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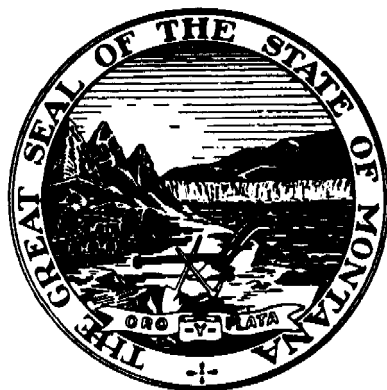
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MAR 11 1985

OF MONTANA

# **MONTANA ADMINISTRATIVE REGISTER**

**1985 ISSUE NO. 5  
MARCH 14, 1985  
PAGES 231-260**



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 5

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

TABLE OF CONTENTS

	<u>Page Number</u>
<u>NOTICE SECTION</u>	
<u>HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16</u>	
16-2-282 Notice of Proposed Amendment - Hazardous Waste Generators and Treatment, Storage And Disposal Facilities. No Public Hearing Contemplated.	231-236
16-2-283 Notice of Adoption of Amendments to Federal Agency Rules Incorporated By Reference - Identification and Listing of Hazardous Waste. No Public Hearing Contemplated.	237-238
<u>LABOR AND INDUSTRY, Department of, Title 24</u>	
24-9-15 (Human Rights Commission) Notice of Hearing and Petition for Declaratory Ruling - Refusal to Contract with any Persons Other Than Married Couples as Aftercare Group Home Houseparents.	239-241
<u>REVENUE, Department of, Title 42</u>	
42-2-283 Notice of Public Hearing on Proposed Amendment - Storage of Alcoholic Beverages.	242-243
<u>RULE SECTION</u>	
<u>ADMINISTRATION, Department of, Title 2</u>	
AMD Definitions - Department of Administration Responsibilities - Delegation of Purchasing Authority - Requisitions from Agencies - Bidders List - Specifications - Public Notice - Competitive Sealed Proposals - Exigency Procurements.	244

	<u>Page Number</u>
<u>COMMERCE, Department of, Title 8</u>	
AMD (Board of Landscape Architects) Fee Schedule.	245
AMD (Montana Economic Development Board) Rates, Service Charges and Fee Schedule.	245
<u>EDUCATION, Title 10</u>	
AMD (Superintendent of Public Instruction) Initiating School Controversy Procedure Process.	246-247
<u>SOCIAL AND REHABILITATION SERVICES, Department of, Title 46</u>	
AMD Medical Assistance, Definitions.	248
AMD Restriction of Access to Medical Services.	249
AMD Services Not Provided by the Medicaid Program.	250-251
<u>SPECIAL NOTICE AND TABLE SECTION</u>	
Functions of the Administrative Code Committee	252
How to Use ARM and MAR	253
Accumulative Table	254-260

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

In the matter of the	)	NOTICE OF PROPOSED
amendment of rules 16.44.202,	)	AMENDMENT OF RULES
16.44.405, 16.44.406,	)	16.44.202, 16.44.405,
16.44.425, 16.44.811,	)	16.44.406, 16.44.425,
16.44.817, 16.44.818 and	)	16.44.811, 16.44.817,
16.44.819, relating to	)	16.44.818 and 16.44.819
hazardous waste generators	)	
and treatment, storage and	)	(Hazardous Waste Management)
disposal facilities	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On April 19, 1985, the department proposes to amend rules 16.44.202 (Definitions), 16.44.405 and 16.44.406 (Manifest Information), 16.44.425 (International Shipments), 16.44.811 (Closure and Post Closure Financial Assurance), and 16.44.817, 16.44.818 and 16.44.819 (Liability Coverage) relating to standards applicable to hazardous waste generators and treatment, storage and disposal (TSD) facilities regulated under the Montana Hazardous Waste Act (MHW), Title 75, Chapter 10, Part 4, MCA.

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

16.44.202 DEFINITIONS

(1) - (53) Same as existing rule.

(54) (a) "Manifest" means the shipping document originated and signed by the generator and which is used to identify the hazardous waste, its quantity, origin and destination during its transportation.

(b) "Manifest" specifically means the shipping document EPA form 8700-22 and, if necessary, EPA form 8700-22A, originated and signed by the generator in accordance with the instructions included in the Appendix to 40 CFR Part 262.

(c) The department hereby adopts and incorporates herein by reference the Appendix to 40 CFR Part 262 which is a federal agency rule setting forth the instructions for completing U.S. EPA manifest forms 8700-22 and 8700-22A. A copy of the Appendix to 40 CFR Part 262 may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

(55) "Manifest document number" means the serially increasing number U.S. EPA twelve digit identification number assigned to the generator plus a unique five digit document number assigned to the manifest by the generator for recording and reporting purposes.

(56) - (73) Same as existing rule.

(74) "Regulated unit" means a land disposal unit which receives hazardous waste after ~~January-26, 1983~~ July 26, 1982.

(75) - (103) Same as existing rule.  
AUTHORITY: Sec. 75-10-404, MCA  
IMPLEMENTING: Sec. 75-10-405, 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 on U.S. EPA form 8700-22 and, if necessary, U.S. EPA form 8700-22A, according to the instructions included in the Appendix to 40 CFR Part 262.

(2) - (4) Same as existing rule.

