

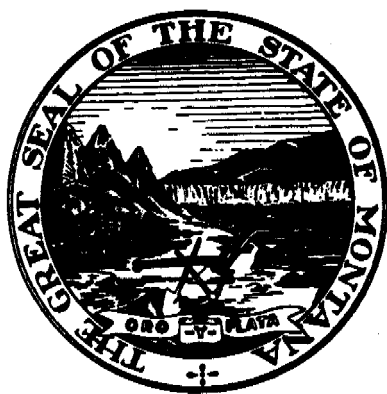
**RESERVE**

RESERVE  
KFM  
9035  
1973  
.A245a

**MONTANA  
ADMINISTRATIVE  
REGISTER**

STATE LAW LIBRARY  
APR 30 1987  
OF MONTANA

1987 ISSUE NO. 8  
APRIL 30, 1987  
PAGES 402-504



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 8

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

NOTICE SECTION

COMMERCE, Department of, Title 8

8-86-20 (Board of Milk Control) Notice of  
Proposed Amendment - Pricing Rules - Special  
Wholesale Prices and Formulas for Fixing the Class  
II and III Producer Prices. No Public Hearing  
Contemplated. 402-404

8-97-22 (Montana Economic Development Board)  
Notice of Proposed Amendment - Economic Development  
Linked Deposit Program. No Public Hearing  
Contemplated. 405-406

8-127-1 (Montana State Lottery Commission)  
Notice of Public Hearing on Proposed Adoption -  
Operations of the Montana State Lottery Commission. 407-416

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

16-2-320 Notice of Proposed Amendment - Hazardous  
Waste Management. No Public Hearing Contemplated. 417-430

LABOR AND INDUSTRY, Department of, Title 24

24-9-22 (Human Rights Commission) Notice of  
Proposed Amendment and Repeal - Procedures for  
Investigation and Conciliation of Complaints Filed  
with the Commission - Pre-hearing Procedures. No  
Public Hearing Contemplated. 431-453

24-15-8 Notice of Public Hearings on Proposed  
Adoption - Mediation of Workers' Compensation  
Disputes. 454-459

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

46-2-497 Notice of Public Hearing on Proposed  
Amendment - Medicaid Optional Services. 460-474

RULE SECTIONAGRICULTURE, Department of, Title 4

EMERG Grading of Seed Potatoes Having Hollow  
AMD Heart Condition. 475-476

COMMERCE, Department of, Title 8

AMD (Board of Morticians) Fee Schedule. 477

AMD (Board of Pharmacy) Fees. 478

AMD (Board of Social Work Examiners and  
NEW Professional Counselors) Fees - Hours,  
Credits and Carry Over - Accreditation and  
Standards - Reporting Requirements -  
Noncompliance - Annual License Renewal. 479

NEW (Local Government Assistance Division)  
Criteria for the Selection of an Independent  
Accountant/Auditor - Criteria for Executing  
a Contract with an Independent Accountant/  
Auditor - Audit and Reporting Standards. 480-482

AMD (Board of Housing) Meetings of the Board. 483

INSTITUTIONS, Department of, Title 20

AMD Admission Criteria for Montana Center for  
the Aged. 484

INTERPRETATION SECTION

Opinions of the Attorney General.

13 Cities and Towns - Authority to Borrow Money  
by Methods Other than Bonds Without Election  
- Counties - Authority to Incur Liability and  
Borrow Money Without Election - Installment  
Purchase Contracts Not Considered Borrowing  
Money - Elections - Incurring Indebtedness  
and Borrowing Money by Cities and Counties -  
Municipal Corporations - Authority to Borrow  
Money by Methods other than Bonds Without  
Election. 485-493

Page Number

SPECIAL NOTICE AND TABLE SECTION

Functions of the Administrative Code Committee.	494
How to Use ARM and MAR.	495
Accumulative Table.	496-504

DEPARTMENT OF COMMERCE  
STATE OF MONTANA  
BEFORE THE BOARD OF MILK CONTROL

In the matter of the amendment ) NOTICE OF PROPOSED AMENDMENT  
Rule 8.86.301 (6)(g), (7)(a) ) OF RULE 8.86.301  
and (8)(a) regarding special ) PRICING RULES  
wholesale prices and formulas )  
for fixing the class II and ) NO PUBLIC HEARING CONTEM-  
III producer prices ) PLATED  
)  
) DOCKET #79-87

TO: ALL INTERESTED PERSONS:

1. On May 30, 1987 the Board of Milk Control proposes to amend Rule 8.86.301 (6)(g), (7)(a), and (8)(a) pertaining to special wholesale prices and formulas for fixing the class II and III producer prices.

2. The purpose for amending subsection (6)(g) is to clarify its intent and to improve its enforceability. The purpose for amending subsections (7)(a) and (8)(a) is to change the rules so they refer to a market source from which accurate and reliable data can be obtained to calculate the class II and III producer price. (Full text of the rule is located at pages 8-2539 through 8-2549, Administrative Rules of Montana)(new matter underlined, deleted matter interlined)  
The rule as proposed to be amended would read as follows:

"8.86.301 PRICING RULES

(1) . . .

(6) . . .

(g) the minimum wholesale price will be marked up ten percent (10%) to arrive at minimum retail prices.

(i) Special wholesale prices for retail grocery stores will be based on the procedures provided in subsections (A), (B) and (C) below. All milk purchased under one of the procedures indicated below must be paid within fifteen (15) days after invoicing unless there is a different time frame specified in the applicable rule section. Retailers are prohibited from purchasing milk at more than one level of service from any one distributor or jobber in any single billing period. This does not prohibit a retailer from changing levels of service in subsequent billing periods.

+A+(A) A special wholesale price for retail grocery stores will be calculated by multiplying regular retail prices by a factor of eighty nine percent (89%) for full service delivery by a distributor. Any milk purchased herein must be paid for within fifteen (15) days after invoicing.

+A+(B) Wholesale drop service for retail stores:

+A+(I) Distributor delivery shall be limited to the service door or refrigerated storage box.

+B+(II) Deliveries shall be limited to a maximum of four (4) times per week, with a one hundred fifty dollars (\$150.00) minimum sale.

+E+(III) The retail store shall assume all responsibility

for servicing the dairy case and rotating the stock of fluid milk products. In store service by the distributor is not permitted.

+B+(IV) The retail store shall assume all responsibility for loss of occasional expiration of product code dates.

+E+(V) The minimum retail price will be marked down by sixteen percent (16%) to arrive at a minimum wholesale drop service price.

+---+(C) Wholesale dock pickup or delivery price:

+A+(I) Delivery shall be f.o.b. the distributor's dock or f.o.b. the wholesale grocer's dock.

+B+(II) The minimum retail price will be marked down by twenty two and three tenths percent (22.3%) to arrive at the minimum wholesale dock pickup or delivery price.

+E+(III) Any milk purchased herein must be paid for within ten (10) days after invoicing.

+B+(IV) Resale will be based upon the wholesale full service price or wholesale drop service price, whichever is applicable.

+E+(V) A minimum pickup or delivery will be five hundred (500) gallons.

(h) . . .

(7) . . .

(a) Prices paid producers for class II milk will be the average spray process nonfat dry milk solids price per pound, ~~from~~ Chicago Central States area, as most recently reported by the United States department of agriculture, plus a factor of \$.0125 per pound for freight, multiplied by 8.2 (which is the amount of solids not fat in skim milk), plus the average Chicago area butter price (grade A, 92 score), as most recently reported by the United States Department of agriculture, multiplied by 4.2 (which is the amount of butter in pounds, which can be produced from one hundred (100) pounds of three point five percent (3.5%) milk, less a make allowance of eight and one half percent (8.5%). In the case of milk containing more or less than three point five percent (3.5%) butterfat, the differential to be employed in computing prices will be determined by multiplying the above mentioned Chicago area butter price by .111 and the resulting answer from this calculation shall be rounded to the nearest half cent (\$.005).

(b) . . .

(8) . . .

(a) Prices paid to producers for class III milk will be the average Chicago area butter price (grade A, 92 score) as most recently reported by the United States department of agriculture, less ten percent (10%) and, in addition, when skim milk is utilized in this classification, by any distributor, the average spray process nonfat milk solids price per pound, ~~from~~ the Chicago Central States area, as most recently reported by the United States department of agriculture, plus a factor of \$.0125 per pound for freight, multiplied by 8.2, less seventeen percent (17%).

(b) . . ."

3. The rationale for the proposed actions is to clarify the intent of the rule, to improve enforceability, and to have the class II and III prices based on an information source from which accurate and reliable data can be obtained for calculating the class II and III producer prices.

4. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Milk Control Bureau, 1520 East Sixth Avenue, Helena, Montana, 59620, no later than May 30, 1987.

5. If a person who is directly affected by the proposed amendment wishes to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit along with any written comments they have to the above address no later than May 30, 1987.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent (10%) or twenty five (25), whichever is less, of the persons who are directly affected by the proposed amendment from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not 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 (10%) of those persons directly affected has been determined to be 26 persons based on an estimate of 261 in-state distributors, resident and non-resident producers subject to this rule.

7. The authority for the Board to take the action and adopt rules as proposed is in section 81-23-302, MCA. Such rules if adopted in the form as proposed or in a modified form, will implement section 81-23-302, MCA.

MONTANA BOARD OF MILK CONTROL  
Curtis C. Cook, Chairman

BY: William E. Ross  
William E. Ross, Bureau Chief

Certified to the Secretary of State April 20, 1987

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE MONTANA ECONOMIC DEVELOPMENT BOARD

In the matter of the proposed amendment of 8.97.406 concerning linked deposit program ) NOTICE OF PROPOSED AMENDMENT of 8.97.406 ECONOMIC DEVELOPMENT LINKED DEPOSIT PROGRAM

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 1, 1987, the Montana Economic Development Board proposes to amend the above-stated rule.

2. The proposed amendment of 8.97.406 will read as follows: (new matter underlined, deleted matter interlined) (full text of the rule is located at page 8-3491, Administrative Rules of Montana)

"8.97.406 ECONOMIC DEVELOPMENT LINKED DEPOSIT PROGRAM

(1) The board may place Economic Development Linked Deposits at an interest rate determined in accordance with ARM 8.97.308, with approved financial institutions who contract with the board to utilize the receipts to finance long-term fixed rate loans to small- and medium-sized businesses that meet the requirement of ARM 8.97.402. The amount of linked deposit shall be limited to 100% of the amount of the loan linked to the deposit. The financial institution retains all risk on any loans financed with the proceeds of an Economic Development Linked Deposit. This program may not be used to fund or support that portion of a loan that which is guaranteed ~~in whole or in part~~ by an agency or instrumentality of the United States government.

(2) will remain the same."

Auth: 17-6-324, MCA Imp: 17-6-315 (1), MCA

3. The Economic Development Linked Deposit Program provides a source of funding for lenders who desire to accept the entire risk on a loan. When the Board approves a loan under this program, the lender receives funding from the Board at a fixed interest rate and in turn loans funds at a fixed rate plus the spread approved by the Board to its borrower. By allowing a lender to combine both the Board's Federally Guaranteed Loan Program and the Economic Development Linked Deposit Program a lender will be able to offer loans to borrowers which are totally on a fixed rate basis.

4. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Montana Economic Development Board, Lee Metcalf Building, 1520 East Sixth Avenue, Helena, Montana 59620-0401, no later than May 28, 1987.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments either orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Montana Economic Development



Board, Lee Metcalf Building, 1520 East Sixth Avenue, Helena, Montana 59620-0401, no later than May 28, 1987.

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

MONTANA ECONOMIC DEVELOPMENT  
BOARD  
D. PATRICK MCKITTRICK,  
CHAIRMAN

BY: Keith L. Colbo  
KEITH L. COLBO, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 20, 1987.

In the matter of the proposed adoption of rules pertaining to the operations of the Montana State Lottery Commission )  
)  
) NOTICE OF PUBLIC HEARING ON  
) THE PROPOSED ADOPTION OF  
) RULES I THROUGH XXXIII  
) PERTAINING TO THE OPERA-  
) TIONS OF THE MONTANA STATE  
) LOTTERY COMMISSION )

1. On May 22, 1987, at 10:00 a.m., a public hearing will be held in the conference room at 2525 North Montana, Helena, Montana, to consider the adoption of new rules I through XXXIII pertaining to the operations of the Montana State Lottery Commission.

"I. ORGANIZATIONAL RULE (1) The Montana state lottery commission was created by Section 4, Chapter 669, Laws of 1985.

(2) Inquiries and applications regarding the commission may be addressed to the Director of the Montana State Lottery, 2525 North Montana, Helena, Montana 59601.

(3) The commission consists of five members appointed by the governor. The commission is allocated to the department of commerce for administrative purposes as prescribed by 2-15-121, MCA. The names and addresses of the members of the commission are as follows:

Keith Colbo, 1424 9th Avenue, Helena, Montana 59620

(4) The director of the Montana lottery is appointed by the governor. The director is Diana S. Dowling, 2525 North Montana, Helena, Montana 59601. The assistant director for security is appointed by the lottery director. All other employees are hired by the lottery director. A chart of the organization of the lottery is attached as the following page and by this reference is herein incorporated.

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Sections 1 through 20, Ch. 669, L. 1985

"II. PROCEDURAL RULES (1) The commission hereby adopts and incorporates by reference rules 1 through 28 of the attorney general's model procedural rules. A copy of these rules may be obtained from the director of the lottery, 2525 North Montana, Helena, Montana 59601."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Sections 1 through 20, Ch. 669, L. 1985

"III. CITIZEN PARTICIPATION (1) The commission hereby adopts and incorporates by reference the citizen participation rules of the department of commerce as set forth in sections ARM 8.2.201 through 8.2.206. A copy of these rules may be obtained from the director of the Montana state lottery, 2525 North Montana, Helena, Montana 59601."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Sections 1 through 20, Ch. 669, L. 1985

"IV. DEFINITIONS (1) 'Chain' means three or more places of business having the same owner.

(2) 'Commission' means the state lottery commission created by Sec. 4, Ch. 669, L. 1985.

(3) 'Director' means the director of the Montana state lottery appointed by the governor under Sec. 6, Ch. 669, L. 1985.

(4) 'License' means the document issued by the lottery which authorizes a retailer to sell lottery instant tickets at a fixed place of business.

(5) 'Lottery' means the Montana State Lottery created by Ch. 669, L. 1985.

(6) 'Place of business' means the premises where any Montana business is conducted and includes but is not limited to retail businesses; businesses of religious, charitable, civic, or fraternal organizations; senior citizen centers; and businesses of the state or any of its political subdivisions. 'Place of business' does not include a mobile business or any business without a fixed location.

(7) 'Provisional license' means a license issued by the director which temporarily authorizes a licensee to conduct the sale of lottery tickets pending processing of the license application or renewal.

(8) 'Retailer' means a licensed ticket or chance sales agent provided for in Sec. 9, Ch. 669, L. 1985.

(9) 'Ticket' means a lottery instant ticket that has a removable coating covering symbols that determine the amount of prize a player can win."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Sections 1 through 20, Ch. 669, L. 1985

"V. GENERAL PROVISIONS (1) The lottery shall provide instant ticket games to the public.

(2) The director shall adopt regulations for each instant game, including, but not limited to:

- (a) game name;
- (b) ticket design;
- (c) number of tickets;
- (d) book size;
- (e) security specifications;
- (f) prize structure; and
- (g) shipping requirements.

(3) The director shall determine the length of each instant game. The starting date and closing date of each game shall be publicly announced.

(4) Game regulations are subject to the concurrence of the commission.

(5) The director may conduct a grand prize event in conjunction with the instant games. The procedures for conducting preliminary drawings and for the grand prize event shall be determined by the director, subject to section 16, Ch. 669, L. 1985.

(6) The lottery shall provide a type of lotto game to the public whenever the director, with the concurrence of the commission, finds it feasible and in the best interest of the state."

Auth: Sections 5(2), (8), Ch. 669, L. 1985 Imp: Sections 5(2), 1 through 20, Ch. 669, L. 1985

"VI. RETAILER PLACES OF SALE (1) Lottery tickets or chances may be sold at any place of business in Montana that:

- (a) is licensed by the lottery;
- (b) is not engaged in business exclusively as a lottery ticket or chance sales agent;
- (c) is not a mobile business;
- (d) is financially responsible;
- (e) is accessible to the public;
- (f) has not been convicted of a felony or a gambling-related offense; or
- (g) does not have a financial interest in any gaming supplier."

Auth: Sections 5(8), 9(2), Ch. 669, L. 1985 Imp: Sections 1 through 20, Ch. 669, L. 1985

"VII. RETAILER RESIDENCY (1) Each person applying for a license must either:

- (a) be a resident of Montana;
- (b) if a corporation, be licensed to do business in Montana; or
- (c) if a partnership, have at least one partner residing in Montana."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Section 5(8), Ch. 669, L. 1985

"VIII. RETAILER APPLICATIONS (1) A person interested in obtaining a license as a retailer shall file an application for a license on an application form provided by the director.

(2) The application must provide sufficient information for the director to determine the eligibility for a license as set forth in Sec. 9, Ch. 669, L. 1985, and these rules and for the director for security to perform sufficient background checks to insure that applicants and licensees conform to the law and rules."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Sections 8(3)(a), 9(1) through (3), Ch. 669, L. 1985

"IX. RETAILER REQUIRED RULE READING (1) Each licensed retailer and any employee of the retailer who will be involved

in the sale, bookkeeping, or any other aspect of the lottery shall:

(a) read the rules of the commission concerning retail licenses and be familiar with such rules;

(b) sign a certificate that he or she is familiar with the rules of the commission and agrees not to violate such rules."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Sections 5(8), 9(11), (13), Ch. 669, L. 1985

"X. RETAILER ELECTRONIC FUNDS TRANSFER (1) A retailer shall, before being licensed, authorize the debiting and crediting of an account in the retailer's name for the purpose of electronic funds transfer to or from the state's collection account, as provided in rule XXVI.

(2) The retailer shall execute all forms required by the lottery director, the retailer's bank, or the initiating bank."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Section 9(12), Ch. 669, L. 1985

"XI. RETAILER BONDING (1) The director will not require a bond of instant ticket retailers."

Auth: Section 9(6), Ch. 669, L. 1985 Imp: Section 9(6), Ch. 669, L. 1985

"XII. RETAILER COMMISSION (1) Each retailer is entitled to a 5% commission on tickets sold."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Section 9(10), Ch. 669, L. 1985

"XIII. RETAILER DUTIES (1) Each retailer shall agree to actively promote the sale of Montana lottery tickets and to maintain a retailer manual, point-of-sale materials and displays in accordance with instructions of the director."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Sections 1 through 20, Ch. 669, L. 1985

"XIV. LICENSE APPLICATION FEE (1) Any eligible person may apply to the lottery for a license to sell lottery tickets.

(2) The application must be accompanied by a nonrefundable fee of \$50.00."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Section 9(5), Ch. 669, L. 1985

"XV. PROVISIONAL LICENSE (1) The director may issue a provisional license after an initial background and financial check pending final processing. A permanent license may be issued only upon successful completion of such checks."

Auth: Sections 5(8), 7(1)(c), Ch. 669, L. 1985 Imp: Sections 7(1)(c), 9(3), (4), Ch. 669, L. 1985

"XVI. DISPLAY OF LICENSE (1) Each retailer shall prominently display the license in each licensed place of business in an area visible to the general public and in a manner that prevents theft or defacement of the license."

Auth: Section 9(7), Ch. 669, L. 1985 Imp: Section 9(7), Ch. 669, L. 1985

"XVII. LICENSE LOCATIONS (1) A license may be issued only for the location specified in the application.

(2) Each person shall submit a separate application for each location at which the person intends to sell lottery tickets.

(3) Each location for which an application is submitted must be a fixed location.

(4) The address of the licensed premises must appear on the license."

Auth: Sections 5(8), 7(1)(c), 9(2), Ch. 669, L. 1985  
Imp: Sections 7(1)(c), 9(2), Ch. 669, L. 1985

"XVIII. EXPIRATION OF LICENSE (1) Each final license shall be issued for one year and expires one year from the date of issuance.

(2) If the director finds that the volume of licenses are such that the expiration in any month or group of months creates a burden on the administration of the lottery, the director may issue licenses for a period greater than or less than one year for the purpose of staggering the expiration dates of licenses throughout the calendar year."

Auth: Sections 5(8), 7(1)(c), Ch. 669, L. 1985 Imp: Section 7(1)(c), Ch. 669, L. 1985

"XIX. DUPLICATE LICENSES (1) Upon the loss, mutilation, or destruction of any license issued by the director, the person holding such license may apply to the director for a duplicate.

(2) The application shall be made on a form provided by the director.

(3) The application for duplicate license shall be accompanied by a statement signed under oath or penalty of perjury stating the details of the circumstances under which the license was lost, mutilated, or destroyed and bearing a certification that such license was, in fact, lost, mutilated, or destroyed.

(4) The application for duplicate license shall be accompanied by a fee of \$10.00.

(5) The existing pieces of any mutilated or partially destroyed license shall be surrendered to the director at the time application for duplicate license is made.

(6) If a licensee finds any lost license after a duplicate has been issued, the licensee shall immediately surrender such license to the director."

Auth: Sections 5(8), 7(1)(c), Ch. 669, L. 1985 Imp: Section 7(1)(c), Ch. 669, L. 1985

"XX. BUSINESS CHANGES (1) A licensee must notify the director of any of the following changes in the licensed business:

- (a) any change of business structure;
- (b) material change of ownership;
- (c) changes in the officers;
- (d) changes in the board of directors; and
- (e) change of business address."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Section 9(8), Ch. 669, L. 1985

"XXI. ASSIGNMENT OR TRANSFER OF LICENSE PROHIBITED

(1) In accordance with (Sec. 9 (8), Ch. 669, L. 1985), licenses for the sale of lottery tickets are not assignable or transferable. No licensee may attempt to assign or transfer the license to another person or to another location."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Section 9(8), Ch. 669, L. 1985

"XXII. CHANGE OF LOCATION (1) The change of a business address for any retail licensee is not considered to be the assignment or transfer of the license if all of the following criteria are met:

- (a) the licensee informs the director in writing of the change of address including the old address, the new address, and the reasons for the change of address;
- (b) the old location ceases all business activity by the licensee and not merely the sale of lottery tickets;
- (c) the new license location does not begin the transaction of any business prior to the cessation of all business at the previous location;
- (d) the director is satisfied that the change in location meets all the requirements for initial licensure.

(2) If all the criteria in (1) are met, the director shall issue a license bearing the new address, with the same identification number."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Section 9(8), Ch. 669, L. 1985

"XXIII. LICENSE RENEWAL (1) A renewal application shall be made on a form supplied by the director and accompanied by a processing fee of \$50.00."

Auth: Sections 5(8), 7(1)(c), Ch. 669, L. 1985 Imp: Sections 7(1)(c), Ch. 669, L. 1985

"XXIV. REVOCATION OR SUSPENSION OF LICENSE (1) After notice, in writing, and hearing before the commission, the director shall revoke the license of any person who has:

- (a) knowingly provided false or misleading information to the lottery or any other agency conducting an investigation on behalf of the lottery;
- (b) been convicted of a felony;
- (c) endangered the security of the lottery; or

(d) sold any ticket at a higher price than that set by rule of the commission.

