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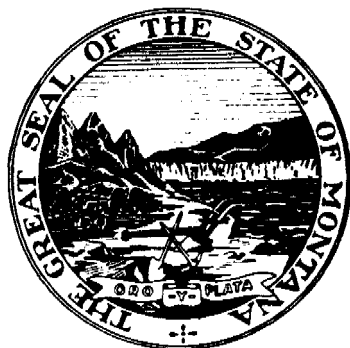
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MONTANA
ADMINISTRATIVE
REGISTER

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1990 ISSUE NO. 24
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PAGES 2209-2327



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MONTANA ADMINISTRATIVE REGISTER DEC 28 1990

ISSUE NO. 24

The Montana Administrative Register (MAR) is a monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are inserted at the back of each register.

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF PUBLIC HEARING ON
amendment of ARM 2.21.306	)	THE PROPOSED AMENDMENT OF ARM
through 2.21.308 and the	)	2.21.306 THROUGH 2.21.308 AND THE
adoption of a new rule	)	ADOPTION OF A NEW RULE RELATING
relating to work site	)	TO WORK SITE CLOSURE DURING A
closure during a localized	)	LOCALIZED DISASTER OR EMERGENCY
disaster or emergency)	

TO: All Interested Persons.

1. On Thursday, January 18, 1991, at 9:00 a.m., in Room 136, Mitchell Building, Helena, Montana, a public hearing will be held to consider the amendment of ARM 2.21.306 through 2.21.308 and the adoption of a new rule relating to work site closure during a localized disaster or emergency.

2. The proposed rule amendments are as follows:

2.21.306 POLICY AND OBJECTIVES (1) Remains the same.

(a) ~~provide paid leave of absence time off~~ not charged to an employee's accrued leave or compensatory time for an employee affected by a disaster or emergency as declared by the governor under the authority in 10-3-302 and 303, MCA;

(b) allow employees to take accrued annual vacation leave, compensatory time, or leave of absence without pay to deal with personal emergencies or to provide volunteer service during a disaster or emergency which does not personally affect the employee; and

(c) allow the closure of work sites affected by a localized disaster or emergency under conditions described in this policy.

(2) It is the objective of this policy to:

(a) administer leave for state employees during a disaster or emergency in compliance with Title 10, Chapter 3, parts 1-4, MCA, and rules relating to annual vacation leave, sick leave, leave of absence without pay and compensatory time; and

(b) to provide temporary paid time off to employees when a work site is closed due to a local disaster or emergency.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

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

(1) Remains the same.

(2) "Affected work site" means portions of an agency's premises which are directly threatened or affected by disaster or emergency conditions as described in this policy.

(2) - (5) Remain the same but will be renumbered (3) - (6).

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

2.21.308 DECLARED DISASTER OR EMERGENCY (1) When the governor of the state of Montana, pursuant to 10-3-302 and 303, MCA, declares a disaster or emergency, an affected employee of the state shall receive paid ~~leave of absence time off~~ which is not charged to any accrued leave or compensatory time.

(2) ~~An agency~~ A department head or designee shall determine on a case-by-case basis:

(a) Remains the same.
(b) the period of time for which the employee should receive paid leave time off under this section.

(3) When the governor's declaration does not define affected employees, employees ~~who wanting~~ paid leave time off under this policy shall make a request through their supervisor stating the reasons they were affected.

(4) - (5) Remain the same.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

3. The proposed new rule provides as follows:

RULE 1 AFFECTED WORK SITE CLOSURE (1) A department head may declare an affected work site closed when the site is under his or her authority and with the approval of the governor or his designee.

(2) The employing agency may temporarily reassign an employee to an alternate work site during the closure of the employee's regular work site.

(3) A department head shall determine which employees are affected by the work site closure. An employee may receive paid time off under this policy only for regularly scheduled hours which fall during the work site closure.

(4) The maximum amount of paid time off during the closure of an affected work site as provided in this rule is two regular shifts. If an affected worksite is closed longer than two regular shifts, an employee who has not been temporarily reassigned may request to use annual vacation leave, compensatory time or leave of absence without pay.

(5) An employee who voluntarily reports for work and performs regular duties during the closure of an affected work site will be paid the normal salary. No additional pay or leave will be granted.

(6) If management requests that an employee remain at work or report to work to perform essential services during the closure of an affected work site, that employee will be authorized hour-for-hour compensatory time in addition to his normal salary. This provision applies to all exempt employees and to non-exempt employees who have not worked in excess of 40 hours during the work week.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

4. Montana state government employs people across the state at a wide variety of facilities. When a large-scale disaster or emergency strikes, the governor has authority under 10-3-302 and 10-3-303, MCA, to close facilities. Under those circumstances, ARM 2.21.308 provides that employees are paid. However, disaster or emergency conditions may arise on a much more limited basis which does not require a formal declaration by the governor. In such cases, departments may be forced to close work sites. Examples of emergencies in which work sites were closed include the winter train explosion in Helena, which forced the evacuation of work sites closer to the disaster, before a general declaration came from the governor, and the destruction of a Billings Job Service office by fire. Extended loss of water to a facility and

extended loss of power during extreme cold also have caused offices to close. Adoption of a rule to deal with these localized situations is reasonably necessary to establish the types of situations in which local work sites may be closed and the procedure needed to approve the closure. This rule will provide guidance to department heads and consistent treatment of employees who are affected when their work site is closed.

It is reasonably necessary to substitute the term "department head" for "agency head" in this policy. The term "agency head" has been used in personnel policies to provide flexibility to those government entities which do not operate solely under, or operate separately from, authority of a specific department head. For the most part, this term is interpreted to mean "department head" and has been applied as intended on a case-by-case, common sense basis. Several departments have recommended use of the term "department head" in the grievance policy because it has a specific statutory definition in 2-15-102, MCA. The term "agency" is defined much more broadly than "department" in 2-15-102, MCA. There is no definition of "agency head." Amending the policy will clarify who may exercise authority under the Disaster and Emergency Leave policy.

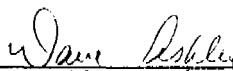
5. Interested parties may submit their data, views, or arguments concerning the proposed amendment to:

Laurie Ekanger, Administrator
State Personnel Division
Department of Administration
Room 130, Mitchell Building
Helena, Montana 59620

no later than January 31, 1991.

6. Liz Hayden, Personnel Policy Coordinator, State Personnel Division, Department of Administration, Mitchell Building, Helena, Montana, 59620, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on 2-18-102, MCA, and the rules implement 2-18-102, MCA.



Dave Ashley, Acting Director
Department of Administration

Certified to the Secretary of State 12-17-90, 1990.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PUBLIC HEARING ON
amendment of ARM 2.21.8011,)	THE PROPOSED AMENDMENT OF
2.21.8017, and 2.21.8018)	ARM 2.21.8011, 2.21.8017,
relating to grievances)	AND 2.21.8018 RELATING TO
)	GRIEVANCES

TO: All Interested Persons.

1. On January 18, 1991, at 9:00 a.m. in Room 136, Mitchell Building, Helena, Montana, a public hearing will be held to consider the amendment of ARM 2.21.8011, 2.21.8017, 2.21.8018 relating to the grievances.

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

2.21.8011 POLICY AND OBJECTIVES (1) - (2) Remain the same.

(3) The department of administration delegates the authority to each executive branch agency to adopt an internal grievance procedure in accordance with ARM 2.21.1203, and with the general authority of ~~an agency~~ a department head to adopt internal management policy found at 2-15-112 and 2-4-102 (10), MCA. An internal grievance procedure shall be consistent with the provisions of this policy and at a minimum include all steps contained in ARM 2.21.8017. Additional steps may be added, forms may be included, and timeframes may be modified at the agency's discretion.

(4) - (7) Remain the same.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

2.21.8017 GRIEVANCE PROCEDURE (1) Step 1 is the informal resolution. ~~The employee has 10 working days from the occurrence of the grievable event to informally resolve the grievance with the immediate supervisor.~~ Both the employee and supervisor are encouraged to resolve the grievance informally whenever possible, ~~before proceeding to step 2, formal grievance.~~

(2) Step 2 is the formal grievance.

(a) A formal grievance shall be filed in writing within 15 working days from the occurrence of the grievable event. The formal grievance shall be filed with the grievant's immediate supervisor, or the next level above the immediate supervisor. A standard form for filing grievances may be required by an agency.

(b) A formal grievance shall state specifically the law, written rule, policy, and/or procedure violated; when the action occurred, and the remedy desired by the grievant. It shall be signed and dated by the grievant.

(c) Management shall respond in writing to a formal grievance within 10 working days from the date it is filed.

(d) The grievance is resolved at step 2 if the grievant accepts management's response, or if the grievant fails to advance the grievance to step 3 within 10 working days of the receipt of management's response.

(3) Step 3 is the review by agency-the department head.

(a) Remains the same.

(b) If the subject of the grievance is suspension without pay for more than 10 working days, disciplinary demotion, or discharge, the designated management representative shall order a hearing, as provided in ARM 2.21.8018. All other grievances shall advance to final review by the agency-department head.

(c) The agency-department head shall review the grievance and shall issue the final administrative decision on the grievance either:

(i) - (ii) Remain the same.

(iii) the agency-department head shall notify the grievant and management concerning any additional actions ordered which will delay the decision.

(d) At the discretion of the agency-department head, the final review may include review of the grievance form, review of management's response, and review of the record of any investigation or hearing, or the agency-department head may authorize an additional investigation, may conduct a discussion with the grievant or may order a hearing.

(e) The agency-department head's final decision shall be issued in writing. This is the final step of this grievance procedure.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

2.21.8018 HEARING (1) - (8) Remain the same.

(9) The agency-department head shall issue the final administrative decision within 10 working days of receipt of the hearing summary.

(Auth. 2-18-102, MCA; Imp. 2-18-102, MCA)

3. The proposed amendment of ARM 2.21.8017 is reasonably necessary to clarify the amount of time an employee has to file a formal grievance. Both agencies and employees have reported confusion about this deadline. The initial timeframes in Step 1 and Step 2 run concurrently, both "from the occurrence of the grievable event." However, some employees have viewed the 10-day period to informally resolve a grievance and the total 15 working days they have to file a formal, written grievance as consecutive time periods. The proposed amendment encourages informal resolution of a grievance, while still allowing 15 days to file the formal grievance. This amendment does not result in any substantive change to the grievance procedure, but only serves as clarification.

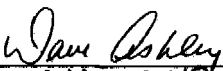
It is reasonably necessary to substitute the term "department head" for "agency head" throughout the policy. The term "agency head" has been used in personnel policies to provide flexibility to those government entities which do not operate solely under, or operate separately from, authority of a specific department head. For the most part, this term is interpreted to mean "department head" and has been applied as intended on a case-by-case, common sense basis. Several departments have recommended use of the term "department head" in the grievance policy because

it has a specific statutory definition in 2-15-102, MCA. The term "agency" is defined much more broadly than "department" in 2-15-102, MCA. There is no definition of "agency head." Amending the policy will clarify who may exercise authority under the grievance procedure, particularly with regard to making a final decision on the grievance.

4. Liz Hayden, Personnel Policy Coordinator, State Personnel Division, Department of Administration, Mitchell Building, Helena, Montana 59620, has been designated to preside over and conduct the hearing.

5. Interested parties may submit their data, views, or arguments concerning the proposed amendments to: Laurie Ekanger, Administrator, State Personnel Division, Department of Administration, Room 130, Mitchell Building, Helena, Montana 59620 no later than January 31, 1991.

6. The authority of the agency to make the proposed amendments is based on 2-18-102, MCA, and the rules implement 2-18-102, MCA.



Dave Ashley, Acting Director
Department of Administration

Certified to the Secretary of State December 17, 1990.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 2.43.432 for the purpose of)	AMENDMENT OF A RULE TO
allowing PERS members to purchase)	ALLOW OPTION OF PURCHASING
full months of additional service)	ADDITIONAL SERVICE MONTHS
when eligible to purchase a full)	IN PERS
year.)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Interested Persons.

1. On February 20, 1991, the Public Employees' Retirement Board proposes to amend ARM 2.43.432 in order to allow PERS members eligible to purchase a full year of "additional service" the option of purchasing full months of additional service.

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

2.43.432 PERS ADDITIONAL SERVICE (1) Subject to statutory limitations, a person who became a PERS member prior to July 1, 1989 and who has 5 or more years of membership service may purchase 1 full year of additional service credit for each 5 full years of service credited in the system. A person eligible to purchase a full year of additional service may elect to purchase full months of service totalling 11 months or less.

(2) The cost of each year of additional service will be 13.4% of the compensation earned by the member during the immediately preceding 12 months of membership service. The cost of each full month of additional service will be 1/12 of 13.4% of the compensation earned by the member during the immediately preceding 12 months of membership service.

(3) The purchase may be completed through a lump sum payment or in monthly installments, which will include interest at the rate currently set by the board. If making monthly installments, a member may purchase only 1 year; after completing payments for that year, he may purchase additional years based upon his immediately preceding 12 month compensation at that point in time.

(4) Service purchased under these provisions can not be counted toward initial retirement eligibility but will be used in calculating the amount of the retirement benefit, including any early retirement reduction.

(5) A person who was in receipt of a PERS pension on or before July 1, 1989 and who returns to active PERS membership on or after March 13, 1989 is eligible to purchase additional service after he has returned to active membership for a period of at least 12 months. The amount of additional service which may be purchased will be based on his total service credits in the system subject to any statutory limitations in effect.

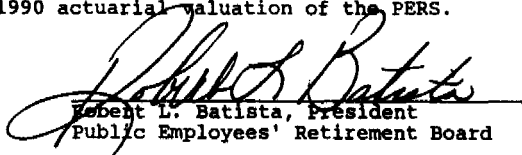
AUTH: 19-3-304, MCA; IMP: 19-3-513, MCA

3. The rule is proposed to be amended to allow eligible PERS members the option of purchasing less than full years of additional service. The amendment will allow the purchase of full months of additional service and provides the method of costing the service purchase.

4. Interested parties may submit their data, view or arguments concerning the proposed adoptions or amendments in writing to Lawrence P. Nachtsheim, Administrator, Public Employees' Retirement Division, 1712 Ninth Avenue, Helena, Montana 59620, no later than February 19, 1991.

5. If a person who is directly affected by the proposed adoption 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 Lawrence P. Nachtsheim, Administrator, Public Employees' Retirement Division, 1712 Ninth Avenue, Helena, Montana 59620, no later than February 19, 1991.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; 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 2,650 persons based upon the number of active members in the PERS covered by these rules per the 1990 actuarial valuation of the PERS.


Robert L. Batista, President
Public Employees' Retirement Board

Certified to the Secretary of State December 14, 1990

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF PROPOSED AMENDMENT
of rules pertaining to)	OF ARM 4.10.1202; 4.10.1203;
livestock protection collars.)	4.10.1206; and 4.10.1207; and
)	REPEAL of ARM 4.10.1208
)	relating to Livestock
)	Protection Collars.
	NO PUBLIC HEARING
	CONTEMPLATED

TO: All Interested Persons:

1. On January 26, 1991 the department of agriculture proposes to amend ARM 4.10.1202; 4.10.1203; 4.10.1206 and 4.10.1207, and repeal ARM 4.10.1208, relating to livestock protection collars.

2. The rules as proposed to be amended provide as follows:
(New matter underlined, deleted matter interlined)

4.10.1202 REGISTRATION (1) ~~Registration of the collar for sale or distribution in the state shall be limited to the Montana department of livestock and federal agencies.~~ Registration of the collars for sale or distribution in the state shall be limited to federal registrants of the collar.

(2) through (3) remain the same. (AUTH: Sec. 80-8-105, MCA; IMP: Sec. 80-8-105, MCA.)

4.10.1203 DEALER SALES (1) ~~Only registrants of the collar shall be allowed to become licensed dealers for the sale and distribution of the collar. The Montana department of livestock and/or a federal agency such as the United States department of agriculture (USDA) may become licensed dealers for the sale and distribution of the collars or in the event one of these agencies chooses not to become a licensed dealer, the department may designate a dealer who meets standards established by the department.~~ The dealer shall be required to maintain an inventory record of collars purchased, sold, distributed, given away, or entrusted. The record shall include each purchase of the collars by the dealer, each individual's name and license or permit number to whom the dealer sells the collars, and the number of collars remaining in the dealer's stock.

(2) remain the same. (AUTH: Sec. 80-8-105, MCA; IMP: Sec. 80-8-105, MCA.)

4.10.1206 SUPERVISION, INSPECTION OF 1080 LIVESTOCK PROTECTION COLLARS (1) The department, ~~or its authorized agent(s)~~ shall inspect each applicator ~~at least once a year~~ to verify that all applicable laws, regulations, rules and restrictions are being strictly followed. (AUTH: Sec. 80-8-105, MCA; IMP: Sec. 80-8-105, MCA.)

4.10.1207 RECORDS (1) remain the same.

(2) Each certified licensed or permitted applicator shall maintain monthly report forms which shall be submitted to the department ~~within 14 calendar days after the end of the calendar month annually by January 31 of the following calendar year or upon written request by the department.~~

(3) Each individual applicator shall maintain the records for two (2) operational years.