(5) The department hereby adopts and incorporates herein by reference the Appendix to 40 CFR Part 262 which is a federal agency rule setting forth the instructions for completing U.S. EPA manifest forms 8700-22 and 8700-22A. A copy of the Appendix to 40 CFR Part 262 may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 75-10-404 MCA  
IMPLEMENTING: Sec. 75-10-405 MCA

16.44.406 REQUIRED INFORMATION ON ACQUISITION OF MANIFEST FORMS

(1) The manifest must contain all of the following information:

- (a) a manifest document number;
- (b) the generator's name, mailing address, telephone number, and EPA identification number;
- (c) the name and EPA identification number of each transporter;
- (d) the name, address and EPA identification number of the designated facility and an alternate facility, if any;
- (e) the description of the waste as required by the U.S. Department of Transportation in 49 CFR 172-202 and 172-203; and

(f) the total quantity of each hazardous waste by units of weight or volume, and the type and number of containers as loaded into or onto the transport vehicle.

(2) The department hereby adopts and incorporates herein by reference 49 CFR 172-202 and 172-203. 49 CFR 172-202 and 172-203 are federal agency rules setting forth the necessary information that must be included in a description of a hazardous material on a shipping paper. A copy of 49 CFR 172-202 and 172-203 may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana.

(3) The following certification must appear on the manifest. "This is to certify that the above-named materials are properly classified, described, packaged, marked, and

labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation and EPA-4

(1) If the state to which the shipment is manifested (consignment state) supplies the manifest forms and requires their use, then the generator must use those manifest forms.

(2) If the consignment state does not supply the manifest forms, then the generator may obtain the manifest forms from any source.

AUTHORITY: Sec. 75-10-404 MCA

IMPLEMENTING: Sec. 75-10-405 MCA

16.44.425 INTERNATIONAL SHIPMENTS

(1) - (2)(b) Same as existing rule.

(c) Meet the requirements under ARM ~~16-44-406~~ 16.44.405 (1) 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 county.

(3) Same as existing rule.

(4) When importing hazardous waste, a person must meet all requirements of ARM ~~16-44-406~~ 16.44.405(1) 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.

(5) A person who imports hazardous waste into Montana may obtain the manifest form from any source.

AUTHORITY: Sec. 75-10-404 MCA

IMPLEMENTING: Sec. 75-10-405 MCA

16.44.811 FINANCIAL TEST AND CORPORATE GUARANTEE FOR CLOSURE AND/OR POST CLOSURE

(1) An owner or operator Owners or operators may satisfy the closure and/or post closure financial assurance requirements of this sub-chapter by demonstrating to the regional administrator of the U.S. EPA Region VIII department that he or she meets they meet the requirements for the financial test and corporate guarantee for closure and/or post closure set forth at 40 CFR 264.143(f) and 40 CFR 264.145(f). A copy of the documents submitted to the regional administrator shall be provided to the department within 30 days after submittal to the regional administrator.

(2) Same as existing rule.

AUTHORITY: Sec. 75-10-404 MCA

IMPLEMENTING: Sec. 75-10-405 MCA

16.44.817 FINANCIAL TEST AND CORPORATE GUARANTEE FOR LIABILITY COVERAGE (1) ~~An owner or operator~~ Owners or operators may satisfy the requirements of ARM 16.44.818 ~~or~~ and/or 16.44.819 by demonstrating to the U.S. EPA Regional Administrator Region VIII department that he or she meets they meet the financial test for liability coverage set forth at 40 CFR 147(f) or the test for a corporate guarantee for closure and/or post closure set forth at 40 CFR 264.143(f) and 40 CFR 264.145(f). A copy of the documents submitted to the Regional Administrator shall be provided to the department within 30 days after submittal to the regional administrator.

(2) The department hereby adopts and incorporates herein by reference 40 CFR 264.143(f), 40 CFR 264.145(f), and 40 CFR 264.147(f) which is a federal agency rule rules setting forth minimum financial worth and bond rating criteria by which owners and operators of hazardous waste management facilities may demonstrate adequate internal resources financial assurance for, respectively, closure/post-closure care and liability for sudden and nonsudden occurrences. A copy Copies of 40 CFR 264.143(f), 40 CFR 264.145(f), and 40 CFR 264.147(f) may be obtained from the Solid and Hazardous Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: Sec. 75-10-404 MCA

IMPLEMENTING: Sec. 75-10-405 MCA

16.44.818 REQUIREMENTS FOR LIABILITY COVERAGE: SUDDEN OCCURRENCES

(1) - (2) Same as existing rule.

(3) ~~An owner or operator~~ Owners or operators may meet the requirements of this rule by ~~passing~~ demonstrating that they meet the financial test for liability coverage or the test for a corporate guarantee, both of which are as specified in ARM 16.44.817.

(4) An owner or operator may demonstrate the required liability coverage through use of both the financial test, corporate guarantee, and insurance as these mechanisms are specified in this sub-chapter. The amounts of coverage must total at least the minimum amounts required by this subsection (1) of this rule.

AUTHORITY: Sec. 75-10-404 MCA

IMPLEMENTING: Sec. 75-10-405 MCA

16.44.819 REQUIREMENTS FOR LIABILITY COVERAGE: NON-SUDDEN ACCIDENTAL OCCURRENCES

(1), (2) Same as existing rule.

(3) ~~An owner or operator~~ Owners or operators may meet the requirements of this rule by ~~passing a~~ demonstrating that they meet the financial test for liability coverage or the test for a corporate guarantee both of which are as specified in ARM 16.44.817.

(4) An owner or operator may demonstrate the required liability coverage through use of ~~both~~ the financial test, corporate guarantee, and insurance as these mechanisms are specified in this sub-chapter. The amount of coverage must total at least the minimum amounts required by subsection (1) of this rule.

AUTHORITY: Sec. 75-10-404 MCA

IMPLEMENTING: Sec. 75-10-405 MCA

3. The department is proposing the amendments to rules 16.44.202, 16.4.405, 16.44.406 and 16.44.425 in order to update Montana's rules to reflect changes which the U.S. EPA has made in federal requirements under the federal Resource Conservation and Recovery Act (RCRA). Montana must keep its rules current with EPA requirements in order to maintain the state's authorization to implement the RCRA program in Montana.