(2) The director may, after a hearing before the commission, suspend or revoke license for any of the following reasons:

- (a) a change of business location;
- (b) an insufficient sales volume;
- (c) a delinquency in remitting money owed to the lottery;
- (d) a violation of any rule adopted by the commission;
- (e) knowingly selling a ticket to a person under the age of 18 years;

(f) allowing an employee under the age of 18 to sell lottery tickets;

(g) failure to redeem prizes as directed by the lottery;

(h) the refusal to acquire or display any materials required by the director; or

(i) the licensee is ineligible for a license under the Montana lottery act and the facts giving rise to such ineligibility occurred or were discovered subsequent to the issuance of a license.

(3) Upon notice of revocation or suspension, the retailer shall give a final accounting to the lottery and surrender the license, lottery material, and tickets to the lottery. The retailer is liable for all money still owed the lottery and for any low tier prizes paid by the lottery on tickets sold by that retailer.

(4) The director may decline to renew a license that could be revoked or suspended under this rule."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Sections 9(3), (13), Ch. 669, L. 1985

"XXV. TEMPORARY LICENSES (1) The director may issue a special temporary license to a licensed retailer upon conditions considered necessary including, but not limited to:

- (a) license period;
- (b) days and hours of sale;
- (c) location of special sale;
- (d) specific business licensed;
- (e) specific sporting, charitable, social, or other event where lottery tickets may be sold under the temporary license."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Section 9(4), Ch. 669, L. 1985

"XXVI. ELECTRONIC FUNDS TRANSFER (1) As a condition of licensing, a retailer shall agree to participate in the lottery's electronic funds transfer system.

(2) The retailer's account will be debited (swept) for the amount owing the lottery approximately seven days after delivery of tickets. The director may allow deviation from the schedule for the first game and in other special circumstances.

(3) The retailer shall bring any error or dispute to the attention of the lottery before the sweep.



(4) A retailer must pay the amount of any nonsufficient fund sweep immediately by certified check, cashier's check, or money order. If a NSF is not covered, the retailer shall immediately surrender all tickets and other lottery material and is subject to license revocation proceedings.

(5) Two or more sweeps that result in nonsufficient funds are cause for license suspension or revocation."

Auth: Sections 5(8), 9(12), Ch. 669, L. 1985 Imp: Section 9(12), Ch. 669, L. 1985

"XXVII. SALE OF INSTANT TICKETS (1) Instant tickets may be sold by any licensed retailer at the location specified on the license or by any employee of the retailer who is 18 years of age or older."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Section 5(2), Ch. 669, L. 1985

"XXVIII. INSTANT TICKET PRICE (1) The price of an instant ticket is \$1.00. A retailer may not sell a ticket for more than \$1.00. A retailer may give away tickets."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Sections 5(3), 10(3), 16(2), 19, Ch. 669, L. 1985

"XXIX. INSTANT TICKET MARKING (1) Licensees shall mark each ticket clearly on the back with the name and identification number of the licensed premises."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Section 5(2), Ch. 669, L. 1985

"XXX. INSTANT TICKETS - PROPERTY OF RETAILER (1) All tickets for the instant game become the property of the retailer upon acceptance from the lottery. The retailer is responsible for all tickets after acceptance and bears the burden of any loss, including theft or damage."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Sections 1 through 20, Ch. 669, L. 1985

"XXXI. NOTIFICATION OF LOST, DAMAGED, OR STOLEN TICKETS OR EQUIPMENT (1) Licensees shall immediately report the theft, loss, or damage of any lottery tickets or equipment to the director and local law enforcement authorities. The licensee shall cooperate in any investigation conducted by the lottery, its employees, the attorney general, legislative auditor, or local law enforcement authorities."

Auth: Sections 5(8), Ch. 669, L. 1985 Imp: Sections 8(3), 19, Ch. 669, L. 1985

"XXXII. INSTANT TICKET RETURNS (1) Unsold instant game tickets may be returned to the lottery for full credit within time limits established by the director."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Sections 5(2), 19, Ch. 669, L. 1985

"XXXIII. PRIZES (1) Winning tickets of \$25.00 or less may be redeemed only at the location marked on the back of the ticket or at lottery headquarters. Winning tickets of more than \$25.00 may be redeemed by presenting a claim form provided by the director to the lottery either by mail or in person.

(2) A winning ticket may be redeemed only by an individual or an organization with a federal employer's identification number.

(3) A claimant authorizes the use of claimant's name and photograph for publicity purposes upon award of the prize.

(4) Unless otherwise provided in the regulations for a specific game, a claimant shall sign the back of a winning ticket and, for prizes over \$25.00, complete a claim form approved by the director.

(5) The lottery may deny a claim for a winning ticket if:

(a) the ticket was not legally issued;  
(b) the ticket was stolen; or  
(c) the ticket is altered or forged or so mutilated that its authenticity cannot reasonably be determined.

(6) By submitting the claim, the claimant discharges the lottery of all further liability upon payment of the prize claimed.

(7) A ticket is a bearer instrument until signed. The person who signs the ticket is the bearer of the ticket. Payment of any prize may be made to the bearer, and all liability of the lottery terminates upon such payment.

(8) Upon validation of a winning claim, a check or warrant for the amount of the prize shall be issued to the claimant, less any applicable state or federal income tax withholding.

(9) A ticket not passing all validation checks is invalid and no prize may be paid on such ticket.

(10) The director's decision concerning validation and payment of any prize is final and binding.

(11) Prizes over \$100,000.00 shall be paid in equal yearly installments without interest over a period of not more than 20 years, as determined by the director. No installment may be less than \$20,000.00.

(12) All prizes payable at the death of a winner, shall be paid to a designated beneficiary, the estate of the deceased or to a person designated by judicial order."

Auth: Section 5(8), Ch. 669, L. 1985 Imp: Sections 5(3), 16(3), (5), 1 through 20, Ch. 669, L. 1985

3. These rules are being proposed to implement the Lottery Act of 1985 and basic authority in Section 5, Subsection 8, of Chapter 669, Laws of 1985.

4. Interested persons may submit their data, views or arguments either orally or in writing, at the hearing. Written data, views and arguments may also be submitted to the Montana State Lottery Commission, 2525 North Montana, Helena, Montana, no later than May 28, 1987.

5. The Montana State Lottery Commission will preside over and conduct the hearing.

MONTANA STATE LOTTERY  
COMMISSION

BY: *Diana S. Dowling*  
DIANA S. DOWLING, DIRECTOR

Certified to the Secretary of State, April 20, 1987.

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

In the matter of the amendment of )  
rules 16.44.102, 16.44.103, )  
16.44.109, 16.44.110, 16.44.116, ) NOTICE OF PROPOSED  
16.44.118, 16.44.120, 16.44.123, ) AMENDMENT OF RULES  
16.44.124, 16.44.126, 16.44.202, )  
16.44.306, 16.44.321, 16.44.323, )  
16.44.330, 16.44.331, 16.44.332, )  
16.44.333, 16.44.334, 16.44.351, )  
16.44.352, 16.44.401, 16.44.405, )  
16.44.410, 16.44.411, 16.44.412, )  
16.44.413, 16.44.511, 16.44.603, )  
16.44.609, 16.44.702, 16.44.802, )  
16.44.803, 16.44.804, 16.44.805, )  
16.44.811, 16.44.817, 16.44.822, ) (Hazardous Waste  
and 16.44.823, regarding ) Management)  
hazardous waste management )

NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On June 1, 1987, the department proposes to amend the above-listed hazardous waste rules, found at pages 16-2562 through 16-4108 of the Administrative Rules of Montana.

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

16.44.102 INCORPORATIONS BY REFERENCE

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

(5) Same text as existing rule, but with one addition to the table listing the CFR incorporations by reference:

<u>State Rule</u>	<u>Federal Rule Incorporated</u>	<u>Notation of Most Recent Changes to Federal Rules</u>
<u>16.44.102</u>	<u>40 CFR</u>	
<u>603</u>	<u>264.250(c), 265.352, 265.383</u>	<u>Regulations identifying dioxin wastes.</u>

AUTHORITY: 75-10-404 and 75-10-405, MCA  
IMPLEMENTING: 75-10-405 and 75-10-406, MCA

8-4/30/87

MAR NOTICE NO. 16-2-320

16.44.103. SCOPE OF PERMIT REQUIREMENTS

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

(8) The department hereby adopts and incorporates herein by reference 40 CFR sections 264.17(b), 264.96, 264.117, 264.171 and 264.172. The correct CFR edition is listed in ARM 16.44.102.

(a)-(e) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405 and 75-10-406, MCA

16.44.109. CONDITIONS OF PERMITS

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

(22) The department hereby adopts and incorporates herein by reference 40 CFR sections 264.72, 264.73(b)(9)-~~47486-edition~~, and 264.76. The correct CFR edition is listed in ARM 16.44.102. 40 CFR sections 264.72, 264.73(b)(9), and 264.76 are federal agency rules setting forth requirements for owners and operators of HWM facilities concerning, respectively, manifest discrepancies, operating records, and unmanifested waste reports.

(23) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405 and 75-10-406, MCA

16.44.110. ESTABLISHING PERMIT CONDITIONS

(1) Same as existing rule.

(2) Each HWM permit shall include permit conditions necessary to achieve compliance with the Act and applicable rules including each of the applicable requirements specified in 40 CFR Parts 264 and 266-~~47486-edition~~. In satisfying this provision, the department may incorporate applicable requirements of 40 CFR Parts 264 and 266 directly into the permit or establish other permit conditions that are based on these parts.

(3)-(5) Same as existing rule.

(6) The department hereby adopts and incorporates by reference 40 CFR Parts 264 and 266-~~47486-edition~~. The correct CFR edition is listed in ARM 16.44.102. 40 CFR Parts 264 and 266 are federal agency rules setting forth requirements, for owners and operators of HWM facilities, concerning respectively, standards for operation and maintenance of facilities and standards for specific hazardous wastes such as recyclable wastes and specific types of facilities.

(7) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405 and 75-10-406, MCA

16.44.116. MODIFICATION OR REVOCATION AND REISSUANCE

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

(5) The department hereby adopts and incorporates herein by reference 40 CFR sections 264.98, 264.99, 264.100, 264.112, 264.113, 264.117(a), 264.118, and 264.147. The correct CFR edition is listed in ARM 16.44.102.

(a)-(c) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA  
IMPLEMENTING: 75-10-405 and 75-10-406, MCA

16.44.118 MINOR MODIFICATIONS OF PERMITS

(1)-(2) Same as existing rule.  
(3) The department hereby adopts and incorporates herein by reference 40 CFR sections 264.112, 264.113, 264.271, and 264.272. The correct CFR edition is listed in ARM 16.44.102.

(a)-(c) Same as existing rule.  
AUTHORITY: 75-10-404 and 75-10-405, MCA  
IMPLEMENTING: 75-10-405 and 75-10-406, MCA

16.44.120 CONTENTS OF PART B

(1)-(2) Same as existing rule.  
(3) The department hereby adopts and incorporates by reference 40 CFR 270.14 through 270.21. The correct CFR edition is listed in ARM 16.44.102.

(a)-(i) Same as existing rule.  
AUTHORITY: 75-10-404 and 75-10-405, MCA  
IMPLEMENTING: 75-10-405 and 75-10-406, MCA

16.44.123 PERMITS FOR HAZARDOUS WASTE INCINERATORS

(1)-(4) Same as existing rule.  
(5) The department hereby adopts and incorporates herein by reference 40 CFR sections 264.343 and 264.345. The correct CFR edition is listed in ARM 16.44.102. 40 CFR sections 264.343 and 345 are federal agency rules setting forth requirements for owners and operators of HWM facilities concerning, respectively, performance standards and operating requirements for hazardous waste incinerators.

(6) Same as existing rule.  
AUTHORITY: 75-10-404 and 75-10-405, MCA  
IMPLEMENTING: 75-10-405 and 75-10-406, MCA

16.44.124 PERMITS FOR LAND TREATMENT DEMONSTRATIONS

(1)-(4) Same as existing rule.  
(5) The department hereby adopts and incorporates herein by reference 40 CFR Part 264, subpart M which includes sections 264.270 through 264.282 and 40 CFR section 264.272. The correct CFR edition is listed in ARM 16.44.102.

(a)-(c) Same as existing rule.  
AUTHORITY: 75-10-404 and 75-10-405, MCA  
IMPLEMENTING: 75-10-405 and 75-10-406, MCA

16.44.126 RESEARCH, DEVELOPMENT, AND DEMONSTRATION PERMITS

(1) The department may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under 40 CFR Part 264 or 266-~~674/86-edition~~. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:

(a)-(c) Same as existing rule.

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

(5) The department hereby adopts and incorporates herein by reference 40 CFR Parts 264 and 266 (~~both parts are contained in the 74486 edition~~), which pertain to standards for owners and operators of hazardous waste management facilities and to standards for the management of specific hazardous wastes such as recyclable materials. The correct CFR edition is listed in ARM 16.44.102. Copies of 40 CFR Parts 264 and 266 may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

#### 16.44.202 DEFINITIONS

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

(16)(a) Same as existing rule.

(b) The department hereby adopts and incorporates by reference herein 40 CFR Part 266 (~~74486 edition~~), which is a federal agency rule pertaining to standards for the management of specific hazardous wastes such as recyclable materials and specific types of hazardous waste management facilities. The correct CFR edition is listed in ARM 16.44.102. A copy of 40 CFR Part 266 may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

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

(57)(a)-(b) Same as existing rule.

(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. The correct CFR edition is listed in ARM 16.44.102. 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.

(58)-(106) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-403, 75-10-405, and 75-10-406, MCA

#### 16.44.306 REQUIREMENTS FOR RECYCLABLE MATERIALS

(1)(a) Same as existing rule.

(b) The following recyclable materials are not subject to the requirements of this rule but are regulated under subparts C through G of 40 CFR Part 266 (~~74486 edition~~) and all applicable provisions in subchapters 1, 8, and 9 of this chapter:

(i) recyclable materials used in a manner constituting disposal (subpart C, 40 CFR Part 266 (~~74486 edition~~));

(ii) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under subpart O of 40 CFR Part 264 or subpart O of 40 CFR Part 265 (subpart D, 40 CFR Part 266) (~~74486 edition~~);

(iii) Same as existing rule.

(iv) recyclable materials from which precious metals are reclaimed (subpart F, 40 CFR Part 266-~~(74186-edition)~~);

(v) spent lead-acid batteries that are being reclaimed (subpart G, 40 CFR Part 266-~~(74186-edition)~~);

(c) Same as existing rule.

(2) Same as existing rule.

(3)(a) Unless exempted in (1)(b) and (1)(c) above, owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of Subparts B through L of 40 CFR Parts 264 and 265 (except subpart H of each Part and except for 40 CFR 264.75 and 40 CFR 265.75)-~~(74186-edition)~~ and subchapters 1, 6, 7, and 8 of this chapter. (The recycling process itself is exempt from regulation.)

(b) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are required to notify the department of their recycling activities by filing a completed form 8700-12 with the department and are subject to the requirements of 40 CFR 265.71 and 265.72 ~~(74186-edition)~~ (dealing with the use of the manifest and manifest discrepancies), except as provided in section (1) of this rule.

(4) The department hereby adopts and incorporates by reference subpart O of 40 CFR Part 264, subpart O of 40 CFR Part 265, 40 CFR 265.71, 265.72, and subparts C through G of 40 CFR Part 266. ~~---(A)---6FR-sections-and-parts-referred-to-herein-are contained-in-the-74186-edition-~~ The correct CFR edition is listed in ARM 16.44.102. These federal agency rules refer, respectively, to: standards for owners and operators of hazardous waste treatment, storage, and disposal facilities, specifically pertaining to incinerators (40 CFR Part 264, subpart O); interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities, specifically pertaining to incinerators (40 CFR Part 265, subpart O); use of a manifest system for interim status facility owners and operators (40 CFR 265.71); manifest discrepancies (40 CFR 265.72); and recyclable materials (40 CFR Part 266). Subparts B through L of 40 CFR Parts 264 and 265 are incorporated by reference in ARM 16.44.702 and 16.44.609. The equivalents of 40 CFR 264.75 and 40 CFR 265.75 ~~are~~ set forth in ARM 16.44.703 and ARM 16.44.613, respectively. A copy of these provisions or any portion thereof may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

#### 16.44.321. CHARACTERISTIC OF IGNITABILITY

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

(c) It is 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. The correct CFR edition is listed in ARM 16.44.102. 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 and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

(d) Same as existing rule.

(2) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

#### 16.44.323 CHARACTERISTIC OF REACTIVITY

(1) Same as existing rule.

(2) The department hereby adopts and incorporates herein by reference 49 CFR 173.51, 49 CFR 173.53, and 49 CFR 173.88. The correct CFR edition is listed in ARM 16.44.102. 49 CFR 173.51, 173.53 and 173.88 are federal agency rules setting forth, respectively, a description of those explosives classified as forbidden explosives, the definition of a Class A explosive, and the definition of a Class B explosive. A copy of 49 CFR 173.51, 173.53 and 173.88 may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

(3) Same as existing rule.

AUTHORITY: 75-10-204, MCA

IMPLEMENTING: 75-10-203 and 75-10-204, MCA

#### 16.44.330 LISTS OF HAZARDOUS WASTES -- GENERAL

(1) Same as existing rule.

(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) Same as existing rule.

(b) ARM 16-44-25+16.44.352 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)-(4) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

#### 16.44.331 HAZARDOUS WASTE FROM NONSPECIFIC SOURCES

The department hereby adopts and incorporates herein by reference 40 CFR 261.31. The correct CFR edition is listed in ARM 16.44.102. 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 and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16.44.332 HAZARDOUS WASTE FROM SPECIFIC SOURCES The department hereby adopts and incorporates herein by reference 40 CFR 261.32. The correct CFR edition is listed in ARM 16.44.102. 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 and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.  
AUTHORITY: 75-10-404 and 75-10-405, MCA  
IMPLEMENTING: 75-10-405, MCA

16.44.333 DISCARDED COMMERCIAL CHEMICAL PRODUCTS, OFF-SPECIFICATION SPECIES, CONTAINER RESIDUES, AND SPILL RESIDUES THEREOF (1)(a)-(f) Same as existing rule.

(g) The department hereby adopts and incorporates by reference the lists of substances and hazardous waste numbers in 40 CFR 261.33(e) and (f). The correct CFR edition is listed in ARM 16.44.102. 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 and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.  
AUTHORITY: 75-10-404 and 75-10-405, MCA  
IMPLEMENTING: 75-10-405, MCA

16.44.334 ADDITIONAL REGULATION OF CERTAIN HAZARDOUS WASTE RECYCLING ACTIVITIES ON A CASE-BY-CASE BASIS

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

(3) The department hereby adopts and incorporates herein by reference 40 CFR Part 265, Appendix V-~~(77786-ed+tion)~~, which sets forth examples of incompatible wastes. The correct CFR edition is listed in ARM 16.44.102. A copy of 40 CFR Part 265, Appendix V, may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.  
AUTHORITY: 75-10-404 and 75-10-405, MCA  
IMPLEMENTING: 75-10-405, MCA

16.44.351 REPRESENTATIVE SAMPLING METHODS; EP TOXICITY TEST PROCEDURES; CHEMICAL ANALYSIS TEST METHODS; AND TESTING METHODS

(1) For the purposes of this chapter, the department hereby adopts and incorporates herein by reference the following (the correct CFR edition is listed in ARM 16.44.102):

(a)-(e) Same as existing rule.

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

AUTHORITY: 75-10-204, MCA  
IMPLEMENTING: 75-10-102 and 75-10-204, MCA

16.44.352 BASIS FOR LISTING -- HAZARDOUS CONSTITUENTS (1) For the purposes of this chapter, the department hereby adopts and incorporates herein by reference the following (the correct CFR edition is listed in ARM 16.44.102):

(a)-(b) Same as existing rule.

(2) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16.44.401 GENERAL PROVISIONS

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

(4)(a)-(b) Same as existing rule.

(c) A "small generator" is a generator who generates in a calendar month:

(i) between 100 kilograms (220 pounds) and 1000 kilograms (2200 pounds) of hazardous waste;

(ii) less than 1 kilogram (2.2 pounds) of acute hazardous waste; or and

(iii) less than 100 kilograms (220 pounds) of any residue, contaminated soil, waste, or other debris resulting from a discharge, into or on any land or water, of acute hazardous waste.

(d)-(f) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16.44.405 MANIFEST GENERAL REQUIREMENTS

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

(6) 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. The correct CFR edition is listed in ARM 16.44.102. 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: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16.44.410 PACKAGING (1) Same as existing rule.

(2) The department hereby adopts and incorporates herein by reference 49 CFR Parts 173, 178 and 179. The correct CFR edition is listed in ARM 16.44.102.

(a)-(d) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16.44.411 LABELING (1) Same as existing rule.

(2) The department hereby adopts and incorporates herein by reference 49 CFR Part 172, Subpart E. The correct CFR edition is listed in ARM 16.44.102. 49 CFR Part 172, Subpart E, are federal agency rules setting forth labeling requirements for hazardous materials offered for transportation. A copy of 49 CFR Part 172, Subpart E, or any portion thereof, may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-10-404 and 75-10-405, MCA

MAR Notice No. 16-2-320

8-4/30/87

IMPLEMENTING: 75-10-405, MCA

16.44.412. MARKING (1) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each package of hazardous waste in accordance with the applicable department of transportation regulations on hazardous materials under 49 CFR Part 172. The department hereby adopts and incorporates herein by reference 49 CFR Part 172, Subpart D. The correct CFR edition is listed in ARM 16.44.102. 49 CFR Part 172, Subpart D, are federal agency rules setting forth marking requirements for hazardous materials offered for transportation. A copy of 49 CFR Part 172, Subpart D, or any portion thereof, may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

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

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16.44.413. PLACARDING (1) Same as existing rule.

(2) The department hereby adopts and incorporates herein by reference 49 CFR Part 172, Subpart F. The correct CFR edition is listed in ARM 16.44.102. 49 CFR Part 172, Subpart F, are federal agency rules setting forth placarding requirements for vehicles carrying hazardous materials in highway or rail transportation. A copy of 49 CFR Part 172, Subpart F, or any portion thereof, may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16.44.511. HAZARDOUS WASTE DISCHARGES -- IMMEDIATE ACTION

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

(5) The department hereby adopts and incorporates herein by reference 49 CFR 171.15 and 171.16 and 33 CFR 153.203. The correct CFR edition is listed in ARM 16.44.102.

(a)-(c) Same as existing rule.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16.44.603. RESTRICTIONS ON CERTAIN HAZARDOUS WASTES

(1) Same as existing rule.

(2) The department hereby adopts and incorporates by reference herein 40 CFR 264.250(c) pertaining to applicability of rules to owners and operators of facilities that store or treat hazardous waste in piles, 40 CFR 265.352 pertaining to interim status incinerators burning particular hazardous wastes, and 40 CFR 265.383, pertaining to interim status thermal treatment devices burning particular hazardous wastes. The correct CFR edition is listed in ARM 16.44.102. A copy of 40 CFR 264.250(c), 265.352, and 265.383, or any portion thereof, may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell

Building, Helena, Montana 59620.

