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MONTANA ADMINISTRATIVE REGISTER

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PAGES 217-345



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 2

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 inserted at the back of each register.

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BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF 8.22.501 DEFINITIONS,
to definitions, general provi-) 8.22.601 GENERAL PROVISIONS
sions and claiming) AND 8.22.804 CLAIMING

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 24, 1996, the Board of Horse Racing proposes to amend the above-stated rules.

2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.22.501 DEFINITIONS (1) through (23) will remain the same.

(24) Maiden for purposes of eligibility at race meetings is a horse which, at the time of starting, has never won a race on the flat in any country, ~~except, commencing in 1995, a horse winning a maiden race in which the winner's share of the purse is \$600 or less, shall be considered a maiden in the state of Montana. However, horses running in maiden races where the winner's share of the purse is less than \$600, after winning, must move up to the next higher condition at races also offering winning purses of \$600 or less.~~

(a) through (46) will remain the same.

(47) Winner means, for purposes of eligibility in Montana, ~~commencing in 1995, a horse which, at the time of starting, has won a race on the flat in any country, in which the winner's share of the purse is \$600 or more. However, horses running in races where the winner's share of the purse is less than \$600, after winning, must move up to the next higher condition at races also offering winning purses of \$600 or less at race meetings whose race records are recorded in an official chart book or the Daily Racing Form.~~ a horse which, at the time of starting, has won a race on the flat in any country at a track whose racing records are recorded in an official chart or the Daily Racing Form.

(47)(a) through (51) will remain the same."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-101, 23-4-104, 23-4-202, MCA

REASON: The proposed amendments will change the definitions of "maiden" and "winner" back to pre-1995 language, and thus simplify the determination of a horse's status as a "maiden," in keeping with horse owner, trainer and officials' requests for a clarification and change to the present overly-complicated rule.

"8.22.601 GENERAL PROVISIONS (1) through (4) will remain the same.

(5) No major official specified in ARM 8.22.601(2)(a) through (g) may actively or passively participate in a race meet, nor may his/her spouse, ~~parents, or child. Any nor any~~ other person who has a permanent or continuous residence in the household of the official ~~is also excluded from actively or passively participating participate~~ in a race meet, at which the major official is serving in his official capacity. A starter or an assistant racing secretary may, however, undertake passive participation.

(a) will remain the same.

(b) "passive" participation shall include galloping, shoeing, ponying, ~~grooming~~ or transporting a race horse. The term does not include grooming.

(6) No minor official specified in ARM 8.22.601(3)(a) through ~~(g)~~ (p) may actively participate (as defined in (5)(a) above), ~~or act as groom for a horse~~ at a race meet at which the minor official is serving in his official capacity.

(7) through (9) will remain the same."

Auth: Sec. 23-4-104, 23-4-202, 37-1-131, MCA; IMP, Sec. 23-4-104, 23-4-201, 23-4-202, 37-1-131, MCA

REASON: The proposed amendments will make the nepotism provisions less restrictive to allow a greater choice in hiring officials who previously were restricted from employment by a family member's participation in racing, as requested by the horse racing industry. The proposed amendments will also clarify that two major officials (starter and assistant racing secretary) may passively participate in a race meet, as the possibility of a conflict of interest being created is remote. Finally, the proposed amendments will clarify that grooming is not allowed by any official, major or minor, as this is a clear employment situation, which does create a conflict situation.

"8.22.804 CLAIMING (1) through (3) will remain the same.

(4) A claimed horse shall not enter for 30 days after being claimed in a race which the determining of eligibility price is less than 25% more than the price at which the horse was claimed. The day claimed shall not count but the following calendar day shall be the first day, so the horse may start on the 31st calendar day following the claim for any claiming price. This provision shall not apply to starter handicaps in which the weight to be carried is assigned by the handicapper. A horse which has been claimed out of a claiming race in which the horse was declared the official winner shall not be eligible to start in any other claiming race for a period of 30 days, exclusive of the day it was claimed, for less than 25% more than the amount for which it was claimed. A horse which has been claimed out of a claiming race in which the horse was not declared the official winner may be eligible to start for any price desired by the claimant.

(5) through (25) will remain the same.

(26) After a horse has been claimed out of a claiming race, the horse loses all starter allowance eligibilities. Claimed horses must re-establish their starter allowance eligibilities for the new owner before being allowed to start in any type of starter allowance or starter handicap race."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, MCA

REASON: The proposed amendment to (4) will allow an owner to claim a horse, and then keep it in the same class level if it doesn't win, to stimulate claiming activity and allow those who claim horses to benefit from their acquisition immediately. The proposed addition of (26) will establish a state-wide rule for all tracks which would address the re-establishment of eligibility for a claimed horse to enter a starter allowance condition race, as this eligibility was previously determined independently and inconsistently by track policy at each track.

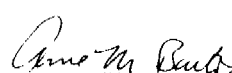
3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Horse Racing, Room 50, Lee Metcalf Building, 1520 East Sixth, P.O. Box 200512, Helena, Montana 59620-0512, or by facsimile to (406) 444-4186, to be received no later than 5:00 p.m., February 22, 1996.

4. If a person who is directly affected by the proposed amendment wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Horse Racing, P.O. Box 200512, Helena, Montana 59620-0512, or by facsimile to (406) 444-4186, to be received no later than 5:00 p.m., February 22, 1996.

5. If the Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 70 based on the 700 licensees in Montana.

BOARD OF HORSE RACING
JAMES SCOTT, DVM, CHAIRMAN


ANNIE M. BARTOS
RULE REVIEWER

BY: 
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 12, 1996.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of rules pertaining) THE PROPOSED AMENDMENT OF
to out-of-state mail service) RULES PERTAINING TO OUT-OF-
pharmacies) STATE MAIL SERVICE PHARMACIES

TO: All Interested Persons:

1. On November 9, 1995, the Board of Pharmacy published a notice of proposed amendment of rules pertaining to out-of-state mail service pharmacies at page 2339, 1995 Montana Administrative Register, issue number 21.

2. The Board received a request for hearing on the proposed amendments from a qualifying association. The Board will hold a hearing on February 28, 1996, at 9:00 a.m. in the conference room of the Professional and Occupational Licensing Bureau, Arcade Building, 111 North Jackson, Helena, Montana.

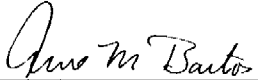
The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the Department no later than 5:00 p.m., February 18, 1996, to advise us of the nature of the accommodation that you need. Please contact Donita Mariegard, Board of Pharmacy, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-1698; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Donita Mariegard.

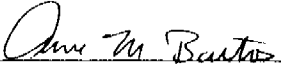
3. The Board will extend the comment period and accept written comment through February 28, 1996, at the close of hearing, and accept oral testimony at the hearing.

4. Carol Grell, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PHARMACY
ED HARRINGTON, PRESIDENT

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 12, 1996.

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

In the matter of the proposed)	NOTICE PROPOSED
amendment of ARM 12.3.104,)	AMENDMENT OF RULES
12.3.118, 12.3.123, 12.3.124,)	12.3.104, 12.3.118,
and 12.3.402 all relating to)	12.3.123, 12.3.124
licensing matters.)	and 12.3.402

To: All Interested Persons. NO PUBLIC HEARING CONTEMPLATED

1. On March 8, 1996, the Fish, Wildlife and Parks Commission (commission) and the Department of Fish, Wildlife and Parks (department) propose to amend ARM 12.3.104, 12.3.118, 12.3.123, 12.3.124 and 12.3.402 relating to landowner licensing preferences, application for drawings, the nonresident combination license alternate list, postmarked dates for license refunds and a correction to update the number of general nonresident combination licenses available.

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

12.3.104 ESTABLISHMENT OF PRIORITY FOR LANDOWNERS IN ISSUANCE OF ANTELOPE OR DEER HUNTING LICENSES (1) Subject to the provisions hereinafter stated, in the establishing of special seasons or areas for the hunting of antelope or in the establishing of permit seasons or areas for the hunting of deer, and in the issuance of permits or licenses therefor, the department will issue such licenses or permits to landowners as hereinafter defined, before conducting any drawing for eligibility for issuance of same in accordance with the following:

(a) Each landowner shall be issued such license or permit upon application therefor; provided that the number of licenses available to eligible landowners shall not exceed the percentage set by the commission annually of the total permits established for any hunting district. If applications from such landowners exceed the percentage set by the commission, the said limited number of landowner licenses or permits will be issued by a drawing system. ~~Priority will be given to applicants who did not receive a permit the immediate preceding year.~~ When the percentage set by the commission has been filled, the remaining applicants will participate in the drawing established for the general public.

(b) remains the same.

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

12.3.118 APPLICATION FOR DRAWINGS (1) The deadline date for the moose, sheep and goat special drawings is on or before May 1. The deadline date for elk, deer and antelope special drawings is on or before June 1. All applications for participation in any special permit/license drawing, except drawings under ARM 12.9.801 (damage hunts) provided for by these regulations must be postmarked by the U.S. postal service on or

before the deadline date of the current license year, or delivered by private mail service on or before the deadline date; or if personally delivered, received in the Helena fish, wildlife and parks office by 5:00 p.m., on the deadline date of the current license year. If the deadline date for application for any license or drawings, as set by the department, falls on a Sunday or state holiday, that date shall be automatically extended to 5:00 p.m. of the next full work day. The deadline may be extended by the department if necessary to provide adequate time for the applicants to apply.

(2) No corrections or changes may be made after the department has received the drawing application, except those types that can be made without contacting the applicant. These include:

(a) adding hunter safety numbers;

(b) moving valid district choices up to replace invalid choices;

(c) eliminating species choices on those applications that are short money when the shortfall is the amount for that species; and

(d) adjusting party applications to insure party consistency.

(3) Any category of correction made by the department must be applied to all applications. In addition, that the department will accept corrections on the applications of those seeking landowner preference. Unless otherwise provided by these rules, all drawings will take place in Helena.

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

AUTH: 87-1-304, 87-2-506, 87-2-701, 87-2-705, 87-2-706, MCA

IMP: 87-1-304, 87-2-506, 87-2-701, 87-2-705, 87-2-706, MCA

12.3.123 COMBINATION LICENSE ALTERNATE LIST (1) Upon completion of the sale of nonresident combination licenses, the department will randomly draw 600 names of unsuccessful general big game combination license applicants for an alternates' list for both categories of nonresident big game combination licenses and all three categories of nonresident deer combination licenses 200 names each for alternates' lists for the general and landowner sponsored resident deer combination licenses. These lists will contain the names of 300 unsuccessful applicants from each category of big game combination licenses and 100 names from each category of deer combination licenses who These unsuccessful applicants may be contacted and given the opportunity to purchase a license in the event refunds are issued to successful applicants.

(2) remains the same.

AUTH: 87-1-201, MCA

IMP: 87-2-511, MCA

12.3.124 COMBINATION LICENSE PREFERENCE SYSTEM (1) The department will issue 11,400 11,500 B-10 licenses through a preference system. Persons who submitted a valid application but did not receive a general nonresident big game combination license (class B-10) during the year immediately preceding the

drawing shall be given preference in the current year's allocation. The preference system will begin in 1994 so that those who were unsuccessful in the 1994 license year will be given preference if they apply in 1995.

(2) Applicants entitled to this preference will be given a class B-10 license if the number of preference applicants is ~~11,400~~ 11,500 or less. If the number of preference applicants is greater than ~~11,400~~ 11,500, the preference applicants will be entered in a random drawing to select license recipients.

(3) through (5) remain the same.

AUTH: 87-1-304, MCA IMP: 87-2-505, MCA

12.3.402. LICENSE REFUNDS (1) No refund will be issued for any hunting, fishing, or trapping license sold by the department except as provided in ~~subsections~~ (a) through (e) of this rule.

(a) through (d) remain the same.

(e) Refunds will be granted for nonresident combination licenses ~~received through if requests are postmarked on or before~~ September 1. After September 1, refunds will be issued only for the reasons outlined in (a) through (c) above ~~if requests are postmarked on or before October 1~~. After October 1, refunds for nonresident combination or resident and nonresident general licenses will not be issued.

(f) through (g) remain the same.

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

3. Rationale: A recent audit of the special drawing system by the Legislative Auditor's office recommended deletion of a sentence in ARM 12.3.104. The 1981 legislature eliminated this part of the preference system and the ARM rules need to reflect this action.

The same audit by the Legislative Auditor's office recommended that ARM 12.3.118 be amended to reflect the present practice of the department of correcting errors in hunting license applications when the department has the time and staff to do so. The department agrees and is proposing to amend this rule to reflect current practices in administering the sale of hunting licenses through drawings. The department's goal is to include as many hunters in the drawings as possible. Rather than deny applications, the department's practice is to correct minor mistakes. Hunters support this practice, provided it does not delay the drawings or become costly to administer. For example, if hunter safety numbers are omitted they are added; if first-choice districts are incorrect, the second choice is moved up; if money is short by the exact amount of the species, only that one species is dropped; and adjustments are made to insure party consistency. Of the 100,000 plus applications received, these correction procedures are consistently applied.

The commission adopted the 1996 annual rule for the sale of nonresident combination licenses at its December meeting. Unless otherwise noted, these proposed amendments are needed to correspond with the annual rule and the provisions of Chapter 459, Laws of 1995 (HB 195).

The department proposes to amend ARM 12.3.123 because an alternate list to reissue refunded nonresident big game combination licenses to outfitter-sponsored hunters is no longer necessary. Except in the case of death, these licenses will not be reissued. In addition, the alternate lists for the general and landowner-sponsored categories are being increased to assure there are enough hunters on the lists to reissue all potential refunded licenses in those categories.

The commission proposes to amend ARM 12.3.124 because the 1995 legislature, through Chapter 459, Laws of 1995 (HB 195), increased the B-10 licenses in the general category from 11,400 to 11,500.

In an effort to clarify and standardize the deadline for nonresident license refunds from a "date received" to a "postmark date", the commission proposes to amend ARM 12.3.402.

4. Interested persons may present their data, views or arguments concerning the proposed amendments in writing no later than February 22, 1996, to Dave Mott, Department of Fish, Wildlife & Parks, P.O. Box 200701, Helena, MT 59620-0701.

5. If a person who is directly affected by the proposed amendments wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments he or she has to Dave Mott, Department of Fish, Wildlife & Parks, P.O. Box 200701, Helena, MT 59620-0701. A written request for hearing must be received no later than February 22, 1996.

6. If the agency receives requests for a public hearing on the proposed amendments from 25 or more persons who are directly affected by the proposed action, from the Administrative Code Committee 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 in excess of 25 based on the number of nonresident hunters and landowner hunters in Montana each year.

RULE REVIEWER



Robert N. Lane

FISH, WILDLIFE & PARKS COMMISSION
AND DEPARTMENT OF FISH, WILDLIFE
AND PARKS



Patrick J. Graham, Secretary of
Fish, Wildlife & Parks Commission
and Director of Department of Fish
Wildlife and Parks

Certified to the Secretary of State on January 12, 1996.

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

In the matter of the transfer of Rules)	
26.2.201 pertaining to leasing or other	)	NOTICE OF TRANSFER
use of state lands, Rule 26.2.301	)	OF RULES AND
pertaining to sale of state lands,	)	PROPOSED AMENDMENT
Rule 26.2.401 pertaining to schedule)	
of fees, and Rule 26.2.503 pertaining)	
to homesite and farmyard leases,)	
26.2.801 through 26.2.813 pertaining	)	NO PUBLIC HEARING
to antiquities on state lands, Rules	)	CONTEMPLATED
26.2.901 through 26.2.905 pertaining)	
to ownership records for non school)	
trust land, and the proposed amendment)	
of Rule 36.2.1004 (formerly 26.2.503))	

TO: All Interested Persons.

1. Pursuant to Section 500, Chapter 418, Laws of Montana 1995, effective July 1, 1995, policies and objectives pertaining to leasing, sale, and fees on state lands, homesite and farmyard leases, antiquities on state land, and ownership records for non school trust land, relating to the department of state lands programs was transferred from the Department of State Lands to the Department of Natural Resources and Conservation. In order to implement that legislation, ARM 26.2.201, 26.2.301, 26.2.401, 26.2.503, 26.2.801 through 26.2.813, 26.2.901 through 26.2.905, inclusive, are transferred to the administrative rules of the Department of Natural Resources and Conservation.

2. The Department of Natural Resources and Conservation has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
26.2.201	36.2.1001	LEASING OR OTHER USE OF STATE LANDS
26.2.301	36.2.1002	SALE OF STATE LANDS
26.2.401	36.2.1003	SCHEDULE OF FEES
26.2.503	36.2.1004	HOMESITE AND FARMYARD LEASES
26.2.801	36.2.801	POLICY STATEMENT
26.2.802	36.2.802	DEFINITION OF TERMS
26.2.803	36.2.803	INITIAL CONSULTATION
26.2.804	36.2.804	DEPARTMENT CONSIDERATION OF SHPO RECOMMENDATION
26.2.805	36.2.805	POST-SURVEY CONSULTATION
		Rule 26.2.806 reserved as 36.2.806
26.2.807	36.2.807	DISCOVERY OF ANTIQUITIES AFTER COMMENCEMENT OF PROJECT

26.2.808 36.2.808 DEPOSIT OF MATERIALS RELATED TO
ANTIQUITIES SITES

Rule 26.2.809 reserved as 36.2.809

26.2.810 36.2.810 ANTIQUITIES PERMIT REQUIREMENT

Rule 26.2.811 reserved as 36.2.811

26.2.812 36.2.812 PROGRAMMATIC MEMORANDUM OF
UNDERSTANDING

26.2.813	36.2.813	UNDERSTANDING EMERGENCY ACTION
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26.2.901 36.2.901 PURPOSE

26.2.902	36.2.902	DEFINITIONS
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26.2.903	36.2.903	FILING OF OWNERSHIP RECORDS
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26.2.904	36.2.904	DEPARTMENT TO MAINTAIN CENTRAL RECORD DEPOSITORY
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26.2.905	36.2.905	INDEX AND VERIFICATION OF OWNERSHIP RECORDS
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3. Following the transfer, the Department proposes to amend Rule 36.2.1004 on February 24, 1996 as follows:

36.2.1004 HOMESITE AND FARMYARD LEASES (1) Upon issuance of a homesite or farmyard lease, all lands included in such lease shall be reclassified as Class IV. Grazing lands are in Class I; timber and/or watershed lands are in Class II; agriculture lands are in Class III; all other lands are in Class IV. The established rental shall be based on the land values involved in each case. ~~The minimum charges are as follows:~~

(a) for homesites or farmyards established prior to September 1, 1975, the lessee shall pay a minimum annual rental, in advance, of \$50 for the first five acres, or part thereof, plus \$5.00 per acre minimum for each additional acre, or part thereof;

~~(b) for homesites or farmyards established after September 1, 1975, the minimum charges are as follows:~~

(i) for Class I & IV land a minimum annual rental, in advance, of \$100 for the first five acres, or part thereof, plus a minimum of \$20 for each additional acre, or part thereof;

(ii) for Class III land a minimum annual rental, in advance, of \$125 for the first five acres, or part thereof, plus a minimum of \$25 for each additional acre, or part thereof.

Subsection (2) remains the same.

~~(a) Ungraded roads, for acreage purposes, shall be computed on a minimum width of 12 feet. Roads which are not graded for more than 50% of their entire length are considered ungraded roads.~~

~~(b) Graded roads, for acreage purposes, shall be computed on the greater of: a minimum width of 14 feet, or three quarters of the widest disturbed area, for the entire length of~~

~~the road. Roads which are graded for more than 50% of their length are considered graded roads.~~

Subsection (3) remains the same.

~~(4) A farmyard is defined as land occupied or to be occupied by a temporary or principal place of residence, or potential residence, that presently has, or will have, agricultural supporting buildings in the immediate vicinity.~~

Subsections (5)(a) through (5)(e) remain the same but will be renumbered (4)(a) through (4)(e).


4. The proposed amendment of Rule 36.2.1004 is necessary because portions have been replaced by Rule 26.3.137.

5. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Don MacIntyre, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT 59620-1601, on or before February 22, 1996.

6. If a person who is directly affected by the proposed amendment wishes 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 to Don MacIntyre, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT 59620-1601. The comments must be received on or before February 22, 1996.

7. If the Department receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 based on the numbers of homesite and farmyard leases issued by the Department.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION



Bud Clinch, Director



Donald D. MacIntyre, Rule
Reviewer

Certified to the Secretary of State January 12, 1996.

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

In the matter of the proposed amendment)	
of Rules 36.19.101 and 36.19.102,)	
36.19.104, 36.19.109, 36.19.111,)	NOTICE OF PROPOSED
36.19.201 and 36.19.202, 36.19.303 and)	AMENDMENT AND
36.19.304 and the repeal of Rules)	REPEAL
36.19.103, 36.19.105, 36.19.108,)	
36.19.110, 36.19.204, 36.19.301, and)	
36.19.305 pertaining to the reclamation)	NO PUBLIC HEARING
and development grants program)	CONTEMPLATED

To: All Interested Persons.

1. On February 24, 1996, the Department of Natural Resources and Conservation proposes to amend Rules 36.19.101 and 36.19.102, 36.19.104, 36.19.109, 36.19.111, 36.19.201 and 36.19.202, 36.19.303 and 36.19.304 and repeal Rules 36.19.103, 36.19.105, 36.19.108, 36.19.110, 36.19.204, 36.19.301, and 36.19.305 pertaining to the reclamation and development grants program.

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

36.19.101 DEFINITIONS Subsection (1) remains the same.

~~(2) "Board" means the board of natural resources and conservation provided for in Title 2, chapter 15, part 33.~~

~~(3) "Crucial state need" means a documented set of circumstances or conditions that require action to prevent or eliminate severe and unacceptable damage to public resources or to capture extraordinary public benefits that would otherwise be lost. "Crucial state need" further implies that a project is of critical importance to Montana and its citizens.~~

Subsections (4) through (7) remain the same but will be renumbered (2) through (5).

~~(8) "Mitigation" means the act of rectifying an impact by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating an impact over time by operations that preserve or maintain the environment; or compensating for an impact by replacing or providing substitute resources or habitats.~~

Subsection (9) remains the same but will be renumbered (6).

~~(10) "Project type" means a grouping of projects having the same or similar characteristics which distinguishes it from other project types.~~

Subsections (11) through (13) remain the same but will be renumbered (7) through (9).

~~(14) "Substantial compliance" means that the application is consistent with application procedures set by the department and the basic provisions of the act and the administrative rules governing the reclamation and development grants program.~~

Subsection (15) remains the same but will be renumbered (10).

AUTH: 90-2-1105, MCA;
IMP: 90-2-1103, 1105, MCA

36.19.102 ELIGIBLE PROJECTS Subsections (1) and (2) remain the same.

~~(3) Projects prohibited by 90-2-1112 are not eligible for funding.~~

~~(4) Projects that do not meet the requirements of the Montana Environmental Policy Act, Title 75, chapter 1, part 2 are not eligible for funding.~~

AUTH: 90-2-1105, MCA
IMP: 90-2-1105, 1111, 1112, MCA

36.19.104 APPLICATION CATEGORIES Subsections (1) through (4) remain the same.

~~(5) Projects categorized as 'other' shall only be recommended for funding if they are qualified and only to the extent that there are funds remaining after funding recommendations are made in the mineral development impacts and crucial state need categories.~~

AUTH: 90-2-1105, MCA
IMP: 90-2-1105, 1112, MCA

36.19.109 APPLICATION (1) An applicant shall submit an application on forms prescribed in the department's Guidelines and Forms for Preparing Grant Applications.