4. The department is proposing to change rule 16.44.811 and 16.44.817 so that TSD owners and operators seeking to use the financial test or corporate guarantee for closure/post closure and liability coverage will submit their financial documentation to the department rather than U.S. EPA Region VIII which has not established a centralized financial data storage system as the department had anticipated.

5. The department is proposing the changes in rules 16.44.817, 16.44.818 and 16.44.819 in order to allow the use of corporate guarantees as an acceptable mechanism for providing liability coverage for sudden and non-sudden occurrences resulting in bodily injury or property damage to third parties. The corporate guarantee mechanism is needed to fill in the gap left by the retreat from the writing of hazardous waste liability coverage by the private insurance industry.

6. Interested persons may submit their data, views, or arguments concerning the proposed amendments in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than April 15, 1985.

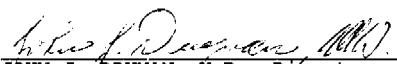
7. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon no later than April 16, 1985.

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



legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1 based on the number of hazardous waste TSD facilities which are required to comply with ARM 16.44.818 and 16.44.819.

9. The authority of the department to make the proposed amendments is based on section 75-10-404, MCA, and the rules implement section 75-10-405, MCA.

  
\_\_\_\_\_  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State March 4, 1985

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

In the matter of the adoption ) NOTICE OF ADOPTION OF  
of amendments to federal ) AMENDMENTS TO  
agency rules pertaining to ) FEDERAL AGENCY RULES PRESENTLY  
the identification and ) INCORPORATED BY REFERENCE  
listing of hazardous waste ) IN ARM 16.44.331, 16.44.333,  
AND 16.44.352(3)  
) (Hazardous Waste Management)  
) NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

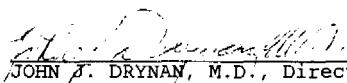
1. The department hereby gives notice of the adoption and incorporation by reference of later amendments to federal agency rules (listed below) presently incorporated by reference in ARM 16.44.331 (Hazardous Waste from Nonspecific Sources), ARM 16.44.333 (Discarded Commercial Chemical Products, Etc.), and ARM 16.44.352(3) (Basis for Listing Hazardous Waste). The amendments set forth the most recent U.S. EPA regulations for procedures, definitions, and standards applicable to the subject matter listed below. Copies of any of the updated federal regulations may be obtained from the Solid and Hazardous Waste Bureau, Montana Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620. The subject matter and Code of Federal Regulations section presently incorporated by reference in ARM 16.44.331, 16.44.333, and 16.44(352(3) are:

- (a) Hazardous waste from nonspecific sources (16.44.331) 40 CFR 261.32
- (b) Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof (16.44.333) 40 CFR 261.33(e) 40 CFR 261.33(f)
- (c) Test basis for listing hazardous waste (16.44.352(3)) 40 CFR Part 261, Appendix VII

2. The effective date for the adoption of the later amendments is April 19, 1985.

3. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 4 based on the number of hazardous waste generators which are required to comply with ARM Title 16, Chapter 44, sub-chapter 3.

4. The authority of the department to make the proposed amendments is based on section 75-10-404, MCA, and the rule implements section 75-10-405, MCA.

  
\_\_\_\_\_  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State March 4, 1985

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

In the matter of the adoption ) NOTICE OF ADOPTION OF  
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agency rules pertaining to ) FEDERAL AGENCY RULES PRESENTLY  
the identification and ) INCORPORATED BY REFERENCE  
listing of hazardous waste ) IN ARM 16.44.331, 16.44.333,  
AND 16.44.352(3)  
) (Hazardous Waste Management)  
NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons


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- (a) Hazardous waste from nonspecific sources (16.44.331) 40 CFR 261.32
- (b) Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof (16.44.333) 40 CFR 261.33(e) 40 CFR 261.33(f)
- (c) Test basis for listing hazardous waste (16.44.352(3)) 40 CFR Part 261, Appendix VII

2. The effective date for the adoption of the later amendments is April 19, 1985.

3. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 4 based on the number of hazardous waste generators which are required to comply with ARM Title 16, Chapter 44, sub-chapter 3.

4. The authority of the department to make the proposed amendments is based on section 75-10-404, MCA, and the rule implements section 75-10-405, MCA.



JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State March 4, 1985

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA  
\*\*\*\*\*

In the matter of application of )  
the MONTANA STATE DEPARTMENT OF )  
INSTITUTIONS, a state govern- )  
mental agency, for a declaratory )  
ruling under Section 49-3-105 )  
MCA (1983) as to the applic- )  
ability of Sections 49-3-201 )  
and 49-3-103(1) (a) MCA (1983) )  
to its requirements for )  
contractual services. )  
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DR85-2639

NOTICE OF HEARING

To: The Montana State Department of Institutions and  
all interested persons:

PLEASE TAKE NOTICE that on April 29, 1985, at 9:00 a.m. in Room C-209, Cogswell Building, 1401 Lockey, Helena, Montana, the petition of the Montana State Department of Institutions for a declaratory ruling that it may refuse to contract with any persons other than married couples as Aftercare Group Home houseparents without violating §49-3-201, MCA, the Governmental Code of Fair Practices, or the Montana Human Rights Act will be heard. You have a right to be represented by counsel at the hearing. A copy of the petition is attached to this notice. James W. Zion, hearing examiner for the Commission, Room C-317, Cogswell Building, Capitol Station, Helena, Montana 59620, will preside over and conduct the hearing.

Any person or organization may petition to intervene in this proceeding by petitioning to intervene and making a showing of their interest, for the purpose of generally addressing the application or expressing a particular point of view concerning it.