AUTHORITY: 75-10-204 and 75-10-405, MCA

IMPLEMENTING: 75-10-204, MCA

16.44.609 STANDARDS FOR EXISTING FACILITIES WITH TEMPORARY PERMITS (INTERIM STATUS) (1) Same as existing rule.

(2) The department hereby adopts and incorporates herein by reference 40 CFR Part 265, subparts B through and including Q, and excluding subpart H and 40 CFR 265.75-~~(77+86-ed+ten)~~. The correct CFR edition is listed in ARM 16.44.102. The equivalent of subpart H is set forth in subchapter 8 of this chapter. The equivalent of 40 CFR 265.75 is set forth in ARM 16.44.613. 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); 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 (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 and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405 and 75-10-406, MCA

16.44.702 STANDARDS AND REQUIREMENTS FOR PERMITTED FACILITIES (1) Same as existing rule.

(2) The department hereby adopts and incorporates herein by reference 40 CFR Part 264, subparts B through and including O, excluding subpart H and 40 CFR 264.75-~~(77+86-ed+ten)~~. The correct CFR edition is listed in ARM 16.44.102. The equivalent of subpart H is set forth in subchapter 8 of this chapter. The equivalent of 40 CFR 264.75 is set forth in ARM 16.44.603. Subparts B through O, excluding subpart H, are federal agency rules setting forth, respectively, 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); 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). A copy of 40 CFR Part 264, subparts B through and including O, excluding subpart H, or any portion thereof, may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-10-404, 75-10-405, and 75-10-406, MCA

IMPLEMENTING: 75-10-405 and 75-10-406, MCA

16.44.802 APPLICABILITY OF FINANCIAL REQUIREMENTS

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

(5) The department hereby adopts and incorporates herein by reference 40 CFR 264.228 and 40 CFR 264.258, which are federal agency rules setting forth closure and post-closure care standards for, respectively, surface impoundments and waste piles. The correct CFR edition is listed in ARM 16.44.102. Copies of 40 CFR 264.228 and 40 CFR 264.258 may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16.44.803 DEFINITIONS (1)-(3) Same as existing rule.

(4) The department hereby adopts and incorporates herein by reference 40 CFR 264.112 and 40 CFR 264.117 through 264.120 which are federal agency rules setting forth, respectively, requirements for facility closure plans and post-closure plans. The correct CFR edition is listed in ARM 16.44.102. A copy of 40 CFR 264.112 and 40 CFR 264.117 through 264.120, or any portion thereof, may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16.44.804 COST ESTIMATE FOR FACILITY CLOSURE

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

(5) The department hereby adopts and incorporates herein by reference 40 CFR Sections 264.111 through 264.115, 40 CFR 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, and 264.351. The correct CFR edition is listed in ARM 16.44.102. 40 CFR 264.111 through 264.115 are federal agency rules setting forth general closure requirements applicable to all hazardous waste management facilities. 40 CFR 264.178, 264.197, 264.228, 264.258, 264.280, 264.310 and 264.351 are federal agency rules setting forth specific closure requirements for different types of waste management units and address, respectively, closure of container storage areas, closure of tanks, closure of surface impoundments, closure of waste piles, closure of land treatment units, closure of land-fills, and incinerator closure. A copy of 40 CFR Sections 264.111 through 264.115, 40 CFR 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, and 264.351, or any part thereof, may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16.44.805 COST ESTIMATE FOR POST-CLOSURE CARE

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

(5) The department hereby adopts and incorporates herein by reference 40 CFR Subpart G, which includes Sections 264.110 through 264.120, and 40 CFR Sections 264.228, 264.258, 264.280 and 264.310. 40 CFR Subpart G, which includes sections 264.110 through 264.120, are federal agency rules setting forth general post-closure care requirements applicable to all disposal facilities. The correct CFR edition is listed in ARM 16.44.102. 40 CFR 264.228, 264.258, 264.280 and 264.310 are federal agency rules setting forth specific post-closure requirements for different types of disposal units and address, respectively, post-closure care of surface impoundments, post-closure care of waste piles, post-closure care of land treatment units and post-closure care of landfills. A copy of 40 CFR 264.117 through 264.120, 264.228, 264.258, 264.280 and 264.310, or any portion thereof, may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

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

(1) Same as existing rule.

(2) The department hereby adopts and incorporates herein by reference 40 CFR 264.143(f) and 40 CFR 264.145(f) which are federal agency 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 for assuring closure and post closure care. The correct CFR edition is listed in ARM 16.44.102. A copy of 40 CFR 264.143(f) and/or 40 CFR 264.145(f) may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16.44.817 FINANCIAL TEST AND CORPORATE GUARANTEE FOR LIABILITY COVERAGE

(1) Same as existing rule.

(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 are federal agency rules setting forth minimum financial worth and bond rating criteria by which owners and operators of hazardous waste management facilities may demonstrate adequate financial assurance for, respectively, closure/post-closure care and liability for sudden and non-sudden occurrences. The correct CFR edition is listed in ARM 16.44.102. 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 Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16.44.822 PERIOD OF COVERAGE

(1) Same as existing rule.

(2) The department hereby adopts and incorporates herein by reference 40 CFR 264.115 which is a federal agency rule setting forth requirements for certifications that a HWM facility has been properly closed. The correct CFR edition is listed in ARM 16.44.102. Copies of 40 CFR 264.115 may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

16.44.823 WORDING OF THE INSTRUMENTS

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

(8) The department hereby adopts and incorporates herein by reference 40 CFR 264.151, subsections (a) through and including (e), (i), and (j). The correct CFR edition is listed in ARM 16.44.102. 40 CFR 264.151 subsections (a) through and including (e), (i) and (j) are federal agency rules setting forth, respectively, specific wording for trust agreements and certifications of acknowledgment (a), surety bonds guaranteeing payment into closure and/or post-closure trust funds (b), surety bonds guaranteeing performance of closure and/or post-closure (c), closure and/or post-closure letters of credit (d), closure and/or post-closure certificates of insurance (e), liability endorsements (i) and, certificates of liability insurance (j), which are instruments guaranteeing closure and/or post-closure financial assurance and liability coverage for HWM facilities. A copy of 40 CFR 264.151, subsections (a) through (e), (i) and (j) may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

AUTHORITY: 75-10-404 and 75-10-405, MCA

IMPLEMENTING: 75-10-405, MCA

3. The proposed amendments involve minor housekeeping changes such as correcting internal rule references and, in rules incorporating material from the Code of Federal Regulations, referring the reader to ARM 16.44.102 for the correct edition, thus simplifying future updating to a current edition of the CFR. ARM 16.44.102 itself is also amended, adding recent incorporations by reference. In ARM 16.44.401 the word "and" was added for clarification.

4. 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 May 31, 1987.

5. If a person who is directly affected by the proposed amendments wishes to express his or her data, views, or arguments orally or in writing at a public hearing, such person must make written request for a hearing and submit this request



along with any comments to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than May 31, 1987.

6. If the department receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the administrative code committee of the legislature, from a governmental agency or subdivision, or from an association having no fewer than 25 members who will be directly affected, a public hearing will be held at a later date. The department has determined that 5 persons represent 10% of the class of potentially affected persons. Notice of the hearing will be published in the Montana Administrative Register.

  
JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State April 20, 1987.

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PROPOSED
of rules 24.9.201, 24.9.202, )	AMENDMENT OF RULES
24.9.204-24.9.210, 24.9.212- )	24.9.201, 24.9.202,
24.9.227, 24.9.230 and )	24.9.204-24.9.210,
24.9.231, relating to proce- )	24.9.212-24.9.227,
dures for investigation and )	24.9.230 AND 24.9.231
conciliation of complaints )	(PROCEDURES FOR
filed with the Commission )	INVESTIGATION AND
	CONCILIATION)

NO PUBLIC HEARING  
CONTEMPLATED

TO: All Interested Persons.

1. On June 1, 1987, the Human Rights Commission proposes to amend rules 24.9.201, 29.9.202, 24.9.204 - 24.9.209, 24.9.212 - 24.9.227, 24.9.230 and 24.9.231. In addition, the Commission proposes to extend the provisions of rules 24.9.210, 24.9.215 and 24.9.217 to implement its authority under Title 49, Chapter 3, MCA. All rules relate to the procedures used by the Commission in handling complaints prior to the formal contested case hearing.

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

24.9.201 LIBERAL CONSTRUCTION; EFFECT OF PARTIAL INVALIDITY (1) The following rules describe the procedure followed by the Human Rights Commission in receiving, investigating, and resolving complaints of discrimination, ~~as well as procedures used in collateral matters such as petitions for declaratory rulings, etc.~~ These rules shall be liberally construed to achieve the remedial goals contemplated by the act and code and the policies of the Commission. If any rule, sentence, paragraph, or section of these rules or the application thereof to any persons or circumstances shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any rule shall lose its force and effect, such judgment or action shall not affect, impair, or void the remainder of these rules.

(2) No change.

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-501, 49-2-504, 49-3-304, 49-3-305 and 49-3-307, MCA.

24.9.202 DEFINITIONS (1) The following definitions shall apply throughout this chapter:

(a) "Act" means the ~~laws enforced by the Human Rights Commission and contained in section 49-2-101, et seq., MCA.~~ Human Rights Act, Title 49, Chapter 2, MCA.

(b) "Administrator" or "division administrator" means the administrator of the Human Rights Division of the Department of Labor and Industry. The administrator is the chief executive officer employed by the Human Rights

8-4/30/87

MAR Notice No. 24-9-22

Commission and is responsible for the supervision of the Commission staff.

(c) "Charging party" means any person who files a complaint with the Human Rights Commission.

(d) "Code" means the Governmental Code of Fair Practices, Title 49, Chapter 3, MCA.

(d) (e) "Commission" means the Human Rights Commission as established by section 2-15-1706, MCA.

(e) (f) "Commissioner" means a member of the Human Rights Commission.

(f) (g) "Division" means the Human Rights Division of the Department of Labor and Industry. The division is the staff of the Human Rights Commission and is answerable directly to the Commission.

(g) (h) "Hearing examiner" means a hearing examiner appointed by the Commission or any one Commissioner acting as hearing examiner for the Commission.

(h) (i) "Person" includes one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees, employers, employment agencies, or labor organizations (section 49-2-101, MCA), and includes any group or organization which qualifies as an aggrieved person in accordance with ARM 24.9.204.

(i) (j) "Respondent" means any person against whom a complaint is filed.

(j) (k) "Staff" or "Commission staff" means the Human Rights Division, which is the staff of the Human Rights Commission.

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-101, 49-2-201, 49-3-101, MCA.

24.9.204 COMPLAINT; WHO MAY FILE (1) A complaint may be filed with the Commission by or on behalf of any person aggrieved by a violation of the act or code. A person "aggrieved" within the meaning of this section shall include any group, organization, or association whose membership includes representatives of an ethnic, racial, religious, political, age, sex, marital status or disability group alleged to be aggrieved by a discriminatory act or practice or which exists for the purpose of fostering or protecting the interests of such ethnic, racial, religious, political, age, sex, marital status or disability group or groups.

(2) Complaints alleging a violation of the act may also be filed by the division administrator, based on information received by the division.

(3) A complaint must be filed within ~~one-hundred-eighty~~ <sup>180</sup> days of the alleged act of discrimination or the cessation of a pattern of discrimination.

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-501 and 49-3-304, MCA.

24.9.205 COMPLAINT; FILING CHARGE ON BEHALF OF AN AGGRIEVED PERSON (1) Any person, agency or organization may file a complaint on behalf of any person claiming to be aggrieved. ~~Such a complaint need not identify by name the person on whose behalf it is made.~~ The person making the complaint, ~~however,~~ must provide the Commission with the name and address of the person on whose behalf the charge is made. During its investigation, the Commission staff shall verify the authorization of such complaint by the person (or persons) on whose behalf the complaint is made. If the person on whose behalf the complaint is filed indicates in writing to the Commission that ~~she~~ ~~he~~ does not wish the complaint processed, ~~the complaint will be withdrawn. the staff will dismiss the complaint.~~

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-501 and 49-3-304, MCA.

24.9.206 DIVISION COMPLAINTS; CLASS ACTIONS BY INDIVIDUALS OR GROUPS (1) ~~The Commission Staff,~~ When ~~it~~ the staff has reason to believe that any person or organization is or has been engaged in a discriminatory practice in violation of the act, it may file a complaint with the Commission alleging that the respondent is or has been engaged in a practice which violates the act. Such a complaint must be filed within ~~one hundred eighty (180)~~ days of the most recent occurrence of the actions or practices complained of. ~~A Division complaint need not identify any person aggrieved by the practice or action but must allege sufficient facts to indicate the basis for its charge.~~ A complaint filed by the Division staff may seek relief authorized by law for any and all persons adversely affected by the practice or actions complained of. Division complaints shall be filed by the division administrator.

(2) ~~at~~ In addition to complaints filed by the division, a complaint may be filed by or on behalf of an aggrieved person alleging that the respondent is engaging or has engaged in a practice or action which discriminates against a class of persons in violation of the act or code. ~~In the case of a complaint filed by an individual or group of individuals alleging discrimination against a class of persons, the complaint may seek the discontinuance of the alleged pattern and practice. If, in addition, the complaint seeks to determine the rights of the affected class to any pecuniary relief, and upon certification for hearing, the complaint shall be designated by the Division as a class action. Notice of intent to maintain a class action shall be immediately sent to each Commission member. The Commission, as soon as practicable after receiving notice of the Division's designation of the complaint as a class action, shall by order approve or disapprove the certification of the class. Rule 23 of the Montana Rules of Civil Procedure, Title 25, Chapter 20, MCA, shall apply in regard to the criteria relevant to the decision to approve~~

~~the certification of a class. Such certification may be conditional and may be altered or amended at any time before a final determination by the Commission after hearing.~~

(b) (3) Upon certification for hearing, Rule 23 of Montana Rules of Civil Procedure, Title 25, Chapter 20, MCA, shall govern designation of a proceeding as a class action, notice to members of the class, withdrawal of a member from the class, use of one's own attorney by a member of the class, the effect of the Commission's findings on the class, maintenance of a class action in regard to particular issues or sub-classes, supplementary orders controlling conduct of the action, and dismissal or compromise of the complaint. AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-501, 49-2-505, 49-3-304 and 49-3-308, MCA.

24.9.207 COMPLAINT; PLACE AND MANNER DATE OF FILING

~~(1) Complaints alleging any violation of the act shall be filed with the Human Rights Commission by either mailing or personally delivering them to the office of the Human Rights Division, Room C-317, Eggswell Building, Capitol Station, Helena, Montana 59620. Complaints shall be in writing and shall be sworn to before a notary public or other person authorized by law to administer oaths and take acknowledgements. (See subsequent section for procedure if notary is not readily available). The person filing the complaint and person on whose behalf the complaint is filed shall receive a copy of the complaint.~~

(2) (1) A complaint is considered to be filed on the date received by the Human Rights Division. ~~Except that~~ In the case of a complaint which is mailed within ~~one hundred eighty~~ (180) days of the most recent act of discrimination alleged but which is not received by the division within this time period, the complaint is deemed filed when mailed. In the case of a complaint which is deferred or transmitted to the Human Rights Commission by any government agency pursuant to any ~~deferral~~ agreement entered into between the agency and Commission, the complaint is deemed filed as of the date it was filed with or received by the agency which deferred or transmitted the complaint.

~~(3) Complaint forms will be made available to any person requesting them from the Commission at the address listed above. In addition, any person wishing assistance in the drafting of a complaint may seek the assistance of the Commission staff by writing to the Division, calling, or requesting a meeting with a member of the staff.~~

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-501 and 49-3-304, MCA.

24.9.208 COMPLAINT; CONTENTS (1) A complaint shall contain the following:

(a) The full name, address and phone number, if any, of the person making the complaint (hereinafter referred to as charging party).

(b) The full name, address and phone number, if any, of the person against whom the complaint is made (hereinafter referred to as the respondent).

(c) A clear, and concise, statement of the facts, including pertinent dates, constituting the alleged unlawful discriminatory practice, including pertinent dates.

(d) The verified signature of the charging party.  
Use-of-the-complaint-form-available-from-the-Division is recommended, but not necessary. The following is a sample form:

<b>COMPLAINT OF DISCRIMINATION</b>		<b>Date Filed: Case No.:</b>
<b>INSTRUCTIONS:</b> If you believe you have been discriminated against, fill in this form as completely as possible.		<b>Cause of Discrimination</b>
Mail to: Montana Human Rights Commission		<b>Area of Discrimination</b>
616 Helena Avenue		--Cred or Religion --Employment
Suite 300		--Age --Training
Helena, Montana		--Sex --Education
59601		--Race --Housing
Agency)		--Handicap, Physical --Public Accommodations
--National Origin		--Political belief tions
--Marital Status		(By Government --Financing
for filing Complaint or other noted Activity		--Government Services
		--Retaliation

<b>Complainant's name</b>	<b>Date of Birth</b>	
<b>Address</b>	<b>Gov. Sec. No.</b>	<b>Phone</b>
the following person always knows where to contact me:		
<b>Name:</b>		<b>Phone</b>
<b>Address:</b>		<b>Phone</b>
The person, employer organization or agency who, I believe, discriminated against me is:		
<b>Name:</b>		<b>Phone</b>
<b>Address:</b>		<b>Phone</b>
<b>Type of Organization:</b>	<b>City, County, Zip Code</b>	

<b>Date or time period of discrimination</b>	<b>If action has been sought through any other agency, give name and address:</b>

Explain as fully as possible how you were discriminated against with as many details and statements of fact as you can provide. If more space is needed, attach additional pages.

I swear or affirm that I have read the Subscribed and sworn to

8-4/30/87

MAR Notice No. 24-9-22

above-charge-and-that-it-is-true-to-the best-of-my-knowledge, information and belief, before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
Notary public for the  
State of Montana  
Residing at \_\_\_\_\_  
Montana. My Commission  
expires \_\_\_\_\_

Auth: 49-2-204 and 49-3-106, MCA; IMP: 49-2-501 and 49-3-305, MCA.

24.9.209 COMPLAINT; PLACE AND MANNER OF FILING, INSUFFICIENCY, EFFECTIVE DATE OF AMENDMENTS (1) Complaints alleging any violation of the act or code shall be filed with the Human Rights Commission by either mailing or personally delivering them to the office of the Human Rights Division, 1236 Sixth Avenue, P.O. Box 1728, Helena, MT 59624-1728. Complaints shall be in writing and shall be sworn to before a notary public or other person authorized by law to administer oaths and take acknowledgements.

(1)(2) Notwithstanding the requirements of Section 24-9-208-supra, A complaint is deemed filed when the division receives a signed preliminary inquiry or intake form or other written statement sufficient to identify parties and describe the actions being complained of. If the description does not state facts establishing an unlawful practice over which the Commission has jurisdiction, the division shall attempt to promptly contact the charging party to ascertain if other facts exist which, when added to the complaint, would describe such an unlawful practice. If such facts do not exist, the staff will notify the charging party ~~will be notified~~ that the Commission has no jurisdiction over the complaint, and the case will be ~~administratively closed~~ dismissed. If such facts do exist or are alleged to exist, the complaint may be amended. Any amendments to cure defects or omissions, including facts added to establish jurisdiction and verification, will relate back to the original filing date.

This provision is intended to facilitate filing a complaint by individuals who due to lack of ready access to a notary or other hardship, or who due to unfamiliarity with the technical provisions of the act and these rules, do not or cannot submit a complaint to the Commission in the first instance which meets the requirements of these rules.  
AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-501, 49-3-304 and 49-3-305, MCA.

24.9.210 AMENDMENT OF COMPLAINTS No change.  
AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-501, 49-2-505, 49-3-304 and 49-3-308, MCA.

24.9.212 CONFIDENTIALITY (1) Neither-a-charge-nor No  
complaint, information obtained in the investigation of a  
complaint, or any records required by-the-Commission to be  
filed with the Commission shall be made matters of public  
information by the Commission prior to the certifying  
certification of a case for public hearing (including-a  
default-hearing-or-a-hearing-alleging-violation-of-a  
conciliation-agreement). This provision rule does not apply  
to such earlier disclosures to the-Charging-Party,-the  
Respondent,-witnesses,-counsel,-and-representatives-of  
interested-Federal,-State-and-local-agencies a party,  
individual or agency outside of the Commission as may be  
appropriate-or necessary to the carrying out of the  
Commission's functions under the act or code nor-to-the  
publication-of-data-or-abstracts-derived-from-such  
information-in-a-form-which-does-not-reveal-the-identity-of  
the-charging-party,-respondent,-or-person-supplying-the  
information--The-Commission-may-enter-into-agreements-with  
any-federal,-state,-or-local-governmental-agency-for-the  
deferral-of-complaints-or-sharing-of-information-regarding  
complaints-which-agreements-may-require-more-stringent  
standards-of-confidentiality-with-regard-to-such-complaints  
or-such-information- provided that the reasonable  
expectations of individual privacy of persons named in the  
Commission's records are protected.

(2) Upon certification of a case for hearing the  
Commission shall continue to protect the identity of persons  
having a reasonable expectation of privacy throughout the  
hearing process. Any information made public shall be  
altered only to provide for the anonymity of those persons  
whose privacy rights are to be protected.

(3) The Commission may disclose any record or  
information contained therein to any party, individual or  
agency pursuant to a written request by, or with the prior  
written consent of the individual to whom the record  
pertains.

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-504,  
49-2-505, 49-3-307 and 49-3-308, MCA.

24.9.213 COMPLAINT; WITHDRAWAL OF COMPLAINT BY  
CHARGING PARTY; REDESIGNATION BY DIVISION ADMINISTRATOR (1)  
Any person who has filed a complaint with the Commission, or  
any person on whose behalf a complaint has been filed may  
make a request in writing that the complaint be withdrawn.  
Upon receipt of a written request for withdrawal of the  
complaint, the division administrator shall issue-an-order  
withdrawing dismiss the complaint either entirely or insofar  
as it alleges a particular cause of action in favor of the  
party seeking the withdrawal, or seeks an individual remedy  
for such party. However, the division administrator may  
reserve so much of the complaint as alleges a cause of  
action in favor of any other person or group or may  
redesignate the complaint as a division complaint in regard



to any allegation or remedy which is not specific to the withdrawing party alone. Such redesignation shall not constitute the filing of a new complaint and shall relate back in time to the date the original complaint was filed. AUTH: 49-2-204 and 49-3-106, MCA; IMP: 2-4-603, 49-2-504 and 49-3-307, MCA.

24.9.214 INTERVENTION (1) Any person or organization not originally a party to a complaint filed with the Commission may intervene in the complaint if, in the judgment of the administrator ~~(prior to certification for public hearing) or~~ the Commission or hearing examiner ~~(subsequent to certification for public hearing)~~, such action will assist in the orderly disposition or presentation of the case. Intervention may be permitted at any time ~~provided, however, that in the case of petition for intervention filed after a case is certified for public hearing,~~. The provisions of these rules regarding prehearing motions generally shall apply to motions to intervene.

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-505 and 49-3-308, MCA.

24.9.215 COMPLAINT; DEFERRAL FROM LOCAL, STATE OR FEDERAL AGENCIES No change.

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-501 and 49-2-304, MCA.

