MONTANA ADMINISTRATIVE REGISTER

1983 ISSUE NO. 13
JULY 14, 1983
PAGES 795-914
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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 13

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

In the matter of the amendments of Rules 8.91.303 and 8.91.304 increasing fees and amending the schedule of prices.	NOTICE OF PUBLIC HEARING FOR AMENDMENTS OF RULES 8.91.303 OFFICIAL PUBLICATIONS AND LEGAL ADVERTISING and 8.91.304 SCHEDULE OF PRICES

TO: All Interested Persons:

1. On Friday, August 5, 1983, at 9:30 a.m. a public hearing will be held at the Sheraton Hotel, 400 10th Avenue South, Great Falls, Montana, to consider the amendments of 8.91.303 and 8.91.304.

2. The proposed amendment of 8.91.303 amends subsection (1) of the rule and will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3095, Administrative Rules of Montana)

"8.91.303 OFFICIAL PUBLICATIONS AND LEGAL ADVERTISING

(1) For every folio or faction thereof, not more than ~~$3.00~~ $6.00 shall be paid for the first insertion thereof, and not more than ~~$2.00~~ $4.00 per folio for each subsequent insertion thereof, required by law to be made. For rule and figure work, not more than ~~$4.00~~ $8.00 per folio or fraction thereof, for the first insertion, and not more than ~~$2.00~~ $4.00 per folio for each subsequent insertion thereof, required by law to be made.

(2)..."

3. The amendment is being proposed at the request from the Montana Press Association to more closely reflect costs of publishing and printing. The authority of the board to make the proposed amendment is based on section 7-5-2404, MCA and implements the same.

4. The proposed amendment of 8.91.304 will read as follows: (new matter underlined, deleted matter interlined)

"8.91.304 SCHEDULE OF PRICES (1) Due to the length of the price schedule in the Franklin Printing Catalog and the fact that it affects only a limited number of Montana citizens, the board consents to the omission of the publication of the schedule in the ~~Montana Administrative Procedure Code~~ Administrative Rules of Montana. A copy of the price schedule may be obtained, free of charge by contacting the Centralized Services Division, Department of Commerce, 1424 9th Avenue, Helena, Montana, 59620."

5. The rule is proposed to be amended to conform with current price levels listed in the Franklin Printing Catalog. Because of the length of the Franklin Printing Catalog, it is not being reproduced. Copies are available upon request from Janice Huffman, Department of Commerce, 1424 9th Avenue,

Helena, Montana, 59620.

The amendment also changes a reference to the Montana Administrative Procedure Code to the Administrative Rules of Montana, which corresponds to the proper title of the rules. The authority of the board to make the proposed amendment is based on section 7-5-2404, MCA and implements the same.

6. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of County Printing, 1424 9th Avenue, Helena, Montana, 59620, no later than August 11, 1983.

7. Robert J. Wood, Helena, Montana, has been designated to preside over and conduct the hearing.

8. The authority and implementing sections are listed after each proposed change.

BOARD OF COUNTY PRINTING
DEPARTMENT OF COMMERCE
GARY BUCHANAN, DIRECTOR

BY: _____
ROBERT J. WOOD
LEGAL COUNSEL

Certified to the Secretary of State, July 1, 1983.

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the adoption of new rules for the management of hazardous waste	) NOTICE OF PUBLIC HEARING) FOR ADOPTION OF NEW RULES) (Hazardous Waste Management)

To: All Interested Persons

1. On August 16, 1983, at 9:30 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of new rules governing (1) the operation and permitting of facilities which treat, store, or dispose of hazardous wastes, (2) the packaging and labeling of hazardous waste containers, and (3) the permit exemption for hazardous waste transporters storing wastes at transfer facilities.

2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.

3. The rules proposed for adoption (in conjunction with existing rules in Title 16, Chapter 44) establish a hazardous waste management (HWM) program which is essentially the equivalent of the federal HWM program established by Congress under the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901-6987) as amended, (RCRA) and administered by the U.S. Environmental Protection Agency. If adopted, the proposed rules (in conjunction with existing rules in ARM Title 16, Chapter 44, and completion by the Department of other RCRA requirements) will be submitted to the U.S. Environmental Protection Agency as the basis for federal delegation to the State of full HWM responsibility under RCRA. The rules proposed for adoption would (1) establish four additional sub-chapters of ARM Title 16, Chapter 44 providing for HWM facility permits, facility standards, financial requirements for facilities, and public participation, (2) establish fees for hazardous waste (HW) generators, (3) impose pre-transportation requirements upon HW generators for the packaging and labeling of hazardous waste containers, and (4) establish a HWM permit exemption for transporters of hazardous waste who store such waste at transfer facilities for 10 days or less. The rules provide in substance as follows:

(a) HWM Facility Permit Rules. The new rules proposed as Sub-Chapter 1 (RULES I through XXV) identify who must apply for HWM permits (and who is exempt), how applications are made, what information and fees must be submitted with applications, the conditions, terms and requirements to be set forth in permits, as well as how permits are modified, revoked, and transferred. The permit requirements in these rules are virtually identical to federal permit requirements set forth in 40 Code of Federal Regulations (CFR) Part 270.

(b) Standards for Permitted Facilities. The new rules proposed as Sub-Chapter 7 (RULES XXVI and XXVII) set forth

numerous standards for the owners and operators of HWM facilities which treat, store or dispose of hazardous wastes. The standards are identical to and incorporate by reference federal standards for such facilities set forth in 40 Code of Federal Regulations (CFR) Part 264, Subparts (B) through and including (O), excluding (H). The rules establish design, operation and maintenance standards for HWM facilities including general facility requirements (B); preparedness and prevention (C); requirements for contingency plan and emergency procedures (D); manifest system, recordkeeping and reporting requirements (E); groundwater monitoring requirements (F); closure and post-closure requirements (G); requirements for use and management of containers (I); and requirements for tanks (J); surface impoundments (K); waste piles (L); land treatment (M); landfills (N); and incinerators (O).

(c) Closure and/or Post-closure Financial Assurance Requirements for Permitted Facilities. The new rules proposed as Sub-Chapter 8 (RULES XXVIII through XLVI and LXIX through LXXII) set forth requirements that owners and operators of HWM facilities (1) provide financial guarantees for closure and post closure care of their facilities and, (2) provide sudden and non-sudden financial coverage for any liability for bodily injury or property damage to third persons incurred during the active life of the facility. The standards embodied in these rules are virtually identical to federal standards set forth in 40 CFR Part 264, Subpart (H).

(d) Public Participation. The new rules proposed as Sub-Chapter 9 (RULES XLVII through LVII) set forth procedures to be followed in the issuance, denial, modification, revocation, or renewal of HWM permits, including assurances for the involvement of the public in hearings and in the submission of information and comments. The procedures for decisionmaking established in the new rules are virtually identical to analogous federal provisions in 40 CFR Part 124.

(e) Fees for Generators. The new rule [RULE LVIII] is proposed for inclusion in the existing Title 16, Chapter 44, Sub-Chapter 4 and sets forth a schedule of fees for HW generators. Until now HW generators have been subject to requirements for obtaining EPA ID numbers as well as manifest, reporting and record keeping. Upon adoption of proposed RULE LVIII, generators would also be subject to annual fees based upon the amount of hazardous waste generated.

(f) Packaging, Labeling, Marking, and Placarding. The new RULES LIX through LXII are proposed for inclusion in the existing Title 16, Chapter 44, sub-chapter 4. These proposed rules impose pre-transportation requirements upon HW generators for the packaging and labeling of hazardous waste containers. The rules incorporate and are essentially identical to federal Department of Transportation (DOT) requirements in 49 CFR Part 172, Subparts (D) and (E).

(g) Requirements for Transfer Facilities. The new rule LXIII is proposed for inclusion in the existing Title 16, Chapter 44, sub-chapter 5 and allows a transporter to store hazardous waste at a terminal or transfer facility for a period of 10 days or less without obtaining a HWM permit or complying with HWM facility standards. The rule is virtually identical to the federal exemption for transfer facilities found at 40 CFR Section 263.12.

4. The Department is proposing these rules in order to meet the requirements for delegation to the state of the federal HWM program under RCRA. The State of Montana has already received so-called Phase I authorization. Adoption of the proposed rules (in conjunction with amendment of existing state HWM rules also proposed this date, and completion by the Department of other RCRA requirements) will enable the State to apply for final (Phase II) authorization from EPA. Upon receipt of final authorization under RCRA, the State would assume full responsibility for the management (by the Department) of hazardous wastes in Montana.

5. A copy of the new rules as proposed to be adopted can be obtained by contacting the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620 (phone: 449-2821).

6. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Capitol Complex, Helena, MT, no later than 5:00 p.m. on August 15, 1983.

7. Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT, has been designated to preside over and conduct the hearing.

8. The authority of the Department to adopt the proposed rules is based on sections 75-10-404 and 75-10-405, MCA, and the rules implement sections 75-10-405 and 75-10-406, MCA.

JOHN J. DRYNAN, M.D., Director

By JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State July 1, 1983

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of rules 16.44.202 through 16.44.612, except 16.44.320, 16.44.323, 16.44.324, 16.44.351, 16.44.402, 16.44.406, 16.44.407, 16.44.418, 16.44.430, 16.44.501, 16.44.502 and 16.44.512, governing the identification, generation, transportation, storage, treatment and disposal of hazardous waste	)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES (Hazardous Waste Management)

TO: All Interested Persons

1. On August 16, 1983 at 9:30 a.m., a public hearing will be held in Room C209 of the Cogswell Building, Helena, Montana, to consider the amendment of rules 16.44.202 through 16.44.612, except 16.44.320, 16.44.323, 16.44.324, 16.44.351, 16.44.402, 16.44.406, 16.44.407, 16.44.418, 16.44.430, 16.44.501, 16.44.502 and 16.44.512, pertaining to the identification, generation, transportation, storage, treatment and disposal of hazardous waste.

2. The proposed amendments would not make major changes in existing rules but essentially would update existing Department rules in accordance with numerous revisions to corresponding federal requirements promulgated by the U.S. EPA under the Resource, Conservation and Recovery Act of 1976 (40 USC 6901-6987) as amended, (RCRA).

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

16.44.202 DEFINITIONS In this chapter, the following terms shall have the meanings or interpretations shown below:

(1) "Act" or ~~"MSWMA"~~ "MHWA" means the Montana ~~Solid Waste Management~~ Hazardous Waste Act, Title 75, Chapter 10, ~~Part 2,~~ Part 4, MCA.

(2) "Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after November 19, 1980, and which is not a closed portion. (See also "closed portion" and "inactive portion.")

(3) "Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ~~groundwater~~ ground water to wells or springs.

(4) "Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.

(5) "Base year" means the calendar year immediately preceding a given registration year.

(6) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(7) "Calendar year" means a year beginning on January 1st and ending on December 31st.

(8) "Certification" means a statement of professional opinion based upon knowledge and belief.

~~(5)~~ (9) "CFR" means the Code of Federal Regulations published by the U.S. Government Printing Office.

~~(6)~~ (10) "Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion.")

~~(7)~~ (11) "Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

~~(8) "Constituent" or "hazardous waste constituent" means a constituent listed in Table 1 of ARM 16.44.324 or a constituent which caused the hazardous waste to be listed in ARM 16.44.330 through 16.44.333.~~

~~(9)~~ (12) "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

~~(10) (reserved)~~

~~(11)~~ (13) "Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(14) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(12)~~ (15) "Designated facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit, a ~~license~~ permit from the department pursuant to ~~sub-chapter~~ sub-chapters 1 or 6 of this chapter, or a permit from another state authorized by EPA that has been designated on the manifest by the generator as required by ARM 16.44.405.

~~(13)~~ (16) "Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

~~(14)~~ (17) "Discharge" or "hazardous waste discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste or materials which, when discharged, become hazardous wastes into or on any land or water.

(18) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any hazardous waste into or onto the land or water so that the hazardous waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground water.

~~(15)~~ (19) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste or hazardous constituents of the waste will remain after closure.

~~(16)~~ (20) "DOT" means the United States Department of Transportation.

(21) "Elementary neutralization unit" means a device which:

(a) Is used for neutralizing wastes which are hazardous wastes only because they demonstrate the corrosivity characteristic defined in ARM 16.44.322, or are listed in ARM 16.44.330 through ARM 16.44.333 only for this reason; and

(b) Meets the definition of a "tank", "container", "transport vehicle", or "vessel" in this rule.

~~(17)~~ (22) "EPA" means the United States Environmental Protection Agency.

~~(18)~~ (23) "EPA hazardous waste number" means the number assigned to each hazardous waste listed or characteristic identified in sub-chapter 3 of this chapter.

~~(19)~~ (24) "EPA identification number" means the number assigned to each generator, transporter, and treatment, storage, or disposal facility.

~~(20) (reserved)~~

~~(21)~~ (25) "Existing hazardous waste management facility" or "existing facility" means a facility which was in operation, or for which construction had commenced, on or before November 19, 1980. Construction ~~had~~ has commenced if:

(a) The owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits; and either

(i) a continuous physical, on-site construction program has begun, or

(ii) the owner or operator has entered into contractual obligations--which cannot be cancelled or modified without substantial loss--for construction of the facility to be completed within a reasonable time.

(26) "Existing portion" means that land surface area of an existing land disposal unit, included in the temporary permit application required under ARM 16.44.605, on which wastes have been placed prior to the issuance of a final HWM permit under sub-chapter 1 of this chapter.

~~(22)~~ (27) "Facility" or "hazardous waste management facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage or disposal operational units. ~~(e.g., one or more landfills, surface impoundments, or combinations of them). A facility constitutes a solid waste management system as defined in the act, section 75-10-203.~~

~~(23)~~ (28) "Federal agency" means any department, agency, or other instrumentality of the federal government, any independent agency or establishment of the federal government including any government corporation, and the government printing office.

~~(24)~~ (29) "Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

~~(25)~~ (30) "Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

~~(26)~~ (31) "Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(32) "Generation" means the act or process of producing waste material.

~~(27)~~ (33) "Generator" means any person, by site, whose act or process produces hazardous waste ~~identified or listed in sub-chapter 3 of this chapter~~ or whose act first causes a hazardous waste to become subject to regulation, under this chapter.

~~(28)~~ (34) ~~"Groundwater"~~ "Ground water" means water below the land surface in a zone of saturation.

(35) "Hazardous constituents" means constituents identified in ARM 16.44.352(4) that are reasonably expected to be in or derived from a hazardous waste; for the purposes of subpart M (land treatment) of ARM 16.44.702 hazardous constituents are limited to those constituents reasonably expected to be in or derived from waste placed in or on the treatment zone of a land treatment unit; for the purposes of subpart F (ground water protection) of ARM 16.44.702, hazardous constitutents are limited to those waste constituents detected in ground water in the uppermost aquifer underlying a regulated unit.

(36)(a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to

human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2.

(37) "Hazardous waste constituent" means a constituent listed in Table 1 of ARM 16.44.324 or a constituent which caused the hazardous waste to be listed in ARM 16.44.330 through 16.44.333.

(38) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(39) "Inactive generator" means a generator who either produced no hazardous wastes during the most recent base year or whose only hazardous wastes were wastes identified in subsection (2)(b), (c) or (d) of RULE LVIII (to be codified as 16.44.404).

~~(29)~~ (40) "Inactive portion" means that portion of a facility which is not operated after November 19, 1980. (See also "active portion" and "closed portion.")

~~(30) [reserved]~~

~~(31)~~ (41) "Incinerator" means an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down hazardous waste. Examples of incinerators are rotary kiln, fluidized bed, and liquid injection incinerators.

~~(32)~~ (42) "Incompatible waste" means a hazardous waste which is unsuitable for:

(a) placement in a particular device, container, or ~~facility~~ waste management unit because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(b) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

~~(33)~~ (43) "Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual genration site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

~~(34)~~ (44) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

~~(35)~~ (45) "Injection well" means a well into which fluids are injected. (See also "underground injection.")

~~(36)~~ (46) "Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

~~(37)~~ (47) "International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

(48) "Land disposal unit" means a "landfill", "landfill cell", "land treatment unit", "surface impoundment", or "waste pile" as defined in this rule.

~~(38)~~ (49) "Landfill" means a disposal ~~facility or part of a facility~~ unit or series of disposal units (i.e. landfill cells) where hazardous waste is placed in or on land and which is not a land treatment ~~facility~~, unit, a surface impoundment, a pile, or an injection well.

~~(39)~~ (50) "Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

~~(40) [reserved]~~

~~(41)~~ (51) "Land treatment ~~facility~~" unit" means a ~~facility or~~ part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such ~~facilities~~ units are ~~disposal~~ "disposal facilities" as defined in ARM 16.44.202(17) if the waste or any hazardous constituents will remain after closure.

~~(42)~~ (52) "Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

~~(43)~~ (53) "Liner" means a continuous layer of natural or manmade materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous ~~waste~~ constituents, or leachate.

~~(44)~~ (54) "Manifest" means the shipping document originated and signed by the generator ~~which contains the information required by ARM 16.44.405 through 16.44.408,~~ and which is used to identify the hazardous waste, its quantity, origin, and destination during its transportation.

~~(45)~~ (55) "Manifest document number" means the serially increasing number assigned to the manifest by the generator for recording and reporting purposes.

(56) "Major HWM facility" means any HWM facility or activity classified as such by the department, in consultation with the EPA.

~~(46)~~ (57) "Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

~~(47)~~ (58) "Movement" means that hazardous waste transported to a facility in an individual vehicle.

~~(48)~~ (59) "Municipality" means a city, town, county, district, association, or other public body created by or pursuant to law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.

~~(49)~~ (60) "New hazardous waste management facility" or "new facility" means a facility which began operation or for which construction commenced after November 19, 1980. (See also "existing hazardous waste management facility.")

~~(50) [reserved]~~

~~(51)~~ (61) "On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

~~(52)~~ (62) "Open burning" means the combustion of any material without the following characteristics:

(a) Control of combustion air to maintain adequate temperature for efficient combustion;

(b) Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(c) Control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment.")

~~(53)~~ (63) "Operator" means the person responsible for the overall operation of a facility.

~~(54)~~ (64) "Owner" means the person who owns a facility or part of a facility.

~~(55)~~ (65) "Partial closure" means the closure of a discrete part of a facility in accordance with the applicable closure requirements of ~~sub-chapter 6~~ sub-chapters 6 or 7 of this chapter. For example, partial closure may include the closure of a ~~trench, a unit operation,~~ surface impoundment, a landfill cell, or a ~~pit,~~ land treatment unit, while other parts of the same facility continue in operation or will be placed in operation in the future.

(66) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local government entity, or any other governmental or private entity, whether organized for profit or not.

~~(56)~~ (67) "Personnel" or "facility personnel" means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of ~~sub-chapter 6~~ sub-chapters 6 or 7 of this chapter.

~~(57)~~ (68) "Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage.

~~(58)~~ (69) "Point source" means any discernible, confined, and discrete conveyance, including, but not limited

to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

~~(59)~~ (70) "Publicly owned treatment works" or "POTW" means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

~~(60) (reserved)~~

~~(61)~~ (71) "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. section 6901 et seq. The department does not intend to incorporate by reference the provisions of RCRA.

(72) "Registration fee" means the annual fee assessed to generators by the department pursuant to the Act and RULE LVIII (to be codified as 16.44.404).

(73) "Registration year" means a calendar year for which generator registration is required and for which a registration fee is assessed.

(74) "Regulated unit" means a land disposal unit which receives hazardous waste after January 26, 1982.

~~(62)~~ (75) "Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon, ~~groundwater~~ ground water) which can be expected to exhibit the average properties of the universe or whole.

~~(63)~~ (76) "Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

~~(64)~~ (77) "Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

~~(65)~~ (78) "Saturated zone" or "zone of saturation" means that part of the earth's crust in which all voids are filled with water.

~~(66)~~ (79) "Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

~~(67) "Spill" means the accidental spilling, leaking, pumping, pouring, emitting, or dumping of hazardous waste or materials which, when spilled, become hazardous wastes into or on any land or water.~~

~~(68)~~ (80) "State" means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(81) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

~~(69)~~ (82) "Surface impoundment" or "impoundment" means a ~~facility or part of a facility~~ waste management unit which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

~~(70)~~ (83) "Tank" means a stationary device, designed to contain an accumulation of hazardous waste, which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

~~(71)~~ (84) "Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

~~(72)~~ (85) "Totally enclosed treatment ~~facility~~" unit" means a ~~facility~~ unit for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

(86) "Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

~~(73)~~ (87) "Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

(88) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

~~(74)~~ (89) "Transporter" means a person engaged in the off-site transportation of hazardous waste~~.~~ by air, rail, highway, or water.

(90) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or compositions

of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

(91) "Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

~~(75)~~ (92) "Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well.")

~~(76)~~ (93) "Unsaturated zone" or "zone of aeration" means the zone between the land surface and the water table.

~~(77)~~ (94) "United States" means the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Marina Islands.

(95) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

~~(78)~~ (96) "Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

(97) "Waste management area" means an area of land where hazardous waste treatment, storage and disposal activities occur. The waste management area is made up of one or more land disposal units.

(98) "Waste management portion" means a portion of, or a smaller area within the confines of, a land disposal unit.