~~(2) An applicant proposing more than one project shall submit a separate application for each.~~

~~(3) An applicant shall submit four copies of the application to the department at the time of filing and shall provide additional copies as requested by the department.~~

AUTH: 90-2-1105, MCA
IMP: 90-2-1105, MCA

36.19.111 CHANGES OR ADDITIONS (1) If an applicant desires to change or add to an application other than as required in ARM ~~36.19.110 requested by the department~~ after it is formally filed, the applicant shall submit the change or addition in writing. The department will consider any substantial change or addition to an application to constitute a new application. No substantial changes or additions will be accepted after the deadline for submittal set forth in ARM 36.19.112.

AUTH: 90-2-1105, MCA
IMP: 90-2-1105, MCA

36.19.201 APPLICATION EVALUATION PROCEDURE Subsections (1) through (4) remain the same.

~~(5) Prior to the submittal deadline set forth in ARM 36.19.112, and as time permits, the department, upon request, will accept and evaluate a proposed application to determine whether it is in substantial compliance with the act and these rules. If the department determines that a proposed application~~

~~is not in substantial compliance, the application will be considered deficient, and the department will return the application, notifying the applicant in writing and listing the application deficiencies. A revised application may be re-submitted after the necessary revisions have been made. All listed deficiencies must be corrected and the revised application filed in compliance with ARM 36.19.109 prior to the submittal deadline in order to be eligible for funding consideration.~~

AUTH: 90-2-1105, MCA
IMP: 90-2-1105, 1111, 1112, 1113, MCA

36.19.202 PREFERENCES AND RANKING OF QUALIFIED PROJECTS

Subsections (1) through (4) remain the same.

~~(5) All projects recommended for funding will be consistent with the estimates of available funding.~~

Subsection (6) remains the same but will be renumbered (5).

AUTH: 90-2-1105, MCA
IMP: 90-2-1105, 1111, 1112, 1113, MCA

36.19.303 PAYMENT OF GRANTS Subsections (1) and (2) remain the same.

(3) Expenses incurred by the grantee before the grant effective date of the contract ~~is fully executed~~ will not be reimbursed by the department.

Subsection (4) remains the same.

AUTH: 90-2-1105, MCA
IMP: 90-2-1104, 1114, MCA

36.19.304 REPORTS AND ACCOUNTING (1) Each grant recipient shall submit periodic progress reports as specified in the grant contract and shall submit a final report to the department ~~within three months following the completion of the contract period or at such other time as~~ specified in the grant contract.

~~(2) Grant recipients shall make oral or written presentations of progress as agreed to in the grant contract.~~

~~(3) The grant recipient shall adequately account for expenditures in a manner acceptable to the department. All records, reports, and other documents that relate to the project and that are required by the department to be maintained by the grant recipient are subject to audit by the office of the legislative auditor, the department and, where required by law, the legislative fiscal analyst.~~

~~(4) (2) The department shall make a biennial accounting to the legislature concerning the status of previously funded projects.~~

AUTH: 90-2-1105, MCA
IMP: 90-2-1105, 1111, 1114, MCA

3. The rules proposed to be repealed are on pages 36-3922 through 36-3924, 36-3932, 36-3941 and 36-3942 of the Administrative Rules of Montana.

AUTH: 90-2-1105, MCA
IMP: 90-2-1105, 90-2-1111, 90-2-1114, MCA

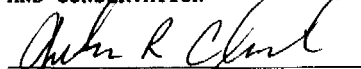
4. The purpose of the proposed amendments is to eliminate rules conflicting with current statutes and standard procedures. The rules proposed for repeal are no longer necessary and are being deleted pursuant to HJR 5 (1995).

5. Interested parties may submit their data, views or arguments concerning the proposed actions in writing to Greg Mills, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT 59620-1601, on or before February 22, 1996.

6. If a person who is directly affected by the proposed actions wishes 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 to Greg Mills, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT 59620-1601. The comments must be received on or before February 22, 1996.

7. If the agency 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 administrative code 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 greater than 25 based on the number of grant applications submitted and approved during grant cycle periods.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION


ARTHUR R. CLINCH, DIRECTOR


DONALD D. MACINTYRE,
RULE REVIEWER

Certified to the Secretary of State on January 4, 1996

BEFORE THE BOARD OF OIL AND GAS CONSERVATION
OF THE STATE OF MONTANA

In the matter of the repeal of Rule)	
36.22.305, pertaining to naming of)	
pools, Rule 36.22.1245, pertaining to	)	NOTICE OF
illegal production, Rule 36.22.1307,	)	PROPOSED REPEAL
pertaining to restoration of surface,)	
and Rules 36.22.1601 through 36.22.1611,	)	NO PUBLIC
pertaining to regulations to implement	)	HEARING
the Natural Gas Policy Act	)	CONTEMPLATED

TO: All Interested Persons.

1. On February 29, 1996, the Board of Oil and Gas Conservation proposes to repeal Rule 36.22.305, pertaining to naming of pools, Rule 36.22.1245, pertaining to illegal production, Rule 36.22.1307, pertaining to restoration of surface, and Rules 36.22.1601 through 36.22.1611, pertaining to regulations to implement the Natural Gas Policy Act.

2. The rules proposed to be repealed are on pages 36-4839, 36-5000, 36-5023, and 36-5091, respectively, of the Administrative Rules of Montana.

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

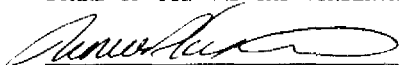
3. The rules proposed to be repealed are not necessary for the functioning of the reorganized Department of Natural Resources and Conservation and are being deleted pursuant to HJR-5 (1995).

4. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to Tom Richmond, Oil and Gas Conservation Division, 2535 St. Johns Avenue, Billings, Montana 59102. Any comments must be received no later than February 25, 1996.

5. If a person who is directly affected by the proposed repeal wishes 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 to Tom Richmond, Oil and Gas Conservation Division, 2535 St. Johns Avenue, Billings, Montana 59102. Any comments must be received no later than February 25, 1996.

6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; from the administrative code 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 greater than 25 based on the number of persons involved in the production of oil and natural gas.

BOARD OF OIL AND GAS CONSERVATION



THOMAS P. RICHMOND,
ADMINISTRATOR



DONALD D. MACINTYRE,
RULE REVIEWER

Certified to the Secretary of State January 12, 1996.

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

In the matter of the	)	NOTICE OF
amendment of rule 16.32.399K	)	PROPOSED AMENDMENT
pertaining to utilization)	
review in medical assistance	)	NO PUBLIC HEARING
facilities	)	CONTEMPLATED

TO: All Interested Persons

1. On February 26, 1996, the Department of Public Health and Human Services proposes to amend rule 16.32.399K pertaining to utilization review in medical assistance facilities.

2. The rule as proposed to be amended provides as follows:

16.32.399K MEDICAL ASSISTANCE FACILITIES--UTILIZATION REVIEW (1) A medical assistance facility must:

(a) Have in effect a utilization review plan to review services furnished by the facility and by members of its medical staff to patients.

(b) Contract with the state peer review organization (PRO) or its department approved equivalent to do the following:

(i) Certify whether all admissions to the facility in the facility's first 12 months of operation were medically necessary;

(ii) During the facility's first 12 months of operation, provide provide consultation to the facility sometime between the 48th and 72nd hour of each patient's the stay of each patient admitted to the facility during that period concerning discharge plans for the patient (e.g. transfer to the hospital, discharge to a skilled nursing facility, discharge to home, etc.);

(iii) Periodically sample facility cases and review them to determine the medical necessity of the professional services furnished, including drugs and biologicals; during the facility's first 12 months of operation, the review must include retrospective review of 25% of the cases of patients admitted to the facility during that period.

(2) After the medical assistance facility's first 12 months of operation, the facility must collaborate and cooperate with the state PRO or its department approved equivalent, pursuant to a written agreement, in projects designed to identify and assess opportunities to improve the quality of patient care, the utilization of the facility, and the appropriateness of the discharge planning and the disposition of each of the facility's patients following treatment. Collaboration by the facility must include:

(a) Participating in the design of the projects;

(b) Providing medical records to the state PRO or its department approved equivalent for abstraction or completing the

abstraction of records on-site and submitting the results to the state PRO or its department approved equivalent;

(c) Assessing the results of the abstraction; and

(d) Developing plans necessary to ensure continuous improvement in the care provided to patients at the facility.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-101, 50-5-103 and 50-5-204, MCA

3. The proposed amendments to the licensing rule prescribing the utilization review standards that medical assistance facilities (MAFs) must meet are necessary in order to implement a lesser standard of

overview by the state peer review organization (PRO) or its department approved equivalent for medical assistance facilities. The rule, in its current form, took effect on April 28, 1989, and requires medical assistance facilities to contract with the state PRO to certify whether all admissions to the facility were medically necessary and to provide consultation to the facility concerning discharge plans for all patients. The department and the state PRO have determined that continual review of all admissions to a facility and of discharge plans for all patients admitted to the facility beyond the facility's initial 12 months of operation is no longer necessary, given the lack of problems detected by the state PRO in its long term contracted review of medical assistance facilities. Therefore, these proposed amendments are necessary to eliminate standards that are more strict than actually needed for its purpose.

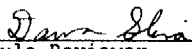
The amended rule will require the state PRO to certify whether all admissions to the facility in the facility's first 12 months of operation were medically necessary and to provide consultation to the facility concerning discharge plans for all patients admitted in the facility's first 12 months of operation. Additionally, the amended rule clarifies that periodic sampling by the state PRO will involve a retrospective review of 25% of all cases involving patients admitted to the facility in the facility's first 12 months of operation. Thereafter, facility involvement in cooperative projects with the state PRO or its department approved equivalent will meet the periodic sampling requirement.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than February 22, 1996.

5. If a party who is directly affected by the proposed amendment wishes to express his or her data, views, and arguments orally or in writing at a public hearing, he or she must make a written request for a hearing and submit this request along with any written comments he or she has to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department

of Public Health and Human Services, P.O. Box 4210, Helena, Montana 59604-4210, no later than February 22, 1996.

6. If the department 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 amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer 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 one, based on the number of medical assistance facilities within Montana.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State January 12, 1996.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of rules 46.12.506	)	ON THE PROPOSED
and 46.12.508 pertaining to	)	AMENDMENT OF RULES
medicaid reimbursement for)	
outpatient hospital)	
emergency, clinic and)	
ambulatory surgery services)	

TO: All Interested Persons

1. On February 14, 1996, at 1:30 p.m. a public hearing will be held in Room 306 of the Social and Rehabilitation Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.506 and 46.12.508 pertaining to medicaid reimbursement for outpatient hospital emergency, clinic and ambulatory surgery services.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on February 5, 1996, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.12.506. OUTPATIENT HOSPITAL SERVICES, DEFINITION (1) through (4) remain the same.

(5) "Partial hospitalization services" means partial hospitalization as defined in the Montana medicaid partial hospitalization policy (May 1995 edition). The department adopts and incorporates by reference the Montana medicaid partial hospitalization policy (May 1995 edition). A copy of the policy may be obtained through the Department of Public Health and Human Services, Medicaid Services Division Health Policy and Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(6) through (7) Remain the same.

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

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

46.12.508. OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT

(1) remains the same.

(2) Except for the services reimbursed as provided in (3) through ~~(9)~~ (12), all facilities will be reimbursed on a retrospective basis. Allowable costs will be determined in

accordance with ARM 46.12.509(2) and subject to the limitations specified in ARM 46.12.509(2)(a), (b) and (c). The department may waive retrospective cost settlement for such facilities which have received interim payments totaling less than \$100,000 for inpatient and outpatient hospital services provided to Montana medicaid recipients in the cost reporting period, unless the provider requests in writing retrospective cost settlement. Where the department waives retrospective cost settlement, the provider's interim payments for the cost report period shall be the provider's final payment for the period.

(2)(a) remains the same.

(3) Except as otherwise specified in these rules, the following outpatient hospital services will be reimbursed under a prospective payment methodology for each service as described in (4) through ~~(9)~~ (12) of this rule.

(4) remains the same.

(5) Emergency room and clinic services provided by hospitals that are not isolated hospitals or medical assistance facilities as defined in ARM 46.12.504(17) and (18) will be reimbursed on a fee basis for each visit as follows.

(a) Emergency room and clinic services will be classified into one of three service groups for reimbursement purposes. Each service group will have two fees, one for sole community hospitals as defined in ARM 46.12.503, and one for non-sole community hospitals. The three service groups are defined as follows:

(i) Critical emergency room visits are emergency room visits in which the recipient receives critical care procedures, dies while in the emergency room or is discharged or transferred to another short term general hospital for inpatient care.

(A) Critical care procedures are those procedures designated by the department as such and identified in the department's emergency room critical care procedures list. The department hereby adopts and incorporates by reference the outpatient hospital emergency room critical care procedures list (January 1996). A copy of the emergency room critical care procedures list may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(ii) Emergency visits are emergency room visits for which the ICD-9-CM diagnosis code chiefly responsible for the services provided is a diagnosis recognized as an emergency diagnosis by the medicaid PASSPORT program described in ARM 46.12.5001 through 46.12.5014. The PASSPORT program emergency diagnoses list is available upon request from the Department of Public Health and Human Services, Health Policy and Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(iii) Other emergency room and clinic visits are emergency room and clinic visits that do not meet the criteria for the critical or emergency visit groups specified in (5)(a)(i) or (ii).

(b) Fees for emergency room and clinic service groups for sole community hospitals and non-sole community hospitals are specified in the department's outpatient hospital emergency room

fee schedule. The department hereby adopts and incorporates herein by reference the outpatient hospital emergency room fee schedule (January 1996). A copy of the emergency room fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(c) Except as provided in (5)(c)(i) and (ii), the fee specified in (5)(b) or (d) is an all inclusive bundled payment per visit which covers all outpatient services provided to the patient, including but not limited to nursing, pharmacy, supplies, equipment and other outpatient hospital services.

(i) Physician services are separately billable according to the applicable rules governing billing for physician services.

(ii) In addition to the fee specified for each emergency room and clinic service group, medicaid will reimburse providers separately as specified in (4), (8) and (9) for laboratory, imaging and other diagnostic services provided during emergency and clinic visits.

(d) For sole community hospital emergency room and clinic visits determined by the department to be unstable, the fee will be a stop-loss payment. If the provider's net usual and customary emergency room or clinic charges are more than 500% of the fee specified in (5)(b), the visit is unstable and the net charges will be paid at the statewide cost to charge ratio specified in (12). For purposes of the stop-loss provision, the provider's net emergency room or clinic charges are defined as total usual and customary claim charges less charges for laboratory, imaging, other diagnostic and any non-covered services.

(e) Emergency room and clinic visits with ICD-9-CM surgical or major diagnostic procedure codes will be grouped into one of the ambulatory surgery day procedure groups described in (11).

(5) remains the same in text but is renumbered (6).

(6) (7) Dialysis visits will be reimbursed at the provider's medicare composite rate for dialysis services determined by medicare under 42 CFR subpart H. The facility's composite rate is a comprehensive prospective payment for all modes of facility and home dialysis and constitutes payment for the complete dialysis treatment, except for a physician's professional services, separately billable laboratory services and separately billable drugs. The provider must furnish all of the necessary dialysis services, equipment and supplies. Reimbursement for dialysis services and supplies is further defined in the Medicare Provider Reimbursement Manual, HCFA Pub. 15 (referred to as "Pub. 15"). For purposes of specifying the services covered by the composite rate and the services that are separately billable, the department hereby adopts and incorporates herein by reference Pub. 15. A copy of Pub. 15 may be obtained through the Department of Public Health and Human Services, ~~Medicaid Services Division~~ Health Policy and Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(7) through (7)(e) remain the same but are renumbered (8) through (8)(e).

~~(9)~~ (9) Imaging services will be reimbursed on a fee basis. For each imaging service or procedure, the fee will be the lower of the provider's usual and customary charges or 160% of the technical component of the medicare resource-based relative value scale (RBRVS) or, if there is no technical component under RBRVS for the procedure, the fee will be 100% of the global amount of the medicare RBRVS. The imaging services reimbursed under this subsection are the individual imaging services listed in the 70000 series of the Current Procedural Terminology, Fourth Edition (CPT-4). For imaging services where no medicare fee has been assigned, the fee is 62% of usual and customary charges for a hospital designated as a sole community hospital as defined in ARM 46.12.503 or 60% of usual and customary charges for a hospital that is not designated as a sole community hospital as defined in ARM 46.12.503.

~~(10)~~ (10) Other diagnostic services will be reimbursed on a fee basis. For each diagnostic service or procedure, the fee will be the lower of the provider's usual and customary charges or 160% of the technical component of the medicare resource-based relative value scale (RBRVS) or, if there is no technical component under RBRVS for the procedure, the fee will be 100% of the global amount of the medicare RBRVS. The individual diagnostic services reimbursed under this subsection are those listed in the Current Procedural Terminology, Fourth Edition (CPT-4) in Addendum K to Chapter VII, Bill Review, of the Medicare Part A Intermediary Manual, Part 3 (HCFA Pub. 13-3).

(11) Ambulatory surgery services provided by hospitals that are not isolated hospitals or medical assistance facilities as defined in ARM 46.12.504(17) and (18) will be reimbursed on a fee basis. A separate fee will be paid within each day procedure group depending on whether or not the hospital is a sole community hospital as defined in ARM 46.12.503. Payment for ambulatory surgery services is a fee for each determined as follows:

(a) The department assigns a day procedure group to each medicaid visit as specified in the day procedure group (DPG) ambulatory surgery classification system developed by the Canadian Institute for Health Information (CIHI). The day procedure group (DPG) system is an ambulatory surgery classification system that assigns patients to one of 66 groups according to the principal, most significant, ICD-9-CM procedure code recorded on the UB-92 claim form.

(b) The department determines a fee for each day procedure group which reflects the estimated cost of hospital resources used to treat cases in that group relative to the statewide average cost of all medicaid cases. Fees for day procedure groups for sole community hospitals and non-sole community hospitals are specified in the department's outpatient hospital fee schedule. The department hereby adopts and incorporates by reference the outpatient hospital ambulatory surgery fee schedule (January 1996). A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(c) Except as provided in (11)(c)(i) and (ii), the payment specified in (11)(b) or (d) is an all inclusive bundled payment per visit which covers all outpatient services provided to the patient, including but not limited to nursing, pharmacy, imaging services, other diagnostic services, supplies and equipment and other outpatient hospital services. For purposes of outpatient hospital ambulatory surgery services, a visit includes all outpatient hospital services related or incident to the ambulatory surgery visit that are provided the day before, the day of or the day after the ambulatory surgery event.

(i) Physician services are separately billable according to the applicable rules governing billing for physician services.

(ii) Payment for certified registered nurse anesthetists (CRNAs) will be based on cost as a pass through in the cost settlement, as provided in ARM 46.12.505.

(d) For sole community hospital ambulatory surgery services, day procedure groups determined by the department to be unstable will be reimbursed a stop-loss payment. If the provider's net usual and customary charges are more than 500% of the fee specified in (11)(b), the day procedure group is unstable and the net charges will be paid at the statewide cost to charge ratio specified in (12). For purposes of the stop-loss provision, the provider's net ambulatory surgery charges are defined as total usual and customary claim charges less charges for any non-covered services.

(12) The medicaid outpatient hospital statewide average cost to charge ratio equals .70.

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

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

3. The proposed changes to ARM 46.12.508(2) and (3) and the additions of proposed (10) through (12) revise the current reimbursement methodology for emergency room, clinic services and ambulatory surgery services under the medicaid outpatient hospital program. The Department proposes to adopt prospective payment methodologies to replace the current retrospective cost-based approach for these services. The 1993 legislature authorized a study and evaluation of medicaid outpatient hospital reimbursement, and the study was performed by Abt Associates on behalf of the department. Abt Associates recommended and the department concurs, that these services be reimbursed using a prospective methodology.

The proposed rule changes are necessary to adopt a more efficient and cost effective reimbursement methodology for emergency room, clinic services and ambulatory surgery services. The proposed prospective methodology is designed to pay hospitals reasonable reimbursement amounts, while encouraging efficiency and cost containment in the provision of services. Under the current retrospective cost-based system, providers are reimbursed actual allowable costs with certain

limitations based upon a cost report filed after the time period in question. The proposed system reimburses a predetermined fee amount. The fee is not adjusted after the filing of the cost report even though the provider's actual costs may exceed the fee. Providers have an incentive to hold costs within the fee amounts.

The proposed rule changes would exempt isolated hospitals and medical assistance facilities (MAFs) from the proposed prospective payment methodology because of the more difficult financial and market conditions experienced by these facilities and the desire to assure access to medical care for rural Montanans. Isolated hospitals and MAF's are now exempt from the prospective payment methodologies for inpatient hospital services. Isolated hospitals and MAF's are currently subjected to prospective payment for laboratory, imaging and other diagnostic services and the ER screen fee. The Department will continue prospective payment for these services.

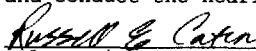
The proposed changes to ARM 46.12.508(8) and (9) are necessary to correctly describe the intended methodology, by inserting language that was inadvertently omitted in a prior rule adoption proceeding. The reimbursements specified in the current rule are subject to the limitation that payments will not exceed usual and customary charges. The proposed changes to ARM 46.12.506(5) and 46.12.508(6) are necessary to update the title of the division that administers the medicaid outpatient hospital services program. The proposed change to ARM 46.12.506(2) is necessary to correct a typographical error by inserting a space between "2" and "hours".

In the aggregate, this change in reimbursement methodology is estimated to be budget neutral. The medical care advisory committee has been notified of this proposed change. A copy of this notice is available at local county human service offices.

The proposed changes will apply to outpatient hospital services provided on or after April 1, 1996.

4. 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 Russell E. Cater, Chief Legal Counsel, P.O. Box 4210, Helena, MT 59604-4210, no later than February 22, 1996.

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


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State January 12, 1996.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of rules	)	ON THE PROPOSED
46.12.590, 46.12.591,	)	AMENDMENT OF RULES
46.12.592, 46.12.593,)	
46.12.595 and 46.12.599)	
pertaining to medicaid)	
reimbursement for)	
residential treatment)	
services)	

TO: All Interested Persons

1. On February 14, 1996, at 3:00 p.m., a public hearing will be held in Room 306 of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rules 46.12.590, 46.12.591, 46.12.592, 46.12.593, 46.12.595 and 46.12.599 pertaining to medicaid reimbursement for residential treatment services.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on February 2, 1996, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.12.590. RESIDENTIAL TREATMENT SERVICES. PURPOSE AND DEFINITIONS (1) through (2)(i) remain the same.

(j) "Residential treatment facility" means a facility licensed by the department ~~of health and environmental sciences~~, or the equivalent agency in the state in which the facility is located, as a residential treatment facility as defined in 50-5-101, MCA or the equivalent category in the state where the facility is located.

(2)(k) and (2)(l) remain the same.

(m) "Beds available" means the number of residential treatment beds for which the facility has been licensed by the department of health and environmental sciences.

