3) "Automobile", for purposes of reimbursing claims, means a light vehicle as defined at 61-1-139, MCA.

(4) through (21) remain the same, but are renumbered (5) through (22).

AUTH: 75-11-318, MCA

IMP: ~~75-11-302, 75-11-303, 75-11-304, 75-11-305, 75-11-306, 75-11-307, 75-11-308, 75-11-309, 75-11-310, 75-11-311, 75-11-312, 75-11-313, 75-11-314, 75-11-315, 75-11-316, 75-11-317, 75-11-318, MCA~~

REASON: The Petroleum Tank Release Compensation Board (Board) finds it necessary to amend ARM 17.58.311 to add a definition of "automobile" for purposes of establishing a mileage rate for claims submitted to the Board for reimbursement from the petroleum tank release compensation fund (the fund). The Montana Motor Vehicle Code at 61-1-139, MCA, defines "light vehicle." Under the Montana Motor Vehicle Code, a light vehicle means a motor vehicle commonly referred to as an automobile, van, sport utility vehicle, or truck having a manufacturer's rated capacity of one ton or less.

22-11/27/02

MAR Notice No. 17-184

Concurrent with this amendment, the Board proposes to amend ARM 17.58.342(1)(e) to replace the current mileage reimbursement rule with a rule that applies the high rate for mileage reimbursement established in Policy 1-0310.10 of the Montana Operations Manual (MOM) plus 5 cents per mile. The fund reimburses transportation costs necessarily incurred to investigate, remediate and monitor releases. The federal mileage reimbursement rate is based on operating costs for a broad range of vehicle types. Vehicles used in the investigation, remediation and monitoring of releases consist of mostly field vehicles that may include automobiles, vans, sport utility vehicles and trucks. Therefore, the Board finds that adoption of a definition of automobile that includes the types of vehicles likely to be used at release sites is necessary to effectively implement its proposed new mileage reimbursement rule.

17.58.342 OTHER CHARGES ALLOWED OR DISALLOWED

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

(e) mileage, at a rate equal to \$0.05 per mile above the high rate for mileage reimbursement prescribed in the Montana Operation Manual (MOM), Volume I, Chapter 1-0300, Policy No. 1-0310.10 (August 13, 2002) calculated utilizing the "Rental Rate Blue Book", or, for employee-provided transportation, at the actual amount of reimbursement paid the employee, provided that it does not exceed the "Rental Rate Blue Book" values;

(f) through (4) remain the same.

AUTH: 75-11-318, MCA
IMP: 75-11-318, MCA

REASON: The current rule requires the use of blue book rates to calculate mileage reimbursement. These rates are cumbersome to calculate as they are rooted in the hours a vehicle is driven, which in turn is dependent on the speed at which a vehicle is driven. The Board finds it necessary to change the mileage rule to adopt the federal mileage rate, established by the U.S. Internal Revenue Service (IRS), plus 5 cents per mile for automobiles, which would include vehicles under one ton.

The Montana Operations Manual (MOM) establishes two rates for mileage reimbursement. One of these rates is known as the high rate. The high rate is equal to the mileage reimbursement rate established by the IRS for the current year.

The Board finds it necessary to adopt the MOM high rate for mileage reimbursement in order to avoid having to amend this rule yearly when the IRS updates its mileage rates. By adopting the MOM rate, the Board will only have to amend its mileage reimbursement rule to update its reimbursement rate when the MOM rate is updated.

The IRS mileage rate is based on a broad range of vehicle types, and vehicles used in the investigation, remediation and monitoring of releases are known to be weighted toward field

vehicles. Therefore, the Board finds that an additional 5 cents per mile is necessary to offset the bias toward lighter vehicles built into the federal mileage reimbursement rate.

The Board finds it necessary to adopt the MOM high rate plus 5 cents per mile in order to simplify reimbursement of mileage from the petroleum tank release compensation fund.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Petroleum Tank Release Compensation Board, 2209 Phoenix Avenue, P.O. Box 200902, Helena, Montana 59620-0902; faxed to (406) 444-1902; or emailed to Kirsten Bowers at kbowers@state.mt.us no later than December 27, 2002. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Kirsten Bowers, attorney for the Department, has been designated to preside over and conduct the hearing.

6. The Board 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 that includes the name and mailing address of the person to receive rulemaking notices. Such written request may be mailed or delivered to the Board at 2209 Phoenix Avenue, P.O. Box 200902, Helena, Montana 59620-0902; faxed to (406) 444-1902; or emailed to Kirsten Bowers at kbowers@state.mt.us or may be made by completing a request form at any rules hearing held by the Board.

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

Reviewed by:

PETROLEUM TANK RELEASE
COMPENSATION BOARD

James M. Madden
JAMES M. MADDEN

BY: Tim Hornbacher
TIM HORNbacher, Chairman

Certified to the Secretary of State November 18, 2002.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 8.32.801,) ON PROPOSED AMENDMENT,
8.32.802, 8.32.804, 8.32.806,) ADOPTION AND REPEAL
8.32.807, 8.32.1102, 8.32.1103,)
8.32.1108, 8.32.1109, 8.32.1110,)
8.32.1111, 8.32.1112, 8.32.1113,)
8.32.1114, 8.32.1116, the proposed)
adoption of new rules I-III, and)
the proposed repeal of 8.32.803,)
8.32.1115 and 8.32.1117, relating)
to nursing education programs -)
approval requirements)

TO: All Concerned Persons

1. On December 19, 2002, at 9:00 a.m., a public hearing will be held in room 438 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or who need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing no later than 5:00 p.m., December 11, 2002, to advise us of the nature of the accommodation that you need. Please contact Jill Caldwell, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2342, Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2343; e-mail dlibsdnur@state.mt.us.

3. The Board believes there is reasonable necessity for rulemaking on the subject of nursing education programs to provide all Montana nursing schools and programs with approval requirements that are clear, concise and therefore, more readily followed. This project is the culmination of nearly three years of cooperative and progressive meetings between Board members, Board staff, and representatives of the Montana schools of nursing. The schools and/or programs represented at the meetings included Montana State University-Bozeman, Billings-College of Technology-MSU, Carroll College, Butte-Division of Technology-MT, Great Falls-College of Technology-MSU, Helena-College of Technology-UM, Miles Community College, Salish Kootenai College, Missoula-College of Technology-UM, Butte-MT Tech of the U of M, and Montana State University-Northern.

This rulemaking project represents the consensus view of the Board and the schools on Board guidelines and requirements for nursing schools, programs and faculty. The nursing schools had approached the Board, expressing a great deal of confusion

as to exactly what the Board expected of the schools for initial and continued approval of schools, curricula, and faculty, and what documentation is necessary to submit to the Board. The existing rules as written are apparently unclear and the Board believes they may not provide adequate notice to the schools of the requirements for school approval. The proposed changes address the areas of concern raised by the various nursing programs, staff and the Board. The proposed amendments, adoptions and repeals of this notice are also part of the Board and Department's ongoing comprehensive rule review in an effort to reduce confusion, eliminate redundancy and archaic language, and increase the overall effectiveness in application of the rules.

The proposed rule changes are based on researched evidence and accreditation requirements for nursing education programs. The proposed changes continue to meet the requirements of other U.S. boards of nursing for initial licensure and preparation for entry level practice. It is important for Montana program graduates to meet the educational requirements of any state in which they may seek licensure, and not just the requirements set forth in Montana.

This statement of reasonable necessity applies to all the rule changes proposed. Additional reasons will be noted as applicable.

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

8.32.801 APPLICATION FOR INITIAL APPROVAL (1) An educational institution wishing to establish a program in nursing and to secure initial approval shall:

~~(2) Submit to the board of nursing, at least two calendar years in advance of expected opening date, a statement of intent to establish a program in nursing. Report of a feasibility study is required at least one calendar year prior to the expected opening date. Any exceptions must be approved by the full board.~~

(2) The feasibility study ~~will~~ is required at least one calendar year before the expected implementation date and must include at least the following information:

(a) Nursing manpower studies population data within the past three years and workforce supply and demand data from the past year documenting the need for the program as it relates to plans for total state resources and nursing education needs within the state;_i

(b) through (d) remain the same.

(e) Availability of adequate clinical and academic facilities for the program;_i

~~(f) Availability of adequate academic facilities for the program.~~

~~(g)~~(f) Evidence of financial resources adequate for the planning, implementation and continuation of the program;_i

~~(h)~~(g) Anticipated student population;_i

~~(i)~~(h) Tentative time table for planning and initiating

the program; and

(j) remains the same, but is renumbered (i).

~~(4)~~(3) When the data submitted in the feasibility study is are reviewed, the board may request additional information or and may conduct a survey site visit to evaluate the information submitted as the board may deem necessary.

(5) remains the same, but is renumbered (4).

~~(6)~~(5) Initial approval may be applied for when ~~t~~The following conditions have been must be met prior to application for initial program approval:

(a) a qualified nurse administrator has been appointed and there are plans for sufficient qualified faculty to initiate the program; and

(b) remains the same.

~~(7)~~(6) Between six months and one year ~~F~~following the feasibility study, the board shall review and conduct a site visit utilizing the initial application and feasibility study for ~~of~~ the proposed program, and the board may grant initial approval following board review. Any communications from the board must be sent to the program director and the leadership of the parent institution. The program may then admit students who shall be eligible upon completion of the program to take the licensing examination.

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

~~(9)~~(8) Following graduation of the first class, a self-evaluation self-study report of compliance with the ~~current Standards for Montana Schools of Professional or Practical Nursing~~ ARM Title 8, chapter 32, subchapter 11, shall be submitted and a survey site visit shall be made for consideration of full approval of the program.

(9) Only materials received at least 30 days before the next scheduled board meeting will be considered by the board.

AUTH: 37-8-202, 37-8-301, MCA

IMP 37-8-301, 37-8-302, MCA

8.32.802 SURVEY AND CONTINUED APPROVAL OF SCHOOLS ~~(1)~~ The board will review an application, related materials and site visit reports for initial approval or continued approval of professional or practical nursing programs only at times when the board is in formal session. Materials and site visit reports shall be in the board office 30 days prior to the board meeting.

~~(2)~~(1) To ~~insure~~ ensure continuing ongoing compliance with the law and the board's ~~of nursing's minimum standards statutes and rules,~~ all approved nursing education programs will must be surveyed site visited and reevaluated for continued approval at least every ~~four~~ 10 years and in conjunction with the program's visit from an approved, recognized national nursing accreditation body. If the program is not nationally accredited, the board must perform approval site visits at least every five years.

~~(3)~~ The board, as a part of the initial and continuing approval process, will schedule a site visit to the program

~~being reviewed.~~

~~(4)(2) Prior to Before a site visit, a school will must submit a self-evaluation narrative self-study report to the board office which provides providing evidence of compliance with the appropriate nursing education standards requirements. The school will must forward six four copies of the self-evaluation narrative self-study report and six four copies of the school catalog to the board office by February 1 of the year in which a program visit is scheduled at least 60 days before a scheduled site visit. If a program holds national nursing accreditation, the self-study report used for the accrediting body must also be submitted to the board office at least 60 days before the scheduled site visit.~~

~~(5)(3) The site visit will be made is performed by representatives of the board a qualified site visitor and the board's executive director on dates mutually agreeable to the board and the school.~~

~~(a) Announcement of a site visit will be sent to schools three months in advance of the visit.~~

~~(b)(a) Schools will be asked to must participate in scheduling the site visit activities.~~

~~(c)(b) A draft of tThe site visit visitor's report will must be made available to the school for review and corrections in statistical data within 60 days of the site visit.~~

~~(c) The school may submit a written response to the site visitor's report for clarification and correction within 30 days of receipt of the report.~~

~~(d) Site visit reviewers will must include, but will not be limited to, the executive director of the board and an outside reviewer with expertise in relation to the type of program being reviewed.~~

~~(6) The school's self-evaluation report of compliance with the board's standards and the report of the site visit will be submitted to the board one month prior to the board meeting date on which the review is scheduled.~~

~~(4) The board shall review the self-study report. Materials and site visit reports must be in the board office at least 30 days before the next scheduled board meeting.~~

~~(7)(5) Following the board's review and decision, the board must send written notification regarding approval of the program and the board's recommendations will be sent to the dean, program director or coordinator of the program and the leadership of the parent institution.~~

~~(8)(6) The board office shall issue A a certificate of approval will be issued to all schools that continue continuing to meet the minimum nursing program standards requirements. The dates of approval will be on the certificate.~~

~~(9) The procedure for conditional approval will be affected if the board determines the school does not meet all of the requirements of the law and nursing program standards. A conditionally approved school is one which fails to meet the requirements of 37-8-202, MCA, and ARM 8.32.801 through 8.32.807, and the Standards for Montana Schools of Professional Nursing or Practical Nursing. The procedure which follows will~~

~~be used (in accordance with ARM 8.32.802) for placing a school on conditional approval or removing it from conditional approval.~~

~~(a) If a school does not meet the standards set for the school, the board may place that school on conditional approval.~~

~~(b) Conditional approval may be given for a specific time period. The board may require a special report and/or repeat the site visit during the period of conditional approval.~~

~~(c) The school will be notified of the conditional approval status and the time and manner in which it must correct the deficiencies.~~

~~(d) If the school does not correct the deficiencies, the board may require the school to stop admitting students until the deficiencies are corrected.~~

~~(e) For continued non-compliance of the standards, approval of the school will not be given and it will be removed from the approved school list.~~

~~(f) The school has the right to request a hearing in accordance with the Montana Administrative Procedure Act and Title 37, chapter 1, part 3, MCA, upon notification of lack of approval to admit students or removal of approval status.~~

~~(g) Once a school has corrected the deficiencies, it will be reinstated to full approval status.~~

~~(10)(7) The board may site-visit A a program may be visited at any time within the usual four-year interval as deemed necessary by the board or at the request of the school.~~

(8) Each nursing program must maintain an annual NCLEX pass rate that is not 10 percentage points or more below the national average pass rate for first-time test takers.

(a) The first year a program's average pass rate is 10 percentage points or more below the national average, the program will be issued a letter of notice from the board.

(b) The second consecutive year a program's average pass rate is 10 percentage points or more below the national average, the program will be placed on conditional approval by the board. The program must submit to the board a written plan to improve the pass rate.

(c) The third consecutive year a program's average pass rate is 10 percentage points or more below the national average, the program must submit a self-study report to the board. The board will also perform a site visit.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-301, 37-8-302, MCA

REASON: The Board proposes the amendment of this rule so that it allows schools to coordinate their national accreditation visits with those required by the Board. This will replace visits every four years for those schools that have national accreditation. For those programs that do not have national accreditation, the visits will be made at least every 5 years. This is a decrease, but the Board feels it can adequately monitor programs through other means. The Board retains the right to visit a school sooner than 5 or 10 years if a problem

is detected in the interim reporting.

This rule also requires schools to maintain a pass rate on the national exam of no more than 10% or more below the national pass rate average. For example: if the national average for first time testers is 85%, and the program's pass rate is 75% one year and 73% the next year, the Board must take action. If the pass rate is 76%, the board would watch the trends, but not take action on the program's approval status, unless other problematic outcome quality indicators were present that required Board action. This rule defines the steps that will be taken if a pass rate falls significantly below the national average, uses a non-arbitrary figure to which the programs agreed, and takes into account the relatively small sizes of some Montana nursing programs. The Board believes this is reasonably necessary since the NCLEX exam is a determinant of entry-level competency in nursing and failure of the exam will prevent an individual from obtaining licensure.

8.32.804 FACULTY QUALIFICATION REPORT (1) The school must submit A a faculty qualification report form will be submitted for each newly employed faculty member on a form provided by the board when the faculty appointment becomes effective. Such forms are available from the board office and on the board's website and must be used by the school.

(2) The education committee of the board shall accept or reject the faculty qualifications and make recommendations for ratification by the full board record will be submitted when the faculty appointment becomes effective.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-301, 37-8-302, MCA

8.32.806 ANNUAL REPORT (1) An annual report for the preceding current academic year shall must be submitted by June 1 of each year, except in the year in which the program submits a self-study report. Four copies will must be submitted to the board office.

(2) The annual report will must provide current data for interim evaluation of the school by the full board. and will the The report must include:

(a) progress during the past year toward achievement of the school's program's stated goals and the program's goals for the forthcoming year;

(b) remains the same.

(c) any special reports and board communications submitted during the last year;

(d)(c) any changes during the last year in the following areas:

(i) qualifications or major responsibilities of the dean or program director and/or faculty;

(ii) qualifications or major responsibilities of faculty members;

(iii)(ii) policies or practices used for selection, promotion progression and graduation of students;

- ~~(iv)(iii)~~ practices followed in safeguarding the health and well-being of the students; and
- ~~(v)(iv)~~ curriculum plan, course descriptions, resources and facilities;
- ~~(vi)~~ course descriptions;
- ~~(vii)~~ resources; and
- ~~(viii)~~ facilities.
- ~~(d)~~ a summary of clinical agency contractual arrangements on a board furnished form; and
- ~~(e)~~ a list of current faculty and identification of those faculty members on education waiver, to include:
 - ~~(i)~~ the date the board approved the waiver for each faculty member on waiver;
 - ~~(ii)~~ the date the faculty member completed the waiver requirements; and
 - ~~(iii)~~ the current number and percentage of faculty on waiver to the total full-time equivalents in the nursing program;
- ~~(e)~~ clinical agency contractual arrangements, to include a full list of all current agencies used for placement of students, approximate number of students per agency per semester, and any potential difficulties related to over-utilization by nursing students in any listed agency. Agencies new to the program must be identified on a form furnished by the board;
- ~~(f)~~ a list of current faculty, including identification of those faculty members who are on waiver (those who do not meet required faculty qualifications), to include:
 - ~~(i)~~ the date of the board approved waiver for each faculty member on waiver; and
 - ~~(ii)~~ the current number and percentage of faculty on waiver to the total FTE's in the nursing program.
- ~~(g)(f)~~ a report of faculty members' pertinent professional development (major activities to maintain expertise) for the past year. This does not include standard agency requirements such as basic life support, blood-borne pathogens, etc.;
- ~~(h)~~ remains the same, but is renumbered (g).
- ~~(i)(h)~~ enrollment in the nursing program each year for the past five years;
- ~~(j)(i)~~ number of graduations from the nursing program each year for the past five years;
- ~~(k)~~ performance of students on state board examinations for the past five years (using data provided by the board office);
- ~~(l)(j)~~ a statement from the program director indicating that the nursing program's budget is sufficient to meet program needs (included on cover sheet of annual report form provided by board office);
- ~~(m)(k)~~ four current copies of the school catalog and student handbook; and
- ~~(n)(l)~~ goals for forthcoming year current program evaluation plan with measurable goals and data to support the evaluation of attaining those goals.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-301, 37-8-302, MCA

REASON: The annual reports will no longer be required in years that the school submits a self-study report. These requirements were in policy, but there has been increased confusion about the requirements, and schools of nursing wanted to see them in rule.

8.32.807 SPECIAL REPORTS (1) A special written report to the board must be submitted prior to initiation regarding The program director is required to notify the board of any proposed substantive change affecting the nursing education program. Substantive changes include, but are not limited to:

(a) substantive changes that significantly affect the administration, curriculum, students, faculty, clinical or education facilities changes in legal status, control, ownership or resources of the institution;

(b) the program's planned response to the changes change in accreditation or approval status;

(c) any potential difficulties related to over-utilization by nursing students in any listed agency. significant change in faculty composition or size;

(d) significant change in teaching affiliations including, but not limited to, clinical affiliations or partnerships;

(e) significant enrollment, progression and graduation rates and other program outcome indicators;

(f) major curriculum revisions;

(g) change in degree offerings or program options;

(h) additional geographic sites or locations; and

(i) any expansion defined by the board.

(2) The substantive change report must document how, if at all, the change affects the program's compliance with the board's statutes and rules.

(3) Continued approval of the program is contingent upon the program director's apprising the board of substantive changes.

(4) The program director shall contact the board office to determine whether a particular change constitutes a substantive change for submitting a report to the board.

(2)(5) Fourteen copies of the special report will must be sent to the board office for distribution to board members and staff. The special report will be considered by the board at the first regularly scheduled meeting that occurs more than 29 days following receipt of the special report at the board office. No further information will be considered by the board if not submitted at least 30 days before the meeting.

(6) For proposed program expansion, at least the following information must be included:

(a) purpose and classification of program;

(b) availability of qualified faculty;

(c) budgeted faculty positions;

(d) availability of adequate clinical and academic facilities for the program;

(e) evidence of financial resources adequate for the

planning, implementation, and continuation of the program;

(f) anticipated student population and impact or relationship to current student population, including plans for student academic and financial support;

(g) tentative timetable for planning and initiating the program;

(h) consideration of how the proposed expansion may affect the existing nursing programs in the state, and indication that plans and the feasibility study regarding the proposed expansion have been shared with the directors of existing Montana programs;

(i) population data within the past three years and workforce supply and demand data from the past year documenting the need for the program change as it relates to plans for total state resources and nursing education needs within the state;

(j) curriculum modifications required to accommodate the targeted student population; and

(k) evidence showing the program's NCLEX pass rates being at or above the national average for at least three of the last five years.

~~(3)(7) The board must shall approve, accept or deny the request prior to initiation of any requested change changes submitted prior to initiation of the change, unless the program is instructed otherwise by the board.~~

~~(4)(8) Other reports as may be Any additional information requested by the board for information will must be provided by the schools program in the period and manner specified by the board.~~

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-301, 37-8-302, MCA

REASON: In addition to the reasonable necessity statement in paragraph three, the Board finds it necessary to amend this rule to clarify that to ensure sufficient preparation in advance of a Board meeting, additional information will not be accepted by the Board less than 30 days prior to the meeting. Deliberations by the Board must occur with adequate preparation by the Board members.

8.32.1102 STATEMENT OF PURPOSE (1) These standards requirements provide a basis for the state board of nursing to evaluate and approve nursing education programs and a format for nursing faculty and administrators to plan, implement and evaluate nursing education for the following professional and practical nursing programs:

(a) professional baccalaureate degree education for RN preparation;

(b) professional associate degree education for RN preparation; and

(c) associate degree education or certification for practical nursing education preparation.

(2) The following rules must set forth general standards requirements regarding all nursing education and specific

standards requirements regarding:

(a) curricula for:

(i) professional baccalaureate degree education for RN preparation;

(ii) professional associate degree education for RN preparation; and

(iii) associate degree education or certification for practical nurse educational nursing preparation programs;

(b) faculty qualifications and responsibilities; and

(c) administrative roles and functions.

(3) These rules represent ~~minimal standards~~ minimum requirements. The board shall interpret the ~~standards these rules to insure~~ ensure that minimum standards requirements are met and to allow faculty flexibility to determine the scope, limits and direction of the nursing education program. ~~The board shall revise these standards periodically to meet the ever-changing health care needs of society and the continuing development of nursing education.~~

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-301, MCA

REASON: These changes are necessary because current programs are offering different degrees or certificates, with associate degrees being offered for both practical and registered nurses. This rule simply clarifies and reflects the changes in education degrees offered.

8.32.1103 PHILOSOPHY, PURPOSE, ORGANIZATIONAL FRAMEWORK AND EDUCATIONAL OBJECTIVES, AND EXPECTED OUTCOMES

(1) The faculty of the nursing educational program shall develop and approve statements of philosophy, purpose, ~~organizational framework~~ and educational objectives, and expected outcomes that are consistent with those of the parent institution and with the ~~laws statutes and rules~~ governing the practice of nursing.

(2) The philosophy ~~statement~~ must include statements about nursing practice, and nursing education ~~and the graduate of the program.~~

~~(3) The statements of philosophy, purpose, organizational framework and educational objectives must be used to plan, implement and evaluate the total program.~~

~~(4)~~(3) The philosophy ~~statement~~ above information must be included in the program catalog or otherwise made available to students. ~~Students must participate in program policy development.~~

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-301, MCA

8.32.1108 PROGRAM EVALUATION (1) All nursing programs must have a formal evaluation plan developed by the faculty that is conducted on a regular basis and must include opportunity for student participation.

(2) Evaluations must ~~consider~~ address the following areas:

- (a) ~~the philosophy, organizational framework, educational objectives, and expected outcomes and curriculum of the program;~~
- (b) the curriculum;
- ~~(b)(c) policies governing recruitment, admissions, promotion, selection, progression, graduation and other matters affecting education, and health and welfare of students;~~
- (c)(d) factors contributing to faculty growth, welfare development, evaluation and effectiveness;
- ~~(d)(e) adequate the adequacy of clinical facilities for student practice experiences in a variety of inpatient and community-based settings to include acute care, chronic care and primary health care settings;~~
- (e)(f) adequate the adequacy of educational facilities including classrooms, technology, skills labs laboratories and library/information resources; and
- ~~(f)(g) documentation of health policy requirements which must be accessible to the student.~~
- (3) ~~The evaluation plan must include a recommendation based on evidence collected to make appropriate program revisions. Program revisions must be based on evidence collected through the evaluation process.~~

AUTH: 37-8-202, 37-8-301, MCA
IMP: 37-8-301, MCA

REASON: These changes are necessary because of the Board's increase in focus on utilization of evidence-based decisions rather than past practice or outdated standards.

8.32.1109 ORGANIZATION AND ADMINISTRATION OF THE NURSING EDUCATION PROGRAM (1) Parent institutions conducting a nursing program must be accredited by the appropriate regional accrediting bodies.

(2) All agencies with which the program maintains cooperative agreements for use as clinical laboratories must have licensure, approval or accreditation appropriate to each agency.

(a) Cooperative agreements between nursing programs and clinical facilities must be current, in writing and signed by the responsible officers of each and must include the following:

(i) through (iii) remains the same.

(3) The organizational pattern structure of the nursing program must be comparable to similar programs of the parent institution. ~~Organizational charts showing the administrative structure of the nursing program and its relationship to other units must be developed.~~

(4) remains the same.

(5) Faculty and administration ~~shall~~ should participate in governance of the parent institution and policy development, including but not limited to, matters related to appeals and grievances. Policies governing faculty employment, promotion and tenure must be in writing and consistent with those of the parent institution.

(6) A nursing education program must provide students with

written policies regarding:

(a) admission, readmission, progression, dismissal and graduation requirements;

(b) personal health practices, designed to protect students, clients and faculty members, and requiring student compliance;

(c) information regarding the process of obtaining a license;

(d) access to the institution/program catalog; and

(e) opportunity for students to participate in program policy development.

(7) Programs must maintain current records of student achievement within the program and provide students with timely evaluations based on educational objectives.

(8) Faculty members or other qualified persons shall be responsible for providing timely academic advice to students.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-301, MCA

8.32.1110 PROGRAM DIRECTOR (1) Baccalaureate and associate degree RN programs must be administered by a full-time program director who shall be responsible for program administration. The director shall also be responsible for and preparation, presentation and administration of the budget of the nursing program. The directors of the professional programs shall possess the following licensure, education and experience qualifications:

(a) a current unencumbered license to practice as a registered nurse in the state of Montana; and

(b) at least two years of experience in nursing practice; and

(c) at least two years of experience in nursing education, including didactic and clinical teaching.

(2) The director of the baccalaureate program shall possess a master's degree with a major in nursing and a doctorate degree in nursing or a related field from approved programs, with preparation in education and administration. If a master's degree is not held, one of the graduate degrees must be in nursing.

(a) The board may allow an exception to the educational requirement of a doctorate degree for a period not to exceed one academic year. Such an exception would require the interim director to hold at least a master's degree in nursing from an approved program.

(3) The director of the associate of science degree RN program shall possess a master's degree in nursing or public health with a major in nursing from an approved program, with preparation in education and administration.

(4) Practical nurse nursing education programs must be administered by a full-time program director who shall devote a minimum of 50% time to administrative activities and shall possess the following qualifications:

(a) a current unencumbered license to practice as a

registered nurse in the state of Montana;

(b) a master's degree with a major in nursing or a minimum of a baccalaureate degree in nursing ~~from an approved program~~, supplemented by courses in curriculum development, principles and methods of teaching and measurement and evaluation; and

(c) at least two years of experience in nursing practice; and

(d) at least two years of experience in nursing education, ~~inclusive of teaching in~~ including didactic and clinical areas teaching.

(5) remains the same.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-301, MCA

REASON: These amendments are necessary because nursing program directors and education organizational leadership in Montana have been experiencing increased difficulty in recruiting and retaining qualified faculty. These rule changes increase the opportunity for bringing faculty into the state with some variations in educational and experiential qualifications while ensuring that overall program quality is not negatively impacted. The Board continues to be responsible to ensure that graduates of nursing programs are prepared for entry level practice and can successfully meet licensing requirements of all U.S. board jurisdictions.

8.32.1111 FACULTY (1) There must be a sufficient number of qualified faculty to meet the purposes and objectives of the nursing program. Faculty includes all nurses employed by the program to provide didactic and/or clinical/laboratory experiences, except clinical resource nurses and preceptors.

(2) Faculty shall have primary responsibility for the development and conduct of the academic program(s), including

~~(a) Faculty shall participate~~ participation in program policy development.

(3) Faculty shall ~~provide evidence of~~ maintain continuing professional development in each areas area of didactic and ~~clinical~~ academic responsibility.

(4) Faculty members who have responsibility for clinical teaching shall ~~demonstrate clinical competence~~ have relevant education and/or experience.

(5) Faculty member titles ~~must~~ should be consistent with faculty functions and the same as or equivalent to titles of faculty of other units of the parent institution.

(6) Faculty members shall be responsible for:

(a) planning, implementing and evaluating learning experiences ~~in the faculty member's area of assignment~~;

(b) participating in academic ~~guidance of students~~ student advising;

(c) providing for student and peer evaluation of teaching effectiveness;

(d) evaluating student achievement in terms of curricular education objectives;

(e) providing opportunity for creative student activities that contribute to positive changes in nursing, nursing education or health care;

(f) providing service to the parent institution, nursing program, profession and community; and

~~(7)(g)~~ Pparticipating in the selection of new faculty and the promotion and tenure of other faculty.

~~(8)(7)~~ Faculty work—loads workloads are should be equitable, and must allow time for:

(a) classes and lab preparation; i

(b) teaching; i

(c) program revision; i

(d) improvements of teaching methods; i

(e) guidance of students; i

(f) participation in faculty organization and committees; i

(g) attendance at professional meetings; and

(h) participation in continuing education activities.

~~(9)(8)~~ Written job specifications—including responsibilities descriptions and performance expectations must be available for each position.

~~(10)(9)~~ Personnel policies must be in writing and must include selection, appointment, promotion, and faculty development and welfare.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-301, MCA

REASON: See the justification for ARM 8.32.1110.

8.32.1112 BACCALAUREATE AND ASSOCIATE FACULTY FOR REGISTERED NURSING (1) All nursing faculty members, including part-time faculty, shall: hold at least a master's degree with a major in nursing from an accredited program, or a doctorate in nursing; have preparation for teaching in their respective area of responsibility and shall be licensed as registered nurses in Montana.

(a) hold an unencumbered license as a registered nurse in Montana;

(b) have preparation for teaching in their respective area of responsibility; and

(c) except as provided in this rule, hold at least a master's degree with a major in nursing, or a doctorate in nursing, from a nationally accredited program.

(2) Faculty members hired without a graduate degree or who hold a master's or doctorate in a health-related field other than nursing may be considered by the board and, if approved, shall not exceed the number or percentage specified by this rule.

~~(2)(3)~~ Faculty members hired without a not holding any master's degree will have three years from the date of hire to obtain a master's degree as set forth by the faculty qualifications in (1).

(4) For each faculty member who does not meet the education requirements of (1),

~~(a) The nursing program director will shall immediately notify the board in writing of the hire of the non-master's prepared faculty member along with a plan for to address compliance with the education requirements set forth at (1).~~

~~(b)(5) Failure to comply with (3) this rule constitutes non-compliance with board of nursing rules, and will subject the program to action deemed appropriate by the board, including loss of the program's approval.~~

(c) remains the same, but is renumbered (6).

~~(3)(7) As a general guideline for the baccalaureate and associate programs, there must be no more than 10 students per faculty member at a given time in a clinical setting. When providing direct patient care, no more than 10 students may be supervised at a time by a faculty member. The number of students must be determined by the educational and clinical resources and faculty sufficient to meet the goals of the program and the requirements of the board of nursing.~~

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-301, MCA

REASON: These changes are necessary because nursing programs are held accountable by the Board to ensure that proper supervision is provided when students are providing direct patient care. The Board is aware that faculty supervision of students is critical to patient safety, especially in a care environment in which there are fewer and fewer staff nurses available to assist students. This change also allows the approval of faculties whose qualifications are less narrowly defined than by previous language. The proposed amendment was done in response to increasing concerns regarding recruitment and retention of qualified faculty.

8.32.1113 FACULTY - PRACTICAL NURSE PROGRAM (1) All nursing faculty, including part-time, shall hold at least a baccalaureate in nursing or a master's degree in nursing or a minimum of a baccalaureate degree in nursing from an a nationally accredited program supplemented by courses in curriculum development, principles and methods of teaching, measurement and evaluation.

(2) Faculty members shall:

(a) have at least two years experience in registered nursing practice within the last five years; and

(b) be currently licensed hold a current unencumbered license to practice professional nursing in the state of Montana.

~~(2) All non-nurse faculty shall have academic and professional education and experience in the field of their specialization.~~

~~(3) There must be a ratio of no more than 10 students for each faculty person in the clinical area at any given time.~~

(3) When providing direct patient care, no more than 10 students may be supervised at a time by a faculty member. The number of students must be determined by the educational and

clinical resources and faculty sufficient to meet the goals of the program and the requirements of the board.

(4) A maximum of 10% or two faculty members, whichever is greater based on full-time equivalents, may qualify under an exception at any point in time at a given school.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-301, MCA

REASON: See the justification for ARM 8.32.1112.