24.9.216 NOTICE OF FILING OF COMPLAINT (1) ~~Within ten (10) days~~ After a complaint is filed with the Commission, or ~~within ten (10) days~~ after the Commission receives a complaint deferred from any local, state or federal agency, ~~or deemed filed as of the date of mailing,~~ the division shall promptly furnish the respondent with written notice of the complaint. ~~thereof by mail or in person.~~ Such The notice shall include identification of the person filing the complaint and a concise description of the alleged unlawful discriminatory practice. ~~Notice is deemed finished when mailed.~~

~~The notice should be accompanied by a memorandum describing briefly the operation of the Commission and an evaluation of the provisions of the Act regarding retaliation for filing a complaint or cooperating with the Commission and willful interference with the Commission's investigation. The notice should also be accompanied by any order prohibiting the Respondent from discarding or destroying any records in his possession or accessible to him which have any bearing on the charge. However, failure to include the memorandum and order described in this section shall not constitute defective notice of the charge.~~  
AUTH: 49-2-504 and 49-3-106, MCA; IMP: 49-2-504 and 49-3-307, MCA.

24.9.217 COMPLAINT; NOTICE TO COMMISSION No change.  
AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-502, 49-2-504  
and 49-3-307, MCA.

24.9.218 COMPLAINT; COMMENCEMENT OF INVESTIGATION (1)  
Once a complaint has been received by the Commission, the  
Human Rights Division shall commence investigation of the  
complaint. As soon as possible after the complaint is  
received, it shall be assigned to a member of the staff for  
investigation. ~~Staff-members-shall-work-under-the  
supervision-of-the-division-attorney-in-conducting-the  
investigation.~~ In conducting the investigation, the staff  
should contact the charging party (and, in the case of a  
complaint filed on behalf of anyone, the person(s) alleged  
to be aggrieved) to ascertain the basis for the complaint  
and to inquire as to such additional facts and allegations  
as may be necessary to amend the complaint into its proper form  
and to make a determination whether the complaint is  
supported by substantial evidence. The staff should also  
contact the respondent to obtain the viewpoint of the  
respondent, to ascertain additional facts, and to assure  
that the respondent understands the nature of the complaint  
and the requirements of the law. The staff may also inquire  
into facts to determine whether the Commission has  
jurisdiction over the complaint.

~~(2)--No-formal-contact-with-the-respondent-other-than  
the-sending-of-notice-shall-be-initiated-by-the-staff-until  
the-respondent-has-been-served-by-U.S.-mail-or-personal  
delivery-with-a-copy-of-the-complaint-or-amended-complaint;  
if-it-has-been-amended.~~

(2) After commencement of the investigation, the  
staff may undertake efforts to achieve a voluntary  
resolution of the case through mediation with the parties.  
Any settlement of a case shall be subject to approval by the  
division administrator on behalf of the Commission.  
AUTH: 49-2-204 and 49-3-106, MCA; IMP: 2-4-603, 49-2-504  
and 49-3-307, MCA.

24.9.219 INVESTIGATION; POWERS OF DIVISION (1) The  
staff's investigation shall be conducted in a prompt and  
impartial manner. The staff shall normally utilize methods  
such as written information requests and telephone  
interviews to obtain information in the course of the  
investigation, relying upon more formal investigative tools  
such as subpoenas and depositions only after attempts to  
achieve voluntary cooperation have been unsuccessful.

~~(1)(2) The-Human-Rights-Division-is-the-staff-of-the  
Human-Rights-Commission.~~ The division, in investigating a  
charge of discrimination under the act, may exercise any and  
all of the powers of the Commission provided for in section  
49-2-203, MCA. These include the power to subpoena  
witnesses, take the testimony of any person under oath,  
administer oaths, and require the production for examination  
8-4/30/87

MAR Notice No. 24-9-22

of tangible evidence, such as documents, relating to the case. In exercising its powers, the division may issue subpoenas, take depositions, serve interrogatories, and require the production and disclosure of any tangible evidence.

(3) The powers of the division to conduct investigations ~~as described herein~~ are continuing from the time that a complaint is filed until the case is resolved, or a hearing on the complaint is held. The division may exercise its investigative powers in determining if a conciliation agreement is being honored or an order of the Commission, issued after hearing, obeyed.

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-203, 49-2-504, 49-2-506, 49-3-307 and 49-3-309, MCA.

24.9.220 EMERGENCY ORDER (1) If, after a complaint is filed, it appears that substantial and irreparable damage to any charging party or aggrieved person will occur unless prompt action is taken, the division administrator may petition the district court for an injunction to prevent or remedy the action causing the damage. ~~Section 49-2-503, MCA, limits the duration of such a court order to 14 days, unless the respondent consents to an extension or the court finds reasonable cause to believe that the respondent has engaged in discriminatory practices.~~

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-503 and 49-3-306, MCA.

24.9.221 INVESTIGATION; FAILURE TO COOPERATE WITH DIVISION INVESTIGATION (1) If any person ~~shall~~ fails to comply with a request by the division for information, or ~~shall~~ fails to answer any interrogatory or question asked by deposition, or to produce any tangible evidence including any document related to a complaint under investigation by the Commission, staff, the division administrator, ~~or, if the case has been certified to the Commission for public hearing, the hearing examiner or any Commissioner~~ may issue a subpoena, subpoena duces tecum, or other appropriate order requiring the person to supply the information, answer the interrogatory, respond to the question, appear and answer questions under oath, or provide the tangible evidence or any other appropriate order. If the order of the administrator, ~~hearing examiner, or Commissioner,~~ is not obeyed, ~~the Commission or~~ the administrator may seek a court order enforcing the order.

(2) If a respondent has been given notice of a complaint and the division has requested information in the course of its investigation and respondent fails to answer the information requests within the time specified, the division may take one or more of the following actions to complete its investigative responsibilities:

(a) issue a subpoena, subpoena duces tecum or other appropriate order in accordance with subsection (1) to

compel the answering of the information requests, the production of documents, or testimony;

(b) in lieu of issuing a subpoena, issue a determination that the allegations of the complaint are supported by substantial evidence, engage in conciliation and, if unsuccessful, certify the case for contested case hearing where the results of the investigation, although incomplete due to the conduct of the uncooperative respondent, are admissible as substantial evidence of discrimination;

(c) draw an adverse inference against respondent as to the evidence sought. Charging party may introduce such an adverse inference finding at the contested case hearing.

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-203, 49-2-504, 49-2-505, 49-3-307 and 49-3-308, MCA.

24.9.222 INVESTIGATION; FAILURE OF CHARGING PARTY OR AGGRIEVED PERSON TO COOPERATE WITH DIVISION INVESTIGATION, OR FAILURE TO PROCEED TO HEARING (1) Whenever any charging party or (in the case of a complaint filed on behalf of anyone) any person alleged to be aggrieved shall refuse to comply with a request by the division for information or evidence reasonably necessary for the investigation, conciliation, or litigation of the complaint, the division administrator may administratively close dismiss the case for failure of the charging party (or aggrieved person) to cooperate with the division, or may dismiss so much of the complaint as relates to that charging party or aggrieved person.

~~If reasonable cause is found and conciliation efforts have been unsuccessful as set forth in ARM 24.9.230 but the charging party is unwilling to proceed to a hearing before the Commission, the division administrator shall also administratively close the case, or so much of the complaint as it relates to that charging party or aggrieved person.~~  
AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-504 and 49-3-307, MCA.

24.9.223 INVESTIGATION; FAILURE OF RESPONDENT TO COOPERATE WITH DIVISION INVESTIGATION TO PRODUCE EVIDENCE (1) ~~If a Respondent has been served with a verified complaint and the division has issued interrogatories pursuant to section 49-2-201, MCA, and notice of the consequence of failure to answer interrogatories has been given to the Respondent and Respondent fails to either answer the interrogatories or to file a motion to strike the interrogatories within the time specified therein or within any extension of time granted by the division, the division administrator may enter an order requiring the answering of the interrogatories and extending the time within which answers to the interrogatories are required for a period of at least 10 days and serve the following notice and order on the Respondent:~~

NOTICE-is-hereby-given-that-a-complaint-has-been-filed and-served-on-you-charging-you-with-a-violation-of-Montana's Human-Rights-Laws-(section-49-2-101-et-seq., MCA)--Pursuant to-the-authority-of-the-Human-Rights-Commission-under section-49-2-203, MCA,--interrogatories-have-been-served-on you--Said-interrogatories-have-not-been-answered-and-filed within-the-time-as-therein-prescribed--Should-you-fail-to fully-answer-and-file-the-answers-to-interrogatories-within -----days, default-shall-be-entered-in-this-case--Said default-shall-constitute:

(a)--An-admission-that-the-interrogatories, if answered, would-have-established-facts-in-accordance-with the-claim-of-the-Charging-Party;

(b)--A-waiver-of-your-right-to-have-the-division conduct-further-investigation, find-whether-or-not-there-is reasonable-cause, make-conciliation-efforts, or hold-a public-hearing;

(c)--A-waiver-of-your-right-to-present-any-and-all defenses.

WHEREFORE, it-is-on-this-----day-of-----, 19--

ORDERED

(a)--Respondent(s)-shall-fully-answer-and-file-answers to-the-interrogatories-previously-served;

(b)--Respondent(s)-shall-file-said-answers-on-or-within-the -----day-following-the-date-of-this-order;

(2)--In-the-event-the-Respondent-files-a-motion-to strike-interrogatories-within-the-time-set-to-answer interrogatories, said-motion-shall-be-supported-by-an affidavit-and/or-brief-and-shall-be-ruled-upon-by-the division-administrator-on-the-motion-papers-without-oral argument--If-the-motion-is-granted, the-interrogatories shall-be-stricken--If-the-motion-is-denied, the-division administrator-shall-then-follow-the-procedure-set-forth-in subsection-(a)-of-this-section-or-enter-any-other appropriate-order.

(3)--If-after-the-expiration-date-of-the-division administrator's-order-extending-time-to-answer interrogatories-the-Respondent-has-failed-to-fully-answer and-file-the-interrogatory-with-the-division, the-division administrator-may-order-an-entry-of-default-on-the-docket-of the-Commission--Whenever-a-failure-to-fully-answer interrogatories-results-in-the-entering-of-such-an-order:

(a)--Said-failure-shall-result-in-the-matters-regarding which-questions-were-asked-being-taken-as-established-for the-purposes-of-the-case-in-accordance-with-the-claim-of-the Charging-Party; and

(b)--Said-failure-shall-constitute-a-waiver-of-the Respondent's-right-to-an-investigation, finding-of-reasonable cause, conciliation-efforts-or-public-hearing; and

(c)--Said-failure-shall-result-in-the-suppression-of any-and-all-defenses-of-the-Respondent.

(4)--Any order for entry of default must be supported by an affidavit of the Division Attorney or a member of the Division Staff involved in the investigation of the complaint;--The affidavit shall recite:

(a)--The date of service of the verified complaint and interrogatories on the Respondent and the date of service of any order requiring answers to interrogatories and extending the time in which to answer them;

(b)--That the Respondent has failed to reply fully to the interrogatories within the time required by the Division Administrator's order as it may have been extended, or Respondent has made a motion to strike interrogatories and following denial thereof by the Division Administrator, has failed to answer within the time required by the Administrator's order;

(c)--That the Respondent has been given notice of the consequences of failure to respond to interrogatories;

(d)--That the Charging Party has filed the complaint of discrimination within the time prescribed by law;

(5)--After the entry of default, the Division Administrator shall certify the case to the Commission for the purpose of hearing the complainant's proofs of the allegation of discrimination on a default basis;

(6)--At any time after entry of default and before the default hearing, the Respondent may petition the Division Administrator who may vacate the entry of default and reopen the case for good cause shown;--The Respondent's assertion of good cause shall be in affidavit form and shall include the full and complete answers to all interrogatories;

(7)--A notice of entry of default and supporting affidavit and a notice of time, date and place of the default hearing, together with a copy of the complaint, as it may have been amended, shall be served on the Respondent at least twenty (20) days prior to the date scheduled for the default hearing;--Notice shall be served in the manner provided by rule 4D, Montana Rules of Civil Procedure;

(8)--If the Division Administrator vacates the entry of default at any time prior to the date of the default hearing, then the default hearing shall be cancelled by the Commission and the complaint shall instead proceed to any investigation, finding as to reasonable cause, conciliation or public hearing as provided by these rules;

(9)--If the Respondent has filed a motion to strike any or all of the interrogatories, which has been denied by the Division Administrator prior to entering an order for default, the Respondent may subsequent to the certification of the case for default hearing and at least ten (ten) days prior to the date set for hearing, file a motion requesting the Commission (or Hearing Examiner) to overturn the ruling of the Administrator;--The motion shall be accompanied by affidavit and/or brief and may be responded to by the Division; The Commission or Hearing Examiner shall decide the motion on the pleadings, briefs and affidavits submitted without

hearing, unless, at the request of any party or the Division, the Commission or Hearing Examiner in its discretion agrees to hold a hearing on the motion. If the motion is denied, the default hearing shall be rescheduled for a time no less than ten (10) days after the order denying the motion. In extraordinary circumstances and when the interests of justice require, the Commission or Hearing Examiner, after denying the motion, may issue an order vacating the default on the condition that the respondent within ten (10) days file with the Division full and complete answers to all interrogatories.

(10) At a default hearing the Commission or Hearing Examiner shall receive the order of entry of default, the supporting affidavit and any other evidence proffered by the Charging Party or person alleged to be aggrieved and shall determine if the facts established by the Charging Party and admitted by the Respondent constitute an act of discrimination and if so, the amount of damages or other recommended relief. No evidence proffered by the Respondent shall be admitted at a default hearing. In all other respects, the default hearing shall comply with the provisions of 24-9-228 for contested case hearing generally.

(11) A final order entered by the Commission subsequent to a default hearing shall constitute a final disposition of the case at the agency level for purposes of appeal. An order based on a default hearing may contain any provision or require any remedy which could have been required in a contested hearing on the complaint.

(12) The procedure outlined in this rule for failure to answer interrogatories shall apply with equal force to failure to disclose and produce any document or other tangible evidence requested by the Division in regard to a complaint.

(13) (1) In addition to the default procedure described in the above subsections of this rule, No evidence concerning any matter which was the subject of a division interrogatory, and which interrogatory information request which was not fully answered by either party during the investigation of the complaint shall be admitted in any contested hearing on a complaint in support of any position taken or defense made by the Respondent that party. No document or other tangible evidence requested in connection with any interrogatory or motion for disclosure and production by the division which was not so produced or whose existence was denied by the Respondent which either party denied existed or failed to disclose or whose existence was not disclosed by the Respondent in response to such the division's inquiry by the Division shall be admitted into evidence at any subsequent contested hearing on a complaint in support of any position taken or defense made by the Respondent that party, nor shall evidence concerning such the document or tangible evidence be admitted in support of the Respondent's party's case.

~~444~~(2) No testimony shall be permitted in support of any position taken or defense made by ~~the Respondent~~ either party concerning the contents of any document or ~~nature of~~ any other tangible evidence which was in the possession or control of ~~the Respondent~~ a party and which, subsequent to the time that the ~~Respondent~~ party received notice of the filing of the complaint, was lost or destroyed or which was in the possession of any person and which was discarded or destroyed at the order or request of the ~~Respondent~~ party. The Commission or hearing examiner may in the interests of justice waive this rule upon receiving the sworn testimony or affidavit of the respondent, the person who had custody of the document or other tangible evidence and the person responsible for its destruction, discarding or loss, ~~if such person be known~~, concerning the circumstances of the loss or destruction. ~~Willful destruction or concealment of evidence relevant to the complaint constitutes willful interference with the Commission in the performance of its duties in violation of charges against the persons it is responsible.~~  
AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-504, 49-2-505, 49-3-307 and 49-3-308, MCA.

24.9.224 PRE-HEARING, INVESTIGATION, DETERMINATION REGARDING CAUSE (1) When a complaint is assigned to a member of the ~~Division~~ staff for investigation, the staff investigator shall undertake a prompt, ~~and~~ thorough, and ~~impartial~~ investigation of the allegations of the complaint to determine if there is substantial evidence (reasonable cause) to believe that an act of discrimination has taken place. When the investigation is complete, or is sufficiently complete to justify a finding, the ~~investigator~~ staff shall issue a finding that there is or is not substantial evidence (reasonable cause) to credit the allegations of the complaint. ~~A finding of reasonable cause or of no cause must be concurred in by the Division attorney and the Division Administrator to become effective as a Division finding. Whenever practicable, a finding of reasonable cause or no cause should be reached within one hundred twenty (120) days of the serving of notice to the Respondent. However, additional time may be required because of difficulties encountered in the investigation such as absence of principal witnesses from the state, refusal of the Respondent to freely offer evidence, necessity of time to examine voluminous evidence, complicated legal or factual issues, excessive case load or other good reasons.~~  
(2) ~~On the written request of any party, the Division Administrator shall inquire into the progress of the investigation of any complaint which has been filed for more than one hundred twenty (120) days and concerning which no finding has been made, to determine if the investigation can be speedily concluded and what steps should be taken to accomplish this result. The Division Administrator shall report the results of his inquiry to all parties. Any party~~  
8-4/30/87 MAR Notice No. 24-9-22



dissatisfied-with-the-results-of-this-inquiry-may-complain to-the-Commission-which-may-determine-what-action-if-any, is-appropriate-in-the-particular-circumstances-and-provide appropriate-direction-to-the-Division-concerning-this matter.

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-504 and 49-3-307, MCA.

24.9.225 PROCEDURE ON FINDING OF NO CAUSE (1) If a finding of no cause is made by the division in regard to any complaint, notice of the Division finding shall be served on all parties. The notice shall include a statement of the reasons for the finding and a statement informing the parties explaining the right of the charging party's or aggrieved person's right to seek a reconsideration of the finding request a hearing. A reasonable time of at least ten (10) days shall be given to the Charging Party or aggrieved person from the date of service of the notice to request an appeal of the no cause determination. The request shall be in writing. The notice shall specify the time in which the charging party or aggrieved person must file a written request for hearing, which in no case shall be less than 14 days from the date the notice of the finding was mailed to the parties.

(2)--Upon receipt of a request for reconsideration, the Division Administrator shall schedule an informal conference between the Administrator and the person requesting the reconsideration. The conference shall not be in the form of a hearing and no record of the conference shall be kept. The purpose of the conference is to afford an opportunity for the Charging Party or the aggrieved person to explain to the Administrator any reasons which that person believes support a finding of reasonable cause, and which should have been considered or accorded more weight by the investigator.

(3)--If as a result of the informal conference, the Administrator determines that the finding of no cause should be rescinded, he shall rescind the finding and so notify all parties. If the finding is rescinded, the case shall be returned to the person or persons on the Division Staff responsible for its investigation or a new person appointed and the investigation shall continue or new finding entered consistent with the recommendations of the Division Administrator.

(4)--If following the informal conference, the Administrator affirms the no cause finding, notice of his decision shall be sent to all parties together with a copy of the original determination and statement explaining the right of the Charging Party or aggrieved person to request that his or her case be set for hearing. The notice shall specify the time in which the charging party or aggrieved person must request that the case be certified for hearing, which in no case shall be less than thirty (30) days from

~~the date that notice of the administrator's determination is sent to the parties.~~

~~45~~ (2) If a case in which the division has found no cause is certified for hearing, it shall be heard by the Commission in the same manner in which it hears other contested cases.

~~46~~ (3) If ~~no conference is requested or, subsequent to a conference,~~ no written request for hearing is made in the time stated in the notice, the ~~division administrator staff~~ shall issue a dismissal order on behalf of the Commission in which the no cause finding is adopted as the final order of the Commission. Notice of the dismissal order shall be sent to all parties.

~~47~~ (4) The issuance of the dismissal order adopting the no cause finding as the final order of the Commission completes the administrative process with regard to the complaint or with regard to those allegations of the complaint in regard to which no cause is found.  
AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-504, 49-2-505, 49-3-307 and 49-3-308, MCA.

24.9.226 PREHEARING CONCILIATION (1) If the division issues a reasonable cause finding, the division administrator or staff person designated by the administrator shall attempt by written recommendation, conference, or other reasonable means to effect a conciliation of the case. No statements made by any party in the course of a conciliation offer or in any oral or written discussion concerning conciliation shall be admissible in any hearing held concerning the complaint. Agreement to a conciliated settlement of the case shall not constitute an admission of violation of any law by the respondent.

(2) Any conciliation agreement reached by the parties shall be reduced to writing, and signed by the parties. No conciliation agreement shall be binding until it is approved by the division administrator on behalf of the Commission. Once a conciliation agreement has been approved it shall have the same effect and be as binding as a Commission order issued after hearing.

(3) A conciliation agreement may be enforced by the Commission or by any party in the same manner as a Commission order issued after hearing by seeking appropriate orders in the district court. In addition, any party to a conciliation agreement or the division may file a petition with the Commission alleging violation of the terms of the conciliation agreement. The division shall investigate any such charge and in conducting its investigation may exercise all the powers that it exercises in regard to the investigation of a charge of discrimination. If the division administrator determines that a party is violating or has violated any material term of a conciliation agreement, the administrator may petition the Commission for

an order compelling compliance with the agreement and providing such additional remedial relief as the situation may dictate, including compensation for any pecuniary loss occasioned by the violation.

(4) A hearing on a petition to enforce a conciliation agreement shall be held before the Commission or a hearing examiner and shall be conducted in accordance with the provisions of 24-9-220 of these rules for contested cases generally. The issue before the Commission or hearing examiner on a petition to enforce a conciliation agreement shall be the compliance of the parties with the terms of the agreement. The merits of the underlying complaint shall not be an issue. If the matter is heard by a hearing examiner, the findings and conclusions of the hearing examiner shall be considered and confirmed or rejected by the Commission in the manner provided in 24-9-220 of these rules for Commission review of the findings and conclusions of hearing examiners generally. Any order issued by the Commission upon a petition to enforce a conciliation agreement shall be enforceable in the same manner as an order issued by the Commission after a contested hearing on a complaint of discrimination.

(5) A conciliation agreement may include in its terms means whereby the division may monitor the respondent's compliance with it. A conciliation agreement may contain any remedy which could have been ordered by the Commission after hearing.

(6) The division administrator may refuse to approve a conciliation agreement, even if the individual parties agree to the proposed settlement, if the remedies outlined in the agreement are considered to be inadequate to cure the discrimination complained of. A party may appeal the division administrator's refusal to the Commission by filing an objection within ten (10) days of the notification of the refusal. In addition, the division administrator may approve an agreement curing only part of the discrimination discovered by the division's investigation and continue to attempt conciliation to cure the discriminatory acts which remain unremedied. ~~If the division has intervened in the complaint, it may settle the case in regard to the original parties and continue to attempt conciliation or proceed to hearing in regard to the allegations of the division's intervenor-complainant.~~ Conciliation of a case in regard to the claims of any person or group of persons shall not prohibit the division from filing a complaint against the same respondent alleging discriminatory acts affecting others not party to the conciliation, which if these acts, or the effects of which these acts are not corrected by the conciliated agreement.

(7) The division administrator shall attempt to achieve a conciliated resolution of the case for so long as it appears that a successful conciliation ~~may be reasonably~~ is possible.