(2) (n) remains the same.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-139 and 53-6-141, MCA

46.12.591 RESIDENTIAL TREATMENT SERVICES. PARTICIPATION REQUIREMENTS (1) and (2) remain the same.

(a) maintain a current license as a residential treatment facility under the rules of the ~~department of health and environmental sciences~~ department's quality assurance division to provide residential psychiatric care, or, if the provider's facility is not located within the state of Montana, maintain a current license in the equivalent category under the laws of the state in which the facility is located;

(b) maintain a current certification for Montana medicaid under the rules of the ~~department of health and environmental sciences~~ department's quality assurance division to provide residential psychiatric care or, if the provider's facility is not located within the state of Montana, meet the requirements of ~~subsections~~ (g) and (h);

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

(i) provide residential psychiatric care according to the service requirements for individuals under age 21 specified in Title 42 CFR, part 441, subpart D (October 1, 1992), which is a federal regulation which is herein incorporated by reference. A copy of these regulations may be obtained through the Department of Public Health and Human Services, Medicaid Services Division Mental and Addictive Disorders Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210;

(2) (j) remains the same.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-139 and 53-6-141, MCA

46.12.592 RESIDENTIAL TREATMENT SERVICES. REIMBURSEMENT

(1) For residential treatment services provided on or after April 1, 1996, the Montana medicaid program will pay a provider for each patient day as provided in these rules. ~~the allowable cost incurred, determined on a retrospective basis,~~

~~subject to an upper limit which will be the lesser of the per patient day amount charged to the medicaid program or the medicaid allowable costs per patient day as determined in accordance with this section, subject to the ceiling established in this section. The reimbursement period will be the provider's fiscal year.~~

(a) Medicaid payment is not allowable for treatment or services provided in a residential treatment facility that are not within the definition of residential psychiatric care in ARM 46.12.590 and unless all other applicable requirements are met.

~~(2) Allowable cost will be determined in accordance with generally accepted accounting principles as defined by the American institute of certified public accountants, subject to the provisions of the medicare provider reimbursement manual (HCFA Pub. 15) except where further restricted in this administrative rule. The department hereby adopts and incorporates herein by reference the medicare provider reimbursement manual (HCFA Pub. 15), which is a manual published by the United States department of health and human services, social security administration, which provides guidelines and policy to implement medicare regulations which set forth principles for determining the reasonable cost of provider services furnished under the Health Insurance for Aged Act of 1965, as amended. A copy of the medicare provider reimbursement manual (HCFA Pub. 15) may be obtained through the Department of Public Health and Human Services, Medicaid Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604 4210.~~

~~(a) Return on equity capital is not an allowable cost.~~

~~(b) Bad debt expense is not an allowable cost.~~

~~(c) Educational and vocational training costs are an allowable cost if such costs qualify for federal financial participation under the provisions of 42 CFR 441.13(b), as amended effective December 21, 1992.~~

~~(3) Providers located within the state will be reimbursed on an interim basis during the provider's fiscal year, subject to retrospective settlement according to these rules. The interim rate will be a percentage of customary charges as determined by the department. The percentage shall be the provider's cost to charge ratio determined by the department or its designee based upon the provider's most recent cost report and according to medicare principles as limited by these rules.~~

~~(2) For residential treatment services provided in the state of Montana, the Montana medicaid program will pay a provider, for each medicaid patient day, a bundled per diem rate~~

determined in accordance with these rules, less any third party or other payments.

(3) For purposes of this rule, the following definitions apply:

(a) "Adjusted base period cost" means the facility-specific audited per diem allowable base period cost multiplied by the facility-specific bundling adjustment factor specified in these rules for each Montana provider. The bundling adjustment factor is applied to each facility's 1994 base period per diem cost one time only.

(i) For the 1994 base period, the facility-specific bundling adjustment factor for shodair is 0.7%, for yellowstone treatment centers it is 2.0% and for rivendell of Montana it is 2.7%.

(b) "Base period" means, for purposes of setting rates for the 4th quarter of state fiscal year 1996 and subsequent rate years, the period from July 1, 1993 through June 30, 1994, referred to as the 1994 base period.

(c) "Blended rate" means the average of the facility's indexed adjusted cost and the statewide rate.

(d) "DRI index" means the HCEA nursing home without capital market basket that is published periodically by DRI/McGraw Hill and that applies to the rate period as specified in these rules. The DRI indexes used to set rates under these rules are estimates of inflation for future time periods and will not be adjusted to follow subsequent estimates or indexes.

(i) For purposes of calculating rates for the period April 1, 1996 through June 30, 1996 (4th quarter 1996), the DRI index is applied by multiplying the provider's adjusted base period cost by 7.7% to calculate the indexed adjusted cost for the provider.

(ii) For purposes of calculating rates for rate year 1997, the DRI index is applied by multiplying the provider's adjusted base period cost by 10.2% to calculate the indexed adjusted cost for the provider.

(iii) For purposes of determining rates for the 1998 and subsequent rate years, the DRI index is the most recent DRI index available as of the May 1st immediately preceding the rate year, applied by indexing the provider's prior rate by the change in value of the average index from the prior rate year to the new rate year expressed as a percentage. The result is the indexed adjusted cost for the provider.

(e) "Established provider" means a currently participating provider that is not a new provider.

(f) "Indexed adjusted cost" means the provider's adjusted base period per diem cost indexed by the applicable DRI index as specified in these rules.

(g) "New provider" means a provider that did not participate in the Montana medicaid program as a residential treatment services provider during the base period.

(h) "Rate year" means the state fiscal year, i.e., from July 1 through June 30. Rate years are designated by the calendar year in which the period ends. For example, rate year 1998 is the period from July 1, 1997 through June 30, 1998.

(i) "Statewide rate" means the medicaid bed-weighted average of the indexed adjusted cost for all established Montana providers. For purposes of calculating the statewide rate, the department uses annualized medicaid bed days from all established Montana providers for the most recent rate year for which data is available from all established Montana providers.

(4) For services provided during the 4th quarter of state fiscal year 1996 or rate year 1997 the provider's per diem payment rate is an amount equal to 95% of the provider's indexed adjusted cost.

(5) For services provided during rate year 1998 the provider's per diem payment rate is the lesser of an amount equal to the provider's indexed adjusted cost or the blended rate.

(6) For services provided during rate year 1999 and subsequent rate years the provider's per diem payment rate is the lesser of an amount equal to the provider's indexed adjusted cost, or the statewide rate.

(7) The final per diem payment rate for new providers is the lowest per diem payment rate of all established providers for the rate year. No retrospective cost settlements will be performed.

(8) The prospectively determined rates provided in these rules are all-inclusive bundled rates. Except as provided in (8)(a), (b) and (c) the per diem payment rate covers and includes all psychiatric services, all therapies required in the recipient's plan of care, and all other services and items related to the psychiatric condition being treated, that are provided while the recipient is admitted to the residential treatment facility, including but not limited to services provided by psychologists, social workers, and licensed professional counselors, and lab and pharmacy services. These services must be reimbursed from the provider's all-inclusive

rate except as provided in (8)(a), (b) and (c) and are not separately billable.

(a) The professional component of physician services is separately billable according to the applicable rules governing billing for physician services.

(b) Services and items that are not related to the recipient's psychiatric condition being treated in the residential treatment facility and that are not provided by the residential treatment facility are separately billable in accordance with the applicable rules governing billing for the category of services or items.

(c) Community licensed professional counselors, social workers and psychologists may bill separately for telephone conferences as provided in ARM 46.12.481, 46.12.588 and 46.12.622 for purposes of remaining informed about the recipient's progress and for discharge planning. These providers may not bill separately for treatment provided while the recipient is admitted to the facility.

(9) The prospectively determined rates provided in these rules are the final rates, and rates will not be adjusted retrospectively based upon more recent cost data or inflation estimates. Cost settlements will not be performed.

(4) (10) Payment for residential treatment services provided outside the state of Montana is subject to the requirements of will be made only under the conditions specified in ARM 46.12.502(3) and these rules. Reimbursement for residential treatment services provided to Montana medicaid patients recipients in facilities located outside the state of Montana will be limited to the lesser of: a percentage of the provider's usual and customary charges. The percentage shall be the provider's cost to charge ratio determined by the facility's medicare intermediary or by the department under medicare reimbursement principles, based upon the provider's most recent medicare cost report. If the provider does not submit the medicare cost report and other financial information necessary to determine the cost to charge ratio, the percentage will equal 60% of the provider's usual and customary charges.

(a) 60% of the provider's usual and customary charge or, upon submission of adequate financial documentation reflecting the facility's costs and charges, a lesser or greater rate determined by the department in accordance with ARM 46.12.592, or

(b) the provider's medicaid rate for the same period paid by the state in which the provider's facility is located.

~~(5) The provider's base period for costs other than educational and vocational training costs will be the first full 12 month cost reporting period in the Montana medicaid program ending after June 30, 1985. No exceptions to this rule will be granted and the exception provisions contained in the HCFA Pub. 15 and medicare regulations do not apply for purposes of determining the base period under these rules.~~

~~(a) For providers previously participating as hospital providers which convert their facilities to residential treatment facilities, the base period for costs other than educational and vocational training costs shall be the providers first full 12 month cost reporting period of participation in the Montana medicaid program as a residential treatment facility.~~

~~(b) Base period costs will be determined on a per patient day basis.~~

~~(c) Base period operating costs exclude the costs of malpractice insurance and capital related costs described in 42 CFR 413.130(i) (October 1, 1992), which is a federal regulation which the department hereby adopts and incorporates by reference. A copy of the cited regulations may be obtained through the Department of Public Health and Human Services, Medicaid Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604 4210.~~

~~(d) Base period allowable educational and vocational training costs shall be determined separately from other provider costs. The base period for educational and vocational training costs is the provider's first full 12 month cost reporting period in the Montana medicaid program ending on or after December 31, 1993. A base period educational and vocational training cost per patient day shall be determined by dividing the total allowable educational and vocational training costs for the base period by the number of total patient days in the base period. In cost reporting years after the base period, reimbursement for educational and vocational training costs shall be subject to a ceiling on the rate of increase in costs per patient day. The ceiling shall be established as provided in subsection (6).~~

~~(6) Reimbursement to providers for all periods subsequent to the base period will be subject to a ceiling on the rate of increase of operating costs per patient day and educational and vocational training costs per patient day for services that will be recognized as reasonable for purposes of determining medicaid reimbursement.~~

~~(a) Ceilings established under this section will be applied to all full 12 month cost reporting periods that follow a base period as described in subsection (5) through (5)(d). For purposes of determining base period reimbursement, allowable cost shall be determined in accordance with subsection (2), without application of the ceiling established in this section.~~

~~(b) Ceilings established under this section will not apply to cost reporting periods of fewer than 12 months that occur along with a change in operations of the providers as a result of changes in ownership, merger or consolidation. However, ceilings will apply to cost reporting periods of fewer than 12 months which result solely from the approval of a provider's request for a change in accounting cycle. In the case of such periods, the applicable percentage rate of increase will be adjusted downward by a monthly factor corresponding to the annual percentage rate to reflect fewer months.~~

~~(c) The cost per patient day ceilings established under this section apply to operating costs and educational and vocational training costs incurred by a provider in furnishing residential treatment services. For purposes of calculating and applying the rate of increase ceiling on operating costs under these rules, operating costs exclude the costs of malpractice insurance and capital related costs described in subsection (5)(c). Such costs shall be allowable operating costs to the extent otherwise permitted by these rules.~~

~~(d) Base period and subsequent costs subject to the ceilings as described in this subsection will be determined on a cost per patient day basis. Total allowable costs as defined in subsection (2) will be divided by the number of total patient days to determine the cost per patient day.~~

~~(e) The maximum increase percentage for each provider's cost reporting period will equal the prospectively estimated market basket index for hospitals and hospital units excluded from the medicare prospective payment system, most recently published in the federal register prior to the start of the provider's cost reporting period. The market basket index is a hospital wage and price index that incorporates approximately weighted indicators of changes in wages and prices that are representative of the mix of goods and services included in the most common categories of inpatient hospital operating costs subject to the ceiling established under this subsection. The maximum increase percentage is not the upper limit set forth in the federal law commonly referred to as the Tax Equity and Fiscal Responsibility Act (TEFRA) update factor.~~

~~(7) For each provider, ceilings will be established on the reimbursable operating costs per patient day and the reimbursable educational and vocational training costs per patient day of that provider. The ceiling for each 12 month cost reporting period, which is the maximum medicaid allowable cost per day, will be set as follows:~~

~~(a) For the first 12 month cost reporting period to which this ceiling applies, the ceiling will equal the provider's allowable operating or educational/vocational cost per patient day for the provider's base period increased by the maximum increase percentage for the subject period.~~

~~(b) For subsequent 12 month cost reporting periods, the ceiling will equal the provider's ceiling for the previous 12 month cost reporting period increased by the maximum increase percentage for the subject cost reporting period.~~

~~(8) The maximum increase percentage applicable to each 12 month cost reporting period will be used to determine the ceiling on the allowable rate of cost increase under this section.~~

~~(a) The applicable maximum increase percentage will be as specified in subsection (6) (c). The maximum increase percentage for each provider applicable for the beginning of the provider's cost reporting period will be applied prospectively, but will not be retroactively adjusted if the actual market basket rate of increase differs from the estimate.~~

~~(9) At the end of each 12 month cost reporting period subject to this section, the provider's allowable medicaid cost per patient day is compared with that provider's ceiling for that period.~~

~~(a) The provider will receive the actual allowable medicaid cost per patient day or the provider's ceiling amount for that period, whichever is less.~~

~~(b) Exceptions to the ceiling on operating or educational/vocational cost increases may be allowed as described in 42 CFR 413.40(g) (October 1, 1992) which is a federal regulation which the department hereby adopts and incorporates by reference. A copy of the cited regulations may be obtained through the Department of Public Health and Human Services, Medicaid Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604 4210. Requests for exceptions must be submitted to the department in writing along with supporting documentation. The department will determine whether the provider is entitled to an exception and will notify the provider in writing of its determination.~~

~~(c) Providers will receive no TEFRA incentive payments even though costs per day may be less than the ceilings established.~~

~~(d) Providers will receive no reimbursement for costs incurred in excess of the ceilings established under this rule, except as provided in subsection (9)(b).~~

~~(10) For purposes of calculating allowable capital costs for purposes of reimbursement in all cost reporting periods, the number of days of service shall be the greater of:~~

~~(a) actual days of service, or~~

~~(b) days of service representing 80% occupancy.~~

(11) For facilities located outside the state of Montana, the department may set an interim rate and pay for services using the interim rate until sufficient information has been submitted to determine the provider's final rate under (10). The interim rate shall be 60% of the provider's usual and customary charges. If the department pays using an interim rate or, if the department pays for services at a rate determined under (10) but subsequently obtains additional information necessary to fully apply (10), the department may settle the rates and adjust any overpayment or underpayment in accordance with ARM 46.12.595.

(11) and (11)(a) remain the same in text but are renumbered (12) and (12)(a).

(b) the recipient is temporarily absent on a therapeutic home visit; and

(c) the recipient is absent from the provider's facility for no more than 72 consecutive hours per absence, unless the department or its designee determines that a longer absence is medically appropriate and has authorized the longer absence in advance of the absence.

(12) remains the same in text but is renumbered (13).

~~(13) (14) The provider must submit to the department's~~
~~medicaid services~~ Mental and Addictive Disorders division or its designee a request for a therapeutic home visit bed hold, on the appropriate form provided by the department, within 90 days of the first day a recipient leaves the facility for a therapeutic home visit. Reimbursement for therapeutic home visits will not be allowed unless the properly completed form is filed timely with the ~~department's medicaid services~~ Mental and Addictive Disorders division or its designee.

(14) remains the same in text but is renumbered (15).

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

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

46.12.593 RESIDENTIAL TREATMENT SERVICES, ALLOWABLE COST, COST REPORTING AND AUDITS (1) The procedures and forms for maintaining cost information and reporting are as follows:

(1) For cost reporting purposes, allowable costs will be determined in accordance with generally accepted accounting principles as defined by the American institute of certified public accountants, subject to the provisions of the medicare provider reimbursement manual (HCFA-Pub. 15) except where further restricted in this administrative rule. The department hereby adopts and incorporates by reference the medicare provider reimbursement manual (HCFA-Pub. 15), which is a manual published by the United States department of health and human services, social security administration, which provides guidelines and policy to implement medicare regulations which set forth principles for determining the reasonable cost of provider services furnished under the Health Insurance for Aged Act of 1965, as amended. A copy of the medicare provider reimbursement manual (HCFA-Pub. 15) may be obtained through the Department of Public Health and Human Services, Health Policy and Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(a) Return on equity capital is not an allowable cost.

(b) Bad debt expense is not an allowable cost.

(c) Educational and vocational training costs are an allowable cost if such costs qualify for federal financial participation under the provisions of 42 CFR 441.13(b), as amended effective December 21, 1992.

(2) For purposes of calculating allowable capital costs for cost reporting purposes, the number of days of service shall be the greater of:

(a) actual days of service; or

(b) days of service representing 80% occupancy.

~~4a~~ (3) The facility must record and report costs in accordance with these rules and generally accepted accounting principles as defined by the American institute of certified public accountants. The facility must maintain appropriate accounting records which will enable the facility to fully complete the cost report in the form required by the department.

~~4b~~ (4) Providers must use the accrual method of accounting for recording and reporting costs, except that, for governmental institutions that operate on a cash method or a

modified accrual method, such methods of accounting will be acceptable.

~~(e)~~ (5) Cost finding means the process of redistributing the data derived from the accounts ordinarily kept by a facility to ascertain its costs of the various services provided. Cost finding is the resolution of the costs by allocation of direct costs and proration of indirect costs. In preparing cost reports, all providers must use the methods of cost finding described at 42 CFR 413.24 (1991) which the department hereby adopts and incorporates ~~herein~~ by reference. 42 CFR 413.24 (1991) is a federal regulation setting forth methods of cost finding. A copy of the regulation may be obtained from the Department of Public Health and Human Services, ~~Medicaid Services Division~~ Mental and Addictive Disorders Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

~~(d)~~ (6) Provider costs must be reported based upon the provider's fiscal year using the financial and statistical report form provided by the department. The use of the department's financial and statistical report form is mandatory for participating facilities. These reports must be complete and accurate. Incomplete reports or reports containing inconsistent data will be returned to the provider for correction. The department will not accept or use for any purpose a cost report for any period greater than 12 months.

~~(+)~~ (a) The provider must file its cost report and supporting documents with the department within 90 days of the closing date of its fiscal year.

~~(+++)~~ (b) In the event a provider does not file a complete cost report complying with these rules within 90 days of the closing date of its fiscal year, an amount equal to 10% of the provider's total reimbursement for the following month shall be withheld by the department. If the report is overdue or incomplete for more than 30 days, 20% shall be withheld. For each succeeding 30 days the report is overdue or incomplete, the provider's total reimbursement shall be withheld. All amounts so withheld will be payable to the provider upon submission of a cost report which complies with these rules. Unavoidable delays may be reported with a full explanation and a request made for an extension of time limits prior to the filing deadline. However, there is a limit of one 30-day extension per cost report.

~~(+++)~~ (c) Failure to submit a cost report will result in recovery by the department of all amounts paid by the department for the fiscal year covered by the cost report.

~~(iv)~~ (d) Cost reports must be executed by the individual provider, a partner of a partnership provider, the trustee of a trust provider or an authorized officer of a corporate provider. The person executing the reports must sign under penalties of false swearing, that he has examined the report including accompanying schedules and statements, and that to the best of his knowledge and belief, the report is true, correct, and complete, and prepared consistent with governing laws, regulations and accounting principles.

~~(v)~~ (7) Records of financial and statistical information supporting cost reports must be maintained by the provider and the department for 3 years after the date a cost report is filed, the date the cost report is due or the date upon which a disputed cost report is finally settled, whichever is later.

~~(vi)~~ (a) Each provider must maintain, as a minimum, a chart of accounts, a general ledger and the following ledgers and journals: revenue, accounts receivable, cash receipts, accounts payable, cash disbursements, payroll, general journal, resident census records identifying the level of care of all residents individually, all records pertaining to private pay residents and resident trust funds.

~~(vii)~~ (b) Business records of any related party, including any parent or subsidiary firm, related to a provider must be available at the facility to support allowable costs. The owner's or related party's personal financial records relating to the facility also must be available at the facility to support allowable costs. Any costs not so supported will not be allowable.

~~(viii)~~ (8) The department or its designee may perform a desk review of cost reports and may conduct on-site audits of provider records. Audits will meet generally accepted auditing standards as defined by the American institute of certified public ~~accounts~~ accountants.

~~(ix)~~ (a) Cost information as developed by the provider must be complete, accurate and in sufficient detail to support payments made for services rendered to recipients and recorded in such a manner to provide a record which is auditable through the application of reasonable audit procedures. The information which may be used to document costs must include all ledgers, books, records and original evidence of cost (purchase requisitions, purchase orders, vouchers, checks, invoices, requisitions for materials, inventories, labor time cards, payrolls, bases for apportioning costs, etc.) which pertain to

the determination of reasonable cost. Documentation created after the fact will not be sufficient to support such costs.

~~(ii)~~ (b) All of the above records and documents must be available at the facility at all reasonable times after reasonable notice and subject to inspection, review or audit by the department, the federal department of health and human services, the Montana legislative auditor, and other authorized governmental agencies.

~~(iii)~~ (c) Upon refusal of the provider to make available and allow access to the above records and documents, all payments made by the department during the provider's fiscal year to which those records relate shall be recovered in full by the department.

~~(g)~~ (2) In addition to the requirements of ~~subsection (1)~~ ~~(f)~~ (8), the department may require out-of-state providers to submit a copy of their most recent audit report in those instances where the provider has not prepared or is not required to prepare a HCFA form 2552. The audit report must have been performed in accordance with generally accepted auditing standards as defined by the American institute of certified public accountants.

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

IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

46.12.595 RESIDENTIAL TREATMENT SERVICES, COST SETTLEMENT AND UNDERPAYMENT (1) For facilities located ~~in~~ outside the state of Montana, the department ~~will~~ may, as provided in (2), perform cost settlements and correct overpayments and underpayments in accordance with the provisions of ARM 46.12.509.

(2) remains the same.

AUTH: Sec. 53-6-113, MCA

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

46.12.599 RESIDENTIAL TREATMENT SERVICES, CERTIFICATION OF NEED FOR SERVICES, UTILIZATION REVIEW AND INSPECTIONS OF CARE

(1) through (9) remain the same.

(10) If the department's utilization review agent fails to timely review a request for authorization or timely make a determination on an authorization or informal reconsideration

request, the provider may make written inquiry to the agent regarding the status of the matter. If the provider does not receive a satisfactory response within a reasonable time, the provider may contact the Department of Public Health and Human Services, ~~Medicaid Services Division~~ Mental and Addictive Disorder Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 for assistance ~~is~~ in obtaining a determination.

(11) and (12) remain the same.

AUTH: Sec. 2-4-201 and ~~53-6-113~~, MCA

IMP: Sec. 2-4-201, ~~53-2-201~~, ~~53-6-101~~, ~~53-6-111~~, ~~53-6-113~~ and ~~53-6-141~~, MCA

3. The primary purpose of the proposed rule changes is to adopt a new reimbursement methodology for residential treatment services. The proposed changes to ARM 46.12.592 would implement a prospective system to replace the current retrospective cost-based system. The proposed prospective system is the result of several years of review and study by department staff and Abt Associates. Abt contracted with the department to study and recommend changes in reimbursement methodology for outpatient hospital services and residential treatment services. A copy of the Abt report is available upon request from the department's health policy and services division.

Abt has recommended that the program adopt facility specific prospective rates for all in-state facilities. In the first year of the rate system, in-state facilities would be paid 95% of their projected cost, based upon audited cost reports from state fiscal year 1994. The department anticipates that the change in payment methods will increase the providers' incentives to reduce costs and increase efficiency. The current methodology recognizes 100% of allowable costs in the base period subject to TEFRA limits. While the current system limits the rate of increase from year to year, the base period costs are not otherwise limited to account for inefficiency or lack of economy in facility operations and expenditures. The proposed system recognizes that some degree of inefficiency is present.