~~(4) Dealers selling and distributing collars shall submit their sales inventory records required by ARM 4.10.1203 to the department either upon request or annually by January 31 of the following year.~~

~~(5)~~ (4) All records shall be subject to inspection and shall be supplied to the department upon request. (AUTH: Sec. 80-8-105, MCA; IMP: Sec. 80-8-105 MCA;)

3. The rule to be repealed, ARM 4.10.1208 may be reviewed at page 4-263.6 of the ARM (department rules). (AUTH: Sec. 80-8-105, MCA; IMP: Sec. 80-8-105, MCA)

4. The proposed amendments provide for greater flexibility for registrants and dealers to handle and sell livestock protection collars; the department to conduct compliance inspections; reduces record keeping requirements under certain conditions; updates the rules to reflect changes in USDA and EPA procedures and repeals ARM 4.10.1208 because adequate authority exists in 80-8-101 et seq., MCA, for the department to take proper and effective enforcement actions.

5. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing to:

Gary L. Gingery
Administrator
MT Department of Agriculture
Environmental Management Division
Capitol Station
Helena, MT 59620-0205

no later than January 24, 1991.

6. If a person who is directly affected by the proposed amendments or repeal of ARM 4.10.1208 wishes to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit their request along with any written comments to Gary L. Gingery at the above address no later than January 24, 1991.

7. If the agency receives requests for a public hearing on the proposed amendments and repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments or repeal of ARM 4.10.1208; from the administrative code committee of the legislature; from a governmental subdivision; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the montana administrative register. Ten percent of those persons directly affected has been determined to be 4 as there are 36 applicators licensed to use livestock protection collars.

By: Everett M. Snortland
EVERETT M. SNORTLAND, DIRECTOR
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State, December 17, 1990.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED
amendment and repeal of rules)	AMENDMENT OF ARM
relating to M-44 sodium)	4.10.1402; 4.10.1403;
cyanide capsules and devices.)	4.10.1404; 4.10.1405;
)	4.10.1406; and 4.10.1407;
)	and REPEAL of ARM 4.10.1408
)	relating to M-44 Sodium
	Cyanide Capsules and Devices.
	NO PUBLIC HEARING
	CONTEMPLATED

TO: All Interested Persons:

1. On January 26, 1991 the department of agriculture proposes to amend ARM 4.10.1402; 4.10.1403; 4.10.1404; 4.10.1405; 4.10.1406; and 4.10.1407, and repeal ARM 4.10.1408, relating to M-44 Sodium Cyanide Capsules and Devices.

2. The rules as proposed to be amended provide as follows:
(New matter underlined, deleted matter interlined)

4.10.1402 REGISTRATION (1) ~~Registration of the cyanide capsules for sale or distribution in the state shall be limited to the Montana department of livestock and federal agencies such as the United States department of interior. Registration of the cyanide capsules for sale or distribution in the state shall be limited to federal registrants of the cyanide capsules.~~

(2) remain the same. (AUTH: Sec. 80-8-105, MCA; IMP: Sec. 80-8-105, MCA.)

4.10.1403 DEALER SALES (1) ~~Only registrants of the cyanide capsules shall be allowed to become licensed dealers for the sale and distribution of the cyanide capsules. The Montana department of livestock and/or a federal agency such as the United States department of agriculture (USDA) may become licensed dealers for the sale and distribution of the cyanide capsules or in the event one of these agencies chooses not to become a licensed dealer, the department may designate a dealer who meets standards established by the department.~~ Each dealer shall be required to maintain an inventory record of capsules purchased, sold, distributed, given away, or entrusted. The record shall reflect each and every purchase of the capsules by the dealer, each individual's name and license or permit number to whom the dealer sells the capsules, and the number of capsules remaining in the dealer's stock.

(2) remain the same.

~~(3) Dealer sales or distribution to licensed or permitted applicators shall be limited to fifty (50) capsules per purchase. Dealer sales and distribution to licensed or permitted applicators shall be limited to fifty (50) capsules per purchase. This limit may be exceeded on a case by case approval by the department if the applicator can document/justify to the department the need to exceed the fifty (50) capsule per purchase limit.~~ Federal or state agencies providing capsules to their employees are not limited by this numeral restriction. (AUTH: Sec. 80-8-105, MCA; IMP, Sec. 80-8-105, MCA;)

4.10.1404 APPLICATOR CLASSIFICATIONS AND REQUIREMENTS

'1) through (2) remain the same.

(3) Regualification. Applicators maintaining their license for four consecutive licensing periods shall be required to requalify for licensing prior to every fifth licensing period. Applicator regualification shall be accomplished by passing an examination or by attending an acceptable applicator training course approved by the department. An applicator requalifying for licensing by attending a pesticide training course shall be required to have the sponsor of the training course submit to the department a written verification of the applicator's attendance and an agenda of topics and speakers. The department retains the right to approve or disapprove such training courses relative to meeting the qualification for relicensing. The only training courses that will be reviewed for approval will be those attended by the applicator during the last half of the third licensing period or the fourth licensing period of a qualification period. The department may also require applicators to pass an examination during any licensing period on new major pesticide technology which applies to the applicator's classification.

~~Applicators examined for licensing in 1976 or 1977 may be required by the department to requalify for licensing prior to the fifth licensing period one time only to allow for staggering the requalification for classes of applicators. Thereafter, all applicator classes shall requalify prior to the fifth licensing period.~~

(4) All individuals who have attended a training course and having passed the written examination on the use of the capsules in M-44 devices will be certified in one of the following classifications:

(a) certified-licensed government applicator--predator regulatory pest control - predator - sodium cyanide (M-44);

(b) certified-licensed commercial applicator--agricultural pest control--vertebrate - sodium cyanide (M-44);

(c) permitted or certified farm applicator - sodium cyanide (M-44).

(5) through (6) remain the same. (AUTH: Sec. 80-8-105, MCA; IMP: Sec. 80-8-105, MCA.)

4.10.1405 USES OF CYANIDE CAPSULES AND M-44 EJECTOR (1) remain the same.

(2) The cyanide capsules for use solely in the M-44 ejector device shall be only used in instances where actual livestock losses due to predation by wild canids are occurring. They may be used in areas where documented prior experience indicates a recurring or seasonal predator problem in a specific area where actual livestock losses due to wild canid predators can reasonably be expected to occur. In each case, livestock depredation shall be verified including evidence that such losses were caused by wild canids prior to actual placement of M-44 devices in an area. Private Farm, commercial, county and state and government M-44 applicators shall submit such documentation on the monthly report form to the Montana department of livestock or the designated dealer. Department of interior US department of agriculture M-44 applicators shall submit each documentation according to established fish and wildlife service APHIS animal damage control procedures. Such documentation shall be available for inspection and copying by request of the Montana department of agriculture.

(3) through (6) remain the same.

(7) Bilingual warning signs in English and Spanish shall be used in all areas containing M-44 devices. All such signs shall be removed when M-44 devices are removed.

(a) Main entrances or commonly used access points to areas in which M-44 devices are set shall be posted with warning signs to alert the public to the toxic nature of the cyanide and of the danger to pets. Signs shall be inspected weekly to insure their continued presence and insure that they are conspicuous and legible.

(b) An elevated sign shall be placed within ~~six (6)~~ twenty-five (25) feet of each individual M-44 device warning persons not to handle the device.

(8) through (16) remain the same.

(17) In areas where more than one governmental agency applicator is authorized to place M-44 devices, the agencies applicators shall exchange placement information and other relevant facts to insure that the maximum number of M-44 devices is not exceeded. (AUTH: Sec. 80-8-105, MCA; IMP: Sec. 80-8-105, MCA;)

4.10.1406 SUPERVISION, INSPECTION, AND REMOVAL OF CYANIDE CAPSULES AND M-44 DEVICES (1) The department, the registrant, and/or supervisor of applicators shall check the records, warning signs, and M-44 devices of each applicator at least once a year periodically to verify that all applicable laws, regulations, rules and restrictions are being strictly followed.

(2) through (3) remain the same. (AUTH: Sec. 80-8-105, MCA; IMP: Sec. 80-8-105, MCA.)

4.10.1407 RECORDS (1) Each certified-licensed or permitted M-44 applicator shall keep records dealing with the placement of the device and the results of each placement. Such records shall include, but need not be limited to:

(a) the number of devices and capsules placed.
(b) the location of each device placed.
(c) the date of each placement, inspection, and removal of each device.

(d) the number and location of devices which have been discharged and the apparent reason for each discharge.

(e) the species of each animal taken.

(f) all accidents or injuries to humans, domestic animals, or non-target wildlife species.

(g) continuous surveillance and documentation of livestock losses caused by depredation of livestock by wild canids which shall be accounted for on the monthly report form.

(h) private farm, commercial, county and state and government M-44 applicators shall maintain monthly report forms which shall be submitted to the department of livestock on June 30 and December 31 of each year or the designated dealer annually by January 31 of the following calendar year or to the department upon written request.

(2) through (3) remain the same. (AUTH: Sec. 80-8-105, MCA; IMP: Sec. 80-8-105, MCA.)

3. The rule to be repealed, ARM 4.10.1408 may be reviewed at page 4-274 of the ARM (department rules). (AUTH: 80-8-105 and 80-8-306, MCA; IMP: 80-8-105 and 80-8-306, MCA)

4. The proposed amendments provide greater flexibility for allowing applicators more capsules under certain conditions; allows the department to rescind outdated licensing requirements and updates such requirements; updates the rules to reflect changes in USDA procedures; brings the rules into conformity with EPA use restrictions and repeals ARM 4.10.1408 because adequate authority exists in 80-8-101 et. seq., MCA for the department to take proper and effective enforcement actions.

5. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing to:

Gary L. Gingery
Administrator
MT Department of Agriculture
Environmental Management Division
Capitol Station
Helena, MT 59620-0205

no later than January 24, 1991.

6. If a person who is directly affected by the proposed amendments or repeal of ARM 4.10.1408 wishes to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit their request along with any written comments to Gary L. Gingery at the above address no later than January 24, 1991.

7. If the agency receives requests for a public hearing on the proposed amendments and repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments or repeal of ARM 4.10.1408; from the administrative code committee of the legislature; from a governmental subdivision; 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 6 as there are 54 applicators licensed to use sodium cyanide capsules and devices.

By: Everett M. Snortland
EVERETT M. SNORTLAND, DIRECTOR
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State, December 17, 1990.

BEFORE THE BOARD OF PLUMBERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of a rule pertaining) OF 8.44.412 FEE SCHEDULE
to fees)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 26, 1991, the Board of Plumbers proposes to amend the above-stated rule.
2. The proposed amendment will read as follows: (new matter underlined, deleted matter interlined)

"8.44.412 FEE SCHEDULE

- (1) through (3) will remain the same.
- (4) Initial license fee 85.00
prorated by quarter
- | | |
|-----------------|--------|
| (a) Journeyman | 75.00 |
| (b) Master | 125.00 |
| (5) Renewal fee | 85.00 |
| (a) Journeyman | 75.00 |
| (b) Master | 125.00 |

(6) will remain the same."

Auth: Sec. 37-1-134, 37-69-202, MCA; IMP, Sec. 37-1-134, 37-69-202, 37-69-307, MCA

REASON: This amendment is being proposed to keep fees commensurate with program area costs. Due to the increase in the number of complaints filed against master plumbers by the field inspectors for violation of the code and licensing laws, the board is devoting a majority of its time investigating these complaints. Based on this finding the proposed fee change is to distribute costs more effectively.

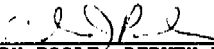
3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Plumbers, 1218 East Sixth Avenue, Helena, Montana 59620, no later than January 24, 1991.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Plumbers, 1218 East Sixth Avenue, Helena, Montana 59620, no later than January 24, 1991.

5. 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 hearing will be held at a later date.

Notice of the hearing will be published in the Montana Administrative Register.

BOARD OF PLUMBERS
ROBERT NAULT, CHAIRMAN

BY: 

ANDY POOLE, DEPUTY DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, December 17, 1990.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PUBLIC HEARING ON
amendment of Student.) PROPOSED AMENDMENT OF ARM
Transportation) 10.61.207, STUDENT TRANSPORTATION

TO: All Interested Persons

1. On January 17, 1991, at 1:30 P.M. or as soon thereafter as it may be heard, a public hearing will be held in the Governor's Reception Room, State Capitol, Helena, Montana, in the matter of the proposed amendment to ARM 10.61.207, Student Transportation.

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

10.61.207 STUDENT TRANSPORTATION (1) through (2)(a)(ii) remain the same.

(b) When transportation by scheduled commercial air or ground carrier is not available, or is inappropriate, preference shall be given to the use of chartered commercial aircraft. The superintendent may choose to transport residential students on either school buses as defined in Section 20-10-101 MCA, chartered commercial aircraft, or through individual transportation contracts with parents. When entering into individual transportation contracts with the parents or guardians of a student, the superintendent must follow the guidelines for special education transportation established by the state of Montana. The individual transportation contract shall provide reimbursement at the current rate set for special education transportation individual contracts.

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

(c) When the superintendent is unable to arrange suitable transportation by scheduled commercial air or ground carrier or chartered aircraft, he may enter into individual transportation contracts with the parents or guardians of a student following the guidelines for special education transportation established by the state of Montana. The contract shall provide reimbursement at the current rate set for special education transportation individual contracts.

AUTH: Sec. 20-8-121 MCA

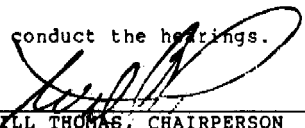
IMP: Sec. 20-8-121 MCA

3. The board is proposing the amendments to this rule to ensure adequate and appropriate transportation for students.


4. Interested parties may submit their data, views or arguments either orally or in writing to Bill Thomas, Chairperson of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, 59620, no later than January 24, 1991.

5. Bill Thomas, Chairperson, and Wayne Buchanan, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been

designated to preside over and conduct the hearings.


BILL THOMAS, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY:



Certified to the Secretary of State December 17, 1990.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PUBLIC HEARING ON PROPOSED
amendment of Endorse-) AMENDMENT OF ARM 10.57.301, ENDORSEMENT
ment Information) INFORMATION, AND ARM 10.58.511,
and Foreign Languages) FOREIGN LANGUAGES

TO: All Interested Persons

1. On January 17, 1991, at 2:00 P.M. or as soon thereafter as it may be heard, a public hearing will be held in the Governor's Reception Room, State Capitol, Helena, Montana, in the matter of the proposed amendment to ARM 10.57.301, Endorsement Information, and ARM 10.58.511, Foreign Languages.

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

10.57.301 ENDORSEMENT INFORMATION (1) and (2) remain the same.

(3) Appropriate teaching areas acceptable for certificate endorsement include: social science, history, economics, sociology, geography, political science, economics-sociology, dramatics, journalism, elementary education, library (K-12), speech-drama, French, Spanish, German, Russian, Latin, other foreign language, English as a second language, mathematics, science, physical science, reading (K-12), physics, chemistry, biology, earth science, agriculture, industrial arts, home economics, distributive education, trade and industry, business education, business education with shorthand, music (K-12), art (K-12), physical education and health (K-12), guidance and counseling (K-12), special education (K-12), psychology. ~~(Effective January 1, 1991, foreign language will be a K-12 endorsement.)~~ (Effective July 1, 1992, foreign language will be a K-12 endorsement.)

(4) through (8) remain the same.

AUTH: 20-4-102 MCA

IMP: 20-4-103 and 20-4-106 MCA

10.58.511 FOREIGN LANGUAGES SECOND LANGUAGE For the prospective teacher the program shall provide:

(1) through (11) remain the same.

AUTH: 20-2-114 MCA

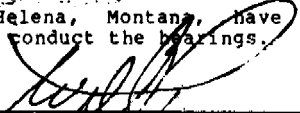
IMP: 20-1-121 MCA

3. These amendments have been proposed for the purpose of providing endorsement for teachers of English as a second language in programs where this training is required.

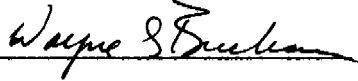
4. Interested parties may submit their data, views or arguments either orally or in writing to Bill Thomas, Chairperson of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, 59620, no later than January 24, 1991.

5. Bill Thomas, Chairperson, and Wayne Buchanan, Executive Secretary to the Board of Public Education, 33

South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearings.


BILL THOMAS, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY:



Certified to the Secretary of State December 17, 1990.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PUBLIC HEARING ON PROPOSED
amendment of Test for) AMENDMENT OF ARM 10.57.211, TEST FOR
Certification) CERTIFICATION

TO: All Interested Persons

1. On January 17, 1991, at 2:30 P.M. or as soon thereafter as it may be heard, a public hearing will be held in the Governor's Reception Room, State Capitol, Helena, Montana, in the matter of the proposed amendment to ARM 10.57.211, Test for Certification.

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

10.57.211 TEST FOR CERTIFICATION (1) Effective July 1, 1986, all new applicants for initial class 1, 2 or 3 certification must provide evidence of having completed the national teacher examination core battery with a minimum score established by the board. Exception: ~~teachers currently holding a class 2 standard certificate will not be required to take the test to qualify for a class 1 certificate if they obtain the class 1 certificate before October 1, 1991.~~ applicants holding a valid Montana class 1, 2 or 3 certificate.