A prehearing conference on the application to settle hearing procedure will be conducted on April 9, 1985 at 2:00 p.m.

DATED this 4th day of March, 1985.

MONTANA HUMAN RIGHTS COMMISSION  
MARGERY H. BROWN, CHAIR

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

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA  
\*\*\*\*\*

In the matter of application of )  
the MONTANA STATE DEPARTMENT OF )  
INSTITUTIONS, a state govern- )  
mental agency, for a declaratory )  
ruling under Section 49-3-105 )  
MCA (1983) as to the applic- )  
ability of Sections 49-3-201 )  
and 49-3-103(1) (a) MCA (1983) )  
to its requirements for )  
contractual services. )  
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DR85-2639

PETITION FOR  
DECLARATORY RULING

1. The Petitioner is the Montana State Department of Institutions, 1539 11th Avenue, Helena, Montana 59620.
2. Petitioner is a state agency that is charged with the duty, among others, of providing for children in need of temporary protection or correctional counseling under Section 53-1-201(4) MCA (1983). One of the means used to obtain this goal is group homes for children released from juvenile correctional institutions on an Aftercare Program. Petitioner is currently seeking new house parents for an Aftercare Group Home in Missoula, Montana. Petitioner wishes to advertise for and contract with a married couple for the position. Petitioner wishes to decline to contract with any people that are not married, but is concerned that in doing so it will be in violation of Section 49-3-201(1) because of consideration of marital status.
3. The statute as to which Petitioner requests a declaratory ruling is Section 49-3-201(1) MCA (1983), which provides that state government officials shall recruit, appoint, assign, train, evaluate and promote personnel on the basis of merit and qualifications without regard to marital status.
4. Petitioner contends that the reasonable demands of the position require a marital status distinction. It is important that the group home parents serve as a family/parental role model for the success of the treatment program and the rehabilitation of the youths involved.
5. The question presented for declaratory ruling by the Commission is whether an exemption under 49-3-103(1)(a) as a bona fide occupational qualification should be granted pursuant to 49-3-105.
6. Petitioner requests that the Commission rule that it may refuse to contract with a non-married couple as Aftercare Group Home houseparents without violation of Section 49-3-201 MCA (1981) or any other provision of the Governmental Code of Fair Practices or the Human Rights Act.
7. Petitioner knows of no other party similarly affected.

DATED: January 16, 1985.

s/Karl Nagel  
Special Assistant Attorney General  
For the Department of Institutions  
1539 11th Avenue  
Helena, Montana 59620



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMEND- )  
MENT of Rule 42.13.301 )  
relating to the storage of )  
alcoholic beverages. )  
NOTICE OF PUBLIC HEARING on  
the Proposed Amendment of  
Rule 42.13.301 relating to  
the storage of alcoholic  
beverages.

TO: All Interested Persons:

1. On April 4, 1985, at 10:00 a.m., a public hearing will be held in Room 160 of the Mitchell Building, corner of Fifth and Sanders Streets, at Helena, Montana, to consider the amendment of rule 42.13.301 relating to the storage of alcoholic beverages.

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

42.13.301 STORAGE OF ALCOHOLIC BEVERAGES (1) A licensee may ~~receive, accept delivery of, and~~ store alcoholic beverages only on his licensed premise.

(2) Only those alcoholic beverages for which the premises are specifically licensed may be received, accepted, ~~and~~ or stored.

(3) For the purpose of this subchapter, the words "store alcoholic beverages" mean to keep alcoholic beverages for sale to a licensed beer wholesaler, table wine distributor, retail licensee, or the public as permitted by Title 16, MCA. The repacking of beer or table wine into smaller quantities at an unlicensed terminal or warehouse facility after shipment in accordance with the provisions of 16-3-230 and 16-3-402, MCA, for transshipment and delivery by a retail licensee to the retailer's licensed premise does not constitute storage of alcoholic beverages.

AUTH: 16-1-303 MCA; IMP: 16-3-201 and 16-6-301 MCA.

3. The Department proposes to amend rule 42.13.301 to exclude language in subsection (1) which does not address the storage of alcoholic beverages. The proposed definition for the words "store alcoholic beverages" will inform the public and licensees of those acts which constitute storage of alcoholic beverages and result in application of the provisions of the subchapter. The definition includes clarifying language providing the storage requirements are not applicable to the practice of a wholesaler or distributor delivering beer or table wine to a retail licensee at an unlicensed premise, e.g., a central warehouse, for delivery to the retail licensee's licensed premise.


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:

Ann Kenny  
Department of Revenue  
Legal Division  
Mitchell Building  
Helena, Montana 59620

no later than April 12, 1985.

5. Roy Andes, Agency Legal Services, Department of Justice, has been designated to preside over and conduct the hearing.

6. The authority of the Department to make the proposed amendment is based on § 16-1-303, MCA. The rule implements §§ 16-3-201 and 16-6-301, MCA.

  
\_\_\_\_\_  
JOHN LAFAVER, Director  
Department of Revenue

Certified to Secretary of State 03/04/85

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

IN THE MATTER OF THE amendment )	NOTICE OF ADOPTION of Rules
of Rules 2.5.201, Definitions; )	2.5.201, Definitions;
2.5.202, Department of Admin- )	2.5.202, Department of
istration Responsibilities; )	Administration Responsibili-
2.5.301, Delegation of Purchas- )	ties; 2.5.301, Delegation of
ing Authority; 2.5.302, Requisi- )	Purchasing Authority; 2.5.
tions from Agencies to the )	302, Requisitions from Agen-
Department; 2.5.401, Bidders )	cies to the Department; 2.5.
List; 2.5.501, Specifications; )	401, Bidders List; 2.5.501,
2.5.503, Public Notice; 2.5.602, )	Specifications; 2.5.503,
Competitive Sealed Proposals; )	Public Notice; 2.5.602, Com-
2.5.605, Exigency Procurements. )	petitive Sealed Proposals;
)	2.5.605, Exigency Procure-
)	ments.