To encourage increased efficiency in the provision of residential treatment center services, proposed payment rates would transition from a facility-specific to a statewide basis. In state fiscal year 1997-98, a limit will be determined and facilities above the limit will be paid a 50/50 blend of their

1997-98 projected cost and the limit. Effective July 1, 1998, the blend factor would be eliminated and all facilities would be paid the lower of the statewide rate or the facility-specific rate. The department believes this approach is necessary to slow the rate of growth in program expenditures for the residential treatment program.

To assure that the cost containment incentives of the program are not diluted by shifting of costs to other program service categories, the per diem rate will be an all-inclusive bundled rate with certain limited exceptions. The rate will cover and include all psychiatric services provided to the recipient, including psychologists, social workers, licensed professional counselors, lab, pharmacy, and any treatment related to the psychiatric diagnosis being treated. Physician services (e.g., psychiatrists) and other specified services will continue to be paid separately. Thus, the residential treatment facility would be responsible for providing all psychiatric services while a youth is in the facility. Services which are not provided by the RTC and are not related to the youth psychiatric diagnosis (e.g. a broken arm) would continue to be paid separately.

Because the bundling requirement will result in some additional cost to providers, an adjustment would be made to each facility's base period costs to account for the increase. Bundling refers to the combining of all the charges for psychiatric services which are paid to various providers and which under the proposal would now be paid to the residential facilities. These services would be identified by the diagnosis or by the drug category for pharmacy services. Since the facilities would become responsible for some of the services for which other providers are now paid separately, their payment rates must be increased to account for the bundling. The adjustments would be 2.0% for Yellowstone Treatment Centers, 0.7% for Shodair, and 2.7% for Rivendell. These calculations are based on medicaid paid claims data for psychiatric services provided to recipients in the respective facilities. The department anticipates that the bundling adjustment will reasonably cover the increased facility costs resulting from the bundling requirement.

To account for inflation after the base period, costs (which have been adjusted for bundling) would be indexed using the HCFA Nursing Home without Capital Market Basket series that is

available from DRI/McGraw Hill. There is no similar series for residential treatment specifically, and since these facilities provide long term care, the department believes that the nursing home index is the most appropriate index for this purpose. The average index value in state fiscal year (SFY) 1994 was 1.365. For March - June 1996, the latest forecast value of the index is 1.471, a change of 7.7%. The forecast average value in SFY 1997 is 1.504, a change of 10.2% from SFY 1994. The proposed payment rates are based on DRI inflation projections. No retroactive adjustments would be made after the period is over.

A significant advantage of prospective rate setting is that rates are known in advance. The marginal benefit of retroactive adjustments would be outweighed by the added burden on all concerned. The department anticipates that on average, the projections will approximate actual experience, but may be more or less than the actual projection. Continuing department analysis will be performed to compare the projections with actual cost data as it becomes available. The department's experience with the same index in the nursing facility program is that the projections are very accurate predictors of inflation in the industry.

Accurate calculation of the statewide rate or limit requires that facility-specific rates be weighted by actual medicaid days data. It would be difficult to project accurately medicaid days by facility. Accordingly, the most recent available medicaid days data by facility, expressed on an annualized basis, would be used.

New providers within Montana or new service locations for existing providers would be paid final prospective rates, rather than using interim rates followed by retrospective settlements which is the current practice. The rate for new providers would be equal to the lowest rate paid to an established facility. For a facility that started operation on July 1, 1996, the rate would be \$213.27 per patient day. Alternative approaches were considered, such as paying the statewide rate. However, the department believes that the strong growth in bed availability in the last two years demonstrates that the lower rate would be adequate. For out-of-state providers, the current cost to charge ratio payment methodology would be continued. The department believes that the key to managing out-of-state

spending is an effective prior approval process rather than adoption of fully prospective rates.

One significant advantage of the proposed system is that it will eliminate the need to perform cost settlements for Montana facilities. Cost settlements are very labor intensive and time consuming, and given the lack of adequate numbers of state staff, are impossible to complete in any reasonably short time period after the submission of cost reports. This creates long term uncertainty for facility management as well as state budget managers regarding the amount of program reimbursement. The process also drives up the cost of services because providers spend significant time and expense in completing the settlements. In addition, it will promote consistency in billing for both in-state and out-of-state facilities by eliminating the wide variety of revenue codes which are currently available to facilities for billing. The new reimbursement system will give facilities a degree of certainty concerning their present and future reimbursement rates. The prospective rate system should allow the medicaid program to more accurately predict expenditures associated with residential treatment services.

Other proposed changes in ARM 46.12.592(4) are necessary to more clearly state the methodology for reimbursement of out-of-state services. The current rule language does not clearly specify the cost to charge ratio approach that was intended and that is employed in actual practice. This does not change current department policy or intent.

Proposed ARM 46.12.592(2) and (10), and 46.12.593 would more logically organize the rules related to cost reporting. The rules specifying allowable costs relate to the cost reporting process and are located currently in ARM 46.12.592(2) and (10). The proposed rule would relocate these rules in ARM 46.12.593 with the other rules relating to reporting of costs. Proposed changes to ARM 46.12.595 are necessary to make the rule consistent with the proposed prospective payment system, in which there will be no cost settlements with in-state providers. The rule would limit the cost settlement process to out-of-state facilities and make clear that the process is discretionary under the conditions described. Proposed new ARM 46.12.592(11) is necessary to specify the circumstances under which rates for

out-of-state facilities are interim and subject to retrospective settlement.

Proposed changes to ARM 46.12.590, 46.12.591, 46.12.592(2) and (13), 46.12.593(1)(c) and 46.12.599(10) update agency and division names which have changed as a result of the reorganization of various health and human service agencies enacted by the 1995 legislature.

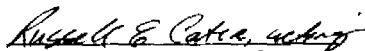
For SFY 1996, the department estimates that the proposed reimbursement system will result in a budget savings of approximately \$202,312 in total federal and state funds and for SFY 1997 the savings are estimated to be approximately \$929,225 in total federal and state funds. These estimates are calculated based upon the expected savings resulting from payment of 95% rather than the current 100% of cost. Savings may be greater or smaller depending upon other factors such as inflation, the rate of growth in the number of recipient patient days and other factors.

The medical care advisory committee has been notified of the proposed changes. A copy of this notice is available at local county offices of human services. The proposed changes will apply to residential treatment services provided on or after April 1, 1996.

4. 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 Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than February 22, 1996.

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


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State January 12, 1996.

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT OF THE
amendment of ARM 4.12.3402) SEED LABORATORY ANALYSIS
) FEES RULE

TO: All Interested Persons:

1. On October 12, 1995, the department published a notice of a proposed amendment of the above-stated rule in the Montana Administrative Register at page 2084, issue No. 19.

2. The department has adopted the amendment as proposed.

3. The department has thoroughly considered all comments and testimony received. The department received three written comments from one person and one oral comment. Those comments and the department's responses are as follows:

COMMENT 1: The rules should not be adopted to raise seed laboratory fees until a better explanation is made that the raise is needed.

RESPONSE: The fees collected by the seed laboratory defray the operating costs (80-5-110, MCA). The new schedule establishes fees for various types of agricultural seeds commensurate with the cost of each analysis. The new fee structure will increase yearly income which is necessary because the laboratory has been operating a deficit budget assisted by cash reserves. For example, in 1993, income was \$71,829 and expenses were \$74,642. In 1994, income was \$87,653 and expenses were \$92,699. During this period, the reserve account declined from about \$12,000 to \$4,000. The program should maintain a reserve account of approximately \$10,000 for contingent expenses associated with accrued personnel services such as annual leave and sick leave. Certain items of laboratory seed analysis equipment will also need replacement soon which will require expenditures above that in 1993 or 1994 when no seed analysis equipment was purchased. Additional expenses have been associated with increased salaries and benefits required under the state pay plan. The new fee structure will increase revenues in the range of \$4,000 to \$10,000 yearly depending upon the amount and types of samples received.

COMMENT 2: The rules should not be adopted until the fee cash balances that exist now are used or will be depleted in the near future.

RESPONSE: See response to comment 1. Under the current fee structure, reserve account balances have decreased to about \$4,000. The reserve account will probably be depleted within one to two years under the current fee structure. A reserve account of about \$10,000 should be maintained to meet

contingent liabilities such as the payment of accrued annual leave and sick leave should laboratory personnel leave.

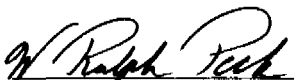
COMMENT 3: The fees should not be raised until consideration is given in raising some fees and lowering others to better benefit seed laboratory users while still raising revenue for the laboratory and improving processing of certain services to customers.

RESPONSE: Fees have been established based on the actual cost of the analysis. This has actually resulted in certain fees being lowered and others being raised. For example, the new fee structure increases the fees for grass seeds but decreases fees for oats, spelt, safflower, sunflower, sanfoin, sorghum and sudan grass. The fee for barley stripe mosaic testing decreased from \$52.50 to \$30.00 which reflects the actual cost of the test.

COMMENT 4: The proposed rules raise the seed laboratory fees to a point where the service is not affordable.

RESPONSE: The agricultural experiment station seed laboratory has recommended that the new fees are necessary to defray the expenses incurred by the laboratory. The records and projections for income and expenses support this recommendation. The department concludes that the recommendation is consistent with the provisions for fees established in 80-5-110, MCA.

DEPARTMENT OF AGRICULTURE



W. Ralph Peck
Director



Timothy J. Meloy
Attorney
Rule Reviewer

Certified to the Secretary of State this 10th day of January
1996

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

In the matter of the repeal of) NOTICE OF REPEAL
Title 6, Chapter 6, Sub-Chapter 4)
pertaining to college student)
life insurance.)

TO: All Interested Persons.

1. On December 7, 1995, the state auditor and commissioner of insurance of the state of Montana published notice of proposed repeal of Title 6, Chapter 6, Sub-Chapter 4 concerning college student life insurance. The notice was published at page 2573 of the 1995 Montana Administrative Register, issue number 23.

2. The agency has repealed rules 6.6.401 through 6.6.410, found on pages 6-117 through 6-119 of the Administrative Rules of Montana.

AUTH: 33-1-313, MCA

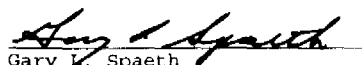
IMP: 2-4-314, MCA

3. No comments were received.

Mark O'Keefe
State Auditor and
Commissioner of Insurance

By: 

Frank Coté
Deputy Insurance Commissioner


Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 12th day of January, 1996.

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

In the matter of the repeal of) NOTICE OF REPEAL
Sub-Chapter 23 of Chapter 6 of)
Title 6 regarding the Montana)
Insurance Assistance Plan.)

TO: All Interested Persons.

1. On November 22, 1995, the state auditor and commissioner of insurance of the state of Montana published notice of proposed repeal of Sub-Chapter 23 of Chapter 6 of Title 6 concerning the Montana Insurance Assistance Plan. The notice was published at page 2448 of the 1995 Montana Administrative Register, issue number 22.

2. The agency has repealed rules 6.6.2301 through 6.6.2309, found on pages 6-237 through 6-239 of the Administrative Rules of Montana.

AUTH: 33-8-205, MCA


IMP: 33-8-205, MCA

3. No comments were received.

Mark O'Keefe
State Auditor and
Commissioner of Insurance

By: 

Frank Cote
Deputy Insurance Commissioner


Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 12th day of January,
1996.

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

In the matter of the repeal of) NOTICE OF REPEAL
Sub-Chapter 29 of Chapter 6 of)
Title 6 regarding the prelicensing)
education program.)

TO: All Interested Persons.

1. On November 22, 1995, the state auditor and commissioner of insurance of the state of Montana published notice of proposed repeal of Sub-Chapter 29 of Chapter 6 of Title 6 concerning the prelicensing education program. The notice was published at page 2444 of the 1995 Montana Administrative Register, issue number 22.

2. The agency has repealed rules 6.6.2901 through 6.6.2907, found on pages 6-259 through 6-259.5 of the Administrative Rules of Montana.

AUTH: 33-1-313, MCA


IMP: 33-17-207 through 33-17-209, MCA

3. No comments were received.

Mark O'Keefe
State Auditor and
Commissioner of Insurance

By: 

Frank Cote
Deputy Insurance Commissioner


Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 12th day of January, 1996.

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

In the matter of the repeal of) NOTICE OF REPEAL
Sub-Chapter 32 of Chapter 6 of)
Title 6 regarding the pricing of)
noncompetitive or volatile lines.)

TO: All Interested Persons.

1. On November 22, 1995, the state auditor and commissioner of insurance of the state of Montana published notice of proposed repeal of Sub-Chapter 32 of Chapter 6 of Title 6 concerning the pricing of noncompetitive or volatile lines. The notice was published at page 2446 of the 1995 Montana Administrative Register, issue number 22.

2. The agency has repealed rules 6.6.3201 through 6.6.3206, found on pages 6-851 through 6-854 of the Administrative Rules of Montana.

AUTH: 33-1-313, MCA

IMP: 33-16-231 through 33-16-236, MCA

3. No comments were received.

Mark O'Keefe
State Auditor and
Commissioner of Insurance

By: 

Frank Coté
Deputy Insurance Commissioner


Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 12th day of January,
1996.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
Rule 6.6.4001 pertaining to the)
valuation of securities other than)
those specifically referred to in)
statutes.)

TO: All Interested Persons.

1. On December 7, 1995, the state auditor and commissioner of insurance of the state of Montana published notice of proposed amendment of rule 6.6.4001. The notice was published at page 2575 of the 1995 Montana Administrative Register, issue number 23.

2. The agency has amended rule 6.6.4001 as proposed.

3. No comments were received.

Mark O'Keefe
State Auditor and
Commissioner of Insurance

By: 

Frank Coté
Deputy Insurance Commissioner


Gary L. Spaeth
Rules Reviewer

Certified to the Secretary of State this 12th day of January,
1996.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

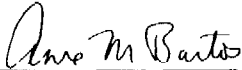
In the matter of the	)	CORRECTED NOTICE ON
amendment, repeal and adoption)	)	THE PROPOSED AMENDMENT,
of rules pertaining to	)	REPEAL AND ADOPTION OF RULES
physician, acupuncturist,	)	PERTAINING TO PHYSICIANS,
emergency medical technician,	)	ACUPUNCTURISTS, EMERGENCY
physician assistant-certified,	)	MEDICAL TECHNICIANS, PHYSICIAN
podiatrist, and nutritionist	)	ASSISTANTS-CERTIFIED,
licensure	)	PODIATRISTS AND NUTRITIONISTS

TO: All Interested Persons:

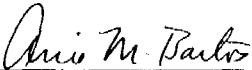
1. On September 14, 1995, the Board of Medical Examiners published a notice of public hearing on the proposed amendment, repeal and adoption of rules pertaining to physician, acupuncturist, emergency medical technician, physician assistant-certified, podiatrist, and nutritionist licensure at page 1736, 1995 Montana Administrative Register, issue number 17. The Board published an adoption notice of the rules at page 2480, 1995 Montana Administrative Register, issue number 22. The rules were adopted exactly as proposed.

2. ARM 8.28.911(21) through (23) were inadvertently numbered wrong in the original proposed notice. Those subsections should have been numbered (20) through (22). Replacement pages for this rule were filed on the 12/31/96 filing date.

BOARD OF MEDICAL EXAMINERS
JAMES BONNET, JR., M.D.
PRESIDENT



ANNIE M. BARTOS
RULE REVIEWER

BY: 

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, January 12, 1996.

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

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 12.6.901 creating a no)
wake speed zone near Rock Creek)
Marina in Ft. Peck Reservoir)
)

To: All Interested Persons.

1. On November 22, 1995, the Fish, Wildlife and Parks Commission (commission) published notice of the proposed amendment of the above-captioned rule at page 2459, 1995 Montana Administrative Register, issue number 22.

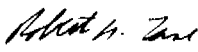
2. The commission has adopted the rule amendment as proposed.

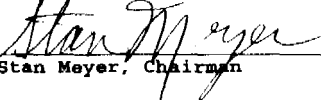
AUTH: 87-1-303, 23-1-106, MCA; IMP: 87-1-303, 23-1-106, MCA

3. No adverse comments or testimony were received.

4. The rule has been reviewed and approved by the Department of Public Health and Human Services as required by §87-1-303(2), MCA, with a determination that the rule would not have an adverse impact on public health or sanitation.

FISH, WILDLIFE AND PARKS COMMISSION


Robert N. Lane
Rule Reviewer


Stan Meyer, Chairman

Certified to the Secretary of State on January 12, 1996.

BEFORE THE BOARD OF CRIME CONTROL
DEPARTMENT OF JUSTICE
STATE OF MONTANA

In the Matter of the Transfer) NOTICE OF ADOPTION,
of ARM 23.14.423, 23.14.424,) AMENDMENT, AND TRANSFER
23.14.508 and 23.14.509; the) OF RULES
Amendment and Transfer of ARM)
23.14.425, 23.14.501 and)
23.14.502; and the Adoption)
of New Rules I through XIV)

TO: All Interested Persons:

1. On September 28, 1995, the board of crime control published notice of its intent to adopt, amend, and transfer the above-captioned rules, at pp. 1873 through 1882 of the Montana Administrative Register, Issue No. 18.

2. The board has adopted, amended and transferred the rules as proposed with no substantive changes. However, the board found it necessary to change several rule numbers and catchphrases. Additionally, as ARM numbers have now been assigned to all the newly-adopted rules, this notice includes the correct numbers and catchphrases of all the adopted, amended, and transferred rules.

3. The amended and/or transferred rules are numbered and entitled as follows:

FORMER ARM 23.14.423 NOW ARM 23.14.524 5	MINIMUM STANDARDS <u>QUALIFICATIONS</u> FOR THE EMPLOYMENT OF DETENTION OFFICERS
FORMER ARM 23.14.424 NOW ARM 23.14.522 6	REQUIREMENTS FOR DETENTION OFFICER <u>BASIC</u> CERTIFICATION ONE
FORMER ARM 23.14.425 ARM 23.14.500 3	REFERENCED ADMINISTRATIVE RULES OF MONTANA APPLY TO FULL-TIME AND PART-TIME <u>DETENTION NON-SWORN</u> OFFICERS
FORMER ARM 23.14.501 NOW ARM 23.14.506 10	MINIMUM STANDARDS <u>QUALIFICATIONS</u> FOR THE EMPLOYMENT OF PUBLIC SAFETY COMMUNICATIONS OFFICERS
FORMER ARM 23.14.502 NOW ARM 23.14.507 11	REQUIREMENTS FOR PUBLIC SAFETY COMMUNICATIONS OFFICER <u>BASIC</u> CERTIFICATION ONE
FORMER ARM 23.14.508 NOW ARM 23.14.554 5	MINIMUM QUALIFICATIONS OF <u>FOR</u> PROBATION AND PAROLE OFFICERS
FORMER ARM 23.14.509 NOW ARM 23.14.552 6	REQUIREMENTS FOR PROBATION AND PAROLE OFFICER <u>BASIC</u> CERTIFICATION ONE

4. The new rules that the board adopts are numbered as follows:

RULE I (ARM 23.14.504)	ADOPTED AS PROPOSED
RULE II (ARM 23.14.512)	ADOPTED AS PROPOSED
RULE III (ARM 23.14.513)	ADOPTED AS PROPOSED
RULE IV (ARM 23.14.514)	ADOPTED AS PROPOSED
RULE V (ARM 23.14.515)	ADOPTED AS PROPOSED
RULE VI (ARM 23.14.516)	ADOPTED AS PROPOSED
RULE VII (ARM 23.14.527)	ADOPTED AS PROPOSED
RULE VIII (ARM 23.14.528)	ADOPTED AS PROPOSED
RULE IX (ARM 23.14.529)	ADOPTED AS PROPOSED
RULE X (ARM 23.14.530)	ADOPTED AS PROPOSED
RULE XI (ARM 23.14.531)	ADOPTED AS PROPOSED
RULE XII (ARM 23.14.570)	ADOPTED AS PROPOSED
RULE XIII (ARM 23.14.571)	ADOPTED AS PROPOSED
RULE XIV (ARM 23.14.901)	ADOPTED AS PROPOSED

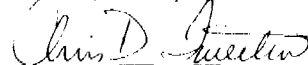
5. No comments or testimony were received.

MONTANA BOARD OF CRIME CONTROL

By:



ELLIS E. KISER, Executive Director



Rule Reviewer

Certified to the Secretary of State, January 11, 1996.

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

In the matter of the) NOTICE OF AMENDMENT OF
amendment of ARM 24.30.102,) ARM 24.30.102 AND
related to occupational safety) REPEAL OF ARM 24.30.201
and health standards for) THROUGH 24.30.271
public sector employment, and)
the repeal of 71 rules related)
to logging safety for public)
sector employment)

TO ALL INTERESTED PERSONS:

1. On December 7, 1995, the Department published notice at pages 2581 through 2584 of the Montana Administrative Register, Issue No. 23, to consider the amendment of ARM 24.30.102 and the repeal of ARM 24.30.201 through 24.30.271.

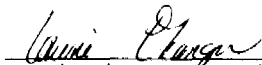
2. On January 3, 1996, a public hearing was held in Helena concerning the proposed amendments and repeals. No oral or written comments from the public were offered at that time. No written comments were received prior to the closing date of January 10, 1996.

3. The Department has amended ARM 24.30.102 exactly as proposed.

4. The Department has repealed ARM 24.30.201 through 24.30.271 exactly as proposed.

5. The amendments and repeals are effective March 1, 1996.


David A. Scott
Rule Reviewer


Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: January 12, 1996.

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

In the matter of the repeal	)	NOTICE OF
of Rule 26.2.101, department	)	REPEAL
of state lands model)	
procedural rule)	

TO: All Interested Persons.

1. On September 14, 1995, the Department of Natural Resources and Conservation published a notice of proposed repeal of rule 26.2.101 pertaining to the Department of State Lands model procedural rules at page 1777 of the 1995 Montana Administrative Register, Issue No. 17.

2. The agency has repealed rule 26.2.101 found on page 26-23 of the Administrative Rules of Montana.

AUTH: Section 2-4-201, MCA

IMP: Section 2-4-201, MCA

3. No comments were received.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION


ARTHUR R. CLINCH, DIRECTOR


DONALD D. MACINTYRE,
RULE REVIEWER

Certified to the Secretary of State on January 12th, 1996.

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

In the matter of the repeal)
of Rules 26.2.628, 26.2.629,)
26.2.630, 26.2.634, 26.2.639,) NOTICE OF REPEAL
and 26.2.641 through 26.2.663)
pertaining to rules imple-)
menting the Montana)
environmental policy act)

TO: All Interested Persons.

1. On October 12, 1995, the Department of Natural Resources and Conservation published a notice of proposed repeal of rules 26.2.628 through 26.2.630, 26.2.634, 26.2.639, and 26.2.641 through 26.2.663 pertaining to rules implementing the Montana environmental policy act, at page 2098 of the 1995 Montana Administrative Register Issue No. 19.


2. The agency has repealed rules 26.2.628, 26.2.629, 26.2.630, 26.2.634, 26.2.639, and 26.2.641 through 26.2.663 found on pages 26-50 through 26-52, 26-53, 26-56, and 26-56 through 26-74 of the Administrative Rules of Montana.

AUTH: Section 2-4-201, MCA

IMP: Section 2-4-201, MCA

3. No comments were received.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION


ARTHUR R. CLINCH, DIRECTOR


DONALD D. MACINTYRE, REVIEWER

Certified to the Secretary of State January 12th, 1996.

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

In the matter of the repeal)
of Rule 36.2.201, board model)
procedural rule)

NOTICE OF REPEAL

TO: All Interested Persons.