(2) and (3) remain the same.

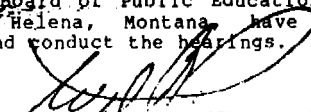
AUTH: Sec. 20-2-121(1) and 20-4-102(1) and (5) MCA

IMP: Sec. 20-4-102(1) and (5) MCA

3. This amendment has been proposed for the purpose of facilitating the professional advancement of Montana Educators.

4. Interested parties may submit their data, views or arguments either orally or in writing to Bill Thomas, Chairperson of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, 59620, no later than January 24, 1991.

5. Bill Thomas, Chairperson, and Wayne Buchanan, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearings.


BILL THOMAS, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY: 

Certified to the Secretary of State December 17, 1990.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PUBLIC HEARING ON PROPOSED
amendment of Rein-) AMENDMENT OF ARM 10.57.208, REIN-
statement, and Class 1) STATEMENT and ARM 10.57.401, CLASS
Professional Teaching) 1 PROFESSIONAL TEACHING CERTIFICATE,
Certificate, and Class) and ARM 10.57.403, CLASS 3 ADMINIS-
3 Administrative) TRATIVE CERTIFICATE.
Certificate)

TO: All Interested Persons

1. On January 17, 1991, at 3:00 P.M. or as soon thereafter as it may be heard, a public hearing will be held in the Governor's Reception Room, State Capitol, Helena, Montana, in the matter of the proposed amendment to ARM 10.57.208, Reinstatement, and ARM 10.57.401, Class 1 Professional Teaching Certificate, and ARM 10.57.403, Class 3 Administrative Certificate.

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

10.57.208 REINSTATEMENT (1) Lapsed certificates cannot be renewed but the holder may apply for reinstatement of the certificate provided requirements are met which are in force at the time reinstatement is requested. A minimum of 12 (8 semester) credits of college work or the equivalent is required within the five-year period immediately preceding the effective date of the certificate for reinstatement of the class 2 certificate. A minimum of 6 quarter (4 semester) credits or the equivalent within this period is required for reinstatement of class 1 or class 3 certificates (one year of teaching or administrative experience with a master's degree). Effective in 1995, requirements for class 1 certificate reinstatement, will be 12 quarter (8 semester) credits or the equivalent earned within the 5-year period preceding the effective date of the certificate. Effective in 1992, requirements for class 3 certificate reinstatement, will be 12 quarter (8 semester) credits or the equivalent earned within the 5-year period preceding the effective date of the certificate. In cases where this requirement has not been met, a class 5 certificate may be issued to meet the recent training requirement.

(2) If the period of lapse is 15 years or more, the reinstatement requirements for the class 2 certificate is 12 quarter credits no more than five years old plus additional credits based on the number of years of teaching experience. For the person seeking a class 1 or 3 certificate, the requirement is 6 quarter credits no more than five years old plus additional credits based on teaching experience. Effective in 1995, if the period of lapse is 15 years or more requirements for reinstatement of class 1 certificates will be 12 quarter (8 semester) credits no more than five years old plus additional

credits based on teaching experience. Effective in 1992, if the period of lapse is 15 years or more, requirements for reinstatement of class 3 certificates will be 12 quarter (8 semester) credits no more than five years old plus additional credits based on teaching experience.

No teaching or equivalent experience since the original training. +6 additional credits

1-5 years teaching or equivalent experience. +4 additional credits

5-10 years teaching or equivalent experience. +2 additional credits

Over 10 years teaching or equivalent experience. +0 additional credits

If the individual seeking the class 2 certificate has 12 quarter credits within the preceding 15 years (6 quarter credits for those seeking the class 1 or 3, in 1995, 12 quarter credits for class 1 and in 1992, 12 quarter credits for class 3), he/she may qualify for the class 5 provisional certificate, providing all other academic and non-academic requirements are met. The class 5 would allow three years of certified time in which to complete the balance of the required recent credits.

(3) through (4) remain the same.

AUTH: Sec. 20-4-102, 20-2-121(1) MCA

IMP: Sec. 20-4-102, 20-4-103, 20-4-106 and 20-4-108

MCA

10.57.401 CLASS 1 PROFESSIONAL TEACHING CERTIFICATE

(1) through (4) remain the same.

(5) Reinstatement: 6 quarter (4 semester) credits or the equivalent earned within the 5-year period preceding the effective date of the certificate, or one year of experience with a master's degree. Effective in 1995, 12 quarter (8 semester) credits or the equivalent earned within the 5-year period preceding the effective date of the certificate. (See ARM 10.57.208 for reinstatement of certificates allowed to lapse 15 years or more.)

(6) and (7) remain the same.

AUTH: Sec. 20-4-102 MCA

IMP: Sec. 20-4-106, 20-4-108 MCA

10.57.403 CLASS 3 ADMINISTRATIVE CERTIFICATE (1)

through (3) remain the same.

(4) Reinstatement: 6 quarter (4 semester) credits or one year experience or the equivalent earned within the 5-year period preceding the effective date of the certificate. Effective in 1992, 12 quarter (8 semester) credits or the equivalent earned within the 5-year period preceding the effective date of the certificate. Requirements must be met that are in force at the time of reinstatement. (See ARM 10.57.208 for reinstatement of certificates allowed to lapse 15 years or more.)

(5) through (9) remain the same.

AUTH: Sec. 20-4-102 MCA

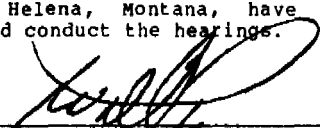
IMP: Sec. 20-4-106, 20-4-106(1)(c), 20-4-108 MCA

3. This amendment has been proposed for the purpose of requiring that the reinstatement requirements of a class 1 and class 3 certificate be greater than the

renewal requirements for such certification.

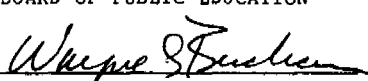
4. Interested parties may submit their data, views or arguments either orally or in writing to Bill Thomas, Chairperson of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, 59620, no later than January 24, 1991.

5. Bill Thomas, Chairperson, and Wayne Buchanan, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearings.



BILL THOMAS, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY:



Certified to the Secretary of State December 17, 1990.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PUBLIC HEARING ON
amendment of Endorse-) PROPOSED AMENDMENT OF ARM
ment Information,) 10.57.301, ENDORSEMENT INFORMATION
Computer Endorsement) AND NEW RULE I, COMPUTER ENDORSE-
Review Committee, and) MENT REVIEW COMMITTEE, AND NEW
Endorsement of Com-) RULE II, ENDORSEMENT OF COMPUTER
puter Science Teachers) SCIENCE TEACHERS

TO: All Interested Persons

1. On January 17, 1991, at 3:30 P.M., or as soon thereafter as it may be heard, a public hearing will be held in the Governor's Reception Room, State Capitol, Helena, Montana, in the matter of the amendment of ARM 10.57.301, Endorsement Information and New Rule I, Computer Endorsement Review Committee, and New Rule II, Endorsement of Computer Science Teachers.

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

10.57.301 ENDORSEMENT INFORMATION (1) and (2) remain the same.

(3) Appropriate teaching areas acceptable for certificate endorsement include: social science, history, economics, sociology, geography, political science, economics-sociology, dramatics, journalism, elementary education, library (K-12), speech-drama, foreign language, mathematics, science, physical science, reading (K-12), physics, chemistry, biology, earth science, agriculture, industrial arts, home economics, distributive education, trade and industry, business education, business education with shorthand, music (K-12), art (K-12), physical education and health (K-12), guidance and counseling (K-12), special education (K-12), psychology, computer science. (Effective January 1, 1991, foreign language will be a K-12 endorsement.)

(4) through (8) remain the same.

AUTH: Sec. 20-4-102 MCA

IMP: Sec. 20-4-103 20-4-106 MCA

RULE I COMPUTER ENDORSEMENT REVIEW COMMITTEE (1) The computer endorsement review committee consists of seven members appointed by the superintendent of public instruction. The committee shall include:

(a) three members serving on the faculty of a university or college whose major field is computer science and/or computer education;

(b) three members employed as computer instructors and/or computer coordinators within grades 5 through 12; and

(c) one member employed as an administrator, with the certification required in 20-4-106(1)(c) MCA.

(d) the mathematics/computer specialist of the office of public instruction shall be an ex officio member of this committee.

(2) The computer endorsement review committee will

review applications from teachers who desire to teach computer science in grades 5 through 12. The committee will make recommendations for the approval of endorsements according to specific criteria developed by the committee based on board approved certification program standards for computer science.

(3) Upon review of the application, the computer endorsement review committee will take one of the following actions:

- (a) recommend endorsement;
- (b) recommend alternatives to meet standards; or
- (c) not recommend endorsement.

(4) The recommendation for endorsement will be submitted to the office of public instruction for review and final approval. The applicant will receive a copy of the transmittal form used to forward this decision to the office of public instruction.

(5) If the committee recommends alternatives to meet the standards under section (3)(b), the office of public instruction and the applicant shall be notified of the action. The notice will include documentation of program standards judged as being not met. Recommendations for alternative methods of satisfying the standards will be made available to the applicant.

(6) Applications which do not meet the criteria established by the committee will not be recommended for approval. The applicant will be advised of the committee's decision. The committee will provide assistance interpreting the criteria, should the applicant request it.

(7) Applications will be accepted from January 1, 1992 through December 31, 1994. After December 31, 1994, applicants who have deficiencies noted by the review committee will have until September 1, 1996 to satisfy them.

(8) After September 1, 1996, applicants who have not received a recommendation for approval by this committee will no longer be considered for endorsement through the certification endorsement review committee.

(9) This rule terminates September 1, 1996.

AUTH: Sec. 20-4-102 MCA

IMP: Sec. 20-4-103 MCA

RULE II ENDORSEMENT OF COMPUTER SCIENCE TEACHERS (1)

For the prospective teacher in core computer science the program shall:

(a) include computer science prerequisite to, consistent with, and substantially beyond that which the teacher may be expected to teach;

(b) develop a competence in programming that will prepare the teacher to be able to program and to teach advanced placement computer science courses; topics covered shall include:

- (i) problem solving techniques and strategies,
- (ii) modern algorithm design methodology,
- (iii) algorithm analysis in terms of time and space complexity,

(iv) algorithm verification techniques,
(v) competence in at least two programming languages widely used in secondary education settings, and
(vi) program testing;

(c) provide a basic introduction to the major subject areas of computer science: algorithms and data structures, programming languages, architecture and machine-dependent programming, numerical and symbolic computing, operating systems, software methodology and engineering, database and information retrieval, artificial intelligence and robotics, and human-computer communication;

(d) provide a basic introduction to computer science theory including computability and intractable problems;

(e) include the history, current trends, career opportunities, and future directions of computing and computer science; and

(f) include the impact of computers on society and the ethical and moral obligations inherent in the use of computer hardware and software.

(2) For the prospective teacher in applications and instructional uses of computers the program shall:

(a) develop the competence to use and teach common software packages, including:

- (i) database,
- (ii) graphics
- (iii) networking/telecommunications,
- (iv) spreadsheet,
- (v) word processing, and
- (vi) operating systems and utilities;

(b) include content studies and experiences relevant to the computer sciences curricula grades 5-12;

(c) provide competence in the use of computers for classroom management;

(d) include a study of effective pedagogical uses of computers and software in the instructional process;

(e) develop an awareness of resource materials such as journals, sources of computers and software, computer conferences, and professional organizations;

(f) provide competence in proper keyboarding technique;

(g) develop competence in basic trouble-shooting and maintenance of the kinds of computer equipment commonly found in an educational setting; and

(h) provide a basis for evaluating, selecting and purchasing classroom hardware and software.

AUTH: Sec. 20-2-114 MCA

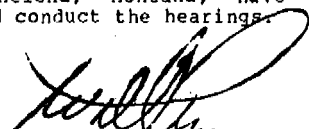
IMP: Sec. 20-2-121 MCA

3. The board is proposing this amendment and new rules to add a computer science endorsement area in response to recommendations by the Office of Public Instruction, the colleges/universities, teachers, and a task force appointed to investigate the addition of the endorsement.

4. Interested parties may submit their data, views or arguments either orally or in writing to Bill Thomas,

Chairperson of the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, 59620, no later than January 24, 1991.

5. Bill Thomas, Chairperson, and Wayne Buchanan, Executive Secretary to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, have been designated to preside over and conduct the hearings.


BILL THOMAS, CHAIRPERSON
BOARD OF PUBLIC EDUCATION

BY: 

Certified to the Secretary of State December 17, 1990.

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

In the matter of the proposed	)	NOTICE OF PROPOSED AMENDMENT
amendment of ARM 36.16.117 per-	)	OF RULE 36.16.117 PERTAINING
taining to water reservation	)	TO WATER RESERVATION
applications in the Upper	)	APPLICATIONS IN THE UPPER
Missouri Basin	)	MISSOURI BASIN

NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On January 26, 1991, the Board of Natural Resources and Conservation proposes to amend ARM 36.16.117 pertaining to water reservation applications in the Upper Missouri Basin.

2. The proposed amended rule will read as follows: (New matter underlined, deleted matter interlined) (full text of the rule is located at pages 36-346.6 and 36-346.7, Administrative Rules of Montana.)

"36.16.117 APPLICATIONS IN THE MISSOURI RIVER BASIN AND THE LITTLE MISSOURI RIVER BASIN (1) Applicants seeking a reservation of water for instream purposes or diversionary uses with points of diversion in the Missouri River basin above Fort Peck Dam pursuant to 85-2-331, MCA, shall submit ~~correct-and~~ complete applications on or before July 1, 1989. The board shall make a final determination on all applications for water reservations above Fort Peck Dam on or before ~~December 31, 1991~~ July 1, 1992. ~~Correct-and-complete~~ Applications for the reservation of water for instream purposes or diversionary uses with points of diversion below Fort Peck Dam and the Little Missouri River Basin must be submitted on or before December 31, 1993. For the purposes of this rule, the Missouri River basin below Fort Peck Dam includes all drainages that would enter the Missouri River downstream of Fort Peck Dam, including the Milk River basin, the Little Missouri River Basin and any groundwater therein. An application to reserve water below Fort Peck Dam may be filed as an amendment to an application to reserve water above Fort Peck Dam, if filed by the same applicant for the same purpose.

(2) The priority date of Missouri reservations applied for and granted in accordance with the deadlines provided in (1) is July 1, 1985 in the Missouri River basin and July 1, 1989 in the Little Missouri basin. Applications for water reservations in the ~~Missouri~~ basin submitted after the deadlines provided in (1) will be accepted, but the priority date shall be the date the order reserving water is adopted by the board. Separate environmental impact statements and board hearings may be required for such late applications.

(3) The use of reserved water with a July 1, 1985 priority date may, at the discretion of the board, be subordinated to the

use of water under permits with priority dates after July 1, 1985 which are issued before the date of the board order granting such reservations. The use of reserved water with a July 1, 1989 priority date may, at the discretion of the board, be subordinate to the use of water under permits with priority dates after July 1, 1989 which are issued before the date of the board order granting such reservations. The board may provide for subordination only if it finds that such permits would not substantially interfere with the purpose of a reservation. The board may consider subordination after issuing its order reserving water. The hearing convened in the matter of objections to the reservations may be bifurcated to separately consider the establishment of the water reservations and the subordination of those reservations.

(4) Remains the same.

Auth: 85-2-113, MCA Imp: 85-2-316, 331, MCA;

The Board is proposing this amendment in response to a legislative amendment to the statute.

3. The 1989 legislature amended 85-2-331, MCA, changing the board's deadline for making a final determination on reservation applications in the basin above Fort Peck Dam from December 31, 1991 to July 1, 1992, including the Little Missouri River basin in the reservation proceeding below Fort Peck Dam, and establishing a July 1, 1989 priority date for any reservation granted in the Little Missouri River basin.

ARM 36.6.117 of the rules requires the applicants to submit correct and complete applications for the reservation of water in the basin below Fort Peck Dam by July 1, 1991. The proposed amendments would require applicants to simply submit applications to reserve water in the basin below Fort Peck Dam by July 1, 1991. This would give the department 90 days to determine reservation applications correct and complete. The applicants would then have 60 days to re-submit applications returned as not being correct and complete.

The proposed amendments to ARM 36.16.117 reflect the changes made by the legislature to the reservation statute and give the department flexibility in reviewing reservation applications.

4. Interested parties may present their data, views, and arguments concerning the proposed amendment in writing to the Board of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, MT 59620-2301, no later than January 24, 1991.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with written comments to the Board of Natural Resources and Conservation, 1520 East Sixth Avenue, Helena, MT 59620-2301 no later than January 24, 1991.

6. If the board receives requests for a public hearing on the proposed adoption 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 agency or subdivision; 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.

BOARD OF NATURAL RESOURCES
AND CONSERVATION

By:


Karen L. Barclay, Director

Certified to the Secretary of State December 13, 1990

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of Rule I	)	THE PROPOSED ADOPTION OF
pertaining to state	)	RULE I PERTAINING TO STATE
medical reimbursement	)	MEDICAL REIMBURSEMENT

TO: All Interested Persons

1. On January 17, 1991, at 9:00 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 adoption of Rule I pertaining to state medical reimbursement.