8.32.1114 PRECEPTORS — BACCALAUREATE AND ASSOCIATE

~~(1) When utilizing preceptors, Registered nurse preceptors may assist with course teaching provided that:~~

~~(a) faculty members are responsible for:~~

~~(a) ensuring safe, accessible and appropriate supervision based on client health status, care setting, course objectives and student level of preparation; and~~

~~(b) lecture and laboratory portions of a course.~~

~~(b) the use of preceptors is appropriate given the course objectives and the level of students in the course; and~~

~~(c) a nursing faculty member retains responsibility for lecture and laboratory portions of the course.~~

~~(2) Professional registered nurse In registered nursing education programs, preceptors may assist with "senior level" courses taken during the last quarters/ semesters of the nursing education program. clinical teaching provided the preceptor:~~

~~(a) holds a current unencumbered license as a registered nurse in Montana; and~~

~~(b) works with students on a one-to-one basis in the clinical setting.~~

~~(3) In practical nursing education programs, preceptors may assist with clinical teaching provided the preceptor:~~

~~(a) holds a current unencumbered license as a registered nurse or practical nurse in Montana; and~~

~~(b) works with students on a one-to-one basis in the clinical setting.~~

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-301, MCA

REASON: These proposed amendments increase the opportunity for bringing faculty into positions focused on clinical expertise, allowing new variations in educational and experiential qualifications while ensuring that overall program quality is not negatively impacted. This change in focus allows the approval of faculty whose qualifications are less narrowly defined or not allowed in previous language.

8.32.1116 EDUCATIONAL FACILITIES (1) There must be safe and accessible physical facilities and resources for students and faculty.

(2) Physical facilities must be designed to meet the educational and clinical needs of the program, including, but

~~not limited to:~~

~~(a) — e Classrooms, laboratories, offices and conference rooms must be of adequate size, number and type according to the number of students and purposes for which these areas are to be used.~~

~~(b)(3) The program must ensure:~~

~~(a) adequate supplies and equipment, including computer resources and audio visual aids; and~~

~~(c)(b) adequate and convenient access by students and faculty to library/information resources, including sufficient titles, periodicals, computer data bases and similar media resources.~~

~~(2) — Institutional financial support for the program's library/information resources must be adequate to meet the program's purposes and educational objectives. Faculty and students shall provide input regarding purchases of informational resources.~~

~~(3) — There must be adequate study area/space conducive to scholarly work for faculty and students.~~

~~(4) Clinical resources must be: adequate to provide the learning experiences identified~~

~~(a) delineated in and applicable to the educational objectives of the program. Learning experiences in clinical settings must be; and~~

~~(b) under the control and supervision of the nursing faculty.~~

~~(5) The Each program director, with input from faculty input, shall determine appropriate student faculty -instructor ratios in the clinical setting. to The ratio must provide safe, accessible and appropriate supervision based on client health status, care setting and student level of preparation. The ratio must not exceed 10 students to one instructor.~~

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-301, MCA

REASON: The Board's previous rules regarding educational facilities and program resources were narrowly defined. These proposed amendments place the overall responsibility for program management on the education program's leadership with fewer requirements for Board purposes. For example, a full budget report has been previously required, yet the Board is truly interested in whether the budget supports the program's needs, rather than the details of the budget itself. The budget can be discussed in detail during the periodic site visits. The proposed language will also allow for an additional level of clinical faculty, CRRN.

5. The proposed new rules provide as follows:

NEW RULE I CHANGE IN APPROVAL STATUS (1) The board shall make a change in approval status when a school does not meet all of the requirements of the statutes and rules. The board shall notify the school of a change in approval status and the time

and manner in which the school must correct the deficiencies.

(2) Change in approval status may be given for a specific time period. The board may require a special report and/or repeat the site visit during the period of the change in approval status.

(3) If the school does not correct the deficiencies within the time period and in the manner specified, the board may require that the school stop admitting students until the deficiencies are corrected.

(4) The board will not approve a school if requirements are continually unmet. The board shall remove the school from the list of approved schools and notify the applicable national accrediting body.

(5) If the board removes the school's approval status and/or notifies the school to stop admitting students, the school may request a hearing in accordance with the Montana Administrative Procedure Act and Title 37, chapter 1, part 3, MCA.

(6) Once deficiencies are corrected, the board shall reinstate the program to conditional or approval status.

(7) The following programs may not be considered for any type of program expansion:

(a) a program on conditional approval; and/or

(b) a program whose NCLEX pass rate, based on first time testers for a calendar year, is less than the national average.

(8) Program expansion means offering additional degrees, adding geographic sites and locations, or otherwise expanding the program.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-301, 37-8-302, MCA

REASON: The Board finds it necessary to propose the adoption of this rule to clarify the process the board uses to change the approval status of a school of nursing or to issue sanctions. This new rule makes terms relating to changes in approval status consistent and congruent with national accrediting body processes. The hearing process has been an option in existing rule, but a clear definition as to when a program might experience sanctions and how a program could challenge an adverse Board decision is a substantive rule change.

NEW RULE II RECOGNIZED ACCREDITATION BODIES (1) The board recognizes the following national accreditation bodies:

(a) committee on collegiate nursing education (CCNE); and

(b) national league for nursing accreditation commission (NLNAC).

(2) The board recognizes the following regional accreditation body:

(a) northwest association of schools and colleges.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-301, 37-8-302, MCA

REASON: In addition to the reasonable necessity statement in paragraph three, the Board proposes the adoption of these changes since it may, if the rules are adopted as proposed, be performing site visits on a different (longer) schedule cycle for nursing programs with national accreditation status. For clarity and consistency, the Board needs to specify which bodies will be recognized for purposes of this rule amendment.

NEW RULE III CLINICAL RESOURCE REGISTERED NURSES (CRRNs)

(1) A clinical resource registered nurse (CRRN) is an RN with an unencumbered Montana nursing license who provides supervision, demonstration and evaluation of direct patient care in a clinical or laboratory setting to students enrolled in a nursing education program.

(2) The maximum number of nursing students a CRRN may work with at any one time is 10.

(3) Although a CRRN is not considered to be a faculty member of a program, a CRRN may be used by the program to maintain a 10:1 student-to-instructor supervision ratio in a clinical or laboratory setting.

(4) When using CRRNs, faculty members remain responsible for:

(a) ensuring safe, accessible and appropriate supervision based on client health status, care setting, course objectives and student level of preparation; and

(b) the lecture and laboratory portions of a course.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-301, 37-8-302, MCA

REASON: The Board believes this new rule is necessary because nursing program directors and education organizational leadership in Montana have been experiencing increased difficulty in recruiting and retaining qualified faculty, particularly for experiences in small rural facilities and in all clinical settings. These rule changes increase the opportunity for bringing faculty into positions focused on clinical expertise, allowing new variations in educational and experiential qualifications while ensuring that overall program quality is not negatively impacted. This change in focus allows the approval of faculty whose qualifications are less narrowly defined or not allowed in previous language.

6. The Board of Nursing proposes to repeal the following rules:

8.32.803 SCHOOL REPORTS TO THE BOARD which can be found on page 8-996 of the Administrative Rules of Montana.

AUTH: Sec. 37-8-202, MCA

IMP: Sec. 37-8-301, 37-8-302, MCA

REASON: The Board finds it necessary to repeal ARM 8.32.803 because it is necessary to clarify the process of approving

schools of nursing. The current rule is brief, and does not explain the consequences when a program is not approved. The current rule also provides no recourse for a program that disagrees with the Board's decision or action upon their reports.

NEW RULE I outlines a process the Board will use in granting approval and conditional approval of programs. This process is done through written reports and on-site surveys. ARM 8.32.803 provided only for periodic reports to the Board. NEW RULE I outlines the steps the Board will take if the Board finds a problem with a nursing program.

8.32.1115 PRECEPTORS - PRACTICAL NURSE PROGRAM which can be found on page 8-1005.9 of the Administrative Rules of Montana.

AUTH: 37-8-202, 37-8-301, MCA
IMP: 37-8-301, MCA

REASON: The Board finds it necessary to repeal ARM 8.32.1115 because preceptor requirements for both registered nursing and practical nursing programs are combined in the rule amendment of ARM 8.32.1114. Thus, this rule is not needed and will be replaced by a different level of clinical instructor, the Clinical Resource Registered Nurse (CRRN), as proposed in NEW RULE III.

8.32.1117 STUDENTS which can be found on page 8-1005.10 of the Administrative Rules of Montana.

AUTH: 37-8-202, 37-8-301, MCA
IMP: 37-8-301, MCA

REASON: The Board finds it necessary to repeal ARM 8.32.1117 because this rule is unnecessary and redundant. All of the current rule language related to students is contained elsewhere in the proposed rule amendments.

7. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted by mail to:

Jill Caldwell
Board of Nursing
Department of Labor and Industry
P.O. Box 200513
Helena, Montana 59620-0513

by facsimile to (406) 841-2305, or by e-mail to dlibsdnur@state.mt.us and must be received no later than 5:00 p.m., December 26, 2002.

8. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://www.discoveringmontana.com/dli/nur>, in the Rules Notices section. 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 e-mail address does not excuse late submission of comments.

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

10. Darcee Moe, attorney, has been designated to preside over and conduct this hearing.

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

12. The Board of Nursing will meet on January 21-23, 2002, in Helena to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed amendments, new rules and repeals. The meeting will be held in conjunction with the Board's regular meeting. Members of the public are welcome to attend the meeting and listen to the Board's deliberations, but the Board cannot accept any comments concerning the proposed amendments, new rules or repeals beyond the December 26, 2002, deadline.

BOARD OF NURSING
KIM POWELL, RN, CHAIRMAN

By: /s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State, November 18, 2002.

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
adoption of new rule I, the	)	ON PROPOSED ADOPTION,
amendment of ARM 37.78.101,	)	AMENDMENT AND REPEAL
37.78.102, 37.78.106,)	
37.78.215, 37.78.220,)	
37.78.221, 37.78.222,)	
37.78.226, 37.78.227,)	
37.78.228, 37.78.401,)	
37.78.402, 37.78.406,)	
37.78.407, 37.78.415,)	
37.78.416, 37.78.421,)	
37.78.423, 37.78.424,)	
37.78.430, 37.78.505,)	
37.78.507, 37.78.508,)	
37.78.601, 37.78.602,)	
37.78.606, 37.78.801,)	
37.78.806, 37.78.810,)	
37.78.811, 37.78.817,)	
37.78.830, 37.78.832,)	
37.82.101, 37.82.102 and)	
37.82.201 and the repeal of)	
ARM 37.78.831, 37.82.836,)	
37.82.837 and 37.78.838)	
pertaining to recipient)	
overpayments and medical)	
assistance definitions in)	
medical assistance and)	
pertaining to the temporary)	
assistance for needy families)	
(TANF) program)	

TO: All Interested Persons

1. On December 17, 2002, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption, amendment and repeal of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on December 9, 2002, 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 proposed to be adopted provides as follows:

RULE I RECIPIENT OVERPAYMENTS (1) The department shall take reasonable and appropriate actions to recover each recipient overpayment, as defined in ARM 37.82.102, of medicaid benefits when the recipient overpayment is the result of the recipient's intentional or unintentional act or omission. The department shall also take reasonable and appropriate actions to recover overpayments that result from continued benefits which were paid pending the outcome of a fair hearing that is ultimately decided, at least in part, in the department's favor.

(2) The department shall not seek to recover a recipient overpayment, as defined in ARM 37.82.102, of medicaid benefits when the entire recipient overpayment is the result of an error made by the department.

(3) A recipient overpayment shall be calculated to include:

(a) the total amount of medicaid benefits paid to or on behalf of an ineligible recipient; or

(b) the difference between the amount of an accurately calculated monthly incurment and the amount of monthly incurment the recipient paid toward an incorrectly calculated incurment.

(4) The medicaid recipient and any other individual who has a legal obligation to support the medicaid recipient is liable to the department for any recipient overpayment sought to be recovered by the department. The department may use all legal means to recover the overpayment.

AUTH: Sec. 53-2-201, 53-4-212 and 53-6-113, MCA
IMP: Sec. 53-6-111, MCA

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

37.78.101 FAIM FINANCIAL ASSISTANCE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF): PURPOSE (1) These rules implement ~~the demonstration project entitled families achieving independence in Montana (FAIM)~~ Montana's TANF program authorized under section ~~1115~~ 401 of the Social Security Act, 42 USC ~~1315~~ 601, et seq. The purpose of this project is to provide temporary assistance for needy families and to assist families in obtaining or advancing in their employment or finding alternatives to public assistance where employment is precluded by disability or other causes.

~~(2) The demonstration project was implemented in some counties in February 1, 1996 and in all counties by February 1, 1997. The demonstration project shall end no later than the last day of the 32nd quarter ending after the deemed beginning date.~~

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

37.78.102 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF):
FEDERAL REGULATIONS ADOPTED BY REFERENCE (1) remains the same.

(2) The Montana TANF cash assistance manual in effect July 1, 2002 and manual updates effective July 1, 2002 are January 1, 2003 is hereby adopted and incorporated by this reference. A copy of the Montana TANF cash assistance manual and manual updates are is available for public viewing at each local office of public assistance, and at the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. ~~The proposed manual~~ Manual updates are also available on the department's website at www.dphhs.state.mt.us.

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

37.78.106 FAIM FINANCIAL ASSISTANCE TANF: SAFEGUARDING AND SHARING INFORMATION (1) Use of information concerning applicants for or participants in ~~FAIM financial assistance TANF~~ is restricted to purposes directly connected with the administration of ~~the FAIM project~~ TANF and other federally assisted programs which provide assistance to individuals on the basis of need.

(2) The department may use or share confidential information concerning an applicant for or participant in ~~FAIM financial assistance TANF~~, without notice or permission of the person for the following purposes:

(a) administration of ~~FAIM financial assistance TANF~~ or any of the other federal programs listed in (4);

(b) reporting of child abuse and neglect to an appropriate agency or authority or responding to a request for information from an appropriate agency or authority investigating child abuse or neglect; ~~or~~

(c) the conduct of child support activities; or

(d) for other purposes authorized by law.

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

(4) Other federal programs for which confidential applicant information may be used include the following:

(a) through (p) remain the same.

(q) any other federal or federally assisted program providing assistance in cash, in-kind or in services, directly to recipients on the basis of need.

(5) The department, without notice to or the permission of an applicant or participant, may release the current address of the person to a federal, state or local law enforcement officer, if the officer ~~provides in the request the name of~~ identifies the person and satisfactorily demonstrates:

(a) through (6) remain the same.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-105, 53-2-201, 53-2-211, 53-3-111 and 53-4-211, MCA

37.78.215 FAIM FINANCIAL ASSISTANCE TANF: TANF CASH ASSISTANCE; CHILD SUPPORT ENFORCEMENT COOPERATION REQUIREMENTS

(1) Except as provided in (2), in every FAIM financial TANF cash assistance case where one or both of the minor child's parents is absent from the home, the specified caretaker relative must:

(a) and (b) remain the same.

(2) In cases of ~~single-parent adoption~~ where there is only one adoptive parent or where the parental rights of the child's parents have been terminated by a court of competent jurisdiction, the applicant or recipient is not required to assign child or medical support rights or cooperate in establishing paternity or obtaining child support.

(3) The requirement of cooperation in establishing paternity and obtaining child support may be waived if good cause is shown. For purposes of this rule, good cause exists if one of the following circumstances exists, and as a result of that circumstance cooperation would be detrimental to the child:

(a) and (b) remain the same.

(c) the caretaker relative ~~is planning to relinquish or~~ has relinquished the child to a public or licensed social agency for the purpose of adoption;

(d) through (6) remain the same.

(7) The ~~county~~ local office of public assistance will promptly notify the child support enforcement division of all cases in which it has been determined that there is good cause for refusal to cooperate in establishing paternity or obtaining child or medical support.

(8) remains the same.

~~(9) When a parent or parents have been determined ineligible for assistance due to failure to assign child or medical support rights or cooperate in establishing paternity or in obtaining child or medical support, the children in the household will nevertheless be eligible for assistance.~~

~~(10)~~ (9) When a parent or parents fail or refuse without good cause to assign child or medical support rights or to cooperate in establishing paternity or obtaining child or medical support, the children in the all household as well as the parents members will be ineligible for assistance.

AUTH: Sec. 53-4-212, MCA

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

37.78.220 FAIM FINANCIAL ASSISTANCE TANF: ELIGIBILITY, CITIZENSHIP REQUIREMENTS

(1) Except as provided by this rule, only U.S. citizens and qualified aliens are eligible for FAIM financial TANF cash assistance.

(2) A qualified alien is a noncitizen who:

(a) was admitted to the U.S. as a refugee under section 207 of the Immigration and Nationality Act (INA) for only seven years from the date of entry;

(b) was granted asylum under section 208 of the INA for only seven years from the date of entry;

(c) has had deportation withheld under section 243(h) of

the INA for only seven years from the date of entry; or

(d) through (i) remain the same.

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

(k) through (k)(iii) remain the same but are renumbered (j) through (j)(iii).

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

(i) through (v) remain the same.

(vi) the alien entered the U.S. before August 22, 1996 and can be credited with 40 qualifying quarters of work, cumulated as defined in (4) and (5); or

(vii) remains the same.

(m) through (o) remain the same but are renumbered (l) through (n).

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

~~(q) (p)~~ is the unmarried child of a an alien veteran or alien on active duty as described in (2)~~(m)~~ (l) through ~~(o)~~ (n); or

(q) is a victim of a severe form of trafficking as determined by the U.S. department of health and human services for only seven years from the date of entry.

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

(a) through (c) remain the same.

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

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

(f) Cuban/Haitian entrants as defined in section 501(e) of the Refugee Assistance Act of 1980;

(g) Amerasian immigrants admitted to the U.S. pursuant to section 584 of the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988;

(h) enrolled members of a federally-recognized Indian tribe under section 4(e) of the Indian Self Determination and Education Assistance Act; or

(i) a victim of a severe form of trafficking as determined by the U.S. department of health and human services.

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

(a) through (d) remain the same.

(5) No work quarters may be credited for any period after December 31, 1996 if ~~the alien or~~ any of the persons listed in

(4)(b) (a) through (d) received any federal means-tested benefits during the period the work quarters were earned.

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

(a) through (e) remain the same.

(7) A person must be a U.S. citizen to be eligible for non-financial assistance.

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

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

37.78.221 FAIM FINANCIAL ASSISTANCE TANF: RESIDENCY

(1) There is no durational residency requirement for ~~FAIM financial assistance~~ TANF. Any resident of Montana who meets all other eligibility requirements may receive ~~FAIM financial assistance~~ TANF.

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

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

37.78.222 FAIM FINANCIAL ASSISTANCE TANF: TANF CASH ASSISTANCE; DENIAL OF BENEFITS TO STRIKERS

(1) Participation in a strike does not constitute good cause to leave, or to refuse to seek or accept, employment.

(2) ~~FAIM financial~~ TANF cash assistance benefits will be denied to any family for any month in which any caretaker relative with whom the dependent child is living is, on the last day of the month, participating in a strike.

(3) and (4) remain the same.

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

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

37.78.226 FAIM FINANCIAL ASSISTANCE TANF: TANF CASH ASSISTANCE; PLACE OF APPLICATION

(1) Applications for ~~FAIM financial TANF cash~~ assistance ~~must may~~ be made ~~at the office of public assistance in the county where the person lives~~ in any office of public assistance in Montana on behalf of a minor child. When conditions preclude a person from visiting the office of public assistance to make application, he shall have an opportunity to make application at a mutually agreed place, ~~or~~ through a home visit by the worker or by mail.

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

IMP: Sec. 53-2-201, 53-4-211 and 53-4-233, MCA

37.78.227 FAIM FINANCIAL ASSISTANCE TANF: INVESTIGATION OF ELIGIBILITY

(1) remains the same.

(2) If a case is selected for program compliance review for any program, the client must cooperate.

AUTH: Sec. 53-2-201 and 53-4-212, MCA
IMP: Sec. 53-2-201, 53-4-211 and 53-4-233, MCA

37.78.228 FAIM FINANCIAL ASSISTANCE TANF: TANF CASH ASSISTANCE; INITIAL PAYMENT AND REDETERMINATION OF ELIGIBILITY

(1) remains the same.

(2) Periodic investigations will be made of all FAIM TANF participants to determine whether continuing eligibility to receive assistance exists, at least once every 12 months, but may be made at any time if circumstances require.

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

37.78.401 FAIM FINANCIAL ASSISTANCE TANF: TANF CASH ASSISTANCE; RESOURCES (1) This rule governs the treatment of resources for purposes of all ~~programs and types of~~ benefits in the ~~FAIM project with the exception of food stamp benefits~~ TANF cash assistance program. ~~The treatment of resources for food stamp purposes shall be governed by ARM 37.78.1001, et seq.~~

(2) In determining eligibility for FAIM financial TANF cash assistance, the department will count the equity value as defined in ARM 37.78.103 of all resources available to any member of the filing unit, unless there is a specific provision for the exclusion of the resource elsewhere in this rule or in federal law. A resource is considered available ~~both when~~ if actually available ~~and or~~ when the applicant or participant has a legal interest in the resource and the legal ability to make it available for support and maintenance. In the case of qualified aliens, as defined in ARM 37.78.220, the income and resources of the alien's sponsor and the alien's sponsor's spouse must be considered in determining the eligibility of the alien. A sponsor is any person over the age of 18 who petitions for admission of an alien under section 213 of the Immigration and Nationality Act.

(3) If the total value of the filing unit's countable resources exceeds \$3,000, the filing unit is ineligible for assistance. Eligibility is determined on the basis of the countable resources as of the date of application and the first moment of the first day of each month for which ongoing assistance is being determined. If the filing unit's countable resources exceed the \$3,000 resource limit on the first day of the month, the filing unit is ineligible for that entire month, even if the value of the filing unit's countable resources drops below \$3,000 later in the month.

(4) The following resources in which a member of the filing unit has a personal ownership interest are excluded in determining eligibility:

(a) and (b) remain the same.

(c) tools, and equipment and other assets essential for the self-employment of a member of the filing unit;

(d) one burial space for each member of the filing unit and not more than \$1,500 designated under a funeral agreement for burial arrangements for each member or irrevocable burial

accounts or agreements;

(e) through (l) remain the same.

(m) student financial assistance for post-secondary education made for attendance costs under Title IV of the Higher Education Act or bureau of Indian affairs student assistance programs as per the Higher Education Technical Amendment Act of 1987. The exclusion lasts only as long as the recipient of assistance is continuously attending an institution of higher education, excluding regular school breaks such as semester breaks or summer vacations; and

(n) earned income tax credit (EITC) advance payments and refunds;

(o) trust fund or similar legal document which cannot be accessed by the grantor, beneficiary or trustee for the purpose of providing for the health, welfare, maintenance or daily needs of the beneficiary;

(p) annuities from which payments are being made;

(q) funds which have been prorated as income, during the period for which they have been prorated;

(r) governmental disaster payments designated for restoration of a home damaged in a disaster if the household is subject to legal sanction if funds are not used as intended; or

(s) funds which are held in an escrow account during the household's participation in a department of housing and urban development family self-sufficiency program.

(5) The exclusions in (4) do not apply when members of the filing unit no longer have a personal ownership interest in the resource.

~~(5) (7) State and federal income tax refunds are a countable resource in the month received.~~

~~(6) If the needs of a member of the assistance unit are removed from the grant due to a sanction or disqualification, the resources of that member will nevertheless be counted in determining the assistance unit's eligibility and grant amount.~~

~~(7) (6) If an individual would be required by ARM 37.78.208 to be included in the assistance unit except that the individual is not eligible because they are not a U.S. citizen or qualified alien, or they are a parole probation violator, fleeing felon, a person who has committed an intentional program violation, or a convicted drug felon as stated in ARM 37.78.206(3)(f) through (h) and 37.78.505, the resources of that individual will be counted in determining the assistance unit's eligibility and grant amount even though the individual's needs are not included in the grant.~~

AUTH: Sec. 53-4-212, MCA

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

~~37.78.402 FAIM FINANCIAL ASSISTANCE TANF: TREATMENT OF INCOME (1) This rule governs the treatment of income for purposes of all programs and types of benefits in the FAIM project with the exception of food stamp benefits the TANF program. The treatment of income for food stamp purposes shall be governed by ARM 37.78.1001 et seq.~~

(2) All available income of any member of the filing unit is counted in determining eligibility and benefit amount for TANF cash assistance, unless a specific provision elsewhere in this chapter provides that the income will be excluded, disregarded, or otherwise not counted. Income is considered available both when actually available and when the applicant or participant has a legal interest in it and the legal ability to make the income available for support and maintenance.

(3) Eligibility and grant amount for TANF cash assistance is determined for each benefit month. The assistance unit's future eligibility with regard to income and grant amount is determined by prospectively evaluating the income expected to be received by members of the filing unit in the month of application and future months. The department estimates total income to be received by the filing unit in the future based on their current circumstances and available information about changes in their circumstances reasonably anticipated to occur in the future.

(4) through (6) remain the same.

~~(7) If the needs of a member of the assistance unit are removed from the grant due to a sanction or disqualification, the income of that member will nevertheless be counted in determining the assistance unit's eligibility and grant amount.~~

~~(8) (7) If an individual would be required by ARM 37.78.208 to be included in the assistance unit except that the individual is not eligible because they are not a U.S. citizen or qualified alien, or they are a parole probation violator, fleeing felon, a person who has committed an intentional program violation or a convicted drug felon as stated in ARM 37.78.206(3)(f) through (h) and 37.78.505, the income of that individual will be counted in determining the assistance unit's eligibility and grant amount even though the individual's needs are not included in the grant.~~

(8) All earned income of the adults included in the filing unit is counted in determining eligibility for TANF non-financial assistance.

(9) Eligibility for TANF non-financial assistance is determined by evaluating the earned income expected to be received by the adults included in the filing unit in the month of application. The department estimates the total income to be received by the filing unit based on their current circumstances.

(10) In the case of earned income from self-employment, allowable business expenses are subtracted from gross receipts to arrive at gross income.

(a) Business expenses means costs directly related to the production of goods or the furnishing of services and without which the goods could not be produced or the services furnished. Allowable business expenses include the costs of materials, labor, tools, rental equipment, supplies and utilities.

(b) Allowable business expenses do not include depreciation, entertainment expenses, personal work related expenses such as clothing or transportation to the site of employment, purchase of capital equipment, or payments on

principal of loans for capital equipment, or payments on principal of loans for capital assets or durable goods.

AUTH: Sec. 53-4-212, MCA

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

37.78.406 FAIM FINANCIAL ASSISTANCE TANF: TANF CASH ASSISTANCE; INCOME DISREGARDS AND INCOME DEEMING (1) This rule governs income disregards and deeming for purposes of FAIM financial TANF cash assistance with the exception of food stamp benefits, which are governed by ARM 37.78.1001 et seq.

(2) When testing net countable monthly income and determining the amount of the assistance payment, the following amounts are subtracted in the order listed from the earned income of each wage earner in the assistance unit after exclusions provided in ARM 37.78.416:

(a) ~~in the case of an assistance unit receiving benefits under the pathways and job supplement programs, \$200 from the earned income of each wage earner and in the case of assistance units receiving benefits in the community services program, \$100 from the earned income of each wage earner, except that neither of these disregards applies to \$200 of monthly earnings for each wage earner, except in the case of individuals whose income is deemed as described in (3);~~

(b) 25% of the remaining earned income after the disregards in (1)(a) have been applied; +

~~(i) in the case of an assistance unit receiving benefits in the job supplement program; and~~

~~(ii) in the case of an assistance unit receiving benefits in the pathways program only if:~~

~~(A) the assistance unit's net monthly income is less than the NMI standard without applying the 25% disregard, but after the \$200 work expense disregard, the dependent care disregard, and the obligated support disregard have been deducted;~~

~~(B) the assistance unit's gross monthly income is less than the GMI standard; or~~

~~(C) the assistance unit has received a cash assistance grant in one of the four months immediately preceding the benefit month.~~

~~(iii) Participants in the CSP do not receive the 25% disregard.~~

(c) ~~in the pathways, job supplement and community services programs, the cost of care for each working member's minor child or incapacitated adult for hours when the member is working or in employment and training activities, not to exceed \$200 per month per child or incapacitated adult, but only if the minor child or incapacitated adult lives in the same household and is either a member of the assistance unit or would be a member of the assistance unit except for the fact that the minor child or incapacitated adult is receiving supplemental security income benefits.~~

(i) remains the same.

(3) ~~When testing net monthly income and determining the amount of the assistance payment, the The amount of any child~~

support payments ~~made paid~~ under court order by any member of the assistance unit to any individual not living in the household is subtracted from the income of the household, whether earned or unearned or both.

(4) Subject to the disregards in (5)(a) through (d), income of the following individuals must be deemed when determining eligibility:

(a) remains the same.

(b) for a pregnant woman ~~who has no other eligible child in the home, in the last trimester of her pregnancy,~~ the income of her spouse or of the father of her unborn child if the father resides with her; and

(c) remains the same.

(5) The following amounts shall be subtracted from the income of the individuals specified in (4)(a) through (c) whose income is deemed:

(a) remains the same.

(b) an amount of income equal to the net monthly income standard for a family consisting of the individual and the individual's natural or adopted children, if such children are claimed as dependents for federal income tax purposes and are living in the same household as the individual, but are not included in the FAIM TANF cash assistance unit;

(c) through (6) remain the same.

AUTH: Sec. 53-4-212, MCA

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

37.78.407 FAIM FINANCIAL ASSISTANCE TANF: TANF CASH ASSISTANCE; LIMITS ON DISREGARDS (1) remains the same.

AUTH: Sec. 53-4-212, MCA

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

37.78.415 FAIM FINANCIAL ASSISTANCE TANF: TANF CASH ASSISTANCE; EXCLUDED EARNED INCOME (1) This rule governs excluded earned income for purposes of FAIM financial TANF cash assistance ~~but not food stamp benefits, which are governed by ARM 37.78.1001 et seq.~~

(2) In testing gross ~~and net~~ monthly income and in determining the monthly grant, the following earned income is to be excluded:

(a) the earned income of a minor child as defined in ARM 37.78.103 who is attending elementary or high school, ~~regardless of the child's age;~~

(b) remains the same.

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

(d) all Workforce Investment Act (WIA) work experience income; and

(d) remains the same but is renumbered (e).

AUTH: Sec. 53-4-212, MCA

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

37.78.416 FAIM FINANCIAL ASSISTANCE TANF: TANF CASH ASSISTANCE; EXCLUDED UNEARNED INCOME (1) This rule governs excluded unearned income for purposes of FAIM financial TANF cash assistance but ~~not food stamp benefits, which are governed by ARM 37.78.1001, et seq.~~

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

(a) through (e) remain the same.

(f) the following income of enrolled tribal members:

(i) and (ii) remain the same.

(iii) per capita payments not to exceed \$2,000 per individual per payment;

(iv) and (v) remain the same.

(g) complementary assistance from other agencies or organizations which provides or pays for goods or services not intended to be covered by ~~pathways or CSP~~ TANF cash assistance;

(i) through (s) remain the same.

(t) reimbursement made to a member of the assistance unit, including ~~repayment of loans and~~ repayment of monies spent;

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

~~(v) one time employment related payments;~~

~~(w)~~ (v) supplemental security income (SSI) payments received by a person who lives with the assistance unit, except that any portion of the SSI payment which is directly contributed to the assistance unit is not excluded;

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

~~(y)~~ (x) money received pursuant to a valid loan as defined in ARM 37.78.103; and

~~(z)~~ (y) emergency assistance payments provided under ARM 37.78.601 and 37.78.602.

AUTH: Sec. 53-4-212, MCA

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

37.78.421 FAIM FINANCIAL ASSISTANCE TANF: TANF CASH ASSISTANCE; LUMP SUM PAYMENTS (1) This rule governs lump sum payments for purposes of FAIM financial TANF cash assistance but ~~not food stamp benefits, which are governed by ARM 37.78.1001, et seq.~~

(2) remains the same.

(3) The assistance unit may lose eligibility for one or more months if, when the lump sum payment is added to all other countable resources, the total exceeds the \$3,000 resource limitation. ~~To determine how long the assistance unit will be ineligible, if at all, the amount of the payment is divided by \$3,000. If the figure obtained by such division is one or more, the assistance unit will be ineligible for that many months.~~

The household will be ineligible as long as the total countable resources exceed the \$3,000 resource limitation.

~~(4) The period of ineligibility, if any, begins the month following the receipt of the lump sum payment. After the period of ineligibility has ended, any part of the payment remaining and available as defined in ARM 37.78.402 is considered a resource following the period of ineligibility if the assistance unit reapplies for assistance.~~

~~(5) If receipt of a non-recurring lump sum in excess of the resource limitation is reported or discovered after the month of receipt, the ineligibility period is calculated as stated in (2) above. As provided in ARM 37.78.430, an overpayment of benefits may exist.~~

~~(6) The period of ineligibility will be recalculated with respect to the remaining months if:~~

~~(a) an error was made in the original calculation of the ineligibility period; or~~

~~(b) the funds have become unavailable for reasons beyond the control of the assistance unit.~~

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

37.78.423 FAIM FINANCIAL ASSISTANCE TANF: TANF CASH ASSISTANCE; PROTECTIVE PAYMENTS PAYEE (1) through (2)(g) remain the same.

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

37.78.424 FAIM FINANCIAL ASSISTANCE TANF: RESTRICTIONS ON ASSISTANCE PAYMENTS (1) ~~Pathways and community services TANF~~ program monthly benefit payments are made directly to eligible persons for their own use except in cases of protective payees. TANF cash assistance payments are made either by check, direct deposit, or by placing benefits in an electronic benefit transfer (EBT) account. The check may not be mailed to the grantee in care of a creditor delivered through indirect representation. Payments may not be forwarded from one address to another.

~~(2) Cash assistance TANF payments, including but not limited to employment and training supportive services payments, and one-time employment related payments, are made directly to the participant, protective payee or vendor.~~

~~(3) and (4) remain the same.~~

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

37.78.430 FAIM FINANCIAL ASSISTANCE TANF: UNDERPAYMENTS AND OVERPAYMENTS (1) The department may recover the value of any ~~FAIM financial assistance (FFA) TANF~~ benefits paid to or on behalf of an assistance unit to which it was not entitled, regardless of whether the overpayment occurred due to an error

by the department, a nonfraudulent action or omission by the FAIM TANF participant, or fraudulent action by the FAIM TANF participant.

(2) remains the same.

~~(3) Recovery of food stamp over issuances shall be made in accordance with the requirements of 7 CFR 273.18, as amended through January 1, 1997, and provisions of section 13 of the Food Stamp Act of 1977, 7 USC 2022, as amended by section 844 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which are hereby adopted and incorporated by reference. Copies of 7 CFR 273.18, as amended by PRWORA may be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210. To the extent that the federal regulations at 7 CFR 273.18 are inconsistent with any provision of the Food Stamp Act of 1977 as amended by PRWORA, the provisions of the Food Stamp Act shall take precedence.~~

~~(4) (3) Recovery of TANF cash assistance, medical assistance, and all other FFA benefits excluding food stamps shall be made as follows:~~

~~(a) through (c)(ii) remain the same.~~

~~(5) (4) When an assistance unit has been underpaid due to an error by the department or the participant or due to any other reason, the underpayment shall be corrected by issuing a supplemental payment in the amount by which the assistance unit was underpaid.~~

~~(a) remains the same.~~

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

IMP: Sec. 53-2-108, 53-2-201 and 53-4-211, MCA

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

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

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

individual will be presented with the following:

(a) through (f) remain the same.