TO: All Interested Persons:

1. On December 27, 1984, the Department of Administration published notice of proposed amendments to rules 2.5.201, concerning adding new definitions to the existing rules; 2.5.202, distinguishing certain responsibilities of several divisions within the Department; 2.5.301, raising the small purchase limit for agencies; 2.5.302, clarifying the use of requisitions; 2.5.401, clarifying that the Publications and Graphics Division maintains a bidders list separate from the list of bidders maintained by the Purchasing Division; 2.5.501, adding a suggested format for specifications; 2.5.503, clarifying how a purchasing agency may shorten a list of bidders; 2.5.602, clarifying that any one of the conditions listed in the current rule may render competitive sealed bidding not practicable; 2.5.603, defining the operational procedures for small purchases; and 2.5.605, clarifying that agencies must declare their own exigencies at pages 1818 through 1822 of the 1984 Montana Administrative Register, issue number 24.

2. The agency has amended the rules as proposed.
3. No comments or testimony were received.

BY: *Ellen Selver*  
Director, Department of  
Administration

CERTIFIED TO THE SECRETARY OF STATE: February 19, 1985

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF LANDSCAPE ARCHITECTS

In the matter of the amendment ) NOTICE OF AMENDMENT OF  
of 8.24.409 concerning the ) 8.24.409 FEE SCHEDULE  
fee schedule )

TO: All Interested Persons:

1. On January 17, 1985, the Board of Landscape Architects published a notice of amendment of the above-stated rule at pages 1 and 2, 1985 Montana Administrative Register, issue number 1.
2. The board has amended the rule exactly as proposed.
3. No comments or testimony were received.

DEPARTMENT OF COMMERCE  
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

In the matter of the amendment ) NOTICE OF AMENDMENT OF  
of 8.97.308 (5) and (6) con- ) 8.97.308 (5) & (6) RATES,  
cerning rates, service ) SERVICE CHARGES AND FEE  
charges and fee schedule ) SCHEDULE

TO: All Interested Persons:

1. On January 17, 1985, the Montana Economic Development Board published a notice of amendment of the above-stated rule at pages 3 and 4, 1985 Montana Administrative Register, issue number 1.
2. The board has amended and adopted the rule exactly as proposed.
3. No comments or testimony were received.

DEPARTMENT OF COMMERCE

BY: Keith P. Colbo  
KEITH L. COLBO, DIRECTOR

Certified to the Secretary of State, March 4, 1985.

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of the proposed )	NOTICE OF AMENDMENT OF
amendment of ARM 10.6.103 )	ARM 10.6.103, INITIATING
outlining the process for )	SCHOOL CONTROVERSY
initiating the school con- )	PROCEDURES PROCESS
troversy procedure )	

To: All interested persons.

1. On November 29, 1984 the Montana Office of Public Instruction published notice of the proposed amendment of Rule 10.6.103 relating to special education hearings and jurisdiction before the county superintendent.

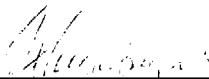
2. The Montana Office of Public Instruction has amended Rule 10.6.103, as proposed.

3. A public hearing was held on January 21, 1985, to consider the proposed amendment of this rule. One person appeared to oppose the proposed amendment. Charles Erdmann, Attorney for the Montana School Boards Association expressed concern that the proposed amendment would limit the ability of a board of trustees to make a decision on a special education matter. He indicated that the ten (10) day limit puts an unfair burden on the school district. He stated that the school district may need more time to collect and receive information and requested additional days to make their decision. He did not specify a certain number of days.

No other comments or testimony were received.

4. Response to the concern expressed by Mr. Erdmann: The United States Department of Education, Office of Special Education, required that the Montana rule regarding special education be amended. The requirement of federal law is that individuals may appeal directly to the county superintendent of schools for an impartial hearing on any special education matter and that school board decisions can be bypassed. In order to allow the board of trustees an opportunity to review and decide the case, the amended rule would permit a grieving party to go immediately to the county superintendent of schools. The county superintendent of schools would then return the question to the board of trustees, allowing the board 10 days to decide. The county superintendent of schools has 45 days in which to conduct a hearing and draft findings, conclusions and an order. These 10 days are inclusive of the 45 days.

5. The authority for the rule is Sec. 20-3-107(3) MCA;  
IMP: Sec. 20-3-107(3) MCA.

  
\_\_\_\_\_  
Ed Argenbright  
State Superintendent  
Office of Public Instruction

Certified to the Secretary of State March 4, 1985.

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

In the matter of the amend- )  
ment of Rule 46.12.102 )  
pertaining to medical )  
assistance, definitions )

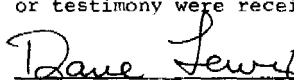
) NOTICE OF THE AMENDMENT OF  
) RULE 46.12.102 PERTAINING  
) TO MEDICAL ASSISTANCE,  
) DEFINITIONS

TO: All Interested Persons

1. On January 31, 1985, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.102 pertaining to medical assistance, definitions at page 96 of the 1985 Montana Administrative Register, issue number 2.

2. The Department has amended the rule as proposed.

3. No written comments or testimony were received.

  
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Director, Social and Rehabilitation Services

Certified to the Secretary of State March 4, 1985.