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


[RULE I] REIMBURSEMENT FOR GENERAL RELIEF MEDICAL ASSISTANCE SERVICES (1) Reimbursement for general relief medical assistance services is that provided for the same services in the medicaid program at ARM Title 46, chapter 12. (2) Cost settlements to determine allowable costs for general relief medical assistance inpatient and outpatient hospital services will be undertaken by the department as provided for in ARM 46.12.509.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-2-803 and 53-3-310 MCA

2. This rule change adopts for reimbursement of general relief medical assistance services, the reimbursement methodologies and resulting rates of the medicaid program. In addition, the rule adopts for general relief medical assistance hospital services the cost settlements methodology of the medicaid program. These changes will simplify administration and subject the providers to one set of methodology and rates for the two programs. The adoption of a cost settlement approach for hospital reimbursement will base that reimbursement on allowable actual costs.

3. 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 59604-4210, no later than January 24, 1991.

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



Director, Social and Rehabilitation Services

Certified to the Secretary of State December 17, 1990.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of	)	NOTICE OF ADOPTION
rules implementing the Montana	)	OF RULES 4.11.101
Agricultural Chemical Ground Water	)	4.11.201 - 4.11.205
Protection Act	)	4.11.301 - 4.11.307
		4.11.401 - 4.11.403
		4.11.601 - 4.11.605
		4.11.901 - 4.11.917
		4.11.1101- 4.11.1117

To: All Interested Parties

1. On June 28, 1990, the Department of Agriculture published a notice of public hearing on the proposed adoption of permanent rules implementing the Montana Agricultural Chemical Ground Water Protection Act. The notice was published at page 1199 of the 1990 Montana Administrative Register, issue Number 12.

2. The hearing was held on July 19, 1990 at 10:00 a.m. in the conference room of the Agricultural/Livestock Building in Helena, Montana.

3. As a result of oral comments received at the hearing, the written comments received on the public record and the department's review of the comments and the proposed rules, the department has adopted all of the proposed new rules with those changes listed below, as follows:

RULE 1 (4.11.101) DEFINITIONS These definitions apply to all rules adopted under the Montana Agricultural Chemical Ground Water Protection Act Title 80, chapter 15, MCA.

(1) "Affected Person" means any person that is required to comply with a SMP or other requirements of Title 80, chapter 15, MCA; that is or potentially may be adversely affected by the impairment or degradation of ground water; or for which an agricultural chemical has been detected in their well.

(2) "Confidential business information" herein referred to as "CBI" is data or information submitted or provided under authority of Title 80, chapter 15, MCA in any form to the department, by the environmental protection agency (EPA), agricultural chemical registrants, licensed or permitted pesticide dealers, retailers and applicators, fertilizer manufacturers or distributors or any affected person. CBI agricultural chemical data or information may include; confidential statements of the complete agricultural chemical formula, agricultural chemical registration data or information and information concerning the sales, production or use of pesticides or fertilizers.

(3) "Degradation" means the presence of an agricultural chemical in ground water at a concentration that meets or exceeds the standard as defined in 80-15-102(2), MCA.

~~(2)~~ (4) "Environment" includes water, air, land, plants, and ~~man~~ humans and other animals living therein and the interrelationships which exist among these.

~~(3)~~ (5) "General agricultural chemical ground water management plan" means a written state-wide plan, herein referred to as "GMP", which describes the general environmental conditions of the state, ground water resources, common agricultural chemical uses and their properties, agriculture cropping and livestock practices, regions vulnerable or potentially vulnerable to ground water impairment or degradation by agricultural chemicals, best management plans and practices, educational programs and other general program elements set forth in Title 80, chapter 15, MCA, ~~which achieve the policies of 80-15-103, MCA.~~

~~(4)~~ (6) "Good faith effort" means a substantiated or measurable attempt to comply with the provisions of Title 80, chapter 15, MCA and the rules adopted thereunder or any specific agricultural chemical ground water management plan.

~~(5)~~ (7) "Impairment" means the presence of an agricultural chemical in ground water introduction, potential for introduction, or increase in the its concentration of an agricultural chemical into ground water for which its present and future beneficial use may be affected and which is contrary to 80-15-103, MCA.

~~(6)~~ (8) "Official test result" means a test result which is obtained following the department approved quality assurance and quality control (QA/QC) field and laboratory procedures.

~~(7)~~ (9) "Significant harm" means: having a measurable or verified observation of adverse effects on public health, the environment, agricultural crops or livestock; the verified presence of an agricultural chemical which meets or exceeds the standard and; the term also includes the definitions set forth in ARM 4.10.1501 (7), (21), (67), (71), (98) and (100).

~~(8)~~ (10) "Significant probability" means the likelihood a reasonable possibility based on the most recent valid scientific or technical information and/or documented evidence, that an agricultural chemical could enter ground water.

~~(9)~~ (11) "Specific agricultural chemical ground water management plan", herein referred to as "SMP", are means rules adopted for the purpose of preventing or reducing the potential or incidence of ground water impairment or degradation from an agricultural chemical or chemicals within a specific management zone which may include the provisions of 80-15-214 (2), MCA, ~~and which achieve the policies of 80-15-103, MCA.~~

~~(10)~~ (12) "Specific management zone", herein referred to as a "SMZ" means an area, region or localized site, the

boundaries of which are defined by the department based on the best available hydrogeologic data in a SMP.

(11) (13) "Unofficial test result" means a test result which does not meet department approved quality assurance and quality control (QA/QC) field and laboratory procedures.

(14) "Vulnerable" or "vulnerability" means the factors that determine the potential for or actual impairment or degradation of an aquifer or ground water. These factors include, but are not limited to: depth to a confined or unconfined aquifer, soil type, clay and organic matter content, texture, structure, porosity, moisture, local climatic conditions and irrigation practices, ground water recharge rates, well construction, and other factors that determine the fate and transportation of agricultural chemicals in ground water.

RULE II (4.11.201) GENERAL MANAGEMENT PLAN (1) The department, when developing or modifying the GMP, will include the requirements of 80-15-211 and 80-15-213, MCA and many of the program elements for a SMP in 80-15-214, MCA. The intent of the GMP is to protect ground water and the environment from ground water impairment or degradation from agricultural chemicals by providing agricultural chemical users with information and data on:

(a) aquifer and ground water information with special emphasis on regions in the state that may be vulnerable to impairment or degradation from agricultural chemicals;

(b) special state or federal agency programs and requirements;

(c) special factors such as irrigation practices, and meteorological or geological characteristics;

(d) agricultural chemical application techniques, chemical characteristics, benefits and risks potential problems in terms of ground water impairment or degradation;

(e) the leaching potential of chemical residues in soils whether from a point or nonpoint source;

(f) proper and modified uses of agricultural chemicals to prevent their introduction into ground water;

(g) the utilization of alternative agricultural practices, and integrated pest management systems; and

(h) soil fertility practices.

(2) A list of all data and information obtained during the development of the GMP will be available from the department.

RULE III (4.11.202) GENERAL BEST MANAGEMENT PRACTICES

(1) The department in consultation cooperation with the Montana State University Extension Service (MSUES) will write and incorporate directly or by reference best management practices and plans (BMP's) into the GMP. These BMPs will provide recommendations and information to chemical users on

minimizing the impact of agricultural chemicals on ground water through proper use of chemicals at mixing/loading sites, areas treated with agricultural chemicals, and at disposal and storage facilities. The BMP's will also include information on alternative agricultural strategies, and their integration with the use of agricultural chemicals.

RULE IV (4.11.203) GMP PUBLIC PARTICIPATION (1) The department will follow the procedures set forth in this rule when developing or modifying the GMP. The department will:

(a) prepare an outline ~~of for~~ the GMP for use at public meetings;

(b) sponsor interagency and public meetings;

(c) consult with local, state and federal agencies, universities, and agricultural chemical user groups and the public, to identify the provisions, best management plans and practices. information and data needed, the agricultural chemicals of concern and plans for development of the GMP;

~~--(d)--consult with the MSUES as set forth in Rule III in the development of BMPs for the GMP;~~

(2) Upon completion of these activities listed in (1) the department will prepare a draft GMP. The department will solicit through meetings and correspondence additional agency and public comment on the draft GMP. Copies of the GMP will be available for public review and comment at the department's Helena office. Additional copies will be made available for agency and public review and comment dependent upon available resources. The department will consider public comments, revise the draft if necessary, and submit the draft or revised draft GMP to the Department of Health and Environmental Sciences (DHES) for that department's their review and comments in accordance with rule XV (4.11.402).

(3) The department will prepare a final GMP upon completion of the DHES 30 day review and comment period. If no substantive modifications are made, the plan will be finalized and implemented by the department. If substantive modifications are made the department may will provide for additional public comment.

(4) through (5) Same as proposed.

RULE V (4.11.204) GMP EDUCATION Same as proposed.

RULE VI (4.11.205) GMP EVALUATIONS The department will periodically evaluate the contents of the GMP with knowledgeable research, and technical ~~and operational~~ persons to determine if the plan is meeting the objectives of Title 80, chapter 15, MCA. The department in cooperation with research and technical persons, users of agricultural chemicals, members of any appointed advisory committee and the public will develop and use specific evaluation criteria for determining the effectiveness of the GMP. The initial evaluation will be made after 2 years, following which

additional evaluations will be made as needed. Based upon these evaluations the department may revise program elements of the plan to ensure compliance with Title 80, chapter 15, MCA. The department may hold public meetings to assist in evaluation of the GMP. The department will follow the procedures in rule ARM (4.11.203) throughout this evaluation effort. The department will also evaluate the GMP through the provisions set forth in rule ARM (4.11.903).

RULE VII (4.11.301) SPECIALIFIC MANAGEMENT PLAN (1) The department will develop a SMP when any of the criteria in 80-15-212 (1) MCA, are met. All SMPs must be adopted as administrative rules. A compliance or emergency order issued under 80-15-403, MCA may be adopted as a SMP.

RULE VIII (4.11.302) SMP CONTENT (1) SMPs will incorporate provisions set forth under 80-15-214 (1), MCA. The department will consider incorporation of appropriate elements and provisions set forth in 80-15-214 (2), MCA in the SMP that are necessary to achieve the requirements of 80-15-214 (1), MCA and other requirements of Title 80, chapter 15, MCA. The content of these provisions will be contingent upon;

- (a) the extent and nature of the problem;
- (b) the type of agricultural chemical(s) involved;
- (c) soil and water analytical results;
- (d) geological and aquifer characteristics when known;
- (e) land use patterns;
- (f) soil type and related characteristics;
- (g) meteorological conditions;
- (h) depth to ground water;
- (i) current and potential beneficial uses of the groundwater;

(j) physiography;

(k) jurisdictional and ownership boundaries; and

(l) other elements deemed necessary by the department.

(2) Information and data contained in the SMP will be obtained from a variety of sources. The department will attempt to acquire the most recent and accurate information available. If appropriate data is not available the department will proceed with the SMP utilizing the expertise of knowledgeable persons. The department and associated persons may conduct studies to obtain data and information that are lacking. Once these data or information are obtained the SMP will be evaluated to determine if revisions are necessary. A list of all data and information obtained during the development of the SMP will be available from the department.

RULE IX (4.11.303) BMP'S FOR SMP (1) The department in consultation with MSUES may incorporate BMP's into every SMP. The BMP's may address agricultural chemical use, use of alternative agricultural chemicals, integrated pest

management techniques programs, alternative agricultural practices and methods, and other provisions deemed necessary by the department.

RULE X (4.11.304) SMP - PUBLIC PARTICIPATION (1) The department will follow the procedures set forth in this rule when developing a SMP. The department, in the following order will:

(a) prepare an outline for the SMP for use at public meetings, which will include a description of the facts and circumstances that led the department to identify the need for a SMP;

(b) sponsor interagency and public meetings;

(c) consult with local, state and federal agencies, universities, and agricultural chemical user groups and the public, to identify the provisions, best management plans and practices, information and data needed, other agricultural chemicals of concern and plans for development of the SMP;

(d) ~~consult with the MSUES as set forth in rule IX in the development of BMPs and~~ to identify the benefits of appropriate use of the agricultural chemicals within the proposed SMZ of the SMP;

(2) Upon completion of these activities the department will prepare draft SMP rules. The department will submit the draft SMP to the DHES for that department's their review and comment in accordance with rule ARM (4.11.402).

(3) Same as proposed.

RULE XI (4.11.305) SMP EDUCATION The department in cooperation with the MSUES and other persons will educate agricultural chemical users and other persons within the SMZ on the provisions of the SMP. The educational program may ~~also~~ include the use of written and audio-visual materials on particular elements set forth in a SMP.

RULE XII (4.11.306) SMP EVALUATIONS The department will periodically evaluate the content of the SMP with knowledgeable research, and technical and operational persons to determine whether the program is meeting the objectives of Title 80, chapter 15, MCA. The department in cooperation with research, technical and interested persons, users of an agricultural chemicals, members of any appointed advisory committee and the public will develop and use specific evaluation criteria for determining the effectiveness of the SMP. The initial evaluation will be made after two years, following which additional evaluations will be made as needed. When substantial changes are necessary, the department will determine what program elements of the plan need to be revised to ensure compliance with Title 80, chapter 15, MCA. The department may hold public meetings to assist in making evaluations. The department will follow the procedures in rule ARM (4.11.304) throughout this evaluation process. The

department will also evaluate the SMP through the provisions set forth in rule ARM (4.11.903).

RULE XIII (4.11.307) PRIORITIZING PREPARATION OF SMP'S

(1) The department ~~as authorized by 80-15-212-(3), MCA~~ shall use any or all of the following criteria for prioritizing the preparation or revision of SMP's in situations when several SMP's are required, based on after one of the criteria in 80-15-212(1), MCA and when available resources limit the department's ability to work on all of the required SMPs simultaneously; is met:

(a) properties and volumes of the agricultural chemical(s) being used in a SMZ or region of the state that could cause ground water impairment or degradation; detection of an agricultural chemical above 50% of the established standard;

(b) the concentration(s) or migration of agricultural chemicals detected in ground water; a trend of increasing concentration or migration from the point of detection of an agricultural chemical is confirmed;

(c) the number of persons and/or water wells that are or reasonably could be affected in a SMZ or region of the state;

(d) the problem cannot be completely corrected through an enforcement option other than a SMP; action;

(e) vulnerability of the ground water to impairment or degradation; the department's available resources for SMP preparation; and

(f) other documented factors deemed appropriate by the department, and deemed as appropriate.

RULE XIV (4.11.401) GMP OR SMP ADVISORY COMMITTEES

Same as proposed.

RULE XV (4.11.402) DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES REVIEW AND COMMENT

(1) The department will provide a completed draft GMP and drafts of SMP's or modifications to such plans to the department of health and environmental sciences (DHES) for review and comment, as required by 80-15-105 (2) (b), 211 and 217, MCA. The draft GMP or SMP will be submitted to the director of DHES or the director's his designee. Upon documented delivery of the drafts the 30-day statutory review and comment period will begin. The 30-day comment period means calendar days and will end at 5 p.m. on the 30th day.

(2) Changes in format, grammar, DHES standards (80-15-1032 (20), MCA) or classification of ground water and updated monitoring results, are excluded from the management plan review process.

(3) Within the 30-day review and comment period the DHES may request meetings with the department to discuss provisions of the plans and resolve questions and issues.

(4) The department will consider DHES comments or

suggested modifications and incorporate those found appropriate in the final draft of the GMP, future modifications to the final GMP, draft rules for any SMP and future proposed rules for to a SMP.

(5) The department will prepare a final GMP in accordance with Rule ARM (4.11.203).

(6) The department will prepare the proposed SMP rules upon completion of the DHES 30-day review and comment period. The department will publish the proposed rules in the Montana Administrative Register.

RULE XVI (4.11.403) SOURCES OF INFORMATION Same as proposed.

RULE XVII (4.11.601) MONITORING (1) The department shall perform both statewide monitoring and specific management plan monitoring as required by 80-15-202, MCA for the presence of agricultural chemical residues. The department may monitor media including: soil, air, plants, water, animals, and any other media identified as necessary to accomplish the provisions of Title 80, chapter 15, MCA.

(2) Monitoring shall be used to determine:

(a) the occurrence, extent and probability of agricultural chemical impairment or degradation of ground water in Montana;

(b) the need for intensified monitoring in a particular location;

(c) the need for preparation of specific ground water management plans as provided in 80-15-212, MCA;

(d) compliance with the requirements of Title 80, chapter 15, MCA and rules adopted thereunder; and

(e) whether the provisions of a SMP are reducing the occurrence or concentration of agricultural chemicals in the environment.

RULE XVIII (4.11.602) SELECTION OF MONITORING SITES: (1) Factors that may be used in establishing priority for selection of sampling sites include, but are not limited to:

(a) local cropping practices;

(b) agricultural chemical use patterns;

(c) soil characteristics;

(d) depth to water table;

(e) ground water usage:

(i) public or private drinking water supply;

(ii) non-potable use;

(f) existing water quality;

(g) previous detections of agricultural chemical residues in ground water;

(h) the potential for adverse impact of impaired or degraded ground water on human health or the environment:

(i) number of wells per unit area;

(ii) volume of ground water used for human consumption

per unit area.