1. On September 14, 1995, the Department of Natural Resources and Conservation published a notice of proposed repeal of rule 36.2.201 pertaining to the board model procedural rules, at page 1776 of the 1995 Montana Administrative Register, Issue No. 17.

2. The agency has repealed rule 36.2.201 found on page 36-31 of the Administrative Rules of Montana.


AUTH: Section 2-4-201, MCA

IMP: Section 2-4-201, MCA

3. No comments were received.

DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION


ARTHUR R. CLINCH, DIRECTOR


DONALD D. MACINTYRE,
RULE REVIEWER

Certified to the Secretary of State January 12th, 1996.

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

In the matter of the	)	NOTICE OF THE ADOPTION
adoption of Rules I through	)	AND AMENDMENT OF RULES
XL and the amendment of)	
rules 46.10.801, 46.10.803,)	
46.10.805, 46.10.808,)	
46.10.809, 46.10.810,)	
46.10.811, 46.10.823,)	
46.10.825, 46.10.833 and)	
46.10.835 pertaining to the)	
traditional JOBS program,)	
the FAIM JOBS program and)	
FAIM employment and training)	

TO: All Interested Persons

1. On December 7, 1995, the Department of Public Health and Human Services published notice of the proposed adoption of Rules I through XL and the amendment of rules 46.10.801, 46.10.803, 46.10.805, 46.10.808, 46.10.809, 46.10.810, 46.10.811, 46.10.823, 46.10.825, 46.10.833 and 46.10.835 pertaining to the traditional JOBS program, the FAIM JOBS program and FAIM employment and training at page 2619 of the 1995 Montana Administrative Register, issue number 23.

2. The Department has amended rules 46.10.801, 46.10.803, 46.10.808, 46.10.809, 46.10.810, 46.10.823, 46.10.825, 46.10.833 and 46.10.835 as proposed.

3. The Department has adopted rules [RULE I] 46.18.201 FAIM JOBS PROGRAM: PURPOSE; [RULE II] 46.18.202 FAIM JOBS PROGRAM: DEFINITIONS; [RULE IV] 46.18.206 FAIM JOBS PROGRAM: JOBS ACTIVITIES; [RULE V] 46.18.209 FAIM JOBS PROGRAM: ALTERNATIVE WORK EXPERIENCE PROGRAM (AWEP); [RULE VI] 46.18.210 FAIM JOBS PROGRAM: PARTICIPATION REQUIREMENTS FOR EDUCATIONAL ACTIVITIES; [RULE VII] 46.18.214 FAIM JOBS PROGRAM: JOBS CHILD CARE; [RULE VIII] 46.18.215 FAIM JOBS PROGRAM: TWO PARENT HOUSEHOLD PARTICIPATION AND OTHER REQUIREMENTS; [RULE IX] 46.18.216 FAIM JOBS PROGRAM: REQUIREMENTS FOR SATISFACTORY PROGRESS IN EDUCATIONAL AND WORK AND TRAINING ACTIVITIES; [RULE X] 46.18.217 FAIM JOBS PROGRAM: JOB SEARCH; [RULE XI] 46.18.220 FAIM JOBS PROGRAM: ON-THE-JOB TRAINING (OJT); [RULE XII] 46.18.221 FAIM JOBS PROGRAM: TRAINING SERVICES--POST-SECONDARY; [RULE XIII] 46.18.222 FAIM JOBS PROGRAM: SUPPORTIVE SERVICES AND ONE TIME WORK-RELATED EXPENSES AVAILABILITY; [RULE XIV] 46.18.223 FAIM JOBS PROGRAM: AVAILABILITY OF SERVICES AFTER LOSS OF PATHWAYS AFDC ELIGIBILITY; [RULE XV] 46.18.226 FAIM JOBS PROGRAM: LEAD AGENCY; [RULE XVII] 46.18.230 FAIM JOBS PROGRAM: PARTICIPANTS EMPLOYABILITY PLAN AND JOBS CONTRACT; [RULE XVIII] 46.18.231 FAIM JOBS PROGRAM: CASE MANAGEMENT; [RULE XIX] 46.18.237 FAIM JOBS PROGRAM: GOOD CAUSE; [RULE XXI] 46.18.239

FAIM JOBS PROGRAM: CONCILIATION; [RULE XXII] 46.18.240 FAIM JOBS PROGRAM: FAIR HEARING PROCEDURE; [RULE XXIII] 46.18.243 FAIM JOBS PROGRAM: WORK SUPPLEMENTATION PROGRAM, CONDUCT OF PROGRAM; [RULE XXIV] 46.18.301 FAIM EMPLOYMENT AND TRAINING: PURPOSE; [RULE XXV] 46.18.302 FAIM EMPLOYMENT AND TRAINING: DEFINITIONS; [RULE XXVI] 46.18.305 FAIM EMPLOYMENT AND TRAINING: ELIGIBILITY; [RULE XXVII] 46.18.309 FAIM EMPLOYMENT AND TRAINING: ALTERNATIVE WORK EXPERIENCE PROGRAM (AWEP); [RULE XXIX] 46.18.310 FAIM EMPLOYMENT AND TRAINING: PARTICIPATION REQUIREMENTS FOR EDUCATIONAL ACTIVITIES; [RULE XXX] 46.18.314 FAIM EMPLOYMENT AND TRAINING: CHILD CARE; [RULE XXXI] 46.18.315 FAIM EMPLOYMENT AND TRAINING: TWO PARENT FAMILIES PARTICIPATION AND OTHER REQUIREMENTS; [RULE XXXII] 46.18.318 FAIM EMPLOYMENT AND TRAINING: POST-SECONDARY PARTICIPATION CRITERIA; [RULE XXXIII] 46.18.319 FAIM EMPLOYMENT AND TRAINING: REQUIREMENTS FOR SATISFACTORY PROGRESS IN EDUCATIONAL, WORK AND TRAINING ACTIVITIES; [RULE XXXIV] 46.18.322 FAIM EMPLOYMENT AND TRAINING: JOB SEARCH; [RULE XXXV] 46.18.323 FAIM EMPLOYMENT AND TRAINING: ON-THE-JOB TRAINING (OJT); [RULE XXXVI] 46.18.326 FAIM EMPLOYMENT AND TRAINING: SUPPORTIVE SERVICES AND ONE TIME PATHWAYS EMPLOYMENT RELATED EXPENSES AVAILABILITY; [RULE XXXVII] 46.18.329 FAIM EMPLOYMENT AND TRAINING: FAMILY INVESTMENT AGREEMENT; [RULE XXXVIII] 46.18.330 FAIM EMPLOYMENT AND TRAINING: GOOD CAUSE; [RULE XXXIX] 46.18.331 FAIM EMPLOYMENT AND TRAINING: SANCTIONS; [RULE XL] 46.18.332 FAIM EMPLOYMENT AND TRAINING: FAIR HEARING PROCEDURE as proposed.

4. The Department has adopted the following rules as proposed with the following changes:

[RULE III] 46.18.205 FAIM JOBS PROGRAM: EXEMPT STATUS (1) remains as proposed.

~~(a) the person is specifically exempted as provided in (3);~~

(1)(b) and (1)(c) remain as proposed in text but are renumbered (1)(a) and (1)(b).

(2) The department, in collaboration with the participant, will determine which component or components of the JOBS program are most appropriate for the pathways AFDC recipient. HOWEVER, THE DEPARTMENT SHALL MAKE THE FINAL DECISION AS TO WHICH COMPONENT OR COMPONENTS THE RECIPIENT SHALL PARTICIPATE IN.

~~(3) individuals will be exempt THE EXEMPTIONS from participation in FAIM as JOBS specified in ARM 46.10.805(3)(a) through (3)(m), subject to the following provisions: DO NOT APPLY TO INDIVIDUALS PARTICIPATING IN THE FAIM PROJECT.~~

~~(a) In a two parent household, the family, in collaboration with the FAIM coordinator may decide which parent will be exempted to care for a child under the age of 1 year, except as provided in (3)(b). This decision cannot be changed more often than once every 6 months and must be documented in the family investment agreement (FIA).~~

~~(b) If one parent in a two parent household is exempt from participation because of pregnancy, incapacity or because that parent is caring for an incapacitated household member as~~

~~provided in ARM 46.10.005(3)(c), (3)(f) and (3)(h) or is currently sanctioned pursuant to [Rule XX] for failure to participate, only the parent who is already exempt or under sanction will be exempted to care for the child, unless a licensed physician, nurse midwife, psychologist, licensed professional counselor or licensed social worker verifies that said parent is physically or mentally unable to care for the child.~~

~~(4) The provisions of ARM 46.10.005(4) through (10) apply to individuals participating in FAIM, subject to the following provisions:~~

~~(a) For two parent households, the primary wage earner (PWE) must participate unless specifically exempt under ARM 46.10.005(3).~~

AUTH: Sec. 53-4-212, MCA

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

[RULE XVII] 46.18.227 FAIM JOBS PROGRAM; RESPONSIBILITIES OF LEAD AGENCY (1) through (3) remain as proposed.

(4) The lead agency must coordinate and arrange for services that will assure effective participation of participants in the program and in FAIM. This includes possible ALTERNATIVE WORK EXPERIENCE PROGRAM (AWEP) site development and consultation and concurrences procedures for county pathways participants not in JOBS.

(5) remains as proposed.

AUTH: Sec. 53-4-212, MCA

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

[RULE XX] 46.18.238 FAIM JOBS PROGRAM; SANCTIONS

(1) After referral to the JOBS program, a pathways recipient who is required to participate in the FAIM JOBS program and who, without good cause, refuses or fails to participate in the program or refuses or fails to accept or maintain employment will lose, as provided for in (3), their portion of the pathways grant. The sanctions will be imposed for failure to participate in any aspects of the program including orientation, assessment, employability, plan development, case management and participation in assigned components.

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

~~(5) An automatic referral to child protection services will occur when a sanction is imposed.~~

AUTH: Sec. 53-4-212, MCA

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

[RULE XXVII] 46.18.306 FAIM EMPLOYMENT AND TRAINING: ACTIVITIES (1) and (1)(a) remain as proposed.

(b) volunteer activities designated AS appropriate in the FIA.

AUTH: Sec. 53-4-212, MCA

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

5. The Department has amended the following rules as proposed with the following changes:

46.10.805 CONTROL JOBS: ELIGIBILITY, EXEMPT STATUS (1) through (1)(c) remain as proposed.

(2) ~~The alternative work experience program is a component of the JOBS program designed to improve the employability of participants by assigning the participant to work in a non-profit organization. The department, who finally decides IN COLLABORATION WITH THE PARTICIPANT, will determine which component or components of the JOBS program are most appropriate for the AFDC recipient.~~

(3) through (10) remain as proposed.

AUTH: Sec. 53-4-212 and 53-4-719, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-706, 53-4-707, 53-4-708, 53-4-715, 53-4-717 and 53-4-720, MCA

46.10.811 CONTROL JOBS: UNEMPLOYED PARENTS TRACK PARTICIPATION AND OTHER REQUIREMENTS (1) ~~In an unemployed parent assistance unit, each parent As a part of the AFDC pay for performance program, the primary wage earner (PWE) applicant must attend JOBS-UP orientation, assessment, and employability planning as part of the non-financial criteria for eligibility. A mandatory spouse WHO IS REQUIRED TO PARTICIPATE must attend these activities either at time of application or once AFDC has been approved unless that parent is specifically exempt under ARM 46.10.805. Failure to attend orientation or assessment by a parent who is not exempt will result in the sanction of that parent as provided in ARM 46.10.839.~~

(2) through (9)(c) remain as proposed.

AUTH: Sec. 53-4-212 and 53-4-719, MCA

IMP: Sec. 53-2-201, 53-4-211, 53-4-215, 53-4-703, 53-4-705, 53-4-706, 53-4-707 and 53-4-720, MCA

6. The Department has thoroughly considered all commentary received:

1. COMMENT: Rule XXX pertaining to child care assistance for FAIM participants and ARM 46.10.810 pertaining to child care assistance for control JOBS participants as proposed to be amended do not specify the number of child care hours which will be provided. Recipients of assistance will not be able to achieve self-sufficiency in the short time period required under FAIM if adequate child care hours are not provided.

RESPONSE: Since these rules guarantee child care assistance necessary to allow a recipient to participate in approved activities, it is not necessary to specify a particular

number of child care hours. Specifying a maximum or minimum number of hours would limit child care assistance to those exact standards. Participants' needs for child care assistance for approved activities will be met.

2. COMMENT: The proposed FAIM JOBS and FAIM employment and training rules, Rule X and Rule XXXIV, should limit the number of hours a participant spends in job search.

RESPONSE: The department sought and received a waiver of the federal limits on the number of job search hours in order to allow case managers flexibility to require whatever number of job search hours is appropriate for each individual client. The department relies on the case managers' expertise in this area and believes that case managers have used job search activities appropriately in the past. Case managers will be expected to utilize the appropriate number of job search hours suitable for each client.

3. COMMENT: Rule XVI pertaining to responsibilities of the lead agency in FAIM JOBS states that the lead agency will "assist the participant in a quest toward immediate employment." Although the ultimate goal for participants is to obtain employment, it would seem that persons are referred to JOBS because they need stabilization services, remedial training or other services in order to obtain employment. Therefore this emphasis on finding immediate employment does not make sense.

RESPONSE: Because of the federal requirement of cost neutrality (i.e., the requirement that the state not expend more dollars in the FAIM program than it is currently expending for assistance in the AFDC, Food Stamp and Medicaid programs) and the parameters set by the Montana Legislature (i.e., the time limits on receipt of benefits in the pathways program), it is necessary that participants be directed toward immediate employment if possible. Nevertheless, case managers will concurrently be helping participants to work on other issues necessary to achieve and maintain self-sufficiency, such as stabilization services. Additionally, statistics indicate that in many cases employment may build participants' self-esteem and contribute to family stability as well as helping them to become financially self-sufficient.

4. COMMENT: Rule III(2) and (3)(a) state that FAIM JOBS participants will be included in decision making about required activities, but the rules governing control JOBS participants do not specify that the participant will be included in this process. Also, it appears that the case manager is not included in the decision making process regarding which components of FAIM JOBS the recipient will participate in.

RESPONSE: The case manager will be making these decisions with the input of the participant. The department contracts with case managers to provide services to JOBS participants; the

case manager is therefore an agent of the department when the case manager is working with JOBS participants. Thus when the rule states that the department will make decisions regarding components or activities, it is normally the case manager who is making the decision for the department. Although the JOBS rules did not in the past specifically state that the participant is involved in decision making, participants have always been and will continue to be involved because JOBS activities have been found to be more successful when participants are involved in the process. Section (2) of ARM 46.10.805 governing control JOBS is now being amended to provide specifically that the department will collaborate with the participant to decide what components are suitable for the participant.

5. COMMENT: There is no mention of outcomes or performance standards in the rules. Since FAIM is a new program, evaluation is necessary to determine if expectations were realistic, what adjustments are necessary, and what improvements can be made.

RESPONSE: The evaluation process and performance standards for the FAIM project are internal matters and for this reason are not addressed in the FAIM rules. The department does intend to evaluate the success of the FAIM project. JOBS has had performance standards in place for several years and control JOBS will continue to have such standards. Performance standards are being developed for FAIM JOBS as well. The department is working with the counties to develop performance strategies to meet FAIM goals.

6. COMMENT: It is noted that Rule III lists exemptions from participation in FAIM JOBS which are very similar to the exemptions in control JOBS. Wasn't a federal waiver granted permitting the department to eliminate exemptions from FAIM JOBS participation?

RESPONSE: Yes. The federal waiver package for the FAIM Project allows the department to require JOBS participation of all recipients, and the department intends to require participation of all recipients. However, consideration will be given to special circumstances which are the basis for exemption under control JOBS (such as being the parent of a child under one year of age) in determining what JOBS components or activities are appropriate for a participant. Exemptions from participation were inadvertently included in Rule III on the notice of proposed adoption and these provisions are now being deleted.

7. COMMENT: The appropriateness of the provision in Rule XX(5) requiring an automatic referral to child protective services when a FAIM JOBS sanction is imposed is questioned.

RESPONSE: The provision regarding referrals to CPS was based on a clause in House Bill 2 passed by the 54th Montana Legislature which requires notification of the regional

administration that children are at risk when a sanction is imposed. However, a review of the language of House Bill 2 indicates that it does not mandate a CPS referral, merely notice in some form to the regional administrator. Additionally, it has been determined that it is inappropriate, and perhaps illegal, to require a CPS referral when the department has no specific information which would indicate that a child is being neglected or abused. The mere possibility that a child might suffer neglect or abuse because of reduced household income is not a sufficient basis for a CPS referral. Thus the provision for a CPS referral is being deleted. It will be the department's policy to send a sanction report each month to the family services regional administrator with a listing of the name and address of each person who has been sanctioned for failure to comply with JOBS requirements. The administrator could then compare the monthly report to any other listings or information it may have about the sanctioned individual to determine what action, if any, is appropriate. The referral to the regional administrator is an internal policy which the department does not need to address in rule.

Dawn Blum
Rule Reviewer

Russell E. Carter, acting
Peter L. Blumby M.D.
Director, Public Health and
Human Services

Certified to the Secretary of State January 12, 1996.

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

In the matter of the	)	NOTICE OF THE ADOPTION
adoption of Rules I through	)	AND AMENDMENT OF RULES
XXXV and the amendment of)	
46.12.501, 46.12.3204,)	
46.12.3401, 46.12.3805,)	
46.12.4805, 46.12.4806 and)	
46.12.5003 pertaining to)	
AFDC, food stamps and)	
medicaid assistance under)	
the FAIM project)	

TO: All Interested Persons

1. On ~~December~~ 7, 1995, the Department of Public Health and Human Services published notice of the proposed adoption of Rules I through XXXV and the amendment of 46.12.501, 46.12.3204, 46.12.3401, 46.12.3805, 46.12.4805, 46.12.4806 and 46.12.5003 pertaining to AFDC, food stamps and medicaid assistance under the FAIM project at page 2591 of the 1995 Montana Administrative Register, issue number 23.

2. The Department has amended rules 46.12.3204, 46.12.3401, 46.12.3805, 46.12.4805 and 46.12.5003 as proposed.

3. The Department has adopted rules [RULE I] 46.18.101 FAIM: PURPOSE; [RULE III] 46.18.103 FAIM: DEFINITIONS; [RULE VI] 46.18.108 FAIM: EXEMPTIONS TO TIME LIMITED BENEFITS; [RULE VII] 46.18.112 FAIM: LIVING WITH A SPECIFIED RELATIVE; [RULE IX] 46.18.114 FAIM: CHILD SUPPORT ENFORCEMENT COOPERATION REQUIREMENTS; [RULE X] 46.18.118 FAIM: PROPERTY RESOURCES; [RULE XI] 46.18.119 FAIM: TREATMENT OF INCOME; [RULE XIII] 46.18.121 FAIM: LIMITS ON DISREGARDS; [RULE XIV] 46.18.124 FAIM: LUMP SUM PAYMENTS; [RULE XV] 46.18.125 FAIM: EXCLUDED EARNED INCOME; [RULE XVI] 46.18.126 FAIM: EXCLUDED UNEARNED INCOME; [RULE XVII] 46.18.129 FAIM: RESTRICTIONS ON ASSISTANCE PAYMENTS; [RULE XVIII] 46.18.130 FAIM: ONETIME EMPLOYMENT-RELATED PAYMENT; [RULE XIX] 46.18.133 FAIM: FAMILY INVESTMENT AGREEMENT; [RULE XXI] 46.18.135 FAIM: REPORTING REQUIREMENTS; [RULE XXII] 46.18.401 FAIM FOOD STAMP PROGRAM: PURPOSE; [RULE XXIII] 46.18.402 FAIM FOOD STAMP PROGRAM: DEFINITIONS; [RULE XXIV] 46.18.405 FAIM FOOD STAMP PROGRAM: DETERMINING ELIGIBILITY AND BENEFIT AMOUNT; [RULE XXV] 46.18.406 FAIM FOOD STAMP PROGRAM: REPORTING AND VERIFICATION REQUIREMENTS; [RULE XXVI] 46.18.410 FAIM FOOD STAMP PROGRAM: STANDARD UTILITY ALLOWANCE; [RULE XXVII] 46.18.411 FAIM FOOD STAMP PROGRAM: RESOURCES; [RULE XXVIII] 46.18.412 FAIM FOOD STAMP PROGRAM: DEPENDENT CARE DEDUCTION; [RULE XXIX] 46.18.413 FAIM FOOD STAMP PROGRAM: UNEARNED INCOME EXCLUSIONS; [RULE XXX] 46.18.414 FAIM FOOD STAMP PROGRAM: EMPLOYMENT RELATED

PAYMENTS; [RULE XXXII] 46.18.502 FAIM: SLIDING FEE SCALE FOR EXTENDED CHILD CARE; [RULE XXXIII] 46.18.505 FAIM PATHWAYS: CHILD CARE (PCC); [RULE XXXIV] 46.18.506 FAIM JOB SUPPLEMENT: CHILD CARE (JSP); [RULE XXXV] 46.18.507 FAIM COMMUNITY SERVICES: CHILD CARE (CSCC) as proposed.

4. The Department has adopted the following rules as proposed with the following changes:

[RULE II] 46.18.102 FAIM: FEDERAL REGULATIONS ADOPTED BY REFERENCE (1) The FAIM AFDC program shall be governed by the regulations of the administration for children and families of the U.S. department of public health and human services governing the aid to families with dependent children contained in THE FOLLOWING PARTS, EXCEPT AS THE RULES IN THIS CHAPTER MAKE SPECIFIC PROVISIONS WHICH ARE CONTRARY TO THE FEDERAL REGULATIONS, IN WHICH CASE THESE RULES SHALL TAKE PRECEDENCE OVER THE FEDERAL REGULATIONS: 45 CFR parts 205, 206, 232, 233, 234, 235, 238, 239, 250, 255 and 256, ~~except as the rules in this chapter make specific provisions which are contrary to the federal regulations, in which case these rules shall take precedence over the federal regulations.~~ THESE PARTS PERTAINING TO ELIGIBILITY AND FURNISHING OF ASSISTANCE, COVERAGE AND CONDITIONS OF ELIGIBILITY, FORM OF ASSISTANCE, CHILD SUPPORT ENFORCEMENT REQUIREMENTS, CHILD CARE AND OTHER WORK-RELATED SUPPORTIVE SERVICES, THE COMMUNITY WORK EXPERIENCE PROGRAM, THE WORK SUPPLEMENTATION PROGRAM, AND THE JOB OPPORTUNITIES AND BASIC SKILLS PROGRAM. The department hereby adopts and incorporates by reference 45 CFR parts 205, 206, 232, 233, 234, 235, 238, 239, 250, 255 and 256, as amended through October 1, 1993. A copy of 45 CFR parts 205, 206, 232, 233, 234, 235, 238, 239, 250, 255 and 256, as amended through October 1, 1993 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 59604-4201.

AUTH: 53-4-212, MCA

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

[RULE IV] 46.18.106 FAIM: AFDC DISQUALIFICATION HEARING

(1) If a participant in FAIM appears to have committed an intentional program violation (IPV) as defined in 45 CFR 235.112, the county office of human services must initiate administrative disqualification hearing (ADH) procedures TO DETERMINE IF THE INDIVIDUAL SHOULD BE DISQUALIFIED FROM RECEIVING AFDC BENEFITS AND/OR FOOD STAMP BENEFITS.

(2) through (7)(c) remain as proposed.