(99) "Waste management unit" means a single operational unit which is a part of a facility and is used for hazardous waste treatment, storage or disposal. Examples of waste management units include surface impoundments, tanks, waste piles, landfill cells, incinerators and container storage areas.

(100) "Wastewater treatment unit" means a device which:

(a) is part of a wastewater treatment facility permitted as a surface water discharge under Title 75, chapter 5, MCA, and rules implementing that chapter; and

(b) receives and treats or stores an influent wastewater which is a hazardous waste as defined in ARM 16.44.303, or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined in ARM 16.44.303, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in ARM 16.44.303; and

(c) is a "tank" as defined in this rule.

~~(79)~~ (101) "Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

~~(80)~~ (102) "Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

~~(81)~~ (103) "Well injection": (See "underground injection.")

AUTHORITY: Sec. 75-10-404, 75-10-405, MCA
IMPLEMENTING: Sec. 75-10-403, 75-10-405, 75-10-406, MCA

16.44.301 POLICY This sub-chapter identifies only some of the materials which are hazardous wastes under the act and this chapter. A material which is not a hazardous waste identified in this sub-chapter is still a hazardous waste for purposes of the act if, during an inspection under section ~~75-10-205,~~ 75-10-410, MCA, the department has reason to believe that the material may be a hazardous waste within the meaning of section ~~75-10-203,~~ 75-10-403, MCA~~,~~ or meets the statutory elements of section 75-10-415, MCA.

AUTHORITY: Sec. 75-10-404, 75-10-405(1), MCA
IMPLEMENTING: Sec. 75-10-403(7), 75-10-405(1), MCA

16.44.302 DEFINITION OF WASTE A waste is any garbage, refuse, sludge or any other waste material which is not excluded under ARM 16.44.304. An "other waste material" is any solid, liquid, semi-solid or contained gaseous material, resulting from industrial, commercial, mining or agricultural operations, or from community activities which:

(1) is discarded or is being accumulated, stored or physically, chemically or biologically treated prior to being discarded;

(2) has served its original intended use and sometimes is discarded; or

(3) is a manufacturing or mining byproduct and sometimes is discarded.

(a) A material is "discarded" if it is not used, reused, reclaimed or recycled and is abandoned by being:

(i) disposed of as defined in section ~~75-10-203(3),~~ 75-10-403(3), MCA;

(ii) burned or incinerated, except where the material is being burned as a fuel for the purposes of recovering usable energy; or

(iii) physically, chemically or biologically treated, other than burned or incinerated, in lieu of or prior to being disposed of.

(b) A "manufacturing or mining byproduct" is a material that is not one of the primary products of a particular manufacturing or mining operation, is a secondary and incidental product of the particular operation, and would not be solely and separately manufactured or mined by the particular manufacturing or mining operation. The term does

not include an intermediate manufacturing or mining product which results from one of the steps in a manufacturing or mining process and is typically processed through the next step of the process within a short time.
AUTHORITY: Sec. 75-10-404, 75-10-405(1), MCA
IMPLEMENTING: Sec. 75-10-405(1), MCA

16.44.303 DEFINITION OF HAZARDOUS WASTE (1) A waste, as defined in ARM 16.44.302, is a hazardous waste if:

(a) it is not excluded from regulation as a hazardous waste under ARM 16.44.304(1); and

(b) it meets any of the following criteria:

(i) it exhibits any of the characteristics of hazardous waste identified in ARM 16.44.320 through 16.44.324.

~~(i)~~ (ii) it is listed in ARM 16.44.330 through 16.44.333,

~~(ii)~~ (iii) it is a mixture of any waste and ~~one or more~~ a hazardous ~~wastes~~ waste ~~listed~~ identified in ARM 16.44.330 through 16.44.333~~,~~ solely because it exhibits one or more of the characteristics of hazardous waste identified in ARM 16.44.320 through 16.44.324, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in ARM 16.44.320 through 16.44.324.

~~(iii) it exhibits any of the characteristics of hazardous waste identified in ARM 16.44.320 through 16.44.324.~~

(iv) It is a mixture of solid waste and one or more hazardous wastes identified in ARM 16.44.330 through 16.44.333; however, the following mixture of solid wastes and hazardous wastes listed in ARM 16.44.330 through 16.44.333 are not hazardous wastes (except by applicaton of subsection (1)(b)(i) or (ii) of this rule) if the generator can demonstrate that the mixture consists of wastewater the surface water discharge of which is permitted pursuant to Title 75, chapter 5, MCA, and rules implementing that chapter and:

(A) One or more of the following spent solvents identified in ARM 16.44.331-carbon tetrachloride, tetrachloroethylene, trichoroethylene-provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 1 part per million; or

(B) One or more of the following spent solvents identified in ARM 16.44.331-methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methylethylketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents-provided that the maximum total weekly usage

of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 25 parts per million; or

(C) One of the following wastes identified in ARM 16.44.332-heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050); or

(D) A discarded commercial chemical product, or chemical intermediate identified in ARM 16.44.333, arising from de minimis losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this sub-section, "de minimis" losses include those from normal material handling operations (e.g. accidental discharges from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes identified in ARM 16.44.330 through 16.44.333, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation.

(2) A waste which is not excluded from regulation under ARM 16.44.304(1) becomes a hazardous waste when any of the following events occur:

(a) In the case of a waste listed in ARM 16.44.330 through 16.44.333, when the waste first meets the listing description set forth in ARM 16.44.330 through 16.44.333.

(b) In the case of a mixture of any waste and one or more listed hazardous wastes, when a hazardous waste listed in ARM 16.44.330 through 16.44.333 is first added to the waste.

(c) In the case of any other waste, including a waste mixture, when the waste exhibits any of the characteristics identified in ARM 16.44.320 through 16.44.324.

(3) Unless and until it meets the criteria of ARM 16.44.303(4), a hazardous waste will remain a hazardous waste. Any waste generated from the treatment, storage or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust or leachate, but not including precipitation run-off, is a hazardous waste.

(4) Any waste described in ARM 16.44.303(3) is not a hazardous waste if:

(a) it does not exhibit any of the characteristics of hazardous waste identified in ARM 16.44.320 through 16.44.324; and

(b) in the case of a waste which is listed in ARM 16.44.330 through 16.44.333, contains a waste listed in ARM 16.44.330 through 16.44.333, or is derived from a waste listed in ARM 16.44.330 through 16.44.333, it also has been delisted by EPA in accordance with ~~40 CFR 260.20 and 260.22~~ federal regulations.

AUTHORITY: Sec. 75-10-404, 75-10-405(1), MCA
IMPLEMENTING: Sec. 75-10-403(7), 75-10-405(1), MCA

16.44.304 EXCLUSIONS (1) The following are not subject to regulation under this chapter:

(a) wastes generated by either of the following and which are returned to the soil as fertilizers:

(i) the growing and harvesting of agricultural crops; or

(ii) the raising of animals including animal manure.

(b) irrigation return flows.

(c) source, special nuclear or byproduct material as defined by Title 75, Chapter 3, MCA, and rules implementing that chapter.

(d) materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(e) mining overburden ~~returned to the mine site,~~ and mining wastes, from coal and uranium mining, which are subject to the requirements of Title 82, Chapter 4, Part 2, MCA.

(f) domestic sewage and any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works for treatment. Domestic sewage means untreated sanitary wastes that pass through a sewer system.

(g) industrial wastewater discharges that are point source surface water discharges subject to regulation under Title 75, Chapter 5, MCA, and rules implementing that chapter.

(h) A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or any manufacturing process unit or an associated

non-waste-treatment-manufacturing unit, until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated ~~from~~ for manufacturing, or for storage or transportation of product or raw materials.

(2) The following are not subject to regulation under this chapter but may be subject to regulation under the provisions of ARM Title 16, Chapter 14:

(a) household waste, including household waste that has been collected, transported, stored, treated, disposed of, recovered such as refuse-derived fuel, or reused. "Household waste" means any waste material, including garbage, trash and sanitary wastes in septic tanks, derived from households including single and multiple residences, hotels and motels.

(b) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

(c) drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(d) waste from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore.

(e) cement kiln dust waste.

(f) waste which consists of discarded wood or wood products which fails the test for the characteristic of EP toxicity and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials'intended end use.

(g)(i) wastes which fail the test for the characteristic of EP toxicity because chromium is present or are listed in ARM 16.44.330 through 16.44.333 due to the presence of chromium, which do not fail the test for the characteristic of EP toxicity for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic if it is shown by a waste generator or by waste generators that:

(A) the chromium in the waste is exclusively (or nearly exclusively) trivalent chromium;

(B) the waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process not generate haxavalent chromium; and

(C) the waste is typically and frequently managed in non-oxidizing environment.

(ii) Specific wastes which meet the standard in (i)(A), (B) and (C) (so long as they do not fail the test for the characteristic of EP toxicity, and do not fail the test for any other characteristic) are:

(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome/tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beam-house, through-the-blue; and shearling.

(B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; retan/wet finish; no beam-house; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beam-house; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beam-house; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beam-house; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

(3) The following provisions apply to samples of waste, water, soil and air.

(a) Except as provided in subsection (3)(b) of this rule, a sample of waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this chapter, when:

(i) The sample is being transported to a laboratory for the purpose of testing; or

(ii) The sample is being transported back to the sample collector after testing; or

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing; or

(iv) The sample is being stored in a laboratory before testing; or

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

(b) In order to qualify for the exemption in subsection (3)(a)(i) and (ii) of this rule, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

(i) Comply with U.S. Department of Transportation, U.S. Postal Service, or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, U.S. Postal Service, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(I) The sample collector's name, mailing address, and telephone number;

(II) The laboratory's name, mailing address, and telephone number;

(III) The quantity of the sample;

(IV) The date of shipment; and

(V) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(c) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in subsection (3)(a) of this rule.

AUTHORITY: Sec. 75-10-404, 75-10-405(1), MCA
IMPLEMENTING: Sec. 75-10-403(7), 75-10-405(1), MCA

16.44.305 SPECIAL REQUIREMENTS FOR HAZARDOUS WASTE GENERATED BY SMALL QUANTITY GENERATORS (1) A generator is a small quantity generator in a calendar month if he generates less than 1000 kilograms of hazardous waste in that month.

(2) Except for those wastes identified in subsections (5) and (6) of this rule, a small quantity generator's hazardous wastes are not subject to regulation under this chapter, provided the generator complies with the requirements of subsection (7) of this rule.

(3) Hazardous waste that is beneficially used or re-used or legitimately recycled or reclaimed and that is excluded from regulation by ARM 16.44.306(1) is not included in the quantity determinations of this rule, and is not subject to any requirements of this rule. Hazardous waste that is subject to the special requirements of ARM 16.44.306(2) is included in the quantity determinations of this rule and is subject to the requirements of this rule.

(4) In determining the quantity of hazardous waste he generates, a generator need not include:

(a) His hazardous waste when it is removed from on-site storage; or

(b) Hazardous waste produced by on-site treatment of his hazardous waste.

(5) If a small quantity generator generates acutely hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acutely hazardous waste are subject to regulation under this chapter:

(a) A total of one kilogram of commercial chemical products and manufacturing chemical intermediates having the generic names listed in ARM 16.44.333(5), and off-specification commercial chemical products and manufacturing chemical intermediates which, if they met specifications, would have the generic names listed in ARM 16.44.333(5); or

(b) A total of 100 kilograms of any residue or contaminated soil, water or other debris resulting from the ~~clean-up of a spill,~~ discharge, into or on any land or water, of any commercial chemical products or manufacturing chemical intermediates having the generic names listed in ARM 16.44.333(5)~~,~~, or any residue or contaminated soil, water or any other debris resulting from the discharge, into or on any land or water, of any off-specification commercial chemical products or manufacturing chemical intermediates which, if they met specifications, would have the generic names listed in ARM 16.44.333(5).

(6) A small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms of his hazardous waste, or his acutely hazardous wastes in quantities greater than set forth in subsections (5)(a) or (5)(b) of this rule, all of those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under this chapter. The time period of ARM 16.44.415 for accumulation of wastes on-site begins for a small quantity generator when the accumulated wastes exceed the applicable exclusion level.

(7) In order for hazardous waste generated by a small quantity generator to be excluded from full regulation under this rule, the generator must:

(a) Comply with ARM 16.44.402;

(b) If he stores his hazardous waste on-site, store it in compliance with the requirements of subsection (6) of this rule; and

(c) Either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is:

(i) ~~Licensed~~ Permitted under ~~sub-chapter~~ sub-chapters 1 or 6 of this chapter;

(ii) Authorized by EPA to manage hazardous waste;

(iii) Authorized to manage hazardous waste by a state with a hazardous waste management program approved by EPA;

(iv) Licensed by the department to ~~manage solid waste~~ operate a refuse disposal facility pursuant to sub-chapter 5, Chapter 14, title 16, ARM; or

(v) A facility which:

(A) Beneficially uses or re-uses, or legitimately recycles or reclaims his waste; or

(B) Treats his waste prior to beneficial use or re-use, or legitimate recycling or reclamation.

(8) Hazardous waste subject to the reduced requirements of this rule may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this rule, unless the mixture meets any of the characteristics of hazardous wastes identified in ARM 16.44.320 through 16.44.324.

(9) If a small quantity generator mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this rule, the mixture is subject to full regulation.

AUTHORITY: Sec. 75-10-404, 75-10-405(1), MCA
IMPLEMENTING: Sec. 75-10-405(1) and (2), MCA

16.44.306 SPECIAL REQUIREMENTS FOR HAZARDOUS WASTE WHICH IS USED, REUSED, RECYCLED OR RECLAIMED (1) Except as otherwise provided in subsection (2) of this rule, a hazardous waste which meets ~~either~~ any of the following criteria is not subject to regulation under sub-chapters 4, 5, ~~and 6~~ 6 or 7 of this chapter until such time as the department ~~promulgates~~ adopts rules to the contrary:

(a) it is being beneficially used or reused or legitimately recycled or reclaimed.

(b) it is being accumulated, stored, or physically, chemically or biologically treated prior to beneficial use or reuse or legitimate recycling or reclamation.

(c) It is one of the following materials being used, reused, recycled or reclaimed in the specified manner:

(i) Spent pickle liquor which is reused in wastewater treatment at a facility holding a surface water discharge permit issued pursuant to Title 75, Chapter 5, MCA, and rules implementing that chapter, or which is being accumulated, stored, or physically, chemically or biologically treated before such reuse.

(2) Except for those wastes listed in subsection (1)(c) of this rule, A a hazardous waste which is a sludge, or which is listed in ARM ~~16.44.330 through 16.44.333~~, 16.44.331 or 16.44.332, or which contains one or more hazardous wastes listed in ARM ~~16.44.330 through 16.44.333~~, 16.44.331 or 16.44.332; and which is transported or stored prior to being used, reused, recycled or reclaimed is subject to the requirements of sub-chapters ~~4 and 5~~ 4, 5, 6, and 7 of this chapter, except ARM 16.44.609, and to Subparts ~~A~~, B, C, D, E, F, G, ~~H~~, I, J, K, and L of Part 265, Title 40, CFR, with respect to such transportation or storage.

(3) The department hereby adopts and incorporates herein by reference 40 CFR Part 265, Subparts ~~A~~, B, C, D, E, F, G, ~~H~~, I, J, K, and L. Subparts ~~A~~, B, C, D, E, F, G, H, I, J, K, and L of 40 CFR Part 265 are federal agency rules. These subparts contain, respectively, ~~the purpose, scope and applicability of Part 265 (A)~~, general facility standards (B), requirements for preparedness and prevention (C), requirements for contingency plan and emergency procedures (D), manifest system requirements, recordkeeping and reporting requirements (E), requirements for ground water monitoring (F), closure and post-closure requirements (G), ~~financial requirements (H)~~, use and management of containers (I), requirements for tanks (J), requirements for surface impoundments (K), and requirements for waste piles (L). A copy of Subparts ~~A~~, B, C, D, E, F, G, H, I, J, K, and L of 40 CFR Part 265, or any portion thereof, may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana.

AUTHORITY: Sec. 75-10-404, 75-10-405(1), MCA
IMPLEMENTING: Sec. 75-10-405(1) and (2), MCA

16.44.307 RESIDUES OF HAZARDOUS WASTE IN EMPTY CONTAINERS (1) Any hazardous waste remaining in either an empty container or an inner liner removed from an empty container, as defined in subsections (3), (4) and (5) of this rule, is not subject to regulation under this chapter.

(2) Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in subsections (3), (4) and (5) of this rule, is subject to regulation under this chapter.

(3) A container or an inner liner removed from a container that has held any hazardous waste, or hazardous material identified in ARM 16.44.333, except a waste or material that is a compressed gas or that is identified in ARM ~~16.44.333(3)~~ 16.44.333(5), is empty if:

(a) all ~~wastes~~ waste or material ~~have~~ has been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and

(b) no more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner~~,~~ or

(c)(i) No more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size, or

(ii) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size.

(4) A container that has held a hazardous waste ~~that~~ or a hazardous material identified in ARM 16.44.333 which is a compressed gas is empty when the pressure in the container approaches atmospheric.

(5) A container or an inner liner removed from a container that has held a hazardous ~~waste~~ material identified in ARM ~~16.44.333(3)~~ 16.44.333(5), other than a compressed gas, is empty if:

(a) the container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(b) the container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(c) in the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

AUTHORITY: Sec. 75-10-404, 75-10-405(1), MCA
IMPLEMENTING: Sec. 75-10-405(1), MCA

16.44.310 CRITERIA FOR IDENTIFYING THE CHARACTERISTICS OF HAZARDOUS WASTE (1) The department may identify and define a characteristic of a hazardous waste in ARM 16.44.320 through 16.44.324 only upon determining that:

(a) a waste that exhibits the characteristic may: ~~cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms, and~~

(i) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(ii) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

(b) the characteristic can be measured by an available standardized test method which is reasonably within the capability of generators of waste or private sector laboratories that are available to serve generators of waste; or reasonably detected by generators of waste through their knowledge of their waste.

AUTHORITY: Sec. 75-10-404, 75-10-405(1), MCA
IMPLEMENTING: Sec. 75-10-405(1), MCA

16.44.311 CRITERIA FOR LISTING HAZARDOUS WASTE

(1) The department may list a waste as a hazardous waste only upon determining that the waste meets one of the following criteria:

(a) It exhibits any of the characteristics of hazardous waste identified in ARM 16.44.320 through 16.44.324.

(b) It has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible or incapacitating reversible illness.

(i) Waste listed in accordance with the criteria in subsection (1)(b) of this rule will be designated acute hazardous waste.

(c) It contains any of the ~~toxic~~ hazardous constituents listed in ARM ~~16.44.350~~ 16.44.352(4) unless, after considering any of the following factors, the department concludes that the waste is not capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

(i) the nature of the toxicity presented by the constituent.

(ii) the concentration of the constituent in the waste.

(iii) the potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in subsection (1)(c)(vii) of this rule.

(iv) the persistence of the constituent or any toxic degradation product of the constituent.

(v) the potential for the constituent or any toxic degradation product of the constituent to degrade into non-harmful constituents and the rate of degradation.

(vi) the degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(vii) the plausible types of improper management to which the waste could be subjected.

(viii) the quantities of the waste generated at individual generation sites or on a regional or national basis.

(ix) the nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.

(x) action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(xi) such other factors as may be appropriate.

(A) Wastes listed in accordance with subsection (1)(c) of this rule will be designated toxic wastes.

(2) The department may list classes or types of waste as hazardous waste if it has reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste in section ~~75-10-203,~~ 75-10-403, MCA.

(3) The department will use the criteria for listing specified in this rule to establish the exclusion limits referred to in ARM ~~16.44.305(3),~~ 16.44.305(5).

AUTHORITY: Sec. 75-10-404, 75-10-405(1), MCA
IMPLEMENTING: Sec. 75-10-405(1), MCA

16.44.321 CHARACTERISTIC OF IGNITABILITY (1) A waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(a) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60°C. (140°F.), as determined by a Pensky-Martens closed cup tester, using the test method specified in ASTM Standard D-93-79, or D-93-80, or a Setaflash closed cup tester, using the test method specified in ASTM Standard D-3278-78. The department hereby adopts and incorporates by reference ASTM ~~Standard~~ Standards D-93-79, D-93-80 and ~~ASTM Standard~~ D-3278-78. ASTM ~~Standard~~ Standards D-93-79 and D-93-80 ~~is a~~ are like ~~publication~~ publications setting forth standard test methods for determination of flash point by Pensky-Martens closed cup tester. ASTM Standard D-3278-78 is a like publication setting forth standard test methods for the determination of the flash point of liquids by Setaflash closed tester. A copy of these standards may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana.

(b) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(c) It is ~~an ignitable~~ a flammable compressed gas as defined in 49 CFR 173.300 and as determined by the test methods described in that regulation. The department hereby adopts and incorporates herein by reference 49 CFR 173.300, ~~and any subsequent amendments thereto~~. 49 CFR 173.300 is a federal agency rule setting forth the definitions of compressed gas, flammable compressed gas, non-liquefied compressed gas, liquefied compressed gas, compressed gas in solution, flammable range, filling density, and service pressure. A copy of 49 CFR 173.300 may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana.