- (i) impairment or degradation of irrigation water;
- (j) agricultural chemical user activities which may lead to ground water impairment or degradation;
- (k) suspected misuse of chemicals, violation of Title 80, chapter 15, MCA, or violation of a SMP.

(2) The department will consider seasonal changes in climate ground water recharge and flux and irrigation scheduling when determining appropriate times to sample water.

(3) The department will re-evaluate site prioritization based on new or updated information.

RULE XIX (4.11.603) SAMPLE COLLECTION AND ANALYSIS Same as proposed.

RULE XX (4.11.604) POINT OF STANDARDS APPLICATION TEST RESULTS (1) The department will review and evaluate all official ground water test results. Official ground water test results will be classified as either:

- (a) negative detection;
- (b) positive detection below the adopted standard;
- (c) positive detection which meets or exceeds the adopted standard;
- (d) positive detection for which there is no standard.

(2) Negative detections will be entered into the departments ground water data base and reported to the affected person.

(3) Positive detections lower than 50% of the standard will be entered into the departments database, reported to the affected person, and will be noted as a well to be resampled to observe changes in agricultural chemical concentrations in the aquifer. The department will prepare a SMP under 80-15-212 (1) (b) or (c), MCA, if additional monitoring demonstrates a scientifically-validated increase in agricultural chemical residues in ground water or if an agricultural chemical has migrated from the point of detection.

(4) Positive detections that meet or exceed 50% of the standards will be reported to the affected persons and resampled to confirm the results.

~~(5) If positive detections that relate to the requirements of 80-15-212, MCA are confirmed, the following steps will be taken:~~

- (a) enter in ground water database;
- (b) intensify monitoring in the immediate vicinity; ~~(i) to identify the source(s) of impairment; or degradation and to~~
- ~~--(ii) determine the extent of impairment or degradation;~~
- (c) conduct investigation into the possible cause of impairment or degradation;
- (d) prepare determine need for a specific management plan as provided in 80-15-212, MCA; and
- (e) initiate any necessary enforcement monitoring.

~~--(5) (6) An unofficial test result may be used to:~~

- (a) initiate monitoring in a particular area;
- (b) notify local and state agricultural, environmental and health officials.

RULE XXI (4.11.605) DEVELOPMENT AND MAINTENANCE OF GROUND WATER QUALITY DATABASE Same as proposed.

RULE XXII (4.11.901) ENSURE COMPLIANCE Same as proposed.

RULE XXIII (4.11.902) COMPLIANCE INSPECTIONS (1) The department will conduct inspections of agricultural chemical facilities and users to determine compliance with Title 80, chapter 15, MCA. Special inspections, investigations or monitoring may be conducted:

- (a) when misuse of an agricultural chemical is suspected;
- (b) if an inspection reveals that an agricultural chemical may impair or degrade ground water; and
- (c) if monitoring reveals the presence of an agricultural chemical in ground water.

RULE XXIV (4.11.903) COMPLIANCE EVALUATIONS Same as proposed.

RULE XXV (4.11.904) GMP AND SMP EVALUATIONS Same as proposed.

RULE XXVI (4.11.905) COORDINATING PROPOSED ORDERS Same as proposed.

RULE XXVII (4.11.906) DETERMINING SIGNIFICANT PROBABILITY

(1) For purposes of determining significant probability the department will obtain information during investigations or monitoring of agricultural chemical use, chemical spills, dumps, or inconsistent misuse. Examples of information that will be considered are:

- (a) characteristics of the chemical that influences entry into ground water such as water solubility, half-life, absorption and adsorption;
- (b) depth to and direction of flow, volume and rate of ground water;
- (c) distance to existing wells or other conduits to ground water;
- (d) soil characteristics including depth, texture, organic matter and permeability;
- (e) amount of chemical used, spilled, dumped or otherwise available to enter ground water;
- (f) land features that could influence chemical movement such as surface water drainage;
- (g) precipitation;
- (h) cropping history and irrigation; and
- (i) other factors deemed appropriate by the department.

RULE XXVIII (4.11.907) CONTENTS OF ORDERS Same as proposed.

RULE XXIX (4.11.908) CORRECTIVE ACTIONS (1) In issuing a compliance or emergency order the department may require the following actions:

(a) monitoring to determine residue levels, trends and movement of agricultural chemicals in ground water, soils or other materials;

(b) characterization of ground water features such as direction of flow, depth and rate of flow;

(c) inventory of wells, surface water features, springs, groundwater recharge areas, and other ground water resources in the area or ~~in a SMZ affected or area-SMZ~~ that may be affected;

(d) monitoring the direction, depth and rate of movement of any impaired or degraded ground water;

(e) removal and disposal, relocation or treatment of ~~impaired or degraded, water, soil or other materials;~~

(f) provision for alternate water supplies ~~or removal of agricultural chemicals from ground water to provide potable water for drinking and suitable water for irrigation and other beneficial uses;~~

(g) provision for removal or reduction of agricultural chemicals from impaired or degraded ground water using appropriate clean-up technology.

--(g) (h) procedural or operational changes that prevent, reduce or minimize the probability of ground water impairment or degradation from agricultural chemicals; and

--(h) (i) other provisions deemed appropriate to protect ground water.

(2) Same as proposed.

RULE XXX (4.11.909) DURATION OF MONITORING

(1) Monitoring required under a compliance or emergency order shall consist of sampling and chemical analyses conducted using department approved procedures and methods:

(a) Required ground water monitoring shall continue until residues in ground water are within levels established in the compliance or emergency order by the department in consultation with the DHES.

(b) The department when determining duration of monitoring, shall consider the following factors: classification of the ground water, present and future beneficial uses, the standard, the laboratory detection level and whether or not the impaired or degraded ground water is affecting other persons or aquifers.

(c) The department may require that ground water monitoring continue for one or more annual hydrologic cycles after analytical results fall within the accepted level.

(2) Same as proposed.

RULE XXXI (4.11.910) PROCEDURES FOR ISSUING COMPLIANCE AND EMERGENCY ORDERS Same as proposed.

RULE XXXII (4.11.911) ENFORCEMENT Same as proposed.

RULE XXXIII (4.11.912) ABILITY TO STAY IN BUSINESS Same as proposed.

RULE XXXIV (4.11.913) OTHER PENALTIES Same as proposed.

RULE XXXV (4.11.914) PENALTY DETERMINATION Same as proposed.

RULE XXXVI (4.11.915) GRAVITY OF VIOLATIONS (1) Same as proposed.

(2) A violation may be considered more grave when:

(a) a restricted use pesticide defined by ARM 4.10.1501 (90) is involved versus a general use pesticide as defined by ARM 4.10.1501 (50);

(b) a pesticide is involved that is more toxic than other available, effective registered alternative pesticides;

(c) agricultural chemical levels in ground water meet or exceed the standard, pursuant to 80-15-201, MCA;

(d) the extent, and severity of the violation results in harm to health, environment, or agriculture crops, or livestock;

(e) use is inconsistent with label directions and precautions or department rules;

(f) the person's history of compliance illustrates continued noncompliance or disregard for compliance;

~~--(g)--a-restricted-use-pesticide-(ARM-4.10.1501-(90))-is sold-to-or-provided-in-any-manner-to-a-person-not-licensed, certified-or-permitted;~~

~~--(h)-(g)~~ the violation results in impairment or degradation of ground or surface water;

~~--(i)-(h)~~ a person uses an agricultural chemical which is not registered or labeled, or has been cancelled, suspended or banned by EPA or the department by statute, rule or order;

~~--(j)-(i)~~ a person does not possess the proper pesticide license credential or permit to use or purchase a pesticide, or is not supervised as required by Title 80, chapter 8 or Title 80, chapter 15, MCA and rules adopted thereunder;

~~(k)-(j)~~ records are not maintained or are improperly maintained;

~~--(l)-(k)~~ the person has knowledge of Title 80, chapter 15, MCA, and rules adopted thereunder or specific management plans which were violated.

RULE XXXVII (4.11.916) DEGREE OF CARE (1) and (2) Same as proposed.

(3) The charged persons may present evidence of the degree of care exercised, which may will be considered by the

department for the purpose of determining and mitigating the amount of penalty.

RULE XXXVIII (4.11.917) SIGNIFICANCE OF HARM (1) The department will attempt to determine and verify significant harm resulting from any violation. The type and amount of verified significant harm will be considered in determination of civil penalty amounts and may mitigate or enhance the civil penalty. ~~The department will determine that significant harm has resulted when any monitoring reveals that an agricultural chemical meets or exceeds a standard.~~

(2) For verification of significant harm the department will consider documented physical evidence and expert opinion from knowledgeable persons. Examples of such persons include pesticide specialists, physicians, toxicologists, biologists, water quality personnel, extension agents, university personnel, product technical representatives, and consultants and other personnel with documented qualifications.

(3) The following are criteria that the department will consider in determining significant harm including but not limited to:

(a) exposure to humans resulting in acute illness, chronic illness or death;

(b) exposure to livestock or other domestic animals resulting in illness, death, or residues in the livestock or by-products that exceed tolerances or prevent marketing or consumption;

(c) exposure to crops, ornamental plants or other plants being grown or cultivated that results in damage, destruction, reduction in yield or residues that exceed tolerances or prevent marketing or consumption;

(d) contamination impairment or degradation of ground water that results in ~~impairment or~~ adverse effects to any existing or future beneficial use; and

(e) exposure and adverse impact on plants other than crops, animals other than livestock, soil, water or any other components of the environment.

RULE XXXIX (4.11.1101) PESTICIDE REGISTRANT CBI (1) through (3) Same as proposed.

(4) CBI received by the department shall be immediately secured in accordance with the procedures of the CBI rules. The director or ~~his~~ the director's designee shall be responsible for initiating and maintaining security procedures.

RULE XL (4.11.1102) CBI-CHEMICAL USE AND SALES DATA Same as proposed.

RULE XLI (4.11.1103) CBI SHALL BE STORED IN AN APPROVED SECURITY FILE Same as proposed.

RULE XLII (4.11.1104) AUTHORIZED ACCESS Same as proposed.

RULE XLIII (4.11.1105) DOCUMENT TRACKING Same as proposed.

RULE XLIV (4.11.1106) MEETINGS Same as proposed.

RULE XLV (4.11.1107) TELEPHONE Same as proposed.

RULE XLVI (4.11.1108) TRAVELING Same as proposed.

RULE XLVII (4.11.1109) TRANSMITTAL Same as proposed.

RULE XLVIII (4.11.1110) CBI ACCESS JUSTIFICATION

(1) Interagency access to CBI documents, shall be requested in writing and shall state the specific purpose for such access. The department recognizes that disclosure of specific CBI may be necessary for an agency to carry out a directive on behalf of the department, to fulfill said agency's own statutory obligations, or to complete an inquiry initiated by the department. Written requests for access to CBI by agencies outside the department shall be signed by a designated person from the agency authorized by the department to receive and review CBI. All such requests shall be entered as a permanent part of the document tracking system. The department reserves the right to deny CBI access to persons or agencies not providing adequate document security.

RULE XLIX (4.11.1111) ELIGIBILITY REQUIREMENTS Same as proposed.

RULE L (4.11.1112) INTERAGENCY (1) The department may enter into a memorandum of understanding (MOU) with any agency possessing an obligation, under Montana law, to provide protection of public health or the environment. Through the MOU, an agency shall provide the department a list of trained as specified in rule LIV designated persons requesting authorization to receive CBI, agree to treat all information disclosed by the department as CBI and insure adequate document security. The department may set time limits for the return of all disclosed CBI, and may recall all or any portion of the disclosed documents at any time. Agencies receiving CBI from the department through the procedures outlined above may not reproduce or reveal to unauthorized persons(s) such documents in any manner.

RULE LI (4.11.1113) PERSONNEL PRECAUTIONS Same as proposed.

RULE LII (4.11.1114) AUTHORIZATION Same as proposed.

RULE LIII (4.11.1115) NOTIFICATION OF DISCLOSURE Same as proposed.

RULE LIV (4.11.1116) TRAINING Same as proposed.

RULE LV (4.11.1117) VIOLATIONS (1) Any authorized personnel within the department or agencies outside the department, who fail to comply with these confidentiality rules, shall be investigated by that agency and complete findings reported to the department's director. The department retains the authority to revoke an agency's access to CBI if violations of the department's CBI rules are documented. If CBI access is revoked, an agency may regain access to CBI by providing proof, satisfactory to the department, that adequate steps have been taken to improve security.

(2) Same as proposed.

4. The following comments were received on the proposed rules and the department makes the following responses:

GENERAL COMMENT: Several commenters recommended adoption of rules to implement sections 80-15-212 (1)(d) and (e), MCA of the Montana Agricultural Chemical Ground Water Protection Act.

RESPONSE: When EPA finalizes its pesticide ground water strategy, the department will develop a generic management plan. Once EPA restricts or requires a management plan for a specific pesticide the department will determine if the pesticide is needed in the state. If it is needed a SMP will be developed and adopted under provisions of the statute and these rules.

Section 80-15-212 (1) (e), MCA deals with preparing a SMP "when agricultural chemicals that possess or are suspected of possessing properties that indicate potential to migrate to ground water are being applied on areas underlaid by ground water that is vulnerable to impairment". The department agrees that development of a rule to implement this subsection may be necessary in the future. Rules can be developed at any time as more definitive information on Montana's ground water is obtained.

GENERAL COMMENT: Several commenters expressed concern about implementation of the act and rules because of the limited funding available in FY 90 and 91.

RESPONSE: The department agrees the current funding level is inadequate and expressed its concern to the 1989 legislature. Basically the legislature decided that minimal funding would be available in FY 90-91, which would allow for the initial implementation of the act. The department has proposed a budget for legislative consideration which substantially increases the funding level of this program in FY 92-93.

Rule I (4.11.101) DEFINITIONS

COMMENT: Several commenters suggested the addition of the terms "affected person", "degradation" and "vulnerable or vulnerability" to the definitions rule.

RESPONSE: The department has added these terms to the definitions rule.

COMMENT: Several commenters recommended that the definition for "Environment" be amended by changing the word "man" to "humans".

RESPONSE: The department agreed with the recommendation and made the change.

COMMENT: One commenter suggested that the term "agricultural chemical" be defined.

RESPONSE: The term "agricultural chemical" is already defined in 80-15-102, MCA, therefore, a definition in this rule is not necessary.

COMMENT: One commenter recommended that the terms "Best Management Practices or Plans" (BMP's) be defined in this rule.

RESPONSE: The term BMP's is already defined in 80-15-102, MCA, therefore, a definition in this rule is not necessary.

COMMENT: One commenter requested clarification of several issues in the "Confidential Business Information" definition. The issues are: (a) does the submission of complete agricultural chemical formulas by registrants include active and inert chemicals; (b) is patented information protected; and (c) are dealer, applicator and farmer sales and use data confidential.

RESPONSE: The agricultural chemical formula statement from an agricultural chemical registrant or EPA includes both active and inert ingredients. Patented information if deemed confidential by EPA or by any other federal or state law would be held as confidential information by the department. Agricultural chemical sales or use data submitted to the department, are not, by statute, subject to publication. However, the Constitution requires the department to balance the public's right to know with an individual's right to privacy to determine whether any other disclosure is permissible.

COMMENT: One commenter suggested that either the definition of "impairment" be deleted from the definitions rule or that the words "potential for introduction" in the definition be

deleted. Several other commenters also suggested deletion of these words from the definition.

RESPONSE: The term impairment is used in Title 80, chapter 15, MCA, but it is not defined. The department believes it is necessary to define impairment, however, the words "potential for introduction" have been deleted from the definition.

COMMENT: Several commenters requested that the definition "Significant probability" be modified by striking the words "a reasonable possibility" and inserting in the definition the words "the most recent".

RESPONSE: The department has deleted the words "a reasonable possibility" and inserted the words "the most recent valid" in this definition.

COMMENT: One commenter requested the department address not only the use of agricultural chemicals in rural areas, but in urban areas.

RESPONSE: The definition of agricultural chemical in Title 80, chapter 15, MCA defines agricultural chemicals as pesticides (80-8-102, MCA) and commercial fertilizers (80-10-101, MCA). This means any use of these chemicals whether in rural or urban areas are subject to the provisions of Title 80, chapter 15 and rules adopted thereunder.

COMMENT: One commenter raised the issue of the difference between "impairment" and "degradation" stating; (1) that degradation does not occur within specific management plan zone unless a violation has occurred; (2) "impairment" not "degradation" is synonymous with the presence of an agricultural chemical; (3) that the term "degradation" does not need to be defined by rule; and (4) the rules cannot imply that impairment is more serious than degradation.