(8) Disqualification shall begin the first month which follows the date the individual receives written notice of disqualification. ~~If the individual is not eligible for benefits at the time the disqualification period is to begin, the disqualification period will not begin to run until the~~

individual applies for and is determined eligible for benefits. Once a disqualification has been imposed, the period of disqualification must continue uninterrupted until completed regardless of the eligibility of the disqualified individual's household.

(9) ~~The determination of IPV made by the hearing officer is the final agency decision and can be appealed only by applying to the district court as provided in Title 2, chapter 4, subchapter 7, MCA.~~ The determination by the hearing officer that an IPV has occurred cannot be reversed by a subsequent fair hearing decision relating to the same or a similar issue.

AUTH: Sec. 53-4-212, MCA

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

[RULE V] 46.18.107 FAIM: FAIM COMPONENT AND TIME LIMITS

(1) through (4)(g) remain the same.

(5) PARTICIPANTS IN THE FAIM PROJECT IN ANY OF THE THREE COMPONENTS MAY ALSO REQUEST TO RECEIVE FOOD STAMPS IN ADDITION TO THE OTHER BENEFITS ENUMERATED ABOVE.

AUTH: Sec. 53-4-212, MCA

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

[RULE VIII] 46.18.113 FAIM: INCLUSION IN ASSISTANCE UNIT

(1) ~~THE~~ EXCEPT AS PROVIDED IN (4), THE parent or parents of a dependent child who live with the child must be included in the assistance unit, regardless of whether the parents are married to each other, if the parent or parents meet all other conditions of eligibility. The parent's or parents' income and resources will be counted in determining FAIM eligibility and benefit amount and the parent's or parents' needs will be included in the grant.

(2) ~~THE~~ EXCEPT AS PROVIDED IN (4), THE stepparent of a child who lives with the child and the child's natural or adoptive parent must be included in the assistance unit if the stepparent meets all other conditions of eligibility. The stepparent's income and resources will be counted in determining FAIM eligibility and benefit amount and the stepparent's needs will be included in the grant.

(2)(a) remains as proposed.

(3) ~~ALL~~ EXCEPT AS PROVIDED IN (4), ALL persons under the age of 18 years who live in the home must be included in the assistance unit, including but not limited to half brothers and sisters and stepiblings of the child applying for or receiving assistance, if they meet all other conditions of eligibility. Their income and resources will be counted in determining FAIM eligibility and benefit amount and their needs will be included in the grant.

(4) THE NEEDS, INCOME AND RESOURCES OF PERSONS RECEIVING SUPPLEMENTAL SECURITY INCOME (SSI) PAYMENTS UNDER TITLE XVI OF THE FEDERAL SOCIAL SECURITY ACT SHALL NOT BE INCLUDED IN DETERMINING THE NEED AND AMOUNT OF THE ASSISTANCE PAYMENT OF

AN AFDC ASSISTANCE FOR THE PERIOD FOR WHICH SSI BENEFITS ARE RECEIVED. THE NEEDS, INCOME AND RESOURCES OF PERSONS WITH RESPECT TO WHOM FEDERAL, STATE OR LOCAL FOSTER CARE PAYMENTS ARE MADE OR PERSONS WITH RESPECT TO WHOM FEDERAL, STATE OR LOCAL ADOPTION ASSISTANCE PAYMENTS ARE MADE SHALL NOT BE INCLUDED IN DETERMINING NEED AND AMOUNT OF THE ASSISTANCE PAYMENT TO THE EXTENT PROVIDED IN 45 CFR 233.20(a)(1)(ii).

(4) remains the same as proposed in text but is renumbered (5).

AUTH: Sec. 53-4-212, MCA

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

[RULE XII] 46.18.120 FAIM: INCOME DISREGARDS AND INCOME DEEMING (1) through (2) remain as proposed.

~~(3) Income must be deemed when determining eligibility for individuals who are sponsors of aliens or spouses of a caretaker relative who is not the natural or adoptive parent of the dependent child and whose needs are included in the assistance unit's grant. Income of these individuals, less disregards listed in (a) through (d) below, must be counted as unearned income to the assistance unit whether or not such income is actually contributed to any member of the assistance unit. The following amounts shall be subtracted from income:~~

(3) SUBJECT TO THE DISREGARDS IN (4)(a) through (d), INCOME OF THE FOLLOWING INDIVIDUALS MUST BE DEEMED WHEN DETERMINING ELIGIBILITY:

(a) FOR ALIENS, THE INCOME OF THE ALIEN'S SPONSOR;

(b) FOR A PREGNANT WOMAN WHO HAS NO OTHER ELIGIBLE CHILD IN THE HOME, THE INCOME OF HER SPOUSE OR OF THE FATHER OF HER UNBORN CHILD; AND

(c) FOR A CARETAKER RELATIVE WHOSE NEEDS ARE INCLUDED IN THE ASSISTANCE UNIT'S GRANT AND WHO IS NOT THE NATURAL OR ADOPTIVE PARENT OF THE DEPENDENT CHILD, THE INCOME OF THE CARETAKER RELATIVE'S SPOUSE.

(4) THE FOLLOWING AMOUNTS SHALL BE SUBTRACTED FROM THE INCOME OF THE INDIVIDUALS SPECIFIED IN (3)(a) THROUGH (c) WHOSE INCOME IS DEEMED:

(3)(a) through (3)(d) remain as proposed in text but are renumbered (4)(a) through (4)(d).

(5) INCOME OF THE INDIVIDUALS SPECIFIED IN (3)(a) THROUGH (c), LESS THE DISREGARDS SPECIFIED IN (4)(a) THROUGH (d), MUST BE COUNTED AS UNEARNED INCOME TO THE ASSISTANCE UNIT WHETHER OR NOT SUCH INCOME IS ACTUALLY CONTRIBUTED TO ANY MEMBER OF THE ASSISTANCE UNIT.

AUTH: Sec. 53-4-212, MCA

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

[RULE XX] 46.18.134 FAIM: SANCTIONS (1) If any member of the assistance unit fails to comply ~~without good cause~~ with a pathways or community services program requirement, including but not limited to any requirement under a family investment agreement, the assistance unit will be sanctioned

by means of the reduction of the monthly FAIM assistance payment by an amount equal to the portion of the payment allocated to the needs of that member.

- (1) (a) through (6) (a) remain as proposed.
- (b) THIRD PARTY LIABILITY REQUIREMENTS INCLUDING health plan enrollments as specified in ARM 46.12.3215; or
- (c) through (7) remain as proposed.

AUTH: Sec. 53-4-212, MCA

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

[RULE XXXI] 46.18.501 FAIM: EXTENDED CHILD CARE REQUIREMENTS (1) Extended child care (ECC), MEANING CHILD CARE THAT IS PROVIDED AFTER THE FAMILY BECOMES INELIGIBLE FOR PATHWAYS, JOB SUPPLEMENT PROGRAM OR COMMUNITY SERVICES PROGRAM, if necessary to permit a member of the FAIM family to accept or retain employment, and if requested, shall be provided to needy families with dependent children who meet the requirements of ARM 46.10.408(1) (a) through (1) (b) (iii).

(2) remains as proposed.
(a) the family received assistance in the pathways, job supplement [JSP] or community services programs [CSP] in Montana at least 1 month immediately preceding the first month of ineligibility;

(2) (b) through (8) (a) (iv) remain as proposed.

AUTH: Sec. 53-4-212, MCA

IMP: Sec. 53-4-211, 53-4-601 and 53-4-612, MCA

46.12.501 SERVICES PROVIDED (1) through (1) (ad) remain as proposed.

(2) Individuals who are recipients of assistance in the pathways, community services or job supplement components of the families achieving independence in Montana (FAIM) project and who are 21 years of age or older and all recipients of AFDC-related medical assistance only who are PARTICIPATING IN THE FAIM PROJECT AND ARE 21 years of age or older will receive basic medicaid benefits, except that pregnant women will be entitled to all services specified in (1) (a) through (1) (ad) OF THIS RULE. Basic medicaid benefits are the services specified in (1) (a) through (1) (ad) OF THIS RULE except the following:

(2) (a) through (2) (e) remain as proposed.
(3) WITH REGARD TO PERSONS IDENTIFIED IN (2) WHO RECEIVE BASIC MEDICAID BENEFITS, THE DEPARTMENT WILL PROVIDE THE NON-COVERED SERVICES SPECIFIED IN (2) (a) THROUGH (e):

(a) IF THE NON-COVERED SERVICES ARE REQUIRED AS A CONDITION OF EMPLOYMENT; OR

(b) ON AN EMERGENCY BASIS. FOR PURPOSES OF THIS SECTION, AN EMERGENCY IS A SITUATION WHICH:

(i) ARISES SUDDENLY OR UNEXPECTEDLY; AND
(ii) IS LIFE-THREATENING OR HAS VERY SERIOUS IMPLICATIONS FOR THE INDIVIDUAL'S HEALTH.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-103, 53-6-131 and 53-6-141,
MCA

46.12.4806 HEALTH MAINTENANCE ORGANIZATIONS;
DISENROLLMENT (1) An enrollee may request, without good
cause, disenrollment from an HMO at any time, except that an
individual required to enroll in an HMO per ARM
46.12.4805(1)(a) may disenroll only for good cause AS DEFINED
IN (j) OF THIS RULE.

(2) through (10) remain as proposed.
(11) A PERSON PARTICIPATING IN THE FAIM PROJECT WHO IS
REQUIRED TO ENROLL IN AN HMO UNDER ARM 46.12.4605 IS
CONSIDERED TO HAVE GOOD CAUSE TO DISENROLL IF THE PERSON:
(a) HAS A TERMINAL ILLNESS;
(b) MEETS ONE OF THE CONDITIONS FOR EXEMPTION FROM THE
PASSPORT TO HEALTH PROGRAM AS DEFINED IN ARM 46.12.5003; OR
(c) IS UNDER TREATMENT BY A PHYSICIAN OR MID-LEVEL
PRACTITIONER WHO IS NOT AFFILIATED WITH A MEDICAID HMO AND
BOTH THE PATIENT AND PROVIDER BELIEVE THAT A DISRUPTION OF THE
PATIENT/PROVIDER RELATIONSHIP MAY ADVERSELY AFFECT TREATMENT
OR CAUSE UNNECESSARY HARDSHIP TO THE PATIENT; PROVIDED THAT
GOOD CAUSE TO DISENROLL FOR THIS REASON SHALL EXIST ONLY UNTIL
THE END OF TREATMENT OR UNTIL THE PROVIDER CONTRACTS WITH AN
HMO, WHICHEVER FIRST OCCURS, AND IN NO EVENT FOR MORE THAN 4
MONTHS.

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-113, 53-6-116 and
53-6-117, MCA

5. The Department has thoroughly considered all
commentary received:

1. COMMENT: A number of comments were received expressing
the view that two additional exemptions to the time limits for
receipt of benefits by caretaker relatives in the Pathways
Program should be added to Rule VI (46.18.108). These
commentors expressed the opinion that homeless individuals and
victims of domestic violence should be exempted from the
Pathways' time clock. One commentor stated that she believed
the department's director had expressed a commitment to
exempting these individuals from the Pathways' time clock
during the 1995 legislative session in which the legislation
authorizing the FAIM Project was passed.

RESPONSE: Section 53-4-607, MCA, which addresses
exemptions from the time limits in the Pathways Program,
provides that the Department in establishing categories of
persons who are exempt "may take into consideration factors
that may delay an individual's attainment of self-
sufficiency". Section 53-4-607(2)(a) through (j) lists ten
factors which the department may consider, including
homelessness and being a victim of domestic violence. The

language of 53-4-607 thus specifies factors which may be considered but does not mandate that the Department exempt any of the categories of persons specified in the rule. After much careful thought and consideration of commentary received from members of the public throughout the process of designing the FAIM Project, the Department has determined that individuals who are homeless or who are victims of domestic violence will not automatically be exempted from the Pathways time clock.

Such persons may be exempted at least temporarily under one of the exemptions which are included in Rule VI (46.18.108), however. For example, section (1)(b) of Rule VI (46.18.108) provides an exemption for persons who have a verifiable illness, injury or physical or mental impairment, handicap or disability which prevents the person from participating in activities to achieve self-sufficiency. Thus a person who has physical injuries or is emotionally impaired as a result of domestic violence or who is suffering from severe depression might be exempt under (1)(b) as long as the injuries or impairment which prevents the person from participating in activities to achieve self-sufficiency is verifiable and continuing, for example.

The fact that such individuals are not being exempted from the Pathways time limitations does not mean that the special needs of persons in these circumstances will not be considered. Although all adult recipients of financial assistance in FAIM will be required to participate in Family Investment Agreement (FIA) activities, including persons who are exempted from the Pathways time limits, the activities required for each participant will be based upon the particular background, needs, abilities and strengths of that individual. The FIA activities developed for a participant who is a victim of domestic violence might be confined for a given period to counseling or other activities to deal with the trauma caused by domestic abuse, for example. Similarly the activities developed for a participant who is homeless would be tailored to that person's circumstances at that point in time. The FAIM coordinator's job will be to work with the participant to develop activities which will enhance self-esteem and help them to deal with the problems which they face so they may begin to work toward becoming self-supporting.

If a person who is homeless or a victim of domestic violence has not been able to achieve self-sufficiency within the period of 24 (or in some cases 18) months, that person's assistance will not end. The individual can continue to receive assistance in the Community Services Program after time-limited benefits in Pathways expires.

The Department believes that its decision not to create an automatic exemption for homeless persons and victims of domestic violence does not contravene the legislative intent

underlying section 53-4-607. The legislature could have mandated exemptions for these groups but instead directed the Department to consider these and other factors which affect the participant's ability to achieve self-sufficiency. Further, the Department does not believe that the legislative history of this statute would reflect any promise made by the Director or any other employees of the agency to exempt persons in these groups. It should also be noted that in the Welfare Reform Advisory Council's report to the Governor, no mention is made of homelessness or domestic violence as a possible basis for exemption from the time clock. The Department has given and will continue to give serious consideration to the needs of participants who are homeless or victims of domestic violence. Nevertheless the Department does not believe that an automatic exemption for persons in these groups is the best method of dealing with their special problems or is consistent with the goals expressed by the legislature for the FAIM Project.

2. COMMENT: Participants in FAIM who are refugees or non-English speaking should be exempted from the time limits for receipt of benefits in the Pathways Program.

RESPONSE: Section 53-4-607, MCA, regarding exemptions from the Pathways' time limits does not mention refugee status or status as a non-English speaking person as a factor which may delay a person's ability to achieve self-sufficiency. It should also be noted that in the Welfare Reform Advisory Council's report to the Governor, no mention is made of non-English speaking or refugee status as a possible basis for exemption from the time clock. Nevertheless, as described in the response above, such factors certainly will be considered in determining appropriate FIA activities. For example, a participant might enroll in a course in English as a second language as a FIA activity. Again, as discussed above, if a refugee or participant who does not speak English fluently cannot achieve self-sufficiency in the allotted period to receive Pathways benefits, that person can continue to receive assistance in the Community Services Program.

3. COMMENT: Exemptions must include persons engaged in post-secondary education. Extended education has proven most successful in promoting self-sufficiency.

RESPONSE: See response above to comments regarding exemption for refugee or non-English speaking status. The legislature did not mention post-secondary education as a basis for an exemption from the Pathways' time limits. Although there is merit to the argument that extended education helps families obtain better-paid employment and therefore promotes self-sufficiency in the long run, the Department does not believe it is the only route toward self-sufficiency. Additionally, to meet the goal of attaining a savings in public assistance expenditures by February 1, 1999,

and considering the amount of supportive services monies available, the Department has determined that moving participants into employment as quickly as possible is the best way to meet legislative goals. Local communities will have discretion to decide that post-secondary education is appropriate for some participants, but participants will be subject to the Pathways' time clock while engaged in post-secondary education.

4. COMMENT: Child care benefits should be extended for victims of domestic violence and/or other FAIM participants.

RESPONSE: The legislature did not provide any child care or extended child care program specifically for victims of domestic violence. However, while a person is participating in FIA activities, including community service work, child care is guaranteed as necessary to perform that activity. Extended child care is also available to all participants of FAIM for up to 12 months after they cease to be eligible for FAIM benefits if they meet the requirements of Rule XXXI (46.18.501). Additionally, victims of domestic violence as well as other parents who no longer qualify for AFDC benefits may be able to obtain child care assistance under other federally funded programs such as the Community Services Block Grant program.

5. COMMENT: Rule XX (46.18.134) does not provide for a conciliation process prior to the imposition of sanctions for failure to comply with FIA and other FAIM requirements. Conciliation is provided for participants who are sanctioned for failure to comply with JOBS requirements and should be available to FAIM recipients sanctioned for other reasons also.

RESPONSE: The Department believes that conciliation is not necessary prior to the imposition of sanctions in the FAIM project. The Family Investment Agreement is a mutually established document. The participant is made fully aware of the consequences of failure to comply with FIA requirements through the extensive interview process. Participants are also advised that in cases where the participant cannot comply with a FIA requirement, the FAIM coordinator should be contacted before the failure to comply occurs. If necessary, the FIA may be mutually renegotiated when the participant cannot comply. Additionally, sanctions will not be imposed for failure to comply if the participant contacts the FAIM coordinator in advance and has good cause for not complying.

One of the basic goals of welfare reform in Montana is to foster responsibility in participants as a means of helping them achieve self-sufficiency. In cases where a participant has failed to notify the FAIM coordinator in advance of a failure to comply with FIA requirements, the participant will be held accountable by means of the imposition of a sanction.

The participant will have the right to a fair hearing to challenge the imposition of the sanction. However, to delay resolution of the matter by requiring conciliation before a sanction can be imposed would interfere with the goal of promoting responsibility.

6. COMMENT: One commentor notes that Rule IV (46.18.106) regarding administrative disqualification hearings may be confusing to clients, questions what the function of the pre-hearing meeting is, and states that section (8) is confusing. Another commentor states the recipients should be advised of their rights to remain silent and to have attorneys before they are asked to waive those rights.

RESPONSE: Several changes are being made to Rule IV (46.18.106) to make the procedure for administrative disqualification hearings for intentional program violations clearer. It was unclear whether the disqualification applied to AFDC or food stamp benefits or both; the rule now specifies that it applies to receipt of both kinds of benefits. The pre-hearing meeting at the local county office is similar to the administrative review conference usually held prior to a fair hearing. It provides an opportunity for the recipient to meet with representatives of the Department informally to exchange information as outlined in (2) (a) through (f) of Rule IV (46.18.106). It will also give the recipient the opportunity to present the recipient's side of the story. If the matter is not resolved at the pre-hearing meeting, an administrative disqualification hearing will be held by an impartial individual appointed by the Department. The second sentence in section (8) which states that the disqualification period will not begin to run until the recipient is eligible apparently was confusing. It is being deleted, not because it was confusing but because the Department was recently notified of a ruling of the 9th Circuit Court of Appeals which prohibits postponing the disqualification period when a recipient is not eligible for food stamp benefits at the time when the disqualification period would begin to run. Although this ruling applies only to food stamp recipients, the Department will not delay the disqualification period for receipt of either AFDC or food stamp benefits, in order to have a consistent policy in both programs as to when the disqualification period begins to run.

Another change is being made in section (9) of Rule IV (46.18.106). The provision that the determination of an intentional program violation by the hearing officer is final and can be appealed only by applying to the district court is being deleted because it fails to comply with the requirements of the Montana Administrative Procedure Act at 2-4-621, MCA, which requires an opportunity for review of the hearing officer's decision before it becomes final. Thus recipients who disagree with the hearing officer's determination can request review by the Board of Public Assistance Appeals in

accordance with the procedure which applies to fair hearings.

With regard to the comment on advising recipients of their Miranda rights, this is not required as the ADH is not a criminal proceeding. Its purpose is not to determine whether the recipient is guilty of a crime but is to determine whether disqualification should be imposed. Although it is possible that criminal proceedings could also be brought based on the same acts or omissions which are the basis for the ADH, the fact that the recipient had waived the right to an ADH would not constitute an admission that the recipient had committed any crime.

7. COMMENT: The maximum child care reimbursement of \$200 per month is not adequate. Also, there is no mention of a minimum number of hours of child care for post-secondary education.

RESPONSE: Child care is recognized as a vital supportive service necessary to enable participants to achieve employment and eventual self-sufficiency. Although \$200 per month may not cover the full monthly child care cost, it is an increase over the rates previously paid by the department. Increased funding has also been made available to the resource and referral agencies for administrative purposes to coordinate reasonably priced child care. Giving funding limitations and the federal requirement of cost neutrality (i.e., the requirement that the State not expend more dollars in the FAIM Project than it is currently expending for the AFDC, Food Stamp and Medicaid programs), it is not possible to provide more toward a family's child care costs at this time.

Rather than impose minimum or maximum numbers of hours for post-secondary education child care, the Department has chosen to give local communities considerable discretion as to how to spend the child care dollars allotted to them. The communities will be given discretion to determine within certain specified parameters whether post-secondary education is the most appropriate activity for participants in their community.

8. COMMENT: Reimbursement at less than minimum wage for participants in the Community Services Program is not adequate.

RESPONSE: The FAIM rules being adopted at this time do not address details of the Community Services Program because participants do not move to that component of FAIM until their time-limited benefits in the Pathways Program have expired, which will not occur for 18 or 24 months. The Department will be adopting rules governing issues such as how many hours of community service work may be required in the CSP in the future and is open to input on such issues. The Department

will give careful consideration to this comment when a detailed rule governing CSP is adopted.

9. COMMENT: There are no exemptions or allowances for parents to take care of sick dependents or other family emergencies.

RESPONSE: Section (1)(d) of Rule VI (46.18.108) does contain an exemption from the Pathways' time limits when a caretaker relative is needed to care for another household member with a disability who requires special care. Additionally, allowances may be made for such contingencies under reasonable circumstances if the participant gives the FAIM coordinator prior notice that the participant cannot comply with FIA requirements due to a family emergency or other circumstances beyond the participant's control. However, the Department has chosen to eliminate the formal good cause exception. Section (1) of Rule XX (46.18.134) as first proposed specifies that sanctions will be imposed if a participant fails to comply without good cause with FIA or other requirements. The phrase "without good cause" is therefore now being deleted.

10. COMMENT: The stated purpose of the FAIM Project is to help low income persons become self-sufficient. However, the rules governing FAIM do not contain a definition of self-sufficiency. The commentor suggests that an operational definition of economic self-sufficiency be used. Based on extensive research and data on poverty issues, the commentor suggests that the department adopt an operational definition of self-sufficiency as 155% of the federal poverty level.

RESPONSE: The Department agrees that moving all participants into jobs providing them with income equal to 155% of the federal poverty level is a laudable goal, but such a goal is not one which can be swiftly attained. Given the level of supportive services monies available and the established goal of achieving savings in public assistance expenditures by February 1, 1999, the Department has determined that moving recipients into employment as quickly as possible will be necessary. Education and training will be part of the mix, but there will be an emphasis on education and training which will lead rapidly to employment. Many recipients initially will not obtain employment which will provide them with income equal to 155% of poverty level. Nevertheless by obtaining employment they will be moving toward greater self-sufficiency.

11. COMMENT: The proposed amendment of ARM 46.12.4806(1) indicates that individuals required to enroll in an HMO under the FAIM program may only disenroll for good cause, but good cause is not defined.

RESPONSE: The Department agrees that a definition of good cause is necessary and is amending the rule to provide a definition.

12. **COMMENT:** Is the process for an enrollee to request disenrollment for good cause the same as that specified in ARM 46.12.4806(3), and, if so, who will make the determination that good cause exists: the administrative contractor for managed care or the Department? If this is not the process that will be followed, is there a rule that specifies the appropriate procedure for a recipient to follow?