(d) It is an oxidizer which is a substance, such as a chlorate, permanganate, inorganic peroxide, ~~nitro carbo nitrate~~, or a nitrate, that yields oxygen readily to stimulate the combustion of organic matter.

(2) A waste that exhibits the characteristic of ignitability, but is not listed as a hazardous waste in ARM 16.44.330 through ARM 16.44.333, has the EPA hazardous waste number of D001.

AUTHORITY: Sec. 75-10-404, 75-10-405(1), MCA
IMPLEMENTING: Sec. 75-10-405(1), MCA

16.44.322 CHARACTERISTIC OF CORROSIVITY (1) A waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(a) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using ~~Test Method 5.2~~ the test method specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods."

(b) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55°C. (130° F.) as determined by ~~Test Method 5.3~~ the test method specified in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods."

(c) The department hereby adopts and incorporates herein by reference ~~Test Methods 5.2 and 5.3 in~~ "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" published by EPA. "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" is a like publication setting forth EPA's standard test methods for determination of, among other things, hazard waste characteristics of solid waste; ~~Test Method 5.2 sets forth pH measurement and Test Method 5.3 sets forth measurement of corrosivity towards steel~~. A copy of ~~Test Methods 5.2 and 5.3~~ "Test Methods for the Evaluation of Solid Waste, physical/chemical Methods" may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Helena, Montana.

(2) A waste that exhibits the characteristic of corrosivity, but is not listed as a hazardous waste in ARM 16.44.330 through 16.44.333, has the EPA hazardous waste number of D002.
AUTHORITY: Sec. 75-10-404, 75-10-405(1), MCA
IMPLEMENTING: Sec. 75-10-405(1), MCA

16.44.330 LISTS OF HAZARDOUS WASTES -- GENERAL (1) A waste is a hazardous waste if it is listed in ARM 16.44.331 through 16.44.333.

(2) The basis for listing the classes or types of wastes listed in ARM 16.44.331 through 16.44.333 will be indicated by employing one or more of the following hazard codes:

(a) Ignitable Waste----------(I)
Corrosive Waste----------(C)
Reactive Waste----------(R)
EP Toxic Waste----------(E)
Acute Hazardous Waste----------(H)
Toxic Waste----------(T)

(b) ARM ~~16.44.357~~ 16.44.352(3) identifies the constituent which caused the waste to be listed as an EP toxic waste (E) or toxic waste (T) in ARM 16.44.331 and 16.44.332.

(3) Each hazardous waste listed in ARM 16.44.331 through 16.44.333 is assigned an EPA hazardous waste number which precedes the name of the waste. This number must be used in complying with the requirements of this chapter.
AUTHORITY: Sec. 75-10-404, 75-10-405(1), MCA
IMPLEMENTING: Sec. 75-10-405(1), MCA

16.44.331 HAZARDOUS WASTE FROM NONSPECIFIC SOURCES The department hereby adopts and incorporates herein by reference 40 CFR 261.31, ~~and any subsequent amendments thereto~~. 40 CFR 261.31 is a federal agency rule setting forth a list of hazardous wastes from non-specific sources. A copy of 40 CFR 261.31 may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana.
AUTHORITY: Sec. 75-10-404, 75-10-405(1), MCA
IMPLEMENTING: Sec. 75-10-405(1), MCA

16.44.332 HAZARDOUS WASTE FROM SPECIFIC SOURCES The department hereby adopts and incorporates herein by reference 40 CFR 261.32, ~~and any subsequent amendments thereto~~. 40 CFR 261.32 is a federal agency rule setting forth a list of hazardous wastes from specific sources. A copy of 40 CFR 261.32 may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana.
AUTHORITY: Sec. 75-10-404, 75-10-405(1), MCA
IMPLEMENTING: Sec. 75-10-405(1), MCA

16.44.333 DISCARDED COMMERCIAL CHEMICAL PRODUCTS, OFF-SPECIFICATION SPECIES, ~~CONTAINERS~~, CONTAINER RESIDUES, AND SPILL RESIDUES THEREOF

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded:

(1) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in subsections (5) or (6) of this rule.

(2) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsections (5) or (6) of this rule.

(3) Any residue remaining in a container or an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in ~~subsection (5)~~ subsections (5) or (6) of this rule, or any container or inner liner removed from a container that has been used to hold any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsections (5) or (6) of this rule, unless the container is empty as defined in ARM ~~16.44.307(5)~~. 16.44.307.

(4) Any residue or contaminated soil, water or other debris resulting from the ~~cleanup of a spill~~, discharge, into or on any land, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in ~~subsections~~ subsection (5) or (6) of this ~~rule~~. rule, or any residue or contaminated soil, water or other debris resulting from the discharge, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in subsection (5) or (6) of this rule.

(5) The commercial chemical products, ~~or~~ manufacturing chemical intermediates, or off-specification commercial chemical products or manufacturing chemical intermediates referred to in subsections (1) through (4) of this rule are identified as acute hazardous wastes (H) and are subject to the small quantity exclusion defined in ARM 16.44.305(5). These wastes and their corresponding EPA hazardous waste numbers are those wastes listed in 40 CFR 261.33(e).

(6) The commercial chemical products, ~~or~~ manufacturing chemical intermediates, or off-specification commercial chemical products or manufacturing chemical intermediates referred to in subsections (1), ~~(2),~~ ~~and~~ through (4) of this rule are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity exclusion defined in ARM 16.44.305(1) and (6). These wastes and their corresponding EPA hazardous waste numbers are those wastes listed in 40 CFR 261.33(f).

(a) The department hereby adopts and incorporates by reference the lists of substances and hazardous waste numbers in 40 CFR 261.33(e) and (f). ~~and any subsequent amendments thereto.~~ 40 CFR 261.33(e) and (f) is a federal agency rule setting forth those commercial chemical products and manufacturing chemical intermediates which are, in (e), acute hazardous wastes and, in (f), toxic wastes. A copy of 40 CFR 261.33(e) and (f) may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana.
AUTHORITY: Sec. 75-10-404, 75-10-405(1), MCA
IMPLEMENTING: Sec. 75-10-405(1), MCA

16.44.352 EP TOXICITY TEST PROCEDURES--CHEMICAL ANALYSIS TEST METHODS--BASIS FOR LISTING--HAZARDOUS CONSTITUENTS For the purposes of this chapter, the department hereby adopts and incorporates herein by reference the following:

(1) Appendix II of 40 CFR Part 261. ~~and any subsequent amendments thereto.~~ Appendix II of 40 CFR Part 261 is an appendix to a federal agency rule setting forth the test procedure for EP toxicity.

(2) Appendix III of 40 CFR Part 261. ~~and any subsequent amendments thereto.~~ Appendix III of 40 CFR Part 261 is an appendix to a federal agency rule setting forth the appropriate analytical procedures to be used in determining whether a waste contains a particular ~~toxic~~ hazardous constituent.

(3) Appendix VII of 40 CFR Part 261. ~~and any subsequent amendments thereto.~~ Appendix VII of 40 CFR Part 261 is an appendix to a federal agency rule setting forth the basis for listing hazardous waste.

(4) Appendix VIII of 40 CFR Part 261. ~~and any subsequent amendments thereto.~~ Appendix VIII of 40 CFR Part 261 is an appendix to a federal agency rule setting forth a list of hazardous constituents.

(a) A copy of Appendices II, III, VII and VIII of 40 CFR Part 261 may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana.
AUTHORITY: Sec. 75-10-404, 75-10-405, MCA
IMPLEMENTING: Sec. 75-10-405, MCA

16.44.401 GENERAL PROVISIONS (1) A generator who treats, stores, or disposes of hazardous waste on-site must only comply with the following ~~sections~~ rules of this subchapter with respect to that waste:

(a) ARM 16.44.402 for determining whether or not he has a hazardous waste;

(b) ARM 16.44.403 for ~~obtaining an EPA identification number;~~ generator registration;

(c) Rule LVIII (to be codified as ARM 16.44.404) for the payment of fees.

(d) ARM 16.44.415 for accumulation of hazardous waste;

~~(e)~~ (e) ARM 16.44.416(3) and (4) for recordkeeping; and, if applicable,

~~(d)~~ (f) ARM 16.44.430 for farmers.

(2) Any person who imports hazardous wastes into Montana from a foreign country must comply with the standards applicable to generators established in this sub-chapter.

(3) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of ARM 16.44.430 is not required to comply with other standards in this sub-chapter or ~~sub-chapter~~ sub-chapters 6, 7 or 8 of this chapter with respect to such pesticides.

(4) A person who generates a hazardous waste as defined by sub-chapter ~~(3)~~ 3 of this chapter is subject to the penalties provided in the act if he does not comply with the requirements of this sub-chapter

(5) An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility must comply with the generator standards established in this sub-chapter.

AUTHORITY: Sec. 75-10-404, 75-10-405(7), MCA;
IMPLEMENTING: Sec. 75-10-405(2) and (7), MCA

16.44.403 REGISTRATION AND EPA IDENTIFICATION NUMBERS (1) Except as otherwise provided in ARM 16.44.305, A a generator must not accumulate, treat, store, dispose of, transport, or offer for transportation hazardous waste without having ~~received an EPA identification number from the department or EPA~~ current registration with the department.

(2) A generator who ~~has not received an EPA identification number may obtain one~~ is not currently registered may become registered by applying to the department. The department will provide registration forms upon request. Upon receiving the ~~request~~, completed form and payment of any fee as required by RULE LVIII (to be codified as ARM 16.44.404), the department will ~~assign an EPA identification number to~~ register the generator for the current registration year, and will assign an EPA identification number to the generator if one has not yet been assigned.

(3) A generator must not offer his hazardous waste to transporters ~~or to treatment, storage, or disposal facilities~~ that have not received an EPA identification number, or to treatment, storage or disposal facilities which are not "designated facilities" as defined in ARM 16.44.202.

AUTHORITY: Sec. 75-10-404, 75-10-405(7), MCA
IMPLEMENTING: Sec. 75-10-405(7), MCA

16.44.405 MANIFEST GENERAL REQUIREMENTS (1) A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage or disposal must prepare a manifest before transporting the waste off-site.

(2) A generator must designate on the manifest one facility which is permitted to handle the waste described on the manifest.

(3) A generator may also designate on the manifest one alternate facility which is permitted to handle his waste in the event an emergency prevents delivery of the waste to the primary designated facility.

(4) If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate designated facility, the generator must either designate another facility or instruct the transporter to return the waste.

AUTHORITY: Sec. 75-10-404, 75-10-405(5) and (7), MCA
IMPLEMENTING: Sec. 75-10-405(5) and (7), MCA

16.44.408 USE OF MANIFEST (1) The generator must sign the manifest ~~certification~~ by hand; obtain the handwritten signature of the initial transporter and date of acceptance on the manifest; and retain one copy in accordance with ARM 16.44.416(1).

(2) The generator must give the transporter the remaining copies of the manifest.

(3) For shipment of hazardous waste within the United States ~~solely by railroad or~~ solely by water (bulk shipments only), the generator must send 3 copies of the manifest dated and signed in accordance with this rule to the owner or operator of the designated facility~~,~~ or the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(4) For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must send at least three copies of the manifest dated and signed in accordance with this section to:

(a) The next non-rail transporter, if any, or

(b) The designated facility if transported solely by rail; or

(c) The last rail transporter to handle the waste in the United States if exported by rail.

AUTHORITY: Sec. 75-10-404, 75-10-405(5) and (7), MCA
IMPLEMENTING: Sec. 75-10-405(5) and (7), MCA

16.44.415 ACCUMULATION TIME (1) A generator may accumulate hazardous waste on-site without a ~~license~~ permit for 90 days or less, provided that the following requirements are met:

(a) ~~All such waste is shipped off-site in 90 days or less.~~ The waste is placed in containers and the generator complies with Subpart I of 40 CFR Part 265, or the waste is placed in tanks and the generator complies with subpart J of 40 CFR Part 265 except 40 CFR 265.193;

(b) ~~The waste is placed in either containers or tanks.~~ The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container or tank.

~~(i) If the waste is placed in containers, the container must meet the applicable Department of Transportation regulations on containers under 49 CFR Parts 173, 178 and 179. The owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. Containers holding ignitable or reactive waste must be located at least 15 meters (50 feet) from the facility's property line.~~

~~(ii) If the waste is placed in tanks, the generator must comply with the requirements of 40 CFR Part 265, Subpart J, except 40 CFR 265.193.~~

(c) ~~The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container or tank.~~ While being accumulated on-site each container and tank is labeled or marked clearly with the words, "Hazardous Waste", and

~~(d) Each container is properly labeled and marked in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 CFR Part 172, Subparts D and E. In addition, each container of 110 gallons or less must be marked with the following words:~~

~~HAZARDOUS WASTE -- Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency. Generator's Name and Address_____ Manifest Document Number_____~~

~~(e)~~ (d) The generator complies with the requirements for facility owners or operators in 40 CFR, Part 265 Subparts C and D and with 40 CFR 265.16.

(2) The department hereby adopts and incorporates by reference ~~49 CFR Part 172, Subparts D and E, 49 CFR Parts 173, 178 and 179,~~ 40 CFR Part 265, Subparts C and D; 40 CFR 265.16; and 40 CFR Part 265, ~~Subpart~~ Subparts I and J except 40 CFR 265.193.

~~(a) 49 CFR Part 172, Subparts D and E are federal agency rules setting forth marking and labeling requirements for hazardous materials offered for transportation.~~

~~(b) 49 CFR Part 173 are federal agency rules setting forth general requirements for shipment and packaging of hazardous materials including explosives and blasting agents, flammable, combustible and pyrophoric liquids, flammable solids, oxidizers and organic peroxides, corrosive materials, compressed gases, poisonous materials, etiologic agents and radioactive materials, and other regulated material preparation requirements.~~

~~(c) 49 CFR Part 178 are federal agency rules setting forth shipping container specifications including specifications for carboys, jugs in tubs, rubber drums, inside containers and linings, cylinders, metal barrels, drums, kegs, cases, trunks, and boxes, wooden barrels, kegs, boxes, kits and drums, fiberboard boxes, drums and mailing tubes, cloth, burlap, paper or plastic bags, portable tanks, and containers for motor vehicle transportation.~~

~~(d) 49 CFR Part 179 are federal agency rules setting forth specifications for tank cars including approvals and reports, general design requirements, and specifications for pressure tank car tanks, nonpressure tank car tanks, multiunit tank car tanks, liquefied hydrogen tank car tanks and seamless steel tanks.~~

~~(e)~~ (a) 40 CFR Part 265, Subparts C and D are federal agency rules setting forth requirements for handling emergencies including preparedness, prevention, contingency plans, and emergency procedures for facilities that treat, store or dispose of hazardous wastes.

(b) 40 CFR 265.16 is a federal agency rule setting forth requirements for hazardous waste personnel training.

~~(f)~~ (c) 40 CFR Part 265, ~~Subpart~~ Subparts I and J, ~~except 265.193,~~ are federal agency rules setting forth, respectively, requirements for owners or operators of facilities that use containers or tanks to treat or store hazardous wastes including general operating requirements, inspections, closure, and special requirements for ignitable, reactive and incompatible wastes.

~~(g)~~ (d) A copy of ~~49 CFR Part 172, Subparts D and E, 49 CFR Parts 173, 178 and 179,~~ 40 CFR 265.16, 40 CFR Part 265, Subparts C, D, I, and J, ~~except for 40 CFR 265.193,~~ or any portion thereof, may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana.

~~(2)~~ (3) A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of ~~sub-chapter 6~~ subchapters 1, 6, 7 and 8 of this chapter, unless he has been granted an extension to the 90-day period. An extension of up to 30 days may be granted by the department on a case-by-case basis where hazardous wastes must remain on-site due to unforseen, temporary and uncontrollable circumstances.

AUTHORITY: Sec. 75-10-404, 75-10-405(2), (6) and (7), MCA
IMPLEMENTING: Sec. 75-10-405(2), (6) and (7), MCA

16.44.416 RECORDKEEPING (1) A generator must keep a copy of each manifest signed in accordance with ARM 16.44.408(1) for 3 years or until he receives a signed copy from the designated facility which received the waste.

This signed copy must be retained as a record for at least 3 years from the date the waste was accepted by the initial transporter.

(2) A generator must keep a copy of each ~~annual~~ biennial report and exception report for a period of at least 3 years from the due date of the report (March 1).

(3) A generator must keep records of any test results, waste analyses, or other determinations made in accordance with ARM 16.44.402 for at least 3 years from the date that the waste was last sent to on-site or off-site treatment, storage, or disposal.

(4) The periods of retention referred to in this rule are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the department.

AUTHORITY: Sec. 75-10-404, 75-10-405(5) and (7), MCA
IMPLEMENTING: Sec. 75-10-405(5) and (7), MCA

16.44.417 ~~ANNUAL~~ BIENNIAL REPORTING (1) A generator who ships his hazardous waste off-site must submit ~~annual~~ biennial reports to the department, on forms obtained from the department, no later than March 1, ~~for the preceding calendar year,~~ of each even numbered year. The biennial report must cover generator activities during the previous calendar year and must include the following information:

(a) The EPA identification number, name, and address of the generator;

(b) The calendar year covered by the report;

(c) The EPA identification number, name, and address for each off-site treatment, storage, or disposal facility to which waste was shipped during the year; for exported shipments, the report must give the name and address of the foreign facility.

(d) The name and EPA identification number of each transporter used during the reporting year.

(e) A description, EPA hazardous waste number, DOT hazard class, and quantity of each hazardous waste shipped off-site. This information must be listed by EPA identification number of each off-site facility to which waste was shipped.

(f) The certification signed by the generator or his authorized representative.

(2) Any generator who treats, stores, or disposes of hazardous waste on-site must submit ~~an annual~~ a biennial report covering those wastes in accordance with the provisions of ~~sub-chapter (6)~~ sub-chapters 1, 6, and 7 of this chapter.

AUTHORITY: Sec. 75-10-404, 75-10-405(5) and (7), MCA
IMPLEMENTING: Sec. 75-10-405(5) and (7), MCA

16.44.425 INTERNATIONAL SHIPMENTS (1) Any person who exports a hazardous waste from Montana to a foreign country or imports hazardous waste from a foreign country into Montana must comply with the ~~provisions~~ requirements of ~~40 CFR 262.50(a), (b)(2) and (3), (e) and (d),~~ this chapter and with the special requirements of this rule. ~~The department hereby adopts and incorporates herein by reference 40 CFR 262.50(a), (b)(2) and (3), (e) and (d), 40 CFR 262.50(a),(b)(2) and (3), (e) and (d) are federal agency rules setting forth manifest and reporting requirements for importation of hazardous waste from a foreign country and exportation of a hazardous waste to a foreign country. A copy of 40 CFR 262.50(a), (b)(2) and (3), (e) and (d) may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana.~~

(2) When shipping hazardous waste outside the United States, the generator must:

(a) Notify the EPA Administrator in writing four weeks before the initial shipment of hazardous waste to each country in each calendar year;

(i) The waste must be identified by its EPA hazardous waste identification number and its DOT shipping description;

(ii) The name and address of the foreign consignee must be included in this notice;

(iii) These notices must be sent to the Office of International Activities (A-106), United States Environmental Protection Agency, Washington, D.C. 20460.

(b) Require that the foreign consignee confirm the delivery of the waste in the foreign country. A copy of the manifest signed by the foreign consignee may be used for this purpose;

(c) Meet the requirements under ARM 16.44.406 for the manifest, except that:

(i) In place of the name, address, and EPA identification number of the designated facility, the name and address of the foreign consignee must be used;

(ii) The generator must identify the point of departure from the United States through which the waste must travel before entering a foreign country.

(3) A generator must file an Exception Report, if:

(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within 45 days from the date it was accepted the initial transporter; or

(b) Within 90 days from the date the waste was accepted by the initial transporter, the generator has not received written confirmation from the foreign consignee that the hazardous waste was received.

(4) When importing hazardous waste, a person must meet all requirements of ARM 16.44.406 for the manifest except that:

(a) In place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number must be used.

(b) In place of the generator's signature on the certification statement, the U.S. importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

AUTHORITY: Sec. 75-10-404, 75-10-405(2) and (7), MCA
IMPLEMENTING: Sec. 75-10-405(2) and (7), MCA

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

(2) Before transporting the hazardous waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous waste from the generator. The transporter must return a signed copy to the generator before leaving the generator's property.

(3) The transporter must ensure that the manifest accompanies the hazardous waste.

(4) A transporter who delivers a hazardous waste to another transporter or to the designated facility must:

(a) obtain the date of delivery and the handwritten signature of that transporter or of the owner or operator of the designated facility on the manifest;

(b) retain one copy of the manifest in accordance with ARM 16.44.508; and

(c) give the remaining copies of the manifest to the accepting transporter or designated facility.