RESPONSE: The department, based upon the comments received has revised the definition of impairment and added a definition for degradation. Basically the term "impairment", as defined in rule I, means the presence of an agricultural chemical at any concentration in ground water whether or not a standard has been established by DHES. The term "degradation", as defined in rule I, means the presence of an agricultural chemical, for which a standard is established, and its concentration in ground water is at or exceeds the standard. The department has determined, based upon Title 80, chapter 15, MCA, that impairment of ground water has occurred when any concentration of an agricultural chemical is present in ground water and degradation results when the concentration of an agricultural chemical, for which a standard exists, is at or exceeds the standard. Whether or not impairment or

degradation has occurred, if a violation of the act cannot be proven by the department then an administrative or judicial action against a person(s) cannot be taken. However, the department may, under the provisions of this act, either create a SMP or revise an existing SMP to prevent, minimize or eliminate further impairment or degradation of ground water. Impairment of ground water by an agricultural chemical without a standard (if the criteria in 80-15-212, MCA is triggered) requires the development of a SMP by the department. It should be noted that the department may petition DHES to establish a standard for an agricultural chemical. (Normally the need for a standard to properly administer a SMP is imperative.) A SMP must be developed whether or not a violation has occurred. If a SMP is in place and the concentration of an agricultural chemical over time continues to increase and eventually meets or exceeds the standard, degradation has resulted and the plan has failed and it must be revised. If, through monitoring, the concentration of an agricultural chemical, in an area not subject to a SMP, is found to meet or exceed the standard the department would implement an emergency SMP to prevent further impairment or degradation.

COMMENT: One commenter recommended modification of the GMP definition by providing that the GMP describe regions known to be vulnerable or regions where the vulnerability is not known.

RESPONSE: The department has inserted the words "potentially vulnerable" into this definition. The GMP will address all regions of the state and with currently available information determine the vulnerable and potentially vulnerable aquifers in the state.

COMMENT: One commenter suggested that the definition of "significant harm" be modified.

RESPONSE: The department modified this definition by including the words, "the verified presence of an agricultural chemical which meets or exceeds the standard".

COMMENT: One commenter recommended the definition "Specific Management Zone" (SMZ) be changed by inserting the words "based on the best available hydrogeologic data".

RESPONSE: The recommendation has been included in this definition.

RULE II (4.11.201) GENERAL MANAGEMENT PLAN

COMMENT: One commenter recommended the addition of wording which describes why ground water and the environment need protection.

RESPONSE: The department added the appropriate wording to Rule II (1).

COMMENT: One commenter suggested insertion of the word "especially" in (1)(a) of rule II to emphasize special concern for all ground water -- the department should consider all ground water vulnerable until adequate knowledge is available to determine it is not vulnerable to agricultural chemicals.

RESPONSE: The commenter's concern that the GMP may give some users of agricultural chemicals the idea that in some regions of the state ground water is not vulnerable is a valid concern, however, the department believes the rule as written is adequate and the final GMP will address this issue.

COMMENT: One commenter recommended that (1)(d) of rule II be modified by deleting the words "potential problems" and inserting the word "risks".

RESPONSE: The department made this modification in the rule.

COMMENT: One commenter suggested the word "alternative" be deleted in (1)(g) of rule II.

RESPONSE: The department believes the term "alternative" is appropriate and conforms with the intent of the act.

COMMENT: One commenter recommended that wording be added to (1)(g) and (h) to illustrate that alternative practices have both benefits and potential problems (or risks) in terms of ground water impairment and degradation.

RESPONSE: The department has chosen not to modify the proposed rule, however, these issues will be addressed in the GMP.

RULE III (4.11.202) GENERAL BEST MANAGEMENT PRACTICES

COMMENT: Several commenters recommended that the development of BMP's in this rule read in "consultation" with Montana State University Extension Service (MSUES) rather than in "cooperation".

RESPONSE: The department has amended the rule accordingly.

COMMENT: Several commenters recommended that other university and government personnel and interest groups be involved in development of BMP's.

RESPONSE: The department believes the involvement of other parties in development of BMP's was already provided for in Rule IV. However, to ensure such involvement by other persons

the department added the words "best management plans and practices" to Rule IV (1)(c).

COMMENT: One commenter suggested that wording be added to this rule which includes alternative farming practices that can minimize the need for agricultural chemicals.

RESPONSE: The act and rule already address this issue adequately and alternative farming practices will be addressed in the GMP.

RULE IV (4.11.203) GMP PUBLIC PARTICIPATION

COMMENT: Several commenters suggested a number of minor wording changes in rule IV.

RESPONSE: The department adopted many of the suggested changes.

COMMENT: Several commenters recommended that the department establish a mandatory advisory council to participate in development, implementation and evaluation of the GMP.

RESPONSE: Reference the comment and the department's response to this issue for rule XIV (4.11.401) "GMP or SMP Advisory Committees".

COMMENT: Several commenters recommended in subsection (3) of rule IV that if substantial changes to the GMP are recommended by DHES, which are approved or disapproved by MDA, that additional public comment should be mandated.

RESPONSE: The department has made the recommended change in this rule.

RULE V (4.11.204) GMP EDUCATION

COMMENT: Several commenters requested that this rule on education and rule XI on SMP education set forth specifics on the types, numbers, content, and arrangements of the educational programs.

RESPONSE: The department has determined that the specifics of the educational programs do not need to be addressed by rule. The department in cooperation with MSUES and others will conduct and sponsor various educational programs involving seminars, conferences, meetings, videos, slides, pamphlets and related materials. The educational programs will involve users of agricultural chemicals and the public. EPA and state pesticide lead agencies will also be upgrading the ground water/pesticides training for certified and licensed applicators and dealers in FY 91-92.

RULE VI (4.11.205) GMP EVALUATIONS

COMMENTS: Several commenters recommended the addition of specific evaluation criteria into this rule.

RESPONSE: The department will establish specific evaluation criteria in the GMP in cooperation with MSUES and other persons. Additional evaluation criteria may also be needed after the GMP is in place for a few years. The department believes it would be difficult to establish meaningful evaluation criteria in this rule, without having developed the written text, content and recommendations for the GMP. The proposed rule has been modified by stating that evaluation criteria will be developed for determining the effectiveness of the GMP.

RULE VIII (4.11.302) SMP CONTENT

COMMENT: One commenter suggested the addition of language identifying specific groups and persons in this rule who would assist in development of the SMP content.

RESPONSE: The consultation and coordination with groups and persons is set forth in rules IX, X and XIV.

COMMENT: One commenter recommended a new rule to identify and publish sources of information submitted, considered and used in development of the GMP and SMPs by the department.

RESPONSE: The department added wording that a list of all data and information obtained during the development of SMPs will be available from the department. This same wording was added in rule II - GMP.

RULE IX (4.11.303) BMP's FOR SMP

COMMENT: Several commenters recommended a number of minor wording changes in this rule.

RESPONSE: The department incorporated these wording changes.

COMMENT: One commenter suggested that the BMP's for a SMP be developed in accordance with rule III and that such BMP's be voluntary.

RESPONSE: BMP's for a SMP must be adopted by rule because a SMP must be implemented by rule as required by the act. Rule X has also been modified to ensure that the public and agricultural chemical users are involved in the development of BMP's for a SMP.

RULE X (4.11.304) SMP - PUBLIC PARTICIPATION

COMMENT: Several commenters recommended minor wording changes.

RESPONSE: The department made many of the recommended changes.

COMMENT: One commenter recommended that a mandatory advisory committee be established when the department is dealing with a non-point source problem which requires the development of a SMP.

RESPONSE: Reference the comment and the department's response to this issue for rule XIV (4.11.401) "GMP or SMP Advisory Committees".

RULE XII (4.11.306) SMP EVALUATIONS

COMMENT: One commenter questioned why SMPs would be evaluated two years after implementation instead of immediately.

RESPONSE: The department does not believe an immediate evaluation after the SMP rules are adopted would serve any particular purpose. In meetings with various groups on the development of these rules it was the general consensus that the first evaluation would be appropriate after two years of experience with the SMP and thereafter as needed. The department has the right and obligation to evaluate a SMP at any time if investigations or monitoring indicate the plan is not achieving its purpose. However, the initial two year evaluation is mandated by this rule.

COMMENT: One commenter recommended that the first evaluation be made after one complete growing season and thereafter after each third growing season.

RESPONSE: The department decided to proceed with the first mandatory evaluation in two years for a SMP and thereafter as needed. The department has the authority to conduct an evaluation prior to the second year of implementing a SMP if information and data indicate the ground water problem is not being resolved. Because of different conditions and circumstances involved with SMPs a definitive on-going schedule of evaluations in this rule is not necessary. The department will develop evaluation criteria for each individual SMP in cooperation with other persons.

COMMENT: Several commenters recommended that mandatory SMP advisory committees be established in this rule.

RESPONSE: Reference the comment and the department's response to this issue for rule XIV (4.11.401) "GMP or SMP Advisory

Committees".

COMMENT: Several commenters suggested the addition of evaluation criteria in this rule.

RESPONSE: The department agrees that evaluation criteria are needed for a SMP, however, such criteria should be set forth in each specific SMP so that the conditions and other unique characteristics of the area within the SMP can be defined, established and evaluated. The department has inserted wording in this rule that evaluation criteria will be developed.

RULE XIII (4.11.307) PRIORITIZING PREPARATION OF SMP'S

COMMENT: Several commenters recommended that this rule be modified to more specifically address how and when development of SMP's will be accomplished.

RESPONSE: The department has modified this rule to clarify the prioritization criteria for determining when and which SMP's will be developed, within available resources, based upon potential and actual impact of agricultural chemicals on people and ground water.

COMMENT: Some commenters expressed concern that this rule did not adequately address 80-15-212 (1)(d) and (e), MCA.

RESPONSE: The modifications made to this rule address the issue of 80-15-212 (1)(e), MCA as revised in (1)(a), (c), and (e), of the rule. The department is authorized by the statute to develop criteria in future rules to address the (1)(e) issue or it may proceed to develop a SMP for an area determined to be potentially vulnerable to the use of a particular agricultural chemical.

In relationship to the (1)(d) issue, once the EPA finalizes its pesticide ground water strategy and requires states to develop a plan for managing the pesticide(s) to protect ground water, the department will prepare a plan. The EPA will establish the criteria, standards and procedures the department will have to follow in developing and implementing the plan.

COMMENT: Several commenters recommended that an agricultural chemical registrant may want to propose a SMP to the department under certain circumstances and that such a submittal should be addressed in rule XIII.

RESPONSE: The department may accept for consideration a registrant's or any person's proposed SMP under the Montana Administrative Procedure Act (MAPA) because a SMP has to be adopted through the rule making process. Under MAPA any

person can petition the department to adopt or amend a rule. However, review and evaluation of such a SMP would have to comply with the act and the agricultural chemical ground water rules. Review by users in any proposed SMP and public review and comment on the SMP would be required.

RULE XIV (4.11.401) GMP OR SMP ADVISORY COMMITTEES

COMMENT: Several commenters recommended that advisory committees be made mandatory for development, implementation and evaluation of the GMP and SMPs.

RESPONSE: The department does not believe it is necessary to mandate advisory committees for the GMP or SMP's. The Legislature has vested authority and responsibility in the department to make responsible decisions in the implementation of the ground water act. In order to be effective the department must have discretion to determine when it is appropriate to seek advice. To mandate such advice may serve to limit that discretion and impede effectiveness. The department therefore, believes it sufficient to state its intentions to use advisory committees when appropriate. The department will establish technical and advisory committees for both types of plans. The department believes it is imperative to involve university, government and other interested or affected persons in the development of both types of plans. The potential diversity of circumstances, issues and locations of SMP's makes it even more difficult to mandate committees, their structure and functions for a SMP. The department is responsible when developing the GMP or a SMP for contacting users of an agricultural chemicals and user groups as set forth in 80-15-215(2), MCA. The department has modified rules VI and XII by stating that evaluation criteria for the GMP and for SMPs will be developed in consultation with other persons and groups. Provisions for consultation with many different persons was already provided for in rules IV and X.

RULE XV (4.11.402) DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES REVIEW AND COMMENT

COMMENT: Several commenters recommended minor wording changes for this rule.

RESPONSE: The department made most of the changes recommended.

RULE XVII (4.11.601) MONITORING

COMMENT: Several commenters recommended that more specific monitoring procedures be included in this rule.

RESPONSE: The department believes that specific detailed monitoring procedures are needed for each site, but it is not practical to detail these procedures in a general rule for monitoring. The department, in cooperation with agencies and universities, will conduct statewide ambient monitoring, permanent sites monitoring and SMP monitoring. Because of various factors which include the: geology; physiography; climatic conditions; agricultural chemical use and farming practices; a standard set of monitoring procedures is virtually impossible to establish. When a SMP is implemented the monitoring to be conducted by the department and/or required of other persons will be established. The cost of monitoring and the number of SMP's will also determine the extent and type of monitoring.

RULE XVIII (4.11.602) SELECTION OF MONITORING SITES

COMMENT: One commenter recommended that subsection (1)(d) of this rule be modified by adding the words "where known" and that subsection (2) be modified by striking the word "climate" and inserting the words "ground water recharge and flux".

RESPONSE: The department did not modify subsection (1)(d) of this rule as recommended because "depth to water table" whether known or unknown is just one of the factors to be considered when selecting monitoring sites. The department agreed with the comment concerning subsection (2) of this rule and made the modification as recommended.

COMMENT: One commenter suggested that a new rule be inserted which identifies how the department will select, and seek assistance selecting the type, number and placement of monitoring wells once the monitoring sites have been selected under Rule XVIII.

RESPONSE: The department has chosen not to insert a new rule. Once a monitoring site is selected it is imperative that an on-site assessment be made before any decisions on types, numbers, etc. of wells can be made. This may include compilation of existing data from other agencies and/or groups. If no data is available, an on-site assessment by the department in consultation with knowledgeable persons from agencies such as the USGS, MBMG and others must be performed. The department, in rule XVI (4.11.403) "Sources of Information", lists the sources the department may contact to obtain assistance and information for selecting monitoring wells or sites. The department feels strongly that these decisions must be site specific and made on a case-by-case basis. This process (on-site assessment) will occur whether the monitoring to be conducted is ambient or for a SMP.

RULE XX (4.11.604) POINT OF STANDARDS APPLICATION TEST RESULTS

COMMENT: Several commenters recommended a number of changes in this rule, including a broader interpretation of affected persons; and rewording on how positive detections are confirmed and utilized for implementation of a SMP.

RESPONSE: The department revised this rule based upon the comments received.

RULE XXI (4.11.605) DEVELOPMENT AND MAINTENANCE OF GROUND WATER QUALITY DATABASE

COMMENT: One commenter recommended that the data collected from monitoring be published annually.

RESPONSE: The department will make every effort to summarize annual monitoring data, however, funding and legislative authorization of budgets will determine if it is possible to report monitoring data results each year.

RULE XXIX (4.11.908) CORRECTIVE ACTIONS

COMMENT: Several commenters suggested that reference to a persons right to "due process" in administrative or judicial cases be listed in the rule.

RESPONSE: Montana statute and the Montana Administrative Procedure Act addresses these concerns. In any order issued by the department to the responsible party, the right of representation by an attorney and the right to contest the department's action will be outlined in the order. It is not necessary for this rule to restate "due process" provisions of Montana statutes and rules.

COMMENT: One commenter recommended changes in subsection 1 of this rule by recommending deletion of the words "or degraded water".

RESPONSE: The department made this change in the rule.

COMMENT: One commenter recommended modification of (1) (f) of this rule by striking the word "removal" and inserting the word "reduction" and other wording changes.

RESPONSE: The department inserted the word "reduction", however, the department decided the word "removal" is appropriate in this rule. Removal of agricultural chemical residues in some ground water situations is an acceptable alternative, especially with point source problems that occur in confined aquifers.

The department reviewed subsection (1)(f) and based upon this review and comments received decided the two subjects set forth in the rule, alternative water supplies and removal or reduction of agricultural chemicals should be separated into two subsections. (1)(f) as revised only deals with alternative water supplies and a new subsection (1)(g) was inserted which deals with removal or reduction of agricultural chemicals from ground water. Original subsections (1)(g) and (1)(h) were renumbered as (1)(h) and (1)(i) respectively.

COMMENT: One commenter asked who pays for the corrective actions set forth in this rule.

RESPONSE: A violation(s) must be proven by the department prior to causing any person to implement corrective actions. The responsible person(s) would be responsible for the costs of correcting the violation and any impairment to ground water or soils.

RULE XXX (4.11.909) DURATION OF MONITORING

COMMENT: Two commenters opposed subsection (1)(a) of this rule because of their concerns about the length of time for which individuals served a compliance or emergency order would have to conduct monitoring. The concerns expressed also involved the lack of criteria for determining the lowest chemical residue level in ground water, for which the person would have to conduct monitoring over time. Also would monitoring be required until a residue level of zero was reached plus continued monitoring for one hydrologic cycle? The commenter also suggested that the health based standard should serve as the criteria for clean-up if the ground water was only used for human consumption.

RESPONSE: The department agrees that the issues raised by the commenters are very difficult to resolve. The department in response to the concerns inserted words to establish some criteria for determining the level of residues persons would have to continue to monitor for, which includes; classification of the ground water, present and future beneficial uses, the standard, the laboratory detection level and whether or not the impaired or degraded ground water is affecting other persons or aquifers.