(4) If the individual does not sign a waiver of the right to an ADH at the pre-hearing meeting in the county local office, an ADH shall be scheduled and the individual alleged to have committed an IPV shall be sent a written notice of the hearing at least 30 days prior to the date of the hearing.

(a) through (9)(d) remain the same.

(10) If it is determined through an ADH that an individual committed an IPV or if the individual alleged to have committed an IPV signs a waiver of right to ADH, the period of disqualification shall be:

(a) ~~F~~for IPVs involving misrepresentation of the individual's residence to obtain FAIM TANF cash assistance benefits in two or more states simultaneously, 10 years;

(b) through (13) remain the same.

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

AUTH: Sec. 53-4-212, MCA

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

37.78.507 FAIM TANF: REPORTING REQUIREMENTS (1) All applicants for or participants in FAIM TANF cash assistance must report any change of address and any change in income, resources, household composition or other circumstances which may affect eligibility or benefit amount to the eligibility case manager as soon as possible, but in any event within 10 calendar days after the applicant or participant has knowledge of the change.

AUTH: Sec. 53-4-212, MCA

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

37.78.508 ~~FAIM FINANCIAL ASSISTANCE:~~ TANF: TANF CASH ASSISTANCE; GOOD CAUSE (1) A FAIM TANF cash assistance participant's failure to comply with a ~~pathways or community service~~ program requirement, such as a requirement under a family investment agreement, including but not limited to participation in an employment and training activity or the requirement of accepting or maintaining suitable employment, shall not result in imposition of a sanction if good cause exists for the failure to comply.

(2) If it appears that a participant has failed to comply with a FIA requirement, the participant shall be given the opportunity to provide information to the ~~FAIM coordinator~~ eligibility case manager or work readiness component (WoRC) case manager regarding the alleged noncompliance and the reasons for the alleged failure to comply. If the ~~FAIM coordinator or WoRC case manager~~ committee that reviews the sanction determines from the available information, including any information provided by the participant, that there was a failure to comply

and that good cause for the noncompliance does not exist, a sanction shall be imposed in accordance with ARM 37.78.506.

(3) through (5)(g) remain the same.

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

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

37.78.601 EMERGENCY ASSISTANCE (1) Financial assistance and/or services may be authorized to meet the emergency needs of a child under the age of 21, who lives with a specified relative as defined in ARM 37.78.207 or who is under age 18 and has lived with a specified relative within the six months prior to the request date in a place of residence maintained by the relative as the child's home, in the following circumstances:

(a) through (5) remain the same.

(6) Emergency assistance shall not be provided to pay for the following:

(a) through (j) remain the same.

(k) any travel expense that would be payable by any source including but not limited to medicaid, ~~FAIM or TANF cash assistance~~ supportive services ~~or one-time employment related payments~~.

(7) through (9)(b) remain the same.

(10) Receipt of emergency assistance does not count as using any month of time-limited FAIM TANF cash assistance.

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

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

37.78.602 EMERGENCY ASSISTANCE PROCEDURES FOLLOWED IN DETERMINING ELIGIBILITY (1) and (2) remain the same.

(3) To receive emergency assistance, an applicant must show:

(a) that a child who is under the age of 21 is living with a relative specified in ARM 37.78.207 or is under age 18 and has lived with a specified relative within six months of the date of the request in a place of residence maintained by the relative as the child's home; and

(b) remains the same.

(4) Emergency assistance may be provided in addition to but not as a substitute for basic needs assistance, including but not limited to FAIM TANF cash assistance, tribal TANF family assistance or bureau of Indian affairs (BIA) general assistance.

(5) The completed request for emergency assistance shall be submitted to the ~~county~~ local office of public assistance. The applicant shall be notified by the department of the approval or reasons for denial of the request for emergency assistance.

(6) and (7) remain the same.

(8) An expedited administrative review of a denial of a request for emergency assistance will be available to applicants who request in writing such an expedited review within 5 five working days of the date of the denial. Such a review will be held within five working days of the date the request is

received by the county local office. Requests not made in accordance with these provisions will be processed according to the department's standard fair hearing procedures.

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

37.78.606 FAIM FINANCIAL ASSISTANCE TANF: TANF CASH ASSISTANCE; NEEDY PREGNANT WOMAN (1) remains the same.

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

37.78.801 FAIM TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING: PURPOSE

(1) These rules govern FAIM TANF cash assistance employment and training for persons who are recipients of the ~~pathways or community services programs of the families achieving independence in Montana (FAIM) project~~ TANF cash assistance program.

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

37.78.806 FAIM TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING: PARTICIPATION (1) A person who is eligible for the ~~pathways or community services~~ TANF cash assistance program is required to participate in FAIM employment and training as provided in these rules. ~~No one is exempt.~~ All adults, minor parents, teen parents, and minor children ~~between the ages of 16 or 17 and 18~~ who are not attending school or an equivalency program full time must participate in FAIM employment and training or activities as indicated in the FIA.

(2) Participants in single and two-parent households may, ~~on the basis of the screening guide as defined in ARM 37.78.103 and FAIM coordinator's recommendation,~~ be required to participate in the work readiness component (WoRC).

(3) Placement of persons into FAIM TANF employment and training services will be based upon the following factors:

(a) the suitability of the available services for meeting the person's needs as identified in the screening guide ~~and action plan~~ or by the FAIM coordinator eligibility case manager; and

(b) the availability of the necessary services, ~~;~~ and

~~(c) allowability under the community operating plan in effect in the county where the participant resides.~~

(4) Some FAIM TANF employment and training activities may differ from community to community based on available resources. Participants may be placed in any activities available in their community.

(5) A WoRC participant who loses eligibility for the ~~pathways program or CSP~~ TANF cash assistance program due to employment may, if the participant's case manager ~~and FAIM coordinator approve~~ approves, receive case management services

for up to 180 days after the last day of the last month of eligibility for FAIM TANF cash assistance.

AUTH: Sec. 53-4-212, MCA

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

37.78.810 FAIM TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING: WORK EXPERIENCE PROGRAM (WEX) (1) The work experience component is an activity of FAIM TANF employment and training designed to improve the employability of participants by assigning a participant to train in a nonprofit organization or public agency or in a for profit private agency. The specific purposes of the work experience component are to:

(a) through (4) remain the same.

AUTH: Sec. 53-4-212, MCA

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

37.78.811 FAIM TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING: PARTICIPATION REQUIREMENTS FOR EDUCATIONAL ACTIVITIES

(1) A teen parent who is under 18, who has not completed high school or its equivalent or any other teen student referred to FAIM TANF employment and training must participate in educational activities unless the ~~FAIM coordinator or WoRC operator~~ case manager designates or approves another activity.

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

AUTH: Sec. 53-4-212, MCA

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

37.78.817 FAIM TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING: TWO-PARENT FAMILIES PARTICIPATION AND OTHER REQUIREMENTS (1) The FAIM employment and training participation requirements for two-parent families are specified in ARM 37.78.216.

(2) Either one or both parents may be referred by the county eligibility case manager to WoRC if a referral is appropriate ~~based on the results of the screening guide as defined in ARM 37.78.103~~. If a parent is referred to WoRC, the parent will perform all participation hours specified in ARM ~~37.78.217~~ 37.78.216 in WoRC activities.

(3) Subject to the requirements of ARM 37.78.216, members of two-parent families may participate in the activities specified in ARM 37.78.807. ~~Additionally, one of the parents may be permitted to provide child care for a family member as that parent's WoRC activity during the hours when the other parent who is the work activity participant is engaged in WoRC activities.~~

AUTH: Sec. 53-4-212, MCA

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

37.78.830 FAIM TANF EMPLOYMENT AND TRAINING: JOB SEARCH

(1) and (2) remain the same.

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

37.78.832 FAIM TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING: SUPPORTIVE SERVICES (1) ~~Funds are Dependent upon available funding, money may be available to pay expenses that are, or may be, incurred in a benefit month, by a pathways/CSP TANF cash assistance participant to comply with his/her family investment agreement activities which include the mandatory eligibility requirements and employment/training activities.~~

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

(3) Supportive services payments may be provided as appropriate by the ~~FIA coordinator or service provider as defined in the community operating plan case manager.~~

(4) remains the same.

(5) Supportive services may be provided only if they are necessary to comply with the family investment agreement and ~~or are consistent with necessary for the participant's to accept or maintain employment goals.~~

(6) remains the same.

(7) Supportive service payments will not exceed \$1,000 per household per state fiscal year.

(8) Each participant is expected to cost share between 5% and 15% in expenses. This cost share can be through an actual outlay of cash or an in-kind contribution. Each community advisory council establishes guidelines for determining exceptions to the limits and cost share requirement.

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

37.82.101 MEDICAL ASSISTANCE, PURPOSE AND INCORPORATION OF POLICY MANUALS (1) remains the same.

(2) The department hereby adopts and incorporates by this reference the state policy manuals governing the administration of the medicaid program ~~that are in effect July 1, 2002. The manuals hereby adopted are the Family Medicaid Manual and the SSI Medicaid Manual and manual updates effective July 1, 2002 effective January 1, 2003.~~ The Family Medicaid Manual, the SSI Medicaid Manual and the proposed manual updates are available for public viewing at each local office of public assistance or at the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. The proposed manual updates are also available on the department's website at "www.dphhs.state.mt.us".

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141, MCA

37.82.102 MEDICAL ASSISTANCE, DEFINITIONS

~~(1)~~ (8) "Department" means the Montana department of public health and human services.

~~(2)~~ (18) "Medically necessary service" means a service or

item reimbursable under the Montana medicaid program, as provided in these rules:

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

~~(3)~~ (20) "Montana medicaid program" means the Montana medical assistance program authorized by Title 53, chapter 6, MCA and Title XIX of the Federal Social Security Act.

~~(4)~~ (25) "Provider" means an individual, company, partnership, corporation, institution, facility, or other entity or business association that has enrolled or applied to enroll as a provider of services or items under the Montana medicaid program.

~~(5)~~ (11) "Emergency service" means inpatient and outpatient hospital services that are necessary to treat an emergency medical condition as defined in 42 CFR 489.24(b).

~~(6)~~ (28) "Services" means services, items and any other amounts reimbursable under the Montana medicaid program.

~~(7)~~ (9) "Designated review organization" means either the department or other entity, contracting with the department or designated by law to determine the medical necessity of medical services rendered to recipients of public assistance.

~~(8)~~ (4) "Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

~~(9)~~ (14) "Fiscal agent" means an organization which processes and pays provider claims on behalf of the department.

~~(10)~~ (31) "Suspension of payments" means the withholding of all payments due a provider pending the resolution of the matter in dispute between the provider and the department.

~~(11)~~ (30) "Suspension of participation" means an exclusion from participation in the medicaid program for a specified period of time.

~~(12)~~ (33) "Termination from participation" means an exclusion from participation in the medicaid program.

~~(13)~~ (35) "Withholding of payments" means a reduction or adjustment of the amounts paid to a provider on pending and subsequently submitted bills for purposes of offsetting overpayments previously made to the provider.

~~(14)~~ (15) "Grounds for sanctions" are fraudulent, abusive, or improper activities engaged in by providers of medical assistance services.

~~(15)~~ (16) "Intern" means a medical practitioner involved in a period of on-the-job training as part of a larger educational program.

~~(16)~~ (27) "Resident" means a medical practitioner involved in a prolonged period of on-the-job training which may either be part of a formal educational program or be undertaken separately after completion of a formal program, sometimes in fulfillment of a requirement for credentialing.

~~(17)~~ (17) "License" means permission granted to an individual or organization by competent authority to engage in a practice, occupation or activity which would otherwise be unlawful. It is granted in the state where the practice, occupation or activity is carried out.

~~(18)~~ (7) "Certification" means the process by which a

governmental or non-governmental agency or association evaluates and recognizes an individual, institution or educational program as meeting predetermined standards.

~~(19)~~ (13) "Family size", Ffor SSI-related medically needy, "~~family size~~" means the number of eligible individuals and responsible relatives living in the same household unit. Ineligible persons living in the same household who are not responsible relatives are not counted when determining family size. For AFDC-related family-related medically needy, "family size" means the number of eligible individuals in the same household unit. Ineligible persons living in the same household, including ineligible responsible relatives, are not counted in determining family size.

~~(20)~~ (19) "Medically needy" means aged, blind or disabled individuals or families and children who are otherwise eligible for medicaid and whose income is above the prescribed limits for the categorically needy but within the limits prescribed in ARM Title 37, chapter 82, subchapter 11.

~~(21)~~ (12) "Families and children" refers to eligible members of families with dependent children who are financially eligible under AFDC-related family-related rules in subchapters 7, 11, and 13. In addition, this group includes individuals under ~~21~~ 19 who are not dependent children but who are financially eligible under the above-cited subchapters. It does not include individuals under age 21 whose eligibility for medicaid is based on the blindness or disability; for these individuals, the SSI-related rules in ARM Title 37, chapter 82, subchapters 9, 11, and 13 apply.

~~(22)~~ (6) "Categorically needy" means aged, blind or disabled individuals or families and children:

(a) who are otherwise eligible for medicaid and who meet the financial eligibility requirements of AFDC section 1951 of the Social Security Act, SSI, or an optional state supplement; or

(b) whose categorical eligibility is otherwise provided for in ARM Title 37, chapter 82, subchapters 7, 9, 11, and 13.

~~(23)~~ (3) "AFDC" means aid to families with dependent children under Title IV-A of the Social Security Act.

~~(24)~~ (29) "SSI" means supplemental security income under Title XVI of the Social Security Act.

~~(25)~~ (23) "Optional state supplement" means a cash payment made by the department, ~~under ARM 46.9.201 through 46.9.205,~~ to an aged, blind or disabled individual.

~~(26)~~ (21) "OAA" means old age assistance under Title I of the Social Security Act.

~~(27)~~ (2) "AB" means aid to the blind under Title X of the Social Security Act.

~~(28)~~ (1) "AABD" means aid to the aged, blind and disabled under Title XVI of the Social Security Act.

~~(29)~~ (5) "APTD" means aid to the permanently and totally disabled under Title XIV of the Social Security Act.

~~(30)~~ (22) "OASDI" means old age, survivors, and disability insurance under Title II of the Social Security Act.

~~(31)~~ (24) "Professional component" means the cost of

professional services of the physician including examination of the patient, when indicated, performance and/or supervision of the procedure, interpretation and reporting of the examination and consultation of the referring physician. It does not include the cost of personnel, materials, equipment or other facilities.

(32) "Technical component" means the cost of personnel, materials including visual contrast media and drugs, space, equipment and other facilities, but does not include the cost of ~~radio-isotopes~~ radioisotopes.

~~(33)~~ (34) "Total value" means the combined value of the professional component and the technical component of physician services.

~~(34)~~ (10) "Electronic media claims" means claims submitted to the Montana medicaid program via magnetic tape or another acceptable electronic media approved by the department in accordance with ARM 37.85.406.

(26) "Recipient overpayment" means an amount of public assistance paid to or on behalf of a recipient in excess of the amount that is proper.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-106, 53-6-107, 53-6-111, 53-6-113, 53-6-131 and 53-6-141, MCA

37.82.201 APPLICATION (1) and (1)(a) remain the same.

(2) Written application and place of application:

(a) The application must be submitted in writing:

(i) remains the same.

(ii) ~~at the office of public assistance in the county in which the person presently resides, except that institutionalized individuals may make application with the county in which the institution is located~~ of their choice.

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

(4) Automatic entitlement to medicaid:

(a) Except as provided for below, a separate application for medicaid will not be required from an individual if ~~he~~ the individual receives:

~~(i) FAIM financial assistance;~~

~~(ii)~~ (i) supplemental security income (SSI);

~~(iii)~~ (ii) mandatory state supplement; or

~~(iv)~~ (iii) optional state supplement.

(b) through (6)(c)(iii) remain the same.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-132 and 53-6-133, MCA

4. The rules 37.78.831 and 37.78.836 through 37.78.838 as proposed to be repealed are on pages 37-17138, 37-17145 and 37-17146 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-212, MCA

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

5. The Medicaid program is jointly funded by the State and Federal government for the purpose of providing covered medical care and services to eligible low income Montanans. The proposed amendment to ARM 37.82.102 and the proposed new rule are intended to create state legal authority for the Department to recover overpaid Medicaid assistance from recipients of the Medicaid program.

The proposed new rule I is necessary to establish in state law authority for the Department to seek recovery of an overpayment from a Medicaid recipient when the overpayment is the result of the recipient's intentional or unintentional act or omission or when continued benefits have been provided pending a fair hearing in which the Department ultimately prevails. Since federal law permits but does not require the Department to recover all recipient overpayments, it is necessary for the Department to specify in its administrative rules how the Department intends to exercise the discretion granted by federal law. The proposed rule does not permit the Department to seek recovery of a recipient overpayment when the recipient overpayment results from the Department's error. The proposed rule also describes how an overpayment is calculated and lists the persons from whom an overpayment may be recovered. It is necessary to establish authority to seek recovery of recipient overpayments so that the Department can be a responsible steward of the public monies supporting the Medicaid program.

The Department could have proposed a rule which required the Department to recover recipient overpayments even when the overpayment was caused by the Department. However, the Department believes that seeking repayment of overpaid funds when the Department caused the overpayment creates an undue hardship on a family that carries no blame for the error. Thus, the Department chose to forego recovery of overpayments in those circumstances where the Department, itself, caused the error.

The Department estimates that approximately 3,088 individuals may be subject to recovery efforts of recipient overpayments, and thus, may be impacted by these proposed amendments and adoption. The Department is unable to estimate the amount of overpaid assistance that could be recovered under the proposed amendments and adoption because the use and cost of medical care varies widely from individual to individual and cannot be estimated. The proposed rule adoption and amendments will not change the fees or benefits associated with the Medicaid program.

The TANF programs are funded in part, with federal block grant funds, which means that the Department receives a set amount of federal TANF funds per year regardless how many persons participate in the program or how much the Department chooses to pay for grants or other services to participants. Because it is a block grant program, some changes proposed in these rules may reduce expenditures for or services to an individual or family

but will not affect the Department's total expenditures for TANF programs. For example, the proposed limitations on supportive services in ARM 37.78.832 may reduce the amount an individual participant receives for supportive services but will not reduce the Department's total expenditures for supportive services.

The purpose of the TANF grant is to provide limited financial and non-financial assistance to low income Montanans who are striving for self-sufficiency. ARM 37.78.101 is the rule that authorizes the Temporary Assistance for Needy Families (TANF) cash assistance program and establishes the purpose of the TANF program. The proposed amendments to ARM 37.78.101 are necessary to delete the reference to the Families Achieving Independence in Montana (FAIM) demonstration project. FAIM was a demonstration waiver program of the Aid to Families with Dependent Children (AFDC) program. AFDC was eliminated with the passage of the Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 (PRWORA), which implemented TANF. Clarifying language was also added to ARM 37.78.101 to state that the purpose of TANF is to assist families in not only obtaining but also advancing in their employment. The changes to ARM 37.78.101 will not increase, decrease, or change the nature of any fees, costs, or benefits. There are approximately 6000 cases (approximately 17,000 individuals) presently receiving TANF cash assistance and all of which are impacted by the proposed rule amendments. Any deviation from these figures of those impacted by the amendments proposed for these rules will be indicated below.

The proposed amendments to ARM 37.78.102 and 37.82.101 are necessary in order to incorporate into the Administrative Rules of Montana the version of the policy manual effective January 1, 2003 and permit all interested parties as well as the public to comment on the Department's policies and to offer suggested changes. The manuals and draft manual material are available for review in each local Office of Public Assistance. Following is a brief overview of the changes being made to each manual section for the Family Medicaid Manual, the SSI Medicaid Manual and the TANF Cash Assistance Manual.

Family Medicaid Manual

Changes to the following Family-Related Medicaid manual sections are proposed only to update dates, update legal cites, and add clarifications to policies previously set forth in the manual sections. Clarifications are intended to eliminate confusion over current policy:

FMA 0-1 Table of Contents - update manual section versions
FMA 0-4 Glossary - update and clarify definitions
FMA 200 Coverage Groups - Overview - update legal cites and clarify policies
FMA 300 Nonfinancial Requirements - Overview - update legal cites

FMA 302-2 Temporary Absence - update legal cites
FMA 307-1 Third Party Liability - update legal cites
FMA 400 Resources - clarify policy
FMA 400-1 Resources - Index - update page numbers
FMA 402-1 Countable and Excluded Resources - clarify policies
FMA 802-1 Essential for Employment - update legal cites and clarify policies
FMA 804-1 EPSDT - update legal cites
FMA 900 Child Support - Overview - update legal cites
FMA 901-1 Child Support, Cooperation - update legal cites
FMA 902-3 Child Support, Periodic Review of Good Cause - update legal cites
FMA 903-1 Child Support, Failure/Refusal to Comply - update legal cites and clarify policies
FMA 904-1 Child Support, Continuation of Support Services - update legal cites and clarify policies
FMA 1101-1 Subsidized Adoption, Application Processing - update legal cites and clarify policies

Changes to Family-Related Medicaid manual section FMA 103-1 Application Filing are proposed to update legal cites, clarify policies previously set forth in this section, add policy regarding referrals to and from CHIP, and add new policy allowing applications for assistance to be submitted and accepted in any Office of Public Assistance in Montana, rather than requiring that an application be submitted in the county in which the applicant lives.

Proposed changes to Family-Related Medicaid manual sections FMA 103-2 Interview, FMA 104-1 Eligibility Determination and FMA 104-2 Timely Action are necessary to update legal cites and add new policy indicating Family-Related Medicaid applications are valid for 45 days, rather than the previous policy of 30 days.

Family-Related Medicaid manual section FMA 201-1 Family Medicaid is being updated to add an explanation that minor children who are emancipated either through marriage or court action are no longer considered dependents of their parents and to clarify policies previously set forth in this section.

Changes to Family-Related Medicaid manual sections FMA 201-10 Extended Medicaid, and FMA 201-13 Extended Child/Spousal Support are proposed to clarify previously set forth policies and to add information regarding new system processes regarding automated closure and processes used to determine whether or not a family may qualify for extended coverage.

Family-Related Medicaid manual section FMA 201-12 Breast & Cervical Cancer Treatment is being updated to clarify policy and to update the list of MBCHP Site Administrators.

Changes to Family-Related Medicaid manual section FMA 306-1 Managed Care are necessary to incorporate the current cost-sharing policy, to add that participants in the Extended

Child/Spousal Support Medicaid program are required to cooperate with Managed Care, and to clarify policy.

Family-Related Medicaid manual section FMA 501-2 Native American Income is being updated to correct a typographical error.

Proposed changes to Family-Related Medicaid manual section FMA 1501-1 Reporting Changes are necessary to incorporate revised policies regarding verification requirements.

Family-Related Medicaid manual section FMA 1504-1 Overpayments is a new manual section outlining the process to be followed in establishing overpayments for all Family-Related Medicaid programs.

Changes to Family-Related Medicaid manual section 1701-1 Tribal and Indian Agency Offices are necessary to update the names of tribal chairpersons for the reservations in Montana. The Crow Tribe is currently in the process of selecting a new tribal chairperson, and it is expected that this new chairperson's name will be added to the section prior to the date this material goes to print.

SSI Medicaid Manual

Changes to the following SSI-Medicaid manual are proposed only to update dates, update legal cites, and add clarifications to policies previously set forth in the manual sections. Clarifications are intended to eliminate confusion over current policy:

- MA 0-1 Table of Contents - update manual section versions
- MA 0-4 Glossary - update and clarify definitions
- MA-005 Nursing Home Residents - update income standards
- MA-006 Pickle Applicants - incorporate new SSI standards
- MA-011 Standard Payment Amounts - update standards
- MA-001 Categorically Needy - update income standards
- MA 105-1 Disability Determination Process - update legal cites and clarify policies
- MA 400 Resources - clarify policies
- MA 402-1 Countable and Excluded Resources - update and clarify policies
- MA 501-1 Unearned Income - update legal cites and clarify policies
- MA 502-1 Earned Income - update student income exclusion
- MA 601-2 Financial Responsibility of Relatives - update legal cites and clarify policies
- MA 702-1 Cash Option - update legal cites, form numbers and clarify policies
- MA 903-1 Resource Assessments - update minimum and maximum resource maintenance allowance
- MA 904-2 Income Disregards - update maximum community spouse monthly maintenance needs allowance

Changes to SSI-Medicaid manual section MA 103-1 Application, Eligibility Determination & Furnishing Assistance are proposed to update legal cites, clarify policies previously set forth in this section, list approved application forms, clarify that any application can be used for any program, and add new policy that applications for assistance may be submitted and accepted in any Office of Public Assistance in Montana, rather than requiring that an application must be submitted in the county in which the applicant lives.

Proposed changes to MA 001, MA 005, MA 006, MA 011 are necessary to update income standards, SSI standards and payment standards in order to comply with federal standards issued by the federal regulatory authority, the Centers for Medicare and Medicaid Services (CMS).

The proposed change to MA 502-1 is necessary to increase the student income exclusion to \$1,340 per month, up to a maximum of \$5,410 per year. This increase is necessary to comply with changes made by CMS.

The proposed changes to MA 903-1 and MA 904-2 are necessary to comply with the new maintenance allowances adopted by CMS.

Proposed changes to SSI-Medicaid manual section MA 201-1 include incorporation of Medicaid Bulletin B50, which states that Medicaid will be opened for SSI cash assistance recipients without a secondary resource evaluation by the county Office of Public Assistance regarding countable trusts. Additional proposals including updates to legal cites and clarifications regarding changes to the SSI payment policies, and how those changes affect Medicaid eligibility, in that although SSI payment does not start until the second month of eligibility for SSI, Medicaid will begin in the first month of eligibility for SSI.

Changes to SSI-Medicaid manual section MA 201-2 Presumptive Disability for SSI are proposed to incorporate Medicaid Bulletin B52, which explains updated SSI payment policies and their effects on Medicaid eligibility for the presumptively disabled. The effect is primarily that a presumptively disabled individual may receive up to seven months of Medicaid, although they only receive up to six months of SSI payments.

SSI-Medicaid manual section MA 404-1 is proposed to be changed to update legal cites, increase the uncompensated asset transfer divisor for determining asset transfer penalties, and clarify that the divisor to be used is based on the date of Medicaid application or the date of transfer, whichever is later.

Proposed changes to SSI-Medicaid manual section MA 601-3 include updates to legal cites and the correction of a TEAMS (automated eligibility system) coding instruction (from CS to CH). SSI-Medicaid manual section MA 800 proposed changes include updated

legal cites and removal of references to the Qualified Individual 1 and Qualified Individual 2 programs. These programs are federally mandated programs that will end effective 12/31/02 and will no longer be available.

Changes to SSI-Medicaid manual section MA 801-1 are proposed to include an update of legal cites, clarifications of existing policies, including the clarification QMB recipients are not subject to cost sharing requirements.

Proposed changes to SSI-Medicaid manual section MA 904-1 include updates to legal cites, various wording clarifications, updates and adjustments to existing examples, and the addition of a new example to increase clarity of existing policies.

SSI-Medicaid manual section MA 1501-1 proposed changes include updated legal cites, and a slight modification of the verification requirement. The wording is changed to clarify that only reported changes that result in changes to Medicaid eligibility, including increase or decrease in an incurment, must be verified. If a change in household circumstance is reported which does not result in a change to eligibility, category of coverage, or incurment amount, the change does not need to be verified.

Changes to SSI-Medicaid section MA 1701-1 includes an update of the names of tribal chairpersons for the reservations in Montana. The Crow Tribe is currently in the process of selecting a new tribal chairperson, and it is expected that this new chairperson's name will be added to the section prior to the date this material goes to print.

TANF Cash Assistance Manual

TANF Cash Assistance Manual 0-4 is updated to include new definitions and add clarifications to existing definitions.

TANF manual section 102-1 is updated to correct two mailing addresses for filing a Civil Rights complaint. This is necessary to make sure complaints are mailed to the correct addresses and processed timely.

TANF manual section 103-1 is updated to clarify that if an individual receives TANF cash assistance in another state they can receive assistance in Montana as long as the assistance received in another state is documented as unearned income to the household. Also, the policy is changed to extend the processing time for TANF cash assistance to 45 days. The proposed change keeps the policy consistent with the Medicaid program. Policy is also changed to allow individuals to file an application for TANF cash assistance in any Office of Public Assistance in any county in Montana. This proposed change decreases the barriers to applying for public assistance. The policy on home visits is clarified to state that prior notification to the household is not necessary when the home

visit is being made to facilitate case management. Prior notice is still required when the purpose of the home visit is to investigate eligibility.

The proposed changes to TANF manual section 104-1 are clarifications of policies previously set forth in the manual section. The manual section has just been rewritten to eliminate confusion over current policy.

TANF manual sections, 201-1 and 305-1, have been updated to clarify the "teen parent living independently policy". The definition of a teen parent living independently specifies that the teen is not living with a specified caretaker relative within the 5th degree of kinship. Teen parents living independently must be approved to live independently by a committee. This is not a change in policy but a policy clarification.

TANF manual sections 400, 400-1 and 402-1 have been updated and clarified. The sections pertain to resources and what resources are countable or excluded for purposes of TANF eligibility.

TANF manual sections, 500-1 and 502-1, have been updated to remove the foster grandparent program from the Older Americans Act income. Foster grandparents are paid under the Domestic Volunteer Services Act.

TANF manual section 501-2 has been updated to clarify that countable Native American Income should be coded on the unearned income screen not the earned income screen in the TEAMS system. This is not a change in policy but a correction of an error in the manual.

The policy in TANF manual sections, 702-1 and 702-3, has been changed to state that when an individual negotiates a new FIA following a sanction or at application, when the case has been closed within the last 90 days and non-compliance has been documented, a new 90-day conciliation period is started. The conciliation agreement is negotiated at the same time the FIA is negotiated or if the individual is being referred to the Work Readiness Component (WoRC) program, at the time their employability plan is negotiated with the WoRC case manager. This change in policy is necessary to assist families who have a documented history of non-compliance with the mandatory work requirements of the TANF cash assistance program. Other proposed changes to TANF manual section 702-3 are clarifications of policies previously set forth in the manual section.

TANF manual section 702-2 has been changed to reflect changes in the Sanction Recommendation form. There are no changes in policy, only in procedure. The form has been changed at the recommendation of the Case Managers who use the form in order to make it more user friendly.

TANF manual section 704-1 has been updated to include the procedure for requesting a supportive service payment either in the TEAMS system or through an e-mail to the fiscal bureau. There are not changes in policy or procedure. However, the procedure was not previously included in the manual.

TANF manual section 801-2 has been changed to clarify the current policy that a specified caretaker relative, who has been included in the grant, cannot request a child only grant for the same child when they have exhausted their 60 months of assistance. This is not a change in policy only a clarification.

TANF manual section 803-1 has been changed to clarify that an individual in Central Office will enter all out-of-state months into the TEAMS system. This is not a change in policy, only in procedure.

TANF manual section 1101-1 is being changed to clarify that a child who is eligible for Emergency Assistance must be under age 21 and living with a specified caretaker relative or be a child under age 18 who has lived with a specified caretaker relative within the most recent 6 months prior to the month of the request. This not a change in policy only a clarification of policy. The manual section is also being updated to clarify the procedure in TEAMS for determining if an individual has received emergency assistance in the previous 12 months. Again, this is not a change in policy but a clarification of the procedure.

TANF manual section 1501-1 is being changed to clarify that all changes in resources must be reported not just changes in liquid resources. This is not a change in policy, only a clarification of policy.

The proposed changes to TANF manual section 1503-1 are clarifications of policies previously set forth in the manual section. The manual section has just been rewritten to eliminate confusion over current policy.

The proposed changes to TANF manual section 1504-1 are clarifications of policies previously set forth in the manuals section. The manuals section has just been rewritten to eliminate confusion over current policy.

The proposed changes to TANF manual section 1505-1 include the updated procedure for referring a potential Intentional Program Violation (IPV) to Program Compliance (PC) for investigation and processing. This is a procedural change not a policy change. The section is also being updated to reflect that an individual who commits an intentional program violation will be responsible to pay back the entire amount of overpaid benefits and an additional 25% penalty.

Changes to TANF manual section 1701-1 are necessary to update

the names of tribal chairpersons for the reservations in Montana. The Crow Tribe is currently in the process of selecting a new tribal chairperson, and it is expected that this new chairperson's name will be added to the section before the date this material goes to print.

TANF manual section 1702-1 is being changed to reflect the changes in the names and or addresses of the WoRC contractors. There are no policy changes.

The proposed manual changes are available for public viewing at the same location where the policy manuals can be viewed on the Department's website, www.dphhs.state.mt.us/legal_section/proposed_manual_changes.htm. The policies or pages in the manuals that are being changed effective January 1, 2003 are clearly marked on the proposed manual replacement materials.

The incorporation and adoption of the manuals, including the proposed changes to the manuals, will not increase, decrease, or change the nature of any fees, costs, or benefits. There are approximately 6000 cases (approximately 17,000 individuals) presently receiving TANF cash assistance and all of which are impacted by the Department's administrative policies. There are approximately 77,216 individuals receiving medical care through the Medicaid program, all of which are impacted by the Department's administrative policies. The Department does not expect these amendments to have any significant impact on families in Montana.

ARM 37.78.106 outlines the rules for safeguarding and sharing information obtained because of the TANF cash assistance program. The proposed amendments to ARM 37.78.106 are necessary to delete the reference to the FAIM project.