(5) The requirements of subsections (3), ~~and (4)~~ (4) and (6) of this rule do not apply to rail or water (bulk shipment) transporters if:

(a) the hazardous waste is delivered by ~~rail or~~ by water ~~bulk shipment~~ (bulk shipment) ~~water~~ to the designated facility;

(b) a shipping paper containing all the information required on the manifest, excluding the EPA identification numbers, generator certification, and signatures, accompanies the hazardous waste;

(c) the ~~delivery~~ delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper;

(d) the person delivering the hazardous waste to the initial ~~rail or~~ water (bulk shipment) transporter obtains

the date of delivery and signature of the rail or water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

(e) a copy of the shipping paper or manifest is retained by each ~~rail or~~ water (bulk shipment) transporter in accordance with ARM 16.44.508.

(6) For shipments involving rail transportation, the requirements of paragraphs (3), (4), and (5) do not apply and the following requirements do apply:

(a) When accepting hazardous waste from a non-rail transporter, the initial rail transporter must:

(i) Sign and date the manifest akcnowledging acceptance of the hazardous waste;

(ii) Return a signed copy of the manifest to the non-rail transporter;

(iii) Forward at least three copies of the manifest to:

(A) The next non-rail transporter, if any; or,

(B) The designated facility, if the shipment is delivered to that facility by rail; or

(C) The last rail transporter designed to handle the waste in the United States;

(iv) Retain one copy of the manifest and rail shipping paper in accordance with ARM 16.44.508;

(b) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) accompanies the hazardous waste at all times.

(c) When delivering hazardous waste to the designated facility, a rail transporter must:

(i) Obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

(ii) Retain a copy of the manifest or signed shipping paper in accordance with ARM 16.44.508.

(d) When delivering hazardous waste to a non-rail transporter a rail transporter must:

(i) Obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(ii) Retain a copy of the manifest in accordance with ARM 16.44.508.

(e) Before accepting hazardous waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.

~~(6)~~ (7) Transporters who transport hazardous waste out of Montana to a foreign country must indicate on the manifest the date the hazardous waste left the United States;

sign the manifest and retain one copy in accordance with ARM 16.44.508(3); and return a signed copy of the manifest to the generator.
AUTHORITY: Sec. 75-10-404, 75-10-405(5) and (7), MCA
IMPLEMENTING: Sec. 75-10-405(5) and (7), MCA

16.44.506 COMPLIANCE WITH MANIFEST (1) The transporter shall deliver the entire quantity of hazardous waste which he has accepted from a generator or a transporter to:

(a) the designated facility listed on the manifest;

(b) the alternate designated facility, if the hazardous waste cannot be delivered to the designated primary facility because an emergency prevents delivery;

(c) the next designated transporter; or

(d) the site in the foreign country designated by the generator.

(2) If the hazardous waste cannot be delivered in accordance with subsection (1) of this rule, the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.
AUTHORITY: Sec. 75-10-404, 75-10-405(5) and (7), MCA
IMPLEMENTING: Sec. 75-10-405(5) and (7), MCA

16.44.508 RECORDKEEPING (1) A transporter of hazardous waste shall keep a copy of the manifest signed by the generator, himself, and the next designated transporter or the owner or operator of the designated facility for a period of 3 years from the date the hazardous waste was accepted by the initial transporter.

(2) For shipments delivered to the designated facility by ~~rail or~~ water (bulk shipment), each ~~rail or~~ water (bulk shipment) transporter must retain a copy of a shipping paper containing all the information required in ARM 16.44.505(5)(b) for a period of 3 years from the date the hazardous waste was accepted by the initial transporter.

(3) For shipments of hazardous waste by rail within the United States:

(a) The initial rail transporter must keep a copy of the manifest and shipping paper with all the information required in ARM 16.44.505(6)(b) for a period of three years from the date the hazardous waste was accepted by the initial transporter; and

(b) The final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste was accepted by the initial transporter.

~~(3)~~ (4) A transporter who transports hazardous waste from Montana to a foreign country must keep a copy of the manifest indicating that the hazardous waste left the United

States for a period of 3 years from the date the hazardous waste was accepted by the initial transporter.

~~(4)~~ (5) The periods of retention referred to in this rule are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the department.

AUTHORITY: Sec. 75-10-404, 75-10-405(5) and (7), MCA
IMPLEMENTING: Sec. 75-10-405(5) and (7), MCA

16.44.511 HAZARDOUS WASTE DISCHARGES -- IMMEDIATE ACTION (1) In the event of a hazardous waste discharge ~~of hazardous waste~~ during transportation, the transporter must take appropriate immediate action to protect human health and the environment.

(2) If a hazardous waste discharge ~~of hazardous waste~~ occurs during transportation and the department or a local government official, acting within the scope of his official responsibilities, determines that immediate removal of the waste is necessary to protect human health or the environment, the department or local government official may authorize the removal of the waste by transporters who do not have EPA identification numbers and without the preparation of a manifest.

(3) A transporter who has discharged hazardous waste must:

(a) Give notice, if required by 49 CFR 171.15 to the National Response Center (800-424-8802 or 202-426-2675);

(b) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590; and

(c) Give notice to the department by immediately contacting the Montana hazardous materials emergency response system (449-3034).

(4) A water (bulk shipment) transporter who has discharged hazardous waste must give the same notice as required by 33 CFR 153.203 for oil and hazardous substances.

(5) The department hereby adopts and incorporates herein by reference 49 CFR 171.15 and 171.16 and 33 CFR 153.203.

(a) 49 CFR 171.15 and 171.16 are federal agency rules setting forth, respectively, telephonic and written reporting requirements for certain hazardous materials incidents including incidents involving injury or death of a person, property damage, radioactive material, or etiologic agents.

(b) 33 CFR 153.203 is a federal agency rule setting forth reporting requirements for the discharge of oil or hazardous substance from a vessel or an onshore or offshore facility.

(c) A copy of 49 CFR 171.15 and 171.16 and 33 CFR 153.203 may be obtained from the Solid Waste Management

Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana.
AUTHORITY: Sec. 75-10-404, 75-10-405(2), (5) and (7), MCA
IMPLEMENTING: Sec. 75-10-405(2), (5) and (7), MCA

16.44.601 PURPOSE The purpose of the rules of this sub-chapter is to provide temporary ~~licensure~~ permitting and standards for the operation of ~~treatment, storage and disposal facilities until final licensure rules and standards for these facilities are adopted,~~ existing hazardous waste management facilities pending final administrative disposition of a HWM permit application under sub-chapter 1 of this chapter.
AUTHORITY: Sec. 75-10-404, 75-10-405(2), (3) and (4), MCA
IMPLEMENTING: Sec. 75-10-405(2), (3) and (4), 75-10-406, MCA

16.44.602 PROHIBITIONS (1) No person may operate an existing facility which treats, stores or disposes of hazardous waste without obtaining a ~~license~~ permit under ARM 16.44.605, or Rule IV (to be codified as 16.44.104).

(2) No person may commence construction of a new facility which treats, stores or disposes of hazardous waste without obtaining a ~~license~~ permit from the department. Application for such ~~license~~ permit ~~may be made after the department has promulgated final licensure rules for hazardous waste management facilities, and~~ must be submitted 180 days before continuous, physical on-site construction begins.

(a) For the purposes of this rule, "commence construction" means either:

(i) a continuous physical, on-site construction program has begun, or

(ii) contractual obligations, which cannot be canceled or modified without substantial loss, have been entered into for construction of the facility to be completed within a reasonable time.
AUTHORITY: Sec. 75-10-404, 75-10-405(2), (3) and (4), MCA
IMPLEMENTING: Sec. 75-10-405(2), (3) and (4), 75-10-406, MCA

16.44.605 TEMPORARY ~~LICENSURE~~ PERMITS (INTERIM STATUS) A person who owns or operates an existing facility which treats, stores or disposes of a hazardous waste shall be ~~licensed~~ permitted temporarily for the treatment, storage, or disposal of that waste if:

(1) he files completed form 8700-12 with the department or has filed this form with EPA by November 19, 1980; and

(2) he submits all the information required by ~~40 CFR 122.24~~ Rule XIX (to be codified as 16.44.119) to the department or has submitted such information to EPA by November 19, 1980.

~~(a) The department hereby adopts and incorporates herein by reference 40 CFR 122.24. 40 CFR 122.24 is a federal agency rule setting forth Part A application requirements under RCRA. A copy of 40 CFR 122.24 may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana.~~

(3) Form 8700-12 and forms for submitting the information required in subsection (2) of this rule may be obtained from the department.

AUTHORITY: Sec. 75-10-404, 75-10-405(4), MCA
IMPLEMENTING: Sec. 75-10-405(4), 75-10-406, MCA

16.44.606 ~~TEMPORARY LICENSE -- EXPIRATION -- TERMINATION~~ TEMPORARY PERMIT (INTERIM STATUS) -- EXPIRATION -- TERMINATION (1) A ~~license~~ temporary permit obtained under ARM 16.44.605 shall expire upon final administrative disposition of a ~~license~~ HWM permit application.

(2) A ~~license~~ temporary permit obtained under ARM 16.44.605 may be terminated if the ~~licensee~~ permittee fails to submit, ~~as required by the final licensure rules of the department,~~ a ~~license~~ HWM permit application on time or all the information required by the ~~license~~ HWM permit application.

AUTHORITY: Sec. 75-10-404, 75-10-405(4), MCA
IMPLEMENTING: Sec. 75-10-405(4), 75-10-406, MCA

16.44.607 ~~TEMPORARY LICENSE -- TERMS~~ TEMPORARY PERMIT (INTERIM STATUS) -- TERMS Except as provided for in ARM 16.44.610, a A facility ~~licensed~~ permitted under ARM 16.44.605 may not:

(1) treat, store, or dispose of a hazardous waste not specified in the information submitted pursuant to ARM 16.44.605(2);

(2) employ processes not specified in the information submitted pursuant to ARM 16.44.605(2); or

(3) exceed the design capacities specified in the information submitted pursuant to ARM 16.44.602(2).

AUTHORITY: Sec. 75-10-405, 75-10-405(2), (3) and (4), MCA
IMPLEMENTING: Sec. 75-10-405(2), (3) and (4), 75-10-406, MCA

16.44.609 STANDARDS FOR EXISTING FACILITIES WITH TEMPORARY ~~LICENSE~~ PERMITS (INTERIM STATUS) (1) A person who receives a ~~license~~ temporary permit under 16.44.605 must comply with the standards and requirements in 40 CFR Part 265, Subparts B through and including Q.

(2) The department hereby adopts and incorporates herein by reference 40 CFR Part 265, Subparts B through and including Q, excluding Subpart H. The equivalent of Subpart H is set forth in sub-chapter 8 of this chapter. Subparts B through Q of 40 CFR Part 265 are federal agency rules setting forth general facility standards (B); requirements for preparedness and prevention (C); requirements for contingency plan and emergency procedures (D); manifest system, recordkeeping and reporting requirements (E); groundwater monitoring requirements (F); closure and post-closure requirements (G); ~~financial requirements (H),~~ requirements for use and management of containers (I) and requirements for tanks (J), surface impoundments (K), waste piles (L), land treatment (M), landfills (N), incinerators ~~(b)~~ (O), thermal treatment (P), and chemical, physical and biological treatment (Q). A copy of 40 CFR Part 265, Subparts B through and including Q, excluding Subpart H, or any portion thereof, may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana.
AUTHORITY: Sec. 75-10-404, 75-10-405(3) and (4), MCA
IMPLEMENTING: Sec. 75-10-405(3) and (4), 75-10-406, MCA

16.44.610 CHANGES DURING TEMPORARY ~~LICENSURE~~ PERMITTING (INTERIM STATUS) (1) A new hazardous waste not previously identified in the information required by ARM 16.44.605(2) may be treated, stored, or disposed of at a ~~licensed~~ permitted existing facility if the owner or operator submits to the department a revision of the information required by ARM 16.44.605(2) on the new waste prior to treatment, storage or disposal of the new waste.

(2) Increases in the design capacity of processes used at a ~~licensed~~ permitted existing facility may be made if the owner or operator submits to the department a revision of the information required by ARM 16.44.605(2) with a written justification explaining the need for the capacity increase and the department approves the capacity increase because of a lack of available treatment, storage or disposal capacity at other hazardous waste management facilities.

(3) Changes in the processes for the treatment, storage or disposal of hazardous waste may be made at a ~~licensed~~ permitted existing facility or additional processes may be added if the owner or operator submits a revision of the information required by ARM 16.44.605(2) prior to such change with a written justification explaining the need for the change and the department approves the change because:

(i) it is necessary to prevent a threat to human health or the environment because of an emergency situation, ~~or~~

(ii) it is necessary to comply with federal regulations or state or local laws.

(4) Changes in the ownership or operational control of a ~~licensed~~ permitted existing facility may be made if the new owner or operator submits a revision of the information required by ARM 16.44.605(2) no later than 90 days prior to the scheduled change. When a transfer of ownership or operational control of a facility occurs, the ~~old~~ transferring owner or operator shall comply with the requirements of ~~40 CFR Part 265, Subpart H (financial requirements), incorporated by reference in ARM 16.44.609(2),~~ sub-chapter 8 of this chapter until the new owner or operator has demonstrated to the department that it is complying with that ~~subpart~~ sub-chapter. All other duties imposed by ARM 16.44.609 are transferred effective immediately upon the date of the change of ownership or operational control of the facility. Upon demonstration to the department by the new owner or operator of compliance with ~~Subpart H,~~ sub-chapter 8 the department shall notify the ~~old~~ transferring owner or operator in writing that it no longer needs to comply with ARM 16.44.609 as of the date of demonstration.

(5) Changes may not be made to a ~~licensed~~ permitted existing facility during temporary ~~licensure~~ permitting which amount to reconstruction of the facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds fifty percent of the capital cost of a comparable entirely new facility.

AUTHORITY: Sec. 75-10-404, 75-10-405(3) and (4), MCA
IMPLEMENTING: Sec. 75-10-405(3) and (4), 75-10-406, MCA

16.44.612 EXCLUSIONS The provisions of this sub-chapter do not apply to:

(1) the owner or operator of a POTW which treats, stores or disposes of hazardous waste;

(2) the owner or operator of a refuse disposal facility licensed by the department ~~to manage solid waste~~ pursuant to sub-chapter 5, Chapter 14, Title 16, ARM, if the only hazardous waste the facility treats, stores, or disposes of is excluded from regulation under this sub-chapter by ARM 16.44.305;

(3) the owner or operator of a facility which treats or stores hazardous waste, which treatment or storage meets the criteria in ARM 16.44.306(1), except to the extent that ARM 16.44.306(2) provides otherwise;

(4) a generator accumulating waste on-site in compliance with ARM 16.44.415, except to the extent the requirements are included in ARM 16.44.415;

(5) a farmer disposing of waste pesticides from his own use in compliance with ARM 16.44.430; or

(6) the owner or operator of a ~~totally~~ "totally enclosed treatment ~~facility,~~ unit" as defined in ARM 16.44.202~~(72)~~.

(7) The owner or operator of an "elementary neutralization unit" or a "wastewater treatment unit" as defined in ARM 16.44.202;

(8)(a) Except as provided in subsection (8)(b) of this rule, a person engaged in treatment or containment activities during immediate response to a hazardous waste discharge or an imminent and substantial threat of a hazardous waste discharge.

(b) An owner or operator of a facility otherwise regulated by this sub-chapter must comply with all applicable requirements of 40 CFR Part 265, Subparts C and D.

(c) Any person who is covered by subsection (8)(a) of this rule and who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this sub-chapter for those activities;

(9) A transporter storing manifested shipments of a hazardous waste in containers meeting the requirements of RULE LIX (to be codified as ARM 16.44.410) at a transfer facility for a period of ten days or less;

(10) The addition of absorbent materials to waste in a "container", as defined in ARM 16.44.202, or the addition of waste to the absorbent material in a container, provided that these actions occur at the time that waste is first placed in the container and sections 40 CFR 265.17(b), 40 CFR 265.171, and 40 CFR 265.172 are complied with;

(11) The disposal of wastes in injection wells; however, where injection wells have associated surface facilities that treat, store or dispose of hazardous waste, such associated surface facilities are subject to the requirements of this sub-chapter.

AUTHORITY: Sec. 75-10-404, 75-10-405(1), (2) and (4), MCA
IMPLEMENTING: Sec. 75-10-405(1), (2) and (4), 75-10-406, MCA

4. The Department is proposing the updating amendments of its existing rules as part of the State's overall effort to obtain from EPA final (Phase II) authorization of the State's HWM program and delegation of the federal HWM program under RCRA. If adopted, the amended rules (in conjunction with the adoption of new rules also proposed this date and the completion by the Department of the RCRA requirements) will be submitted to EPA as the basis for federal delegation to the state of full HWM responsibility under RCRA. Since the Department's rulemaking authority under state law (Title 75, Chapter 10, Part 4, MCA) is limited to basic equivalence with federal HWM regulations,

the proposed amendments to Montana's existing rules simply mirror revisions to federal regulations made since state rules were adopted in 1980.

5. It is the Department's intention that all incorporations by reference in the foregoing rules operate to incorporate the referenced regulations and materials as those regulations and materials exist on the effective date of the foregoing amended rules of the Department.

6. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT., no later than 5:00 p.m., August 15, 1983.

7. Robert L. Solomon, Cogswell Building, Capitol Complex, Helena, MT, has been designated to preside over and conduct the hearing.

8. The authority of the Department to make the proposed amendments and the sections implemented are stated at the end of each rule.

JOHN J. DRYNAN, M.D., Director

By JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State July 1, 1983

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 46.5.1204 pertaining to payment standards for recipients of state supplemental payments.	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.5.1204 PERTAINING TO PAYMENT STANDARDS FOR RECIPIENTS OF STATE SUPPLEMENTAL PAYMENTS

TO: All Interested Persons

1. On August 5, 1983 at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the amendment of Rule 46.5.1204 pertaining to payment standards for recipients of state supplemental payments.

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

46.5.1204 PAYMENT STANDARDS (1) The department of social and rehabilitation services has set the following monthly payment standards of state supplement per client for each of the five facilities listed in ARM 46.5.1203:

(a) residential care facilities - ~~$104.00~~ $94.00.

(b) community homes for the developmentally disabled - ~~$104.00~~ $94.00.

(c) group homes for the mentally disabled - ~~$104.00~~ $94.00.

(d) foster care homes - ~~$62.75~~ $52.75.

(e) semi-independent program facilities - ~~$36.00~~ $26.00.

(2) The payments will be administered by the federal social security administration according to a state-federal agreement.

(3) A recipient must receive for personal needs a minimum amount of forty dollars ($40) total from the state supplement and the federal supplemental security income per month.

(4) The payment standards in subsection (1) are retroactively effective July 1, 1983.

AUTH: Section 53-2-201, MCA.
IMP: Section 53-2-204, MCA.

3. The 1983 Montana Legislature appropriated $807,866 for fiscal year 1984 to fund the State Supplement Program. The department had estimated that due to expanded caseloads, the program would need an appropriation of $891,794. The resulting projected deficit is $83,928 for fiscal year 1984. The Social Security Administration has determined that the State of Montana must assume financial responsibility for an estimated eighty-six (86) "State Supplement Only" cases. This

change will cost the State of Montana an estimated $10,000. The department must, due to these two factors, reduce the monthly payment standards in order to assure the continuation of the State Supplement Program for those persons eligible for receipt of the state supplement.

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 the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than August 16, 1983.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State July 1, 1983.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of rules 2.21.1301 through 2.21.1306 and 2.21.1311 relating to sexual harassment	NOTICE OF THE ADOPTION OF RULES 2.21.1301 THROUGH 2.21.1306 AND 2.21.1311 RELATING TO SEXUAL HARASSMENT

TO: All Interested Persons.

1. On March 17, 1983, the department of administration published notice of the proposed adoption of rules 2.21.1301 through 2.21.1306 and 2.21.1311 relating to sexual harassment at page 287 of the 1983 Montana Administrative Register, issue number 4.

2. The rules have been adopted with the following changes:

2.21.1303 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Sexual harassment" means any ~~deliberate or repeated~~ unsolicited comments, gestures or physical contact of a sexual nature when:

(a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals;

(c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

2.21.1304 AGENCY POLICY STATEMENT (1) - (2) Same as proposed rule.

(3) The policy statement shall be reviewed and approved by the Personnel Division, Department of Administration.

(4) Same as proposed rule.

2.21.1305 COMPLAINT PROCEDURE (1) Same as proposed rule.

(2) This procedure must be reviewed and approved by the Personnel Division, Department of Administration.

(3) The procedure shall contain at a minimum, the following steps:

(a) An employee who believes he or she has been the subject of sexual harassment must ~~immediately~~ within 10 calendar days bring the alleged act to the attention of the immediate supervisor ~~or~~, to the first level supervisor who is not involved in the alleged act~~.~~, or to the agency Equal Employment Opportunity officer.

(b) ~~The supervisor~~ Management must investigate, and respond to the complaint within 30 calendar days of notification.

(c) When a supervisor is notified of a complaint, the supervisor shall also notify the agency Equal Employment Opportunity officer, who may ~~also~~ participate in the investigation.

(d) The supervisor or the ~~EEO~~ Equal Employment Opportunity officer shall prepare a report and shall make a non-binding recommendation to the agency head as a result of the investigation.

(e) The agency head shall make the final determination ~~within 30 days after receiving the report~~ on the proposed action to be taken.