The department rejected the suggestion that monitoring would only be needed until the residue level reaches the established standard concentration because it is possible residue levels may increase which would place people at a greater risk. If continued introduction of the agricultural chemical into ground water from soils or migration of the chemical in the ground water from seasonal or temporal aquifer variation

occurred, the users of ground water would not have a "margin of safety" if the residue level was already at the standard.

RULE XXXIII (4.11.911) ABILITY TO STAY IN BUSINESS

COMMENT: One commenter questioned the need for a rule dealing with a persons ability to stay in business.

RESPONSE 80-15-412(3), MCA requires the department to address this issue. The department determined that a person must provide bonafide financial evidence to the department to illustrate why a civil penalty would prevent them from continuing in business.

RULE XXXV (4.11.914) PENALTY DETERMINATION

COMMENT: One commenter questioned why the administrative civil penalty for a farm applicator for the first offense cannot exceed \$500 while for all other applicators the first offense cannot exceed \$1,000.

RESPONSE: Section 80-15-412(1), MCA established this penalty level and the department included the penalty in this rule for emphasis and information when a person is reviewing these rules without having access to the act.

RULE XXXVI (4.11.915) GRAVITY OF VIOLATIONS

COMMENT: One commenter recommended deletion of subsections (1) (a), (b), (g) and (h) in this rule. The issues raised by the commenter involved: concern that restricted use pesticides are worse than general use; the department in the case of (1)(b) would make after the fact decisions - second guessing the user of the pesticide; subsection (1)(g) dealing with certification, licensing or permitting has no relationship to impairment of ground water; and subsection (1)(h) presumes a grave violation even at the time of first detection.

RESPONSE: The department determined that deletion of subsections (1)(a), (b) and (h) is not necessary. The substance of subsection (1)(a) and (b) is that a person must use a greater degree of care when using a restricted use pesticide versus a general use pesticide, or when using a more toxic pesticide. A violation involving a restricted use and/or more toxic pesticide is more significant because the agricultural, human health or environmental concerns are documented and labeling reflects these concerns thus use of these products requires a greater degree of care. The department agrees with deletion of subsection (1)(g) because it is not directly related to the agricultural chemical ground water act. Subsection (1)(h) relates to misuse of a pesticide resulting in impairment of ground water and it is applicable

to determining the gravity of a violation.

COMMENT: One commenter questioned what "exceed the standard" means in subsection (1)(c) of this rule.

RESPONSE: Exceed the standard means when the concentration (residue level) of an agricultural chemical is greater than the standard established by DHES as provided for in 80-15-201, MCA. The phrase speaks for itself and should need no further explanation.

COMMENT: Once commenter raised several questions concerning records as set forth in (1)(k) in terms of the meaning of proper record keeping and pesticide use information in urban areas.

RESPONSE: The records provision in (1)(k) of this rule primarily relates to any record keeping requirements imposed by a SMP. Pesticide use information available to the state for urban areas is restricted to use by commercial and government applicators in such areas.

RULE XXXVII (4.11.916) DEGREE OF CARE

COMMENT: One commenter recommended that in subsection (3) the word "may" be changed to "will".

RESPONSE: The department modified this rule as recommended.

RULE XXXVIII (4.11.917) SIGNIFICANCE OF HARM

COMMENT: One commenter recommended that the second sentence in subsection (1) be deleted and included in the definition of significance of harm in rule I.

RESPONSE: The department agrees and has inserted the appropriate wording in the definition in rule I.

COMMENT: One commenter posed the question that any or all cases may be deemed to cause significant harm and that subsection (3)(d) is inconsistent with the law.

RESPONSE: The purpose of this rule is to inform the public how the department will determine significance of harm. The determination of significance of harm is required prior to the assessment of a civil penalty and the degree and adverse impact of a violation is required prior to determining the level of penalty. The level of the penalty would increase as the degree or significance of harm increases. The department when issuing civil penalties identifies in its enforcement letters or orders the violations and their significance. The person involved with the violation may appeal the department's

action both administratively and judicially.

The department modified the wording in (3)(d) to conform with the law.

COMMENT: One commenter posed a question concerning subsection (2) of this rule - - when the department receives expert opinion from two parties who differ on their interpretation of the evidence in a case which opinion takes precedence.

RESPONSE: The department would evaluate their opinions and attempt to determine the most valid opinion and in very difficult cases additional expert opinion would be obtained.

COMMENT: One commenter recommended that subsection (3)(e) of this rule be further defined.

RESPONSE: The department believes that the statement is adequate in that the adverse impact of agricultural chemicals on plants other than crops, animals other than livestock and on the environment will be determined and the significance of harm documented from violation of the act.

RULE XL (4.11.1102) CBI-CHEMICAL USE AND SALES DATA

COMMENT: One commenter expressed concern on the confidentiality of patented and sales information and the need for additional safeguards.

RESPONSE: The department is obligated to deal with the public's right to know versus an individual's right of privacy as established by Montana's Constitution, state statutes (Title 80, chapter 8 and 10 and Title 80, chapter 15) and the Federal Insecticide, Fungicide and Rodenticide Act and believes this rule conforms with the Constitution and other statutes.

RULE LIII (4.11.1115) NOTIFICATION OF DISCLOSURE

COMMENT: One commenter requested that industry be notified of improper disclosure of confidential information prior to release.

RESPONSE: This rule states that if disclosure of information is improperly made to any person the department will notify the submitter of such improper disclosure within 15 days. The department would not know if improper disclosure was going to occur much less inform the submitter that such improper disclosure was going to occur.

RULE LV (4.11.1117) VIOLATIONS

COMMENT: One commenter stated that the penalty for improper disclosure of information was too small.

RESPONSE: The penalty listed in this rule is established by 80-15-414(3), MCA and is listed in the rule to inform persons of the penalty.

5. The authority of the Department of Agriculture to adopt Rules I through LV is contained in Section 80-15-105, MCA.

By:


EVERETT M. SNORTLAND, DIRECTOR
DEPARTMENT OF AGRICULTURE

Certified to the Secretary of State, December 14, 1990.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT
amendment of rule relating to	)	OF ARM 10.10.309
accounting practices and)	
tuition)	

To: All Interested Persons

1. On November 15, 1990, the Superintendent of Public Instruction gave notice of proposed amendment to Rule 10.10.309, on page 2015 of the Montana Administrative Register, issue number 21.

2. No public hearing was held nor was one requested. The Superintendent has received and considered commentary concerning this rule, as follows:

COMMENT: This language is in conflict with section 20-9-501, MCA.

RESPONSE: Revised rule to comply with statutory language in section 20-9-501, MCA.

3. Based on the foregoing, the Superintendent hereby amends the rule as follows, deleted material interlined:

10.10.309 DISTRIBUTION OF COUNTY-WIDE RETIREMENT FUNDS

(1) The county superintendent of schools shall distribute the cash balance in the county-wide retirement fund to district funds on a monthly basis in the proportion each district's net district requirement bears to the total of all net district requirements. Net district requirement is defined as the total district retirement budget ~~including amounts for new operating reserves~~ less estimated district revenues.

(2) - (3) same as proposed rule.

Nancy Keenan
Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State December 17, 1990.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT
amendment of rule relating to	)	OF ARM 10.21.104
guaranteed tax base)	

To: All Interested Persons

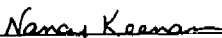
1. On November 15, 1990, the Superintendent of Public Instruction gave notice of proposed amendment to Rule 10.21.104 pertaining to guaranteed tax base, on page 2010 of the Montana Administrative Register, issue number 21.

2. No public hearing was held nor was one requested. The Superintendent has received and considered commentary concerning this rule, as follows:

COMMENT: Requested additional language requiring guaranteed tax base aid reversion at the district level.

RESPONSE: The rules were amended to simplify the accounting necessary by county superintendents to calculate the amount of retirement guaranteed tax base reversion. The proposed change would require county superintendents to establish a complex accounting system to monitor GTB revenues at the district level. Such an accounting system is inappropriate for a fund that is operated at the county level.

3. Based on the foregoing, the Superintendent hereby amends the rule as proposed.



Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of December 17, 1990.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE	OF	AMENDMENT
amendment of rules relating	)	OF ARM 10.23.101 and		
to permissive amount, voted	)	10.23.104		
amount, and school levies)			

To: All Interested Persons

1. On November 15, 1990, the Superintendent of Public Instruction gave notice of proposed amendment to Rules 10.23.101 and 10.23.104, on page 2013 of the Montana Administrative Register, issue number 21.

2. No public hearing was held nor was one requested. The Superintendent has received and considered commentary concerning Rule 10.23.101 and has not received written or oral comments concerning Rule 10.23.104, as follows:

COMMENT: This language is in conflict with section 20-9-501, MCA.

RESPONSE: Revised rule to comply with statutory language in section 20-9-501, MCA.

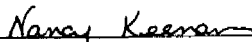
3. Based on the foregoing, the Superintendent hereby amends the Rule 10.23.104 as proposed, and Rule 10.23.101 as follows, deleted material interlined:

10.23.101 DEFINITIONS

(1) - (6) same as original rule.

(7) "Net district requirement" is the total district retirement budget ~~including amounts for new operating reserves~~ less estimated district revenues.

(8) same as proposed rule.



Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State December 17, 1990.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment)	NOTICE OF THE AMENDMENT OF
of Rule 11.16.170, pertaining)	RULE 11.16.170, PERTAINING TO
to prohibition of day care in)	PROHIBITION OF DAY CARE IN
adult foster homes, Rule)	ADULT FOSTER HOMES, RULE
11.16.128, pertaining to)	11.16.128, PERTAINING TO
licensing of adult foster)	LICENSING OF ADULT FOSTER
homes, Rules 11.16.101, and)	HOMES, RULES 11.16.101, AND
11.16.102, and the repeal of)	11.16.102, AND THE REPEAL OF
11.16.103, pertaining to)	RULE 11.16.103, PERTAINING TO
department services provided)	DEPARTMENT SERVICES PROVIDED
to, and procedures for, adult)	TO, AND PROCEDURES FOR, ADULT
foster homes.)	FOSTER HOMES.

TO: All Interested Persons

1. On November 15, 1990, the Department of Family Services published notice of public hearing on the amendment of Rules 11.16.170, 11.16.128, 11.16.101, 11.16.102, and the repeal of Rule 11.16.103 pertaining to adult foster care at page 2017 of the 1990 Montana Administrative Register, issue number 21.

2. No comments or testimony were received.

3. The Department has amended Rules 11.16.170, 11.16.128, 11.16.102, and repealed Rule 11.16.103 as proposed. Rule 11.16.101, as proposed, omitted the text to be deleted in subsection (4) of this rule. Therefore, Rule 11.16.101 is adopted with the following changes:

11.16.101 GENERAL The department shall provide the following: Subsections (1) through (3) remain as proposed.

(4) ~~provide or arrange for other services to facilitate success of placement, such as transportation, recreation, medical care a study of a home's eligibility for licensing as an adult foster care home upon written request addressed to the appropriate regional DFS office made by any individual or married couple age 18 or over.~~

Subsections (5) and (6) are deleted as proposed.

DEPARTMENT OF FAMILY SERVICES


TOM OLSEN, DIRECTOR

Certified to the Secretary of State on December 17, 1990.

Montana Administrative Register

24-12/27/90

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

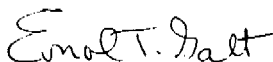
In the matter of the amendment)	NOTICE OF AMENDMENT
of Rule 12.6.901 pertaining)	OF RULE 12.6.901
to water safety regulations)	

TO: All interested persons

1. On October 25, 1990 the Fish and Game Commission gave notice of proposed amendment to Rule 12.6.901 establishing a no-wake restriction in the marina area on Tongue River reservoir on page 1918 of the Montana Administrative Register, issue number 20.

2. No public hearing was held nor was one requested. The Commission has received three written comments in support of this amendment.

3. Based on the foregoing, the Commission hereby amends the rule as proposed.



Errol T. Galt, Chairman
Fish and Game Commission

Certified to the Secretary of State December 17, 1990.

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

In the matter of the amendment of)	NOTICE OF AMENDMENT
ARM 16.44.202, 16.44.303,)	OF RULES
16.44.304(2)(d), 16.44.408,)	
16.44.605, 16.44.607, & 16.44.610)	
regarding mining waste exclusion)	
and related amendments)	(Solid & Hazardous Waste)

To: All Interested Persons

1. On August 16, 1990, the department published notice at pages 1536-1541 of the Montana Administrative Register, Issue No. 15, to consider the amendment of the following sections of the Administrative Rules of Montana: 16.44.202, which defines terms used in chapter 44, Hazardous Waste Management; 16.44.303, which defines hazardous waste; 16.44.304(2)(d), which excludes certain mining wastes from the state's hazardous waste management regulations; 16.44.408, which prescribes how hazardous waste manifests are to be used; 16.44.605, which establishes the requirements for temporary permits for treatment, storage or disposal facilities; 16.44.607, which relates to the scope of a temporary permit; and 16.44.610, which relates to revision of a temporary permit.

2. After consideration of the comments received on the proposed rules, the department has adopted the rules as proposed, with the following changes (new material is underlined; material to be deleted is interlined):

16.44.202 DEFINITIONS Same as proposed.

16.44.303 DEFINITION OF HAZARDOUS WASTE Same as proposed.

16.44.304 EXCLUSIONS (1) Same as proposed.

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

(a)-(c) Same as proposed.

(d) waste from the extraction, beneficiation, and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore. For purposes of this exclusion, beneficiation of ores and minerals is restricted to the following activities: crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting {and/or autoclaving and/or chlorination}/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precip-

itation; amalgamation; and heap, dump, vat, tank, and in situ leaching. For the purposes of this exclusion, waste from the processing of ores and minerals will include only the following wastes, until the department further modifies this rule in ~~light of studies, determinations and reports to be completed by EPA after EPA completes a report to Congress and a regulatory determination on their ultimate regulatory status:~~

(1) through (xx) Same as proposed.

(e)-(g) Same as proposed.

(3)-(5) Same as proposed.

16.44.408 USE OF MANIFEST Same as proposed.

16.44.605 TEMPORARY PERMITS (INTERIM STATUS) (1) through (2) Same as proposed.

~~(3) The department may by publication in the Montana Administrative Register extend the date by which owners and operators of specified classes of hazardous waste management facilities must submit the information required by ARM 16.44.119 if it determines that there are valid reasons for the extension.~~

~~(4)(3)~~ The department may by compliance order issued under the Act extend the date by which the owner and operator of a hazardous waste management facility must submit the information required by ARM 16.44.119.

~~(5)(4)~~ Form 8700-12 and forms for submitting the information required in sections (1)(b) and (2)(b) of this rule may be obtained from the department.

16.44.607 TEMPORARY PERMIT (INTERIM STATUS) -- TERMS
Same as proposed.

16.44.610 CHANGES DURING TEMPORARY PERMITTING (INTERIM STATUS) Same as proposed.

3. Comments on the proposed amendments were received and considered by the department. The changes indicated in the final rule were made in response to comments received.

COMMENT: One comment concerned the consistency of the definitions of waste, solid waste, and hazardous waste. The comment sought to change these references to exactly parallel the federal terminology.

RESPONSE: Such a change would require amending the definitions of these terms and changing the terms throughout the entire hazardous waste management chapter. This task would go beyond what is proposed in the instant rulemaking. The terms that appear in the final rule are consistent with the appropriate definitions as they appear in the state regulations.

COMMENT: One comment noted that ARM 16.44.304(2)(d), as proposed, differed significantly from 40 CFR § 261.4(b)(7) (55

Fed. Reg. 2322-2354).

RESPONSE: This section was changed in the final rule to indicate what additional studies and reports are anticipated.

COMMENT: Another comment noted that the state's ability to grant a blanket extension of time for "valid reasons" in ARM 16.44.605(3), as proposed, was broader than the federal standard allowing an extension when "substantial confusion" exists. The commenter believed the state's language would allow the state to grant extensions in cases where EPA could not and thus would not provide equivalent regulatory coverage.

RESPONSE: The proposed section 16.44.605(3) has been deleted from the final rule.

COMMENT: One commenter submitted extensive comments in opposition to the proposed deletion of certain mineral processing wastes from the exclusions listed in ARM 16.44.304. At the outset, this commenter urged the department to "carefully evaluate whether or not statutory changes should be made to the Montana hazardous waste management laws in order to identify mineral processing materials as hazardous waste."

RESPONSE: To the extent that the exclusion of mineral processing wastes is included in Montana law, it appears in the hazardous waste management regulations. The Montana Hazardous Waste and Underground Storage Tank Act provides that the department "may adopt, amend, or repeal rules governing hazardous waste, including ... identification and classification of those hazardous wastes subject to regulation and those that are not..." Section 75-10-405(1)(a), MCA (1989). Consequently, no statutory change is required to implement the changes adopted in this amendment.

COMMENT: Almost all of the other comments submitted by this commenter attack EPA's actions regarding mining and mineral processing wastes from 1978 to the present.

RESPONSE: The department is not persuaded that all of EPA's actions in this area are without foundation and constitute an abuse of discretion, as asserted in these comments. However, even if all these assertions were true, they do not require rejection of the proposed amendments.