The amendment to ARM 37.78.106(2) is necessary to clarify the rule. The department may use or share confidential information under certain circumstances. A provision was added that the department may use or share confidential information for other purposes authorized by law. The Department considered not making any changes to this rule but determined that clear rules and policy on confidentiality are necessary to operate TANF appropriately. The changes to ARM 37.78.106 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.215 is the rule that governs the requirement to cooperate with the child support enforcement division (CSED). The proposed amendments to ARM 37.78.215(2) are necessary to clarify when individuals must cooperate with CSED. The changes to ARM 37.78.215(9) and (10) are necessary to clarify that when a caretaker relative fails or refuses to comply with the requirement to assign child support rights or to cooperate with child support enforcement in establishing paternity and obtaining child support, the entire household is not eligible

for TANF cash assistance. This change brings the rules into compliance with federal regulations as stated in 45 CFR 264.30 (c)(2). The other option considered was to reduce the household grant by a minimum of 25%. The Department did not choose this option because it did not conform with the State's sanction policy, nor with the goals of that policy. The changes to ARM 37.78.215 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.220 is the rule that governs the citizenship requirements for TANF cash assistance. The proposed amendments to ARM 37.78.220 are necessary to clarify the rule and bring it into compliance with regulations outlined in the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-38). The addition of ARM 37.78.220(7) is necessary to establish the citizenship requirements for non-financial assistance. Non-financial assistance was established in 2001 Laws of Montana Chapter 465 (codified, in part, in 53-4-201, MCA) by the 57th Legislature. The differences in the citizenship requirements for TANF cash assistance and TANF non-financial assistance are intended to simplify the eligibility process for non-financial assistance so basic eligibility screening can be completed by community partners. The Department could have chosen to make the rules for TANF cash assistance and TANF non-financial assistance identical but did not choose this option because of the complicated eligibility rules for TANF cash assistance. The changes to ARM 37.78.220 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.221 outlines the residency requirements for the TANF cash assistance program. The proposed amendments to ARM 37.78.221 are necessary to delete the reference to the FAIM project. The changes to ARM 37.78.221 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.222 is the rule denying TANF cash assistance benefits to household's that include an individual who is on strike. The proposed amendments to ARM 37.78.222 are necessary to delete the reference to the FAIM project. The changes to ARM 37.78.222 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.226 is the rule stating where an application for TANF cash assistance can be filed. The policy is being changed to allow an individual to file an application for TANF cash assistance in any office of public assistance in Montana. The Department did not have to make this change but determined the proposed change decreases the barriers to applying for public assistance. The changes to ARM 37.78.226 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.227 and 37.78.228 are the rules governing the investigation of TANF eligibility and the initial payment. The proposed amendments to ARM 37.78.227 and 37.78.228 are necessary

to delete the reference to the FAIM project. The proposed amendments to ARM 37.78.227(2) are also necessary to require individuals who are selected for a program compliance review for any program to cooperate. The changes to ARM 37.78.227 and 37.78.228 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.401 is the rule that governs the treatment of resources for the TANF cash assistance program. The proposed amendments to ARM 37.78.401 are necessary to delete the reference to the FAIM project. Proposed changes to ARM 37.78.401(4), (5) and (7) are also necessary to clarify current policy and to specify that the exclusions are only available when resources are personally owned by a member of the filing unit. ARM 37.78.401(4)(o) through (s) were added to exclude certain forms of resources. These resources include certain inaccessible trust funds, annuities which produce income, funds that are being held which have been prorated as income, governmental disaster payments designated for restoration of a home damaged in a disaster, and funds which are held in an escrow account during the household's participation in a Department of Housing and Urban Development (HUD) self-sufficiency program. The Department made the choice to exclude these resources because they were either inaccessible, counted as income, or excluded by federal law or regulation. The changes to ARM 37.78.401 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.402 is the rule that governs the treatment of income for the TANF cash assistance program. The proposed amendments to ARM 37.78.402 are necessary to delete the reference to the FAIM project. Proposed changes to ARM 37.78.402(6) and (7) are necessary to clarify current policy. The addition of ARM 37.78.402(8) through (10) is necessary to establish the rules governing the treatment of income for the TANF non-financial assistance. TANF non-financial assistance was established in 2001 Laws of Montana Chapter 465 (codified, in part, in 53-4-201, MCA) by the 57th Legislature. The treatment of income is similar, but not identical to the treatment of income for TANF cash assistance. The differences are intended to simplify the eligibility process for TANF non-financial assistance so community partners can complete eligibility screening.

The Department could have chosen to make the rules for TANF cash assistance and TANF non-financial assistance identical but did not choose this option because of the complicated eligibility rules for TANF cash assistance. The changes to ARM 37.78.402 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.406 is the rule that governs income disregards and income deeming for TANF cash assistance. The proposed amendments to ARM 37.78.406 are necessary to delete the reference to the FAIM project. Formerly, the FAIM program had

three components: the pathways program, job supplement program (JSP), and community services program (CSP). These programs ended on June 30, 2001. Since these programs were removed from Title 53 of the Montana Code Annotated by the 57th Legislature, it is necessary to delete the obsolete references to those programs in the rules in order to prevent confusion. The proposed amendments to ARM 37.78.406(2)(c) and (3) are necessary to clarify the policy on income disregards and deductions. The proposed amendments to ARM 37.78.406(4)(b) are necessary to clarify the policy on income deeming. The changes to ARM 37.78.406 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.407 is the rule that governs the limits on disregards. The proposed amendments to ARM 37.78.406 are necessary to delete the reference to the FAIM project. The changes to ARM 37.78.407 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.415 is the rule that governs excluded earned income for TANF cash assistance. The proposed amendments to ARM 37.78.415 are necessary to delete the reference to the FAIM project. The proposed changes to ARM 37.78.415(2) are necessary to clarify current policy and to excluded Workforce Investment Act (WIA) work experience income as required by the Workforce Investment Act of 1998 (Public Law 105-220). The changes to ARM 37.78.415 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.416 is the rule that governs excluded unearned income for TANF cash assistance. The proposed amendments to ARM 37.78.416 are necessary to delete the reference to the FAIM project. Formerly, the FAIM program had three components: the pathways program, job supplement program (JSP), and community services program (CSP). These programs ended on June 30, 2001. Since these programs were removed from Title 53 of the Montana Code Annotated by the 57th Legislature, it is necessary to delete the obsolete references to those programs in the rules in order to prevent confusion.

The proposed elimination of the exclusion for one-time employment related payments in ARM 37.78.416(2)(v) is necessary because one-time employment related payments have been eliminated and so the income exclusion does not apply. The Department could have left this exclusion in place but chose to remove it in order to avoid confusion. The changes to ARM 37.78.416 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.421 is the rule that governs the treatment of lump sum payments for TANF cash assistance. The proposed amendments to ARM 37.78.421 are necessary to delete the reference to the FAIM project. The proposed amendments to ARM 37.78.421(3) through (6) eliminate the lump sum ineligibility period. The household

is ineligible for TANF cash assistance if the household's total countable resources exceed the \$3,000 resource limit established in ARM 37.78.401, and the household will remain ineligible as long as the total household resources exceed the \$3,000 resource limit.

The Department could have chosen not to eliminate the lump sum ineligibility period but the Department believed that this rule punished people who chose to spend their lump sum to provide for their family's future needs, such as purchasing a home so that their family had adequate shelter or a car so that the family had adequate transportation. Shelter and transportation are two necessary supports to becoming self-supporting. This change will allow some families to receive benefits who previously would have been ineligible due to lump sums and will result in the Department spending approximately \$6,916 more per fiscal year for these families. Because TANF is a block grant program, however, this change will not increase the Department's total expenditures for TANF programs, as previously explained.

ARM 37.78.423 is the rule that governs protective payments of TANF cash assistance. The proposed amendments to ARM 37.78.423 are necessary to delete the reference to the FAIM project. The changes to ARM 37.78.423 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.424 is the rule that governs the restrictions on TANF cash assistance payments. The proposed amendments to ARM 37.78.424 are necessary to delete the reference to the FAIM project. The proposed amendments to ARM 37.78.424(1) are also necessary to allow for the payment of TANF cash assistance benefits by check, direct deposit, or electronic benefit transfer. As technology has advanced additional delivery methods are available for TANF cash assistance benefits. The proposed amendments to ARM 37.78.424(2) eliminate the reference to one-time employment related payments, which are no longer being issued. The Department could have left the reference in but chose to remove it in order to avoid confusion. The changes to ARM 37.78.424 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.430 is the rule that governs underpayments and overpayments for TANF cash assistance. The proposed amendments to ARM 37.78.430 are necessary to delete the reference to the FAIM project. The proposed amendments to ARM 37.78.430(3) and (4) are necessary to delete the references to Food Stamps and Medicaid. The repayment of Medicaid and Food Stamps are governed under other rules and should not be included in the TANF cash assistance rule. The changes to ARM 37.78.424 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.505 is the rule that governs penalties associated with an intentional program violation. The proposed amendments to

ARM 37.78.505 are necessary to delete the reference to the FAIM project. The proposed amendments to ARM 37.78.505(2) are necessary to remove the reference to Food Stamps, which is governed under another rule. Other proposed changes to ARM 37.78.505 are necessary to clarify current policy. The changes to ARM 37.78.505 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.507 is the rule that governs the reporting requirements for TANF cash assistance. The proposed amendments to ARM 37.78.507 are necessary to delete the reference to the FAIM project. The other proposed changes are necessary to clarify who changes must be reported to. The changes to ARM 37.78.507 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.508 is the rule that governs good cause for non-compliance with the TANF cash assistance program. The proposed amendments to ARM 37.78.508 are necessary to delete the reference to the FAIM project. The changes to ARM 37.78.508 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.601 and 37.78.602 are the rules that govern the Emergency Assistance program. The proposed amendments to ARM 37.78.601 and 37.78.602 are necessary to delete the reference to the FAIM project. Other proposed changes to ARM 37.78.601 and 37.78.602 are necessary to delete outdated, obsolete references to one-time employment related payments.

The proposed amendments to ARM 37.78.601(6)(k) eliminate the reference to one-time employment related payments, which are no longer being issued since the program was discontinued when FAIM was eliminated. The Department could have left the reference in but chose to remove it in order to avoid confusion. The changes to ARM 37.78.601 and 37.78.602 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.606 is the rule that governs the issuance of TANF cash assistance to pregnant women with no other children. The proposed amendments to ARM 37.78.606 are necessary to delete the reference to the FAIM project. The changes to ARM 37.78.606 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.801, 37.78.806, 37.78.810, 37.78.811, 37.78.817, and 37.78.830 are rules that govern employment and training activities. The proposed amendments to ARM 37.78.801, 37.78.806, 37.78.810, 37.78.811, 37.78.817, and 37.78.830 are necessary to delete the reference to the FAIM project. Other proposed changes to ARM 37.78.801, 37.78.806, 37.78.810, 37.78.811, 37.78.817, and 37.78.830 are necessary to clarify the rules. The changes to ARM 37.78.801, 37.78.806, 37.78.810, 37.78.811, 37.78.817, and 37.78.830 will not increase, decrease,

or change the nature of any fees, costs, or benefits.

ARM 37.78.832 is the rule that governs supportive service payments for TANF cash assistance. The proposed amendments to ARM 37.78.832 are necessary to delete the reference to the FAIM project. The proposed amendments to ARM 37.78.832(1) are necessary to clarify that the payment of supportive services is dependent upon available funding and to clarify the rule. The proposed amendments to ARM 37.78.832(3) and (5) are necessary to clarify current policy. The proposed addition of ARM 37.78.832 (7) and (8) is necessary to establish a limit on the receipt of supportive services per household per fiscal year and to establish the expectation of a cost share by the participant. The Department did not have to add the fiscal year limit or cost share expectation but believed that because of limited supportive service funding both policies assured the equitable distribution of limited funds. These changes will not reduce or increase the Department's total expenditures for supportive services, but the total amount expended will now be divided among more families. Thus, individual families will receive less. It is estimated that 445 families per year will be affected by these changes and will have to pay a matching cost share of \$12.75 a month in either money or services in-kind. This will amount to \$5,673.75 a month total for the impacted 445 families, with a total of \$68,085 per year for cost share in the program.

The proposed amendments to ARM 37.82.102 are necessary to update the definitions in order to delete outdated references to aid to families with dependent children (AFDC) program and repealed rules, to bring order to the rule by putting the definitions in alphabetical order, and to add a new definition for "recipient overpayment". A definition of "recipient overpayment" must be added in order to distinguish between overpayments recovered from Medicaid recipients and overpayments recovered from Medicaid providers.

Changes to ARM 38.82.201 are necessary to allow individuals to apply for Medicaid in the county of their choice, instead of the county of residence. This change is being made to alleviate a potential barrier to applying for Medicaid in Montana. Another change to ARM 38.82.201 was necessary to correct information regarding automatic entitlement to Medicaid. Individuals receiving FAIM Financial Assistance (now known as TANF Cash Assistance) are no longer automatically entitled to Medicaid. A separate eligibility determination must be made for both TANF Cash Assistance and Medicaid. This change is necessary, as the two programs, Medicaid and TANF Cash Assistance, have been delinked. This change is expected to impact 77,216 Medicaid recipients. No fiscal impact is anticipated.

ARM 37.78.831 is a rule that governs on the job training for TANF cash assistance. The Department is proposing to eliminate ARM 37.78.831 because the Department does not currently operate

an on the job training program for TANF cash assistance. Individuals who receive TANF cash assistance may be assisted under the Work Force Investment (WIA) Act of 1998 (Public Law 105-220), which is not governed by the rules of the TANF program. The elimination of ARM 37.78.831 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.836 is the rule that governs good cause in employment and training. The Department is proposing to eliminate ARM 37.78.836 because the rule is duplicative and covered under ARM 37.78.508. The elimination of ARM 37.78.836 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.837 is the rule that governs sanctions in employment and training. The Department is proposing to eliminate ARM 37.78.837 because the rule is duplicative and covered under ARM 37.78.506. The elimination of ARM 37.78.837 will not increase, decrease, or change the nature of any fees, costs, or benefits.

ARM 37.78.838 is the rule that governs fair hearings in employment and training. The Department is proposing to eliminate ARM 37.78.838 because the rule is duplicative and covered under ARM 37.5.307. The elimination of ARM 37.78.838 will not increase, decrease, or change the nature of any fees, costs, or benefits.

6. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on December 27, 2002. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State November 18, 2002.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of the Proposed) NOTICE OF PUBLIC HEARING
Adoption of Rules I - XVI) ON PROPOSED ADOPTION
Pertaining to Default)
Electricity Supply)
Procurement Guidelines)

TO: All Concerned Persons

1. On January 7, 2003, at 1:30 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the adoption of new Rules I - XVI.

2. The PSC will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 5:00 p.m. on January 3, 2003, to advise us of the nature of the accommodation that you need. Please contact Rhonda Simmons, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, email rsimmons@state.mt.us.

3. The proposed new rules provide as follows:

RULE I INTRODUCTION AND APPLICABILITY (1) These guidelines provide policy guidance to default supply utilities (DSU) on long-term default electric supply resource planning and procurement. The guidelines do not impose on DSUs specific resource procurement processes nor mandate particular resource acquisitions. Instead, the guidelines describe a process framework for considering resource needs and suggest optimal ways of meeting those needs. Electric default supply resource decisions affect the public interest. A DSU can better serve the public interest if it involves the public in the portfolio planning process. The DSU must ultimately make electric resource acquisition decisions based on economics, reliability, management expertise and sound judgment, although management should consider these guidelines and public input.

(2) A DSU should thoroughly document its default supply portfolio planning processes, resource procurement processes and management decision-making so that it can fully demonstrate to the commission and stakeholders the prudence of default supply-related costs. A DSU should routinely communicate with the commission and stakeholders regarding on-going default supply portfolio planning and resource procurement activities.

(3) These guidelines will provide the basis for commission review and consideration of the prudence of a DSU's default supply resource planning and procurement actions. As such, the

guidelines should assist DSUs in making prudent decisions and in fully recovering default supply-related costs. Successful application of the guidelines will require a commitment from the commission, DSUs and stakeholders to honor the spirit and intent of the guidelines.

(4) These guidelines are applicable to any public utility designated by the commission or Montana law as the default supplier of electricity to retail customers in its distribution service territory. These guidelines do not apply to public utilities that are not required to restructure pursuant to Title 69, chapter 8, MCA.

(5) These guidelines supercede the commission's electric least cost planning rules (ARM 38.5.2001 through 38.5.2012) solely with respect to a DSU's default supply resource planning and procurement functions.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

RULE II DEFINITIONS For the purpose of this subchapter, the following definitions are applicable:

(1) "Default supply costs" means the actual electricity supply costs of providing default supply service, including but not limited to: capacity costs, energy costs, fuel costs, ancillary service costs, demand management and energy efficiency costs, transmission costs (including congestion and losses), billing costs, planning and administrative costs, and any other costs directly related to the purchase of electricity, management of default electricity supply costs and provision of default supply and related services.

(2) "Default supply resource" means:

(a) a wholesale power transaction, including bilateral contracts, however structured, and spot energy purchases;

(b) a demand management activity, including energy efficiency and conservation programs, load control programs and pricing mechanisms; or

(c) a combination of wholesale power transactions and demand management activities.

(3) "Default supply utility or DSU" means a distribution services provider regulated by the commission.

(4) "Environmentally responsible" means explicitly recognizing and incorporating into default supply portfolio planning, management and procurement processes and decision-making the policy of the state of Montana to encourage utilities to acquire resources in a manner that will help ensure a clean, healthful, safe and economically productive environment.

(5) "External costs" means costs incurred by society but not incorporated directly into electricity production and delivery activities, or retail prices for electricity services directly paid by consumers.

(6) "Long-term" means a time period at least as long as DSU's planning horizon. Long-term should also be considered that time period in which a DSU can reasonably expect to provide default service.

(7) "Planning horizon" means the longer of:

(a) the longest remaining contract term in a DSU's current default portfolio; or

(b) the longest contract term being considered for a new resource acquisition, but at least 10 years.

(8) "Rate stability" means minimal price variation, both month-to-month and year-to-year, and minimal price inflation over time.

(9) "Stakeholder" means a member of the public (individual, corporation, organization, group, etc.) who may have a special interest in, or may be especially affected by, these rules.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

RULE III GOALS (1) The goals of these default supply resource planning and procurement guidelines are to:

(a) facilitate a DSU's provision of adequate and reliable default electricity supply services, stably and reasonably priced, at the lowest long-term total cost;

(b) promote economic efficiency and environmental responsibility;

(c) facilitate a DSU's on-going financial health;

(d) facilitate a process through which a DSU identifies and cost-effectively manages and mitigates risks related to its obligation to provide default supply service in a retail choice environment;

(e) foster an environment in which meaningful retail customer choice and workable competition can develop, where feasible; and

(f) build on the fundamental rate making relationship between the commission and the DSU to advance these goals.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

RULE IV OBJECTIVES (1) In order to satisfy its default supply responsibilities, a DSU should pursue the following objectives in assembling and managing an electricity supply portfolio. The DSU should:

(a) provide default supply customers adequate and reliable default supply services, stably and reasonably priced, at the lowest long-term total cost;

(b) design rates for default supply service that promote rational, economically efficient consumption and customer choice decisions;

(c) assemble and maintain a balanced, environmentally responsible portfolio of power supply and demand-management resources coordinated with economically efficient cost allocation and rate design that most efficiently supplies the daily, weekly and seasonal capacity and energy requirements of default supply customers over the planning horizon;

(d) maintain an optimal mix of power supply sources with respect to underlying fuels, generation technologies and associated environmental impacts, and a diverse mix of long, medium and short duration power supply contracts with staggered start and expiration dates; and

(e) maximize the dissemination of information to default customers regarding the level of emissions associated with default supply service through itemized labeling and reporting of the default supply portfolio's energy products.

(2) These objectives are listed in order of importance, but no single objective should be pursued such that others are ignored. Simultaneously achieving these multiple objectives will require a balanced approach. A DSU should apply the recommendations in [Rules V through XV], in addition to relevant commission orders, to achieve these goals and objectives.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

RULE V DEFAULT SUPPLY UTILITY SERVICE RESPONSIBILITIES

(1) A DSU's default service responsibilities are:

(a) to plan and manage its resource portfolio in order to provide adequate, reliable and efficient annual default electricity supply services at the lowest total cost. (During and after the transition period, some customers that participate in retail markets will occasionally rely on default service for countless reasons. Retail customers may subscribe to default service while they study market supply alternatives. Customers may return to default service after their contracts with a licensed electricity supplier expire until they find new suppliers. Or customers may become permanent default service customers if their licensed competitive supplier exits the market.);

(b) to provide adequate, reliable and efficient long-term default electricity supply services at the lowest total cost. (Some retail customers may subscribe to default supply service for a very long time, perhaps perpetually. Retail markets may never develop for all customer segments, and markets with the potential to benefit customers will take time to mature. Some customers may resist choosing alternative suppliers. Others may have trouble finding market suppliers willing to serve them because of poor payment histories or undesirable consumption characteristics.); and

(c) to provide all or a substantial amount of the emergency electricity supply requirements of retail customers who have electricity supply service contracts with a licensed electricity supplier or marketer that has failed to deliver the required electricity supply. (A DSU is not required to maintain a reserve of electricity supply to fulfill its emergency supply responsibilities. To the greatest extent practicable, a DSU should recover the costs of providing emergency service from the supplier or marketer that failed to deliver the required electricity or the customers that directly benefited from the DSU's provision of emergency service. A DSU must provide

emergency service according to commission-approved tariff schedules.)

(2) The DSU may establish an optional retail electricity product composed of power generated by renewable resources. For purposes of this rule, "renewable resources" means biomass, wind, solar or geothermal resources.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

RULE VI MODELING AND ANALYSIS (1) A DSU's default supply portfolio planning, resource procurement and decision-making processes should incorporate proven, cost-effective computer modeling and rigorous analyses. A DSU should use modeling and analyses to:

(a) evaluate and quantify probable default supply load characteristics, including trends in load shapes, load growth, load migration to choice and price elasticity of demand;

(b) evaluate the potential effect of various rate designs and demand management methods on future loads and resource needs;

(c) evaluate and quantify projected portfolio resource requirements over the planning horizon;

(d) develop competitive resource solicitations, including associated bid evaluation and selection criteria;

(e) develop methods for weighting resource attributes and ranking bid offers. Resource attributes may include, but are not necessarily limited to:

(i) underlying fuel source and associated price volatility and risk, including risks related to future regulatory constraints on environmental emissions such as carbon dioxide, sulfur dioxide, nitrogen oxides and mercury;

(ii) contributions to achieving the lowest, long-term portfolio cost;

(iii) total life cycle resource costs;

(iv) contributions to achieving optimal resource diversity;

(v) external costs related to environmental emissions and intrusions;

(vi) direct or indirect transmission costs and/or benefits;

(vii) project feasibility, including engineering, development and financing;

(viii) resource availability, reliability and dispatchability;

(ix) supplier/developer creditworthiness; and

(x) supplier/developer experience;

(f) evaluate the performance of alternative resources under various loads and resource combinations through:

(i) scenario analyses;

(ii) portfolio analyses;

(iii) sensitivity analyses; and

(iv) risk analyses;

(g) help the DSU's managers inject prudent and informed judgments into the portfolio planning and resource acquisition process;

- (h) optimize the mix of portfolio resources in the context of the goals and objectives of these guidelines; and
- (i) meet the DSU's burden of proof in prudence and cost recovery filings before the commission.

AUTH: 69-8-403, MCA
IMP: 69-8-403, MCA

RULE VII RESOURCE NEEDS ASSESSMENT (1) Before soliciting new multi-year wholesale power contracts for inclusion in the default supply portfolio, a DSU should evaluate its existing default supply resource portfolio and analyze future resource needs in the context of the goals and objectives of these guidelines. A DSU should use an annual planning horizon that covers the longer of:

(a) the longest remaining contract term in its portfolio;
or

(b) the longest contract term the DSU would consider signing, based on the analyses described in these guidelines. (An annual planning horizon of at least 10 years is reasonable.)

(2) A DSU's default supply portfolio resource need assessment should include:

(a) analyses of default customer loads including base load, intermediate load, peak load and ancillary service requirements, seasonal and daily load shapes and variability, the number and type of default customers, load growth, trends in customer choice and retail markets, technology that may lead to substitutes for grid-based electricity service and price elasticity of demand;

(b) an assessment of the types of resources that are available and could contribute to meeting portfolio needs, including demand-side resources, supply-side resources, distributed resources, and rate design improvements;

(c) an assessment of the types of electricity products that could contribute to meeting portfolio needs including base load, heavy load, peak, dispatchable, curtailable, assignable, firm, full requirements, load following, unit contingent, slice of the system (fixed percentage of hourly system load requirements), and others;

(d) an assessment of the resource diversity of the existing portfolio with respect to generation fuel and generation technology (e.g., conventional coal, clean coal, hydro, natural gas combined cycle, natural gas simple cycle, wind, fuel cell, etc.) in the context of the goals and objectives of these guidelines; and

(e) an assessment of the flexibility of the existing portfolio with respect to generation resources, demand-management resources, electricity products, contract lengths, contract terms and conditions.

[The commission proposes to include in these rules either Rule VII(3) and (4) - Alternative A or Rule VIII - Alternative B]

[ALTERNATIVE A]

(3) A DSU's resource needs assessment should include analyses of how cost allocation and rate design decisions might impact future loads and resource needs. A DSU's cost allocation and rate design practices should support and complement the goals and objectives of these guidelines. A DSU should evaluate and consider the following items when assessing its resource needs and developing cost allocation and rate design proposals:

- (a) the ability of opportunity cost-based prices to increase economic efficiency;
- (b) cost allocation among customer segments and services based on cost causation;
- (c) customer desire for long-term rate stability and understandable price structures;
- (d) costs and benefits of implementing various rate types/structures, including:
 - (i) time-of-use;
 - (ii) seasonal;
 - (iii) blocked;
 - (iv) tiered;
 - (v) commitment-based; and
 - (vi) other structures as may be reasonable and consistent with the goals and objective of these guidelines;
- (e) the potential for retail demand-response to cost-effectively enhance economic efficiency and promote the other goals and objectives of these guidelines; and
- (f) the potential for direct load control to cost-effectively contribute to retail demand response.

(4) A DSU must ensure that all default supply-related costs are recovered through default supply service prices, not in transmission or distribution service prices. An analysis of the sources of default supply costs might support the recovery of some costs through non-bypassable prices.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

[ALTERNATIVE B]

RULE VIII COST ALLOCATION AND RATE DESIGN (1) A DSU's cost allocation and rate design practices should support and complement the goals and objectives of these guidelines. A DSU should evaluate and consider the following items when allocating costs and designing rates:

- (a) the ability of opportunity cost-based prices to increase economic efficiency;
- (b) cost allocation among customer segments and services based on cost causation;
- (c) customer desire for long-term rate stability and understandable price structures;
- (d) costs and benefits of implementing various rate types/structures, including:
 - (i) time-of-use;

- (ii) seasonal;
 - (iii) blocked;
 - (iv) tiered;
 - (v) commitment-based; and
 - (vi) other structures as may be reasonable and consistent with the goals and objectives of these guidelines;
- (e) the potential for retail demand-response to cost-effectively enhance economic efficiency and promote the other goals and objectives of these guidelines; and
- (f) the potential for direct load control to cost-effectively contribute to retail demand response.
- (2) A DSU must ensure that all default supply-related costs are recovered through default supply service prices, not in transmission or distribution service prices. An analysis of the sources of default supply costs might support the recovery of some costs through non-bypassable prices.

AUTH: 69-8-403, MCA
IMP: 69-8-403, MCA

- RULE IX RESOURCE ACQUISITION (1) A DSU should apply industry accepted procurement practices to acquire default supply resources. The commission cannot prescribe in advance the precise industry accepted practices a DSU must apply since industry accepted practices vary depending on context and circumstances. Generally, an industry accepted approach to resource procurement should encompass the following basic steps:
- (a) explore a wide variety of alternative supply and demand resources, products and prices;
 - (b) collect proposals from various parties offering supply and demand resources and products;
 - (c) analyze the proposals or offers with respect to price and non-price factors in the context of the goals and objectives of these guidelines;
 - (d) select the best proposals and develop a short-list;
 - (e) negotiate the best contract; and
 - (f) anticipate changing circumstances and remain flexible.
- (2) Although these basic steps could be achieved through a variety of methods, a DSU should use competitive solicitations with short-list negotiations as a preferred method of procuring default supply resources. A DSU should design requests for proposals based on its resource needs assessment. Competitive solicitations should treat bidders fairly, promote transparency in a DSU's default supply portfolio planning and resource procurement processes and contribute to achieving the goals and objectives of these guidelines. A DSU's resource acquisition process should conform to the following principles:
- (a) A DSU should clearly define the resources, products and services it needs, including any predetermined price to beat, before issuing a resource solicitation and clearly communicate these needs to potential bidders in the request(s) for proposals. Multiple solicitations and/or solicitations for multiple resources, products and services may be necessary to

obtain information sufficient for prudent analyses and decision-making;

(b) A DSU should establish bid evaluation and bidder qualification standards and criteria it will use to select from among offers before issuing a resource solicitation and clearly communicate these standards and criteria to potential bidders in the request for proposals. Once bids are received, a DSU should apply its bid evaluation and bidder qualification standards and criteria firmly and consistently. A DSU should develop a systematic rating mechanism that allows it to objectively rank bids with respect to price and nonprice attributes;

(c) A DSU should establish a short-list of offers from bidders with which the DSU will pursue contract negotiations. A DSU should complete due diligence regarding bid qualifications, bidder credit worthiness and experience and project feasibility before selecting an offer for the short-list. A DSU should not indicate to a bidder that its offer is being considered for the short-list while performing initial due diligence;

(d) If, in evaluating offers, a DSU determines that a previously unidentified resource attribute should be considered in the bid evaluation, or that additional evaluation criteria should be used, all bidders should be given an opportunity to supplement their offering to address the DSU's desire for the new attribute or the new criteria. The DSU should attempt to minimize such occurrences;

(e) A DSU should not "flip" default supply contracts. That is, contracts should not be reassigned or secured by an additional third party(ies) after the original bid activity;

(f) During competitive solicitation and resource acquisition processes a DSU should not publicly disclose specific information related to particular bids, including price, before the DSU completes its resource acquisition process and has signed contracts with the selected bidder(s);

(g) An independent third party should review the contract terms and conditions in any power purchase agreement between a DSU and an affiliate before the DSU signs the agreement. A DSU should consult with its advisory committee before selecting the independent third party and should evaluate the third party's findings with the advisory committee; and

(h) A DSU should not provide any information to an affiliate with respect to the DSU's resource need assessment, evaluation criteria, bidder qualification criteria, due diligence or any other relevant resource procurement information unless such information is simultaneously provided to all other prospective bidders.

(3) To the extent a DSU does not use competitive solicitations to acquire default supply resources it should thoroughly document the exercise of its judgment in evaluating and selecting resource options, including the decision not to use competitive solicitations.

(4) Use of competitive solicitations as the preferred method for procuring default supply resources may not adequately achieve the goals and objectives of these guidelines with respect to demand-side resources. A DSU should design programs

and associated marketing and verification measures, as necessary, to ensure that its procurement of demand-side resources is optimized in the context of the goals and objectives of these guidelines.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

RULE X DEMAND-SIDE RESOURCES (1) Energy efficiency and conservation measures can effectively contribute to serving total default electricity load requirements at the lowest long-term total cost. A DSU should develop a comprehensive inventory of all potentially cost-effective demand-side resources available in its service area and optimize the acquisition of demand-side resources over its planning horizon.

(2) A DSU should evaluate the cost-effectiveness of demand-side resources and programs based on its long-term avoidable costs. Cost-effectiveness evaluations of demand-side resources should encompass avoidable electricity supply, transmission and distribution costs.

(3) A DSU should strive to achieve steady, sustainable investments in cost-effective, long-term demand-side resource targets. A DSU's investment in demand-side resources should be coordinated with and complement its universal system benefits activities.

(4) Prudently incurred costs related to procuring demand-side resources are fully recoverable in rates. The commission will evaluate the prudence with which demand-side resources are procured, including resources acquired through programs, sub-contractors, and competitive solicitations consistent with evaluations of supply-side resources.

(5) A DSU's development of demand-side resources should include an examination of innovative methods to address cost recovery issues related to demand-side resource investments and expenses, including undesirable effects on revenues related to the provision of transmission and distribution services.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

RULE XI RISK MANAGEMENT AND MITIGATION (1) Prudent default supply resource planning and procurement includes evaluating, managing and mitigating risks associated with the inherent uncertainty of electricity supply markets and default supply load characteristics. A DSU should identify and analyze sources of risk using its own techniques and judgment. Sources of risk may include, but are not limited to:

<u>Underlying Risk Factor</u>	<u>Price Uncertainty Risk</u>	<u>Load Uncertainty Risk</u>
(a) Fuel prices and price volatility	X	X
(b) Environmental regulations & taxes	X	X

(c) Default supply rates		X
(d) Competitive suppliers' prices		X
(e) Transmission constraints	X	
(f) Weather	X	X
(g) Supplier capabilities	X	X
(h) Supplier creditworthiness	X	
(i) Contract terms and conditions	X	X

(2) A DSU's strategy for managing and mitigating risks associated with the identified risk factors should be developed in the context of the goals and objectives of these guidelines and include an evaluation of relevant opportunity costs.

(3) A DSU should manage and mitigate risk through adequate utility staffing and technical resources (e.g., computer modeling), diversity (fuels, technology, contract terms), and contingency planning.

(4) A DSU should use cost-effective resource planning and acquisition techniques to manage and mitigate risks associated with the above identified risk factors, including, but not limited to:

(a) modeling and analyzing the relative risks of alternative resources, individually and integrated with all portfolio resources;

(b) acquiring resources which enhance scheduling flexibility;

(c) acquiring an optimal mix of small, short lead-time resources that better match load requirements;

(d) diversifying the resource portfolio to accommodate a broad range of future outcomes; and

(e) maintaining a transparent planning and procurement process (i.e., one which produces resource plans that can be reasonably understood by the public and the commission.)

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

RULE XII TRANSPARENCY AND DOCUMENTATION (1) A DSU should thoroughly document the exercise of its judgment in implementing all aspects of the guidelines, including any deviations from the framework set forth in these guidelines.