~~When it shall appear to the administrator that a conciliated settlement is not reasonably possible, the administrator division shall inform all parties in writing that the conciliation period is concluded. Any party within 10 days after notice of the end of the conciliation period sent by the administrator, may request in writing the continuation of conciliation efforts, stating in the request the reasons why conciliation should continue. The administrator division may in his discretion reopen the conciliation period in its discretion. If no request to reopen conciliation is made or if the administrator determines that the conciliation period should not be reopened, the administrator shall certify~~ Once conciliation has concluded without success, the division shall certify the case to the Commission for hearing ~~if the charging party is willing to proceed to a hearing before the Commission at that time.~~ Certification of a case for hearing does not prohibit the parties and the division from continuing to attempt to conciliate the case.

~~(8) -- Once a complaint has been certified to the Commission for hearing, the case becomes contested within the meaning of section 2-4-102(4), MCA.~~

~~(9) (8) Nothing in this section shall prohibit the division, on the request of any party, from undertaking efforts to achieve a voluntary resolution of a case at any time after the charge is filed and before a final order is issued. Any settlement of a case, agreed to prior to or after the conciliation period, shall be subject to approval by the division administrator on behalf of the Commission, and shall be enforceable in the same manner as other conciliation agreements provided for in these rules. The Commission must be informed. The parties must inform the Commission of any settlement entered into after the Commission has issued a final order.~~

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-504, 49-2-505, 49-3-307 and 49-3-308, MCA.

24.9.230 CERTIFICATION OF A CASE TO COMMISSION FOR HEARING (1) Whenever the division administrator has determined that substantial evidence (reasonable cause) exists to believe that a respondent has engaged in a discriminatory practice in violation of the act or code and that conciliation efforts have been unsuccessful, the administrator shall notify the Commission that the case should be set for hearing, ~~providing that the charging party is willing to proceed to a hearing before the Commission at that time.~~ In addition, if the division administrator has determined that no substantial evidence (no reasonable cause) exists to believe that a respondent has engaged in a discriminatory practice in violation of the act, but the charging party nevertheless wishes to proceed to a hearing before the Commission, the case shall also be certified for hearing.

AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-505 and 49-3-308, MCA.

24.9.231 NOTICE OF CERTIFICATION FOR HEARING (1)  
~~Under the APA, a contested case exists whenever a proceeding before the agency determines the legal rights, duties, or privileges and the law requires an opportunity for hearing. In a contested case, all parties are afforded an opportunity for hearing after reasonable notice.~~

(2)(1) Notice that a case has been certified to the Commission for hearing shall include:

(a) A statement indicating that the case has been certified to the Commission for hearing;

(b) A statement indicating that the Commission or hearing examiner will set a time and place for hearing, and notify the parties; that the hearing will be held in the county where the discriminatory practice is alleged to have occurred, unless the respondent or the Commission requests a change of venue for good cause;

(c) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(d) A reference to the particular sections of the statutes and rules involved;

(e) ~~A copy of the complaint as it may have been amended.~~ A statement that a formal proceeding may be waived pursuant to §2-4-603, MCA;

(f) ~~A copy of the Commission's procedural rules.~~ A statement advising the parties of their right to be represented by counsel at hearing;

(g) ~~The notice shall include a provision advising A statement that a hearing examiner has been appointed to conduct the hearing, if applicable.~~

(2) The division administrator shall notify the parties of the certification for hearing if applicable.

(3) Notice that a complaint has been certified to the Commission for hearing and the copy of the complaint shall be served on all parties in the manner provided in Rule 4(d) of the Montana Rules of Civil Procedure, Title 25, Chapter 20, MCA.

~~(4) The following is a sample form of notice that a case has been certified to the Commission for hearing.~~

-----BEFORE THE HUMAN RIGHTS COMMISSION  
-----OF THE STATE OF MONTANA  
THOMAS MATTHEWS,-----  
-----Charging Party,-----Case No. RE1-555  
v.-----NOTICE OF  
CERTIFICATION TO  
GEORGE P. ROGERS,-----HUMAN RIGHTS  
COMMISSION FOR  
-----Respondent,-----HEARING OF CHARGE OF  
UNLAWFUL  
-----DISCRIMINATION  
TO:-----Thomas Matthews

-----George-Pt-Rogers

-----This-will-notify-you-that-in-regard-to-the-complaint  
filed-with-the-Human-Rights-Commission-by-Thomas-Matthews  
against-George-Rogers,-Commission-Case-#RH1-555,-efforts  
undertaken-by-the-Division-have-been-unsuccessful-in  
resolving-the-dispute,-Therefore,-the-above-captioned-case  
has-been-certified-to-the-Human-Rights-Commission-for-public  
hearing-

-----The-Human-Rights-Commission-will-either-hear-the-case  
itself-or-will-appoint-a-hearing-examiner-to-conduct-the  
hearing-

-----You-will-be-contacted-by-the-Commission-or-its  
appointed-hearing-examiner-concerning-the-date,-time-and  
place-of-hearing-and-concerning-any-pre-hearing-procedures  
which-will-be-required-

-----The-hearing-conducted-by-the-Commission-or-hearing  
examiner-is-held-under-the-authority-of-Section-49-2-505,  
MCA.-The-Complaint-filed-by-the-Charging-Party-alleges  
violation-of-Section-49-2-303,-MCA-

-----The-Complaint-alleges-that-the-Respondent-refused-to  
hire-the-Charging-Party-because-of-his-race,-A-copy-of-the  
Complaint-accompanies-this-notice-

-----The-Respondent-is-required-by-the-rules-of-the  
Commission-to-file-a-verified-answer-to-the-Complaint-of-the  
Charging-Party-within-twenty-(20)-days-of-the-date-of  
service-of-this-notice,-unless,-upon-request,-the  
Commission/hearing-examiner-shall-extend-the-time-for  
answer-

-----The-time-for-discovery-provided-for-by-the-rules-of-the  
Commission-shall-expire-within-thirty-(30)-days-of-the  
receipt-of-this-notice,-unless,-upon-request,-the  
Commission/hearing-examiner-shall-extend-the-period-for  
discovery-

-----At-the-hearing-conducted-by-the-Commission-or-hearing  
examiner-you-have-a-right-to-be-represented-by-counsel-  
Failure-to-appear-at-the-hearing-by-the-Charging-Party-may  
result-in-dismissal-of-the-Complaint,-Failure-to-appear-at  
hearing-by-Respondent-may-result-in-the-entry-of-judgment-on  
a-default-basis-

-----Dated-June-17-1977-----s/Heien-Campion

-----Division-Administrator  
AUTH: 49-2-204 and 49-3-106, MCA; IMP: 49-2-505 and  
49-3-308, MCA.

3. The Commission proposes the amendments as part of a review of its procedural rules in order to streamline its procedures, eliminate redundant and unnecessary material, provide clear distinctions between the investigation/conciliation stages and the contested case hearing stage of processing and clarify that the Commission's procedural rules are intended to implement Chapter 3 of Title 49, MCA.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to

8-4/30/87

MAR Notice No. 24-9-22

Margery H. Brown, Chair, Human Rights Commission, P.O. Box 1728, Helena, Montana, 59624-1728, no later than May 29, 1987.

5. If a person who is directly affected by the proposed amendments 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 Margery H. Brown, Chair, Human Rights Commission, P.O. Box 1728, Helena, Montana, 59624-1728, no later than May 28, 1987.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments, 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 more than 25 persons based upon the number of potential complainants and respondents in Montana.

7. The authority of the Commission to make the proposed amendments is based on sections 49-2-204 and 49-3-106, MCA. The rules as amended implement sections 2-4-603, 49-2-101, 49-2-203, 49-2-501 - 49-2-506, 49-3-101 and 49-3-304 - 49-3-309, MCA.

In the matter of the repeal )	NOTICE OF PROPOSED
of rules 24.9.203, 24.9.211 )	REPEAL OF RULES
and 24.9.228, relating to )	24.9.203, 24.9.211,
Commission pre-hearing )	and 24.9.228
procedures )	(PRE-HEARING
	PROCEDURES)

NO PUBLIC HEARING  
CONTEMPLATED

To: All Interested Persons.

1. On June 1, 1987, the Human Rights Commission proposes to repeal rules 24.9.203, found on page 24-362, Administrative Rules of Montana, 24.9.211, found on page 24-367, Administrative Rules of Montana, and 24.9.228, found on page 24-380, Administrative Rules of Montana, relating to the procedures used by the Commission on handling complaints prior to the formal contested case hearing.

2. The Commission proposes the repeal as part of a review of its procedural rules in order to eliminate redundant and unnecessary material.

MAR Notice No. 24-9-22

8-4/30/87

3. Interested parties may submit their data, views, or arguments or proposed repeal in writing to Margery H. Brown, Chair, Human Rights Commission, P.O. Box 1728, Helena, Montana, 59624-1728, no later than May 29, 1987.

4. If a person who is directly affected by the proposed repeal 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 Margery H. Brown, Chair, Human Rights Commission, P.O. Box 1728, Helena, Montana, 59624-1728, no later than May 28, 1987.

5. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal, from the Administrative Code Committee of the legislature, from a governmental subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons based upon the number of potential complainants and respondents in Montana.

MONTANA HUMAN RIGHTS COMMISSION  
MARGERY H. BROWN, CHAIR

By:

Anne L. MacIntyre  
ANNE L. MACINTYRE  
ADMINISTRATOR  
HUMAN RIGHTS DIVISION

Certified to the Secretary of State April 20, 1987.



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

In the matter of rules	)	NOTICE OF PUBLIC HEARINGS
concerning mediation of	)	ON PROPOSED ADOPTION OF
workers' compensation	)	RULES CONCERNING
disputes.	)	MEDIATION OF WORKERS'
	)	COMPENSATION DISPUTES

TO: All Interested Persons

1. Hearings will be held to consider the adoption of rules concerning mediation of workers' compensation disputes as follows:

May 28, 1987, 7:00 p.m., Student Union Building, Lewis and Clark Room, First Floor, Eastern Montana College, Billings, Montana; June 2, 1987, 2:00 p.m., SRS Auditorium, 111 North Sanders, Helena, Montana; June 4, 1987, 7:00 p.m., Outlaw Inn, Winchester Room, 1701 Highway 93 South, Kalispell, Montana.

2. The proposed rules provide as follows:

RULE I JURISDICTION (1) Parties having a dispute about any issue concerning benefits, excluding those enumerated in (2), must bring the dispute before a department of labor and industry mediator prior to petitioning the workers' compensation court. Any issue between a claimant and insurer upon which the right to or the amount of the claimant's benefits under chapters 71 and 72 will be determined is a dispute concerning benefits.

(2) Parties having a dispute concerning benefits involving one of the following issues are not required to bring the dispute to mediation, but instead must attempt to resolve the dispute before the division of workers' compensation according to the appropriate procedures set forth in the statutes:

(a) Determination of the value of work paid for in property other than money (39-71-303);

(b) Settlement allocations under the subrogation statute (39-71-414);

(c) Requests to waive the one year statute of limitations up to 24 months (39-71-601);

(d) Disputes concerning the medical condition of a claimant when one side requests the division to order an independent evaluation (39-71-605);

(e) Disputes concerning attorney fees on cases that have not gone to hearing before the workers' compensation court (39-71-613);

(f) Disputes concerning impairment ratings (SB 315, section 24, laws of Montana, 1987);

(g) Disputes regarding dependency for purposes of determining beneficiaries (39-71-723);

(h) Disputes concerning certification as vocationally handicapped under title 39, chapter 71, part 9;

(i) Disputes concerning vocational rehabilitation on injuries occurring on or after July 1, 1987 (SB 315, sections 41, 49 and 50, laws of Montana, 1987), and on injuries prior to that date about which 39-71-1005 in effect at the date of injury gives the division jurisdiction;

(j) Disputes concerning whether a claimant is suffering from an occupational disease or regarding apportionment under the Occupational Disease Act (title 39, chapter 72, part 6);

(k) Disputes over attorney fees on occupational disease claims (39-72-712);

(1) Disputes over medical claims (A.R.M. 24.29.1404).

(3) A mediator shall have no jurisdiction over any dispute about which a party has filed a petition with the workers' compensation court prior to July 1, 1987, except by consent of all parties to the dispute.

(4) Within five working days after the receipt of a request for mediation, the department shall determine whether it has jurisdiction over the subject of the dispute. If the department determines that it does not have jurisdiction, it shall issue an order dismissing the request, stating the reasons for the dismissal, and setting forth the proper procedure for resolving the dispute.

AUTH: SB 315, Section 53(2), Laws of Montana, 1987 IMP: SB 315, Section 54, Laws of Montana, 1987

#### RULE II PARTIES, ATTENDANCE, REPRESENTATION (1)

Parties to a dispute are the claimant and the insurer, or alleged insurer.

(2) A claimant may be represented by himself, an unpaid representative, or an attorney licensed to practice law in Montana. An insurer may be represented by a designated representative. However, a claimant must attend mediation conferences, except if the mediator excuses the claimant for good cause.

(3) Parties may bring witnesses to a mediation conference with the consent of the mediator.

AUTH: SB 315, Section 53(2), Laws of Montana, 1987 IMP: SB 315, Section 57, Laws of Montana, 1987

#### RULE III REQUESTS FOR MEDIATION (1)

A party may request mediation by submitting a completed mediation request form to: Employment Relations Division, Department of Labor and Industry, P.O. Box 1728, Helena, MT 59624.

(2) Mediation request forms are available from: the Employment Relations Division of the Department of Labor and Industry at the address above or at (406) 444-3022; the Division of Workers' Compensation at 5 Last Chance Gulch, Helena, MT 59620, (406) 444-6500; and from local Job

Service offices. For assistance in completing the form, a party may phone the Insurance Compliance Bureau of the Division of Workers' Compensation at (406) 444-6530.

AUTH: SB 315, Section 53(2), Laws of Montana, 1987 IMP: SB 315, Section 57, Laws of Montana, 1987

RULE IV TIME FRAMES FOR SETTLEMENT CONFERENCES - NOTICES (1) The mediator shall have 45 days from the date the mediation request was received by the department to hold mediation conferences. The mediator shall send notice to the parties identifying the following: issues to be mediated; information required prior to the time of the mediation conference; and the time and place of the mediation conference. The 45 day period may be extended by mutual agreement of the parties. If a party objects to a telephone mediation conference, the mediator may extend the 45 day period to 60 days if the mediator deems the extension necessary.

AUTH: SB 315, Section 53(2), Laws of Montana, 1987 IMP: SB 315, Section 57, Laws of Montana, 1987

RULE V MOTIONS TO DISMISS FOR FAILURE TO MEET SETTLEMENT REQUIREMENTS (1) A party may request a mediator to dismiss a mediation request because the settlement requirements of SB 315, section 8, laws of Montana, 1987 have not been met. The request must be in writing, setting forth the party's specific objections, and filed with the mediator within ten working days after the department's mailing of a copy of the mediation request form to the opposing parties. A copy of the request for dismissal shall be mailed by the party requesting dismissal to all other parties.

(2) Upon receipt of a request under this rule, the mediator shall attempt to communicate with the parties jointly to ascertain whether the settlement requirements have been met. After the communication, or a reasonable attempt at communication, if the mediator determines that the settlement requirements have not been met, the mediator may issue an order dismissing the request. The order must state with particularity what the requesting party must do to meet the settlement requirements. The order may be appealed to the workers' compensation court within 10 working days after the date of the order.

(3) Parties may waive the settlement requirements by mutual agreement.

AUTH: SB 315, Section 53(2), Laws of Montana, 1987 IMP: SB 315, Section 57, Laws of Montana, 1987

RULE VI MEDIATION CONFERENCES (1) The mediator shall conduct one or more mediation conferences. Conferences may be conducted by telephone conference call.

AUTH: SB 315, Section 53(2), Laws of Montana, 1987 IMP: SB 315, Section 57, Laws of Montana, 1987

RULE VII ROLE OF MEDIATOR - UNREPRESENTED CLAIMANT (1) As set forth in SB 315, sections 1 and 52, laws of Montana, 1987, it is the purpose of the mediation process to facilitate resolution of disputes as early as possible, and it is the general purpose of the Workers' Compensation Act to allow claimants who wish to proceed without an attorney to do so. When claimants are represented in mediation by legal counsel, it is assumed by the department that counsel is aware of what must be done to meet settlement and mediation requirements, and how to meet those requirements. Accordingly, the mediator shall hold them to that standard in determining whether the settlement requirements have been met and whether they are cooperating with the mediation process. It is also assumed that insurers' agents, even though they may not be licensed attorneys, work in the area of workers' compensation regularly and are versed in the workers' compensation laws and procedures. However, most claimants who choose to represent themselves are not assumed to be knowledgeable about the workers' compensation system. In order to provide a process where it is reasonable for a claimant to represent himself, the mediator's and department's role shall be to make efforts to assist unrepresented claimants in meeting information and settlement requirements. The mediator, while doing this, must also maintain neutrality regarding the issues. Nothing herein is intended to discourage claimants from seeking legal counsel if they so choose. The intent is simply to avoid a situation where legal counsel is necessary to resolve routine disputes.

AUTH: SB 315, Section 53(2), Laws of Montana, 1987 IMP: SB 315, Sections 52, 55 and 57, Laws of Montana, 1987

RULE VIII MEDIATOR'S REPORT - RECOMMENDATION (1) The parties and the mediator are encouraged to attempt to resolve issues at a mediation conference. If issues are not resolved at or before a mediation conference, the mediator shall issue a report as set forth in (2).

(2) Within 10 working days after a mediation conference, the mediator shall prepare a written report to the parties setting forth the mediator's recommended solution and the basis for the recommendation. The mediator may also set forth alternative solutions. When parties have offered specific solutions which are not recommended by the mediator, the mediator shall explain why the solutions are not

recommended. Within 45 days of the date of the mediator's report, each party shall notify the mediator whether the recommended solution, or an alternate solution, is accepted.

(3) If both parties cannot reach a solution after 45 days, either party may petition the workers' compensation court for a resolution of the dispute. Nothing in this rule shall prevent a party from petitioning the workers' compensation court prior to the expiration of the 45 days, if both parties agree that they cannot resolve the dispute.

AUTH: SB 315, Section 53(2), Laws of Montana, 1987 IMP: SB 315, Sections 55 and 57, Laws of Montana, 1987

RULE IX MEDIATOR'S REPORT OF NON-COOPERATION (1)

Within five working days after a mediation conference, the mediator may issue a report finding that a party did not cooperate with mediation and ordering the parties to repeat the mediation process. The report must set forth the criteria in SB 315, section 57(7)(b), laws of Montana, 1987 on which the finding of non-cooperation is based, and the facts supporting the finding. Copies of the report shall be sent to each party and to the workers' compensation court.

(2) A party may dispute the report by filing a petition with the workers' compensation court within 10 days of the date of the mediator's report. A mediator may not require parties to repeat mediation for non-cooperation if the repetition would not be in the best interest of a cooperating party.

AUTH: SB 315, Section 53(2), Laws of Montana, 1987 IMP: SB 315, Section 57(7), Laws of Montana, 1987

RULE XI NOTICE TO MEDIATOR WHEN DISPUTE SETTLED (1)

Whenever parties settle their dispute after a request for mediation is filed and before a mediation report is issued by the mediator under [RULE X], the party requesting mediation shall advise the mediator immediately.

AUTH: SB 315, Section 53(2), Laws of Montana, 1987 IMP: SB 315, Section 57, Laws of Montana, 1987

RULE XII TIME-COMPUTATION UNDER MEDIATION RULES (1)

In computing any period of time allowed by these rules for mediation of workers' compensation disputes, the day of the event after which the designated period of time begins to run is not to be included.

(2) When reference is made to the date of an order for computing time, the date from which the time runs shall be the date appearing on the order.

(3) When reference is made to filing with or receipt by the department or a mediator, time shall be computed from

the date a document is actually received at the department's central office in Helena, Montana. However, if the department or a mediator directs a party to file documents at a different location, time shall be computed from the date a document is actually received at that location.

AUTH: SB 315, Section 53(2), Laws of Montana, 1987 IMP: SB 315, Section 57, Laws of Montana, 1987

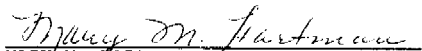
3. The 50th Legislature recently passed Senate Bill 315. That bill requires parties with certain disputes over workers' compensation benefits to submit the dispute to a Department of Labor and Industry mediator prior to petitioning the Workers' Compensation Court. The purpose of these proposed rules is to set forth the procedures through which mediation is commenced and accomplished.

4. Interested persons may submit their data and views either orally or in writing at a hearing. Written data and views may also be submitted to the Employment Relations Division, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624, no later than June 4, 1987.

5. The proposed rules are intended to be effective July 1, 1987.

6. Robert Jensen, Administrator, Employment Relations Division, Department of Labor and Industry, will preside over the hearings.

DEPARTMENT OF LABOR AND INDUSTRY

  
MARY M. HARTMAN  
Commissioner

Certified to the Secretary of State this 30<sup>th</sup> day of April, 1987.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of Rules	)	ON THE PROPOSED AMENDMENT
46.12.204, 46.12.501,	)	OF RULES 46.12.204,
46.12.502, 46.12.515,	)	46.12.501, 46.12.502,
46.12.521, 46.12.526,	)	46.12.515, 46.12.521,
46.12.531, 46.12.536,	)	46.12.526, 46.12.531,
46.12.541, 46.12.546,	)	46.12.536, 46.12.541,
46.12.550, 46.12.552,	)	46.12.546, 46.12.550,
46.12.571, 46.12.581,	)	46.12.552, 46.12.571,
46.12.588, 46.12.602,	)	46.12.581, 46.12.588,
46.12.702, 46.12.703,	)	46.12.602, 46.12.702,
46.12.802, 46.12.902,	)	46.12.703, 46.12.802,
46.12.905 and 46.12.912	)	46.12.902, 46.12.905 AND
pertaining to Medicaid	)	46.12.912 PERTAINING TO
Optional Services	)	MEDICAID OPTIONAL SERVICES

TO: All Interested Persons

1. On May 20, 1987, at 10:00 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 proposed amendment of rules as listed above pertaining to Medicaid Optional Services.

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

46.12.204 RECIPIENT REQUIREMENTS, CO-PAYMENTS

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

~~(e)--pediatry-services,-\$1.00-per-service;~~

~~(d)--outpatient-physical-therapy-services,-\$.50-per-serv-~~

ice;

~~(e)--speech-pathology,-\$.50-per-service;~~

~~(f)--audiology-services,-\$.50-per-service;~~

~~(g)--hearing-aids,-\$.50-per-service;~~

~~(h)--outpatient-occupational-services,-\$.50-per-service;~~

~~(ic) home health services, \$1.00 per service;~~

~~(jd) home dialysis for end stage renal disease, \$.50 per service, except for attendant back-up service; and~~

~~(k)--private-duty-nursing-services,-\$.50-per-service;~~

~~(l)--citic-services,-\$1.00-per-visit;~~

~~(m)--psychological-services,-\$.50-per-service;~~

~~(n)--dental-services,-\$1.00-per-service;~~

~~(e)--outpatient--drugs--the--amount--specified--in--ARM~~

~~46.12.703;~~

~~(p)--prosthetic--devices--durable-medical--equipment--and  
medicai-supplies,-\$.50-per-item-for-items-that-do-not-require  
prior-authorisation,-and-\$3.00-per-item-for-items-that-require  
prior-authorisation;~~

~~(g) optometric services, \$1.00 per service;~~  
~~(h) eyeglasses, \$1.00 per service;~~  
~~(se) physician's services, \$1.00 per service; and,~~  
~~(t) licensed clinical social workers' services, \$1.50 per service.~~

Subsections (2) through (4) remain the same.