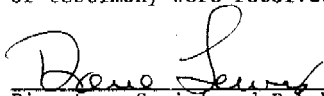
BEFORE THE DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES OF THE  
STATE OF MONTANA

In the matter of the amend- ) NOTICE OF THE AMENDMENT OF  
ment of Rule 46.12.216 ) RULE 46.12.216 PERTAINING  
pertaining to restriction of ) TO RESTRICTION OF ACCESS TO  
access to medical services ) MEDICAL SERVICES

TO: All Interested Persons

1. On January 31, 1985, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.216 pertaining to restriction of access to medical services at page 93 of the 1985 Montana Administrative Register, issue number 2.

2. The Department has amended the rule as proposed.
3. No written comments or testimony were received.

  
\_\_\_\_\_  
Denise Lewis  
Director, Social and Rehabilitation Services

Certified to the Secretary of State March 4, 1985.



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

In the matter of the amend-	)	NOTICE OF THE AMENDMENT OF
ment of Rules 46.12.502 and	)	RULES 46.12.502 AND
46.12.1002 pertaining to	)	46.12.1002 PERTAINING TO
services not provided by the	)	SERVICES NOT PROVIDED BY
medicaid program	)	THE MEDICAID PROGRAM

TO: All Interested Persons

1. On January 31, 1985, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.502 and 46.12.1002 pertaining to services not provided by the medicaid program at page 98 of the 1985 Montana Administrative Register, issue number 2.

2. The Department has amended Rule 46.12.502 as proposed.

3. The Department has amended Rule 46.12.1002 as proposed with the following changes:

46.12.1002 TRANSPORTATION AND PER DIEM, REQUIREMENTS

(1) Transportation and per diem shall be allowed when medically necessary for a recipient to obtain nonemergency services which ~~the department finds are not reasonably available locally or in the state~~ NOT REASONABLY AVAILABLE LOCALLY OR IN THE STATE, OR THE COMBINED TOTAL OF OUT-OF-STATE TRANSPORTATION, MEDICAL SERVICES AND OTHER RELATED EXPENSES ARE LESS COSTLY THAN IN-STATE SERVICES. allowable in accordance with ARM-46.12.502(3)

(2) Transportation and per diem will not be reimbursed unless WRITTEN PRIOR authorization is granted by the department. ~~shall be authorized by the local county welfare director prior to payment.~~

Subsections (3) through (8) remain the same.

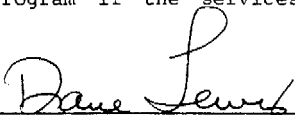
AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 and 53-6-141 MCA

4. The Department has thoroughly considered the written commentary received:

Comment: The proposed rule refers to transportation and per diem to obtain medical services which the Department finds are allowable in accordance with other rules. The reference to those services being not reasonably available locally or in the state has been deleted. There are frequent requests for transportation to obtain medical services in other communities of Montana and it appears that this transportation for in-state travel may no longer be approved.

Response: The Department agrees that the language of the proposed rule appears to prohibit payment for in-state travel. The language has been revised to reflect the intent of the Department to continue to pay for in-state travel as necessary. The intention of the rule amendments is to clarify that the Department will authorize out-of-state travel and medical services only after it has determined that the needed medical services are not available in Montana or it would be less costly to the Medicaid Program if the services were obtained out of state.

  
\_\_\_\_\_  
Director, Social and Rehabilitation Services

Certified to the Secretary of State March 4, 1985.

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 bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

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

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

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

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of 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 ARM topical index, volume 16. Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute Number and Department 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1984. This table includes those rules adopted during the period January 1, 1985 through March 31, 1985, 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 December 31, 1984, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1984 and 1985 Montana Administrative Registers.

ADMINISTRATION, Department of, Title 2

- I-IV Equal Employment Opportunity and Affirmative Action Program, p. 1533, 1798
- I-XVII Recruitment and Selection of Employees By State Agencies, p. 1199, 1560
- 2.5.201 and other rules - Definitions - Department of Administration - Delegation of Purchasing Authority - Requisitions from Agencies to the Department - Bidders List - Specifications Public Notice - Competitive Sealed Proposals - Exigency Procurements, p. 1818
- 2.21.216 and other rules - Administration of Annual Vacation Leave, p. 1656, 100
- (Workers' Compensation Judge)
- 2.52.344 and other rule - Petition for New Trial or Reconsideration of Attorney Fee Award - Attorney Fees, p. 1598, 107

AGRICULTURE, Department of, Title 4

- 4.3.204 Loan Limits Through Junior Agriculture Loans, p. 1082, 1366
- 4.12.1208 Laboratory Fees for Samples of Bees Submitted for Certification, p. 1823, 202

- 4.14.302 and other rules - Loan Powers and Eligible Loan Activities - Loan Maximums - Applicant Eligibility - Tax Deduction, p. 1427, 1752

COMMERCE, Department of, Title 8

(Board of Cosmetologists)

- 8.14.814 and other rules - General, Initial, Renewal and Late Fees - Fee Schedule p. 548, 861, 1180

(Board of Dentistry)

- I-IX Interpretive Rules for Advertising - Coverage - Name and Office Information - Fee Information - Specialization Areas - Solicitation, p. 1825, 154

(Board of Horse Racing)

- 8.22.502 and other rule - Licenses Issued for Conducting Pari-mutuel Wagering on Horse Racing Meetings - Starter, p. 141

- 8.22.610 and other rule - Stewards - Workers' Compensation Insurance Required, p. 143

- 8.22.801 General Requirements - Finalist Determination in Thoroughbred Races, p. 1601, 1843

- 8.22.1025 Penalties, Hearings and Appeals, p. 1778, 108

(Board of Landscape Architects)

- 8.24.409 Fee Schedule, p. 1

(Board of Nursing)

- 8.32.305 and other rules - Educational Requirements and Other Qualifications Applicable To Specialty Areas of Nursing - Re-examination - Registered Nurse - Re-examination - Practical Nurse, p. 1780, 108

(Board of Nursing Home Administrators)