(2) A DSU must procure and manage a portfolio of power purchase contracts and demand resources to serve the full load requirements of its default supply customers. The commission must allow a DSU to recover through default supply rates all costs it prudently incurs to perform this function. Whether the costs a DSU incurs are prudent is, in part, directly related to whether its resource procurement process was conducted prudently. It is vital that a DSU document its default supply portfolio planning, management and procurement activities to justify the prudence of its resource procurement decisions. The better a DSU documents the steps involved in its resource procurement process and explains how and why decisions were made, the easier it is to satisfy its burden of proof. When a

DSU requests cost recovery related to the procurement of new power purchase contracts it should:

(a) document and explain all due diligence regarding the qualification of bidders and resource offers, including why selected bidders were sufficiently qualified financially and technically to warrant further evaluation of the offer based on the resource needs assessment;

(b) list and describe all resource attributes considered in evaluating resource alternatives and how the attributes are relevant to the evaluation of potential resources based on the resource needs assessment;

(c) explain how the identified resource attributes were weighted as part of the resource evaluation and discuss the trade-offs between alternative resources that have different attributes and various weights;

(d) document and explain the use of the ranking methodology and decision criteria used to evaluate resource alternatives;

(e) document and explain computer modeling and analysis designed to assess how various potential resources fit with existing resources and contribute to optimizing the overall portfolio;

(f) document relevant industry practices observed in other utilities in the western electricity coordinating council regarding portfolio design, to the extent such practices form the basis for a DSU's decisions;

(g) document and explain how and when management injected its judgment onto analyses of resource alternatives, final selection and contract negotiations, and the impact of management judgment; and

(h) document the discussion and recommendations of the DSU's advisory committee.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

RULE XIII AFFILIATE TRANSACTIONS (1) The commission subjects transactions between a DSU and any of its corporate affiliates to close scrutiny. A DSU should not acquire resources involving affiliate transactions except through competitive solicitations that are consistent with these guidelines. DSUs should sufficiently demonstrate through transparent, documented modeling, analysis and judgment that any resource acquired from an affiliate corresponds to a predetermined portfolio need.

(2) To the extent a DSU procures resources involving affiliate transactions it should respond to the following primary regulatory concerns:

(a) A DSU should demonstrate that it has not subordinated its default supply obligations in favor of an affiliate corporate entity;

(b) The burden of proof is on a DSU to demonstrate that costs it incurs through any affiliate transactions are just and reasonable and in the public interest and, as such, are

recoverable through regulated rates. Since affiliate transactions could be conducted on a less-than-arms-length basis, leaving room for gaming, self dealing and certain subsidies, the commission will subject these transactions to greater scrutiny to reasonably protect ratepayers served under regulated rates from harm. This higher level of protection is referred to as the "no harm to ratepayer" standard. This standard has evolved over time from long standing regulatory practices and policies that require affiliated transactions to be fair, reasonable and in the public interest before the associated costs are recoverable through rates. In keeping with the "no harm to ratepayer" standard, the commission will judge the reasonableness of affiliate transactions-related costs in relation to the lower of cost or market. For purposes of this rule, cost, by definition, is the applicable regulated cost structure, including a return on the capital invested, to provide the relevant affiliated services;

(c) A DSU must reasonably assure that costs and revenues are accurately and properly segregated between regulated and non-regulated affiliated entities in order to protect captive customers served under regulated rates, and avoid subsidies to, and excess charges by, non-regulated affiliates;

(d) The "no harm to ratepayer" standard requires that the books of account and related records of any affiliate transacting business with the DSU must be available for audit and review purposes. A DSU should impute the estimated costs of necessary audit activity into affiliate resource costs when evaluating resource alternatives according to these guidelines. As reasonable and necessary and when lawful, the commission will protect affiliate information through confidentiality agreements;

(e) In order to provide for ongoing regulatory review, a DSU should separately report on its on-going affiliated transactions and relationships in the context of the issues identified in this rule. Such reporting should be sufficient to allow the commission to adequately monitor whether on-going affiliate transactions-related costs are prudent and, therefore, recoverable through regulated rates; and

(f) A DSU must implement a code of conduct to guide management and other employees regarding standards for day-to-day business activities with affiliates and to guard against self-dealing, gaming and resulting subsidies.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

RULE XIV STAKEHOLDER INPUT (1) A DSU should maintain a broad-based advisory committee to review, evaluate and make recommendations on technical, economic and policy issues related to a DSU's default supply portfolio management and resource procurement process. Maintaining an effective advisory committee could involve funding certain member participation. A DSU should also facilitate processes that provide opportunities for a broader array of stakeholders to comment. Such processes

could include:

- (a) public meetings;
- (b) customer surveys (large and small customers); and
- (c) other processes that may provide a DSU information about public opinion on resource procurement matters.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

RULE XV DEFAULT SUPPLY RESOURCE PLANNING AND PROCUREMENT FILINGS (1) As necessary, a DSU's cost tracking filings should include the information, analyses and documentation recommended in these guidelines to support its request for cost recovery related to default supply resource additions or changes.

(2) A DSU's annual cost tracking filing should document the status of on-going default supply portfolio planning, management and resource procurement activities and include rolling three-year action plans. Action plans should include a discussion of activities involving transmission and distribution functions and services.

(3) The commission may implement a DSU's annual cost recovery request on an interim basis, subject to retroactive adjustment, to allow adequate time to process such requests and render a final order.

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

RULE XVI REWARD FOR SUCCESSFUL DEFAULT SUPPLY SERVICE

(1) The commission will evaluate a DSU's performance in providing default service pursuant to the goals and objectives of these guidelines and may reward the DSU for superior performance at a level commensurate with such performance.

AUTH: 69-8-403, MCA

IMP: 69-8-201, 69-8-210 and 69-8-403, MCA

4. The commission may designate a public utility or distribution services provider as a default supplier of electricity to those persons not served by a competitive supplier of electricity, or those persons who choose to be served by the public utility. 69-8-201(2), MCA. The commission has designated a regulated distribution utility (NorthWestern Energy, f/k/a The Montana Power Company) as the default supplier (DSU) of electricity in its service territory. ARM 38.5.6007. It is possible that the commission could designate other public utilities as default suppliers in the future. A default supplier is responsible for procuring electricity supply to meet the needs of its customers. The prudent costs of procurement are recoverable in rates. The procurement of default supply is a difficult and challenging task for a DSU, involving a risk of underrecovery of costs on commission review. These rules are reasonably necessary to provide a DSU with guidance on the procurement of supply. Following these procurement guidelines

should reduce the risk of underrecovery to a DSU, which will benefit the DSU and, ultimately, DSU customers.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than January 7, 2003, or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.state.mt.us/PublicComment/PublicComment.htm> no later than January 7, 2003. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-02.11.5-RUL.")

6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. The PSC maintains a list of persons who wish to receive notices of rulemaking actions proposed by the PSC. 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: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines, motor carriers, rail carriers, and administrative procedures. Such written request may be mailed or delivered to Rhonda Simmons, Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Rhonda Simmons at (406) 444-7618, emailed to rsimmons@state.mt.us, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Gary Feland

Gary Feland, Chairman

/s/ Robin A. McHugh

Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 18, 2002.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed)
adoption of New Rule I;)
amendment of ARM 42.12.104,)
42.12.106, 42.12.108, 42.12.109,))
42.12.111, 42.12.115, 42.12.116,))
42.12.122, 42.12.126, 42.12.128,))
42.12.129, 42.12.131, 42.12.132,))
42.12.144, 42.12.204, 42.12.205,))
42.12.208, 42.12.209, 42.12.210,))
42.12.211, 42.12.212, 42.12.222,))
42.12.401, 42.12.404, 42.12.405,))
42.12.406, and 42.12.412; and)
repeal of ARM 42.13.403 relating))
to liquor licenses and permits)

TO: All Concerned Persons

1. On December 20, 2002, at 9:00 a.m., a public hearing will be held in the Director's Office Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of New rule I; amendment of ARM 42.12.104, 42.12.106, 42.12.108, 42.12.109, 42.12.111, 42.12.115, 42.12.116, 42.12.122, 42.12.126, 42.12.128, 42.12.129, 42.12.131, 42.12.132, 42.12.144, 42.12.204, 42.12.205, 42.12.208, 42.12.209, 42.12.210, 42.12.211, 42.12.212, 42.12.222, 42.12.401, 42.12.404, 42.12.405, 42.12.406, and 42.12.412; and repeal of ARM 42.13.403 relating to liquor licenses and permits.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., December 9, 2002, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I CONCESSION AGREEMENTS (1) All concession agreements must be submitted to the department for approval, and must set forth the following:

(a) the nature of the agreement is one that arises from a mutually beneficial situation only;

(b) the agreement gives the licensee possessory interest in the concessioned premises;

(c) the licensee's amended floor plan, including the new service area, will accompany the agreement;

(d) the licensee is responsible for the sales and service of all alcoholic beverages;

(e) the parties may share the employees. In the event of shared employees, the licensee must retain the right to discipline or otherwise sanction any employee in relation to the service of alcohol. Any violation of liquor law is the sole responsibility of the licensee;

(f) the non-licensed entity cannot order, or otherwise purchase, any alcoholic beverage product from a wholesaler or agency liquor store;

(g) the agreement must include language that allows the licensee to terminate the agreement without cause; and

(h) that all the proceeds from the sale of alcoholic beverages are the property of the licensee.

(2) Upon approval of the agreement, the license will reflect language that the licensee is also serving alcoholic beverages in the establishment.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-3-305, 16-3-311, 16-4-401 and 16-4-402, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I because the statutes do not guide the department regarding these matters. Current rules do not specifically address this business relationship, and department policy regarding concession agreements is made only from inferences related to the licensee being required to have "possessory interest" in any premises in which they serve. This rule is similar to ARM 42.12.132 regarding management agreements.

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

42.12.104 ACTION TAKEN WITH CENSUS UPDATE (1) Upon receipt of the most recent census taken under the direction of congress, or the most recent population estimates published by the bureau of the census, United States department of commerce, the department of revenue will determine the availability of any alcoholic beverages licenses subject to a quota system. The department will publish notice of increases in the availability of alcoholic beverages licenses subject to a quota limitation if the quota of licenses had previously been filled within 30 days of receipt of both city and county certified census numbers.

(2) In determining the availability of such licenses, the department will:

(a) utilize only those boundaries that are recognized by the bureau of the census; and

(b) consider the distance measurement from an incorporated city to extend in a 5~~five~~-mile radius but, in no case, ~~further~~ farther than the county boundary within which the incorporated city is located.

(3) The department will determine whether a license is available for a license applicant based on the verified census data in the department's possession on the date the department received the application, except when the department has published a notice of availability of a license three months before or after receipt of the application, in which case, the verified census data in the department's possession on the date the notice is published shall be used. Census data is verified when the department has confirmation the federal census bureau has declared the census data to be official, the department has calculated the license quotas from the official census data, and the department has placed the revised quotas on file.

(4) If more applications are received than licenses available within a quota area, the procedure in ARM 42.12.131(1)(d) is followed.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-105, 16-4-106, 16-4-201, 16-4-203, and 16-4-502, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.104 to provide a timeline for publishing licenses available through a change in the quota based on a legislative audit recommendation. The city and county quotas are provided at separate times, so it is necessary to amend the rules to show that the department will publish a notice of availability after both sets have been provided to the department.

42.12.106 DEFINITIONS The following definitions apply to this sub-chapter:

(1) "Associated business" means a business that is not licensed by the state to keep or sell alcoholic beverages, but has an alcoholic beverages licensed business located within or on the premises owned or controlled by the "associated business." Examples of associated businesses are:

(a) a hotel owner that is not licensed to keep or sell alcoholic beverages, but leases space in the hotel to a licensee to sell alcoholic beverages; or

(b) a shopping mall that is not licensed to keep or sell alcoholic beverages, but leases space in the mall to a licensee to sell alcoholic beverages.

(2) "Bona fide grocery store" means a retail establishment where a variety of articles of staple foodstuffs, including meats, vegetables, fruits, bakery items, dairy products, and household supplies, are sold for consumption off_ the premises.

(3) through (5) remain the same.

(6) "Concession agreements" are agreements between either an on-premises consumption beer or all-alcoholic beverages licensee and a non-licensed entity operating a business directly related to the liquor operation. Both parties must conduct their respective enterprises within the same building, as set forth in [New Rule I], and the premises must meet suitability requirements as set forth in ARM 42.12.122.

(6) through (9) remain the same, but are renumbered (7) through (10).

~~(10)~~(11) "Loan" means a written contract by which one delivers a sum of money to another with the agreement that the money be returned with interest within a definite specified period of time.

(11) remains the same but is renumbered (12).

~~(12)~~(13) "Ownership interest" means the involvement in the business operated under the license by someone who owns some or all of the assets of the business, shares any portion of the profits, or any portion of the losses, or liabilities of the business. Someone with an ownership interest in a liquor license shares in the financial risks of the business, and is entitled to the profits or suffers the losses. Ownership interest includes the right to control the location or ownership of a license. Examples of ownership interests would include the authority to participate in such business decisions as the sale of the license, relocation of the license, change or creation of any financial arrangements for loan repayment or funding sources, or any responsibilities listed in ARM 42.12.132 to be held by the licensee. Participation in business decisions does not include providing advice. A right of first refusal is not an ownership interest.

~~(13)~~(14) "Parties" means a:

- (a) licensee;
- (b) applicant;
- (c) secured party;
- (d) ~~protestant~~ protestor; or
- (e) attorney representing the licensee, applicant, secured party, protestor, or other interested party.

~~(14)~~(15) "Prepared-food business" means a restaurant, except the food need not be prepared on-site.

~~(15)~~(16) "Primarily meals with table service" means a restaurant where the business records show that the gross sales of food is greater than the sum of any other activity conducted on the premises.

~~(16)~~ (17) "Restaurant" means a public eating establishment allowing for seated service for a minimum of 12 persons at tables or booths where the sale of food served is prepared on-site.

(17) remains the same but is renumbered (18).

~~(18)~~(19) "Special event" as it relates to an application for a special beer and wine permit or the use of a catering endorsement means an out-of-the-ordinary, infrequent occurrence which is short in duration and can be construed to be either a picnic, fair, convention, reception, civic or community enterprise, or sporting event lasting one or more consecutive days. A business promotion, with the exception of a grand opening for a new business, is not a special event. For example, a business year-end inventory sale or a wine-tasting at a special sale would not be considered a special event.

(19) and (20) remain the same but are renumbered (20) and (21).

~~(21)~~(22) "Undisclosed ownership interest" means a person with an ownership interest in a license who is not identified as an applicant, shareholder, or member of an applicant on an

application for the license, or as a licensee on the face of the license.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-3-311, 16-4-105, 16-4-205, 16-4-207, 16-4-301, 16-4-402, 16-4-404, 16-4-413, 16-4-420, and 16-4-423, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.106 to define the term "concession agreements" which will support New Rule I relating to these agreements. The amendment to "special event" is necessary to clarify the use of a catering endorsement previously used in lieu of a license. All other amendments are housekeeping only.

42.12.108 HEARING PROCEDURE (1) When it is determined that a hearing is necessary, the matter will be forwarded to the department's office of dispute resolution where the time, date, and place for the hearing will be determined. The date and time of the hearing shall be during regular business hours. The place of the hearing shall be in:

(a) ~~in~~ Helena, if other than a public convenience and necessity hearing or a resort determination hearing;

(b) ~~in~~ the community nearest the location of the applicant's proposed premises if it is a public convenience and necessity hearing or a resort determination hearing; or

(c) ~~in~~ Helena for a telephonic hearing, when agreed to by all the parties to the hearing. ~~The~~ hearing will be initiated from Helena by the hearing examiner through a conference call to the telephone numbers provided by the parties.

(2) remains the same.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-105, 16-4-203, 16-4-207, and 16-4-404, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.108 for housekeeping purposes only.

42.12.109 PROTESTS (1) A protest letter as described in 16-4-207, MCA, must:

(a) contain a ~~clear~~ statement(s) of the writer's intent that the letter be considered a protest;

(b) ~~state~~ describe the reason for protesting the granting of a license; and

(c) identify the appropriate action by:

(i) providing the license number and accurate trade name or applicant name in a case of a transfer; or

(ii) the trade name and applicant name and stating that it is for a new application for an original Montana all-alcoholic beverages license.

(2) remains the same.

(3) If the grounds stated in the letter of protest contain public convenience and necessity issues, the prerequisite number of protest letters required ~~for a~~ to initiate a public convenience and necessity hearing, as defined in 16-4-207, MCA, must be received ~~to schedule the public convenience and necessity hearing. If the number of protests is~~

~~insufficient, no protest hearing will be held.~~

(4) Any protest letter failing to meet the criteria in (1), (2), and (3) above by the protest deadline will not be considered.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-207, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.109 for housekeeping purposes only. The deletions do not change the meaning of the rule.

42.12.111 PROCESSING FEES (1) The following are the fees to be charged for processing endorsement and license applications:

- (a) All-beverages license (including veterans' or fraternal) \$200
- (b) Catering endorsement (all-beverages, restaurant beer/wine, beer and wine). \$50 100
- (c) All-beverages license with catering endorsement (when applied for concurrently) \$200
- (d) Retail on-premises beer license (including veterans' or fraternal) \$200
- (e) Wine amendment (for use with existing on-premises retail beer license). \$50 100
- (f) Restaurant beer/wine license \$100
- ~~(f)~~(g) Retail on-premises beer license and wine amendment (when applied for concurrently) \$200
- ~~(g)~~(h) Retail off-premises beer license \$100
- ~~(h)~~(i) Retail off-premises table wine license \$100
- ~~(i)~~(j) Retail off-premises beer and table wine license (when applied for concurrently) \$100
- ~~(j)~~(k) Wholesale beer license \$100
- ~~(k)~~(l) Wholesale beer sub-warehouse license \$50 100
- ~~(l)~~(m) Wholesale table wine license \$100
- ~~(m)~~(n) Wholesale table wine sub-warehouse \$50 100
- ~~(n)~~(o) Wholesale beer and table wine license \$100
- ~~(o)~~(p) Brewer's license \$100
- ~~(p)~~(q) Beer importer's license \$100
- ~~(q)~~(r) Resort all-beverages license \$200
- ~~(r)~~(s) Winery/wine importer \$100

(2) through (4) remain the same.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-1-302 and 16-1-303, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.111 to make the processing fees consistent. The difference between these fees reflects the additional cost for publishing on-premise license applications.

The reference to "beer and wine" is being added to the catering endorsement, and "restaurant beer and wine license" was inadvertently omitted when the rule was originally adopted.

The increase in the catering endorsement for all-beverages, restaurant beer/wine, and beer and wine licenses will result in approximately \$1,600 in additional revenue annually and impact

approximately 35 licenses.

The increase in the wine amendment processing fee will result in approximately \$500 in additional revenue annually and impact approximately 10 amendments to beer licenses.

The increase in the restaurant beer/wine license fee will result in approximately \$250 in additional revenue annually and impact approximately five licenses.

The increase in the wholesale beer sub-warehouse license fee will result in approximately \$100 in additional revenue annually and impact approximately two licenses.

The increase in the wholesale table wine sub-warehouse license fee will result in approximately \$100 in additional revenue annually and impact approximately two licenses.

42.12.115 ASSESSMENT OF LICENSE RENEWAL LATE-PAYMENT PENALTY FEE - GROUNDS FOR WAIVER

(1) The department will assess a license renewal late-payment penalty fee in all cases where a licensee fails to pay the license renewal fee on or before the due date. The renewal application and fee is timely filed and paid if mailed in an envelope postmarked by the United States postal service prior to the due date. If the due date falls on a Saturday, Sunday, or state legal holiday, a postmark for the following business day or a payment received at the department on the following business day is timely.

(2) The department may waive a license renewal late-payment penalty fee assessment upon receipt of a written request by the licensee. The request must state the reason for late payment and be supported by documentation. A waiver of the license renewal late-payment penalty fee assessment shall be granted under the following conditions:

- (a) a department error;
- (b) the department mailed a license renewal notice less than two weeks prior to the due date;
- (c) a delay in payment caused by the death or serious illness of the licensee;
- (d) a United States postal service error;
- (e) a renewal application and fee was erroneously mailed to the internal revenue service or bureau of alcohol, tobacco, and firearms;
- (f) a delay in payment due to bankruptcy or foreclosure action; or
- (g) the late payment is the only late payment within the most recent five consecutive years or since the license was acquired, whichever is less, and payment was received at the department within 30 days after the due date.

(3) A licensee's neglect, lack of funds, or ignorance of the law are not sufficient reasons for waiver of a license renewal late-payment penalty fee assessment.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-501, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.115(2)(e) to add the bureau of alcohol, tobacco and firearms, since the licensee is required to also send in

documentation to the bureau. Licensees have inadvertently sent in documents meant for the department of revenue to the bureau and, therefore, the bureau needs to be included in the waiver of penalty fee assessment. All other amendments are for housekeeping purposes only.

42.12.116 CONCURRENT APPLICATIONS (1) An application received for a premises for which an application is pending, as defined in 16-4-412, MCA, shall be returned to the applicant with an explanation that the applicant cannot be considered because there is a previous application pending for the same premises.

~~(2) Multiple applications pending for the same premises which are not considered concurrent are those due to the following:~~

~~(a) a default to a secured party and a subsequent transfer to a purchaser; or~~

~~(b) more than one sale of a license has occurred and the department was not immediately notified thereby requiring multiple applications to show continuity of transfer of the license.~~

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-412, MCA

REASONABLE NECESSITY: The department no longer allows double transfers. Previous statute changes and rule amendments address foreclosures, and no monies can change hands for a license without department approval, eliminating multiple sales of a license without the department's knowledge.

42.12.122 DETERMINATION OF SUITABILITY OF PREMISES

(1) A party applying for either a new retail license, the transfer of ownership of an existing retail license, the transfer of location of an existing retail license, or approval of an alteration to a premises must provide the department with evidence of the suitability of the premises for the use intended.

(2) The premises must be considered suitable for the retail sale of alcoholic beverages if:

(a) ~~It~~ meets the standards of the department of PHHS; the department of ~~commerce~~ labor and industry, building codes bureau; and the state fire marshall's office in the fire prevention and investigation bureau of the department of justice; or their delegated representatives;

(i) Aa license issued for off-premises consumption of beer and/or table wine must meet the standards for an establishment operated as a grocery store, or a drug store licensed as a pharmacy;

(ii) Aa license issued for on-premises consumption of beer must meet the standards for an establishment operated as a bar or tavern;

(iii) Aa license issued for on-premises consumption of beer and wine must meet the standards for an establishment operated as either a restaurant or a prepared food business; and

(iv) Aa license issued for on-premises consumption of all-alcoholic beverages must meet the requirements for a bar or tavern-; i

(b) Fthe investigator can easily ascertain the type of alcoholic beverages business that is being conducted on the premises due to indoor and outdoor advertising, signage, and/or the general layout and atmosphere of the premises to be licensed. The two circumstances to be ascertained are:

(i) Aa beer and/or table wine license issued for off-premises consumption operates at a premises recognizable as a grocery store or a pharmacy as defined in ARM 42.12.126; and

(ii) Aa license issued for on-premises consumption operates at a premises recognizable as a restaurant, bar, tavern, or other business directly related to the on-premises consumption of alcoholic beverages, such as a bowling alley, hotel, or gambling casino. The licensed premises must have a bar preparation area and sufficient seating to encourage patrons to remain on the premises and consume the alcoholic beverages sold by the drink. Sufficient seating must consist of not less than 12 seats at either a bar, not including a service bar as defined in ARM 42.12.401, or tables, booths, gaming areas, or any combination of the above-; and

(iii) Aa restaurant beer and wine licensed premises must have a service bar as defined in ARM 42.12.401, and sufficient seating as defined in 16-4-420, MCA-; i

(c) Aa alcoholic beverages are advertised and displayed as being available for purchase-; i

(d) Fthe premises is open for business on a regular basis so as not to be considered a license on nonuse status-; i

(e) Fthe layout of the premises allows for licensee- and/or employee-only control over the preparation, sale, service, and distribution of alcoholic beverages-; i

(f) Fthe investigator can verify to the department that the dimensions shown on the floor plan accurately represents the physical layout of the premises-; i

(g) Fthe applicant has demonstrated that adequate safeguards are in place to prevent the sale of alcoholic beverages to minors and intoxicated persons-; i

(h) Fthe premises to be used for the on-premises consumption of alcoholic beverages is physically separated from any business not directly related to the on-premises consumption of alcoholic beverages by four permanent walls. The walls must be floor to ceiling and shall not be moved without department approval of alterations to the premises pursuant to ARM 42.13.106. The premises can maintain inside access to each business conducted in the building through a doorway no larger than 6-six feet wide with a door that can be closed and locked when not in use. Businesses directly related to the on-premises consumption of alcoholic beverages are a hotel, bowling alley, gambling casino, or restaurant-; i

(i) Fthe premises is not within a 50-foot radius of gasoline pumps-; and

(j) Fthe provisions of (3) below are not violated.

(3) The premises cannot be considered suitable for the

retail sale of alcoholic beverages if:

(a) ~~L~~local government zoning restrictions or ordinances prohibit the sale and/or consumption of alcohol at the location of the premises;~~i~~

(b) ~~T~~the location is off regular police beats and cannot be properly policed by local authorities;~~i~~

(c) ~~T~~the service of alcohol is handled by the customer without the direct involvement of the licensee or their employees such as:

(i) alcoholic beverages provided the customer through automatic dispensing or vending machines; or

(ii) self-service beer tap;~~i~~

(d) ~~T~~the on-premises operation is not physically separated from other businesses operated in the same building that are unrelated to the business of retail on-premises alcoholic beverages consumption, such as a grocery store, laundromat, clothing store, hardware store, flower shop, a nursery, or preschool;~~i~~

(e) ~~T~~the on-premises operation is within a 50-foot radius of gasoline pumps; and

(f) ~~T~~the operator of the alcoholic beverages business intends to conduct some or all of the sale of alcoholic beverages through the use of a drive-up window.

(4) Premises currently licensed that do not meet the suitability standards would be required to meet the above standards upon department approval of completed alterations of the existing licensed premises in accordance with 16-3-311, MCA, except for the requirement that premises not be within a ~~fifty~~50-foot radius of gasoline pumps. The restriction on premises being beyond a 50-foot radius of gasoline pumps applies only to transfers of licenses to new locations, or to new original licenses.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-3-311, 16-4-402, 16-4-404, 16-4-405, and 16-4-420, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.122 for housekeeping purposes only.

42.12.126 OFF-PREMISES SALE OF BEER OR TABLE WINE (1) A retail license to sell beer or table wine in the original packages for off-premises consumption only may be issued to any person, firm, or corporation ~~who shall be~~ approved by the department as a fit and proper person, firm, or corporation to sell beer or table wine, and whose premises proposed for licensing are is operated as a bona fide grocery store or a drugstore licensed as a pharmacy.

(2) A retail inventory of \$3,000 will be used as a basis for determining whether an establishment qualifies as a "bona fide grocery store." The retail inventory of at least \$3,000 must be maintained at all times. The retail inventory must include at least three different types of items in each of the following food groups: meats, vegetables, fruits, bakery items, dairy products, and household supplies. For example, three

different types of items in the dairy products group would be a cheese, a milk, and a butter, but skim milk, chocolate milk, and whole milk would not be considered as three different types of items in the dairy products group.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-105, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.126 for housekeeping purposes only.

42.12.128 CATERING ENDORSEMENT (1) Any licensee, having obtained a catering endorsement under the provisions of 16-4-111 or 16-4-204, MCA, is authorized to sell alcoholic beverages authorized under the license to persons attending a special event upon premises not otherwise licensed. Only the licensee or the licensee's employees are authorized to sell and serve alcoholic beverages at the special event.

(2) The holder of a catering endorsement may sell and serve alcoholic beverages at retail only at a booth, stand, or other fixed place of business within the exhibition enclosure, confined to specified premises or designated areas described in the notice given to the local law enforcement agency that has jurisdiction over the premises where the event is to be catered. Such a licensee, or his the licensee's agents or employees may also sell and serve beer, in the case of an all-beverages licensee, or beer and wine, in the case of a beer/wine licensee, in the grandstand or bleacher.

(3) remains the same.

(4) Every licensee holding a catering endorsement shall report, on or before the 15th day of each month, those events the licensee catered in the previous month. The report shall include the date, time, and place of the catered event. This report can be provided to the department in letter format.

AUTH: Sec. 16-1-103 and 16-1-303, MCA

IMP: Sec. 16-3-103, 16-4-111, and 16-4-204, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.128 to require written notice be provided to both the department and local law enforcement. This amendment will help prevent abuse of the catering endorsement and promote legitimate use of such endorsements.

42.12.129 DETERMINATION OF PROXIMITY TO PLACE OF WORSHIP OR SCHOOL (1) In order to apply the provisions of 16-3-306, MCA, the department must find:

(a) the entrance doors of the premises proposed for licensing and the entrance doors of the place of worship or school are situated on the same street; and

(b) the ~~business mailing physical~~ address of the premises proposed for licensing is designated as the same street as the ~~business mailing physical~~ address of the place of worship or school; and

(c) the distance, measured in a straight line, from the entrance doors of the business proposed for licensing and the

entrance doors of the place of worship or school is 600 feet or less.

(2) through (5) remain the same.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-3-306, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.129 to clarify the intent of the rule is the physical address, not the mailing address.

42.12.131 APPLICATIONS FOR AVAILABLE LICENSE(S) IN QUOTA AREA (1) When the department receives applications after the initial lottery application deadline for the available license(s) in a quota area, the following procedures apply:

(a) When fewer applications than licenses available are received, the applications will be processed;

(b) If there are more applicants than licenses available in a quota area, ~~then the license must be awarded by lottery in accordance with ARM 42.12.401 through 42.12.414~~ the licenses will be awarded on a first-come, first-served basis. The postmark on each application will establish which of the applications will be processed; and-

(c) ~~All Those applications received by the department or with the same postmarked for an available license on or before the final date for receipt of all applications will be considered and will proceed to a lottery process.~~

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-105 and 16-4-201, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.131 to comply with a recommendation by the legislative auditor and clarify how applications will be treated when received with the same postmark.

42.12.132 MANAGEMENT AGREEMENTS (1) Subject to the terms and conditions stated in this rule, an alcoholic beverages licensee may employ a manager as the licensee's agent to oversee the alcoholic beverages business conducted in the licensee's licensed premises. ~~The manager must either be a natural person or if not, the manager must identify the person who will perform the management function.~~ The manager or the person designated to represent the manager must possess a past record and present status as a business person and citizen ~~which~~ who demonstrates ~~that they are the likelihood to of operating~~ the licensed establishment on behalf of the licensee in compliance with all applicable laws of the state and local governments.

(2) Within 30 days of employing the manager, the licensee must file an original signed copy of the written management agreement ~~must be filed~~ with the department that clearly discloses the following information:

(a) the manager's name, address, telephone number, mailing address, if different from street address, and one of the following:

(i) social security number for individuals; or

- (ii) federal identification number for business;
- (b) the amount of compensation; and
- (c) the specific duties and responsibilities delegated to the manager by the licensee.

(3) The department will review the agreement for compliance with the following standards:

(a) the licensee must retain the possessory interest in the premises through ownership, lease, rent, or other agreement with the owner of the premises;

(b) while the agreement may delegate duties to the manager, the licensee must retain ultimate control, liability, responsibility, and accountability for the retail liquor operation. The agreement may not assign or limit any of the rights or responsibilities of ownership. In particular, the agreement may not grant or assign to the manager:

(i) control of business hours, types of alcoholic beverage products sold, selling price, level of inventory maintained, and overall business atmosphere;

(ii) exclusive authority over business accounts, and operation funds;

(iii) authority to remodel or otherwise make changes in the business operation requiring non-routine actions;

(iv) ultimate decision-making authority regarding the hiring, firing, advancement or promotion, or any other change of status of other employees;

(v) liability for all business expenses and losses, either directly or through an indemnification agreement with the licensee. The licensee may require the manager to do the ministerial act of paying the expenses, but this must be accomplished by using the licensee's funds; and

(vi) ownership of the inventory or the right to use or dispose of it at will.

(c) the licensee must maintain an active participation in the business operation sufficient to insure the proper and lawful conduct of the business, and execute all reports required by governmental agencies that attest to the licensee's ownership and certify compliance with applicable statutes and regulations. The licensee may work in the establishment at any time;

(d) the agreement may not be assignable by the manager to a successor manager without the written consent of the licensee;

(e) the agreement may not place any restrictions on the licensee's right to transfer, mortgage, hypothecate, or alienate the license, or change the location of the operation;

(f) the agreement must be terminable upon the licensee transferring the license, selling the business, or otherwise ceasing business operations at the licensee's option;

(g) the agreement must provide for compensation either as a fixed amount, a percentage of gross sales, or a combination of fixed amount and percentage of gross sales;

(h) the compensation of the manager must be commensurate with the duties performed, cannot consist of all net profits from the business, and cannot be less than the federal wage and hourly standards for an individual; and

(i) the management agreement must establish a principal

agent, ~~master-servant~~, employer-employee, or other type of agency relationship, making the manager responsible to the licensee for the performance of assigned duties, while the licensee is responsible for the proper performance of the manager.

(4) Management agreements failing to meet any of the standards set forth in (1), (2), and (3) ~~above of this rule~~ will be marked as rejected and returned to the licensee, together with a written explanation of the reasons for the rejection. If the deficiencies are not corrected within a period 30 days of the time set by the department, the tendered management agreement will be deemed to be void. Failure of the licensee to terminate operations under a void management agreement constitutes a violation of Montana law and departmental rules.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-3-101 and 16-4-404, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.132 for housekeeping purposes only.

42.12.144 TRANSFERS BETWEEN QUOTA AREAS - PROCEDURES AND DOCUMENTATION (1) remains the same.

(2) An applicant applying to the department to transfer an all-beverages license under the provisions of 16-4-204, MCA, whose lottery entry is successful in a lottery drawing, is required to have entered into an agreement to purchase a transferable license within 60 days after the lottery drawing and submit additional documents needed to effect a transfer of ownership and location. However, additional time can be requested and approved by the department when the applicant can demonstrate he that the applicant is actively pursuing the purchase of a license, and that failure to purchase a license is through no fault of the applicant. The additional time is not to exceed 60 days. An additional fee is required to cover the costs of republishing the transfer notice in a newspaper within the area from which the license is proposed to be transferred.

(3) Documentation required under (1) includes:

- (a) a completed application form;
- (b) a transfer fee;
- (c) a purchase agreement;
- (d) a request for termination of existing secured parties' interest and the applicable fee (\$10 each);
- (e) a floor plan of the proposed premises; and
- (f) other documents which may be needed or specified on the application form, depending upon the response to certain questions, for example: lease or sales agreements. The department or hearing examiner may require additional documentation as deemed necessary to reach a final decision.

(4) Documentation required under (1) is the same as that itemized in (3)(a) through (f). However, a signed purchase agreement and a request for termination of secured parties' interests are not required upon initial filing of the application.