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

IMP: Sec. 53-6-141 MCA

46.12.501 SERVICES PROVIDED Subsections (1) through (1) (e) remain the same.

(f) physician's services, except for those services required for the provision of eyeglasses;

~~(g) pediatry services;~~  
~~(h) outpatient physical therapy services;~~  
~~(i) speech therapy, audiology and hearing aids;~~  
~~(j) outpatient occupational therapy services;~~  
~~(kg) home health care services;~~  
~~(lh) personal care services in a recipient's home;~~  
~~(mi) home dialysis;~~  
~~(n) private duty nursing services;~~  
~~(o) clinic services;~~  
~~(p) dental services;~~  
~~(q) outpatient drugs;~~  
~~(r) prosthetic devices and medical supplies;~~  
~~(s) eyeglasses and optometric services;~~  
~~(t) transportation and per diem;~~  
~~(uk) family planning services;~~  
~~(v) psychological services;~~  
~~(w) licensed clinical social workers' services.~~  
(1) inpatient psychiatric services; and  
(m) home and community services.  
Subsection (2) remains the same.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-103 and 53-6-141 MCA

46.12.502 SERVICES NOT PROVIDED BY THE MEDICAID PROGRAM

Subsection (1) remains the same.

(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 an inpatient of a licensed health care facility, except as allowed under the home health services rule at ARM 46.12.550 and the early periodic screening, diagnosis and treatment rule at ARM 46.12.515, and except for those services specifically available, as listed in ARM



46.12.1404, to persons eligible for home and community-based services:

- (a) podiatry services;
- (b) outpatient physical therapy services;
- (c) speech therapy, audiology, and hearing aids;
- (d) outpatient occupational therapy services;
- (e) private duty nursing services;
- (f) clinic services;
- (g) dental services;
- (h) outpatient drugs;
- (i) prosthetic devices and medical equipment and supplies;
- (j) eyeglasses and optometric services;
- (k) psychological services;
- (l) licensed clinical social worker services;
- (m) those services required for the provision of eyeglasses and provided by a physician;

Original subsections (2)(a) through (2)(n) remain the same in text but will be recategorized as (2)(n) through (2)(aa).

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

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402 MCA

IMP: Sec. 53-2-201, 53-6-103, 53-6-141 and 53-6-402

MCA

46.12.515 EARLY PERIODIC SCREENING DIAGNOSIS AND TREATMENT, REQUIREMENTS Subsections (1) through (4) remain the same.

- (a) diagnosis--and-treatment-for--defects-in--vision-and hearing--including eyeglasses and hearing aids; optometric services;
- (b) dental care--needed-for--relief-of--pain-and-infections--restoration-of-teeth-and-maintenance-of-dental-health; services;
- (c) appropriate immunizations;
- (d) podiatry services;
- (e) outpatient physical therapy services;
- (f) speech therapy, audiology and hearing aids;
- (g) outpatient occupational therapy services;
- (h) private duty nursing services;
- (i) clinic services;
- (j) outpatient drugs;
- (k) prosthetic devices and medical equipment and supplies;
- (l) psychological services;
- (m) licensed clinical social worker services.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

46.12.521 PODIATRY SERVICES, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 45.12.308.

(2) Podiatry services are available only to EPSDT-referred recipients.

(23) Utilization and peer review of podiatry services shall be conducted by the designated review organization.

AUTH: Sec. 53-6-113 MCA

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

46.12.526 OUTPATIENT PHYSICAL THERAPY SERVICES, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.102 and 46.12.301 through 46.12.308.

(2) Outpatient physical therapy services are available only to EPSDT-referred recipients.

Original subsections (2) through (11) remain the same in text but will be renumbered (3) through (12).

AUTH: Sec. 53-6-113 MCA

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

46.12.531 SPEECH PATHOLOGY SERVICES, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(2) Outpatient speech pathology services are available only to EPSDT-referred recipients.

Original subsections (1) through (6) remain the same in text but will be renumbered (3) through (8).

AUTH: Sec. 53-6-113 MCA

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

46.12.536 AUDIOLOGY SERVICES, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(2) Audiology services are available only to EPSDT-referred recipients.

Original subsections (1) through (6) remain the same in text but will be renumbered (3) through (8).

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

46.12.541 HEARING AID SERVICES, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(2) Hearing aid services are available only to EPSDT-referred recipients.

Original subsections (1) through (7) remain the same in text but will be renumbered (3) through (9).

AUTH: Sec. 53-6-113 MCA  
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.546 OUTPATIENT OCCUPATIONAL THERAPY SERVICES, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(2) Outpatient occupational therapy services are available only to EPSDT-referred recipients.

Subsections (1) through (6) remain the same in text but will be renumbered (3) through (8).

AUTH: Sec. 53-6-113 MCA  
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.550 HOME HEALTH SERVICES, DEFINITION Subsections (1) through (1)(b) remain the same.

(c) physical therapy services, when the recipient is also EPSDT-referred;

(d) occupational therapy services, when the recipient is also EPSDT-referred;

(e) speech therapy services, and when the recipient is also EPSDT-referred; and

Subsections (1)(f) through (1)(f)(iii) remain the same.

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

46.12.552 HOME HEALTH SERVICES, REIMBURSEMENT

Subsections (1) and (1)(a) remain the same.

(b) payment for home health services which are medical supplies and equipment and which are provided in intermediate care facilities as allowed in ARM 46.12.550+2+(1)(f)(ii) may not exceed the requirements of ARM 46.12.805.

Subsections (2) through (7) remain the same.

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

46.12.571 CLINIC SERVICES, REQUIREMENTS (1) Clinic services are available only to EPSDT-referred recipients.

Original subsections (1) through (4)(d) remain the same in text but will be renumbered (2) through (5)(d).

AUTH: Sec. 53-6-113 MCA  
IMP: Sec. 53-6-101 and 53-6-141 MCA

46.12.581 PSYCHOLOGICAL SERVICES, REQUIREMENTS

(1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(2) Psychological services are available only to EPSDT-referred recipients.

Original subsections (1) through (4) remain the same but will be renumbered (3) through (6).

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85

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

46.12.588 LICENSED CLINICAL SOCIAL WORK SERVICES, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(2) Licensed social work services are available only to EPSDT-referred recipients.

Original subsections (1) through (5) remain the same in text but will be renumbered (3) through (7).

AUTH: Sec. 53-6-113 MCA; AUTH Extension, Sec. 2, Ch. 77, L. 1985, Eff. 10/1/85

IMP: Sec. 53-6-101 MCA

46.12.602 DENTAL SERVICES, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(2) Dental services are available only to EPSDT-referred recipients.

Original subsections (1) through (13) remain the same in text but will be renumbered (3) through (15).

AUTH: Sec. 53-6-113 MCA

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

46.12.702 OUTPATIENT DRUGS, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(2) Outpatient drugs are available only to EPSDT-referred recipients.

Original subsections (1) through (5)(b) remain the same in text but will be renumbered (3) through (7)(b).

AUTH: Sec. 53-6-113 MCA

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

46.12.703 OUTPATIENT DRUGS, REIMBURSEMENT Subsections (1) through (4) remain the same.

~~(5)--Each recipient, unless eligible for exemption, must pay to the pharmacist 50¢ per prescription.~~

~~(6)--The following recipients are exempt from the prescription co-payment:~~

~~(a)--individuals under 21 years of age;~~

~~(b)--pregnant women; and~~

~~(c)--inpatients in a hospital, skilled nursing facility, intermediate care facility or other medical institution if~~

~~such individual is required to spend for costs of medical care all but his personal needs allowance, as defined in ARM 46.12.4008.~~

~~(7) No co-payment will be imposed with respect to emergency prescriptions or family planning prescriptions.~~

AUTH: Sec. 53-6-113 MCA

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

46.12.802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308. Requirements for prosthetic devices, durable medical equipment, and medical supplies utilized by nursing home residents are contained in ARM 46.12.1205.

(2) Prosthetic devices, durable medical equipment and medical supplies are available only to EPSDT-referred recipients or as a home health service.

Original subsections (1) through (2)(c) remain the same in text but will be renumbered (3) through (4)(c).

AUTH: Sec. 53-6-113 MCA

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

46.12.902 OPTOMETRIC SERVICES, REQUIREMENTS

(1) Optometric services listed in ARM 46.12.905 and marked with an asterisk are available only to EPSDT-referred recipients.

Original subsections (1) through (3)(b) remain the same in text but will be renumbered (2) through (4)(b).

AUTH: Sec. 53-6-113 MCA

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

46.12.905 OPTOMETRIC SERVICES, REIMBURSEMENT (1) The department will pay the lowest of the following for optometric services not also covered by Medicare: the provider's actual (submitted) charge for the service or the department's fee schedule contained in this rule. Optometric services listed in this rule and marked with an asterisk are available only to EPSDT-referred recipients.

(2) The department will pay the lowest of the following for optometric services: which are also covered by Medicare:

(a) the provider's actual (submitted) charge for the service;

(b) the amount allowable for the same service under Medicare; or

(c) the department's fee schedule contained as specified in this rule.

(43) The following procedures are included in Visual Examination for diagnosis only: ~~The following procedures are included:~~

- (a) Case history, symptoms, and occupational vision evaluation
- (b)\* Analysis and neutralization of patients current lenses and frames
- (c)\* Visual acuity testing, distance and near
- (d) Eye health examination
- (i) pupillary reflexes (direct, consensual, and accommodative)
- (ii) ophthalmoscopy (media and fundus inspection)
- (iii) external inspection (cornea, lids, and adnexa)
- (iv) ocular motility (versions)
- (e) Visual Analysis
- (i) keratometry or ophthalmometry
- (ii) preliminary oculomotor coordination evaluation (pursuits, saccadics, cover tests, N.P.C.)
- (iii) refraction at far point: static retinoscopy, subjective refraction
- (iv) refraction at near point: dynamic retinoscopy, subjective refraction
- (v) phorometric tests at far point and near point: phorias, ductions, blur points, accommodative measurements
- (f) The fee is\* \$28.13

(24)\* The following procedures are included in Visual Examination, prescription, and follow-up: ~~The following procedures are included:~~

- (a)\* Case history, symptoms, and occupational vision evaluation,
- (b)\* Analysis and neutralization of patients current lenses and frames
- (c)\* Visual acuity testing, distance and near
- (d)\* Eye health examination
- (i)\* pupillary reflexes (direct, consensual, and accommodative)
- (ii)\* ophthalmoscopy (media and fundus inspection)
- (iii)\* external inspection (cornea, lids, and adnexa)
- (iv)\* ocular motility (versions)
- (e)\* Visual Analysis
- (i)\* keratometry or ophthalmometry
- (ii)\* preliminary oculomotor coordination evaluation (pursuits, saccadics, cover tests, N.P.C.)
- (iii)\* refraction at far point: static retinoscopy, subjective refraction
- (iv)\* refraction at near point: dynamic retinoscopy, subjective refraction
- (v)\* phorometric tests at far point and near point: phorias, ductions, blur points, accommodative measurements
- (f)\* Prescribing: writing ophthalmic lens power prescription(s)

(g)\* Follow-up observation at visit following the delivery and fitting of new lens prescription: observation of patient's reactions and evaluation of visual performance with new glasses or other therapy performing of any indicated frame or lens adjustments re-prescribing of lens and/or frame if indicated

(h)\* The fee is\* \$37.51

(45)\* Measuring services include the following:

(a)\* measuring, verifying, single vision service (for standard frame and basic power ophthalmic lenses) - \$11.25

(b)\* measuring, verifying, bifocal lens service - \$15.00

(c)\* measuring, verifying, trifocal lens service - \$18.76

(d)\* measuring, verifying, cataract lens service - \$28.13

(56)\* Fitting services include the following:

(a)\* fitting, servicing, single vision frame service - \$11.25

(b)\* fitting, servicing, bifocal frame service - \$15.00

(c)\* fitting, servicing, trifocal frame service - \$18.76

(d)\* fitting, servicing, cataract frame service - \$28.13

(67)\* Hearing Aid Dispensing Services include the following:

(a)\* Add to measuring and verifying services - \$9.37

(b)\* Add to fitting services - \$9.37

(78)\* Non-basic Diagnostic Services include the following:

(a)\* Visual examination, additional visits - \$9.37

(b)\* Visual field, Peripheral field examination, using perimeter or equivalent, white fields - \$9.37

(c)\* Visual fields, peripheral field examination using perimeter or equivalent, color fields - \$13.12

(d)\* Visual fields, central field examination using tangent screen or equivalent

(i) white fields - \$9.37

(ii) color fields - \$13.12

(e)\* Screening, visual skills examination, using key-stone tests or equivalent - \$7.50

(f)\* Screening, multiple pattern visual fields, using harrington-flecks or equivalent - \$5.62

(g)\* Screening, limited tests for completion of insurance, government or school forms - \$7.50

(h)\* Color vision tests, using 20 isochromatic or equivalent - \$3.75

(i) Tonometry, tension - \$7.50

(j) Biomicroscopy - \$7.50

(k) Special reports - \$56.27 per hour

(l) Consultation (schools, government) - \$56.27 per hour

(m) Office consultation - \$7.50

(n) Out-of-office calls (add to other service)

(i) day-time - \$9.37

(ii) night-time - \$15.00

(o) Mileage charge (beyond 10 miles from office) - \$1.19 per mile

(p) Post cataract diagnostic examination - \$28.13

(q)\* Cataract lens change or regrind - \$18.76

(89)\* Non-Basic Ophthalmic Lens Services include the following:

(a)\* Non-Basic spherical and Sphero-Cylindric Powers (+ = + Or - = +) for each 4 diopters of sphere over Basic Power up to 12.00D (not applicable to cataract lenses) - add, per pair \$5.62

(b)\* For each 2 diopters cylinder over basic power - add, per pair \$5.62

(c)\* Special base curve - add, per pair \$3.75

(d)\* Prism Power

(i)\* total prism power less than 5 prism diopters - add, per pair \$5.62

(ii)\* total prism power 5 diopters or more - add, per pair \$9.37

(e)\* Lenticular grinding

(i)\* concave - add, per pair \$9.37

(ii)\* convex - add, per pair \$9.37

(f)\* Slab-off grinding - add, per pair \$9.37

(g)\* Tinted or colored glass

(i)\* single vision lenses - \$3.75

(ii)\* multifocal lenses - \$3.75

(h)\* Oversize, fused flat top multifocal segment, 35 & 45 mm wide - \$3.75

(i)\* Dual segment bifocal (to be added to bifocal value units) - add, per pair \$18.76

(j)\* Dual segment trifocal (to be added to trifocal value units) - add, per pair \$18.76

(k)\* High add fused bifocal, 3.00 - 4.00 diopters - add, per pair \$3.75

(l)\* High add fused bifocal, over - 4.00 - add, per pair \$9.37

(m)\* High add one-piece bifocal over 4.00 diopters - add, per pair \$9.37

(n)\* Plastic single vision lens - add, per pair \$3.75

(o)\* plastic multifocal lens - add, per pair \$9.37

(p)\* Coating, anti-reflection or color - add, per pair \$3.75

(q)\* Iseikonic lens - add, per pair \$168.80

(r)\* Safety Hardening - add, per pair \$3.75

(910)\* Service Code for metal frames - \$7.50



(1011)\* ~~Intact Contact Lens Therapy~~---These services are to be performed at visits following the visual examination, and include the following:

(a)\* Contact lens diagnostic examination include biomicroscopy, corneal measurements, ocular adnexa measurements, control lens observations, and contact lens refraction - \$18.76

(b)\* Fitting Procedure, basic spherical lens include:

(i)\* integration of all diagnostic data to determine physical specifications and refractive prescription of initial lens,

(ii)\* ordering from laboratory,

(iii)\* verifying finished lenses for physical specifications and refractive properties,

(iv)\* biomicroscopic and fluorescein evaluation of finished lenses in patients eye,

(v)\* contact lens refraction with finished lens,

(vi)\* instructing patient in insertion and removal procedures,

(vii)\* subsequent office visits to evaluate lens performance as wearing-time is increased (biomicroscopic and fluorescein inspections),

(viii)\* determination of necessary lens modifications or complete lens changes, as indicated,

(ix)\* re-specifying, re-prescribing, and re-ordering of lenses as indicated,

(x)\* office laboratory modifications as indicated, and

(xi)\* re-verifying of new or modified lenses.

(xii)\* The fee is \$281.33

(c)\* The following fees may be added to contact lens diagnostic examination or contact lens fitting procedure, basic spherical lens.

(i)\* Fitting Procedures, Spherical Prism Ballast Lenses - \$90.48

(ii)\* Fitting Procedures, Bifocal and/or Aphakic Lenses - \$46.88

(iii)\* Fitting Procedures, Toric Lenses - \$93.78

(iv)\* Fitting Procedures, Bifocal Lenses - \$187.55

(v)\* Fitting Procedures, Keratoconus Lenses - \$187.55

(vi)\* Office Call, observation and consultation - \$9.37

(1112)\* The following contact lense services are independent procedures:

(a)\* Instruction visit for previous contact lens wearer;

(i)\* fitted elsewhere - \$28.13

(ii)\* fitted in your office - \$13.17

(b)\* Fitting Procedure for previous contact lens wearer - \$181.50

(c)\* Duplication of new contact lenses - \$70.32

- (d)\* Fitting Procedure, monocular only - \$181.50  
(1213)\* Contact Lens Laboratory Adjustments  
~~(a)---This service applies to new patients fitted elsewhere and your the provider's patients past customary servicing period---it includes and include:~~  
(a)\* Edge-refinishing, size reducing, fenestrating, repolishing and bleeding - \$9.37.  
(b)\* Analysis and neutralization of contact lenses - \$11.25  
(1314)\* Servicing, and Repairs, and Frame Adjustments. Apply to new patients fitted elsewhere and ~~your-patients~~ the provider's past customary servicing period, and include the following:  
(a)\* Conventional frame (minor adjustments) - \$3.75  
(b)\* Conventional frame (complete realignment) - \$7.50  
(c)\* Iseikonic lenses \$7.50  
(d)\* Low vision aid - \$9.37  
(e)\* Special frame - \$9.37  
(f)\* Hearing aid frame - \$9.37  
(1415)\* Servicing, and Repairs,---Frame and Replacements ~~(standard-frame) of frames include the following:~~  
(a)\* Duplicate frame (1 003 + 004 using single vision service units) - \$16.87  
(b)\* Different frame (requiring lens or frame reshaping) - \$20.63  
(c)\* Front Replacement (1 003 + 004 using single vision service units) - \$14.06  
(d)\* Temple Replacement, per temple (service per pair) - \$5.08  
(e)\* Hinge Repair - \$5.62  
(f)\* Ptois Crutch - \$18.76  
(1516)\* Minor Servicing and Repairs---Minor of Frames Reports include the following:  
(a)\* Replace Screws - \$1.87  
(b)\* Supply Jumbo Pads - \$1.87  
(c)\* Supply Temple Covers - \$1.87  
(d)\* Supply Pad Covers - \$1.87  
(e)\* Supply Hinge Springs or Tension Washers - \$3.75  
(f)\* Solder Repair - \$3.75  
(g)\* Rocking Pads added to Zyl or aluminum frame - \$3.75  
(h)\* Rightening hinge to front or temple - \$1.87  
(i)\* New top-rims - \$3.75  
(1617)\* Servicing and Repairs---Lens of lenses include the following:  
(a)\* Neutralization of lenses for copy of Prescription - \$5.62  
(b)\* Lens replacement, one lens, single vision service - \$11.25  
(c)\* Lens replacement, one lens, bifocal service - \$15.00

(d)\* Lens replacement, one lens, trifocal service - \$18.76

(1718) Diagnostic Procedures include the following:

(a) Cycloplegic examination/refraction, independent procedure - \$46.88

(b) Supplemental mydiatic, add to fee for other procedures - \$9.37

(c) Supplemental cycloplegic including post-cycloplegic office visit - \$18.76

(d) Ophthalmoscopy, independent procedures, with mydriasis, direct and/or indirect - \$18.76

(e) Ophthalmoscopy with contact fundus lens procedure, add to fee for other procedures - \$13.10

(f) Gonioscopy, add to fee for other procedure - \$15.00

(g) Gonioscopy, independent procedure - \$26.26

(h) Tonography, independent procedure - \$37.51

(i) Intra-ocular photography, independent procedure, anterior segment - \$18.76

(j) Intra-ocular photography, independent procedure, posterior segment - \$37.51

(k) Supplemental differential diagnostic procedures using topical pharmaceuticals, add to fee for other procedures - \$13.12

(l) Ophthalmoscopy with contact fundus lens procedure, independent procedure - \$26.26

(m) Ophthalmodynamometry, supplemental procedure, add to fee for other procedures - \$11.25

(n) Ophthalmodynamometry, independent procedure - \$17.05

(1919)\* Visual training shall be reimbursed at the lowest of usual and customary charges, which are reasonable, the amount payable by medicare or \$21.78 per hour.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-113 and 53-6-141 MCA

46.12.912 EYEGLASSES, REQUIREMENTS (1) Eyeglasses are available only to EPSDT-referred recipients.

(2) Each EPSDT-referred recipient 21-years-old-or-younger is limited to one pair of eyeglasses per fiscal year and each recipient over 21-years-old-is-limited-to-one-pair-of-eyeglasses-every-two-fiscal-years unless one of the following circumstances exists:

Original subsections (1)(a) through (3) remain the same in text but will be renumbered (2)(a) through (4).

AUTH: Sec. 53-6-113 MCA

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

3. The actions of the 50th Legislature indicate that the Medicaid program may not have sufficient funds to continue the current level of services into fiscal years 1988 and 1989. The Director of the Department is required by law to hold expenditures within appropriations granted by the Legislature. The law further requires, at 53-6-141, MCA:

If available funds are not sufficient to provide medical care for all eligible persons, the department shall have the authority to set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical care and services made available.

53-6-102, MCA, also provides:

If funds are inadequate, priorities of the foregoing items and amounts of medical assistance shall be determined by the department. The department shall establish standards of assistance.

In order to stay within budget limits, the Department must eliminate a number of services to adults that are defined by federal Medicaid standards and by 53-6-101, MCA, to be optional and which the Department has determined are not essential to the diagnosis and treatment of a "serious medical condition", as defined in 53-3-109, MCA. The medical services that will remain available to adults are considered by the Department to be essential to the diagnosis and treatment of "a physical condition that causes a serious health risk to a person and for which treatment is medically necessary, including pregnancy". The reduction in general fund expenditure resulting from the elimination of these optional services is expected to be approximately \$4.5 million for the biennium. This is after the effects of cost shifting are taken into account. The loss in federal matching funds to the states will be approximately \$10.5 million for the biennium.

Copies of this proposed notice are available for public review at county human services offices and local welfare offices.