(f) The report and the agency head's decision shall be made known to the employee making the complaint, to the employee about whom the complaint is made, the division administrator(s) who supervise the employees involved and the ~~EEO~~ Equal Employment Opportunity officer. Otherwise, the report and decision made as a result of the internal investigation shall remain confidential.

(4) Agency heads shall post the complaint procedure in each bureau ~~and in each location~~ where the agency conducts business.

(3) A public hearing on the proposed rules was conducted May 10, 1983. The following comments and testimony were received during the comment period and at the hearing.

COMMENT: Rule 2.21.1302 and Rule 2.21.1306 should state that sexual harassment is a violation of state and federal law and Rule VI should also point our possible recourse for an employee through the Human Rights Commission.
RESPONSE: These rules are designed to make acts of sexual harassment a violation of state policy, in addition to any other laws and regulations, and to provide an internal complaint procedure for state employees to use to attempt to resolve complaints, if they arise. It is not the purpose of these rules, nor would it be appropriate to attempt, to advise employees on all possible rights they may wish to exercise, because these rules do not establish those rights.

COMMENT: A total of 30 comments was received on Rule 2.21.1303 Definition. Each comment objected to some of all of the proposed definition. In paragraph (1) the phrase "deliberate or repeated" was opposed. All persons commenting recommended including the third part of the federal definition of sexual harassment covering environment.
RESPONSE: The department has deleted the phrase "deliberate or repeated" and has added the third part of the federal definition.

COMMENT: In Rule 2.21.1304 Policy Statement, the rule should require that an agency specify the name and location of the agency Equal Employment Opportunity officer.
RESPONSE: Policy statements are designed to be broad, general statements of an agency's goals or purpose. Requiring the name and location of the EEO officer, which is subject to change could require frequent revision of the policy statement. Attaching this information to the policy statement would be a more appropriate method of conveying this information to employees.

COMMENT: A number of issues were raised regarding the Rule 2.21.1305 Complaint Procedure. They will be dealt with separately, also with the department's response. A number of those commenting protested the fact that the proposed rules require the person alleging harassment to "immediately" report the incident, while management would have a total of 60 days to investigate and take action.
RESPONSE: The department has modified "immediately" to read "10 calendar days" and has reduced the total time for investigation and response to 30 calendar days.

COMMENT: Adding the agency Equal Employment Opportunity Officer as a person who could initially receive a complaint of sexual harassment was suggested.
RESPONSE: The department has modified the rule as suggested.

COMMENT: One comment suggested establishing a review body to investigate and make determinations on the merits of a complaint when the accused harasser feels discipline has been unfair; the employee making the complaint is dissatisfied with the agency action, or the complaint is brought against the immediate supervisor or person who otherwise would investigate the complaint.
RESPONSE: Mechanisms already exist to address the issues raised here. If the accused harasser feels discipline is unfair, he or she may file a grievance. If the victim is dissatisfied, he or she can file a complaint with the Human Rights Commission. The rule will be modified, as indicated in the previous comment, to allow initial complaints to be made to the agency EEO officer.

COMMENT: Two comments questioned whether the confidentiality requirements concerning a report and recommendation were violations of the right to know provisions of the state Constitution and state law.
RESPONSE: Because the results of an investigation may lead to disciplinary action against an employee and disciplinary actions are confidential, as provided in the Employee Record Keeping policy, 2.21.6601 et.seq. ARM, the report of the investigation should also remain confidential.

COMMENT: The agency should have discretion in dissemination of the complaint procedure.
RESPONSE: The department has modified the rule to require dissemination at least in each bureau.

COMMENT: Several comments recommended incorporating parts (c) through (g) of the Federal sexual harassment guidelines into the complaint procedure to give more guidance to agencies in investigating complaints.
RESPONSE: Requiring agencies to use the federal guidelines in investigating complaints is too restrictive, although they may be used as guidance.

COMMENT: Several comments recommended addressing the issue of harassment by clients or non-employees by modifying the definition of sexual harassment to prevent "intimidating, hostile or offensive working environment." This gives management the tools to deal with non-employees.
RESPONSE: The rule has been modified to include this provision

COMMENT: Complaints of sexual harassment should be in writing, listing specific allegations.
RESPONSE: Requiring the initial filing in writing of complaints has the effect of discouraging some persons from making the complaint. While as part of its complaint procedure an agency may require written complaints, the purpose of this procedure is to attempt to resolve problems at the lowest management level and informally if possible.

COMMENT: Employees making false allegations of sexual harassment should be made subject to discipline under this policy.
RESPONSE: Any employee making false allegations on any subject, including sexual harassment, would be subject to disciplinary action under the discipline handling policy, 2.21.6501 et.seq. ARM.

COMMENT: Is there liability to an investigator and agencies concerning the investigation and final decision?
RESPONSE: If an agency fails to investigate a complaint or the investigation is deficient in some way, the employee has recourse, including mechanisms much as the grievance policy or a complaint to the Human Rights Commission. An agency already is in a potential liability situation under federal rules, if it fails to take action regarding sexual harassment complaints.

COMMENT: Can an agency adopt an enforceable policy without making it a rule?
RESPONSE: The department is empowered in 2-18-102, MCA and under 2.21.1203 ARM to delegate personnel policy-making authority to agencies. These rules delegate this authority for sexual harassment. Under the authority in 2-15-112 (f) and 2-4-103 (10), MCA, an agency may adopt an enforceable policy without going through the formal rules adoption process, if it is limited to the internal management of the agency.

COMMENT: The rules should refer to training on sexual harassment prevention.
RESPONSE: The Personnel Division has provided training, as required by Executive Order 7-82, to more than 3,000 persons to date and some agencies are also providing internal training. Training of all employees is not required by the executive order. Promotion of the training via other means has been successful; requiring it by rule would not be appropriate.

COMMENT: The department of administration is not the appropriate agency to define sexual harassment in a rule-making proceeding.
RESPONSE: At the time these rules were proposed for adoption, no other state agency has taken direct action to define sexual harassment for the state as an employer. The Human Rights Commission now has adopted by reference the federal definition and the state's rules will be modified as indicated to more closely follow the federal definition.

The Department of Administration is statutorily responsible for adopting rules covering the personnel policies and practices of state agencies. This is a process of an employer adopting policies to govern its own operation. No other agency has this statutory responsibility for personnel management in state agencies. The rules are not intended to enforce federal or state law or to act in place of the compliance agency.

By: _____
Morris L. Brusett, Director
Department of Administration

Certified to the Secretary of State June 28, 1983

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of amendment of rule 10.6.122, concerning appellate procedure and notice of appeal for cases of school controversy	)))))	NOTICE OF AMENDMENT OF RULE 10.6.122

TO: All Interested Persons:

1. On May 26, 1983 the superintendent of public instruction published notice of proposed amendment of rule 10.6.122 concerning appellate procedure and notice of appeal for cases of school controversy at page 522 of the 1983 Montana Administrative Register, issue number 10.

2. The superintendent has amended the rule as proposed.

3. No comments or testimony were received.

ED ARGENBRIGHT, SUPERINTENDENT
OFFICE OF PUBLIC INSTRUCTION

Certified to the Secretary of State, July 1, 1983.

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of rule 16.16.803, establishing a fee schedule for subdivision review	))))	NOTICE OF THE AMENDMENT OF RULE ARM 16.16.803 (Fee Schedules)

TO: All Interested Persons

1. On May 26, 1983, the department published notice of proposed amendment of rule 16.16.803 concerning fees for subdivision review at page 535 of the 1983 Montana Administrative Register, issue number 10.

2. The department has amended the rule as proposed.

3. No comments or testimony were received.

JOHN J. DRYNAN, M.D., Director

By JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State July 1, 1983

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of rules 16.28.701, definitions; 16.28.702, requirements for unconditional enrollment; 16.28.703, documentation of immunization status required of those enrolling for the first time prior to August 1, 1980; 16.28.704, documentation required of those enrolling for the first time after July 31, 1980, for the 1980-1981 school year; 16.28.705, documentation required of persons enrolling for the first time after July 31, 1981; 16.28.706, requirements for conditional enrollment; 16.28.707, medical exemptions; 16.28.708, religious or personal exemption; and 16.28.714, non-compliance report	NOTICE OF THE AMENDMENT OF RULES ARM 16.28.701, 16.28.702, 16.28.703, 16.28.704, 16.28.705, 16.28.706, 16.28.707, 16.28.708, and 16.28.714 (School Immunization)

TO: All Interested Persons

1. On May 26, 1983, the department published notice of proposed amendments of rules ARM 16.28.701, 16.28.702, 16.28.703, 16.28.704, 16.28.705, 16.28.706, 16.28.707, 16.28.708, and 16.28.714 concerning school immunization requirements at page 527 of the 1983 Montana Administrative Register, issue number 10.

2. The department has amended the rules as proposed.

3. No comments or testimony were received.

JOHN J. DRYNAN, M.D., Director

By JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State July 1, 1983

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the Matter of the Amendment of Rules 23.3.119, 23.3.121, 23.3.125, 23.3.203, 23.3.204, 23.3.209 23.3.211 and 23.3.212 Concerning Vision Standards, Road Signs, Rules and Incomplete Driving Examination, Eligibility for Driver Rehabilitation Program, Participation in the Driver Rehabilitation Program, Withdrawal of Consent for a Minor Medical Conditions Affecting Driver Licenses, and Alteration of Drivers' Licenses.	NOTICE OF AMENDMENT OF RULES 23.3.119 23.3.121, 23.3.125, 23.3.203, 23.3.204, 23.3.209, 23.3.211, and 23.3.212

TO: All Interested Persons

1. On April 28, 1983, the Department of Justice published notice of proposed amendments of rules concerning vision standards, road signs and road rules, incomplete driving examinations, eligibility for Driver Rehabilitation Program, participation in the Driver Rehabilitation Program, withdrawal of consent for a minor, medical conditions affecting drivers' licenses, and alteration of drivers' licenses at pages 323 through 328 of the Montana Administrative Register, Issue No. 8.

2. The agency has adopted the rule as proposed.

3. Oral comments were received from the staff of the Administrative Code Committee questioning the reasons given for the proposed amendments. The Committee wanted more specific reasons stated for the amendments of the rules. The amendments to rule 23.3.119 are proposed to adequately state the vision standards required by the Division for issuance of a drivers' license. The amendments to rule 23.3.121 are proposed to set out the passing test scores for the combined operator/signs test. The amendments to rule 23.3.125 are proposed to set out standards for incomplete examinations. The amendments to rules 23.3.203 and 23.3.204 are proposed to adequately set out requirements for admission to and participation in the Driver Rehabilitation Program. The amendments to rule 23.3.209 are proposed to inform the public of the Division's action upon withdrawal of consent for a

minor. The amendments to rule 23.3.211 are proposed to set out reporting requirements as to medical treatment for heart ailments. The amendments to rule 23.3.212 are proposed to inform the public that any alteration of a driver license may result in a suspension.

4. No other comments were received.

DATED this 20th day of June, 1983.

MIKE GREELY
Attorney General

Certified to the Secretary of State, June 20th, 1983.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In The Matter of the Amendment of Rules 23.3.131, 23.3.141, and 23.3.142, Concerning proof of name and date of birth, military persons and dishonored checks.	NOTICE OF AMENDMENT OF RULES 23.3.131, 23.3.141 and 23.3.142

TO: All Interested Persons

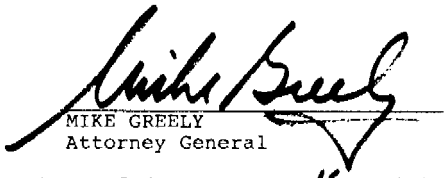
1. On May 12, 1983, the Department of Justice published notice of proposed amendments of rules concerning the proof required for name and date of birth for application for a duplicate drivers' license; the procedure for drivers' licenses for military persons, and the handling of dishonored checks at pages 395 through 398 of the 1983 Montana Administrative Register, Issue No. 9.

2. The agency has adopted the rule as proposed.

3. Oral comments were received from the staff of the Administrative Code Committee questioning the reasons given for the proposed amendments. The Committee wanted more specific reasons stated for the amendments of the rules. The amendments to Rule 23.3.131 are proposed to require adequate proof of name, and date of birth when applying for a duplicate drivers' license to eliminate wrongful issuance of duplicate licenses and to indicate the department's change in policy from mandatory to permissive on the use of the social security number. The amendments to rule 23.3.141 are proposed to clearly set out the procedure whereby a military person on active duty may ensure the continued validity of his driver's license and to define active duty. Rule 23.3.142 is amended to provide for a method of handling dishonored checks given for both the driver's license fee and the Driver Rehabilitation Program.

4. No other comments were received.

DATED this 16th day of June, 1983.



MIKE GREELY
Attorney General

Certified to the Secretary of State, June 16, 1983.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 24.9.225, relating to the dismissal of complaints in which the Commission staff has found no cause	))))	NOTICE OF THE AMENDMENT OF RULE 24.9.225 (DISMISSAL OF NO CAUSE COMPLAINT)

TO: All Interested Persons:

1. On May 12, 1983, the Human Rights Commission published a notice of the proposed amendment of rule 24.9.225 relating to the dismissal of complaints in which the Commission staff has found, after investigation, that no cause exists to credit the allegations of the complaint at page 399 of the 1983 Montana Administrative Register, issue number 9.

2. The Commission has amended rule as proposed.

3. No comments or testimony were received.

4. The authority of the Commission to make the amendment is based on Section 49-2-204, MCA, and section 2 of Chapter 540, 1983 Laws of Montana. The rule as amended implements sections 49-2-504, 49-2-505, and 49-2-507, MCA, and sections 8, 9, and 11 of Chapter 540, 1983 Laws of Montana.

In the matter of the adoption of Rules governing the issuance of right to sue letters by the Commission	))))	NOTICE OF THE ADOPTION OF RULES GOVERNING THE ISSUANCE OF RIGHT TO SUE LETTERS

TO: All Interested Persons:

1. On May 12, 1983, the Human Rights Commission proposed adoption of rules governing the issuance of right to sue letters in discrimination cases pending before the Commission at page 401 of the Montana Administrative Register, issue number 9.

2. The Commission has adopted Rule I (ARM 24.9.262) and Rule II (ARM 24.9.263) as proposed. The Commission has adopted Rule III with the following changes:

24.9.264. EFFECT OF ISSUANCE OF RIGHT TO SUE LETTER. (1) The issuance of a right to sue letter pursuant to 24.9.262 shall constitute the completion of the administrative process with regard to any complaint of discrimination in which a right to sue letter is issued.

(2) If the court later finds that it does not have jurisdiction over the case in which the right to sue letter was issued because of the improper issuance of the letter, then the charging party may apply to reopen the complaint before the Commission.

3. No comments or testimony were received. The Commission added paragraph 2 to Rule III (ARM 24.9.264) to cover a situation not considered at the notice stage so that the rights of the charging party to receive a hearing will not be jeopardized if the Commission erroneously issues a right to sue letter.

4. The authority of the Commission to adopt the rules is based on section 49-2-204, MCA, and section 2 of Chapter 540, 1983 Laws of Montana. The rules as adopted implement section 1 of Chapter 505, 1983 Laws of Montana and section 13 of Chapter 540, 1983 Laws of Montana.

HUMAN RIGHTS COMMISSION
MARGERY H. BROWN, CHAIR

By: Anne L. MacIntyre
ANNE L. MacINTYRE
ADMINISTRATOR/ATTORNEY
HUMAN RIGHTS DIVISION

Certified to the Secretary of State July 1, 1983.

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

In the matter of the amendments of Rule 24.11.409, concerning Fraudulent Claims for unemployment compensation	))))	NOTICE OF AMENDMENTS TO RULE 24.11.409

TO: All Interested Persons:

1. On May 26, 1983, the Department of Labor and Industry published notice of a Proposed Amendment to Rule 24.11.409, concerning fraudulent claims for unemployment compensation at Page 552 of the Montana Administrative Register, Issue Number 10.

2. The Department has adopted the rule with corrections of typographical errors as follows:

24.11.409 IMPOSITION OF PENALTIES (1) The phrase "false statement or representation" as set forth in Sections 39-51-3201 and 39-51-3202 MCA means ~~something more than merely an untrue or erroneous statement, rather it implies that the statement made is designedly untrue and deceitful, and made with the intention to deceive the division~~ a statement that is made with the purpose to mislead and known by the MAKER to be untrue.

(2) No administrative penalty may ~~under any circumstances~~ be imposed based upon a mistake or a statement not meeting the criteria as set forth in Subsection (1) herein.

~~(3) Prior to an administrative penalty being imposed, there first must be a determination based on evidence that a false statement or representation has been made and such determination will be become operative until the claimant has been given a reasonable opportunity for an ex-parte hearing for the purpose of affording said claimant an opportunity to refute the preliminary determination if, in fact, such refutation exists.~~

~~(4) Following a preliminary determination that a false statement or representation has been made, the following will apply:~~

~~(a) Criminal Action. On cases being considered for a criminal action, the claimant shall be given three working days notice by the local office by both telephone and certified mail where possible, and by certified mail alone if no telephone exists, of the time, place, and purpose of such ex-parte hearing.~~

~~(b) Administrative Action. On cases being considered for administrative penalty and overpayment only, the claimant shall be given seven working days notice by regular mail letter from the central office.~~

~~(5) Should claimant fail to appear at time and place designated for ex-parte hearing:~~

~~(a) CriminalAction. On cases being considered for criminal action, should claimant fail to appear at the time and place designated for ex-parte hearing or fail to request a continuance for good cause, the preliminary determination will become effective as of original date of determination, that is three working days following notice to claimant (See (4)).~~

~~(b) Administrative Action. On cases being considered for administrative action, should claimant fail to respond to the notice by letter from the Supervisor of Benefits or fail to request a continuance for good cause, the preliminary determination will become effective as of original date of determination, that is seven working days following notice to claimant (See (4)).~~

~~(6) Where claimant appears at the local office and offers evidence:~~

~~(a) Criminal Action. On cases being considered for criminal action, where claimant appears at the local office and offers evidence, or submits evidence by mail or by telephone, such evidence of whatever nature, will be recorded and immediately forwarded to the Claims Investigation Section for consideration and determination. Should the Claims Investigator concur in the preliminary determination, such preliminary determination will be retroactive to the date of origin and constitute a final decision, however, should the claimant complete a form UI-404 statement, the date of determination shall then be the date such statement is completed. Should the Claims Investigator determine that substantial and convincing evidence does not exist to sustain the preliminary determination, the Claims Investigator shall forthwith set aside the preliminary determination.~~

~~(b) Administrative Action. On cases being considered for administrative action, where the claimant responds by letter, telephone, or to the local office, such evidence of whatever nature, will be recorded and immediately forwarded to the Supervisor of Benefits for consideration and determination. Should hte Supervisor of Benefits concur in the preliminary determination, such preliminary determination will be retroactive to the date of origin and constitute a final decision. Should the Supervisor of Benefits determine that substantial and convincing evidence does not exist to sustain the preliminary determination, the Supervisor of Benefits shall forthwith set aside the preliminary determination.~~

~~(7) The claimant shall be notified of the decision of the central office and if dissatisfied with such decision may appeal said decision in accordance with the Unemployment Laws of this state and the Administrative Procedure Act.~~

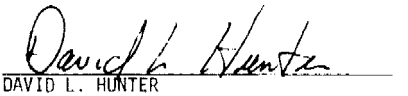
~~(8) Where a person has been convicted of having made a false statement or representation either by guilty plea or following trial, this division will not be required to hold an ex-parte hearing prior to imposing its administrative hearing as referred to in Rules 1 through 7 above.~~

(3) The Unemployment Insurance Claims Investigation Bureau is responsible for making preliminary investigations where violations of 39-51-3201 or 39-51-3202 are suspected.

(4) Upon completion of the preliminary investigation, the claimant shall be served with notice by mail that he is to appear in person at a Job Service Office or respond by letter to a Job Service Office within seven days of the receipt of said notice to respond to the findings of the preliminary investigation. The notice will explain that the matter may be turned over to the County Attorney for criminal prosecution. All information obtained in the preliminary investigation will be enclosed with the notice. Should claimant respond as requested, a decision will be made by the Claims Investigation Bureau whether to refer the case for criminal prosecution. Should the claimant fail to respond to the notice or fail to request a continuance for good cause, a decision whether to refer the case for criminal prosecution will be made based on the information available.

(5) Administrative penalties shall be imposed in accordance with 39-51-3201. The claimant shall be notified of the determination and his right to appeal.

(6) Cases may be referred for criminal prosecution only if a preponderance of the evidence obtained through the preliminary investigation and the claimant's response indicate 39-51-3202 has been violated.



DAVID L. HUNTER
Commissioner
Department of Labor and Industry

Certified to Secretary of State June 30, 1983

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rule 42.28.302, relating to the expiration of the special fuel user's permit.	NOTICE OF THE AMENDMENT OF Rule 42.28.302, relating to the expiration of the special fuel user's permit.

TO: All Interested Persons:

1. On May 26, 1983, the Department of Revenue published notice of the proposed amendment of rule 42.28.302 relating to the expiration of the special fuel user's permit at pages 555 to 556 of the 1983 Montana Administrative Register, issue number 10.