- ~~8.34.418~~ Fee Schedule, p. 1398, 1753

(Board of Optometrists)

- 8.36.409 Fee Schedule, p. 35, 197

(Pharmacy)

- 8.40.404 and other rules - Fee Schedule - Additions, Deletions and Rescheduling of Dangerous Drugs, p. 1208, 1567

(Plumbers)

- ~~8.44.403~~ and other rules - Applications - Examinations - Renewals - Duplicate and Lost Licenses - Fee Schedule, p. 748, 948, 1181

(Board of Psychologists)

- 8.52.613 Code of Professional Conduct, p. 1666, 5

(Board of Public Accountants)

- 8.54.402 and other rules - Examinations - Expiration - Renewal - Grace Period, p. 1832, 154

(Board of Radiologic Technologists)

- 8.56.402 and other rules - Applications - Licenses - Temporary Permits - Definitions - Permit Examinations - Regional Hardship - Requirements for Approval of Physician Specializing in Radiology - Verification of Evidence that Temporary Permit Applicant Can Perform X-ray Exams Without

Endangering Public Health - Unethical Conduct -  
Permit Examinations - Regional Hardship, p. 1210,  
1629

(Social Work Examiners)

8.61.404 Fee Schedule, p. 1783, 108

(Milk Control Bureau)

8.79.301 Licensee Assessments, p. 145.

(Montana Economic Development Board)

I-XII Municipal Finance Consolidation Act Program, p.  
862, 1466

8.97.305 and other rule - Application Procedures - Criteria  
for Determining Eligibility, p. 147

8.97.308 and other rules - Rates, Service Charges and Fee  
Schedule - Criteria for Determining Eligibility -  
Application Procedure- Terms, Rates, Fees and  
Charges - Interim Funding of Pooled Industrial  
Revenue Bond Loans, p. 1784, 3, 155

8.97.410 and other rules - Guaranteed Loan Program -  
Definitions - Description of Economic Development  
Bond Program - Eligibility Requirements -  
Applications - Financing Fees, p. 1430, 1754

8.97.509 Application and Financing Fees, Costs and Other  
Charges, p. 199

(Hard-Rock Mining Impact Board)

8.104.203 and other rules - Format of Impact Plans -  
Notification and Submission of Plan - Ex Parte  
Communications with Board Members and Staff -  
Objections Filed During 30-day Extension of a  
Review Period, p. 1602

(Aeronautics Division)

I-IX Airport Certification and Licensing, p. 1538, 156

#### EDUCATION, Title 10

(Superintendent of Public Instruction)

I Additional Procedures for Evaluating Specific  
Learning Disabilities, p. 1673, 110

10.6.103 Initiating School Controversy Procedure Process, p.  
1668, 1833A

10.16.1101 and other rules - Special Education Evaluation  
Procedures and the Child Study Team Process, p.  
1670, 110

(Board of Public Education)

I Gifted and Talented Children, p. 756, 1182

I Educational Media Library, p. 1168, 1474

I School Program Evaluation, p. 1437

I Opportunity and Educational Equity, p. 54

10.55.101 Accreditation Period, p. 45

10.55.205 and other rules - Supervisory and Administrative  
Time - Policy Governing Pupil Instruction-Related  
Days Approved for Foundation Program Calculations,  
p. 1163, 1441

- 10.55.302 Certificates - First Aid Training for Personnel Coaching Athletics, p. 871, 1161, 1471
- 10.55.303 Teaching Assignments, p. 38
- 10.55.402 Minimum Units Required for Graduation, p. 758, 1439, 111
- 10.57.106 Life Certificates, p. 1166, 1472
- 10.57.207 and other rules - Correspondence Extension and In-Service Credits - Reinstatement - Class 2 Standard Teaching Certificate, p. 1435, 112
- 10.57.403 and other rule - Class 3 Administrative Certificate - Provisional Certificate, p. 46
- 10.62.101 and other rules - Certification of Fire Services Training Schools, p. 760, 1473
- 10.64.601 and other rule - Use of Four Wheel Drive Vehicles - General - Inspections, p. 52
- (Montana State Library)
- 10.101.203 and other rules - General Policy and Public Library Development and Organizational and Procedural Rules, p. 1676

FISH, WILDLIFE AND PARKS, Department of, Title 12

- 12.3.104 Establishment of Landowner Priority in Issuance of Antelope or Deer Hunting Licenses, p. 1021, 1411
- 12.5.401 Oil and Gas Leasing Policy for Department-Controlled Lands, p. 1594, 762, 1084, 1475
- 12.6.901 Water Safety Regulations - 25-Horsepower Limit on Portions of Bighorn River During Part of the Waterfowl Season, p. 1443

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

- I and other rule - Certificates of Need for Long-term Care Facilities, p. 1400
- I Filing of Death Certificates - When Court Order is Required, p. 149
- 16.16.101 and other rules - Sanitation in Subdivisions, p. 1104, 1568
- 16.16.304 Individual Sewage Treatment Systems, p. 1402, 1801
- 16.20.401 Submission and Review of Plans and Specifications for Public Water and Wastewater Systems, p. 1789, 163
- 16.20.605 and other rules - Water Quality Classifications and Standards, p. 1447, 1802
- 16.20.701 and other rules - Extension of Water Quality Non-degradation Rules to Groundwater, p. 1453, 1804
- 16.20.914 and other rule - Issuance of General Permits for Montana Pollutant Discharge Elimination Systems and Groundwater Pollution Control Systems, p. 1459, 1805
- 16.32.103 and other rules - Review Procedures for Applications for Certificates of Need to Establish New Health Care Facilities and Services, p. 293



INSTITUTIONS, Department of, Title 20

- I-VIII Admission Policy for the Montana Veterans' Home, p. 150  
20.11.108 and other rules - Reimbursement Policies, p. 790, 1367