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 May 28, 1987.

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

Dave Lewis  
Director, Social and Rehabilitation Services

Certified to the Secretary of State April 9, 1987.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the adoption )	NOTICE OF THE ADOPTION OF
of emergency rules pertaining )	EMERGENCY RULES PERTAINING
to the grading of seed potatoes )	TO THE GRADING OF SEED
having hollow heart condition )	POTATOES

TO: All Interested Persons:

1. On March 6, 1987 the United States Department of Agriculture (USDA) adopted new standards for the grading of hollow heart condition for seed potatoes. The Montana Department of Agriculture uses the standards of the USDA as part of its basis for the establishment of standards for Montana Grade Seed Potatoes.

It has been brought to the attention of the department by several seed potato growers in the state of Montana that conditions creating the hollow heart condition existed last year but the potatoes that have hollow heart are just now being discovered by growers. The hollow heart condition as scored by the Montana Department of Agriculture inspectors causes many potatoes to be found out of tolerance with the present Montana standard grades found in the rules. If the department adopted standards similar to the Federal standards then many if not most of the potatoes being graded would be found within tolerance of the grades. The department has determined that the following rules must be adopted immediately without prior notice or hearing, in order to ensure that substantial economic losses to seed potato farmers will not occur due to their potatoes being out of tolerance with state standards but not out of tolerance with federal standards. Numerous persons have petitioned the department for the adoption of these emergency rules. Therefore the department finds that an imminent peril to the public welfare requires the adoption of these rules, to bring the state standards in line with the federal standards.

2. The text of the rules is as follows:

4.12.3503 BLUE TAGS subsections (l) through (l)(j) remain the same


(k) Hollow heart, hollow heart with discoloration, or brown discoloration affecting the center or core portion of the potato shall be scored when the affected area exceeds that of a circle 3/4 inch in diameter based on potatoes 5 ounces in weight with correspondingly lesser or greater areas permitted on smaller or larger potatoes.

AUTH: 80-3-110, MCA      IMP: 80-3-104 AND 80-3-105, MCA

3. The rationale for the proposed rules is set forth in the statement of reasons for emergency.

4. These rules are authorized under Section 80-3-110 MCA. They implement Section 80-3-104 and 80-3-105 MCA.

The emergency action is effective April 21, 1987.

  
\_\_\_\_\_  
Keith Kelly  
Director

Certified to the secretary of state April 21, 1987.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF MORTICIANS

In the matter of the amendment ) NOTICE OF AMENDMENT OF 8.  
of 8.30.407 concerning fees ) 30.407 FEE SCHEDULE

TO: All Interested Persons:

1. On February 26, 1987, the Board of Morticians published a notice of proposed amendment of the above-stated rule at page 194, 1987 Montana Administrative Register, issue number 4.

2. The board has adopted the rule exactly as proposed.

3. No comments or testimony were received.

BOARD OF MORTICIANS  
DENNIS F. DOLAN, CHAIRMAN

BY: Keith P. Colbo  
KEITH L. COLBO, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 20, 1987.



STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF PHARMACY

In the matter of the amendments	)	NOTICE OF AMENDMENTS OF 8.
of 8.40.404 concerning fee	)	40.404 FEE SCHEDULE AND 8.
schedule and 8.40.1209 concern-	)	40.1209 FEES
ing fees	)	

TO: All Interested Persons:

1. On March 12, 1987, the Board of Pharmacy published a notice of proposed amendments of the above-stated rules at page 227, 1987 Montana Administrative Register, issue number 5.
2. The board has amended the rules exactly as proposed.
3. No comments or testimony were received.

BOARD OF PHARMACY  
ANTHONY J. FRANCISCO, R.Ph.  
PRESIDENT

BY: Keith L. Colbo  
KEITH L. COLBO, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 20, 1987.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF SOCIAL WORK EXAMINERS  
AND PROFESSIONAL COUNSELORS

In the matter of the amendments of 8.61.404 concerning fees, 8.61.1203 concerning fees, and adoption of new rules concerning hours, credits and carry over; accreditation and standards; reporting requirements; noncompliance; annual license renewal	)	NOTICE OF AMENDMENTS OF 8.61.404 FEE SCHEDULE, 8.61.1203 FEE SCHEDULE, and ADOPTION OF NEW RULES 8.61.1601 HOURS, CREDITS, AND CARRY OVER, 8.61.1602 ACCREDITATION AND STANDARDS, 8.61.1603 REPORTING REQUIREMENTS, 8.61.1604, NONCOMPLIANCE, and 8.61.1605 ANNUAL LICENSE RENEWAL
--	---	--

TO: All Interested Persons:

1. On March 12, 1987, the Board of Social Work Examiners and Professional Counselors published a notice of proposed amendments and adoptions of the above-stated rules at page 231, 1987 Montana Administrative Register, issue number 5.

2. The Board has amended and adopted the rules as proposed with the following comments being submitted.

COMMENT: A comment was received from the Legislative Council stating that the implementing section cited in ARM 8.61.1203 was wrong. It was cited as 37-23-306 and should read 37-23-206.


RESPONSE: The Board concurs and the error has been corrected.

COMMENT: Kenneth B. Kleven, LSW and Galen A. Wilson, LSW, requested that the Board justify to every Social Worker in the State the rationale for the increase in renewal fees. They also commented on the continuing education requirements for Social Workers, the hour requirement and the accreditation fees.

RESPONSE: The Board is not raising renewal fees for Social Workers at this time but are planning on sending an information memo to each licensee explaining the financial status of the Board. The C.E. requirements have been in place since April 25, 1986, and the Board has no proposed changes in those requirements. The Board voted that a fee for C.E. accreditation be adopted because of the administrative costs involved in setting up and maintaining a C.E. program.

4. No other comments or testimony were received.

BOARD OF SOCIAL WORKERS  
AND PROFESSIONAL COUNSELORS  
PATRICK J. KELLY, CHAIRMAN

BY:   
GEOFFREY L. BRAZIER, ATTORNEY  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, April 20, 1987.  
Montana Administrative Register

8-4/30/87

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION

In the matter of the adoption )  
of new rules concerning the )  
approval and administration )  
of contracts for audits of )  
local government units pur- )  
suant to section 2-7-506, MCA )  
NOTICE OF ADOPTION OF NEW  
RULES 8.94.4001 CRITERIA  
FOR THE SELECTION OF AN  
INDEPENDENT ACCOUNTANT/  
AUDITOR, 8.94.4002 CRITERIA  
FOR EXECUTING A CONTRACT  
WITH AN INDEPENDENT  
ACCOUNTANT/AUDITOR, and 8.  
94.4003 AUDIT AND REPORTING  
STANDARDS

TO: All Interested Persons:

1. On October 30, 1986, the Department of Commerce published a notice of public hearing on the proposed adoption of the above-stated rules at page 1745, 1986 Montana Administrative Register, issue number 20.

2. The hearing was held on November 24, 1986, at 1:00 p.m., in Room C-209 of the Cogswell Building in Helena, Montana.

3. Nine people presented oral testimony and written comments at the hearing. The Department received 60 additional written comments during an extended comment period following the hearing.

4. The Department has adopted ARM 8.94.4001 and 8.94.4003 exactly as proposed. The Department has adopted ARM 8.94.4002 with the following changes (new matter underlined, deleted matter interlined)

"8.94.4002 CRITERIA FOR EXECUTING A CONTRACT WITH AN INDEPENDENT ACCOUNTANT/AUDITOR (1) and (2) will remain the same.

(3) An independent auditing contract may not cover an audit period exceeding two ~~three~~ years.

~~(4) --By May 1, of each year the department will notify all local government entities and interested independent accountants/auditors of the local government audits the department's staff will perform during the following two year period. All proposed independent audits of those local government units not included in the department's biennial auditing schedule must be scheduled and contracts therefor must be submitted to the department for approval no later than 90 days after the close of the sole or initial year to be audited, or, in the case of a single audit covering two fiscal years, no later than 90 days after the close of the second fiscal year to be audited.~~

~~(5) --The department may, in cases where entities scheduled for contract audits fail to arrange for such audits, or in cases where the department's work load will not allow it to meet its original schedule, revise the schedule to insure that the requirements of section 2-7-503(2), MCA, are met."~~

5. The Department received a number of comments concerning its proposed new rules, particularly subsections

(4) and (5) of ARM 8.94.4002. (As discussed below, the Department has indefinitely postponed the adoption of these subsections.) Summaries of these comments and the Department's responses follow:

A. ARM 8.94.4001:

COMMENT: This rule, which establishes criteria for the selection of accountants/auditors should apply to auditors employed by the Department as well as to independent accountants/auditors.

RESPONSE: The Department's rule-making authority under section 2-7-506, MCA, is limited to rules governing contracts for independent audits.

COMMENT: The Department should not have the authority, provided under subsection (3)(a) of the rule, to decline to enter into an auditing contract with an independent accountant/auditor who has performed a substandard audit under contract with the Department within the previous two years. The Department does not have the authority to determine adherence to generally accepted governmental auditing standards.

RESPONSE: The Department is required by section 2-7-506, MCA, to establish criteria for the selection of independent accountants/auditors to perform audits of local government units and to set standards for these audits. Section 2-76-505, MCA, requires that all audits of local governmental units be made in accordance with generally accepted governmental auditing standards. Inherent in these requirements is the Department's authority to require that independent audits meet these standards and to enforce this requirement by declining to enter into auditing contracts with independent accountants/auditors who have demonstrated an inability or unwillingness to perform audits in compliance with these standards.

B. ARM 8.94.4002:

COMMENT: Local government units should not have to obtain the Department's written approval of an independent auditing contract before audit work commences [subsection (1)].

RESPONSE: Under section 2-7-506, MCA, only the Department is authorized to contract with private accountants/auditors to conduct audits of local government units which the Department is not going to perform itself under section 2-7-503, MCA. Until the Department signs an auditing contract the document has no legal effect, and any auditing work performed thereunder is unauthorized.

COMMENT: Although a two-year limitation on the duration of an independent local government audit [subsection (3)] is not

"unworkable," local government officials and independent accountants/auditors should have the flexibility to negotiate a three-year contract.

RESPONSE: The Department concurs and has modified 8.94.4003(3) to incorporate this suggestion.

COMMENT: The procedure for scheduling audits of local government units prescribed by subsections (4) and (5) should not be adopted because it would:

1. Deny local government units the discretion to decide who will perform their audits;
2. Result in higher auditing costs to local government units because charges for the Department's audits are determined by actual cost rather than by fixed fee;
3. Disrupt established auditing procedures;
4. Jeopardize the ability of certain local governing bodies to achieve audit standards which would enable them to obtain more favorable bond ratings;
5. Result in an inappropriate expansion of the Department's auditing function;
6. Place independent accountants/auditors at a competitive disadvantage and limit their ability to obtain audit engagements.

RESPONSE: While the Department believes that the concerns reflected by these objections are largely unfounded, the very fact that they have been raised suggests the existence of a widespread misunderstanding on the part of local government representatives and providers of independent auditing services as to the provisions of section 2-7-506, MCA, and the purposes and effects of the Department's proposed rules. Consequently, the Department has indefinitely postponed the adoption of these subsections to allow it time to confer further with those who would be affected by them and, if possible, reach an accommodation with respect to the implementation of section 2-7-506, MCA.

6. No other comments or testimony were received.
7. The reasons for and against adopting the rules are embodied in the comments and responses contained in item 5, above.

DEPARTMENT OF COMMERCE

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

Certified to the Secretary of State, April 20, 1987.

BEFORE THE DEPARTMENT OF COMMERCE  
OF STATE OF MONTANA  
BOARD OF HOUSING

In the matter of the	)	NOTICE OF ADOPTION OF
amendment of Rule 8.111.202	)	AMENDMENT OF RULE 8.111.202
meetings of the board	)	MEETINGS OF THE BOARD
of housing	)	

TO: All Interested Persons.

1. On March 12, 1987, the Montana Board of Housing published notice of a proposed amendment to rule 8.111.202, which clarifies the board's policy with regard to the means by which the board shall give notice of its meetings, at page 240, of the 1987 Montana Administrative Register, issue number 5.

2. The board has amended the rule with the following changes:

8.111.202 MEETINGS OF THE BOARD

(1) (a) - (c) same as proposed rule.

(2) same as proposed rule.

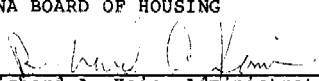
(3) In the case of matters determined by the board to be of significant interest to the public, notice ~~may~~ shall be given by any of the means in (1) above, and by any additional appropriate means of notice, given sufficiently prior to a final decision to permit public comment on the matter.

3. No comments or testimony was received.

4. The authority for the rule is sections 90-6-104 and 90-6-106, MCA, and the rule implements section 90-6-105, MCA.

MONTANA BOARD OF HOUSING

By:

  
Richard A. Kain, Administrator

Certified to the Secretary of State, April 20, 1987.

BEFORE THE DEPARTMENT OF INSTITUTIONS  
OF THE STATE OF MONTANA

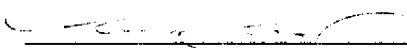
In the matter of the adoption	)	NOTICE OF ADOPTION
of amendment to admission	)	OF AMENDMENT OF
criteria for Montana center for	)	RULE 20.14.106
the aged	)	

TO: All Interested Persons.

1. On March 12, 1987, the department of institutions gave notice of proposed adoption of amendment to Section 20.14.106 to clarify admission criteria for center for the aged, on page 246 of the Montana Administrative Register issue number 5.

2. No public hearing was held nor was one requested. The department of institutions has received no written or oral comments concerning these rules.

3. Based on the foregoing, the department hereby adopts the rule as proposed, clarifying the admission criteria for the Montana center for the aged.

  
CARROLL SOUTH, Director  
Department of Institutions

Certified to the Secretary of State April 8, 1987.

VOLUME NO. 42

OPINION NO. 13

CITIES AND TOWNS - Authority to borrow money by methods other than bonds without election;  
COUNTIES - Authority to incur liability and borrow money without election;  
COUNTIES - Installment purchase contracts not considered borrowing money;  
ELECTIONS - Incurring indebtedness and borrowing money by cities and counties;  
MUNICIPAL CORPORATIONS - Authority to borrow money by methods other than bonds without election;  
MONTANA CODE ANNOTATED - Sections 1-2-101, 7-5-2306, 7-5-4306, 7-7-2101, 7-7-2401, 7-7-2402, 7-7-4101, 7-7-4201, 7-7-4421(1);  
MONTANA CONSTITUTION - Article VIII, section 10, article XI, section 4;  
MONTANA CONSTITUTION OF 1889 - Article XIII, section 5;  
OPINIONS OF THE ATTORNEY GENERAL - 35 Op. Att'y Gen. No. 52 (1973), 37 Op. Att'y Gen. No. 152 (1978), 38 Op. Att'y Gen. No. 14 (1979).

- HELD: 1. Section 7-7-2101, MCA, authorizes a county to incur a liability or indebtedness in an amount up to \$500,000 without an election. Section 7-7-2402, MCA, authorizes a county to borrow money in an amount only up to \$10,000 without an election.
2. An installment purchase contract is not a "borrowing of money" within the meaning of section 7-7-2402, MCA.
3. A municipality is not required to hold an election to borrow money by a method other than issuing bonds. It is, however, limited by section 7-7-4201, MCA, to the 28 percent debt ceiling.



13 April 1987

David Ewer  
Montana Economic  
Development Board  
Department of Commerce  
Lee Metcalf Building  
1520 East Sixth Avenue  
Helena MT 59620-0401

Dear Mr. Ewer:

You have requested an opinion on the following questions:

1. Does section 7-7-2101, MCA, authorize a county to issue a note or some other obligation in an amount up to \$500,000 without first submitting the issue to the electorate of the county?
2. Does an installment purchase contract constitute a "borrowing of money" within the meaning of section 7-7-2402, MCA?
3. Does section 7-7-4101, MCA, authorize a municipality to issue a note without respect to amount and without a vote of the electorate?

Section 7-7-2101, MCA, provides, in pertinent part:

Limitation on amount of county indebtedness.

....

(2) No county may incur indebtedness or liability for any single purpose to an amount exceeding \$500,000 without the approval of a majority of the electors thereof voting at an election to be provided by law, except as provided in 7-21-3413 and 7-21-3414.

Although this section appears to allow a county to incur any obligation up to \$500,000 without an election, it cannot be read in isolation.

8-4/30/87

Montana Administrative Register

Section 7-7-2402, MCA, provides:

Election required to borrow money -- exceptions. (1) Except as provided in subsection (3), the board of county commissioners must not borrow money for any of the purposes mentioned in this title or for any single purpose to an amount exceeding \$10,000 without:

(a) first having submitted the question of a loan to a vote of the electors of the county; and

(b) the approval of a majority of the electors of the county.

(2) If a majority of the votes cast are in favor of the loan, then the board may make the loan, issuing bonds or otherwise as may seem best for the interests of the county.

(3) It shall not be necessary to submit to the electors the question of borrowing money:

(a) to refund outstanding bonds; or

(b) for the purpose of enabling any county to liquidate its indebtedness to another county incident to the creation of a new county or the change of any county boundary lines.

This section clearly requires an election when a county borrow money in an amount exceeding \$10,000 for any single purpose.

35 Op. Att'y Gen. No. 52 at 126 (1973) held that the amount of money a county may borrow for a single purpose without an election is governed exclusively by section 7-7-2102, MCA. The apparent reasoning was that the 1972 Constitution, article VIII, section 10, headnotes required the Legislature to set limits for county indebtedness. Section 7-7-2101, MCA, was amended the next year, placing a \$40,000 limitation on counties' authority to incur debt or liability without an election, while section 7-7-2402, MCA, was left alone.

I disagree with the ruling of that opinion. The 1889 Constitution contained the following provision in Article XIII, section 5:

No county shall be allowed to become indebted in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five (5) per centum of the value of the taxable property therein, to be ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness, and all bonds or obligations in excess of such amount given by or on behalf of such county shall be void. No county shall incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars (\$10,000) without the approval of a majority of the electors thereof, voting at an election to be provided by law.

In 1895 the Legislature enacted two separate statutes--those presently codified as sections 7-7-2101 and 7-7-2402, MCA. Section 7-7-2101, MCA, as originally enacted provided in part: "No county may incur any indebtedness or liability for any single purpose to an amount exceeding ten thousand dollars without the approval of a majority of the electors thereof voting at an election to be provided by law." This section was enacted to give effect to the constitutional provision. Burlington Northern v. Flathead County, 162 Mont. 371, 512 P.2d 710, 712 (1973). Section 7-7-2402, MCA, as originally enacted provided in part: "The Board of County Commissioners must not borrow money for any of the purposes mentioned in this Title, or for any single purpose to an amount exceeding ten thousand dollars without the approval of a majority of the electors of the county, and without first having submitted the question of a loan to a vote of such electors."

In enacting both of the statutes the same year, and amending both from time to time, the Legislature clearly intended each statute to function individually and to coexist. In enacting laws the Legislature is presumed to not enact meaningless legislation. Crist v. Segna, Mont. \_\_\_, 622 P.2d 1028 (1981). Nor does the Legislature perform useless acts. Kish v. Montana State Prison, 161 Mont. 297, 505 P.2d 891 (1973). The

statutes must be construed harmoniously to make each operative. Schuman v. Bestrom, 42 St. Rptr. 54, 693 P.2d 536 (1985).

The Legislature therefore intended different objectives for the two statutes. Section 7-7-2101, MCA, limits the creation of liability or indebtedness; section 7-7-2402, MCA, limits the borrowing of money. The terms are not synonymous. A county can incur a liability or indebtedness without borrowing money. For example, action taken by the board of county commissioners in contracting to remodel an airport building creates an indebtedness or liability against the county. The county did not borrow money to pay the contract price because it had funds on hand for the initial expenditure, and intended to raise the remaining amounts through tax levy that year. Burlington Northern, Inc. v. Flathead County, *supra*. In that case, section 7-7-2101, MCA (§ 16-807, R.C.M. 1947), was the governing statute.

37 Op. Att'y Gen. No. 152 at 627 (1978) describes another example of incurring a liability or indebtedness without borrowing money. A county proposed to purchase machinery or equipment on an installment basis. Cash on hand was to be used for the initial expenditures with the remaining costs to be absorbed in the next fiscal budget. That opinion applied section 7-7-2101, MCA, holding that the debt limitation covers the entire amount of the installment contract price less the expenditures on hand.

Unlike section 7-7-2101, MCA, section 7-7-2402, MCA, is not an implementation of the constitutional requirement of debt limitations. This section is simply a legislative act to place a limit on the amount of money a county may borrow without an election. This section contemplates the borrowing of money through the issuance of bonds, notes, warrants, etc. Edwards v. County of Lewis and Clark, 53 Mont. 359, 165 P. 297 (1917).

In answer to your first question, then, section 7-7-2101, MCA, authorizes the county to incur a liability or indebtedness in an amount up to \$500,000 without an election; however, section 7-7-2402, MCA, authorizes the county to borrow money in an amount only up to \$10,000 without an election. 35 Op. Att'y Gen.

No. 52 at 126 (1973) is therefore overruled insofar as it conflicts with the holding of this opinion.

Your next question is whether an installment purchase contract entered into by the county is a "borrowing" and subject to section 7-7-2402, MCA, or whether it merely creates a debt and is thus subject to section 7-7-2101, MCA.

Installment purchase contracts for counties are authorized by section 7-5-2306, MCA. That statute requires amounts due on the contract to be budgeted for each fiscal year the payments are to be made, with the county making the commensurate appropriations. It is clear that a county's installment purchase contract is subject to the statutory limitations on creation of indebtedness. 37 Op. Att'y Gen. No. 152 at 627 (1978). Montana case law on this question, although scarce, leads to a conclusion that the contract is not a "borrowing" under section 7-7-2402, MCA. In Edwards v. Lewis and Clark County, *supra*, the Montana Supreme Court distinguished between incurring a debt or liability and borrowing money. The constitutional and statutory limitations for incurring indebtedness or liability are aimed at creation of new indebtedness or liability. The present section 7-7-2402, MCA, primarily concerns funding existing indebtedness. Thus, when the county contracts for goods or services, the indebtedness is created; when bonds or notes are then issued, money is borrowed to fund the indebtedness. The existing indebtedness has been transferred from the contract provider to the bond holder. The Court noted: "This is the sense in which the term 'borrowing money' is used throughout our Codes." *Id.* at 299. Of course, a county may create a new indebtedness upon the sale of bonds if the bonds have not been issued to fund an existing indebtedness.

The laws governing limitations on indebtedness and borrowing money have not changed substantively to affect the holding of Edwards. In this light an installment purchase contract is not "borrowing money" within the meaning of section 7-7-2402, MCA. An indebtedness is created by the contract, but no amount of money has been borrowed by the county to pay off the indebtedness. The indebtedness is paid off by the county through yearly appropriations in its budget.

See also 56 Am. Jur. 2d Municipal Corporations § 580, which discusses in further detail the distinction between incurring indebtedness or liability and borrowing money.