2. The Department of Revenue has amended the rule as proposed.

3. No comments or testimony were received.

4. The authority for the rule is §15-70-104, MCA, and the rule implements §15-70-302, MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 07/01/83.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the repeal of Rules 46.4.129 and 46.5.120; the adoption of Rules 46.4.128, 46.4.201, 46.4.202, 46.4.203, 46.4.204, 46.4.205, 46.4.206, 46.5.121, 46.5.122, 46.5.123, 46.5.124, 46.12.1301, 46.12.1302, 46.12.1303, 46.12.1304, 46.12.1401, 46.12.1402, 46.12.1403, 46.12.1404, 46.12.1405, 46.12.1406, 46.12.1407, 46.12.1408, 46.12.1409, 46.12.1410, 46.12.1411, 46.12.1412, 46.12.1413, 46.12.1425, 46.12.1426, 46.12.1427, 46.12.1428, 46.12.1429, 46.12.1430, 46.12.1431, 46.12.1432, 46.12.1433, 46.12.1434, 46.12.1435, 46.12.1436, 46.12.1437, 46.12.1438, 46.12.1439, 46.12.1440, 46.12.1441, 46.12.1442, 46.12.1443, 46.12.1444, 46.12.1445, 46.12.1446, 46.12.1447, 46.12.1448, 46.12.1449, 46.12.1450, 46.12.1451, 46.12.1452, 46.12.1453, 46.12.1454, 46.12.1455, 46.12.1456, 46.12.1457, 46.12.1458; and the amendment of Rules 46.4.127, 46.12.502, 46.12.550, 46.12.552, 46.12.555, 46.12.556, 46.12.1101, 46.12.1102, 46.12.1103, 46.12.3603, 46.12.3804, and 46.12.3805 pertaining to the implementation of the program for home and community-based medicaid services for elderly, physically disabled and developmentally disabled persons.	NOTICE OF THE REPEAL OF RULES 46.4.129 AND 46.5.120; THE ADOPTION OF RULES 46.4.128, 46.4.201, 46.4.202, 46.4.203, 46.4.204, 46.4.205, 46.4.206, 46.5.121, 46.5.122, 46.5.123, 46.5.124, 46.12.1301, 46.12.1302, 46.12.1303, 46.12.1304, 46.12.1401, 46.12.1402, 46.12.1403, 46.12.1404, 46.12.1405, 46.12.1406, 46.12.1407, 46.12.1408, 46.12.1409, 46.12.1410, 46.12.1411, 46.12.1412, 46.12.1413, 46.12.1425, 46.12.1426, 46.12.1427, 46.12.1428, 46.12.1429, 46.12.1430, 46.12.1431, 46.12.1432, 46.12.1433, 46.12.1434, 46.12.1435, 46.12.1436, 46.12.1437, 46.12.1438, 46.12.1439, 46.12.1440, 46.12.1441, 46.12.1442, 46.12.1443, 46.12.1444, 46.12.1445, 46.12.1446, 46.12.1447, 46.12.1448, 46.12.1449, 46.12.1450, 46.12.1451, 46.12.1452, 46.12.1453, 46.12.1454, 46.12.1455, 46.12.1456, 46.12.1457, 46.12.1458; AND THE AMENDMENT OF RULES 46.4.127, 46.12.502, 46.12.550, 46.12.552, 46.12.555, 46.12.556, 46.12.1101, 46.12.1102, 46.12.1103, 46.12.3603, 46.12.3804, AND 46.12.3805 PERTAINING TO THE IMPLEMENTATION OF THE PROGRAM FOR HOME AND COMMUNITY-BASED MEDICAID SERVICES FOR ELDERLY, PHYSICALLY DISABLED AND DEVELOPMENTALLY DISABLED PERSONS

TO: All Interested Persons

1. On May 26, 1983, the Department of Social and Rehabilitation Services published notice of the proposed repeal of Rules 46.4.129 and 46.5.120; the adoption of rules 46.4.128, 46.4.201, 46.4.202, 46.4.203, 46.4.204, 46.4.205, 46.4.206, 46.5.121, 46.5.122, 46.5.123, 46.5.124, 46.12.1301, 46.12.1302, 46.12.1303, 46.12.1304, 46.12.1401, 46.12.1402, 46.12.1403, 46.12.1404, 46.12.1405, 46.12.1406, 46.12.1407, 46.12.1408, 46.12.1409, 46.12.1410, 46.12.1411, 46.12.1412, 46.12.1413, 46.12.1425, 46.12.1426, 46.12.1427, 46.12.1428, 46.12.1429, 46.12.1430, 46.12.1431, 46.12.1432, 46.12.1433, 46.12.1434, 46.12.1435, 46.12.1436, 46.12.1437, 46.12.1438, 46.12.1439, 46.12.1440, 46.12.1441, 46.12.1442, 46.12.1443, 46.12.1444, 46.12.1445, 46.12.1446, 46.12.1447, 46.12.1448, 46.12.1449, 46.12.1450, 46.12.1451, 46.12.1452, 46.12.1453, 46.12.1454, 46.12.1455, 46.12.1456, 46.12.1457, 46.12.1458; and the amendment of Rules 46.4.127, 46.12.502, 46.12.550, 46.12.552, 46.12.555, 46.12.556, 46.12.1101, 46.12.1102, 46.12.1103, 46.12.3603, 46.12.3804, and 46.12.3805 pertaining to the implementation of the program for home and community-based medicaid services for elderly, physically disabled and developmentally disabled persons at page 557 of the Montana Administrative Register, issue number 10.

2. The Department has repealed the rules as proposed.

The authority of the Department to repeal the rules is based upon 53-5-205, MCA.

3. The Department has adopted Rules 46.4.128, FOOD DISTRIBUTION RATIOS; 46.4.201, NUTRITION SERVICES, ELIGIBILITY; 46.4.202, NUTRITION SERVICES, DEFINITIONS; 46.4.203, NUTRITION SERVICES, FOOD REQUIREMENTS; 46.4.204, NUTRITION SERVICES, GENERAL PROVIDER REQUIREMENTS; 46.5.121, HOME ATTENDANT SERVICES, DEFINITION; 46.5.122, HOME ATTENDANT SERVICES, ELIGIBILITY; 46.5.123, HOME ATTENDANT SERVICES, SERVICES AVAILABLE; 46.5.124, TERMINATION OF HOME ATTENDANT SERVICES; 46.12.1401, HOME AND COMMUNITY-BASED SERVICES PROGRAM, IMPLEMENTATION SCHEDULE; 46.12.1408, CASE MANAGEMENT SERVICES, REIMBURSEMENT; 46.12.1429, PERSONAL CARE ATTENDANT SERVICES, REQUIREMENTS; 46.12.1430, PERSONAL CARE ATTENDANT SERVICES, REIMBURSEMENT; 46.12.1431, ADULT DAY CARE SERVICES, DEFINITIONS; 46.12.1433, ADULT DAY CARE SERVICES, REIMBURSEMENT; 46.12.1437, HABILITATION SERVICES, REIMBURSEMENT; 46.12.1439, RESPITE CARE, REQUIREMENTS; 46.12.1441, OUTPATIENT OCCUPATIONAL THERAPY SERVICES, DEFINITION; 46.12.1442, OUTPATIENT OCCUPATIONAL THERAPY SERVICES, REQUIREMENTS; 46.12.1443, OUTPATIENT OCCUPATIONAL THERAPY SERVICES, REIMBURSEMENT; 46.12.1444, OUTPATIENT PHYSICAL THERAPY SERVICES, DEFINITION; 46.12.1445, OUTPATIENT PHYSICAL THERAPY SERVICES,

REQUIREMENTS; 46.12.1446, OUTPATIENT PHYSICAL THERAPY SERVICES, REIMBURSEMENT; 46.12.1447, SPEECH PATHOLOGY AND AUDIOLOGY SERVICES, DEFINITION; 46.12.1448, SPEECH PATHOLOGY AND AUDIOLOGY SERVICES, REQUIREMENTS; 46.12.1449, SPEECH PATHOLOGY AND AUDIOLOGY SERVICES, REIMBURSEMENT; 46.12.1450, MEDICAL ALERT AND MONITORING/ENVIRONMENTAL MODIFICATIONS, DEFINITIONS; 46.12.1451, MEDICAL ALERT AND MONITORING/ENVIRONMENTAL MODIFICATIONS, REQUIREMENTS; 46.12.1452, MEDICAL ALERT AND MONITORING/ENVIRONMENTAL MODIFICATIONS, REIMBURSEMENT; 46.12.1453, TRANSPORTATION SERVICES, DEFINITION; and 46.12.1454, TRANSPORTATION SERVICES, REQUIREMENTS as proposed.

The authority of the Department to adopt the above rules is based upon Sections 53-2-201, 53-5-205, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rules implement Sections 53-2-201, 53-5-205, 53-6-101, 53-6-111, 53-6-131, 53-6-141, MCA and HB 424, Ch. 516, L. 1983.

4. The Department has amended Rules 46.12.550, 46.12.552, 46.12.555, 46.12.556, 46.12.1101, and 46.12.1103 as proposed.

The authority of the Department to amend the above rules is based upon Sections 53-2-205, 53-6-113, and HB 424, Ch. 516, L. 1983 and the rules implement Sections 53-2-205, 53-6-101, 53-6-111, 53-6-131, 53-6-141 and HB 424, Ch. 516, L. 1983.

5. The Department has adopted the below mentioned rules as proposed with the following changes:

46.4.205 ~~RULE VI~~ CONGREGATE NUTRITION SERVICES, PROVIDER REQUIREMENTS Subsections (1) through (1)(e) remain as proposed.

(f) at least semi-annual review of the menus used and when the menus are completely changed by a registered dietician, to assure that compliance with subsection (3) of ~~RULE IV~~ ARM 46.4.203 is met. It is recommended that a cycle menu be used to assure such compliance;

(g) that development and analysis of menus be the responsibility of a qualified dietician/nutritionist; and

(h) that menus and menu analyses be maintained for audit purposes on file for three (3) years.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.4.206 ~~RULE-VII~~ HOME DELIVERED NUTRITION SERVICES, PROVIDER REQUIREMENTS Subsections (1) through (1)(c) remain as proposed.

(d) where feasible and appropriate, make arrangements for the availability of meals to older persons in weather-related emergencies; and

(e) make at least an annual ~~quarterly~~ written evaluation of each recipient in order to re-evaluate the need for the continuation of home delivered meals~~;--and~~.

~~(f)--provide--a--standard--procedure--for--assessing--the recipient's-need-for-other-in-home-services-beyond-the-meal;~~

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1402 ~~RULE-XIII~~ LIMITING ENROLLMENT ON BASIS OF AVAILABLE FUNDS (1) For FY 84, enrollment in the home and community-based program at any point in time is limited to 360 elderly persons, 50 physically disabled persons, and 100 developmentally disabled persons. For FY 85, enrollment in the program at any point in time is limited to 360 elderly persons, 50 physically disabled persons, and 150 developmentally disabled persons. Enrollment will be on a first-come-first-served basis~~;~~ for elderly and physically disabled persons. For developmentally disabled persons, priority for enrollment will be given to those persons determined by the department or its designee to be most in need of services.

Subsections (2) through (3)(e) remain as proposed.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1403 ~~RULE-XIV~~ INDIVIDUALS WHO MAY BE SERVED Subsections (1) through (1)(b) remain as proposed.

(c) for SNF and ICF levels of care, are under the direction and care of a physician, who has prescribed long term care for the person; for ICF/MR level of care, are under the direction and care of an interdisciplinary team as defined in ARM 46.8.102;

(d) require the level of care of an SNF, ICF or ICF/MR, as determined by the preadmission screening as provided for in ~~Rules--XIX,--XX,--and--XXI~~ ARM 46.12.1301, 46.12.1302, and 46.12.1303;

(e) reside in the service areas specified in ~~Rule-XII~~ ARM 46.12.1401;

(f) do not reside in a hospital or long term care facility as defined in 50-5-101(20), MCA; and

(g) have needs that can be met through the home and community-based services program at a cost not to exceed the maximum amount allowed in accordance with ~~Rule--XXII~~ ARM 46.12.1411.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1404 ~~RULE XV~~ HOME AND COMMUNITY-BASED SERVICES, DEFINED (1) The following services may be provided under the home and community-based services program:

(a) case management services, as defined in ~~Rule--XVII~~ ARM 46.12.1406;

(b) homemaker services, as defined in ~~Rule--XXV~~ ARM 46.12.1425;

(c) personal care attendant services, as defined in ~~Rule--XXVIII~~ ARM 46.12.1428;

(d) adult day services, as defined in ~~Rule--XXXI~~ ARM 46.12.1431;

(e) habilitation services, as defined in ~~Rule--XXXV~~ ARM 46.12.1435;

(f) respite care services, as defined in ~~Rule--XXXVIII~~ ARM 46.12.1438;

(g) medical alert and monitoring systems, as defined in ~~Rule--L~~ ARM 46.12.1450;

(h) nutrition services, as defined in ~~Rule--LVI~~ ARM 46.12.1456;

(i) environmental modifications/adaptive equipment, as defined in ~~Rule--L~~ ARM 46.12.1450;

(j) transportation services, as defined in ~~Rule--LIII~~ ARM 46.12.1453;

(k) outpatient physical therapy services, as defined in ~~Rule--XLIV~~ ARM 46.12.1444;

(l) outpatient occupational therapy services, as defined in ~~Rule--XLI~~ ARM 46.12.1441; and

(m) speech pathology and audiology services, as defined in ~~Rule--XLVII~~ ARM 46.12.1446.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1405 ~~RULE XVI~~ GENERAL REQUIREMENTS Subsection (1) remains as proposed.

(2) All providers of service shall meet the requirements contained in ARM 46.12.301 through 46.12.308.

(3) Services may be provided only when indicated in an individual plan of care as defined in ~~Rules XX~~ ARM 46.12.1409 or ~~XXI~~ 46.12.1410.

(4) All facilities providing services must meet all applicable fire and safety standards in order to receive reimbursement under the home and community-based services program.

~~(5) All providers must have and implement such fiscal and personnel management policies as the department directs.~~

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1406 ~~RULE XVII~~ CASE MANAGEMENT SERVICES, DEFINITION (1) For developmentally disabled persons, case management services consist of:

(a) developing individual plans of care as defined in ~~Rule XXI~~ ARM 46.12.1410;

Subsections (1)(b) through (1)(e) remain as proposed.

(2) For elderly persons and physically disabled persons, case management services consist of:

(a) developing individual plans of care as defined in ~~Rule XX~~ ARM 46.12.1409 with the recipient's and attending physician's involvement;

Subsections (2)(b) through (2)(f) remain as proposed.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1407 ~~RULE XVIII~~ CASE MANAGEMENT SERVICES, REQUIREMENTS (1) Case management services may be provided only by department personnel or by providers under contract with the department.

(2) For developmentally disabled persons, the case manager must:

(a) meet the requirements for certification ~~of~~ as a qualified mental retardation professional as contained in ~~Rule XXII~~ ARM 46.12.1304;

(b) ~~function in a manner which is administratively separate from providers under contract for direct service; and~~ for the purposes of determining services to be received by a recipient, function in a manner which is administratively separate from individuals or entities directly responsible by contract for the provision of direct care services, and

(c) when under contract with the department, serve a ~~maximum~~ caseload of no more than 40 persons~~;~~ unless approval is received from the department for a larger caseload.

Subsections (3) through (3)(c) remain as proposed.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1409 ~~RULE-XX~~ INDIVIDUAL PLANS OF CARE FOR ELDERLY AND PHYSICALLY DISABLED PERSONS Subsections (1) through (7)(b) remain as proposed.

(c) feasibility of service provision, including cost-effectiveness of plan as provided for in ~~Rule--XXII~~ ARM 46.12.1411.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1410 ~~RULE-XXI~~ INDIVIDUAL PLANS OF CARE FOR DEVELOPMENTALLY DISABLED PERSONS (1) Individual plans of care for developmentally disabled persons must conform with ARM 46.8.105~~,~~ or alternative procedures approved by the department, with the following additions:

(a) ~~The recipient's attending physician must certify in writing that the specific services prescribed in the individual plan of care are in keeping with the medical needs of the recipient.~~ If the person is determined through the preadmission screening process as defined in ARM 46.12.1301 to have medical needs, the person's attending physician will certify that the person's medical needs are met by the plan of care.

(b) The individual plan of care must include a description of each service to be provided, the frequency of those services, and the type of provider.

(c) The individual plan of care must include the projected costs of each service.

~~(d) The individual plan of care must include documentation:~~

~~(i) of the need for the level of care of an SNF, ICF or ICF/MR;~~

~~(ii) of the feasibility of the individual plan of care;~~

~~(iii) of the consistency of the individual plan of care with the assessment;~~

~~(iv) of informed consent; the recipient has been informed of the feasible alternatives under the waiver and permitted to choose among them; and~~

~~(v) that the recipient has been informed of the procedural protection of a fair hearing.~~

(2) The individual plan of care will be reviewed and approved by the department. Approval will be based on:

(a) completeness of plan;

(b) consistency of plan with preadmission screening data; and

(c) feasibility of service provision, including cost-effectiveness of plan as provided for in ARM 46.12.1411.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1411 ~~RULE XXII~~ COST OF PLAN OF CARE AS REASON FOR DENYING SERVICES (1) Home and community-based services will be denied to a recipient ~~if~~ when the cost ~~of such services, when adjusted to include the equivalent of room and board costs, would exceed the cost of institutional care for the recipient.~~ to the medicaid program of the recipient's services, as determined in accordance with subsection (a), exceeds the cost of the recipient's institutional care, determined in accordance with subsection (b). This determination will be made by the department before the implementation of the proposed plan of care has been approved~~.~~ by the department.

Subsection (1)(a) remains as proposed.

(b) The ~~c~~costs of institutional care shall be determined as follows:

(i) For ICF and SNF levels of care, payment rates projected in accordance with ARM 46.12.1204 for one year for the facilities in the state are multiplied by the number of medicaid patient days for the previous year for each facility. This is divided by the number of medicaid patient days throughout the state. An equivalent of room and board costs, $285 per month, is subtracted from this weighted average. This figure is the ceiling against which annualized projected costs under the plan of care are compared.

~~(c)~~ (ii) For the ICF/MR level of care, a statewide average projected per diem will be derived, using the previous year's utilization rates for each facility. This weighted average will be adjusted by subtracting $285 per month. This adjusted figure is the ceiling against which annualized projected costs under the plan of care are compared.

~~(d)~~ (c) The cost comparison shall be made on the basis of annualized costs.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1412 ~~RULE XXIII~~ INFORMING BENEFICIARY OF CHOICE

(1) If a person is determined by the department to require the level of care provided in a SNF, ICF or ICF/MR, the person or his representative will be informed of the feasible alternatives, if any, available under the ~~medicaid waiver~~ home and community-based services program and will be permitted to choose among them. An institutional alternative will be included as a choice.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1413 ~~RULE XXIV~~ NOTICE AND FAIR HEARING

Subsections (1) through (1)(b) remain as proposed.

(c) feasibility ~~and/or~~, including cost-effectiveness of home and community-based services to the recipient;

Subsections (1)(d) through (2) remain as proposed.

(3) The department will provide the "to be terminated" recipients of home and community-based services notice 30 days before any termination of home and community-based services which is due to the financial exigencies of the program. Such terminations ~~will be~~ are those made in accordance ~~to Rule XIII~~ with ARM 46.12.1402.

Subsections (4) and (5) remain as proposed.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1425 ~~RULE XXV~~ HOMEMAKER SERVICES, DEFINITIONS

(1) Homemaker services consist of general household activities performed by a home attendant. Such services are provided to a person who is unable to manage his home or care for himself or others in the home, or when another who is regularly responsible for these activities is absent. These services may ~~consist of:~~ include:

(a) household management services ~~as defined in Rule X, and~~ consisting of assistance with those activities necessary for maintaining and operating a home and may include assisting the recipient in finding and relocating in other housing;

(b) health supportive services, consisting of assistance with those activities necessary to meet a person's health care needs; ~~social restorative services and teaching services as defined in Rule X,~~

(c) social restorative services consisting of assistance which will further a person's involvement with activities and other persons; and

(d) teaching services consisting of activities which will improve a person's or family's skills in household management, self care, social functioning, and child care activities.

(2) Homemaker services will be provided only in a person's place of residence.

(a) Place of residence includes an individual's own home or a foster home. Place of residence does not include a hospital or a long term care facility as defined in 50-5-101(20), MCA.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1426 ~~RULE XXVI~~ HOMEMAKER SERVICES, REQUIREMENTS

(1) Homemaker services will be provided only after homemaker services provided through department employees or through programs funded with state and federal funds other than medicaid have been exhausted.

(2) Homemaker services may be provided only by a provider that:

(a) is an organized community program~~,~~ operated by a nonprofit corporation or governmental entity (with offices in the community) and which is able to readily provide services in the community; and

(b) provides training for and supervision of the home attendant.

(3) Home attendants must be:

(a) physically and mentally able to perform the duties required;

(b) able to work under supervision;

(c) trained in home management and care of disabled and elderly persons; and

(d) literate and able to follow written orders.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1427 ~~RULE XXVII~~ HOMEMAKER SERVICES, REIMBURSEMENT

(1) Reimbursement for homemaker services shall be the lowest of the following:

(a) the amount paid through ~~Title XX~~ other federal, state or county funded programs;

~~(b) the amount paid through programs funded under Title III of the Older Americans Act;~~

~~(c)~~ (b) the provider's usual and customary charges (billed charges)~~,~~ or ~~rates negotiated by the department or its designee~~.