LABOR AND INDUSTRY, Department of, Title 24

(Human Rights Commission)

- I-VII Maternity Leave, p. 482, 949, 1369  
24.29.3801 Attorney Fee Regulation, p. 1795, 201

STATE LANDS, Department of, Title 26

- I-IV Certification of Coal or Uranium Mine Blasters, p. 420, 1373

LIVESTOCK, Department of, Title 32

- I Brucellosis Vaccination of Imported Cattle Under 4 Months of Age, p. 57  
32.3.406 Brucellosis Test Performed on Cattle Before Change of Ownership or Movement Within the State, p. 1807  
32.3.407A Change of Ownership Test - Waiving in 6 Additional Counties the Brucellosis Test, p. 55

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

(Board of Natural Resources and Conservation)

- 36.7.101 and other rules - Administration of the Montana Major Facility Siting Act - Long-Range Plans - Waivers - Notice of Intent to File an Application - Application Requirements - Decision Standards, Centerlines - Monitoring, p. 1216, 1844

PUBLIC SERVICE REGULATION, Department of, Title 38

- I-VII Charges Related to Utility Line Moves Associated with Movement of Structures, p. 360, 1131, 1185

REVENUE, Department of, Title 42

- I Use of Montana Adjusted Gross Income When Calculating Itemized Deductions, p. 1617, 2033  
I Failure to Furnish Requested Information on Returns, p. 1619, 2033  
I Elderly Homeowner Credit Returns, p. 1621, 2034  
I Tax Status of Federal Obligations, p. 1623, 2034  
I-11 Payment of Interest on Refunds, p. 1610, 2031

- I-V Implementation of Alcohol Tax Incentive and Administration Act, p. 1698, 173
- I-XIV Waiver of Penalty and Interest by the Department of Revenue, p. 1702, 113
- 42.11.201 and other rules - Liquor Vendors - Vendor's Employment of Representatives and Brokers, p. 1732, 165
- 42.12.101 and other rules - Liquor Division Licenses and Permits, p. 1712, 167
- 42.13.101 and other rules - Liquor Division Regulation of Licensees - Beer Wholesaler and Table Wine Distributor Recordkeeping Requirements, p. 1741, 170
- 42.15.504 Investment Tax Credit, p. 1615, 2032
- 42.16.105 Penalties for Failure to File Return, Pay Tax or Pay a Deficiency, p. 1608, 2031
- 42.17.103 and other rules - Wages - Forms to File after Termination of Wage Payments, p. 1612, 2032
- 42.21.101 and other rules - Market Value of Personal Property - Oil Field Machinery and Supplies - Leased and Rented Equipment - Abstract Record Valuation - Property Reporting Time Frames, p. 1550, 2036
- 42.22.101 and other rules - Assessment and Taxation of Centrally Assessed Companies, p. 1543, 2041
- 42.23.416 and other rules - Tax Treatment of Interest Earned on Federal Obligations, p. 59
- 42.27.102 and other rule - Gasoline Distributor's Bonds and Statements, p. 1343, 1631
- 42.27.211 Nonexemption from Gasoline Tax, p. 1341, 1632
- 42.28.105 and other rule - Special Fuel User Tax, p. 1348, 1632
- 42.28.301 and other rules - Special Fuel Permits, p. 1350, 1632
- 42.28.402 and other rules - Special Fuel Dealers, p. 1345, 1631

SECRETARY OF STATE, Title 44

- 1.2.419 Scheduled Filing, Compiling and Publication Dates for Montana Administrative Register, p. 1625, 2046

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

- I Determination of When Food Stamp Eligibility Begins, p. 1464, 1755
- I Youth Foster Home, Foster Parents, p. 1834, 175
- I-XIX Licensing Adult Foster Homes, p. 79
- 46.2.201 and other rules - Overall Departmental Rules - Definitions - Fair Hearings, p. 1358, 1633
- 46.5.116 Protective Services, Information System Operator, p. 1108, 1412
- 46.5.401 and other rules - Licensing of Child Placing Agencies, p. 62

- 46.5.501 and other rules - Procedure for Obtaining Substitute Care Services - Eligibility Requirements - Services Provided - Foster Care Maintenance Payments, p. 1110, 1412
- 46.5.604 and other rules - Licenses - License Revocation and Denial - Confidentiality of Records and Information, p. 1364, 1635
- 46.5.904 and other rules - Day Care For Children of Recipients in Training or in Need of Protective Services, p. 1355, 1635
- 46.5.909 and other rules - Registration of Family - Group Day Care Homes and Licensing of Day Care Centers, p. 1838, 177
- 46.10.308 and other rules - Eligibility Requirements Regarding AFDC Program, p. 1170, 1478
- 46.11.101 Food Stamp Program, p. 1748
- 46.11.101 Food Stamp Program - Thrifty Food Plan, p. 1750
- 46.12.102 Medical Assistance, Definitions, p. 96
- 46.12.216 Restriction of Access to Medical Services, p. 93
- 46.12.304 and other rule - Third Party Liability for Medical Assistance, p. 1409, 1637
- 46.12.401 and other rules - Medical Assistance; Provider Sanctions, p. 1404, 1639
- 46.12.502 and other rules - Services Not Provided by the Medicaid Program, p. 98
- 46.12.513 Reimbursement for Swing-Bed Hospitals, Medical Assistance, p. 1627, 2047
- 46.12.3002 Determination of Eligibility for Medical Assistance, p. 1842, 181
- 46.12.3803 Medically Needy Income Standards, p. 1836, 181
- 46.13.106 and other rules - Low Income Energy Assistance Program - Benefit Award Matrices - Income Standards, p. 1113, 1481