RESPONSE: The process in ARM 46.12.4806(3) will be used for a FAIM recipient required to participate in an HMO to request disenrollment for good cause. As stated in 46.12.4806(3), the request will be made to the administrative contractor for managed care, who will determine whether an enrollee meets one of the definitions of good cause. In situations where the request is based on hardship or otherwise requires substantial judgment, the administrative contractor will refer the request to the Department.

13. **COMMENT:** The FAIM rules do not guarantee participants who are sanctioned for failure to comply with FIA or other FAIM requirements the right to a fair hearing.

RESPONSE: The Department inadvertently failed to provide for fair hearing rights in Rule XX (46.18.134) governing sanctions. Participants who are sanctioned for the reasons set forth in Rule XX (46.18.134) will have the same rights as provided by federal law and department rule for recipients of "traditional" AFDC, food stamp and Medicaid benefits. Rule XX (46.18.134) is therefore being changed to provide fair hearing rights as set forth in ARM 46.2.201 et seq.

14. **COMMENT:** Rule II (46.18.102) regarding the adoption of federal regulations by reference does not specify the content of the regulations being adopted as required by 2-4-307(2)(a), MCA.

RESPONSE: Rule II (46.18.102) is being changed to specify the contents of the regulations being adopted by reference, as required by the Montana Administrative Procedure Act.

15. **COMMENT:** In section (2) which is being added to ARM 46.12.501 to provide that certain adult recipients will receive fewer optional Medicaid services, it is unclear whether all adult recipients of AFDC-related medical assistance only will receive basic rather than full Medicaid benefits or whether basic Medicaid benefits are applicable only to FAIM recipients.

RESPONSE: Section (2) was ambiguous on this point. It is being changed to clarify that the limitation of benefits applies only to adult (i.e., over the age of 21 years) recipients of AFDC-related medical assistance who are participating in the FAIM Project.

16. **COMMENT:** The federal waiver which allows the Department to provide limited services (i.e., basic Medicaid benefits) for some adult recipients included several requirements to lessen the harm from reduced optional services. ARM 46.12.501 must include the federal imposed conditions regarding optional services.

RESPONSE: The Department agrees that the federal exceptions to the limited benefits provision should be included in ARM 46.12.501. They are being added to the rule.

17. **COMMENT:** The AFDC and Food Stamp income exclusions established in Rule XVI (46.18.410) and XXIX (46.18.413) respectively are not consistent. The federal waivers granted to the Department require consistency in income and resource exclusions between the two programs.

RESPONSE: The income exclusions provided in the rules for FAIM AFDC and Food Stamps are consistent with the federal waivers.

18. **COMMENT:** One commentor states that the elements of a viable welfare reform program are not present in FAIM. Specifically, the commentor indicates that FAIM fails to provide benefit levels which equal livable income; should have no time limits; should provide child care and full Medicaid coverage for at least one year or until the family is earning a livable income; and should provide adequate food stamps.

RESPONSE: The Department believes that FAIM is a viable welfare reform program. It is true that, as always, there are constraints imposed by the reality of limited funding. Additionally, the federal waivers contain a requirement to maintain cost neutrality. Therefore the AFDC and Food Stamp benefit amounts are the same as in the traditional AFDC and Food Stamp programs and, at least in the case of AFDC benefits, are less than 100% of poverty as established by the Montana legislature. However, earned income disregards are expanded for AFDC benefits in FAIM so that a family with working members of the household can retain more income and thus may have a liveable income. With regard to time limits, these were mandated by the legislature and are an integral part of the FAIM Project. The Department is committed to helping participants transition off public assistance within the time limits if possible. However, participants who are unable to do so can still continue to receive assistance in the Community Services Program. Extended child care and Medicaid is provided for one year in FAIM, although they are not

guaranteed until the family has a livable income as the commentor suggests. Again, financial constraints do not permit indefinite guarantees of child care and Medicaid assistance. However, as discussed in an earlier response, there are other programs such as the federal Community Services Block Grant child care program which may provide child care assistance to some families after they cease receiving child care in FAIM.

With regard to provision of adequate food stamps, Food Stamp benefit levels are federally established.

19. COMMENT: The same commentor states that availability of food stamps must be listed in all components of FAIM.

RESPONSE: The commentor is correct in stating that food stamps are a benefit which may be available to participants in each component of FAIM if requested by the participant. Rule V (46.18.107) is being changed to state this. In all three components, participants will be categorically eligible for food stamps based on eligibility for financial assistance. Categorical eligibility does not mean that food stamps will automatically be given to every applicant for assistance. Every applicant will be advised of all benefits for which the applicant may be eligible and will choose which benefits he or she wishes to receive, which may include food stamps. This policy is consistent with the federal waivers granted and overall FAIM philosophy of moving toward self-sufficiency.

20. COMMENT: The Department should exempt persons who have children up to the age of five in the home. Mothers should be available for their children by being in the home if they choose until the child is five. Statistics show that many women with children under age three do not work outside the home. Parents should have a choice as to how their children are raised.

RESPONSE: In keeping with the FAIM philosophy which attempts to mirror everyday life situations, the Department has determined that participation in FIA activities for a maximum of twenty hours per week is reasonable even for parents of child under five. The statistics cited by the commentor notwithstanding, a large number of mothers as well as fathers work outside the home before their children reach the age of five. It is common for parents in working families to stay home with a newborn infant for only six weeks. Section (1)(e) of Rule VI (46.18.108) exempts parents of children under one from the Pathways' time clock. This is consistent with the policy in the traditional AFDC program which does not exempt recipients from JOBS participation until their children are five but requires participation if the child is over one. The Department believes the time limit exemption for parents whose children are under one is fair and sensible. FIA activities may be

agreed on that will allow participants in many cases to remain at home a large part of the time.

21. COMMENT: Time limits in the Pathways Program should be extended if the Department fails to meet its obligations under the Family Investment Agreement.

RESPONSE: The Department will attempt to meet the reasonable needs of the participant as specified in the FIA. For example, if an agreed upon FIA activity has no openings, the Department will try to refer the participant to an equally appropriate and meaningful activity or alternate location or will renegotiate the FIA to include other suitable activities. The Department fully understands the necessity of negotiating and implementing successful FIA's and will utilize all available resources to assist participants in moving toward self-sufficiency.

22. COMMENT: Including the needs, income and resources of both unmarried parents and of stepparents as required in Rule VIII (46.18.113) is illegal as contrary to waiver and statute. It is also contrary to the intent of FAIM to promote self-sufficiency because such deeming reduces income available to meet the family's needs.

RESPONSE: Federal waivers granted to the Department do allow this policy to be implemented. Further, the Department believes that this policy is consistent with the goals of FAIM, among which is the goal of promoting personal responsibility. Both parents have a common responsibility to meet the needs of their child and the household. Additionally, although a stepparent may have no legal obligation to support a stepchild, in most cases the stepparent's income does benefit the entire household. Thus it is reasonable to count their income and resources as available to the household. This is similar to the requirement of including siblings in the assistance unit as required under the regulations for the traditional AFDC program, even though a person generally has no legal obligation to contribute income or resources to a sibling. Also, the policy is fair in that not only are the income and resources of stepparents included in the assistance unit, but the needs of the stepparent are considered as well. Thus in some cases this policy will increase the family's income.

23. COMMENT: Federal law prohibits the inclusion of persons receiving Supplemental Security Income (SSI) in the AFDC assistance unit. Therefore Rule VIII (46.18.113) should exclude these individuals.

RESPONSE: The Department intends to exclude such individuals as required by law and is adding a provision to Rule VIII (46.18.113) to state specifically that the needs,

income and resources of SSI recipients are not included in the assistance unit.

24. COMMENT: The list of resource exclusions in Rule X (46.18.118) is not complete because it does not mention all exclusions provided by federal law.

RESPONSE: Although Rule X (46.18.118) does not mention all required exclusions by name, section (3)(a) of Rule X (46.18.118) specifies that all resources excluded in ARM 46.10.406(4)(a) and (c) through (i) are excluded as well as listing other exclusions. Thus all resources required by federal law to be excluded are addressed in the rule.

25. COMMENT: Rule XII(3) (46.18.120) is incorrectly written because neither sponsors of resident aliens nor spouses of a caretaker relative are applying for assistance. Additionally, this section is being changed to provide that, in the case of a pregnant woman, the income of her unborn child's father or the income of her spouse will be deemed. This provision was inadvertently omitted on the first notice.

RESPONSE: This section was incorrectly written and is being corrected.

26. COMMENT: The provisions of Rule XVIII (46.18.130) regarding one-time cash payments are punitive; The penalty of AFDC ineligibility should not be twice the cash payment amount. Also, the statewide task force determined there should be a good cause exception to the penalty of ineligibility.

RESPONSE: The Governor's Welfare Reform Advisory Council recommended, and the Department agrees, that one-time employment related payments should be used only sparingly and only after careful consideration. An ineligibility period of twice the amount of time over which the benefit would have otherwise been paid will deter both participants and FAIM coordinators from making hasty or ill-advised use of this payment. Good cause exceptions to the period of ineligibility were recommended by the task force but were rejected by the Department as unworkable.

27. COMMENT: Grant reduction when a sanction is imposed under Rule XX (46.18.134) must be the difference between the full grant amount and the grant amount for a family with one fewer person. It is inequitable and harmful to the family to reduce the grant by the amount the first family member receives.

RESPONSE: The Department does intend to reduce the grant amount by the amount applicable to the sanctioned individual. This is the same policy followed for JOBS sanctions in the

traditional AFDC program and the Department believes it is a reasonable policy.

28. COMMENT: In Rule XX (46.18.134), the provision eliminating Medicaid coverage for sanctioned individuals in certain cases is inappropriate because it endangers people's lives. It is also not provided for in the federal waiver. Sanctioning parents for the behavior of recalcitrant minors is unreasonable.

RESPONSE: The elimination of Medicaid coverage for sanctioned persons applies only to adults and only in a few narrow instances. This policy is already in effect in the AFDC-related Medicaid program. The rule does not address the sanctioning of parents due to a minor's failure to comply, and the Department does not intend to adopt such a policy at this time.


Rule Reviewer


Director, Public Health and
Human Services

Certified to the Secretary of State January 12, 1996.

Service Date: November 20, 1995

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE CITY OF)	
HELENA, Petition for Declaratory	)	TRANSPORTATION DIVISION
Ruling on the Law Applying to)	
Transportation of Garbage from a	)	DOCKET NO. T-95.38.DR
Transfer Station to a Landfill.)	

DECLARATORY RULING

Introduction

On June 7, 1995 the Montana Public Service Commission (PSC) received a Petition for Declaratory Ruling from the City of Helena (Helena), Montana. In its petition Helena requests a PSC ruling on the application of PSC-administered Class D (garbage) motor carrier laws to Helena's transportation of garbage from a local solid waste transfer station owned and operated by Helena to a local solid waste landfill owned and operated by Lewis and Clark County. Helena is within Lewis and Clark County (County).

Following public notice of Helena's petition, comments were received from the Montana Solid Waste Contractors (SWC, an association of Class D motor carriers in Montana) and City County Sanitation Services (CCS, a motor carrier with Class D authority in the Helena area). Both argue that Helena's transportation in question is regulated motor carriage.

For purposes of responding to the opposition by SWC and CCS Helena requested a hearing on the matter. The PSC denied Helena's request, but allowed Helena to submit further written comments. All written comments have now been submitted and it appears that the facts and arguments are complete to the extent that no hearing is necessary for the PSC to reach a proper determination on the question presented.

Summary of Written Comments Received

Helena states that it owns and operates the solid waste transfer station from which the transportation in question originates. Helena states that its residents (individuals, businesses, and other entities within Helena's municipal boundaries) and the County (on behalf of itself and its residents) pay Helena to deposit garbage at this transfer station. Helena states that the garbage deposited in the transfer station (Helena garbage and County garbage) is then transported in vehicles and equipment owned and operated by Helena, to a

local landfill site owned and operated by the County. Helena states that the County charges it a fee for depositing the garbage at the landfill. SWC and CCS do not dispute these things, but add that Helena's transfer station can and does also receive garbage, for a fee, even from sources outside the County (included herein as County garbage).

In relation to its transfer station operations, Helena identifies itself as being only in the business of receiving garbage. It also identifies itself as being in the much broader business of providing services to its residents. It asserts that it becomes the owner of all garbage received at its transfer station and such ownership is in accord with state and federal law (no citations). It asserts that its transportation from the transfer station to the landfill is not for hire and that it is not in the business of transporting for hire. Helena argues that its transportation of garbage from the transfer station to the local landfill is incidental to its businesses (of receiving garbage and of providing for its residents) and is for itself (as owner of the garbage) and is therefore not regulated under motor carrier laws administered by the PSC.

SWC and CCS argue that Helena is transporting garbage for persons other than residents of Helena and that such is for hire. They point out that those depositing County garbage at Helena's transfer station pay a fee to Helena for use of the transfer station and transfer station services and this fee should extend to the transportation aspect as well. CCS specifically argues that "for hire," defined in § 69-12-101(5), MCA (and material to the definition of "motor carrier" in § 69-12-101(8), MCA), includes both direct and indirect compensation. It argues that, through the fee charged for Helena's transfer station services, there is compensation for the transportation aspect of those services, direct or indirect. Helena disputes this and maintains that it charges only a tipping fee, which is solely for the use of the transfer station and is not for transportation. Helena argues that it has entered and enters no contract for the transportation in question. Helena also points out that its transfer station service includes receiving, screening, recycling, removing, compacting, and disposing of solid waste.

CCS argues that Helena's theory that it becomes the owner of the garbage has been implicitly rejected in Montana Solid Waste Contractors, et al. v. Public Service Commission, et al. (SWC v. PSC), BDV-92-448, Order on Petition for Judicial Review (Montana first Judicial District, September 21, 1993). It also argues that this theory of ownership of garbage has been rejected in previous PSC rulings (no citations). It also argues that, if Helena's theory is accepted, any municipality could haul garbage from anywhere to anywhere without authority. Helena disagrees, arguing that SWC v. PSC basically holds only that more facts were required before the PSC could make a proper determination in that case. It argues that CCS's assertion that Helena is transporting garbage for the

County is wrong, maintaining that the garbage, once deposited at the transfer station, is Helena's garbage. It argues that it is impossible to separate Helena garbage from County garbage once deposited at the transfer station.

SWC argues that application of the primary business test (ARM 38.3.1001 through 38.3.1005, exclusion for transportation incidental to a principal business) may require more facts than have been presented by Helena. From the facts presented, SWC seems to argue that Helena's transportation does not meet the primary business test. Helena disagrees, maintaining that the transportation is but a small part of Helena's transfer station operations and also a small part of its entire business of acting on behalf of Helena citizens and businesses.

SWC argues that public policy does not justify exemption for Helena's transportation. In this regard it argues that Helena has many valid options available to it: competitive bid for services from three authorized carriers in the service area; competitive bid for lease of these authorities; application for authority; or becoming part of the County's solid waste management district. Helena disagrees, arguing that to force it to pursue one of these options is not good public policy when there is the option of no regulation available under the law.

PSC Analysis and Discussion

Preliminary Matters

Effect of SWC v. PSC

The parties rely on the District Court opinion in SWC v. PSC, (citation above) as support for various arguments. SWC uses the opinion as support for its suggestion that more facts may be necessary. CCS argues that the opinion implicitly overrules Helena's argument that it becomes the owner of the garbage it receives. Helena (interpreting the SWC and CCS arguments as being that the opinion implicitly requires Helena to obtain authority) argues that the opinion only holds that the PSC required more facts before it could issue a ruling. Helena also argues that the opinion makes it clear that Helena should be exempt from authority requirements.

The PSC disagrees with all these arguments based on SWC v. PSC. Although the District Court did state that the PSC did not do an adequate job of considering the given facts or comments of the public in that case, the opinion in SWC v. PSC stands only for the proposition that application of the primary business test to transportation incidental to landfill operations is not a feasible process. SWC v. PSC has no direct bearing on Helena's question which involves a transfer station, not a landfill. However, the PSC will certainly keep in mind the Court's caution relating to complete review of given facts and adequate consideration of public comments.

Absence of "(including pickup and disposal)"

In sec. 69-12-301(5), MCA, there has long been a parenthetical provision which, in regard to "transportation" in

that Class D definition, included "pickup and disposal." This provision has been used in the past as support for various arguments made before the PSC. Although the PSC is not certain how it was intended to apply in this case (CCS merely included it in a reference to Montana statutes), Helena is correct in its argument that the language is no longer part of the statutory law. See, Ch. 358, L. 1995.

Effect of PSC Informal Opinions

In their comments SWC and CCS also mention that Helena has obtained informal staff opinions from the PSC which relate to the question now presented. It appears that those opinions have all suggested that Helena's transportation operations now in question are regulated.

However, as Helena notes, PSC staff opinions are informal, not binding on the PSC, and do not preclude or govern review by the PSC on an identical or related formal request for a ruling. The informal opinions may be reviewed to assist in analysis, but they are not controlling.

Effect of Failed Legislation

The Montana Legislature has considered proposed legislation which, if passed, might have made a question such as Helena's unnecessary (e.g., HB 636, 52nd Legislature, 1991, would have allowed local governments automatic proof of public convenience and necessity upon presentation of a written contract for transportation services). The Legislature has also considered proposed legislation that might have made Helena's question moot (e.g., HB 458, 54th Legislature, 1995, would have exempted transportation of garbage by local governments from regulation).

Neither bill became law and SWC and CCS reference this in their arguments. However, the PSC sees no valid reason to view the failure of these bills as either a dispositive or an influential legislative determination on Helena's transportation of garbage from its transfer station. This is so because Helena is not arguing that, because it is a local government it should be exempt (something that the failed legislation might bear on). Helena is arguing that it is excluded from regulation because its transportation is of its own garbage and is incidental to its principal business. Both of these are available exclusions, under the proper circumstances, in the law as it now exists. The failed legislation does not appear to directly bear on the question being considered.

Scope of Ruling

Although undisputed (and included for clarification only), the aspect of Helena's transportation that is legitimately the subject of this ruling is Helena's transportation of garbage deposited at Helena's transfer station by those who are not Helena residents (ie., the ruling pertains to "County garbage" and all garbage which that term encompasses herein). Helena, as well as other municipalities, can transport garbage

as a service to their residents (those within Helena's municipal boundaries) without motor carrier authority.

PSC Analysis and Discussion

Question of Law and Specific Issues

The question of law is whether, under the facts presented, Helena's transportation of garbage between its solid waste transfer station and the County landfill is regulated motor carriage (for which motor carrier authority is required) or whether such transportation is unregulated private carriage (for which motor carrier authority is not required). Except for the preliminary matters (discussed above), the specific issues presented are: whether Helena's transportation is "for hire;" whether Helena is excluded from regulation because it is the owner of the garbage transported; and whether Helena is excluded from regulation because its transportation is merely incidental to its principal business.

For Hire

Among other things, in order for transportation to be regulated it must be done "for hire." To the extent relevant in this matter, transportation is "for hire" if it is done for remuneration of any kind, direct or indirect. See, generally, § 69-12-101(5), MCA.

Helena is a municipality engaged in an operation which regularly makes its solid waste transfer station available to persons and entities outside of Helena's municipal boundaries and does so for a fee. For all practical purposes this operation is equivalent to a business enterprise or commercial undertaking (service on a regular basis for a fee).

Helena attributes the fee it receives only to the receipt-of-garbage aspect of its operations (and possibly other on-site services identified by Helena), not to the transportation-of-garbage aspect. However, given the obvious nature of Helena's transfer station (and any transfer station), transportation of garbage away from the station is a direct, integral, and necessary part of the operations, as the station would soon fill with garbage if the garbage were not transported away.

Whether a business is private or government or a combination of both, it is relatively easy to categorize revenues received for a service in a way that disconnects them from any one particular aspect of that service. It is even relatively simple to support such through contract terms or accounting methods created by design (for that purpose) or otherwise.

Therefore, in analyzing a question of whether transportation is "for hire" in a business setting, the PSC will not view contract terms or accounting methods as controlling. In Matter of Halse, PSC Docket No. T-9565, Declaratory Ruling (September 6, 1990), the PSC stated that "in the case that the element of receiving payment is a prerequisite to invoking regulation, as it is in motor carrier regulation, mere accounting or billing practices which in form might demon-

strate no receipt of payment for what would otherwise be a regulated activity, cannot be permitted to override the substance of what is occurring." *Id.*, para. 18.

In such setting, where transportation is directly related, integral, or essential to the overall service or another aspect of the service to which revenues are clearly attributed, imputing revenues to the transportation aspect will occur. There is no credible reason for a contrary conclusion in Helena's case and the PSC imputes revenues obtained to the transportation aspect of Helena's services. Helena's transportation is done "for hire," as it includes remuneration of any kind, direct or indirect.

In this regard, in Matter of Grouse Mountain, PSC Docket No. T-93.33.DR, Declaratory Ruling (September 1, 1993), the PSC stated that, given the definition of "for hire," it is "unlikely that there could normally be any transportation in a for-profit setting that is not 'for hire' in some qualifying fashion." *Id.*, para. 12. The PSC now extends that reasoning to apply in a business or commercial setting or equivalent, whether for-profit or otherwise.

Ownership of Garbage

Helena states that it becomes the owner of the garbage deposited at its transfer station. In part Helena appears to reason that, because it becomes responsible for the garbage, it owns the garbage. This ownership-by-responsibility theory is not sound, as responsibility does not necessarily create ownership. Additionally, Helena is responsible for the garbage because its agreements require it to be so, not necessarily because it owns the garbage.

As the owner of the garbage, Helena argues that it is not transporting garbage for another and is therefore not within the definition of "motor carrier." However, except for that garbage that Helena might generate itself (Helena owns such) and that which Helena residents generate (not in issue), the PSC disagrees that, within the context of motor carrier regulation, Helena is or can be the "owner" of the garbage it receives at its transfer station.

Foremost in the PSC's reasoning on this point is that, given the nature of the question of ownership of garbage (explained below), an opposite conclusion would allow regulation to be so easily circumvented that such would produce an absurd result, effectively making Class D motor carrier regulation inapplicable in most (if not all) instances. Necessarily, it must be inferred that the law did not intend that garbage would be subject to the exclusion for transportation on behalf of one's self in the instance where "ownership" has been transferred from the one who generates it to the one who transports it.

In Board of Railroad Commissioners v. Gamble-Robinson Co., 111 Mont. 441, 111 P.2d 306 (1941), it was held that to fall within the definition of "motor carrier" the transportation must be of the person or property of another. 111 P.2d

at 310. Although garbage is not generally considered "property" in the context of motor carrier regulation, the PSC agrees (with qualification as alluded to above and explained below) that the Gamble-Robinson logic could extend to the transportation of garbage. In fact, the PSC has so extended the logic in instances where the garbage being transported is clearly not the "property" of another. Generally, a person's transportation of his or her own garbage is viewed as unregulated private carriage.

However, given the nature of garbage and that such seems to evade all customary legal analysis involved in determining ownership, the only instance in which the transportation of garbage is routinely deemed not "for another" is when it is transported by the person generating the garbage. Once garbage is collected from the person generating it or deposited by the person generating it, customary theories relating to "ownership" or transfer of ownership make little sense. Except when the garbage is deemed owned by the person who generates it, ownership becomes suspect for purposes of motor carrier regulation.