(c) rates negotiated by the department or its designee.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1428 ~~RULE XXVIII~~ PERSONAL CARE ATTENDANT SERVICES, DEFINITIONS Subsection (1) remains as proposed.

(2) Personal care attendant services in a recipient's place of residence may include homemaker services as defined in ~~Rule XXV~~ ARM 46.12.1425.

Subsection (3) remains as proposed.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1432 ~~RULE XXXII~~ ADULT DAY CARE SERVICES, REQUIREMENTS Subsections (1) through (1)(b) remain as proposed.

(c) for elderly persons, the minimum standards as provided for in ~~Rule XXXIV~~ ARM 46.12.1434.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1434 ~~RULE XXXIV~~ ADULT DAY CARE SERVICES, PROGRAM CRITERIA Subsections (1) through (1)(b)(ii) remain as proposed.

(iii) personal care services~~.~~ ~~baths and nail cutting (only when center is attached to a licensed nursing home or hospital facility);~~ Personal care services with a health aspect such as bathing and nail cutting may only be provided in an adult day care program if undertaken or supervised by a nurse with appropriate training.

Subsections (1)(b)(iv) through (2)(a)(vi) remain as proposed.

(b) The location of the adult day service should be ~~in an area close~~ readily accessible to ~~the residences of~~ the majority of participants.

(c) The hours of operation of an adult day care facility will be governed by the needs of the group served but should include at least 4 or more hours of service.

Subsections (3) through (4)(b)(iv) remain as proposed.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1435 ~~RULE XXXV~~ HABILITATION SERVICES, DEFINITION

(1) Habilitation is defined as intervention designed to assist in the development of a person's skills or the reduction of behavior which interferes with the person's development. These skills ~~are--determined--by~~ must be identified in the individual ~~habilitation~~ plan~~ning--team~~ of care as appropriate in relation to the person's current developmental level and needs in accordance with the principle of normalization.

Subsections (2) through (3)(a) remain as proposed.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1436 ~~RULE XXXVI~~ HABILITATION SERVICES, REQUIREMENTS

(1) ~~All~~ providers of habilitation services for developmentally disabled persons will meet the requirements as provided for in ARM 46.8.110.

(2) A provider of habilitation services for the physically disabled will be either a licensed occupational therapist or a qualified independent living counselor.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1438 ~~RULE XXXVIII~~ RESPITE CARE, DEFINITION

Subsections (1) and (2) remain as proposed.

(3) Respite care may be provided in a recipient's place of residence or through placement of the recipient in another private residence, a foster home or other related community setting, a skilled nursing facility, an intermediate care facility or an intermediate care facility for the mentally retarded.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1440 ~~RULE XL~~ RESPITE CARE, REIMBURSEMENT

(1) Respite care provided by a skilled nursing facility, an intermediate care facility or an intermediate care facility

for the mentally retarded shall be reimbursed at the rate as established for that facility in accordance with ARM 46.12.1204.

(2) Respite care provided by an individual provider shall be reimbursed at the lowest of the following:

(a) the amount paid through ~~Title XX, Title V or~~ other federal, state or county funded programs;

(b) the provider's usual and customary charges (billed charges); ~~or~~

(c) rates negotiated with providers by the department or its designee~~.~~; or

(d) the statewide average payment rate for the applicable level of care, as determined in accordance with ARM 46.12.1411, had respite care been provided in a nursing home.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1455 ~~RULE V~~ TRANSPORTATION SERVICES, REIMBURSEMENT

(1) Reimbursement for transportation shall be the lowest of the following:

(a) the amount specified in ARM 46.12.1005;

(b) the amount paid through ~~Title XX, Title III of the Older Americans Act, or~~ other federal, state or county funded programs;

(c) the provider's usual and customary charges (billed charges); or

(d) rates negotiated with providers by the department or its designee.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1456 ~~RULE VI~~ NUTRITION SERVICES, DEFINITION

(1) Nutrition services means congregate meals and home delivered meals as defined in ~~Rule III~~ ARM 46.4.202 and is inclusive of programs commonly known as meals on wheels.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1457 ~~RULE-LVII~~ NUTRITION SERVICES, REQUIREMENTS (1) Nutrition services requirements are as provided in ~~Rules-IV,-V,-VI-and-VII~~ ARM 46.4.203, 46.4.204, 46.4.205, and 46.4.206.

(2) A full nutritional regimen may not be provided through congregate or home delivered meals.

(a) A full nutritional regimen means three meals a day.

~~(2)~~ (3) Home delivered meals may be provided only on weekends, except that ~~week-day~~ meals may be provided on week days when prior authorized by the department.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1458 ~~RULE-LVIII~~ NUTRITION SERVICES, REIMBURSEMENT (1) Reimbursement for nutrition services shall be the lowest of the following:

(a) the amount paid through ~~Title-XX,-Title-III-of-the Older-Americans-Act,-or~~ other federal, state or county funded programs;

(b) the provider's usual and customary charges (billed charges); or

(c) rates negotiated with providers by the department or its designee.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1301 ~~RULE-LIX~~ PREADMISSION SCREENING (1) Definitions as used in this rule:

(a) "Medicaid recipient" means a person who is currently medicaid eligible or who has applied for medicaid.

(b) "Preadmission screening" means a medical, psychological and social evaluation of a medicaid recipient which yields a level of care determination by the preadmission screening team. ~~For-all-recipients,~~ For elderly persons and physically disabled persons, the medical component of the evaluation will be accomplished through the use of the ~~Tennessee-patient-assessment-form.--For-elderly-persons-and physically-disabled-persons,~~ long-term care patient evaluation abstract and the psychological/social component of the evaluation will be accomplished through the use of the geriatric functional rating scale. For developmentally disabled persons, the medical component of the evaluation will be accomplished through the use of the long-term care patient evaluation abstract or other tool approved by the department, and the psychological/social component of the evaluation will

be accomplished through the use of the individual behavior assessment or other tool approved by the department.

(c) "Preadmission screening team" means an interdisciplinary group of professionals who are qualified as approved by the department to assess the recipient's medical, psychological and social needs in order to determine the level of care required by the recipient. The team includes at least a licensed registered nurse, a person qualified to assess the social and psychological needs of the recipients and a physician advisor. When developmentally disabled persons undergo preadmission screening, the ~~team--also--includes~~ person qualified to assess the social and psychological needs of the recipient is to be a qualified mental retardation professional. When physically disabled persons undergo preadmission screening, the physician advisor must be a physiatrist if the recipient's condition requires such expertise.

(2) A medicaid recipient must undergo preadmission screening by the department or its designee and must be determined by the preadmission screening team to require the level of care of a skilled nursing facility (SNF), an intermediate care facility (ICF), or an intermediate care facility for the mentally retarded (ICF/MR) before medicaid payment for placement in a SNF, ICF, or ICF/MR or for placement through the home and community-based services program will be authorized.

(a) Criteria for level of care in preadmission screenings are as found in ~~Rule--1X~~ ARM 46.12.1303.

Subsections (2)(b) through (3)(d) remain as proposed.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-5-205, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, 53-6-131, 53-6-141, MCA and HB 424, Ch. 516, L. 1983.

46.12.1302 ~~RULE--1X~~ RE-EVALUATIONS (1) For persons identified as requiring the level of care of an SNF or ICF, and who enroll in the home and community-based services program, a re-evaluation will take place every 90 days. The process will be as contained in ~~Rule--1X~~ ARM 46.12.1301.

(2) For persons identified as requiring the level of care of an ICF/MR, and who enroll in the home and community-based services program, a re-evaluation will take place every 6 months.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1303 ~~RULE-LXI~~ LEVEL OF CARE CRITERIA

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

(d) "Specified skilled services" means the following 20 skilled services~~:~~ when they require an equivalent of 40 management minutes of licensed nursing time per 24 hours:

Subsection (1)(d)(i) through (2) remain as proposed.

(3) For developmentally disabled persons, level of care will be assigned using the following methodologies:

(a) Intermediate care facility for the mentally retarded (ICF/MR) level of care is indicated when a developmentally disabled person as defined in ~~Rule-XIV~~ ARM 46.12.1403:

Subsections (3)(a)(i) through (3)(a)(iii) remain as proposed.

(b) Skilled nursing facility (SNF) level of care is indicated when a developmentally disabled person as defined in ~~Rule-XIV~~ ARM 46.12.1403:

Subsections (3)(b)(i) through (3)(c)(ii) remain as proposed.

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

46.12.1304 ~~RULE-LXII~~ QUALIFIED MENTAL RETARDATION PROFESSIONAL (1) The department will approve persons as qualified mental retardation professionals for purposes of providing ~~pre-screening~~ preadmission screening as described in ~~Rule--LIX~~ ARM 46.12.1301 and case management services as described in ~~Rule-XVII~~ ARM 46.12.1406.

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

The authority of the Department to adopt the rule is based on Sections 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101, 53-6-111, MCA and HB 424, Ch. 516, L. 1983.

6. The Department has amended the below-mentioned rules as proposed with the following changes:

46.4.127 PROVISION OF CONGREGATE NUTRITION SERVICES~~:~~

~~CONGREGATE NUTRITION PROVIDERS~~ (1) An area agency may award nutrition services funds only to a nutrition service provider which:

(a) provides congregate nutrition services;

(b) ~~can~~ provides home delivered nutrition services directly or by contract; ~~and~~

(c) agrees to coordinate its activities with, and provide some meals at, the community focal point; and

(d) meets the relevant requirements of ~~ARM--46.4.129 Rules-II-through-VII;~~ ARM 46.4.201 through 46.4.206.

(2) An area agency shall award funds to a nutrition services provider which~~:~~

~~(a)--was-a-nutrition-project-receiving-funds-under-the former-Title-VII-of-the-act-on-September-30,-1978;-and~~

~~(b)~~ has carried out its nutrition services activities with demonstrated effectiveness.

~~(3)--The-nutrition-services-provider-shall:~~

~~(a)--provide-a-hot-or-other-appropriate-meal-in-a-congregate-setting-at-least-once-a-day,-five-or-more-days-a-week;~~

~~(b)--locate-congregate-nutrition-services-as-close-as possible-to-the-majority-of-eligible-older-persons-who-are-all other-persons-and-the-spouse-of-the-older-person-regardless-of age;-and~~

~~(c)--give-preference-to-community-facilities-when-locating-a-congregate-site.~~

The authority of the Department to amend the rule is based on Section 53-2-205, MCA and the rule implements Section 53-2-205, MCA.

46.12.502 SERVICES NOT PROVIDED BY THE MEDICAID PROGRAM

(1) Items or medical services not specifically included within defined benefits of the medicaid program are not reimbursable under the medicaid program.

(2) The following medical and nonmedical services are explicitly excluded from the Montana medicaid program except for those services covered under the health care facility licensure rules of the Montana department of health and environmental sciences when provided as part of a prescribed regimen of care to ~~the~~ an inpatient of a licensed health care facility, and except for those services specifically available, as listed in ~~Rule XV~~ ARM 46.12.1404, to persons eligible for home and community-based services:

(a) chiropractic services;
(b) acupuncture services;
(c) naturopathic services;
(d) dietician services;
(e) nurse practitioner services;
(f) psychiatric social work services;
(g) mid-wifery; services;
(h) social work services;
(i) physical therapy aide services;
(j) physician assistant services;
(k) nonphysician surgical assistance services;
(l) nutritional services;
(m) masseur or masseuse services;
(n) dietary supplements;
(o) homemaker services; and

(p) telephone service in home, remodeling of home, plumbing service, car repair and/or modification of automobile.

The authority of the department to amend the rule is based on Section 53-2-201, 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Section 53-2-201, 53-6-141, MCA and HB 424, Ch. 516, L. 1983.

46.12.1102 ~~SCREENING GUIDELINES FOR~~ LEVEL OF CARE DETERMINATIONS ~~(1) The goal of skilled care is to provide an alternative to hospital care for patients who require general medical management and skilled nursing care on a continuing basis, but who do not require the constant availability of physician services ordinarily found only in the hospital setting.~~

~~(2)~~ (1) ~~There are~~ The three basic considerations in every level of care determination~~:~~ are ~~(a)~~ the individual patient's medical, psychological and social needs; ~~(b)~~ the specific services required to fill these needs; and, ~~(c)~~ the health and other personnel required to adequately provide these services.

(a) Specific level of care criteria, as well as preadmission screening procedures, are found in ~~Rules I IX and X~~ ARM 46.12.1301 AND 46.12.1303.

~~(3)~~ (2) ~~Determining~~ Assessing a patient's medical condition and evaluating the appropriateness of services for that condition is primarily a ~~physician's~~ nurse coordinator's function. If questions arise regarding the patient's medical condition or the propriety of some or all of the services ordered by the attending physician, ~~because the services ordered appear unusual for the type of patient involved, the case should be referred to the designated review organization~~ physician advisor review, including peer review, may be requested by the attending physician..

(3) Assessing a patient's psychological and social condition and evaluating the appropriate services for that condition is primarily a function of the department or its designee.

The authority of the department to amend the rule is based on 53-2-201 and 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements 53-2-201, 53-6-101 and 53-6-131, MCA and HB 424, Ch. 516, L. 1983.

46.12.3603 FINANCIAL REQUIREMENTS, NON-INSTITUTIONALIZED SSI-RELATED INDIVIDUALS AND COUPLES Subsection (1) remains the same.

(2) For individuals and couples under the heading aged, blind or disabled individuals or couples who are not receiving SSI, the SSI financial requirements which are set forth in 20

CFR Part 416, Subparts J, K and L, will be used to determine whether an individual or couple is eligible with respect to resources and with respect to income. 20 CFR Part 416, Subpart J, contains the SSI criteria for evaluating family relationships; 20 CFR Part 416, Subpart K, for evaluating income, including the income of financially responsible relatives; and 20 CFR Part 416, Subpart L, for evaluating resources, including the resources of financially responsible relatives. The department hereby adopts and incorporates by reference 20 CFR Part 416, Subparts J, K and L. A copy of these federal regulations may be obtained from the ~~Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604~~ **social security administration** DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, ECONOMIC ASSISTANCE DIVISION, P.O. BOX 4210, 111 SANDERS, HELENA, MONTANA 59604.

(a) Notwithstanding the above and in accordance with ARM 46.12.3601(2)(b) and (c), for purposes of this coverage group:

(i) the increase in OASDI benefits on July 1, 1972 will be excluded from unearned income; and

(ii) any cost-of-living increases in OASDI paid under section 215(i) of the Social Security Act after April 1977 will be excluded from unearned income.

(b) In addition, aged, blind or disabled individuals who would be institutionalized solely because of the income and resources requirements relating to financially responsible relatives will be exempt from those requirements and such individuals will have their eligibility determined on the basis of their own income and resources if the department approves such an exemption. The administrative mechanism for approval of this exemption shall consist of:

(i) The department shall review individual cases.

(ii) The department will accept applications for exemption only from department long term care specialists, and developmental disabilities division area office staff, who must recommend that the income and resources requirements relating to financially responsible relatives not be applied in the particular case.

(iii) The application must justify the exemption by showing that:

(A) The economic burden on the financially responsible relative for the care of the individual is the sole reason that institutionalization of the individual is being pursued. The burden on the financially responsible relative of personally providing care to the individual is not a factor.

(B) Enabling the applicant to be eligible for medicaid on the basis of his own income and resources will result in an individual plan of care for home and community-based services which is feasible and cost-effective as provided in ~~Rule XXII~~ ARM 46.12.1411.

Subsections (3) through (3)(ii) remain the same.

(4) For individuals under the heading individuals who were eligible for medicaid in December 1973, the December 1973 OAA, AB, APTD, or AABD financial requirements will be used to determine whether the individual continues to be eligible with respect to December 1973 medicaid financial criteria. A copy of the December 1973 OAA, AB, APTD, and AABD financial requirements may be obtained from the ~~Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604, social security administration.~~ DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, ECONOMIC ASSISTANCE DIVISION, P.O. BOX 4210, 111 SANDERS, HELENA, MONTANA 59604.

(a) When individuals under this heading must also meet current medicaid financial requirements, as provided in ARM 46.12.3601(4)(b), the SSI financial requirements identified in subsection (2) above apply.

The authority of the department to amend the rule is based on Sections 53-2-201 and 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101 and 53-6-131, MCA and HB 424, Ch. 516, L. 1983.

46.12.3804 INCOME ELIGIBILITY, NON-INSTITUTIONALIZED MEDICALLY NEEDY Subsections (1) through (1)(a)(iii) remain the same.

(b) For groups under non-institutionalized SSI-related individuals and couples, quarterly countable income will be determined using the SSI income requirements set forth in 20 CFR, Part 416, Subpart K, as supported by 20 CFR, Part 416, Subpart J. 20 CFR Part 416, Subpart K, contains the SSI criteria for evaluating income, including the income of financially responsible relatives, and 20 CFR Part 416, Subpart J, contains the SSI criteria for evaluating family relationships. The department hereby adopts and incorporates by reference 20 CFR Part 416, Subparts J and K. A copy of these federal regulations may be obtained from the ~~Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604, social security administration.~~ DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, ECONOMIC ASSISTANCE DIVISION, P.O. BOX 4210, 111 SANDERS, HELENA, MONTANA 59604

(i) The exemption from the income requirements relating to financially responsible relatives as described at ARM 46.12.3603(2)(b) applies to individuals applying as medically needy.

Subsections (2) through (4)(c) remain the same.

The authority of the department to amend the rule is based on Sections 53-2-201 and 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101 and 53-6-131, MCA and HB 424, Ch. 516, L. 1983.

46.12.3805 RESOURCE STANDARDS, NON-INSTITUTIONALIZED MEDICALLY NEEDY Subsections (1) and (1)(a) remain the same.

(2) For groups under non-institutionalized SSI-related individuals and couples, the SSI resource standards set forth in 20 CFR, Part 416, Subpart L, as supported by 20 CFR, Part 416, Subpart J, will be used to determine whether the individual or couple is eligible with respect to resources. 20 CFR Part 416, Subpart L, contains the SSI criteria for evaluating resources, including the resources of financially responsible relatives, and 20 CFR Part 416, Subpart J, contains the SSI criteria for evaluating family relationships. The department hereby adopts and incorporates by reference 20 CFR Part 416, Subparts J and L. A copy of these federal regulations may be obtained from the ~~Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604, social security administration.~~ DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, ECONOMIC ASSISTANCE DIVISION, P.O. BOX 4210, 111 SANDERS, HELENA, MONTANA 59604.

(a) The exemption from the resources requirements relating to financially responsible relatives as described at ARM 46.12.3603(2)(b) applies to individuals applying as medically needy.

Subsection (3) remains the same.

The authority of the department to amend the rule is based on Sections 53-2-201 and 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and the rule implements Sections 53-2-201, 53-6-101 and 53-6-131, MCA and HB 424, Ch. 516, L. 1983.

7. The Department has thoroughly considered all verbal and written comments:

COMMENT: We ask that these proposed rules be published, noticed and heard after July 1, 1983, since the effective date of HB 424, authorizing the home and community-based program has an effective date of July 1, 1983.

RESPONSE: The rules may be noticed and a hearing held on them prior to the effective date of enabling legislation since the promulgation of the rules could occur only after the date of effect for the enabling legislation. Promulgation will occur at such time as the Department provides notice to the Secretary of State of the final adoption of the rules. This can not occur until after the legislation's effective date of July 1, 1983. The enabling legislation was appropriately enacted and provides the Department with explicit rule-making authority.

COMMENT: While ARM 46.12.502(2)(g) is not a new section proposed by these rules, it should be amended to reflect SB 70, as passed by the 48th Legislature. SB 70 provides that nurse specialists be included in the list of free choices for treating illness or injury covered by disability insurance or workers' compensation. ARM 46.12.502 excludes such nurse specialists as nurse practitioners and nurse - midwives from Medicaid coverage.

RESPONSE: While Medicaid is not disability insurance and not workers' compensation, the Department is evaluating coverage for nurse specialists. Should the Department decide to cover nurse specialists, a separate rule-making effort would be required. The matter is not directly relevant to implementation of Medicaid home and community-based services.

COMMENT: ARM 46.4.206(1)(e) requires that providers of home delivered nutrition services make at least quarterly written evaluations of each recipient in order to re-evaluate the need for the continuation of home delivered meals. This requirement would not be generally feasible for some providers given their limited administrative resources.

RESPONSE: The rule has been modified to provide that generally the assessment will only need to be done on an annual basis. Due to Medicaid requirements, the Department will require providers to make quarterly assessments of recipients of meals provided for through the Medicaid Home and Community-based Services Program. This requirement will be provided for by contract rather than by rule.

COMMENT: ARM 46.4.206(1)(f) directs providers of home delivered nutrition services to implement a standard procedure for assessing the need of recipients for other in-home services. This provision exceeds the federal statutory mandates for providers of nutrition services under Title III of the Older American's Act.

RESPONSE: The Department will delete the provision. The case management system for recipients of Medicaid home and community-based services will adequately assess the needs of those recipients on an ongoing basis.