In Greener v. City of Great Falls, 157 Mont. 376, 485 P.2d 932 (1971), the focus of the dispute was a city plan to construct a city shop complex, at a cost of \$600,000, and finance it pursuant to section 7-5-4306, MCA (§ 11-1202, R.C.M. 1947). That section, which is the city counterpart to section 7-5-2306, MCA, authorizes municipalities to use installment purchase contracts. The city had not intended to issue bonds to finance the project, but planned to appropriate moneys from its general and special funds. The issue was whether the city was legally required to issue bonds and hold an election therefor. The Court held that the city was not required to issue bonds, or hold an election therefor, and further stated, "[section 7-5-4306, MCA] expressly authorizes an alternate method of financing construction of municipal buildings to that of borrowing or a bond issue." Id. at 940. The Court interpreted an installment purchase contract as a method of financing that was not a "borrowing of money." Finally, the pertinent statutory language is consistent with the conclusion that the county's installment purchase contract is not a "borrowing." Section 7-7-2401, MCA, authorizes the county "to borrow money upon the credit of the county to meet current expenses if the county revenue is insufficient." (Emphasis added.) A county may, of course, incur indebtedness for several years into the future. Upon entering into an installment purchase contract, the county incurs an indebtedness for up to five years. § 7-5-2306, MCA. Thus it cannot be said to be "borrowing money for current expenses." If the county were to obtain money through bonds, warrants, or notes, for payment on the contract, it would then be borrowing money to pay current expense on the indebtedness.

I thus conclude that an installment purchase contract is not a "borrowing" under section 7-7-2402, MCA.

Your last question concerns the scope of authority of a municipality (rather than a county) to borrow money without an election and without respect to the amount borrowed.

Section 7-7-4101, MCA, authorizes a municipality to borrow money or issue bonds for a variety of purposes. The remainder of chapter 7 is concerned primarily with municipal bonds. Section 7-7-4201, MCA, appears to provide the only limitation on the municipality in borrowing money by a method other than selling bonds:

Limitation on amount of bonded indebtedness.  
(1) Except as otherwise provided, no city or town may issue bonds or incur other indebtedness for any purpose in an amount which with all outstanding and unpaid indebtedness will exceed 28% of the taxable value of the property therein subject to taxation, to be ascertained by the last assessment for state and county taxes.  
[Emphasis added.]

The Legislature has imposed an election requirement whenever the municipality considers issuing general obligation bonds. § 7-7-4221(1), MCA. However, no such requirement exists for borrowing money by notes or other instrumentalities. The powers of general government and self-government municipalities are to be liberally construed. Mont. Const., art. XI, § 4; 38 Op. Att'y Gen. No. 14 at 50 (1979). Moreover, the rules of statutory construction prohibit the insertion of matter that the Legislature has omitted. § 1-2-101, MCA.

I therefore conclude that municipalities are not required to hold an election to borrow money by a method other than issuing bonds. The municipalities are, however, limited by section 7-7-4201, MCA, to the 28 percent debt ceiling.

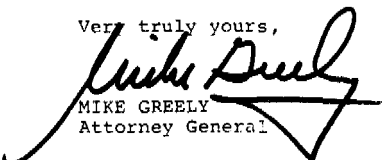
My conclusion is supported by the history of Montana's municipal debt law. Under the 1889 Constitution, the debt ceiling of municipalities was 3 percent of the value of taxable property (increased to 5 percent in 1949). Until 1931 elections were required for the creation or increase of any municipal indebtedness. § 5278, R.C.M. 1921. In 1931 that section was repealed and replaced with the present statutory scheme, which makes no mention of an election requirement for incurring indebtedness by means other than issuing bonds. 1931 Mont. Laws, ch. 160.

The Legislature is presumed to have intended a change, even if the purpose of that change is not readily apparent. State ex rel. Jones v. Giles, 168 Mont. 130, 541 P.2d 355, 357 (1975).

THEREFORE, IT IS MY OPINION:

1. Section 7-7-2101, MCA, authorizes a county to incur a liability or indebtedness in an amount up to \$500,000 without an election. Section 7-7-2402, MCA, authorizes a county to borrow money in an amount only up to \$10,000 without an election.
2. An installment purchase contract is not a "borrowing of money" within the meaning of section 7-7-2402, MCA.
3. A municipality is not required to hold an election to borrow money by a method other than issuing bonds. It is, however, limited by section 7-7-4201, MCA, to the 28 percent debt ceiling.

Very truly yours,



MIKE GREELY  
Attorney General



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 the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

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

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

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

### Use of the Administrative Rules of Montana (ARM):

Known Subject Matter	1. Consult ARM topical index, 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 list 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, 1986. This table includes those rules adopted during the period December 31, 1986 through March 31, 1987 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, 1986, 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 1986 or 1987 Montana Administrative Register.

## ADMINISTRATION, Department of, Title 2

I	Blind Vendors' Bidding Preference, p. 1730, 250
I-VII	Overtime and Compensatory Time in Lieu of Overtime Compensation, p. 272
I-IX	Emergency Telephone Service, p. 1523, 1889
I-X	Leaves of Absence Due to Disability, p. 1423, 1815
2.4.101	and other rules - Regulating Travel Expenses of State Employees While on Official Business, p. 1124, 1581
2.21.1501	and other rules - Administration of Compensatory Time for Employees Exempt from the Federal Fair Labor Standards Act (FLSA), p. 278
	(Public Employees' Retirement Board)
2.43.301	and other rules - Administration of Public Retirement Systems and the State Social Security Program, p. 702, 1454

## AGRICULTURE, Department of, Title 4

I-X	and other rules - Commodity Dealers and Public Warehousemen - Grain Rules - Dry Beans, p. 872, 1178, 1825
I-XLIII	Establishing Standards for Anhydrous Ammonia Facilities, p. 1231, 1820
4.12.1012	and other rule - Increasing the Fees Charged for Sampling, Inspection and Testing of Grains at the State Grain Laboratories, p. 53, 252
4.12.3501	and other rule - Grading of Certified Seed

Potatoes, p. 193, 368

STATE AUDITOR, Title 6

- I Defining Promotional or Developmental Stage, p. 351
- I Emergency Rule - Defining Promotional or Developmental Stage, p. 369
- I-IX Montana Insurance Assistance Plan, Commercial Liability, p. 879, 1460

COMMERCE, Department of, Title 8

- (Board of Architects)
- 8.6.405 and other rules - Reciprocity - Individual Seal - Standards of Professional Conduct and Activities Constituting Misconduct, p. 1648, 253
- (Board of Dentistry)
- 8.16.602 and other rules - Allowable Functions for Dental Hygienists and Dental Auxiliaries - Prohibition - Permit Required for Administration of Facility - Minimum Qualifying Standards - Facility Standards, p. 1654, 155
- (Board of Dentistry)
- I-XVIII Licensing - Procedure - Unprofessional Conduct - Inspections - Disciplinary Issues - Complaint Procedures, p. 732, 1498
- 8.17.404 and other rules - Examination - Fee Schedule - Renewal-Continuing Education, p. 1532, 1897
- (Board of Hearing Aid Dispensers)
- 8.20.401 and other rules - Traineeship Requirements and Standards - Fees - Certified Hearing Aid Audiologists, p. 128, 371
- (Board of Horse Racing)
- 8.22.501 and other rules - Definitions - General Requirements - Claiming, p. 353
- 8.22.610 and other rules - Stewards - Trainers - Veterinarians - General Requirements - Types of Bets - Twin Trifecta - Alcohol and Drug Testing - Pick (N) Wagering, p. 1732, 100
- (Board of Landscape Architects)
- 8.24.405 and other rule - Examinations - Fee Schedule, p. 1856, 2059
- (Massage Therapists)
- 8.26.101 and other rules - Board Organization - Procedural Rules - Substantive Rules, p. 356
- (Board of Morticians)
- 8.30.407 Fee Schedule, p. 194
- 8.30.606 Pre-arranged, Pre-financed or Prepaid Funerals, p. 1358
- 8.30.707 Disciplinary Actions, p. 1994
- (Board of Nursing Home Administrators)
- 8.34.403 and other rules - Board Meetings - Public Information - Examinations - Continuing Education - Fee Schedule - Reinstatement, p. 223

8-4/30/87

Montana Administrative Register

- (Board of Optometrists)  
8.36.403 and other rules - Application for Examination - General Practice Requirements - Unprofessional Conduct - Violations - Disciplinary Actions - Requirements, p. 1269, 1582
- (Board of Pharmacy)  
8.40.404 and other rule - Fee Schedule - Fees, p. 227  
8.40.1215 Additions, Deletions and Rescheduling of Dangerous Drugs, p. 1534, 1957
- (Board of Professional Engineers and Land Surveyors)  
8.48.501 and other rules - Applications - Licensing - Comity - Disciplinary Action - Emeritus Status - Applications by Partnerships and Corporations, p. 1536, 1958, 2006
- (Board of Private Security Patrolmen and Investigators)  
8.50.423 and other rule - Definitions - Fee Schedule, p. 1428, 1697  
8.50.431 and other rule - Insurance Requirements - Fee Schedule, p. 1488, 1898
- (Board of Public Accountants)  
8.54.612 and other rules - Confidential Client Information - Enforcement Against Permit Holders - Enforcement Procedures - Investigators - Credit for Service as Lecturer, Discussion Leader, or Speaker - Reviewers Under the Positive Enforcement Program - Profession Monitoring, p. 998, 1500
- (Board of Radiologic Technologists)  
8.56.409 and other rule - Fee Schedule - Permit Fees, p. 1490, 1899
- (Board of Realty Regulation)  
I Continuing Education, p. 1545, 157  
8.58.414 Trust Account Requirements, p. 1492, 1858  
8.58.419 Suspension or Revocation - Violation of Rules - Unworthiness or Incompetency, p. 229
- (Board of Social Work Examiners and Professional Counselors)  
8.61.404 and other rules - Fee Schedule - Hours, Credits and Carry Over - Accreditation and Standards - Reporting Requirements - Noncompliance - Annual License Renewal, p. 231
- (Board of Speech Pathologists and Audiologists)  
8.62.702 and other rules - Definitions - Continuing Education Required - When - Education Activities Acceptable for Credit, p. 1996
- (Bureau of Weights and Measures)  
8.77.101 Scale Pit Clearance, p. 196
- (Milk Control Bureau)  
8.79.301 Licensee Assessments, p. 56, 310
- (Board of Milk Control)  
8.86.301 Pricing Rules - Class I Price Formula to Change On-the-farm Retail Prices, p. 1134, 1504  
8.86.301 Formula for Fixing the Class I Producer Price, p. 235
- (Local Government Assistance Division)  
I Administration of the 1987 Federal Community
- Montana Administrative Register

- Development Block Grant (CDBG) Program, p. 357
- I-III Approval and Administration of Contracts for Audits of Local Government Units, p. 1745
- (Montana Economic Development Board)
- 8.97.308 Rates, Charges and Fee Schedule, p. 1430, 1698
- 8.97.308 Rates, Service Charges and Fee Schedule - Rate Reduction Fee, p. 1998, 202
- (Hard Rock Mining Impact Board)
- I Board Review of Impact Plans for Compliance with Statutory Requirements and Board Rules, p. 1748
- 8.104.203 and other rules - Format of Plan - Content of Objection to Plan - Implementation of an Approved Plan - Definitions - Waiver of Impact Plan Requirement - Modification of Plan - Financial Guarantee of Tax Prepayments - Evidence of the Provision of Service or Facility - Contents of Petition for Plan Amendment, p. 1052, 1826, 1900
- (Board of Housing)
- 8.111.202 Meetings of the Board of Housing, p. 240

#### EDUCATION, Title 10

- (Superintendent of Public Instruction)
- I-III Special Education Transportation, p. 1003, 1383
- (Board of Public Education)
- 10.55.203 District Superintendent, p. 1859, 102
- 10.55.204 Principal - Defining the Requirements for the Administrative Assistant Program, p. 1360, 1901
- 10.55.205 Professional Development, p. 1859, 102
- 10.55.303 Teaching Assignments, p. 1362, 1901
- 10.55.402 Basic Instructional Program: High School, Junior High, Middle School and Grades 7 and 8 Budgeted at High School Rates, p. 1750, 102
- 10.55.405A Gifted and Talented, p. 130
- 10.57.102 Definitions - Accredited, p. 1861, 103
- 10.57.102 and other rules - Definitions - Correspondence, Extension and Inservice Credit - Reinstatement - Class 1 Professional Teaching Certificate - Class 2 Standard Teaching Certificate - Class 3 Administrative Certificate, p. 130
- 10.57.301 Endorsement Information, p. 1363, 1902
- 10.58.511 Foreign Languages, p. 1364, 1902
- 10.64.301 and other rules - Minimum Standards for School Buses, p. 1752, 104, 158
- 10.64.601 Four-wheel Drive Vehicles, p. 1756, 103
- 10.65.101 Policy Governing Pupil Instruction Related Days Approved for Foundation Program Calculations, p. 1863, 102
- (Montana State Library Commission)
- I-III and other rule - State Coal Severance Tax Funding to Federations and Grant Programs, p. 324, 1506
- 10.101.101 and other rules - Montana Library Services Advisory Council - Library Services and Construction Act (LSCA) Grants, p. 302
- 10.101.203 and other rules - Organizational and Procedural
- 8-4/30/87 Montana Administrative Register

Rules - General Policy and Public Library  
Development, p. 283

FISH, WILDLIFE AND PARKS, Department of, Title 12

- I Abandoning Teton - Spring Creek Bird Preserve,  
p. 424, Decision Not to Adopt, p. 1461
- I Closing a Part of the Ruby River to Public  
Access, p. 1494
- I Exclusion of Certain Flotation Devices from the  
Statutory Definition of "Vessel", p. 307
- I-IV Transplant of Nuisance Animals and the  
Introduction of Peregrine Falcons, p. 885, 1462
- I-VII Collection of Fees for Costs Associated with  
Preparation of Environmental Impact Statements,  
p. 359
- 12.6.701 Personal Flotation Devices and Life Preservers,  
p. 308
- 12.6.703 Limit the Requirements For Fire Extinguishers on  
Small Motorboats and Vessels, p. 363
- 12.6.901 Establishing a No Wake Speed on Portions of  
Harrison Lake, p. 242
- 12.6.901 Prohibiting Motor or Engine Operated Vessels on  
the Bighorn River from Afterbay Dam to the  
Bighorn Access Area, p. 244

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

- I Subdivisions - Authorizing Local Departments or  
Boards of Health to Review Minor Subdivisions,  
p. 1139, 1509
- I-III Water Quality - Regulation of Phosphorous  
Compounds Used for Cleaning Purposes, p. 1137,  
1464
- I-VII Air Quality - Sulfur Dioxide Emission Controls,  
p. 2036
- 16.6.303 Recording of Delayed Birth Records, p. 1432
- 16.8.701 and other rules - Air Quality - Monitoring and  
Data Requirements for Ambient Air Quality,  
p. 1658, 2007
- 16.8.704 and other rules - Air Quality - Testing and Air  
Quality Permits p. 2000, 159
- 16.20.210 Frequency of Bacteriological Sampling, p. 58, 311
- 16.32.328 Minimum Standards for a Hospital - Retention of  
Medical Records, p. 1061, 1583
- 16.44.102 Hazardous Waste - Consolidation and updating  
Incorporations by Reference of Federal Agency  
Rules Contained in Chapter 44 of Title 16 of the  
Administrative Rules of Montana, p. 1, 203
- 16.44.103 and other rules - Hazardous Waste Management -  
Permitting - Counting Hazardous Wastes -  
Requirements for Recycled Materials -  
Incorporating Appendices - Redefining Generator  
Categories - Creating Requirements for  
Conditionally Exempt Small Quantity Generators -

Registration and Fee Requirements for Generators  
and Transporters - Accumulating Hazardous Wastes  
- Annual Reporting, p. 60, 255

INSTITUTIONS, Department of, Title 20

20.14.106 Admission Criteria to the Montana Center for the  
Aged, p. 246

JUSTICE, Department of, Title 23

23.4.101 and other rules - Alcohol Analysis, p. 1945, 16  
(Board of Crime Control)  
23.14.416 and other rules - Basic Course - Intermediate  
Course - Advance Course, p. 1434

LABOR AND INDUSTRY, Department of, Title 24

24.16.9007 Changing the Annual Effective Date of the  
Standard Rate of Wages Applicable to Public Works  
from October 1st to December 1st, p. 1141, 1466  
24.16.9007 Adoption by Reference of Standard Prevailing  
Rates of Wages Effective December 1, 1986 through  
November 30, 1987, p. 1669, 1960  
(Human Rights Commission)  
Public Hearing and Petition for Declaratory Ruling as to  
whether Montana Department of Institutions, a  
State Governmental Agency may Employ only Female  
Cottage Life Attendants at its Correctional  
Facility for Female Youth under Certain  
Circumstances, p. 1495, 2107  
Public Hearing and Petition for Declaratory Ruling as to  
whether the Reasonable Demands of the Screening  
and Selection of Adoptive Parents Requires  
Consideration of the Race, Sex, Religion, Age,  
Marital Status and Physical and Mental Handicap  
of the Applicant Parents without Violating  
Section 49-3-205, MCA, p. 2047  
I-IX Sex Equity in Education under the Montana Human  
Rights Act, p. 1663, 312  
(Workers' Compensation Division)  
24.29.702 Self-Insurers, p. 1273, 1903  
24.29.803 Payment of Compensation, p. 1671, 2060  
24.29.3801 Attorney Fee Regulation, p. 2050, 323

STATE LANDS, Department of, Title 26

I Shut-in Oil Royalties for Oil and Gas Leases on  
State Land, p. 1144, 2010  
26.3.101 and other rules - Surface Leasing of State Land,  
p. 1547, 17



LIEUTENANT GOVERNOR, Title 30

(Montana Statehood Centennial Commission)

I-IX Sanctioning Official Centennial Commemorative  
Products and Projects, p. 1437, 2062

LIVESTOCK, Department of, Title 32

32.2.401 Department of Livestock Fees and Licenses,  
p. 1950, 105  
32.8.202 and other rule - Milk Freshness Dating -  
Clarifying Responsibilities, p. 88

MILITARY AFFAIRS, Department of, Title 34

I-XXII Montana State Veterans Cemetery, p. 2053

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

(Board of Natural Resources and Conservation)

36.16.101 and other rules - Water Reservations -  
Applications in the Yellowstone River Basin -  
Applications in the Missouri River Basin -  
Reservation Changes and Transfers, p. 920, 1584

(Board of Water Well Contractors)

36.21.410 Examinations, p. 1146, 1601  
36.21.601 and other rules - Current Construction Standards  
- Minimum Construction Standards for Water Wells  
in Montana, p. 1148, 1699

(Board of Oil and Gas Conservation)

36.22.1242 Increasing the Oil and Gas Privilege and License  
Tax, p. 742, 1063, 1384

PUBLIC SERVICE REGULATION, Department of, Title 38

38.4.120 and other rules - Intrastate Rail Rate  
Proceedings, p. 135

REVENUE, Department of, Title 42

I Gasoline Distributor's License Tax, p. 1673, 2012  
I Commercial Personal Property Audits, p. 1784,  
2067

I-II Industrial Machinery and Equipment Trend Factors  
- Industrial Machinery and Equipment Depreciation  
Schedules, p. 1779, 1956, 2074

I-IV Child Support Debt Tax Offsets, p. 1864, 2065

I-V Emergency Telephone Service, p. 1574, 1963

I-IX Disclosure of Child Support Information, p. 1065,  
1832

I-XI Classification Requirements for Class 18 Property  
for Nonproductive, Patented Mining Claims -  
Classification Requirements for Class 19  
Property, p. 1806, 106

I-XIV Administrative Income Withholding for Child  
Support, p. 90, 328

- 42.11.104 Retail Liquor/Wine Price Restructuring, p. 1952
- 42.15.511 Energy Related Tax Incentives, p. 1675, 2011
- 42.17.105 Computation of Withholding Taxes, p. 1867, 2066
- 42.17.113 Reporting Requirements for Withholding Taxes, p. 98, 329
- 42.17.120 Individual Liability for State Withholding Taxes, p. 1443, 1835
- 42.21.101 and other rules - Personal Property Taxes, p. 1786, 1956, 2068
- 42.22.1101 and other rules - Net Proceeds On Miscellaneous Mines, p. 1762, 2072
- 42.22.1201 Net Proceeds Tax on Oil and Gas Production, p. 1770, 2073
- 42.22.2101 and other rules - Gross Proceeds Tax on Coal Production, p. 1757, 2079

SECRETARY OF STATE, Title 44

- 1.2.419 Scheduled Dates for the Montana Administrative Register, p. 1682, 2013
- 44.3.1737 and other rules - Processing and Counting of Computer Election Services Votomatic Punchcard Ballots, p. 1445, 1703

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

- I Interstate Compact on the Placement of Children, p. 1290, 1602
- I Food Stamp Employment and Training Program, p. 153, 330
- 46.5.621 and other rules - Child and Youth Care Facilities, p. 511, 1579, 1814, 2080
- 46.5.1202 and other rules - Supplemental Payments to Recipients of Supplemental Security Income, p. 1693, 2014
- 46.10.303 and other rule - AFDC Deprivation Requirements and Continuation of Assistance, p. 1690, 2015
- 46.10.304A Unemployed Parents in the AFDC Program, p. 1577, 1910
- 46.10.317 AFDC Protective and Vendor Payments, p. 10, 204
- 46.10.318 Policy of the AFDC Emergency Assistance Program to Not Pay Recipient's Taxes, p. 248
- 46.10.324 and other rule - AFDC Eligibility of Minor Custodial Parents and AFDC-related Medicaid Eligibility, p. 1379, 1604
- 46.11.101 Adoption of Amendments to Federal Agency Regulations Pertaining to the Food Stamp Program, p. 152
- 46.12.102 and other rules - Medical Assistance Reimbursement for Outpatient Drugs, p. 1684, 1967
- 46.12.514 and other rules - Early Periodic Screening Diagnosis and Treatment (EPSDT), p. 12, 205
- 46.12.525 and other rules - Outpatient Physical Therapy Services, p. 145, 331
- 46.12.532 Reimbursement for Speech Pathology Services,

- p. 8, 207
- 46.12.550 and other rules - Home Health Services, p. 1687, 2017
- 46.12.555 and other rules - Personal Care Attendant Services, p. 197, 372
- 46.12.801 Prosthetic Devices, Durable Medical Equipment and Medical Supplies, p. 755, 1911
- 46.12.1005 Transportation and Per Diem, Reimbursement, p. 2057, 161
- 46.12.1434 and other rules - Home and Community Services Program, p. 1870, 2094
- 46.12.3207 Eligibility Determinations for Medical Assistance - Transfer of Resources, p. 365
- 46.12.3601 and other rule - Non-institutionalized SSI-related Individuals and Couples, p. 6, 208
- 46.12.3803 Medically Needy Income Standards, p. 2004, 163
- 46.13.302 and other rules - Low Income Energy Assistance, p. 365, 1606
- 46.13.402 Low Income Energy Assistance Program (LIEAP) Supplemental Assistance, p. 375
- 46.13.403 Low Income Energy Assistance Program Method of Payment, p. 1812, 2021
- 46.25.101 and other rules - Structured Job Search and Training Program - Workfare, p. 746, 1084
- 46.25.711 and other rules - General Relief Assistance and General Relief Medical Programs, p. 1292, 1615