(5) If an applicant is unable to enter into an agreement

to purchase a transferable license within the time provided in (2) the application will be rejected and the application ranked next in the lottery drawing will be processed. This procedure is not constrained by 16-4-413, MCA.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-204 and 16-4-413, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.144 for housekeeping purposes only.

42.12.204 TREATMENT OF LICENSE OF DECEASED LICENSEE

(1) remains the same.

(2) If an alcoholic beverages license is owned by joint tenants with right of survivorship, it may be reissued in the name of the surviving joint tenant or tenants, upon presentation of proof of death of the decedent joint tenant or tenants ~~and satisfactory evidence of payment of inheritance taxes owing as a result of the death.~~ In all other cases, upon the death of a licensee it is necessary to apply for transfer of ownership of the license as provided by 16-4-204 and 16-4-404, MCA.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-204, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.204 because the inheritance tax law was repealed and this requirement no longer applies.

42.12.205 REQUIREMENTS WHEN LICENSE SUBJECT TO LIEN

(1) All-beverages and on-premises beer licenses may be subject to a mortgage, security interest, and other valid lien. Upon written request to the department, accompanied by a ~~financing statement or by a~~ copy of the note or mortgage, security agreement, or other lien loan document (in which the license or licenses to be affected are described with common certainty such as inclusion of license number), together with a fee of \$10, the department will add the name of the mortgagee, secured party, or other lien holder, which must be endorsed upon the license. All such requests shall be upon forms prescribed by the department and signed in each case by the licensee and the mortgagee, secured party, or other lien holder. The licensee must be the debtor. A loan guarantee by a licensee does not establish a valid lien by the lender under this rule.

(2) and (3) remain the same.

(4) Alcoholic beverages licenses may be subject to security interests as defined in ~~30-9-102~~ 30-1-201, MCA, and other valid liens. The perfection of a security interest or other lien in an alcoholic beverages license does not depend upon filing with the department, but rather by the statutory requirements, which apply to the particular security interest or lien. If a secured party or a lien creditor, as defined in ~~30-9A-301~~ 102, MCA, desires to give additional public notice, he may do so by filing a claim of security interest or other lien with the department. The department acts only as an additional source of public notice for voluntarily filed claims of security

interest and other liens.

(5) through (7) remain the same.

(8) Any notice of security interest or other lien may be deleted from the department's file upon written request of the secured party or lien creditor on forms prescribed by the department. If the secured party or lien creditor is deceased, or otherwise unavailable, the written request for deletion may be made by a personal representative, heir, devisee, or other person upon providing sufficient proof that the person has authority to act on behalf of the estate or has otherwise received the right to the security interest or lien. Any notice of security interest or other lien may also be deleted from the department's file upon the written request of the licensee or applicant for the license if accompanied by a court order releasing the security interest or lien, or other sufficient proof showing that the security interest or lien has expired, been discharged, or otherwise extinguished.

(9) A security interest or other lien may be foreclosed upon in any manner provided by law. ~~For the transfer of a license pursuant to a foreclosure, the department shall accept a foreclosure bill of sale, which specifically refers to the license by number, in lieu of the voluntary assignment of the license by the licensee.~~ In non-judicial foreclosures, the department ~~may~~ will require sufficient documentation that the proper foreclosure proceedings were followed, pursuant to 16-4-801, MCA. Purchasers of a license at a foreclosure sale must apply to the department for transfer of the license and are subject to all statutes and rules required of any other applicant.

(10) Sections (1) through (3) ~~above~~ will apply to all security interests and liens filed with the department prior to September 1, 1990. Beginning September 1, 1990, (4) through (9) ~~above~~ will apply to all new security interests and liens filed with the department.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-204, 16-4-404, 16-4-801, 30-1-201, and 30-9A-102, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.205(1) to clarify that the department does not recognize a non-debtor as a lien holder; (4) to correct the citations because the previously referenced cites were repealed in 1999; and (9) to comply with the requirements of 16-4-801, MCA. All other changes are housekeeping only.

42.12.208 TEMPORARY OPERATING AUTHORITY (1) Temporary operating authority as provided by 16-4-404, MCA, may be issued only to an applicant who requests a transfer of ownership. Temporary operating authority must not be granted on an application for an original license, or when there is a proposed change of location for the existing licensed premises.

(2) The granting of temporary operating authority is neither a temporary license nor a permit. It does not constitute a transfer of ownership, nor does it guarantee that

the department will grant the application if it finds, subsequent to receipt of a complete investigation report, that the applicant is not qualified to hold a license, or the premises are is not suitable for the operation of the business.

(3) Temporary operating authority will be issued for a 45-day periods. An applicant may request an extension for an additional 45-day period if the application has not been processed within that time.

(4) In the event liens, attachments, or judgments have attached to the license, prior to September 1, 1990, the department will not grant an extension beyond the initial 45 days. Beginning September 1, 1990, new liens, new attachments, or new judgments that have attached to a license do not affect the issuance of temporary operating authority. The recorded owner of the license must resume operation of the business conducted under the license in cases where the temporary operating authority has expired and cannot be extended.

(5) Temporary operating authority will be immediately revoked if the applicant to whom temporary operating authority was granted, or ~~his~~ the applicant's employees, violate any provisions of Title 16, MCA, or department rules. Such violations may affect the final decision of the department.

(6) Any proposed fine, suspension, or revocation arising out of a violation will be assessed against, and is the responsibility of, the recorded owner of the license.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-404, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.208 for housekeeping purposes only.

42.12.209 TRANSFER OF A LICENSE TO ANOTHER PERSON

(1) remains the same.

(2) A potential buyer of a liquor license or a potential buyer of 10% or more of stock in a business operated under the license is required to submit an application for transfer of a liquor license or transfer of shares of stock pursuant to ARM 42.12.101. The applicant for ownership of either the business or its stock must be notified in writing by the department that either temporary operating authority has been granted or such a transfer of the license is approved by the department before the buyer may pay to or in any way transfer any money or other valuable consideration to the seller in payment for the business operated under the license or stock. If money is paid to the seller on the granting of temporary operating authority and the application is later not approved, the money, with the exception of a reasonable amount considered earnest money, must be returned. The seller and the buyer may exchange any portion of the purchase price so long as the amount is placed in escrow.

(3) remains the same.

(4) The department may revoke a license for a violation of the requirements in (2) above.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-401, 16-4-402, and 16-4-404, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.209 for housekeeping purposes only.

42.12.210 COMPLETED TRANSACTIONS UNDER BONA FIDE SALES

(1) A transaction under a bona fide sale is complete only if the department receives an application for a license submitted pursuant to ARM 42.12.101, and the department approves the application pursuant to 16-4-402, MCA, and this rule.

(2) An application will not be approved if the sales transaction:

(a) provides for ~~another~~ a person other than the applicant to have an option to purchase the license;

(b) involves an escrow agent, unless the parties are required to report to the department all changes or assignments to the original escrow agreement within 30 days of the change;

(c) involves a loan from a non-institutional lender or a loan guarantor, unless the loan from a non-institutional lender has been approved in writing by the department, but this does not preclude a qualified owner of a license from lending money to the business operated under the license or from individually guaranteeing a debt incurred by the business operated under the license;

(d) involves a lessor of the licensed premises who is not qualified to own the license being applied for, unless the department approves in writing;

(e) involves an applicant who is or will be the manager of an associated business if the associated business is owned or controlled by a person who is not qualified to own the license being applied for, unless the department approves in writing; or

(f) involves any business relationship, with respect to the proposed alcoholic beverages business, with a person who is not qualified to own the license being applied for, unless the department approves in writing.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-401, 16-4-402, and 16-4-404, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.210 for housekeeping purposes only.

42.12.211 TRANSFER OF A LICENSE DUE TO FORECLOSURE

(1) remains the same.

(2) A transfer of a license resulting from a foreclosure on a security interest requires the filing of documents evidencing the foreclosure if the secured party does not intend to operate or does not meet the requirements to hold the license pursuant to 16-4-401 and 16-4-801, MCA. The documents must include either the defaulting party's written acknowledgment of default or a court order foreclosing the defaulting party's interests in the license. Based on the foreclosure documents, the transfer may be approved pursuant to ARM 42.12.205. A foreclosing secured party may retain ownership of the transferred license in a nonuse status for a period of no more than 180 days. If the license has not transferred to a qualified purchaser within 180 days, the license will be

revoked.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-401, 16-4-402, and 16-4-404, and 16-4-801, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.211 to add the statute that pertains to the holding of a security interest in a liquor license. This statute is applicable with regard to the default provisions of the rule and the time periods addressed for holding the license in nonuse status.

42.12.212 LOAN STANDARDS (1) The department will further evaluate a designated loan to determine if the transaction is in reality a loan or an ownership interest. ~~Such a~~ A review of the transaction will be conducted by using standards found either in the uniform commercial code, the internal revenue code, or standards which are in accordance with generally accepted commercial lending practices.

(2) remains the same.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-401, 16-4-402, and 16-4-404, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.212 for housekeeping purposes only.

42.12.222 PROCEDURE UPON REVOCATION OR SUSPENSION OF LICENSE (1) When any alcoholic beverages license is suspended or revoked by the department, the department shall cause a notice to be posted on the inside of the licensed premises so that the notice can be seen from the outside, stating that the license has been suspended or revoked. The notice must identify the number of the license, the name of the licensee, the reason for the suspension or revocation, and the period of suspension. The suspension or revocation notice issued by the department must be dated and signed. The notice must be posted at all times during the period of suspension. In the case of a revocation, the notice must be posted on the premises for a period of ~~ten~~ 10 days. If the notice is removed or caused to be removed by the licensee or any employee of the licensee during a period of suspension, the license shall be permanently revoked and the licensee must be so notified in writing at the time the notice is posted. The license or licenses suspended will be held by the department during the period of suspension.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-1-303 and 16-4-406, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.222 for housekeeping purposes only.

42.12.401 DEFINITIONS ~~(1)~~ The following terms will be used in this sub-chapter and ~~apply to all lottery processes.~~

(1) The following terms apply to all lottery processes:

(a) "Available license" means a newly created license

which can be issued by the department ~~of revenue~~ or an existing license that can be transferred between quota areas because of:

(i) a population increase verified by the most recent census population figures; or

(ii) a lapse or revocation of an existing license; ~~or~~

~~(iii) it is the last available license within a quota area for which an application has been received.~~

(b) remains the same.

(c) "Continuously open to the public" means open during designated business hours on a weekly basis with no interruption in those business hours. Documented exceptions not causing unreasonable closure that would be considered are:

(i) acts of nature, such as a flood, earthquake, tornado, or blizzard;

(ii) other acts beyond the owner's control; or

(iii) a remodeling project of no greater than a one-month duration.

(d) remains the same.

(e) "Lottery application" means a brief one-sheet application for an available license stating the applicant's name, mailing address, type of license, and the location of the establishment and quota area. If more lottery applications than the number of licenses available for any given ~~incorporated city or town~~ quota area have been submitted, a lottery will be held.

(f) "Person" means any individual, firm, partnership, limited liability company, corporation, or association.

(2) The following terms specifically apply to the restaurant beer/wine lottery process:

(a) "Existing beer/wine/all-beverages license" means either an on-premises or off-premises retail license that is either currently being used at the location in question, or has been approved for nonuse status, or is a license for which a sale has occurred or is pending but not approved by the department.

(i) A license in nonuse status does not constitute an existing license if the licensee does not own or control the applicant entity, the applicant and the licensee are not related, and the applicant and licensee are independent business entities.

(b) "Existing preference" means a preference that will be given to a restaurant owner/operator that has either existed for one year prior to the lottery deadline or was an unsuccessful lottery applicant from a previous restaurant beer/wine lottery selections. Either circumstance will give it a priority in the final ranking. An applicant with both preferences must be awarded a license before any applicant with only one preference. However, an existing preference will not supersede the limits within any quota area on licenses of restaurants with a seating capacity of 101 or more persons.

(c) "Restaurant beer/wine license" means a license which must be attached to a restaurant and can only be used in conjunction with food service. The licensee must agree to forego any kind of gambling, maintain 65% of ~~their~~ business income from food sales, and must only have table service of beer

and wine to those customers who are eating or waiting to be seated to eat. Licenses will be issued only in incorporated cities and towns in a number derived from a percentage of the beer licenses in use in these quota areas.

(d) "Seasonal restaurant" means one that is only open during one, two, or three seasons of any year, but never for a full year. Seasonal restaurants can be open any part of a season and not or the full season, as long as the restaurant is not open year-round.

(e) remains the same.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-105, 16-4-201, 16-4-204, 16-4-420, and 16-4-502, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.401 to define terms used in this sub-chapter and comply with recommendations of the legislative auditor.

42.12.404 APPLICATION LIMITATION PER PREMISES (1) ~~If more than one person per location files a lottery application for an available license for the same premises, the department will have a pre-lottery drawing to determine which one of the names submitted will actually be entered into the quota area lottery. Only one application per location is permitted entry into the area lottery. Only one lottery application per person will be accepted. Person is defined in ARM 42.12.401.~~

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-420, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.404 on the recommendation of the legislative auditor. The rule in its present form gives an unfair advantage to a limited number of applicants.

42.12.405 RESTAURANT BEER AND WINE LICENSE APPLICATION FEES (1) Twenty percent of the one-time-only initial licensing fee based on seating capacity described in 16-4-420, MCA, must be submitted with an original application for a new license.

(2) The department must pay interest on the application initial licensing fee if the processing time exceeds four months from receipt of a complete application when that delay is caused by either the department of justice's or department of revenue's failure to act in a timely manner. If the investigation into the application uncovers the necessity to analyze additional information not previously provided by the applicant, the four-month time period stops until the information is provided.

(3) If an original application is terminated, the \$100 of the initial licensing processing fee will be retained by the department.

(4) The balance of the application initial licensing fee and any interest accrued during the processing of the application will be refunded.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-420, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.405 as a housekeeping change to accommodate the needs of a license that has evolved from its original statutory construction. This amendment makes the rule consistent with a fee schedule for similar license types.

42.12.406 LOTTERY APPLICATION PROCESS (1) When an available license within a quota area is determined and public notice of the availability is required, a notice will be promptly published once a week for four consecutive weeks in the newspaper of general circulation in the quota area. There will be a deadline of ~~30~~ 10 days from the last publication date to apply for an available license. The publication notice will state:

- (a) the type of license(s) available;
- (b) the reason for the availability;
- (c) that applicant(s) will be selected through a lottery process;
- (d) the instructions for making an application; and
- (e) the deadline to apply.

(2) Procedures making an available license effective require that a person apply to be included in a lottery held for their applicable county or incorporated city or town quota area. Lotteries will be conducted only for those areas ~~which~~ that have more lottery applicants than available licenses.

(3) and (4) remain the same.

~~(5) Lottery applications must state the exact address as well as the city or town in which the establishment or proposed establishment is or will be located.~~

~~(6) Lottery applications must state whether the location already has an existing beer/wine/all beverage license, as previously defined in this chapter. If a retail license is currently issued to the location, no restaurant beer/wine license will be considered for this location.~~

(7) through (10) remain the same but are renumbered (6) through (9).

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-105, 16-4-201, 16-4-204, 16-4-420, and 16-4-502, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.406 for housekeeping purposes only.

42.12.412 WHEN LOTTERY WILL BE HELD (1) When the number of lottery applications exceed the number of new licenses available within a quota area, a public lottery will be held by the department within 30 days from the publication deadline.

(2) through (5) remain the same.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-420, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.412 to follow the legislative audit recommendation and provide a time line for holding lotteries.

5. The Department proposes to repeal the following rule:

42.13.403 DOMESTIC WINERY which can be found on page 42-1342 of the Administrative Rules of Montana.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-3-411 and 16-4-107, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.13.403 because statutory changes by the 2001 sessions established a license fee for domestic wineries.

6. Concerned 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:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805

and must be received no later than December 27, 2002.

7. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. 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.

9. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Kurt G. Alme
KURT G. ALME
Director of Revenue

Certified to Secretary of State November 18, 2002

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of ARM 42.31.501,) AND REPEAL
42.31.505, and 42.31.510; and)
repeal of ARM 42.31.601,)
42.31.602, and 42.31.604)
relating to telephone license)
and telecommunication excise)
tax and universal access fund)
surcharges) NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 31, 2003, the department proposes to amend ARM 42.31.501, 42.31.505, and 42.31.510; and repeal ARM 42.31.601, 42.31.602, and 42.31.604 relating to universal access fund surcharges.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m. on December 13, 2002, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax number (406) 444-3696; e-mail address canderson@state.mt.us.

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

42.31.501 DEFINITIONS (1) through (5) remain the same.
AUTH: Sec. ~~15-53-104~~ and 15-53-155, MCA
IMP: Sec. 15-53-129, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.501 to delete authority cite 15-53-104, MCA, because it was repealed by the 1999 Legislature.

42.31.505 ANNUAL PAYMENTS FOR SMALL FILERS (1) remains the same.

AUTH: Sec. ~~15-53-104~~ and 15-53-155, MCA
IMP: Sec. ~~15-53-101, 15-53-104, 15-53-111,~~ and 15-53-155, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.505 to delete authority and implementing cites 15-53-101, 15-53-104, and 15-53-111, MCA, because they were repealed by the 1999 Legislature.

42.31.510 PENALTY AND INTEREST (1) remains the same.

AUTH: Sec. ~~15-53-104~~ and 15-53-155, MCA
IMP: Sec. 15-1-216, 15-53-145, and 15-53-147, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.510 to delete authority cite 15-53-104, MCA, because it was repealed by the 1999 Legislature.

4. The department proposes to repeal the following rules:

42.31.601 DEFINITIONS which can be found on page 42-3161 of the Administrative Rules of Montana.

AUTH: Sec. 69-3-860, MCA
IMP: Sec. 69-3-860, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.31.601 because implementing cite 69-3-860, MCA, was repealed by the 1999 Legislature.

42.31.602 DUE DATES which can be found on page 42-3161 of the Administrative Rules of Montana.

AUTH: Sec. 69-3-860, MCA
IMP: Sec. 69-3-860, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.31.602 because implementing cite 69-3-860, MCA, was repealed by the 1999 Legislature.

42.31.604 OFFSET OF SURCHARGE AND REFUND PROCEDURES which can be found on page 42-3162 of the Administrative Rules of Montana.

AUTH: Sec. 69-3-860, MCA
IMP: Sec. 69-3-860, MCA

REASONABLE NECESSITY: The department is proposing to repeal ARM 42.31.604 because implementing cite 69-3-860, MCA, was repealed by the 1999 Legislature.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 5805
Helena, Montana 59604-5805
no later than December 27, 2002.

6. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Cleo Anderson at the above address no later than December 27, 2002.

7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee; from a governmental subdivision or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

8. An electronic copy of this Proposal Notice is available through the Department's site on the World Wide Web at http://www.state.mt.us/revenue/rules_home_page.htm, under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Proposal Notice 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.

9. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Kurt G. Alme
KURT G. ALME
Director of Revenue

Certified to Secretary of State November 18, 2002

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the)	
adoption of new rule	)	NOTICE OF ADOPTION,
I criminal history background	)	AMENDMENT, TRANSFER
check, new rule II substitute	)	AND REPEAL OF RULES
teachers, new rules III)	
through XXVIII relating)	
to teacher license)	
classification, new rule)	
XXIX definition of "immoral)	
conduct," new rule XXX)	
investigation, new rule)	
XXXI reporting of the)	
surrender, denial, revocation)	
or suspension of a license,)	
the amendment of ARM)	
10.55.602, 10.55.604,)	
10.55.702 through 10.55.705,)	
10.55.707 and 10.55.710)	
relating to accreditation,)	
ARM 10.57.101, 10.57.102,)	
10.57.104, 10.57.107,)	
10.57.110, 10.57.112,)	
10.57.201, 10.57.204,)	
10.57.209, 10.57.215 through)	
10.57.218, 10.57.220,)	
10.57.301, 10.57.501,)	
10.57.601 through 10.57.605)	
relating to teacher)	
certification and the)	
amendment and transfer of)	
ARM 10.57.701 through)	
10.57.703 relating to hearing)	
procedures, the transfer)	
of ARM 10.57.407 and)	
10.57.801 and the repeal of)	
ARM 10.57.103, 10.57.106,)	
10.57.108, 10.57.202,)	
10.57.203, 10.57.211A,)	
10.57.213, 10.57.219,)	
10.57.302 and 10.57.401)	
through 10.57.406 relating)	
to teacher certification)	

TO: All Concerned Persons

1. On September 26, 2002, the Board of Public Education published notice of the proposed adoption, amendment, transfer and repeal of rules concerning accreditation and teacher certification at page 2489 of the 2002 Montana Administrative Register, Issue Number 18.

2. The Board of Public Education has adopted the following new rules exactly as proposed.

NEW RULE II	ARM 10.57.113	SUBSTITUTE TEACHERS
NEW RULE III	ARM 10.57.410	CLASS 2 STANDARD TEACHER'S LICENSE
NEW RULE IV	ARM 10.57.411	CLASS 1 PROFESSIONAL TEACHER'S LICENSE
NEW RULE V	ARM 10.57.412	CLASS 1 AND 2 ENDORSEMENTS
NEW RULE VI	ARM 10.57.413	CLASS 3 ADMINISTRATIVE LICENSE
NEW RULE IX	ARM 10.57.416	CLASS 3 ADMINISTRATIVE LICENSE - SECONDARY PRINCIPAL ENDORSEMENT
NEW RULE X	ARM 10.57.417	CLASS 3 ADMINISTRATIVE LICENSE - K-12 PRINCIPAL ENDORSEMENT
NEW RULE XI	ARM 10.57.418	CLASS 3 ADMINISTRATIVE LICENSE - SUPERVISOR ENDORSEMENT
NEW RULE XII	ARM 10.57.419	CLASS 3 ADMINISTRATIVE LICENSE - SPECIAL EDUCATION SUPERVISOR ENDORSEMENT
NEW RULE XIV	ARM 10.57.421	CLASS 4A CAREER AND VOCATIONAL/ TECHNICAL EDUCATION LICENSE
NEW RULE XV	ARM 10.57.422	CLASS 4B CAREER AND VOCATIONAL/ TECHNICAL EDUCATION LICENSE
NEW RULE XXVI	ARM 10.57.433	CLASS 6 SPECIALIST LICENSE
NEW RULE XXVII	ARM 10.57.434	CLASS 6 SPECIALIST LICENSE - SCHOOL PSYCHOLOGIST
NEW RULE XXVIII	ARM 10.57.435	CLASS 6 SPECIALIST LICENSE - SCHOOL COUNSELOR
NEW RULE XXIX	ARM 10.57.601A	DEFINITION OF "IMMORAL CONDUCT"
NEW RULE XXX	ARM 10.57.601B	INVESTIGATION
NEW RULE XXXI	ARM 10.57.606	REPORTING OF THE SURRENDER, DENIAL, REVOCATION OR SUSPENSION OF A LICENSE

3. After consideration of the comments received, the Board of Public Education has adopted the following new rules with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (ARM 10.57.201A) CRIMINAL HISTORY BACKGROUND CHECK (1) through (10) remain as proposed.

(11) This rule shall be effective for persons applying for licensure on or after January 1, 2003.

NEW RULE VII (ARM 10.57.414) CLASS 3 ADMINISTRATIVE LICENSE - SUPERINTENDENT ENDORSEMENT (1) and (1)(a) remain as proposed.

(b) a master's degree in education leadership or equivalent from an accredited professional educator preparation program ~~or equivalent~~ as determined by the university system to include:

(i) through (iii)(E) remain as proposed.

NEW RULE VIII (ARM 10.57.415) CLASS 3 ADMINISTRATIVE

LICENSE - ELEMENTARY PRINCIPAL ENDORSEMENT (1) through (1)(b) remain as proposed.

(c) a master's degree from any accredited professional educator preparation program and a minimum of 24 graduate semester credits in the following content areas:

(i) through (iv) remain the same.

NEW RULE XIII (ARM 10.57.420) CLASS 4 CAREER AND VOCATIONAL/TECHNICAL EDUCATION LICENSE (1) through (4) remain as proposed.

NEW RULE XVI (ARM 10.57.423) CLASS 4C CAREER AND VOCATIONAL/TECHNICAL EDUCATION LICENSE (1) through (2)(g) remain as proposed.

NEW RULE XVII (ARM 10.57.424) CLASS 5 PROVISIONAL ALTERNATIVE LICENSE (1) A class 5 ~~provisional~~ alternative license is valid for a term of three years, is not renewable and may not be reinstated.

(2) An applicant for a class 5 ~~provisional~~ alternative license must sign and file with the superintendent of public instruction a plan of professional intent leading to the class 1, 2, 3 or 6 license within three years of the date of the ~~provisional~~ alternative license.

(3) A class 5 ~~provisional~~ alternative license is available with any endorsement normally allowed for class 1, 2, 3 or 6 licenses.

NEW RULE XVIII (ARM 10.57.425) CLASS 5 PROVISIONAL ALTERNATIVE LICENSE - ELEMENTARY LEVEL (1) To obtain a class 5 ~~provisional~~ alternative license with an elementary level endorsement, an applicant must provide verification of:

(a) through (c) remain as proposed.

NEW RULE XIX (ARM 10.57.426) CLASS 5 PROVISIONAL ALTERNATIVE LICENSE - SECONDARY LEVEL (1) To obtain a class 5 ~~provisional~~ alternative license with a secondary level endorsement, an applicant must provide verification of:

(a) through (c) remain as proposed.

NEW RULE XX (ARM 10.57.427) CLASS 5 PROVISIONAL ALTERNATIVE LICENSE - SUPERINTENDENT ENDORSEMENT (1) To obtain a class 5 ~~provisional~~ alternative license with a superintendent endorsement, an applicant must provide verification of:

(a) through (d) remain as proposed.

NEW RULE XXI (ARM 10.57.428) CLASS 5 PROVISIONAL ALTERNATIVE LICENSE - ELEMENTARY PRINCIPAL ENDORSEMENT (1) To obtain a class 5 ~~provisional~~ alternative license with an elementary principal endorsement, an applicant must provide verification of:

(a) a master's degree from any accredited professional educator preparation program and nine graduate semester credits in school administration;

(b) and (c) remain as proposed.

NEW RULE XXII (ARM 10.57.429) CLASS 5 PROVISIONAL ALTERNATIVE LICENSE - SECONDARY PRINCIPAL ENDORSEMENT (1) To obtain a class 5 ~~provisional~~ alternative license with a secondary principal endorsement, an applicant must provide verification of:

(a) a master's degree from any accredited professional educator preparation program and nine graduate semester credits in school administration;

(b) and (c) remain as proposed.

NEW RULE XXIII (ARM 10.57.430) CLASS 5 PROVISIONAL ALTERNATIVE LICENSE - K-12 PRINCIPAL ENDORSEMENT (1) To obtain a class 5 ~~provisional~~ alternative license with a secondary K-12 principal endorsement, an applicant must provide verification of:

(a) a master's degree from any accredited professional educator preparation program and nine graduate semester credits in school administration;

(b) and (c) remain as proposed.

NEW RULE XXIV (ARM 10.57.431) CLASS 5 PROVISIONAL ALTERNATIVE LICENSE - SUPERVISOR ENDORSEMENT (1) To obtain a class 5 ~~provisional~~ alternative license with a supervisor endorsement an applicant must provide verification of:

(a) and (b) remain as proposed.

NEW RULE XXV (ARM 10.57.432) CLASS 5 PROVISIONAL ALTERNATIVE LICENSE - SPECIALIST ENDORSEMENT (1) To obtain a class 5 ~~provisional~~ alternative license with a specialist endorsement in school psychology an applicant must provide verification of:

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

4. The Board of Public Education has amended the following rules exactly as proposed:

ARM 10.55.602 DEFINITIONS
10.55.604 VARIANCES TO STANDARDS
10.55.702 LICENSURE AND DUTIES OF DISTRICT ADMINISTRATOR - DISTRICT SUPERINTENDENT
10.55.703 LICENSURE AND DUTIES OF SCHOOL PRINCIPAL
10.55.704 ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF DISTRICT SUPERINTENDENTS
10.55.705 ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF SCHOOL ADMINISTRATORS/PRINCIPALS
10.55.707 TEACHER AND SPECIALIST LICENSURE
10.55.710 ASSIGNMENT OF SCHOOL COUNSELING STAFF
10.57.107 EMERGENCY AUTHORIZATION OF EMPLOYMENT
10.57.110 AREA OF PERMISSIVE SPECIALIZED COMPETENCY
10.57.112 LICENSE OF EXCHANGE TEACHERS
10.57.204 EXPERIENCE VERIFICATION
10.57.209 EXTENSION OF LICENSES FOR MILITARY SERVICE

- 10.57.217 APPEAL PROCESS FOR RENEWAL ACTIVITY
- 10.57.218 RENEWAL UNIT VERIFICATION
- 10.57.220 RECENCY OF CREDIT
- 10.57.301 ENDORSEMENT INFORMATION
- 10.57.501 SOCIAL WORKERS, NURSES AND SPEECH AND HEARING THERAPISTS
- 10.57.601 REQUEST FOR DISCIPLINE AGAINST THE LICENSE OF A TEACHER, SPECIALIST, OR ADMINISTRATOR: PRELIMINARY ACTION
- 10.57.602 NOTICE AND OPPORTUNITY FOR HEARING UPON DETERMINATION THAT SUBSTANTIAL REASON EXISTS TO HOLD A HEARING
- 10.57.603 HEARING IN CONTESTED CASES
- 10.57.604 POST HEARING PROCEDURE
- 10.57.605 SURRENDER OF A TEACHER, SPECIALIST OR ADMINISTRATOR LICENSE

5. The Board of Public Education has amended the following rules with the following changes, stricken matter interlined, new matter underlined:

10.57.101 REVIEW OF POLICY (1) remains as proposed.

(2) The board regularly shall consider recommendations for revision of the policies at any time it deems necessary. Notwithstanding any changes made in any five-year period, every five years the board shall have made a comprehensive review of licensure policies to insure that such policies are meeting the needs of the state.

10.57.102 DEFINITIONS The following definitions apply to this chapter.

(1) and (2) remain as proposed.

(3) "Accredited professional educator preparation program" means a program for teacher preparation accredited by NCATE and/or a state board of education. Those persons who enrolled in a regionally accredited teacher preparation program or master's degree program prior to January 1, 2003 will be allowed to receive licensure based on a degree from such program.

(4) through (17) remain as proposed.

10.57.104 STUDENT TEACHING/SUPERVISED PRACTICE

(1) Persons seeking initial licensure must successfully complete a supervised teaching experience in an accredited school. Supervised teaching is student teaching under an appropriate student teaching program and/or supervised practice as a class 5 ~~provisional~~ alternative license holder. The superintendent of public instruction may not waive this requirement.

10.57.201 GENERAL PROVISIONS TO ISSUE LICENSES

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

(d) individuals who currently hold a ~~provisional~~ class 5 alternative license who meet one or more of the above three qualifications.

(3) remains as proposed.

10.57.215 RENEWAL REQUIREMENTS (1) through (2)(d) remain as proposed.

(e) the completion of the assessment process for national board licensure, or renewal of national board licensure, through the standards of the national board for professional teaching standards. Verification of completion of the national board assessment shall result in 60 renewal units. Renewal units earned may apply to renewal of an expiring license. Class 2 license holders may use national board renewal units in lieu of college course credits as required in ~~ARM 10.57.215 (1) and re-stated in 10.57.402(3)~~. This process may also be used in lieu of any credits required to reinstate a lapsed license.

(3) through (6) remain as proposed.

10.57.216 APPROVED RENEWAL ACTIVITY (1) Providers of professional development activities which verify acceptable renewal unit activities for license renewal are:

(a) state, regional or nationally accredited college and university programs, for which no application or prior approval is required;

(b) through (2) remain as proposed.

(3) Those entities approved by the superintendent of public instruction as providers of professional development programs are those applicants who agree to maintain a process in compliance with ~~the definition of renewal unit activities found in ARM 10.57.102(12) and further clarified in ARM 10.57.215 and 10.57.216~~ this rule.

(a) through (4) remain as proposed.

6. The Board of Public Education has amended and transferred the following rules:

ARM 10.57.701 to	10.57.607	APPEAL FROM DENIAL OF A TEACHER, SPECIALIST OR ADMINISTRATOR LICENSE
10.57.702 to	10.57.608	CONSIDERATIONS GOVERNING ACCEPTANCE OF APPEAL IN CASES ARISING UNDER 20-4-104, MCA
10.57.703 to	10.57.609	HEARING ON APPEAL

7. The Board of Public Education has transferred ARM 10.57.407 CLASS 7 AMERICAN INDIAN LANGUAGE AND CULTURE SPECIALIST to ARM 10.57.436 and ARM 10.57.801 SUBSTANTIAL AND MATERIAL NON-PERFORMANCE to ARM 10.57.611.

8. The Board of Public Education has repealed the following rules as proposed.

ARM 10.57.103	GRADES
10.57.106	LIFE CERTIFICATES
10.57.108	SUBSTITUTE TEACHING

10.57.202	APPROVED PROGRAMS
10.57.203	TRAINING EVALUATION
10.57.211A	EDUCATOR RECRUITMENT
10.57.213	REPORTING OF DENIAL OF INITIAL CERTIFICATION, OF REINSTATEMENT OR OF RENEWAL OF CERTIFICATION
10.57.219	CONVERSION FROM RENEWAL CREDITS TO RENEWAL UNITS
10.57.302	COMPUTER ENDORSEMENT REVIEW COMMITTEE
10.57.401	CLASS 1 PROFESSIONAL TEACHER CERTIFICATE
10.57.402	CLASS 2 STANDARD TEACHING CERTIFICATE
10.57.403	CLASS 3 ADMINISTRATIVE CERTIFICATE
10.57.404	CLASS 4 VOCATIONAL CERTIFICATE
10.57.405	CLASS 5 PROVISIONAL CERTIFICATE
10.57.406	CLASS 6 SPECIALIST CERTIFICATE

9. The Board of Public Education has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received and the Board's responses.

COMMENT 1: Lance Melton, Executive Director of the Montana School Boards Association stated his support for the proposed rules in oral testimony at the hearing on October 22, 2002. Mr. Melton recommended that the term "alternative" be substituted for the term "provisional" in connection with Class 5 licensure throughout the proposed rules in order to meet the definition of "highly qualified" under the No Child Left Behind Act, Title IX, Section 9101.