COMMENT: The reference in amended ARM 46.4.127(2), "Providers of Congregate Nutrition Services", to "a nutrition project receiving funds under the former Title VII of the Act on September 30, 1978" is inappropriate. That particular criterion is no longer applicable.

RESPONSE: That reference has been deleted from the proposed rule.

COMMENT: Does the Department and the Department of Health and Environmental Sciences allow the provision of basic hygiene and grooming services by a non-certified home health agency?

RESPONSE: The Department does not at this time know, with any specificity, the position of the Department of Health and Environmental Sciences in this matter. That department would have to be contacted for their definitive opinion in the matter. Those services provided which are not of a health services nature and therefore not requiring nurse supervision presumably could be provided by a provider which is not a home health agency. Any organization professing to be a home health agency or providing nursing services in conjunction with other services would have to be certified as such by the Department of Health and Environmental Sciences.

COMMENT: The wording of ARM 46.12.1405, "General Requirements", does not indicate what process the Department will use to "direct" providers.

RESPONSE: The intent of the rule is to ensure that the fiscal and personnel management policies necessary to the operation of the Home and Community-based Services Program are implemented. However, given that a contractual relationship will exist between the Department and providers, this portion of the rule is superfluous. The Department will delete ARM 46.12.1405(5).

COMMENT: The term "administratively separate" as used in proposed ARM 46.12.1407, "Case Management Services, Requirements", lacks definition.

RESPONSE: Further language has been added to the proposed rule to provide more adequate definition of the term. However, this term remains somewhat ambiguous. It is the Department's intent to address and avoid conflicts of interest in the provision of services without unduly penalizing providers of service. This will in part be accomplished by requiring each respondent to the case management request for proposal to define in what way "administratively separate" will be accomplished.

COMMENT: It is recommended that home and community-based services providers be licensed home health agencies.

RESPONSE: A licensed home health agency may be a provider of services to persons served by the Home and Community-based Services Program. ARM 46.12.301-308 lists the requirements which all Medicaid reimbursed providers must meet. Under the Home and Community-based Services Program, any Medicaid eligible provider, including but not limited to home health agencies, may provide services that are part of a plan of care and with whom a contractual relationship exists.

COMMENT: It is recommended that the individual plan of care be reviewed and approved at sixty (60) day intervals, rather than ninety (90) day intervals. For a person who requires the level of care of an SNF or ICF, a three month interval is too long and the patient's condition may deteriorate rapidly and not be identified (ARM 46.12.1409).

RESPONSE: Federal regulations mandate a sixty (60) day interval for in-patients of skilled nursing facilities and a ninety (90) day interval for in-patients of intermediate care facilities, for the purposes of reviewing plans of care. The Department expects that persons served in the community will be more medically stable than those served in a skilled nursing facility, thus the ninety (90) day interval for plan of care review was chosen. Persons served under the Home and Community-based Services Program will be closely monitored by case management teams. Any deterioration of condition will be identified by that team. The team will be responsible for reviewing and/or revising the plan as necessary. The ninety (90) day interval is a maximum timeline and certainly does not preclude more frequent reviews if the patient's needs change.

COMMENT: It is recommended that ARM 46.12.556 address the training needs for personal care attendants.

RESPONSE: ARM 46.12.556 has been revised to strengthen training requirements for personal care attendants.

COMMENT: If adult day care services are offered away from a rest home or a hospital, the day care staff needs more than first aid training (ARM 46.12.1434).

RESPONSE: Training in first aid techniques is a minimum requirement for staff of adult day care programs. The case management team may require staff with more advanced training, for a particular client, if that client's needs demand more skilled staffing. This would be accomplished by the case management team through its contract for services with the adult day care provider.

COMMENT: Are the personal care services cited in proposed ARM 46.5.1223 and 46.12.1428 synonymous with home health aide services cited in amended ARM 46.12.550?

RESPONSE: They are not the same. Federal guidelines differentiate between personal care services and home health aide care. Personal care services are medically oriented tasks having to do with a patient's physical requirements, which enable a patient to be treated by his physician on an outpatient basis. The purpose of this care is to accommodate long term maintenance or supportive care, as opposed to short-term skilled care. Since the level of care is of a supportive or maintenance type, the tasks encompassed require less skill than some of the duties included in home health care performed by home health aides. Although in many instances personal care services and home health care services overlap, the distinction which applies is the requirement that home health care services must be provided through a Home Health Agency, while personal care services need not be. Personal care services should usually be prescribed only in cases where the patient needs no highly skilled or technical care. They should not be used as a substitute for home health aide care, or for the care usually provided by a registered nurse, licensed practical nurse, or therapist.

COMMENT: For physically handicapped persons, the rules seem to mandate that habilitation services must be provided by a registered occupational therapist.

RESPONSE: Habilitation services may be provided by an Independent Living Counselor who meets the requirements as stated in the home and community-based services proposal. ARM 46.12.1436 has been changed to clarify this question.

COMMENT: What is the accepted definition of an Independent Living Counselor for the pre-screening teams?

RESPONSE: In the current approved home and community-based services proposal, an Independent Living Counselor is not required as a part of the pre-screening team, but is required as part of the case management team dealing with physically disabled persons. In earlier drafts of the proposal, the Independent Living Counselor was required as part of the pre-screening team for physically disabled persons. Based on comments from interested persons, who wanted pre-screening and case management to be done by separate groups, the proposal was changed to require an Independent Living Counselor only on the case management team.

COMMENT: Homemaker services should be made available to persons residing in foster care homes only when the foster "parent" is absent, and not on a regular basis, since providing household services is part of what foster care providers are paid to do under their foster care contracts.

RESPONSE: The Department views foster care providers as substitute parents, favoring placement with such "parents" over placement in long term care facilities as defined in 50-5-101(20), MCA. While such parents may be "paid" to provide a certain level of household services, such parents may also require additional support to secure the placement of a person in need of a substitute parent. Under the Home and Community-based Services Program, homemaker services may be provided in the foster care setting within the limitations of a Department approved plan of care.

COMMENT: The term "organized community program" as used in proposed ARM 46.12.1426(2)(a) lacks definition.

RESPONSE: Further language has been added to that provision to provide definition of the term.

COMMENT: ARM 46.12.1434(a)(iii) states that personal care services, inclusive of baths and nail cutting, may be provided by an adult day care program for elderly persons only if the program is attached to a licensed nursing home or hospital facility. Does this rule preclude the provision of nail cutting, shaving and hair cutting in an adult day care program associated only with a senior citizen center?

RESPONSE: Those personal care services of only a grooming nature such as hair cutting and shaving may be undertaken by an adult day care facility. Federal regulations for Medicaid require that those personal care services with a health aspect be conducted or supervised by appropriately trained health personnel. Those personal care services with a health aspect may be undertaken by an adult day care facility if done or supervised by an appropriately trained nurse. The proposed provision has been modified to more definitively state this.

COMMENT: Section 2(b) of ARM 46.12.1434, relating to the location of the adult day care service, should be deleted.

RESPONSE: The proposed rule has been modified to state that the location of the adult day service should be readily accessible to the majority of participants.

COMMENT: If a nursing home incorporated an adult day care program within the facility, would the nursing home have to have separate space and staff for the day care program?

RESPONSE: The definition of adult day care services includes a program of 4-8 hours per day, outside a person's place of residence, which provides for the person's health, social and habilitation needs as delineated in an individual plan of care. In order to fulfill these requirements and ensure the health and safety of participants, the Department has determined that full-time staff must be available for the adult day care program, as outlined in ARM 46.12.1434. This would preclude the use of staff who have concurrent responsibilities in other areas of the facility.

The space requirements for adult day care were developed to ensure that participants in the program have a specified place which can accommodate the schedules and activities designed for them. The space must allow for individual and group activities and these activities must be supervised by the assigned staff. Supervision of participants would be less than adequate if they are working in an area which includes people who are not involved in the day care program.

For these reasons the Department will require that adult day care programs be operated with staff and space that are separate from other programs.

COMMENT: Nursing homes located in rural areas are often in counties that share a social worker with other counties. The requirement for pre-admission screening of Medicaid recipients may be difficult to accomplish in a reasonable period of time as to facilitate appropriate placement.

RESPONSE: Pre-admission screening is to be conducted by a pre-admission screening team as provided for in ARM 46.12.1301-(1)(c). Local county social workers are not members of this team. The Department has made provisions for pre-admission screening to be available in every county by qualified persons. It is anticipated that the pre-admission screening team will be readily available for conducting all necessary screenings.

COMMENT: Is there a specific time frame for accomplishing pre-admission screening which the pre-admission screening team must meet? Will this time frame be adequate for the purposes of pre-admission screening and plan of care development?

RESPONSE: No time frame for accomplishing pre-admission screening has been established. For the procedure to work smoothly, early referral from hospital discharge planning units to nursing homes or case management teams under the Home

and Community-based Services Program is required. The Department will work with hospitals, nursing homes and case management teams to accomplish early referrals. The Department will also contract with case management teams who have the capability to respond to referrals from discharge planning units at a rate comparable to response by a nursing home. In addition, up to 72 hours of administrative time in the hospital setting is allowed under current procedures to provide for agencies in discharge planning.

COMMENT: How and when is a physiatrist to be utilized by the pre-screening team?

RESPONSE: All pre-screening teams include physician advisors. The role of the physician advisor on the team is to give physician input to the level of care determination, which is made at the time of pre-screening. Because many physically disabled persons have special needs which may demand the skills of a physiatrist, we specified that the physician advisor for the team pre-screening a disabled person must be a physiatrist. This would ensure that the level of care determination is made with consideration for the disabled person's special needs.

COMMENT: ARM 46.12.1303, "Level of Care Criteria", should provide that any one of the situations described in (i) through (iv) qualify a person for SNF care.

RESPONSE: This rule as written provides for this approach.

COMMENT: ARM 46.12.1303(2)(c)(A)-(D) describes a "personal care" patient under the long term care evaluation abstract, not an intermediate care patient. The waiver is intended to serve persons qualifying for the level of care of ICF or SNF patients, not persons needing only personal care.

RESPONSE: Under the long term care evaluation abstract, a person needing only personal care may be classified as qualifying for the level of care of ICF patients if, in the absence of the Home and Community-based Services Program, there would have been no setting of a lesser level of care available to the person. The Department projects that services under the Home and Community-based Services Program will go predominately to such persons, given the financial parameters of the Program.

COMMENT: Several requests were received to postpone the implementation of the Medicaid Home and Community-based

Services Program rules as they apply to services to developmentally disabled children in natural and foster homes. A "Specialized Family" program is being developed, and it was felt that it is too early to develop administrative rules for a program not yet developed.

RESPONSE: While it is not possible to postpone rule implementation as requested, the Department has modified a number of rules to ensure that maximum flexibility is provided while maintaining assurances of quality services.

COMMENT: As stated in ARM 46.12.1402, enrollment on a first-come, first-served basis is not consistent with past efforts of the developmental disabilities system to establish priorities for service, based upon need.

RESPONSE: This rule has been amended to provide that enrollment will be determined by the Department, based on need.

COMMENT: ARM 46.12.1403, "Individuals Who May Be Served", appears to exclude children "at risk" for developmental disabilities who may have significant impairments. The rule also appears to assign physicians the authority to approve or disapprove all services.

RESPONSE: It is the Department's intent to include as eligible certain children with the diagnosis of "at risk" if their impairments are significant. It is the Department's intent to ensure that each recipient's needs, including medical needs, are adequately addressed. Subsection (c) has been amended to read: "for the ICF and SNF levels of care, are under the care of a physician; for the ICF/MR level of care, are under the direction and care of an interdisciplinary team as defined in ARM 46.8.102". The degree of physician involvement will vary according to the needs identified by the pre-admission screening.

COMMENT: ARM 46.12.1406, defining case management, will impose a case management system on the as of yet undeveloped specialized foster care program for developmentally disabled children.

RESPONSE: The definition of case management is broad. We believe that various approaches to case management can be accommodated within the parameters of the rule as it is written.

COMMENT: The definition of case management, ARM 46.12.1407 (2)(a), will be defining qualifications for the specialized foster care program for developmentally disabled children. That program has yet to be developed.

RESPONSE: It is the Department's intent to set minimum qualifications for case managers, both to ensure the quality of service and to satisfy federal requirements. The requirements are broad enough to ensure that any program that reasonably attends to staff qualifications for case managers will not be penalized.

COMMENT: ARM 46.12.1410(1) defines, in detail, individual plans of care. The specialized foster care program for developmentally disabled children, which has yet to be developed, will be the subject of that rule. Subsection (1) contains language which requires conformity to rules not required for family and child services. Subsection (1)(a) suggests that the attending physician has final authority over the approval of all plans of care.

RESPONSE: The Department's intent is to ensure that each recipient's needs are met. The rule has been amended to more adequately address the specific needs of developmentally disabled persons who may be in a specialized foster care program.

COMMENT: ARM 46.12.1412, "Informing Beneficiary of Choice", may encourage the inappropriate institutionalization of some children.

RESPONSE: The Department is required to provide for choice as indicated. No modification is possible. Care has been taken to define criteria for the need for the levels of care covered by the waiver to ensure that choices are offered to individuals with significant care needs.

COMMENT: The intent of ARM 46.12.1413 (1)(a) and (c), specifically the term "feasibility", is not clear. It also implies a great deal of uncertainty as to whether or not a specific individual will be eligible for services under the Home and Community-based Services Program.

RESPONSE: The intent of the rule is to meet the federal and state requirements for a fair hearing. "Feasibility" refers to the availability of the critical services necessary to meet the individual's needs and also includes a determination of the cost effectiveness of services.

COMMENT: Respite care as defined in ARM 46.12.1438 does not allow respite care to be provided in the home of another family.

RESPONSE: There was no intent to preclude respite from being provided in the home of another family or other settings. The rule has been amended to correct this.

COMMENT: In ARM 46.12.1439(4), "Respite Care Requirements", the limitation on respite care is not reasonable.

RESPONSE: The rule indicates that additional respite care may be authorized by the Department. This may take place at the time of approval of the plan of care, so uncertainty about the availability of additional care need not be problematic.

COMMENT: ARM 46.12.1301(1)(b) and (c), "Pre-Admission Screening", too specifically restricts pre-screening to the use of certain tools and certain individuals.

RESPONSE: The Department is required to ensure that medical, psychological and social evaluations take place for each individual seeking services. It is possible, however, to maintain flexibility. The rule has been amended in a minor way to further enhance this flexibility.

COMMENT: Re-evaluations appear to be too frequent as stated in ARM 46.12.1302(1).

RESPONSE: It is the Department's position that frequent re-evaluations are necessary to ensure the appropriateness of services.

COMMENT: As stated in ARM 46.12.1303(3), the specific level of care criteria may not be consistent with those developed for the specialized foster care program for developmentally disabled children.

RESPONSE: As previously stated, the Department intends to offer the choice of institutional or community-based care to those individuals for whom the choice of the institutional setting would be acceptable. This limits the "flexibility" of the criteria.

COMMENT: It is suggested that ARM 46.12.1411 be amended so that the cost of home and community-based services is compared against the cost of nursing home care in the locality where the individual resides, rather than a statewide average.

RESPONSE: The differences in costs of care between localities may reflect property costs more than the cost of services. Therefore, it is the Department's position that a statewide average is a more acceptable comparison figure for the recipients of service.

COMMENT: A progressive evaluation of the program should be completed before another stage is entered into. This evaluation should be conducted throughout the three year period of the Home and Community-based Services Program.

RESPONSE: The Department views the program as a pilot and is keenly aware of the fiscal parameters of the program. A progressive evaluation will be done, with ARM 46.12.1402 providing for Department actions should funds be unavailable for the program.

COMMENT: What is the difference between occupational therapy services under the Home and Community-based Services Program and under the regular Medicaid Program?

RESPONSE: The therapies, including occupational therapy, are listed services under the Home and Community-based Services Program because, in the past, there has been a question between the state and the federal government as to whether the therapies may be provided for habilitation purposes. The intent of the rule is to reflect the understanding between the state and the federal government that the state will provide the therapies for habilitation purposes under the Home and Community-based Services Program.

COMMENT: May personal care attendants provide services in a foster home setting available to the physically disabled or is such provision of services available only to the developmentally disabled, as indicated in the rules for personal care attendants?

RESPONSE: Personal care attendants may provide services in a foster home setting available to either the developmentally disabled or the physically disabled. In the rules for personal care attendant services, foster care is an independent unqualified term. The term that follows, "community homes for the developmentally disabled", is also an independent phrase.

COMMENT: Certain services already provided by other programs, (for example, homemaker services, meals-on-wheels) must be used before the same services under the Home and Community-based Services Program may be used. Will the cost of these services provided by other programs be counted toward the 50% limit in ARM 46.12.1408?

RESPONSE: The 50% limit in ARM 46.12.1408 applies to services paid through the Home and Community-based Services Program. If a service is provided to a program recipient through another program, the cost of the service would not be counted toward the 50% limit.

COMMENT: Can waiver monies be used to provide funding for personal care facilities?

RESPONSE: Currently, the Department funds personal care and other residential facilities through the SSI State Supplementation Program. The SSI State Supplementation payment made on behalf of the recipient buys personal care and other services, making purchase of those services from the facility through the Home and Community-based Services Program moot. However, under the rules, a resident of a personal care facility may receive home health services, including nursing services, through a home health agency. Reimbursement would go to the home health agency.

COMMENT: May a person reside outside the service areas specified in the rules and receive services under the Home and Community-based Services Program?

RESPONSE: Only residents of the service areas specified in the rules may receive services under this program.

COMMENT: What methodology will the Department use in contracting for case management services?

RESPONSE: The Department will use an open, competitive bidding process.

COMMENT: Will individuals enrolled in the Home and Community-based Services Program have to spend-down toward services before Medicaid will pick up costs?

RESPONSE: Individuals who qualify for the Home and Community-based Services Program, and who are determined financially eligible under the Medically Needy Program, will have to meet a spend-down requirement. Home and community-based services equal to income in excess of the SSI standard will be considered the individual's liability. Costs beyond the individual's liability will be paid for by Medicaid.

COMMENT: The twenty (20) specified skilled services in ARM 46.12.1303 need clarification. The fact that the recipient receives one of these services may not always indicate skilled level of care because this particular service may not have to be performed by or under the supervision of skilled personnel.

RESPONSE: Language linking the twenty (20) skilled services to licensed nursing management minutes has been added for clarification purposes.

COMMENT: The reimbursement methodology for respite care should not allow reimbursement for respite care to exceed what would have been paid had the care been provided in a nursing home.

RESPONSE: ARM 46.12.1440 has been so amended.

COMMENT: ARM 46.12.1457 as proposed does not set a limit on the number of meals available to a recipient of home and community-based services.

RESPONSE: Federal regulations state that funds under the Home and Community-based Services Program may not be used for a full nutritional regimen. The definition of a full nutritional regimen and the limits on meals have been added to the rule for clarification.

COMMENT: The Department noted that some rules needed minor changes for purposes of clarification.

RESPONSE: The following rules were amended in order to clarify the intent: 46.12.1411, 46.12.1412, 46.12.1413, 46.12.1425, 46.12.1427, 46.12.1435, 46.12.1455, 46.12.1458, and 46.12.1304.

John LaFaver
Director, Social and Rehabilitation Services

Certified to the Secretary of State July 1, 1983.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the repeal of Rules 46.16.101 through 46.16.103, 46.16.105, 46.16.106, 46.16.108, 46.16.110 and 46.16.115 pertaining to the end stage renal program	))))))	NOTICE OF THE REPEAL OF RULES 46.16.101 THROUGH 46.16.103, 46.16.105, 46.16.106, 46.16.108, 46.16.110 AND 46.16.115 PERTAINING TO THE END STAGE RENAL PROGRAM

TO: All Interested Persons

1. On May 26, 1983, the Department of Social and Rehabilitation Services published notice of the repeal of Rules 46.16.101 through 46.16.103, 46.16.105, 46.16.106, 46.16.108, 46.16.110 and 46.16.115 pertaining to the end stage renal program at page 600 of the Montana Administrative Register, issue number 10.

2. The Department has repealed the rules as proposed.

3. No testimony or written comments were received.

Director, Social and Rehabilitation Services

Certified to the Secretary of State July 1, 1983.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The 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 Joint Resolution directing an agency to adopt, amend or repeal 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 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

Definition: Administrative Rules of Montana (ARM) is a loose-leaf 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 statute 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 General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number.
Department	2.	Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules.
	3.	Locate volume and title.
Subject Matter and Title	4.	Refer to topical index, end of title, to locate rule number and catchphrase.
Title Number and Department	5.	Refer to table of contents, page 1 of title. Locate page number of chapter.
Title Number and Chapter	6.	Go to table of contents of Chapter, locate rule number by reading catchphrase (short phrase describing the rule.)
Statute Number and Department	7.	Go to cross reference table at end of each title which lists each MCA section number and corresponding rules.
Rule In ARM	8.	Go to rule. Update by checking the accumulative table and the table of contents for the last register issued.

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 Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 1983. This table includes those rules adopted during the period April 1, 1983 through June 30, 1983, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 1983, this table and the table of contents of this issue of the MAR.

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