This is so because, with some exceptions (e.g., garbage to be used as fuel) not in issue, garbage is generally considered to have a negative value. In most instances the person generating the garbage must pay to have it collected, removed, and disposed of, would gladly give it away to have this done, would most likely prefer to disclaim ownership and responsibility for it, and would likely be somewhat confused if someone offered to purchase it. For garbage, in the motor carrier context, there is generally no one in the chain of possession, including the person generating it, willing to dispute another's claim to ownership. In the transfer of ownership of garbage, involved is no title, bill of sale, compensation, exchange of value, or like things. Determining title to garbage so evades customary analysis applied in determining ownership that ownership cannot be a valid factor in considering whether transportation is for one's self or for another (except where the one generating the garbage is concerned).

Therefore, for purposes of motor carrier regulation, Helena cannot be the owner of the garbage deposited at its transfer station (for motor carrier purposes) and must be viewed as transporting garbage for another. Helena's transportation of garbage is within the definition of motor carrier in this regard.

Primary Business Test

The determinations on the above issues do not preclude consideration or application of the primary business test. Transportation can be "for hire" and "for another" and remain excluded from regulation under the primary business test.

In regard to this test, Helena argues that its principal business is receiving garbage. Simultaneously, or alternatively, Helena argues that its principal business is providing general government services to its residents. In either case

Helena argues that its transportation operations are merely incidental to a principal business.

Helena's assertion that its principal business is of providing general government service cannot be denied, insofar as its residents are concerned. However, Helena's general government services cannot be extended to encompass those outside its municipal boundaries. In regard to the PSC's primary business test, such would exceed Helena's clear economic purpose of providing general government services to its residents and therefore be outside of the qualifying scope of its principal business. See, ARM 38.3.1001(2) and 38.3.1002(1)(a) and (c). Services to those outside of Helena's municipal boundaries are all that is in issue in this instance, so Helena's argument regarding transportation being incidental on that basis cannot be upheld.

The above does not preclude analysis in regard to Helena's alternative assertion that its principal business is the business of receiving garbage at its transfer station. In this context Helena has a principal business (transfer station services).

However, it is not a qualifying principal business. To qualify for the primary business test exclusion the principal business cannot be a transportation business. ARM 38.3.1005(1)(b). By its nature transportation is a significant part of a transfer station (even the name "transfer station" connotes that something will be transferred or continue to be moved). Helena's transfer station can even be reasonably viewed as nothing more than a complex unloading and loading facility. In such context it merely facilitates transportation. At Helena's transfer station garbage is deposited into a large bin, pushed by a large front end loader or blade and dragged by a large hydraulic hoe or shovel or gripping device and loaded and compressed into a trailer for transportation. The operation is as much transportation as it is anything else.

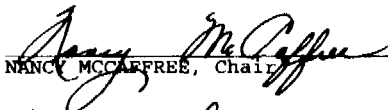
Even if Helena's transfer station operations were deemed a qualifying nontransportation business for purposes of the primary business test, Helena's transportation would not be incidental. Helena's transportation does appear to be in furtherance of such business and in the scope of such business. See, ARM 38.3.1001(2) and 38.3.1002(1)(a), (b), and (c). However, for transportation to qualify for exclusion from the definition of "motor carrier," it also must be subordinate to the principal business. "Subordinate to" means "lesser than, minor in comparison to, dependent on, existing because of, and controlled by." ARM 38.3.1002(d). It can include transportation important to, even essential to, the principal business, but it does not include transportation which is a significant enterprise itself. ARM 38.3.1002(d). Helena's transportation of garbage is such a significant and integral part of the overall operation that it cannot be deemed merely subordinate.

RULING

Helena's transportation of garbage, which is deposited at Helena's transfer station by anyone other than a resident or business or similar entity within the confines of Helena's municipal boundaries, between its solid waste transfer station and the local County landfill is regulated motor carriage for which motor carrier authority is required.

Done and dated this 7th day of November, 1995, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION



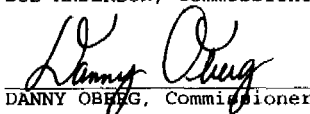
NANCY MCCARFREE, Chair



DAVE FISHER, Vice Chair



BOB ANDERSON, Commissioner




DANNY OBEREG, Commissioner



BOB ROWE, Commissioner

ATTEST:



Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has 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. In addition, the Committee 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 or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1995. This table includes those rules adopted during the period September 1, 1995 through December 31, 1995 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, 1995, 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 1994 and 1995 Montana Administrative Registers.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number. These will fall alphabetically after department rulemaking actions. Accumulative Table entries will be listed with the department name under which they were proposed, e.g., Department of Health and Environmental Sciences as opposed to Department of Environmental Quality.

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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 December, 1995, appear. Vacancies scheduled to appear from February 1, 1996, through April 30, 1996, 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 January 5, 1996.

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 DECEMBER, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
9-1-1 Advisory Council (Administration)			
Mr. James Anderson	Director	not listed	12/12/1995
Helena			12/12/1997
Qualifications (if required):	Department of Military Affairs, Disaster & Emergency Service		
Mr. Ted Benson	Director	not listed	12/12/1995
Billings			12/12/1997
Qualifications (if required):	Western Wireless		
Mr. Art Bicsak	Director	not listed	12/12/1995
Great Falls			12/12/1997
Qualifications (if required):	Montana Emergency Medical Services Association		
Mr. Al Brockway	Director	not listed	12/12/1995
Helena			12/12/1997
Qualifications (if required):	Montana Board of Crime Control		
Dr. Drew Dawson	Director	not listed	12/12/1995
Helena			12/12/1997
Qualifications (if required):	Department of Health and Environmental Sciences, Emergency Medical Services		
Sheriff Lee Edmisten	Director	not listed	12/12/1995
Virginia City			12/12/1997
Qualifications (if required):	Montana Sheriffs and Peace and Officers Association		
Ms. Judy Fraser	Director	not listed	12/12/1995
Kaispell			12/12/1997
Qualifications (if required):	PTI Communication		

BOARD AND COUNCIL APPOINTEES FROM DECEMBER, 1995

Appointee	Appointed by	Succeeds	Appointment/End Date
9-1-1 Advisory Council (Administration) cont.			
Major Irwin L. Garrick	Director	not listed	12/12/1995
Helena			12/12/1997
Qualifications (if required):	Montana Highway Patrol		
Mr. Dan Green	Director	not listed	12/12/1995
Helena			12/12/1997
Qualifications (if required):	US WEST Communications		
Lieutenant Billi Heigh	Director	not listed	12/12/1995
Helena			12/12/1997
Qualifications (if required):	Association of Public-Safety Communications Officers		
Ms. Donna Hulse	Director	not listed	12/12/1995
Helena			12/12/1997
Qualifications (if required):	Commnet Cellular		
Mr. Jim Kraft	Director	not listed	12/12/1995
Billings			12/12/1997
Qualifications (if required):	Association of Disaster & Emergency Services Coordinators		
Mr. Marshall Kyle	Director	not listed	12/12/1995
Missoula			12/12/1997
Qualifications (if required):	Montana State Fire Chiefs' Association		
Mr. Dave Mason	Director	not listed	12/12/1995
Helena			12/12/1997
Qualifications (if required):	Montana State Volunteer Fire Fighters Association		
Mayor William McCauley	Director	not listed	12/12/1995
Cut Bank			12/12/1997
Qualifications (if required):	Montana League of Cities and Towns		

BOARD AND COUNCIL APPOINTEES FROM DECEMBER, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
9-1-1 Advisory Council (Administration) cont.			
Mr. Rick Newby	Director	not listed	12/12/1995
Miles City			12/12/1997
Qualifications (if required):	Montana Association of Chiefs of Police		
Mr. Mike Sederholm	Director	not listed	12/12/1995
Lewistown			12/12/1997
Qualifications (if required):	Montana Fire Districts Association		
Mr. Michael Strand	Director	not listed	12/12/1995
Helena			12/12/1997
Qualifications (if required):	Montana Independent Telecommunications Systems		
Mr. Don Taylor	Director	not listed	12/12/1995
Belfry			12/12/1997
Qualifications (if required):	Montana Association of Counties		
Mr. Bill Wade	Director	not listed	12/12/1995
Circle			12/12/1997
Qualifications (if required):	Montana Telephone Association		
Capitol Restoration Commission (Administration)			
Mr. Walter (Howdie) S. Murfitt	Governor		reappointed
Helena			12/11/1995
Qualifications (if required):	Governor's appointee		12/3/1999
Ms. Gail Shanahan	Governor	Spilker	12/11/1995
Helena			12/3/1999
Qualifications (if required):	Governor's appointee		

BOARD AND COUNCIL APPOINTEES FROM DECEMBER, 1995

Appointee	Appointed by	Succeeds	Appointment/End Date
Department of Corrections Advisory Council (Corrections)			
Commissioner Doug Barone	Governor	new appointment	12/11/1995
Glendive			12/11/1997
Qualifications (if required):	county commissioner		
Sen. Vivian M. Brooke	Governor	new appointment	12/11/1995
Missoula			12/11/1997
Qualifications (if required):	legislator and active in women's issues		
Ms. Nancy Brosten	Governor	new appointment	12/11/1995
Swan Lake			12/11/1997
Qualifications (if required):	member of the Swan River Correctional Training Center Advisory Council		
Mr. Tom Esch	Governor	new appointment	12/11/1995
Kalispell			12/11/1997
Qualifications (if required):	county attorney		
Sen. Ethel Harding	Governor	new appointment	12/11/1995
Polson			12/11/1997
Qualifications (if required):	legislator and a victim representative		
Dr. Allen Hartman	Governor	new appointment	12/11/1995
Billings			12/11/2002
Qualifications (if required):	attorney		
Sen. Bob Hockett	Governor	new appointment	12/11/1995
Havre			12/11/1997
Qualifications (if required):	representing education/VoEd		
Judge Marge Johnson	Governor	new appointment	12/11/1995
Great Falls			12/11/1997
Qualifications (if required):	being a district court judge		

BOARD AND COUNCIL APPOINTEES FROM DECEMBER, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Department of Corrections Advisory Council (Corrections) cont.			
Rep. Royal C. Johnson	Governor	new appointment	12/11/1995
Billings			12/11/1997
Qualifications (if required): legislator			
Mr. T. Larson Medicine Horse	Governor	new appointment	12/11/1995
Hardin			12/11/1997
Qualifications (if required): being a sheriff and Native American representative			
Judge Ted Mizner	Governor	new appointment	12/11/1995
Anaconda			12/11/1997
Qualifications (if required): being a district court judge			
Ms. Kathy Ogren	Governor	new appointment	12/11/1995
Missoula			12/11/1997
Qualifications (if required): representing business/VoEd			
Mr. Jim Reno	Governor	new appointment	12/11/1995
Billings			12/11/1997
Qualifications (if required): representing education programs			
Mr. Steve Rice	Governor	new appointment	12/11/1995
Miles City			12/11/1997
Qualifications (if required): representing Juvenile Justice			
Ms. Anita Richards	Governor	new appointment	12/11/1995
Seeley Lake			12/11/1997
Qualifications (if required): member of the Montana Sentencing Commission & a victim representative			
Mr. Paul "Casey" Stengel	Governor	new appointment	12/11/1995
Miles City			12/11/1997
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM DECEMBER, 1995

Appointee	Appointed by	Succeeds	Appointment/End Date
Department of Corrections Advisory Council (Corrections) cont.			
Mr. John Strandell	Governor	new appointment	12/11/1995
Great Falls			12/11/1997
Qualifications (if required):	being a member of the Regional Correctional Facility		
Mr. Gary Weer	Governor	new appointment	12/11/1995
Deer Lodge			12/11/1997
Qualifications (if required):	public member		
Ms. Candy Wimmer	Governor	new appointment	12/11/1995
Helena			12/11/1997
Qualifications (if required):	representing the Board of Crime Control and the Youth Justice Council		
Family Support Services Advisory Council (Public Health and Human Services)			
Rep. Matt McCann	Governor	Harding	12/6/1995
Harlem			9/9/1996
Qualifications (if required):	being a legislator		
Food and Nutrition Advisory Council (Public Health and Human Services)			
Ms. Peggy Grimes	Governor	Carey	12/20/1995
Missoula			8/30/1996
Qualifications (if required):	representing a local food bank program		
Ms. Linda Stallings	Governor	Medora	12/20/1995
Helena			8/30/1996
Qualifications (if required):	representing statewide org. active in food, nutrition & hunger issues		
Judicial Standards Commission (Justice)			
Ms. Charmaine R. Fisher	Governor	Grow	12/18/1995
Billings			7/1/1999
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM DECEMBER, 1995

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeded</u>	<u>Appointment/End Date</u>
Montana Alfalfa Seed Committee (Agriculture)			
Mr. Markgard John Laurel	Governor	Heiken	12/21/1995
Qualifications (if required): active seed producer			12/21/1998
Mr. Gary Wiltse			
Volborg	Governor	Reynolds	12/21/1995
Qualifications (if required): active seed producer			12/21/1998
Montana Library Services Advisory Council (Education)			
Mr. Will Cowdrey	Director	Allen	12/6/1995
Missoula			6/6/1997
Qualifications (if required): none specified			
Tourism Advisory Council (Commerce)			
Mr. Ed Henrich	Governor	Wilson	12/6/1995
Anaconda			7/1/1996
Qualifications (if required): representing the Innkeepers			

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1996 through April 30, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Advisory Council on Corrections and Criminal Justice Policy (Corrections and Human Services)		
Lieutenant Jim Cashell, Bozeman	Governor	4/28/1996
Qualifications (if required): none specified		
Mr. John P. Connor, Jr., Helena	Governor	4/28/1996
Qualifications (if required): none specified		
Mr. Frank DiPonzo, Sidney	Governor	4/28/1996
Qualifications (if required): none specified		
Ms. Dana Donahue, Warm Springs	Governor	4/28/1996
Qualifications (if required): none specified		
Ms. Linda Hickman, Harlowton	Governor	4/28/1996
Qualifications (if required): none specified		
Mr. William J. "Bill" LaBrie, Whitefish	Governor	4/28/1996
Qualifications (if required): none specified		
Mr. Michael A. Lavin, Helena	Governor	4/28/1996
Qualifications (if required): none specified		
Mr. Ted O. Lympus, Kalispell	Governor	4/28/1996
Qualifications (if required): none specified		
Mr. Steve McArthur, Butte	Governor	4/28/1996
Qualifications (if required): none specified		
Justice Jim Nelson, Helena	Governor	4/28/1996
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1996 through April 30, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Advisory Council on Corrections and Criminal Justice Policy (Corrections and Human Services) cont.		
Ms. Candyce Neubauer, Deer Lodge Qualifications (if required): none specified	Governor	4/28/1996
Mr. Earl Peace, Bozeman Qualifications (if required): not listed	Governor	4/28/1996
Mr. Mike Salvagni, Bozeman Qualifications (if required): none specified	Governor	4/28/1996
Judge Jeffrey Sherlock, Helena Qualifications (if required): none specified	Governor	4/28/1996
Mr. Bill Smith, Deer Lodge Qualifications (if required): none specified	Governor	4/28/1996
Mr. John Strandell, Great Falls Qualifications (if required): none specified	Governor	4/28/1996
Mr. Bud Walsh, Butte Qualifications (if required): none specified	Governor	4/28/1996
Board of Architects (Commerce) Mr. Keith Eugene Rupert, Billings Qualifications (if required): architect	Governor	3/27/1996
Board of Athletics (Commerce) Mr. John Kinna, Bozeman Qualifications (if required): public member	Governor	4/25/1996

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1996 through April 30, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Dentistry (Commerce) Dr. Scott D. Erler, Missoula Qualifications (if required): dentist	Governor	3/29/1996
Board of Hail Insurance (Agriculture) Mr. Lanny Christman, Dutton Qualifications (if required): public member	Governor	4/18/1996
Ms. Rebecca McCabe, Ekalaka Qualifications (if required): none specified	Governor	4/18/1996
Board of Optometrists (Commerce) Mr. Larry J. Bonderud, Shelby Qualifications (if required): optometrist	Governor	4/3/1996
Board of Public Education (Education) Mr. Storrs Bishop, Ennis Qualifications (if required): represents southwest quadrant of the state	Governor	2/1/1996
Board of Regents of Higher Education (Education) Mr. Cordell Johnson, Helena Qualifications (if required): Republican from Western Congressional District	Governor	2/1/1996
Capitol Finance Advisory Council (Administration) Mr. Marvin Dye, Helena Qualifications (if required): Director of the Department of Transportation	Governor	3/30/1996
Sen. Delwyn Gage, Cut Bank Qualifications (if required): represents legislature	Governor	3/30/1996
Mr. Leo Giacometto, Helena Qualifications (if required): Director of the Department of Agriculture	Governor	3/30/1996

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1996 through April 30, 1996

Board/current position holder	Appointed by	Term end
Capitol Finance Advisory Council (Administration) cont.		
Mr. Jim Kaze, Havre	Governor	3/30/1996
Qualifications (if required): represents Board of Regents		
Mr. David Lewis, Helena	Governor	3/30/1996
Qualifications (if required): Director of the Office of Budget and Program Planning		
Dr. Anos R. Little, Jr., Helena	Governor	3/30/1996
Qualifications (if required): represents Montana Health Facilities Authority		
Ms. Lois A. Menzies, Helena	Governor	3/30/1996
Qualifications (if required): Director of the Department of Administration		
Mr. Jon Noel, Helena	Governor	3/30/1996
Qualifications (if required): Director of the Department of Commerce		
Rep. Ray Peck, Havre	Governor	3/30/1996
Qualifications (if required): legislator		
Mr. Mark A. Simonich, Helena	Governor	3/30/1996
Qualifications (if required): Director of the Department of Natural Resources and Conservation		
Mr. Bob Thomas, Stevensville	Governor	3/30/1996
Qualifications (if required): represents Board of Housing		
Mr. Warren Vaughan, Billings	Governor	3/30/1996
Qualifications (if required): represents Board of Investments		
Executive Board of MT College of Mineral Science & Technology (University System)		
Ms. Constance B. Lord, Phillipsburg	Governor	4/15/1996
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1996 through April 30, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Executive Board of Eastern Montana College (University System) Mr. James Sites, Billings Qualifications (if required): none specified	Governor	4/15/1996
Executive Board of Montana State University (University System) Mr. Rory D. Abraham, Kalispell Qualifications (if required): none specified	Governor	4/15/1996
Executive Board of Northern Montana College (University System) Mr. David G. Rice, Havre Qualifications (if required): none specified	Governor	4/15/1996
Executive Board of Western Montana College (University System) Ms. Agnes Helle, Dillon Qualifications (if required): none specified	Governor	4/15/1996
Executive Board of the University of Montana (University System) Colonel Sam A. Roberts, Missoula Qualifications (if required): none specified	Governor	4/15/1996
Family Services Advisory Council (Family Services) Ms. Patricia Coats, Whitefish Qualifications (if required): public member	Governor	4/15/1996
Ms. Joan-Nell Macfadden, Great Falls Qualifications (if required): public member	Governor	4/15/1996
Ms. Jani McCall, Billings Qualifications (if required): public member	Governor	4/15/1996
Ms. Barbara Sample, Billings Qualifications (if required): public member	Governor	4/15/1996

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1996 through April 30, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Family Services Advisory Council (Family Services) cont.		
Ms. Jeri Snell, Miles City	Governor	4/15/1996
Qualifications (if required): public member		
Mental Health Managed Care Advisory Group (Social and Rehabilitation Services)		
Mr. Dan Anderson, Helena	Governor	4/28/1996
Qualifications (if required): Department of Corrections and Human Services		
Mr. Peter Blouke, Helena	Governor	4/28/1996
Qualifications (if required): Department of Social and Rehabilitation Services		
Mr. Bill Diers, Kalispell	Governor	4/28/1996
Qualifications (if required): hospital		
Rep. Mike Foster, Townsend	Governor	4/28/1996
Qualifications (if required): legislator		
Mr. Howard W. Gipe, Kalispell	Governor	4/28/1996
Qualifications (if required): county government		
Ms. Donna Hale, Helena	Governor	4/28/1996
Qualifications (if required): social worker		
Ms. Linda Hatch, Great Falls	Governor	4/28/1996
Qualifications (if required): community mental health center		
Mr. Carl Keener, Warm Springs	Governor	4/28/1996
Qualifications (if required): state hospital		
Mr. Jack Kober, Helena	Governor	4/28/1996
Qualifications (if required): advocate		

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1996 through April 30, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Mental Health Managed Care Advisory Group (Social and Rehabilitation Services) cont.		
Ms. Sandra Mihelish, Helena	Governor	4/28/1996
Qualifications (if required): family member		
Ms. Kelly Moore, Helena	Governor	4/28/1996
Qualifications (if required): advocate		
Dr. Nathan Munn, Helena	Governor	4/28/1996
Qualifications (if required): physician		
Mr. Pat Pope, Helena	Governor	4/28/1996
Qualifications (if required): consumer		
Dr. Debra Sanchez, Helena	Governor	4/28/1996
Qualifications (if required): psychologist		
Ms. Kathy Standard, Helena	Governor	4/28/1996
Qualifications (if required): consumer		
Mr. Ray Venzke, Helena	Governor	4/28/1996
Qualifications (if required): licensed professional counselor		
Sen. Mignon Waterman, Helena	Governor	4/28/1996
Qualifications (if required): legislator		
Multistate Tax Commission Advisory Council (Revenue)		
Ms. Lynn Chenoweth, Helena	Director	3/1/1996
Qualifications (if required): none specified		
Ms. Judy Paynter, Helena	Director	3/1/1996
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1996 through April 30, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Multistate Tax Commission Advisory Council (Revenue) cont.		
Mr. Neil Peterson, Helena Qualifications (if required): none specified	Director	3/1/1996
Mr. David W. Woodgerd, Helena Qualifications (if required): none specified	Director	3/1/1996
Petroleum Tank Release Compensation Board (Health and Environmental Sciences)		
Mr. Bob Robinson, Helena Qualifications (if required): Director of Department of Health and Environmental Sciences	Governor	3/12/1996
Public Employees' Retirement Board (Administration)		
Ms. Carol Lambert, Hammond Qualifications (if required): member at large	Governor	4/1/1996
State Lands Advisory Council (State Lands)		
Sen. Chet Blaylock, Laurel Qualifications (if required): public member	Governor	3/1/1996
Dr. Charles E. Buehler, Butte Qualifications (if required): public member	Governor	3/1/1996
Sen. William Crismore, Libby Qualifications (if required): public member	Governor	3/1/1996
Ms. Kelly Flaherty, Canyon Creek Qualifications (if required): public member	Governor	3/1/1996
Mr. Kenneth Greslin, Broadus Qualifications (if required): public member	Governor	3/1/1996

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1996 through April 30, 1996

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Lands Advisory Council (State Lands) cont.		
Mr. Rick Hartz, Dillon	Governor	3/1/1996
Qualifications (if required): public member		
Ms. Lois Hill, Geyser	Governor	3/1/1996
Qualifications (if required): public member		
Ms. Dorothy Laird, Whitefish	Governor	3/1/1996
Qualifications (if required): public member		
Ms. Marilyn Laughery, Lewistown	Governor	3/1/1996
Qualifications (if required): public member		
Mr. Thomas Loftsgaard, Peerless	Governor	3/1/1996
Qualifications (if required): public member		
Dr. Susan Mast, Bozeman	Governor	3/1/1996
Qualifications (if required): public member		
Sen. Ken Mesaros, Cascade	Governor	3/1/1996
Qualifications (if required): public member		
Mr. Richard L. Miller, Missoula	Governor	3/1/1996
Qualifications (if required): public member		
Mr. Dave Moore, Big Timber	Governor	3/1/1996
Qualifications (if required): public member		
Mr. Mark Rasmussen, Hogeland	Governor	3/1/1996
Qualifications (if required): public member		