RESPONSE: The Board recognizes and appreciates the comment and thanks the Montana School Boards Association for its support. The Board has amended the proposed rules to reflect a change from "provisional" to "alternative" licenses in order to insure compliance with the No Child Left Behind Act.

COMMENT 2: Eric Feaver, President of MEA/MFT stated his support for the proposed rules in oral testimony at the hearing on October 22, 2002 and concurred with Mr. Melton's recommendation to substitute the term "alternative" for the term "provisional" in order to satisfy the requirements of the No Child Left Behind Act.

RESPONSE: The board recognizes and appreciates the comment and thanks MEA/MFT for its support.

COMMENT 3: Dr. Jim Clark, Superintendent of Missoula County Public Schools commented that the rule changes will have a positive impact on Montana schools to recruit and retain qualified educators in a flexible, competitive and realistic manner.

RESPONSE: The Board recognizes and appreciates the comment and thanks Dr. Clark for his support.

COMMENT 4: Mr. Joel Voytoski, Superintendent of Evergreen School District submitted a letter of support and stated concerns with the proposed rules.

New Rule II: Mr. Voytoski feels that the requirement that non-certified substitutes must complete three hours of training will create an additional burden on school districts to find resources and time to meet these new training requirements. Mr. Voytoski questioned whether CSPAC had the authority to make recommendations with regard to non-certified school personnel (substitute teachers) for training and background checks and felt that the name-based Montana background check should be sufficient because it is more cost effective.

RESPONSE: The Board recognizes and appreciates the comment and thanks Mr. Voytoski for his support. The Board feels that training for substitute teachers is necessary. Because of the current flexible language for obtaining the three hours of training and existing models employed by other districts to offer the training, it has been demonstrated that the training can be obtained. The Board also feels that the substitute teachers should have some responsibility for obtaining the necessary training.

In connection with the comment regarding CSPAC, the Board reaffirms CSPAC's standing to provide advice regarding non-certified staff because substitute teaching includes "practices" upon which the council has authority to advise.

The Board feels that it is necessary to obtain background checks based on fingerprints because of the high error rate with data entry on name based checks and that the name based checks only involve Montana records, not records from the FBI or other jurisdictions outside of the state of Montana.

COMMENT 5: Mr. Larry Johnson, Assistant Superintendent of the Missoula County Public Schools submitted a letter of support for the proposed changes and commented that expanding the 7-12 certification to 5-12 will greatly assist in staffing middle schools with qualified teachers.

RESPONSE: The Board recognizes and appreciates the comment and thanks Mr. Johnson for his support.

COMMENT 6: The Board of Public Education Executive Committee requested that language be added to Chapter 57 to ensure that these rules receive a comprehensive review every five years.

RESPONSE: The last sentence of ARM 10.57.101(2) has been reinserted at the request of Dr. Kirk Miller, Chairman of the Board of Public Education to insure that Montana rules reflect and stay up to date with current trends in education.

COMMENT 7: A commentor submitted a letter of support for New Rule II Substitute Teachers (1)(a) and (3). The commentor had concerns that the rules will not be enforced; that schools will hire more non-certified substitutes because they are less expensive to hire and felt that certified substitute teachers should also be fingerprinted.

RESPONSE: The Board appreciates the comment and recognizes the need to work with the Office of Public Instruction to assure compliance with this rule. All certified teachers, whether full-time classroom teachers or substitutes, are required to follow the same rules regarding fingerprinting and background checks.

COMMENT 8: A commentor submitted a letter with a comment regarding New Rule XII Administrative License - Special Education Supervisor Endorsement. The commentor felt that under the proposed rule, people would need to have a specific master's degree to receive a special education supervisor endorsement. Some people may have undergraduate special education degrees with master's degrees in educational administration and still would not qualify for the special education supervisor endorsement as the rule is currently written.

RESPONSE: The Board recognizes and appreciates the comment, but agrees with CSPAC's recommendation that a special education supervisor must be highly trained by evidence of a master's degree in a special education related area.

COMMENT 9: Dr. Bob Clemens of Montana State University-Bozeman submitted a letter recommending that New Rule XIX Class 5 Provisional License - Secondary Level read "at least 8 semester credits..." instead of "6".

RESPONSE: The Board recognizes and appreciates the comment. Originally the requirement was for 8 semester credits for an elementary endorsement and 6 for a secondary endorsement. The CSPAC committee agreed that the requirement should be the same for both elementary and secondary endorsements.

COMMENT 10: A commentor submitted a written request that a "grandfather" clause be added to 10.57.102(3) to allow people who are currently enrolled in regionally accredited teacher preparation or master's degree programs to have this coursework accepted for licensure in Montana. Pursuing an online degree from a regionally accredited institution permits individuals to advance their career in education without having to leave teaching positions in a rural school district.

RESPONSE: The Board recognizes and appreciates the comment and concurs. The Board has amended 10.57.102(3) as set forth above.

In review of this issue the Board has further determined that ARM 10.57.216 should be amended to provide that renewal

units may be earned from state, regional or nationally accredited colleges or universities.

COMMENT 11: Janice Midyet of the University of Montana-Missoula submitted a letter and recommended the following changes:

(a) New Rules XXI, XXII and XXIII provide that in order to receive provisional endorsement as a principal the individual has to have a master's degree from any accredited professional educator preparation program. This means that someone with a degree in math or science or some other certifiable area could become a principal with no administrative course work. Is that what the Board intends? The current rule requires a master's degree or equivalent in school administration and is too restrictive. The administrative internship program requires 9 credits in school administration courses. Shouldn't we add a requirement for the individual to have completed some courses in school administration?

(b) In New Rule XXIII Ms. Midyet believes the third line should refer to K-12 principal, not secondary principal.

(c) In New Rule VII(1)(b) Ms. Midyet thinks that "or equivalent" is misplaced and should follow the phrase "master's degree in education leadership".

(d) In New Rule VIII(1)(c) the term "graduate" is left out of the elementary principal requirements. Graduate is in the secondary requirements. Ms. Midyet suggests changing both to read: "24 graduate semester credits in school administration in the following content areas."

(e) In New Rule XII - does this allow Class 6 specialist school counselors to be special ed supervisors? Clinical counseling is mentioned and school psychology is mentioned but not school counselors.

RESPONSE: The Board recognizes and appreciates Ms. Midyet's comments. The Board concurs with her comments under subparagraphs (a) through (c) above and has amended the subject rules accordingly. In connection with comment (d) the Board has also amended VIII(1)(c) to clarify that the requirement is for 24 graduate semester credits. The Board feels that the terms "school administration" do not need to be added to this paragraph as it is redundant because the course requirements in paragraphs (i) through (iv) are school administration courses. In connection with comment (e) the listed professionals are related service providers whose practice in the schools is the delivery of special education services. A school counselor ordinarily does not practice only in the area of special education.

COMMENT 12: Mr. David Haselkorn, Dean of the National Education Programs and Policies of Lesley University submitted a letter and recommended that the teacher preparation programs that are accredited by Teacher Education Accreditation Council (TEAC), a national accreditation body for teacher preparation institutions, be accepted for teacher licensure and renewal in

Montana.

RESPONSE: The Board recognizes and appreciates Mr. Haselkorn's comment. The Board needs to research further other national teacher program accrediting associations. When this has been accomplished the Board will consider amending this rule to include other accrediting agencies.

COMMENT 13: The Office of Public Instruction requested that the Board amend New Rule I to include an effective date of January 1, 2003. This will give OPI additional time to get the process for fingerprinting and background checks in place before the requirement is effective for licensure.

ARM 10.57.215 is also being amended to correct an error in the proposed notice in that the phrase "and re-stated in 10.57.402(3)" was not contained in the notice. This phrase needs to be stricken because 10.57.402(3) was repealed.

RESPONSE: The Board recognizes and appreciates OPI's comment and has amended New Rule I and ARM 10.57.215 as requested.

/s/ Dr. Kirk Miller
Dr. Kirk Miller, Chair
Board of Public Education

/s/ Steve Meloy
Steve Meloy, Executive Secretary
Rule Reviewer
Board of Public Education

Certified to the Secretary of State November 18, 2002.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 8.32.303,)
pertaining to nursing)
licensure matters)

TO: All Concerned Persons

1. On June 13, 2002, the Department of Labor and Industry published notice of the proposed amendment of the above-stated rule at page 1621 of the 2002 Montana Administrative Register, Issue Number 11.

2. On July 3, 2002, a public hearing on the proposed amendment of the above-stated rule was conducted in Helena, and members of the public spoke at the public hearing. In addition, written comments were received prior to the closing of the comment period on July 11, 2002.

3. On August 29, 2002, the Department of Labor and Industry published notice of the amendment of several rules related to nursing at page 2315 of the 2002 Montana Administrative Register, Issue Number 16. In paragraph 6 of that notice, the Board announced that it was not taking action on the proposed amendments to ARM 8.32.303 at that time.

4. The Board of Nursing (Board) has thoroughly considered all of the comments made regarding proposed amendments to ARM 8.32.303. A summary of the comments received and the Board's responses are as follows:

Comment 1: Opponents to this amendment (Susan Good, for the Montana Society of Anesthesiologists, Montana Neurosurgeons, and the Montana Orthopedic Society; and Mona Jamison, for the Montana Society of Anesthesiologists) argued that the Board of Nursing (Board) may not define Certified Registered Nurse Anesthetist (CRNA) practice as independent and/or interdependent. The opponents believe that the Board does not have the statutory authority to amend this rule in this way. The opponents believe that because the Medicare Conditions of Participation currently have language requiring physician supervision, the rule would not be valid.

Response 1: The Board acknowledges the commenters' statements and notes that section 37-8-409, MCA, allows the Board to grant Advanced Practice Registered Nurse (APRN) status to a nurse who provides proof of qualifications in the respective specialty area. The CRNA practice involves the independent and interdependent practice of administering anesthesia. The Board has the authority to define the scope of practice of its licensees. Following deliberations, the Board decided to change

"interdependent" to "collaborative", in ARM 8.32.803(1), and has amended the rule accordingly.

Comment 2: Opponents (Susan Good, for the Montana Society of Anesthesiologists, Montana Neurosurgeons, and the Montana Orthopedic Society; and Patrick Melby, for the Montana Medical Association) argued that this is a major policy issue resulting in "scope creep", and must be addressed by the legislature. The opponents also stated that the rule language carries grave consequences for the "opt-out" issue currently before the governor.

Response 2: The Board has the authority under 37-8-202, MCA, to define scope of practice for nurses. Medicare or any other payment source may define stricter rules for reimbursement.

Comment 3: Susan Good, on behalf of the Montana Society of Anesthesiologists, Montana Neurosurgeons, and the Montana Orthopedic Society, and Patrick Melby, for the Montana Medical Association, stated that the Board failed to provide a statement of reasonable necessity for amending this rule at this time. Opponents do not accept the statement of reasonable necessity as adequate.

Response 3: The Board believes the statement of reasonable necessity for ARM 8.32.303 is adequate. The statement outlines the change in substance of the rule. Because all CRNAs, Nurse Practitioners (NPs), and Certified Nurse Midwives (CNMs) in Montana have independent practice, the change was not noted in the statement of reasonable necessity. This independent status has always been implied for all APRNs and this rule change was meant to unify the definition of all APRNs. As well, this was a clarification of existing rule ARM 8.32.303 which states, "nurse anesthetist practice is the performance or the assistance in any act involving the determination, preparation, administration or monitoring of any drug used in the administration of anesthesia or related services for surgical and other therapeutic procedures which require the presence of persons educated in the administration of anesthetics." The Board's regulation of advanced practice nursing is, as expressed in the statement of reasonable necessity, exercised in the interests of protecting the health, safety and welfare of Montanans.

Comment 4: Lauri Baptie, an opponent, stated that the administering of anesthetics (prescribed substances) is inherent in the practice of CRNAs and therefore a separate requirement of prescriptive authority is not necessary. As well, the surgeon is the one who orders post-operative pain medications.

Response 4: The Board agrees with the comment and will eliminate the requirement for prescriptive authority except when the CRNA is writing prescriptions to be filled at a pharmacy and to be taken when not under the direct care of the CRNA.

Comment 5: Commenters (Thomas Schulz, CRNA, for the Montana Association of Nurse Anesthetists, and Ron Freund, CRNA) stated that Montana would be the only state to require prescriptive authority for CRNAs.

Response 5: The Board agrees and will eliminate the requirement for prescriptive authority except when the CRNA is writing a prescription to be filled at a pharmacy and to be taken when not under the direct care of a CRNA.

Comment 6: Thomas Schulz, CRNA, for the Montana Association of Nurse Anesthetists, expressed a concern that when a CRNA orders a pre-operative drug for a Registered Nurse (RN) to administer, this is not considered delegation of nursing duties.

Response 6: The Board acknowledges this comment. The concern appears to be that CRNAs with prescriptive authority will no longer be able to assign the administration of pre-operative drugs to an RN. ARM 8.32.1505 states that the APRN with prescriptive authority cannot delegate the prescribing or dispensing of drugs, or the choice of pre-operative medication, which is prescribing. The APRN with prescriptive authority may write an order for the RN to administer a drug, which is assigning. This is not a change from existing rules.

The Board will eliminate the requirement for prescriptive authority except when the CRNA is writing prescriptions to be filled at a pharmacy and to be taken when not under the direct care of the CRNA.

Comment 7: Sami Butler, of the Montana Nurses Association (MNA), opposes including "interdependent" in the proposed rules. The MNA believes that "interdependent" is inherent in the practice of all health care providers.

Response 7: The Board agrees and has voted to delete "interdependent" and add "collaborative" in ARM 8.32.303(1), and has amended the rule accordingly.

Comment 8: G. Brian Zins, of the Montana Medical Association, expressed concerns that this language would expand the scope of nursing practice. The opponent is also concerned that adding the word "independent" is posturing in light of the governor's impending "opt-out" decision.

Response 8: The Board began reviewing and revising the APRN rules more than 18 months ago. The governor's "opt-out" decision affects reimbursement only. The Board is not concerned with issues of reimbursement and is amending the rule in an effort to clarify and unify all APRN scopes of practice.

Comment 9: Mona Jamison, for the Montana Society of Anesthesiologists, argued that scope of practice issues must be decided by the legislature.

Response 9: The Board has the authority under 37-8-202, MCA, to define scope of practice for nurses. Medicare or any other payment source may define stricter rules for reimbursement.

Comment 10: Patrick Melby, for the Montana Medical Association, argued that adding "independent" to the CRNA definition will be in conflict with Medicare "Conditions of Participation", and would be inaccurate and misleading to the public.

Response 10: The Medicare rules and regulations concern reimbursement. The Board is not concerned with matters of reimbursement, but is concerned with clarifying and defining issues of scope of practice for all nurses in Montana.

Comment 11: Lauri Baptie argued that requiring prescriptive authority for CRNAs will not enhance the care rendered and may drive CRNAs away from practicing in Montana.

Response 11: The Board will eliminate the requirement for prescriptive authority except when the CRNA is writing prescriptions to be filled at a pharmacy and to be taken when not under the direct care of the CRNA. The Board has not concluded that a requirement for prescriptive authority would necessarily drive CRNAs away from practicing in Montana.

Comment 12: Kim Hackl, CRNA, objected to the additional continuing education requirements since it will be in addition to what the credentialing organization requires for recertification.

Response 12: The Board will not require additional continuing education unless the CRNA has prescriptive authority and chooses to write prescriptions which are taken after the patient leaves the direct care of the CRNA.

Comment 13: Nelson Benson, CRNA, argued that the federal Drug Enforcement Agency (DEA) does not consider the act of administering anesthesia as prescribing.

Response 13: The Board agrees and will eliminate the requirement for prescriptive authority except when the CRNA is writing prescriptions to be filled at a pharmacy and to be taken when not under the direct care of the CRNA.

Comment 14: Thomas Schulz, CRNA, for the Montana Association of Nurse Anesthetists, argued that if a CRNA was under probation or another disciplinary action by the Board, the CRNA's license would be encumbered and the CRNA would be prohibited from practicing. Mr. Schulz also stated the prescriptive authority requirement might create problems with continuing education for some CRNAs. Locum tenens CRNAs have a difficult time meeting this criterion and thus using locum tenens for vacation relief will be difficult. Lastly, Mr. Schulz stated that writing prescriptions for pain management is not something the typical

CRNA does in practice.

Response 14: The Board will eliminate the requirement for prescriptive authority except if the CRNA is writing prescriptions to be filled at a pharmacy and to be taken when not under the direct care of the CRNA. The Board has not concluded that continuing education requirements are necessarily a burden on CRNAs.

Comment 15: Kim Hackl, CRNA, stated that Montana would be the only state requiring prescriptive authority for CRNAs.

Response 15: The Board agrees and will eliminate the requirement for prescriptive authority except when the CRNA is writing prescriptions to be filled at a pharmacy and to be taken when not under the direct care of the CRNA.

5. After consideration of the comments, the Board has amended the rule as proposed, with the following changes, stricken matter interlined, new matter underlined:

8.32.303 NURSE ANESTHETIST PRACTICE (1) Nurse anesthetist practice is the independent and/or ~~interdependent~~ collaborative performance of or the assistance in any act involving the determination, preparation, administration or monitoring of any drug used in the administration of anesthesia or related services for surgical and other therapeutic procedures which require the presence of persons educated in the administration of anesthetics.

~~(2) A nurse anesthetist is required to have prescriptive authority.~~

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

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

BOARD OF NURSING
KIM POWELL, RN, Chair

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

Certified to the Secretary of State: November 18, 2002.

BEFORE THE BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of new rule I (8.62.425) and) AND REPEAL
the repeal of ARM 8.62.413,)
pertaining to Speech-Language)
Pathologists and Audiologists)
fees)

TO: All Concerned Persons

1. On September 26, 2002, the Board of Speech-Language Pathologists and Audiologists published a notice of proposed adoption and repeal of the above-stated rules at page 2536, 2002 Montana Administrative Register, Issue Number 18.

2. A public hearing on the proposed adoption and repeal was held on October 25, 2002.

3. The Board met on November 14, 2002 and has adopted New Rule I (8.62.425) and repealed 8.62.413, exactly as proposed.

4. The Board received several written comments on the proposed adoption and repeal, which the Board has thoroughly considered. A summary of the comments and the Board's responses are as follows:

Comment 1: Commenters (Holly Wurl, MSPA CCC-SpL; Craig McCollim; Kathy Law; Char Cordier; Sue Toth, MA CCC-A/SLP; Margaret Green, SLP-CCC; Loreen Folsom, SLP; Montana Speech-Language and Hearing Association; Jennifer L. Pierce, M.Sc., SLP-CCC; Mary "Joan" Peterson, MA CCC-SLP) opposed the amount of increases as proposed. The commenters believe the increases are unreasonable, exorbitant, and inordinately excessive.

Response 1: The Board may establish fees for program areas such as application, examination, renewal, reciprocity, late renewal and continuing education. The Board is required by statute, 37-1-134, Montana Code Annotated, to set fees that are reasonably related to the respective program area costs. The proposed fee increases are reasonably necessary to enable the Board to pay its share of the Oracle licensing database.

Comment 2: Commenters (Holly Wurl, MSPA CCC-SpL; Montana Speech-Language and Hearing Association) expressed concern that there is a disparity between the fee increases to be paid by different types of licensees and/or for different types of licenses or registration.

Response 2: The Board has reviewed its records pertaining to the costs of licensing and regulating all types of licensees and

those registered under the Board's jurisdiction, including the time the staff allocates to licensees and registrants. The Board has determined that the proposed fee increases are commensurate with the respective program area costs.

Comment 3: Commenters (Margaret Green, SLP-CCC; Montana Speech-Language and Hearing Association; Sue Toth, MA CCC-A/SLP) questioned whether there might be other cost-cutting measures that the Board could consider, in lieu of raising the licensure fees.

Response 3: The Board will continue to maintain and review budgetary and other documentation regarding the fees charged by the Board to support the respective programs, to ensure that all fees charged continue to be commensurate with the program costs.

Comment 4: The Montana Speech-Language and Hearing Association believes the proposed fee increase came suddenly to licensees.

Response 4: The Board acknowledges the suddenness with which the fee increases have been brought forward. The Board is required to pay its share of the costs of the updated licensing database system in one single payment in the current fiscal year and does not have the option to pay in installments. The Board is also required to be self-sufficient following the 2001 transfer of the Board to the Department of Labor and Industry. Prior to the Board's administrative attachment to the Department of Labor and Industry, a portion of the Board's operating expenses historically were subsidized by other regulated professions. The Board notes that the previous fee structure did not fully fund the Board's operations. The Board is required to charge fees that are commensurate with the Board's operating expenses. The Board recognizes that while its licensees should not help fund the regulatory structure of other professions, it is not fair to expect that other professions fund the Board's activities.

Comment 5: Commenters (Montana Speech-Language and Hearing Association; Margaret Green, SLP-CCC) expressed concern that Speech-Language Pathologists already have to pay dues for membership in professional organizations and fees for continuing education units in addition to the licensure fees.

Response 5: The Board is mandated by statute to safeguard the public health, safety, and welfare by protecting the public from unprofessional conduct by licensees, and from being misled by incompetent, unscrupulous, and unauthorized persons. The fees charged by the Board are collected solely to fund the program costs associated with this statutory mandate. The Board does not work in conjunction with any professional organization, and does not promote any association's goals or objectives. The Board also notes that membership in various professional associations is purely voluntary.

Comment 6: Commenters (Jennifer L. Pierce, M.Sc., SLP-CCC; Mary "Joan" Peterson, MA CCC-SLP; Kathy Law; Char Cordier; Margaret Green, SLP-CCC; Loreen Folsom, SLP) stated that the licensure fee increases are not in line with their salaries or the cost of living increases the licensees receive through their employers.

Response 6: The Board is statutorily mandated to assess fees that are commensurate with the costs of the programs the Board administers. The Board looks only to the program costs when setting the licensure fees, and does not consider cost of living or salary levels of licensees.

Comment 7: One commenter, Jennifer L. Pierce, M.Sc., SLP-CCC, stated that the Board is subject to the speech-language pathology national association's licensing and registration policies, and therefore, the Board is providing a "duplicated professional service".

Response 7: The Board functions as an executive agency of the State of Montana. The statutory purpose of the Board is to license and regulate the practice of speech-language pathology and audiology to protect the public health, welfare and safety. The Board is not subject to any professional association's regulation.

5. After consideration of the comments, the Board has adopted the following rule, exactly as proposed:

NEW RULE I (8.62.425) FEES

6. After consideration of the comments, the Board has repealed ARM 8.62.413, as proposed.

BOARD OF SPEECH-LANGUAGE
PATHOLOGISTS AND AUDIOLOGISTS
MARILYN THADEN, CHAIR

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ Kevin Braun
Kevin Braun,
Rule Reviewer

Certified to the Secretary of State November 18, 2002

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

In the matter of the	)	NOTICE OF AMENDMENT
amendment of ARM 37.70.107,)	
37.70.110, 37.70.305,)	
37.70.312, 37.70.401,)	
37.70.402, 37.70.406,)	
37.70.407, 37.70.408,)	
37.70.601, 37.70.608,)	
37.71.107, 37.71.110,)	
37.71.301, 37.71.601 and)	
37.71.602 pertaining to LIEAP)	
and LIWAP)	

TO: All Interested Persons

1. On September 26, 2002, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rules at page 2604 of the 2002 Montana Administrative Register, issue number 18.

2. The Department has amended ARM 37.70.107, 37.70.110, 37.70.305, 37.70.312, 37.70.401, 37.70.402, 37.70.406, 37.70.407, 37.70.408, 37.70.601, 37.70.608, 37.71.107, 37.71.110, 37.71.301, 37.71.601 and 37.71.602 as proposed.

3. No comments or testimony were received.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State November 18, 2002.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 37.86.2105)
pertaining to medicaid)
eyeglass services)

TO: All Interested Persons

1. On October 17, 2002, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rule at page 2881 of the 2002 Montana Administrative Register, issue number 19.

2. The Department has amended ARM 37.86.2105 as proposed.

3. No comments or testimony were received.

4. This amendment will be effective December 1, 2002.

Dawn Sliva
Rule Reviewer

/s/ Gail Gray
Director, Public Health and
Human Services

Certified to the Secretary of State November 18, 2002.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of the Amendment) NOTICE OF AMENDMENT
of ARM 38.2.5007 and 38.2.5008)
Pertaining to Protective Orders)
And Protection of Confidential)
Information)

TO: All Concerned Persons

1. On July 25, 2002, the Department of Public Service Regulation, Public Service Commission (PSC), published notice of public hearing on the proposed amendment of ARM 38.2.5007 and 38.2.5008 concerning protective orders and protection of confidential information, at page 1972 of the 2002 Montana Administrative Register, issue number 14.

2. The PSC has amended ARM 38.2.5007 and 38.2.5008 with the following changes, stricken matter interlined, new matter underlined:

38.2.5007 PROTECTIVE ORDER -- REQUESTS, TIMING OF REQUESTS, AND PROCEDURE (1) In general, information will be designated confidential information only upon request by a provider. It is the responsibility of the provider or other person asserting a right to protection of information to specifically advise the commission of the claim to confidentiality and to request, by motion prior to submitting the information, that the commission designate the information as confidential.

(2) Prior to requesting a protective order, the provider must ~~thoroughly verify~~ determine, following a thorough legal and factual examination, that all information claimed to be confidential is a bona fide trade secret, a matter of constitutionally-protected privacy, or otherwise legally protectible.

(3) The motion for protective order must comply with commission procedural rules on format of motions in general, but need not include a proposed protective order.

(4) The motion for protective order must be thorough but brief and must include:

(a) an identification of the person, including information allowing that person to be readily contacted (e.g., phone number), to whom communications from commission staff, parties, and interested persons may be made in regard to the information for which protection is requested and the bases for protection;

(b) a complete and specific identification, item by item or by category of items which are alike, of all information for which protection is requested;

(c) a complete and specific factual basis, including a thorough identification and explanation of the specific facts, assertions of which (e.g., information is a trade secret) to be supported by affidavit of an expert where necessary or advisable

(e.g., in a case of first impression before the commission, in an instance when the provider anticipates a challenge to the claim of protection, or when the provider anticipates an expert's view will be helpful to the commission in reaching a determination) or when ordered by the commission, supporting protection of the information for which protection is requested; and

(d) a complete and specific legal basis, including but not limited to a thorough identification and explanation of the specific elements of trade secret, constitutionally protected privacy, or other lawful basis for protection where applicable, explaining why the information for which protection is requested is lawfully entitled to protection.

(5) The commission may rule on a request for protective order or may notice a request for protective order for comment or hearing.

(6) In the interests of preventing delays in proceedings, the commission encourages providers to make requests for protection of confidential information at the earliest possible time in a proceeding, including in anticipation of a proceeding, if the provider has reason to believe that confidential information will be submitted or is likely to be requested in the proceeding.

AUTH: 69-3-103, MCA
IMP: 69-3-105, MCA

38.2.5008 PROTECTIVE ORDER -- ISSUANCE, RECONSIDERATION, CHALLENGE TO CONFIDENTIALITY, INTERIM PROTECTIVE ORDERS

(1) When justified the commission will issue a protective order, with liberal reference to these rules and with attachments as necessary, including to identify the protected information and any waivers and special terms and conditions which may apply.

(2) Reconsideration of issuance of a protective order is not allowed. Challenges to a commission determination that information is protectible shall be in accordance with (3).

(3) Protective orders and these rules establish a procedure for the expeditious handling of information that a provider claims is confidential. Commission issuance of a protective order and designation of information as confidential information means the commission has determined the provider has ~~established a prima facie case shown good and sufficient cause in fact and law~~ that the information for which protection is requested is entitled to protection. A party to the proceeding in which information has been designated confidential, or a person or entity with proper standing, or the commission on its own motion, may challenge the provider's claim of confidentiality at any time, in accordance with the following procedure-:

(a) A motion challenging protection of the information must be filed with the commission and served upon the providing party. The providing party must file a response to the motion

within 14 days. Requests for hearing or oral argument may be granted for good cause; or

(b) If the commission determines on the motion that information should be removed from protection, the information will remain protected under the governing protective order and these rules for a reasonable period, to be established in the commission ruling, to allow the provider time to appeal the commission decision.

(4) Upon challenge of a protective order, the provider shall bear the The burden of demonstrating that information, ~~which the commission has determined to be information entitled to protection, shall be on the provider is entitled to protection.~~

(5) In any proceeding in which a protective order does not exist because there has been no ~~known~~ need known to the provider, the commission, ~~on its own motion or on motion of a provider, the consumer counsel, or other requesting party,~~ may issue an interim protective order ~~if a need for protectible information is identified and issuance of the order will to expedite complete and immediate access to information necessary in the proceeding (e.g., during pre-discovery on-site audits by the commission and consumer counsel).~~ The rights and obligations of providers, requesting parties, and the commission relating to protection of information under the interim protective order are the same as protection under a final protective order, except the provider need only make a reasonable effort in determining that fact and law support the provider's assertion that the information is protectible. Within ~~five~~ 10 days of providing information protected under an interim protective order the provider must file a motion for protection of the information on a final basis in accordance with these rules. If the provider, following the thorough legal and factual examination required in support of protection on a final basis, determines all or part of the information protected on an interim basis is not protectible, the provider shall so notify the commission and requesting parties.

AUTH: 69-3-103, MCA

IMP: 69-3-105, MCA

3. The following comments were received and appear with the PSC's responses:

COMMENT 1: Ronan Telephone Company (RTC) and Hot Springs Telephone Company (HST) comment that the rules are not required by law, are not otherwise necessary, are burdensome for the PSC and parties, and distract from and delay focus and decision on the merits of PSC matters in which the rules apply. RTC and HST suggest there should be an exemption from the rules for small companies. RTC and HST question the effect of the terminology "prima facie case" in light of the PSC's role in review of the information and in burden shifting.

RESPONSE: Some of the RTC/HST comments seem to be directed

at the existing rules. The PSC's protective order rules are reasonably necessary. The protective order process requires strict attention by the PSC, providers, and requesting parties. The rules require this and otherwise do little more than implement the PSC's pre-rule protective order process. The rules are not unduly burdensome and merely require what PSC, providers, and requesting parties should have already been doing. The PSC is aware of no compelling reason to exempt small utilities from the protective order rules applicable to all utilities. The PSC agrees use of the terminology "prima facie case" is problematic and amends the rule accordingly.

COMMENT 2: NorthWestern Energy (NWE) comments that the PSC should clarify the nature of the proposed interim protective order in regard to specificity of the information it would pertain to. NWE views the PSC's intent as likely being a non-specific, blanket interim protective order. NWE suggests the five-day requirement for providers to submit a motion for a permanent protective order be extended to ten days, as all involved will probably be busy with other aspects of the matter before the PSC as well. NWE suggests the "thoroughly verify" and "support by affidavit" should be deleted, as all pleadings, by the signature on them, are attested to as true and correct. In the alternative NWE suggests the rationale for "thoroughly identify" and identity of the circumstances in which "support by affidavit" is required be included in the rule.

RESPONSE: The PSC agrees that clarification is necessary and that the five-day requirement allows too little time. The PSC amends the rule accordingly.

COMMENT 3: Montana Dakota Utilities Co. (MDU) and Qwest Corporation (Qwest) comment that the proposed interim protective order process does not make the rules more workable, but adds to the confusion and uncertainty that already exists in the rules. MDU and Qwest comment a utility cannot describe information to the PSC until the utility knows what the information is. MDU and Qwest suggest the amendments are being proposed because the existing rules are not workable. MDU and Qwest suggest the PSC return to the pre-rule status of protective orders, which is a straight-forward process, was used for many years, and is a more workable approach.

RESPONSE: The interim protective order is designed to allow needed information which is or may be confidential to flow in a timely manner when a provider does not know what the information is until identified by the requesting party. The PSC will clarify this in the rule. The existing rules are not at all unworkable. They do require strict attention by the PSC, providers, and requesting parties and otherwise do little more than implement the PSC's pre-rule protective order process as it was supposed to operate. The pre-rule status of the protective order process sometimes tended to allow less than strict attention by the PSC, providers, and requesting parties. Much

of the proposed rules do little more than clarify what was intended by the existing rules.

/s/ Gary Feland
Gary Feland, Chairman

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 18, 2002.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- ▶ Department of Public Health and Human Services.

Law and Justice Interim Committee:

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

Revenue and Transportation Interim Committee:

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

State Administration, and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2002. This table includes those rules adopted during the period October 1, 2002 through December 31, 2002 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2002, 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 2001 and 2002 Montana Administrative Registers.

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

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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 October 2002, appear. Vacancies scheduled to appear from December 1, 2002, through February 28, 2003, 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 November 8, 2002.

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 OCTOBER 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Alternative Health Care (Labor and Industry) Ms. Kathee Dunham Arlee Qualifications (if required): direct midwife	Governor	reappointed	10/3/2002 9/1/2006
Ms. Eloise Hargrove Belgrade Qualifications (if required): public member	Governor	Pasha	10/3/2002 9/1/2006
Board of Outfitters (Labor and Industry) Ms. Jennifer J. Cote Missoula Qualifications (if required): sportsperson	Governor	reappointed	10/17/2002 10/1/2005
Mr. Leslie K. Dolezal Billings Qualifications (if required): public member	Governor	reappointed	10/17/2002 10/1/2005
Mr. Mel Montgomery Lima Qualifications (if required): big game outfitter	Governor	reappointed	10/17/2002 10/1/2005
Mr. Wayne L. Underwood Billings Qualifications (if required): sportsperson	Governor	reappointed	10/17/2002 10/1/2005
Board of Psychologists (Labor and Industry) Ms. Pat Colberg Billings Qualifications (if required): public member	Governor	Mullowney	10/15/2002 9/1/2007

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Veterans' Affairs (Military Affairs) Mr. Ray Tindall Billings Qualifications (if required): veteran	Governor	Hageman	10/29/2002 8/1/2007
Commission on Community Service (Labor and Industry) Mr. John Allen Helena Qualifications (if required): representative of the National Service Corporation and an ex-officio member	Governor	reappointed	10/15/2002 7/1/2005
Ms. Margaret H. Campbell Poplar Qualifications (if required): representative of tribal government	Governor	Raining Bird	10/15/2002 7/1/2005
Ms. Nan LeFebvre Helena Qualifications (if required): representative of the Department of Public Health and Human Services	Governor	reappointed	10/15/2002 7/1/2005
Mr. Bob Maffit Helena Qualifications (if required): representative of the disabled community and an ex-officio member	Governor	reappointed	10/15/2002 7/1/2005
Ms. Bea Ann Melichar Billings Qualifications (if required): representative of senior programs	Governor	reappointed	10/15/2002 7/1/2005
Ms. Sherry Stevens Wulf Kalispell Qualifications (if required): representative of volunteer agencies	Governor	reappointed	10/15/2002 7/1/2005

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Support Services Advisory Council (Public Health and Human Services)			
Mr. Ron Herman	Governor	Holbrook	10/29/2002
Helena			10/1/2004
Qualifications (if required):	representative of a state agency and the state insurance commissioner		
Ms. Phyllis Astheimer	Governor	not listed	10/1/2002
Bozeman			10/1/2004
Qualifications (if required):	family support specialist		
Ms. Gwen Beyer	Governor	not listed	10/1/2002
Missoula			10/1/2004
Qualifications (if required):	representative of Parents Region V		
Mr. Mike Cooney	Governor	not listed	10/1/2002
Helena			10/1/2004
Qualifications (if required):	representative of public awareness and education organizations		
Ms. Sylvia Danforth	Governor	not listed	10/1/2002
Miles City			10/1/2004
Qualifications (if required):	representative of provider/Part C agency		
Ms. Sue Forest	Governor	not listed	10/1/2002
Missoula			10/1/2004
Qualifications (if required):	representative of Personnel Preparation		
Rep. Mary Anne Guggenheim	Governor	not listed	10/1/2002
Helena			10/1/2004
Qualifications (if required):	representative of medical/health care services		

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Support Services Advisory Council (Public Health and Human Services) cont.			
Ms. Lucy Hart-Paulson	Governor	not listed	10/1/2002
Missoula			10/1/2004
Qualifications (if required):	representative of therapists		
Ms. Liz Harter	Governor	not listed	10/1/2002
Helena			10/1/2004
Qualifications (if required):	agency representative/foster care		
Mr. John Holbrook	Governor	not listed	10/1/2002
Helena			10/1/2004
Qualifications (if required):	agency representative/insurance commissioner's office		
Ms. Jackie Jandt	Governor	not listed	10/1/2002
Helena			10/1/2004
Qualifications (if required):	agency representative/mental health		
Ms. Ann Marie Johnson	Governor	not listed	10/1/2002
Missoula			10/1/2004
Qualifications (if required):	representative of Headstart		
Ms. Kelly Johnson	Governor	not listed	10/1/2002
Frenchtown			10/1/2004
Qualifications (if required):	representative of Parents at Large		
Ms. Denise King	Governor	not listed	10/1/2002
Helena			10/1/2004
Qualifications (if required):	agency representative/EPSDT/Medicaid		
Mr. Jay Korth	Governor	not listed	10/1/2002
Helena			10/1/2004
Qualifications (if required):	representative of Parents Region IV		

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Support Services Advisory Council (Public Health and Human Services) cont.			
Ms. Lynda Korth Helena	Governor	not listed	10/1/2002 10/1/2004
Qualifications (if required):	agency representative/adoption programs		
Ms. Shelley Korth Helena	Governor	not listed	10/1/2002 10/1/2004
Qualifications (if required):	representative of Parents Region IV		
Mr. Brian Lenhardt Havre	Governor	not listed	10/1/2002 10/1/2004
Qualifications (if required):	representative of Parents Region II		
Ms. Rene Lenhardt Havre	Governor	not listed	10/1/2002 10/1/2004
Qualifications (if required):	representative of Parents Region II		
Mr. Ted Maloney Missoula	Governor	not listed	10/1/2002 10/1/2004
Qualifications (if required):	representative at large		
Ms. Sandi Marisdotter Helena	Governor	not listed	10/1/2002 10/1/2004
Qualifications (if required):	representative of provider/Part C agency		
Ms. Novelene Martin Miles City	Governor	not listed	10/1/2002 10/1/2004
Qualifications (if required):	field services specialist		
Mr. Dan McCarthy Helena	Governor	not listed	10/1/2002 10/1/2004
Qualifications (if required):	SEA agency representative/preschool specialist		

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Support Services Advisory Council (Public Health and Human Services) cont.			
Ms. Sandy McGennis Great Falls	Governor	not listed	10/1/2002 10/1/2004
Qualifications (if required):	representing provider/Montana School for the Deaf and Blind		
Sen. Gerald Pease Lodge Grass	Governor	not listed	10/1/2002 10/1/2004
Qualifications (if required):	representative of Parents Region III and the legislature		
Ms. Patti Russ Helena	Governor	not listed	10/1/2002 10/1/2004
Qualifications (if required):	agency representative/child care		
Ms. Barbara Stefanic Laurel	Governor	not listed	10/1/2002 10/1/2004
Qualifications (if required):	LEA representative for special education cooperatives		
Ms. Cris Volinkaty Missoula	Governor	not listed	10/1/2002 10/1/2004
Qualifications (if required):	representative of provider/Part C agency		
Ms. Sharon Wagner Helena	Governor	not listed	10/1/2002 10/1/2004
Qualifications (if required):	agency representative/Children's Special Health Services		
Lewis and Clark Bicentennial Commission (Historical Society)			
Mr. Darrell Kipp Browning	Governor	reappointed	10/1/2002 10/1/2005
Qualifications (if required):	representative of Indian tribes		

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Lewis and Clark Bicentennial Commission (Historical Society) cont. Mr. Homer Staves Billings	Governor	reappointed	10/1/2002 10/1/2005
Qualifications (if required): public member			
Ms. Betty Stone Glasgow	Governor	reappointed	10/1/2002 10/1/2005
Qualifications (if required): public member			
Montana Vocational Rehabilitation Council (Office of Public Instruction) Ms. Ann Verploegen Helena	Director	Lehman	10/21/2002 10/21/2004
Qualifications (if required): federally mandated education agency position			
Peace Officers' Standards and Training Advisory Council (Justice) Mr. Shawn T. Driscoll Helena	Governor	Obert	10/22/2002 2/14/2004
Qualifications (if required): representative of the Montana Highway Patrol			
Mr. Jack Wiseman Helena	Governor	not listed	10/4/2002 2/14/2004
Qualifications (if required): representative of the Department of Livestock			
Property Tax Reappraisal Advisory Council (Revenue) Mr. Kurt Alme Helena	Governor	not listed	10/24/2002 4/30/2003
Qualifications (if required): director of the Department of Revenue			
Rep. Gary Branae Billings	Governor	not listed	10/24/2002 4/30/2003
Qualifications (if required): legislator			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Property Tax Reappraisal Advisory Council (Revenue) cont.			
Mr. Ward Ernst Stanford	Governor	not listed	10/24/2002 4/30/2003
Qualifications (if required): representative of the agriculture community			
Mr. Nick Hogan Missoula	Governor	not listed	10/24/2002 4/30/2003
Qualifications (if required): residential appraiser			
Ms. Susan Knedler Lewistown	Governor	not listed	10/24/2002 4/30/2003
Qualifications (if required): representative of the business community			
Rep. Roger Somerville Kalispell	Governor	not listed	10/24/2002 4/30/2003
Qualifications (if required): legislator			
Sen. Emily Stonington Bozeman	Governor	not listed	10/24/2002 4/30/2003
Qualifications (if required): legislator			
Rep. Robert R. Story, Jr. Park City	Governor	not listed	10/24/2002 4/30/2003
Qualifications (if required): legislator			
Risk Management Advisory Council (Administration)			
Ms. Christina Synness Helena	Governor	Cox	10/15/2002 2/21/2003
Qualifications (if required): representative of the office of Political Practices			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Historic Preservation Review Board (Historical Society)			
Mr. Conrad Fisher	Governor	Hugs	10/1/2002
Lame Deer			10/1/2006
Qualifications (if required): having traditional cultural property expertise			
Mr. Douglas Johnson	Governor	reappointed	10/1/2002
Hamilton			10/1/2006
Qualifications (if required): having historic property administration expertise			
Water Adjudication Advisory Committee (Supreme Court)			
Ms. Candace F. West	court	not listed	10/29/2002
Helena			0/0/0
Qualifications (if required): ex officio member			
Water and Wastewater Operators' Advisory Council (Environmental Quality)			
Mr. Roger Thomas	Governor	reappointed	10/16/2002
Billings			10/16/2008
Qualifications (if required): plant operator who holds the highest class certificate			

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alternative Livestock Advisory Council (Fish, Wildlife, and Parks) Mr. Jeremy Kinross-Wright, Big Timber Qualifications (if required): representative of the Board of Livestock	Governor	1/1/2003
Mr. John Lane, Cascade Qualifications (if required): representative of the Fish, Wildlife, and Parks Commission	Governor	1/1/2003
Appellate Defender Commission (Administration) Judge Dorothy B. McCarter, Helena Qualifications (if required): district judge	Governor	1/1/2003
Mr. Michael Sherwood, Missoula Qualifications (if required): attorney	Governor	1/1/2003
Board of Aeronautics (Transportation) Mr. John Rabenberg, Fort Peck Qualifications (if required): public member	Governor	1/1/2003
Ms. Josephine Eisenzimer, Cascade Qualifications (if required): engaged in aviation education	Governor	1/1/2003
Mr. Craig Denney, Billings Qualifications (if required): commercial airline representative	Governor	1/1/2003
Mr. Bob Palmersheim, Fromberg Qualifications (if required): fixed base operator	Governor	1/1/2003
Board of Chiropractors (Commerce) Dr. Pamela Blanchard, Great Falls Qualifications (if required): practicing chiropractor	Governor	1/1/2003

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Chiropractors (Commerce) cont. Ms. Jo Ausk, Terry Qualifications (if required): public member	Governor	1/1/2003
Board of Crime Control (Justice) Mr. Craig Anderson, Glendive Qualifications (if required): chief probation officer	Governor	1/1/2003
Mr. Gary Buchanan, Billings Qualifications (if required): public member	Governor	1/1/2003
Rev. Steven Rice, Miles City Qualifications (if required): representative of the Youth Justice Council	Governor	1/1/2003
Ms. Sherry Matteucci, Billings Qualifications (if required): U.S. attorney	Governor	1/1/2003
Rep. Sylvia Bookout-Reinicke, Alberton Qualifications (if required): state representative	Governor	1/1/2003
Mayor Laurel Frankenfield, Hamilton Qualifications (if required): representative of local government	Governor	1/1/2003
Mr. Richard L. Kirn, Poplar Qualifications (if required): representative of local government	Governor	1/1/2003
Board of Environmental Review (Environmental Quality) Ms. Susan K. Brooke, Helena Qualifications (if required): public member	Governor	1/1/2003
Ms. Kim Lacey, Glasgow Qualifications (if required): public member	Governor	1/1/2003

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Environmental Review (Environmental Quality) cont. Mr. Joseph Russell, Kalispell Qualifications (if required): county health officer	Governor	1/1/2003
Board of Horse Racing (Commerce) Mr. Tim Donnelly, Miles City Qualifications (if required): representing District 1	Governor	1/20/2003
Ms. Barbara Cole, Shelby Qualifications (if required): representing District 3	Governor	1/20/2003
Board of Housing (Commerce) Mr. Bob Thomas, Stevensville Qualifications (if required): public member	Governor	1/1/2003
Ms. Waneeta Farris, Forsyth Qualifications (if required): public member	Governor	1/1/2003
Ms. Teresa Lightbody, Helena Qualifications (if required): public member	Governor	1/1/2003
Board of Investments (Commerce) Ms. Maureen J. Fleming, Missoula Qualifications (if required): labor representative	Governor	1/1/2003
Mr. Douglas Bardwell, Missoula Qualifications (if required): financial community representative	Governor	1/1/2003
Mr. Calvin Wilson, Busby Qualifications (if required): attorney	Governor	1/1/2003
Ms. Karen B. Fagg, Billings Qualifications (if required): businessperson	Governor	1/1/2003

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Labor Appeals (Labor and Industry) Ms. Carol Donaldson, Billings Qualifications (if required): attorney	Governor	1/1/2003
Board of Milk Control (Livestock) Dr. R. Clyde Greer, Bozeman Qualifications (if required): Independent	Governor	1/1/2003
Mr. Michael F. Kleese, Stevensville Qualifications (if required): Democrat and an attorney	Governor	1/1/2003
Board of Occupational Therapists (Commerce) Ms. Elspeth Richards, Missoula Qualifications (if required): occupational therapist	Governor	12/31/2002
Ms. Barbara Tamietti, Stockett Qualifications (if required): public member	Governor	12/31/2002
Board of Oil and Gas Conservation (Natural Resources and Conservation) Mr. Denzil Young, Baker Qualifications (if required): landowner with no mineral rights and an attorney	Governor	1/1/2003
Mr. Jack King, Billings Qualifications (if required): representative of the oil and gas industry	Governor	1/1/2003
Ms. Elaine Mitchell, Cut Bank Qualifications (if required): public member	Governor	1/1/2003
Board of Pardons and Parole (Corrections) Mr. Patrick T. Fleming, Butte Qualifications (if required): attorney	Governor	1/1/2003

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Pardons and Parole (Corrections) cont. Mr. Michael E. McKee, Hamilton Qualifications (if required): auxiliary member	Governor	1/1/2003
Board of Personnel Appeals (Labor and Industry) Mr. Steve Johnson, Missoula Qualifications (if required): representative of management in collective bargaining	Governor	1/1/2003
Mr. Joe Dwyer, Billings Qualifications (if required): substitute labor representative	Governor	1/1/2003
Mr. Ed Maronick, East Helena Qualifications (if required): substitute management representative	Governor	1/1/2003
Board of Public Assistance (Public Health and Human Services) Mr. John Larson, Clancy Qualifications (if required): public member	Governor	1/1/2003
Board of Public Education (Education) Mr. Storrs M. Bishop, Ennis Qualifications (if required): Republican residing in District 2	Governor	2/1/2003
Board of Regents of Higher Education (Education) Ms. Margie Thompson, Butte Qualifications (if required): Republican from District 2	Education	2/1/2003
Board of Social Work Examiners and Professional Counselors (Commerce) Dr. Leta Livoti, Helena Qualifications (if required): licensed professional counselor	Governor	1/1/2003
Ms. Antoinette Rosell, Billings Qualifications (if required): licensed professional counselor	Governor	1/1/2003

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Social Work Examiners and Professional Counselors (Commerce) cont. Judge Richard A. Simonton, Glendive Qualifications (if required): public member	Governor	1/1/2003
Board of Speech-Language Pathologists and Audiologists (Commerce) Ms. Marilyn Thaden, Miles City Qualifications (if required): speech-language pathologist	Governor	12/31/2002
Ms. Jennifer L. Hartze, Belgrade Qualifications (if required): audiologist	Governor	12/31/2002
Children's Trust Fund Board (Public Health and Human Services) Ms. Ann (Punky) Bullis, Crow Agency Qualifications (if required): public member	Governor	1/1/2003
Ms. Kathleen Perez, Harlem Qualifications (if required): public member	Governor	1/1/2003
Coal Board (Commerce) Ms. Janice Riebhoff, Belgrade Qualifications (if required): expertise in education and residing in District 2	Governor	1/1/2003
Ms. Linda Price, Lewistown Qualifications (if required): expertise in education and residing in District 3	Governor	1/1/2003
Mr. John Sutton, Butte Qualifications (if required): engineer residing in District 2	Governor	1/1/2003
Commission on Human Rights (Labor and Industry) Mr. Jack Copps, Seeley Lake Qualifications (if required): public member	Governor	1/1/2003

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Commission on Human Rights (Labor and Industry) cont. Ms. Kathy Ogren, Missoula Qualifications (if required): public member	Governor	1/1/2003
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) Ms. Sylvia Danforth, Miles City Qualifications (if required): representative of a service provider	Governor	1/1/2003
Sen. Bea McCarthy, Anaconda Qualifications (if required): state legislator	Governor	1/1/2003
Mr. Peyton Terry, Glasgow Qualifications (if required): representative of consumers	Governor	1/1/2003
Mr. Dan McCarthy, Helena Qualifications (if required): representative of the Office of Public Instruction	Governor	1/1/2003
Ms. Florence Massey, Billings Qualifications (if required): representative of Region III	Governor	1/1/2003
Dr. R. Timm Vogelsberg, Missoula Qualifications (if required): representative of the university programs	Governor	1/1/2003
Rep. Bob Lawson, Whitefish Qualifications (if required): state legislator	Governor	1/1/2003
Ms. Bernadette Franks-Ongoy, Helena Qualifications (if required): representative of the Montana Advocacy Program	Governor	1/1/2003
Ms. Marlene Tocher, Great Falls Qualifications (if required): consumer	Governor	1/1/2003

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) cont. Ms. Sally Grover, Helena Qualifications (if required): consumer representative	Governor	1/1/2003
Ms. Ramona Weber, Billings Qualifications (if required): primary consumer	Governor	1/1/2003
Mr. Keven Halsey, Libby Qualifications (if required): primary consumer	Governor	1/1/2003
Ms. Kathy Phillips, Missoula Qualifications (if required): primary consumer	Governor	1/1/2003
Ms. Suzie Twedt, Great Falls Qualifications (if required): representing Region II	Governor	1/1/2003
Mr. Kevin Kosmann, Billings Qualifications (if required): representing Region III	Governor	1/1/2003
Ms. Marlene Disburg, Helena Qualifications (if required): representative of vocational rehabilitation	Governor	1/1/2003
Ms. Jannis Conselyea, Helena Qualifications (if required): representative of the Department of Public Health and Human Services	Governor	1/1/2003
Ms. Kim Evermann, Helena Qualifications (if required): representative of the Older American Act	Governor	1/1/2003
Fish, Wildlife, and Parks Commission (Fish, Wildlife, and Parks) Ms. Darlyne Dascher, Fort Peck Qualifications (if required): representative of District 4 and a rancher	Governor	1/1/2003

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Fish, Wildlife, and Parks Commission (Fish, Wildlife, and Parks) cont. Mr. Tim Mulligan, Whitehall Qualifications (if required): representative of District 2	Governor	1/1/2003
Governor's Income Tax Advisory Council (Revenue) Mr. Leo Berry, Helena Qualifications (if required): representing Association of Montana Retired Public Employees	Governor	12/31/2002
Rep. Chase Hibbard, Helena Qualifications (if required): representing Montana Taxpayers Association	Governor	12/31/2002
Mr. Jon Marchi, Polson Qualifications (if required): representing Montana Ambassadors	Governor	12/31/2002
Rep. Trudi Schmidt, Great Falls Qualifications (if required): legislator	Governor	12/31/2002
Sen. Bob DePratu, Whitefish Qualifications (if required): legislator	Governor	12/31/2002
Sen. Jon Tester, Big Sandy Qualifications (if required): legislator	Governor	12/31/2002
Rep. Karl A. Waitschies, Peerless Qualifications (if required): legislator	Governor	12/31/2002
Mr. Kurt Alme, Helena Qualifications (if required): representative of the Governor's Office	Governor	12/31/2002
Mr. Jerry Driscoll, Helena Qualifications (if required): representing AFL-CIO	Governor	12/31/2002

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Income Tax Advisory Council (Revenue) cont. Mr. Scott Mendenhall, Whitehall Qualifications (if required): representing Jefferson County Local Development Corporation	Governor	12/31/2002
Mr. Tim Bartz, Helena Qualifications (if required): accountant	Governor	12/31/2002
Mr. Doug Young, Bozeman Qualifications (if required): academic	Governor	12/31/2002
Mr. Lary Johnson, Kalispell Qualifications (if required): accountant	Governor	12/31/2002
Ms. Karen Olson, Sidney Qualifications (if required): representing Chamber of Commerce	Governor	12/31/2002
Governor's Local Option Tourist Tax Advisory Council (Revenue) Mayor Larry J. Bonderud, Shelby Qualifications (if required): representing local government - city	Governor	12/31/2002
Sen. Jon Ellingson, Missoula Qualifications (if required): legislator	Governor	12/31/2002
Rep. Bob Gilbert, Sidney Qualifications (if required): representing Rosebud County	Governor	12/31/2002
Ms. Betty T. Lund, Hamilton Qualifications (if required): representing local government - county	Governor	12/31/2002
Ms. Maureen Averill, Bigfork Qualifications (if required): representing Tourism Advisory Council	Governor	12/31/2002

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Local Option Tourist Tax Advisory Council (Revenue) cont. Sen. William E. (Bill) Glaser, Huntley Qualifications (if required): legislator	Governor	12/31/2002
Mr. John Lawton, Great Falls Qualifications (if required): representing local government - city	Governor	12/31/2002
Rep. Joe McKenney, Great Falls Qualifications (if required): legislator	Governor	12/31/2002
Rep. Ralph Lenhart, Glendive Qualifications (if required): legislator	Governor	12/31/2002
Commissioner Carol Brooker, Plains Qualifications (if required): representing local government - county	Governor	12/31/2002
Mr. Kurt Alme, Helena Qualifications (if required): representative of the Governor's Office	Governor	12/31/2002
Mr. Evan Barrett, Butte Qualifications (if required): representing Butte Local Development Corporation	Governor	12/31/2002
Ms. Marti Bara, Helena Qualifications (if required): representing Montana Innkeepers Association	Governor	12/31/2002
Mr. Don Hofmann, Ismay Qualifications (if required): representing Montana Farm Bureau Federation	Governor	12/31/2002
Governor's Tourist Tax Advisory Council (Revenue) Mr. Bob Fletcher, Bozeman Qualifications (if required): representing Montana Tavern Association	Governor	12/31/2002

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Tourist Tax Advisory Council (Revenue) cont. Mr. Dennis M. Taylor, Billings Qualifications (if required): representing local government - city	Governor	12/31/2002
Sen. Emily Stonington, Bozeman Qualifications (if required): legislator	Governor	12/31/2002
Rep. Robert R. Story, Jr., Park City Qualifications (if required): legislator	Governor	12/31/2002
Mr. Kelly Flynn, Townsend Qualifications (if required): representing Montana Outfitters and Guides	Governor	12/31/2002
Rep. Ron Devlin, Terry Qualifications (if required): legislator	Governor	12/31/2002
Rep. Ron Erickson, Missoula Qualifications (if required): legislator	Governor	12/31/2002
Mr. Webb Brown, Helena Qualifications (if required): representing Chamber of Commerce	Governor	12/31/2002
Mr. Kurt Alme, Helena Qualifications (if required): governor's office representative	Governor	12/31/2002
Ms. Mary Whittinghill, Helena Qualifications (if required): representing Montana Taxpayers Association	Governor	12/31/2002
Mr. Bill Howell, West Yellowstone Qualifications (if required): representing Montana Restaurant Association	Governor	12/31/2002
Mr. Dean Harman, Bainville Qualifications (if required): representing local government - county	Governor	12/31/2002

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Governor's Tourist Tax Advisory Council (Revenue) cont. Mr. Dale Duff, Whitefish Qualifications (if required): representing Rocky Mountain Transportation, Inc.	Governor	12/31/2002
Ms. Nancy Schlepp, Bozeman Qualifications (if required): representing Montana Farm Bureau Federation	Governor	12/31/2002
Mr. Don Serba, Missoula Qualifications (if required): representing Pulp and Paperworks Resource Council	Governor	12/31/2002
Mr. George Willett, Neihart Qualifications (if required): public member	Governor	12/31/2002
Hard Rock Mining Impact Board (Commerce) Mr. Donald B. Kinsey, Big Timber Qualifications (if required): public member from District 4	Governor	1/1/2003
Ms. Mary Taylor, Thompson Falls Qualifications (if required): school district trustee and residing in District 1	Governor	1/1/2003
Ms. Betty Aye, Broadus Qualifications (if required): public member residing in District 4	Governor	1/1/2003
Judicial Nomination Commission (Justice) Mr. Frank Stock, Polson Qualifications (if required): public member	Governor	1/1/2003
Montana Alfalfa Seed Committee (Agriculture) Mr. James Whitmer, Bloomfield Qualifications (if required): alfalfa seed grower and rearing alfalfa leaf-cutting bees	Governor	12/21/2002

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Alfalfa Seed Committee (Agriculture) cont. Mr. David Sagmiller, Ronan Qualifications (if required): alfalfa seed seller	Governor	12/21/2002
Mr. John Mehling, Hardin Qualifications (if required): alfalfa seed grower	Governor	12/21/2002
Montana Arts Council (Education) Ms. Ann Cogswell, Great Falls Qualifications (if required): public member	Governor	2/1/2003
Mr. Richard Halmes, Billings Qualifications (if required): public member	Governor	2/1/2003
Ms. Sody Jones, Billings Qualifications (if required): public member	Governor	2/1/2003
Ms. Jackie Parsons, Browning Qualifications (if required): public member	Governor	2/1/2003
Ms. Diane Klein, Kalispell Qualifications (if required): public member	Governor	2/1/2003
Montana Facility Finance Authority (Commerce) Mr. Kenneth Jansa, Glasgow Qualifications (if required): public member	Governor	1/1/2003
Montana Grass Conservation Commission (Natural Resources and Conservation) Ms. Sandra Brown, Terry Qualifications (if required): public member	Governor	1/1/2003

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Health Facility Authority (Commerce) Mr. John Bartos, Corvallis Qualifications (if required): public member	Governor	1/1/2003
Mr. Greg Hanson, Missoula Qualifications (if required): public member	Governor	1/1/2003
Montana Higher Education Student Assistance Corporation (Education) Ms. Shirley Warehime, Helena Qualifications (if required): at large director	Board of Regents	12/31/2002
Ms. Jean Hagan, Bigfork Qualifications (if required): public member	Governor	1/1/2003
Motor Fuel Tax Collection Enforcement and Refund Advisory Council (Transportation) Sen. Barry "Spook" Stang, Helena Qualifications (if required): public member	Governor	12/31/2002
Mr. Steve Pilcher, Helena Qualifications (if required): public member	Governor	12/31/2002
Sen. Dan W. Harrington, Butte Qualifications (if required): legislator	Governor	12/31/2002
Mr. David A. Galt, Helena Qualifications (if required): representative of state government	Governor	12/31/2002
Sen. Ric Holden, Glendive Qualifications (if required): legislator	Governor	12/31/2002
Rep. Ron Devlin, Terry Qualifications (if required): legislator	Governor	12/31/2002

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Motor Fuel Tax Collection Enforcement and Refund Advisory Council (Transportation) cont. Mr. Bob Stephens, Dutton Qualifications (if required): public member	Governor	12/31/2002
Mr. Patrick McNulty, Buffalo Qualifications (if required): public member	Governor	12/31/2002
Mr. Keith Olson, Kalispell Qualifications (if required): public member	Governor	12/31/2002
Ms. Gail Abercrombie, Helena Qualifications (if required): public member	Governor	12/31/2002
Mr. Wes Choc, Helena Qualifications (if required): public member	Governor	12/31/2002
Mr. Cary Hegreberg, Helena Qualifications (if required): public member	Governor	12/31/2002
Rep. John L. Musgrove, Havre Qualifications (if required): legislator	Governor	12/31/2002
Ms. Ronna Christman, Helena Qualifications (if required): public member	Governor	12/31/2002
Risk Management Advisory Council (Administration) Mr. John Huth, Helena Qualifications (if required): representative of the State Auditor's Office	Governor	2/21/2003
Ms. Julia Dilly, Helena Qualifications (if required): representative of the office of Public Instruction	Governor	2/21/2003

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Risk Management Advisory Council (Administration) cont.		
Mr. Devin Garrity, Helena	Governor	2/21/2003
Qualifications (if required):	representative of the Department of Administration	
Mr. Larry Delaney, Helena	Governor	2/21/2003
Qualifications (if required):	representative of the office of Higher Education	
Ms. Beth McLaughlin, Helena	Governor	2/21/2003
Qualifications (if required):	representative of the Judiciary	
Ms. Donna Wrubel, Helena	Governor	2/21/2003
Qualifications (if required):	representative of the Department of Military Affairs	
Mr. Joe DeFilippis, Helena	Governor	2/21/2003
Qualifications (if required):	representative of the Secretary of State's Office	
Ms. Christina Synness, Helena	Governor	2/21/2003
Qualifications (if required):	representative of the office of Political Practices	
Risk Management Executive Council (Administration)		
Mr. Danny Corti, Missoula	Governor	2/21/2003
Qualifications (if required):	representing University of Montana	
Ms. Laura Calkin, Helena	Governor	2/21/2003
Qualifications (if required):	representing Department of Public Service Regulation	
Mr. George Harris, Helena	Governor	2/21/2003
Qualifications (if required):	representing Department of Livestock	
Ms. Kathy Battrick, Helena	Governor	2/21/2003
Qualifications (if required):	representing Department of Public Health and Human Services	

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Risk Management Executive Council (Administration) cont. Mr. Brett Dahl, Helena Qualifications (if required): representing the Governor's Office	Governor	2/21/2003
Mr. Todd Saarinen, Helena Qualifications (if required): representing the Historical Society	Governor	2/21/2003
Ms. Patti Forsness, Helena Qualifications (if required): representing Department of Justice	Governor	2/21/2003
Mr. Dave Brown, Helena Qualifications (if required): representing the Legislative Branch	Governor	2/21/2003
Ms. Linda McKinney, Helena Qualifications (if required): representing Department of Agriculture	Governor	2/21/2003
Mr. William "Skip" Lopuch, Helena Qualifications (if required): representing Department of Corrections	Governor	2/21/2003
Mr. Doug Denler, Helena Qualifications (if required): representing Department of Fish, Wildlife, and Parks	Governor	2/21/2003
Ms. Diane West, Helena Qualifications (if required): representing Department of Labor and Industry	Governor	2/21/2003
Mr. Bill Miller, Helena Qualifications (if required): representing Department of Natural Resources and Conservation	Governor	2/21/2003
Mr. Ray Eby, Helena Qualifications (if required): representing Department of Transportation	Governor	2/21/2003

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Risk Management Executive Council (Administration) cont. Ms. Barbara Hagel, Billings Qualifications (if required): representing MSU Billings	Governor	2/21/2003
Ms. Susan Thomas, Great Falls Qualifications (if required): representing MSU College of Technology	Governor	2/21/2003
Ms. Marilyn Cameron, Butte Qualifications (if required): representing the Montana Tech of the UM	Governor	2/21/2003
Mr. Jeff Shada, Bozeman Qualifications (if required): representing MSU Bozeman	Governor	2/21/2003
Mr. Bob Hoover, Havre Qualifications (if required): representing MSU Northern	Governor	2/21/2003
Mr. Ken Willett, Missoula Qualifications (if required): representing University of Montana	Governor	2/21/2003
Mr. Bob Campbell, Dillon Qualifications (if required): representing Western Montana College of UM	Governor	2/21/2003
Ms. Barbara Sawitzke, Helena Qualifications (if required): representing the office of Public Instruction	Governor	2/21/2003
Ms. Erica Hess, Helena Qualifications (if required): representative of the Secretary of State's Office	Governor	2/21/2003
Mr. Steve Halferty, Helena Qualifications (if required): representing State Fund	Governor	2/21/2003
Mr. D.J. Whitaker, Helena Qualifications (if required): representing the Helena Tech of the University of Montana	Governor	2/21/2003

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Risk Management Executive Council (Administration) cont. Ms. Teri Juneau, Helena Qualifications (if required): representing the Department of Commerce	Governor	2/21/2003
Ms. Sandy Lang, Helena Qualifications (if required): representing the Department of Revenue	Governor	2/21/2003
Mr. Peter Donovan, Helena Qualifications (if required): representative of the Board of Public Education	Governor	2/21/2003
State Employee Group Benefits Advisory Council (Administration) Mr. Thomas Schneider, Helena Qualifications (if required): none specified	Director	12/31/2002
Mr. Dale Taliafero, Helena Qualifications (if required): none specified	Director	12/31/2002
Ms. Mary Dalton, Helena Qualifications (if required): none specified	Director	12/31/2002
Mr. Steve Barry, Helena Qualifications (if required): none specified	Director	1/1/2003
Sen. Duane Grimes, Clancy Qualifications (if required): none specified	Director	12/31/2002
Mr. John W. Northey, Helena Qualifications (if required): none specified	Director	12/31/2002
Mr. John McEwen, Helena Qualifications (if required): none specified	Director	12/31/2002

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Employee Group Benefits Advisory Council (Administration) cont. Mr. Todd Lovshin, Helena Qualifications (if required): none specified	Director	12/31/2002
Mr. Richard Cooley, Helena Qualifications (if required): none specified	Director	12/31/2002
Ms. Barbara Smith, Helena Qualifications (if required): none specified	Director	1/1/2003
Ms. Kathleen Martin, Helena Qualifications (if required): none specified	Director	1/1/2003
Mr. Monte Brown, Helena Qualifications (if required): none specified	Director	1/1/2003
Ms. Amy Carlson, Helena Qualifications (if required): none specified	Director	12/31/2002
State Fund Structure Study Committee (State Fund) Mr. George Wood, Missoula Qualifications (if required): representative of plan 1 insurers	Governor	12/31/2002
Mr. Jerry Driscoll, Helena Qualifications (if required): representative of employee groups	Governor	12/31/2002
Mr. Larry Jones, Missoula Qualifications (if required): representative of plan 1 insurers	Governor	12/31/2002
State Tax Appeal Board (Administration) Mr. Gregory Thornquist, Helena Qualifications (if required): public member	Governor	1/1/2003

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2002 through FEBRUARY 28, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Transition Advisory Committee (Legislative Services) Mr. Russ Ritter, Helena Qualifications (if required): representing the industrial community	Governor	1/1/2003
Mr. Gene Leuwer, Helena Qualifications (if required): representing a low-income program provider	Governor	1/1/2003
Mr. Stephen E. Bradley, Crow Agency Qualifications (if required): representing Montana's Indian tribes	Governor	1/1/2003
Ms. Kathie Roos, Helena Qualifications (if required): representing the environmental and conservation community	Governor	1/1/2003
Mr. Jerry Driscoll, Helena Qualifications (if required): representing organized labor	Governor	1/1/2003
Mr. Paul Farr, Billings Qualifications (if required): representing the electric power market industry	Governor	1/1/2003
Ms. Kathy Rice, Great Falls Qualifications (if required): representing the nonindustrial retail electric consumer sector	Governor	1/1/2003
Mr. David Kinnard, Billings Qualifications (if required): representing the electric power market industry	Governor	1/1/2003
Transportation Commission (Transportation) Ms. Nancy Espy, Broadus Qualifications (if required): Republican from District 4	Governor	1/1/2003
Mr. Dan Larson, Libby Qualifications (if required): Democrat from District 1	Governor	1/1/2003