A determination by the department of the sufficiency and validity of EPA's compliance with the statutory mandate of the Bevill Amendment, as sought by the commenter, is neither required nor appropriate here. The assertion that the department may properly remove certain processing wastes from the list of excluded wastes only by conducting the studies and performing the analyses which Congress directed EPA to make in the Bevill Amendment fails to recognize that the state regulations are promulgated under the Montana Hazardous Waste and

Underground Storage Tank Act, not under the federal Resource Conservation and Recovery Act.

The exclusion for mineral processing wastes was incorporated in the Montana hazardous waste regulations to meet the requirement of section 75-10-405, MCA, that the Montana rules not be more restrictive than the federal rules. It is still the general intent and purpose of the Montana law that the treatment, storage and disposal of wastes which are hazardous should be subject to appropriate regulation. An exemption from regulation need not and should not be maintained where the reason for granting the exemption, in this case, the federal exemption, no longer exists.

The department recognizes that EPA's listing of certain mineral processing wastes as hazardous wastes was held invalid and remanded to the agency for further consideration. See American Mining Congress v. EPA, 907 F.2d 1179 (D.C. Cir. 1990). However, the issue being addressed in these amendments is not the listing of wastes, but the elimination of a special exclusion. Thus the actions of the department in this amendment are not in contravention of the holding or the intent of the court in the recent American Mining Congress case.

Should any legal action against EPA be successful in forcing a change of the federal rule covering the mineral processing wastes with which the commenter is concerned, the department would be required by the terms of section 75-10-405(2), MCA, to amend its regulations to reflect those changes. The proper forum for the arguments set out in these comments is either an EPA proceeding or judicial review of EPA's proceedings.

COMMENT: One of these comments that does apply under state law is the assertion that some mineral processing materials are not "solid wastes" and therefore cannot be considered hazardous wastes.

RESPONSE: To the extent this is correct, it does not weigh against adoption of the amendments proposed in this rulemaking. If the materials are not wastes, they are simply not subject to the hazardous waste regulations, and they need not and should not be expressly excluded. Moreover, the arguments submitted by the commenter on this issue were rejected by the court in American Mining Congress v. EPA, 907 F.2d 1179, where the court stated that the petitioners in the case read too broadly the case relied upon in the comments, American Mining Congress v. EPA, 824 F.2d 1177 (D.C. Cir. 1987).


WILLIAM J. OPITZ, Director

Certified to the Secretary of State December 17, 1990

24-12/27/90

Montana Administrative Register

BEFORE THE BOARD OF LAND COMMISSIONERS
AND THE DEPARTMENT OF STATE LANDS
OF THE STATE OF MONTANA

In the Matter of the Adoption)
of new Rules I through III) NOTICE OF
and the amendment of ARM 26.3.129,) ADOPTION OF RULES
all relating to the sale of)
cabinsites and homesites on state)
trust lands.)

TO: All Interested Persons

1. On August 30, 1990, the Department of State Lands and Board of Land Commissioners published notice of public hearing on proposed adoption of rules concerning the sale of cabinsites and homesites on state trust lands, on page 1660 of the Montana Administrative Register, Issue No. 16.

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

RULE I (26.3.155A) SALE OF CABIN SITES, AND CITY OR TOWN LOTS: APPLICATION AND NOTICE PROCEDURES (1) The lessee of a cabin site or city or town lot who is a handicapped lessee or whose 65th birthday occurs before October 1, 1999, may submit to the department an application ~~to purchase~~ for sale of the leased land pursuant to 77-2-318, MCA, at any time prior to October 1, 2009. Any other cabin site or city or town lot lessee may apply for ~~purchase sale~~ purchase sale prior to October 1, 1999. A lessee of a cabinsite that adjoins state land classified as grazing or agricultural land may apply for sale of a divisible portion of the section that includes the cabinsite. For a sale to occur, however, the certificate of purchase or deed must be issued before these deadlines. Lessees are therefore encouraged to file applications no later than 18 months prior to these deadlines. Upon receipt of the application, the department shall consult with the board and advise the applicant whether the board will consider sale of the cabinsite.

(2) Upon receipt of notice that the board will consider sale of the cabinsite, the lessee shall ~~An application must be accompanied by submit~~ a nonrefundable appraisal fee of \$150. ~~in the application.~~ The lessee shall also advise the department which of the buildings, if any, the lessee will remove if the cabinsite is sold to another person. If the ~~applicant lessee~~ applicant lessee intends to remove any building, he shall agree to eliminate any hazards resulting from removal of the building and to reclaim the site. If the ~~applicant lessee~~ applicant lessee intends to leave any building, the ~~applicant lessee~~ applicant lessee shall agree to allow department personnel to inspect and photograph the ~~interior and exterior of that building~~ and include with the application the appraised value of the building as determined by the department of revenue and, if the

lessee disagrees with that appraisal, the value the applicant believes to be correct. The lessee shall also include a listing of all other permanent improvements and an estimate of their value. The lessee shall also agree to allow the department to schedule and conduct, in consultation with the lessee, viewings of the cabinsite for interested persons.

~~(2)~~(3) Upon receipt of an application for the sale pursuant to 77-2-318, MCA, the department shall with reasonable diligence prepare and provide to the board an appraisal of the cabinsite and a report advising whether 77-2-303, MCA, would prohibit the sale, and, if not, whether the sale would be consistent with the orderly development and management of state lands and in the best interests of the trust. The appraisal must take into consideration whether the purchaser will be required to purchase an easement for access to the tract. The department shall also advise the board whether reservation of a conservation easement pursuant to 77-2-319, MCA, is required. The department shall mail to the applicant a copy of its recommendation when 45 days before it sends the recommendation to the board. The lessee may withdraw the application for sale by notifying the department within 30 days of receiving the department's appraisal and report of his intention to withdraw in writing.

~~(3)~~(4) The board shall determine whether to hold the sale for the land. In determining whether to hold the sale, the board shall consider the criteria described in ~~(2)~~(3).

~~(4)~~(5) The department shall advise the applicant of the board's decision. If the board decides to hold a sale, the applicant shall file with the department a \$850 application processing fee. The department shall keep a strict accounting of its costs, including employee time and travel, incurred in conjunction with the application. If the costs are less than the amount of the application fee, the department shall refund the unused fee to the applicant. If the applicant is not the successful bidder, the unrefunded amount of the fee and the appraisal fee must be considered an improvement pursuant to 77-2-325, MCA.

~~(5)~~(6) If the board authorizes sale, the applicant shall also file with the department a certificate of survey. Preparation of the certificate is the responsibility of the applicant. The certificate must be prepared in consultation with the department to ensure that it accurately depicts the boundaries of the cabinsite. On the basis of the survey, the department shall finalize its appraisal.

~~(6)~~(7) When the appraisal is finalized, the department shall proceed with the notice of sale in accordance with 77-2-322, MCA. In addition, the department shall publish notice of sale in such other in-state newspapers and periodicals as it determines reasonably necessary to provide an open and competitive market for the sale and the best return to the trust.

~~(7)~~(8) The notice of sale must:

- (a) indicate the appraised value of the tract;
- (b) describe any easement across state lands necessary for access to the tract, and the price the successful bidder must pay

for that easement, and any claim for damage compensation by any lessee that would result from issuance of the easement; and

(c) list the improvements on the cabinsite and which, if any, of the improvements would be removed if the lessee is not the high bidder;

(d) describe any conservation easement that will be placed on the tract;

(e) describe the time, date, and location of the sale; and

(f) describe the sale procedures and terms of sale.

~~(8)~~ (9) If the board determines that the state land should be sold, the sale must be held in accordance with the procedures contained in Title 77, chapter 2, part 3, MCA, and the additional procedures and requirements contained in this rule and Rule II.

(10) The department may require a later purchaser of an easement that includes a road subject to an existing easement to reimburse the original easement holder for a proportionate share of the original easement holder's survey costs if the survey is of substantial benefit to the later purchaser. The proportionate share will be determined by the department.

(11) Whenever the lessee or purchaser requests a 60-foot right of way easement in order to allow for designation as a county road and the board determines that it is in the best interests of the state, the department shall grant a 60-foot easement.

(12) Water rights appurtenant to the cabinsite must be transferred to the purchaser at the same time title is transferred. AUTH: 77-2-328, MCA; IMP, 77-2-318, 319, MCA.

RULE II (26.3.155B) SALE OF CABIN SITES AND CITY OR TOWN LOTS: BIDDING AND FINAL BOARD DETERMINATION (1) Sale of a cabinsite must be by oral auction. The department shall set the date of the auction in consultation with the lessee and shall allow the lessee or any other bidder to appear at the auction and bid through an attorney-in-fact. Before the sale commences, any person other than the applicant who wishes to bid must post with the department a bid bond in the amount of ten percent of the appraised value as a guarantee of purchase and compliance with Rule III should that bidder be awarded the sale. Each bidder must also sign an agreement that he will abide by the requirements of Title 77, Chapter 2, part 3, MCA, and Rules I through III, including payment for improvements. The existing lessee must be afforded the right to meet the high bid in accordance with 77-2-324, MCA. If the lessee meets the high bid, he is considered the high bidder for purposes of this rule.

(2) The board shall disapprove a cabinsite sale whenever it determines that the sale would be disadvantageous to the state. AUTH: 77-2-328, MCA; IMP, 77-2-318, 321, MCA.

RULE III (26.3.155C) SALE OF CABINSITES AND CITY OR TOWN LOTS: IMPROVEMENTS (1) If the lessee is not the purchaser, the lessee must remove all his movable improvements by March 1 following the sale or a later date allowed by the department for good cause shown unless he and the purchaser reach an agreement that some or all of them will remain. The lessee may remove any

building which he has designated for removal in his application for sale. Removal must be completed by the August 1 following the date the purchaser takes possession of the property, which is March 1 following the sale. The lessee must leave all other permanent improvements unless he and the purchaser agree otherwise.

(2) The purchaser must, in accordance with 72-2-325, MCA, reimburse the lessee for all permanent improvements that he chooses to leave. If the lessee and purchaser cannot agree on the value of the improvements, the parties shall engage in the arbitration process described in 77-6-306, MCA. If the arbitration process is not completed within 6 months or a reasonable time determined by the department, the improvements become the property of the department. The department shall then determine the value of the improvements, obtain that amount from the purchaser, and reimburse the lessee.

(3) If the lessee removes any permanent improvements, he shall reclaim the site by removing any foundations and hazards and by filling with suitable material any pits or excavations that result from removal of the improvement. AUTH: 77-2-328, MCA; IMP, 77-2-318, 325, MCA.

The proposed amendment provides as follows:

26.3.129 DEFINITIONS When used in the subchapter of the ARM, unless a different meaning clearly appears from the context:

(1) through (10) remain the same.

(11) "Full market value" means the most probable price in terms of money that a property will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and the seller each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus.

(11) remains the same but is renumbered (12).

(13) "Handicapped lessee" means a lessee certified by the department of social and rehabilitation services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the lessee's ability to obtain, retain, or advance in employment.

(12) through (28) remain the same but are renumbered (14) through (30). AUTH: 77-2-328, MCA; IMP, 77-2-318, MCA.

3. The following persons submitted comments on the proposed rules:

<u>NAME</u>	<u>REPRESENTING</u>
Jim Andler	Self
Judy Andler	Self
Edna M. Perrodin	Self
James B. Perrodin	Self
Sam Yewusiak	Self
Wayne Martens	Self
William A. Clark	Self

Lorraine E. Wood	Self
Byron D. Haines	Self
Pat Dake	Self
John McMaster	Legislative Council
Loretta Harker	Self
Don L. Dennison	Self
Mary Boone	Self
Melvin H. Hanson, Jr.	Self
Charles Spurlock	Self
Harriet Spurlock	Self
Ethel Benjamin	Self
Arnold Joyes	Self
Aldon Joyes	Self
Robin P. Marten	Self
Tim Tanberg	Montana State Leaseholders Association
Martin S. Behner	Self
Beverly Hulay	Self
Ernest T. Ibey	Self
Rebecca Beshoon	Self
Robert Opie	Self
Ann Ibey	Self
Don Hulay	Self
Daniel Negaard	Self
R. E. Burns	Self
Keith Albright	Self
Ed Benz	Self
Roy Albertus	Self
Jerry Mahugh	Self
Lee Humbert	Self
Alvin Kaul	Scobey Saddle Club
Fred Thoeny	Self
Carroll Ferestad	Self
Curt Flakne	Self
Myron Halverson	Self

The following is a summary of comments received and the agency's responses to those comments:

GENERAL

1. COMMENT: The state should continue to finance cabinsite sales. (Haines) How can State Lands say there is no state financing as long as the law is on the books? (Dake)
RESPONSE: Section 77-2-329, MCA, currently requires State Lands to require 10% down and to finance the remainder over 20 years for city and town lots and over 33 years for other lots. If this statute is in effect at the time of sale, state financing will be available to purchasers. If the 1991 Legislature repeals or amends this provision, state financing may not be available. Because the rules do not address the method of financing sales, no changes in the rules are or will be necessary.

2. COMMENT: Many elderly cabinsite lessees assumed that they could continue to live on their cabinsites. It is unfair to sell the cabinsites out from under them. This will happen because they will not be able to meet the high bid. Lessees should be allowed to continue to rent. (Hanson)

RESPONSE: Under the law and these rules, a cabinsite on forested lands cannot be put up for sale unless the lessee applies to have it sold. Lessees of forested tracts can therefore continue to rent and the result feared by the commenter will not occur. Also, State Lands at the present time has no plans to sell cabinsites (often called "homesites") on non-forested land unless it receives an application for sale from the lessee. The term "applicant" has been changed to "lessee" in Rule I to clarify this.

3. COMMENT: The lessee who purchases his cabinsite should not be required to purchase an easement for an access road that has historically been used by cabinsite lessees. (Opie, Spurlock) Perhaps the road could be made into a county road. (Spurlock)

RESPONSE: Federal law and the Montana Constitution provide that State Lands cannot grant an interest in land without first obtaining full market value. This requirement also applies to counties. Therefore, either the cabinsite purchaser or the county must purchase an easement if access to the cabinsite will be across state land after the sale.

4. COMMENT: It is unfair that in a situation in which several cabinsites are served by one access road, the first person to apply for sale would be required to pay the survey costs. (Spurlock) In this situation there should be reimbursement by later purchasers to the former purchasers. (Tanberg)

RESPONSE: Reimbursement may be equitable in some circumstances but not in others, such as a situation in which the later purchaser uses only a small portion of the prior survey. Therefore, the rules have been revised to provide that State Lands has the authority to require subsequent purchasers to pay to the original purchaser his proportionate share of the original survey if use of the original survey is of substantial benefit to the later purchaser. The proportionate share will be determined by State Lands.

5. COMMENT: Some short, final access roads needlessly cross neighboring lots at the present time. The rules should require that these roads be relocated. (Spurlock)

RESPONSE: State Lands would consider such a proposal on a site-specific basis. Because State Lands might not wish to relocate such an access road, a mandatory relocation requirement has not been added.

6. COMMENT: The rules should provide that a divisible parcel, such as a quarter section, be put up for sale with homesites. (Aldon Joyes, Arnold Joyes, Humbert, Thoeny, Halverson), but only in counties that are economically depressed (Aldon Joyes).

These larger tracts should be sold only to beginning farmers.
(Aldon Joyes)

RESPONSE: Language has been added providing that, for cabinsites adjoining land classified as grazing or agricultural land, the lessee may apply to include with the homesite a divisible portion of the section. Addition of this language does not, however, guarantee that the Board will put the divisible portion up for sale.

7. COMMENT: Whenever State Lands provides access to a cabinsite that it sells across the lease or easement of another lessee, the latter should be compensated for any loss in investment occasioned thereby. (Haines)

RESPONSE: Under ARM 26.3.159, the applicant for an easement is required to compensate the lessee or lessees for any damage to improvements or the leasehold interest before the easement is granted. Rule I(7)(b) has been amended to place notice of this requirement in the notice of sale.

8. COMMENT: Why can't State Lands grant an easement free of charge to the person who purchases the cabinsite? Roads that have been open to the public for a number of years cannot be closed. The public will be traveling across my lot with no reduction in value to me (Dake) This latter encroachment should be given consideration. (Beshoon)

RESPONSE: State Lands cannot give away an easement because federal law, the Montana Constitution, state law, and federal and state court cases provide that the state must obtain full market value for any interest in land that the state grants. The process of securing an easement through public use for a number of years, which is called "easement by prescription," is not applicable to state lands because of this full market value requirement. Thus, roads can be closed, no matter how long they have existed, unless an easement has been purchased. The existence of an easement across a cabinsite will be taken into consideration in appraising a cabinsite.

9. COMMENT: Can a potential bidder view lots on his own or must a State Lands' employee accompany him? Potential bidders might not be able to find the property or lot corners. (Dake)

RESPONSE: Rule I has been amended to provide that State lands will, in consultation with the lessee, schedule and conduct viewings of the property for interested bidders.

10. COMMENT: The cost of easements for existing roads should be included in the sale package. (Clark)

RESPONSE: Rule I(7)(b) provides that the cost of the easement is to be included in the notice of sale. It is therefore part of the sale package.

11. COMMENT: The rules should contain a provision recognizing the lots that the state laid out when the lots were leased. (Behner)

RESPONSE: A legal survey was not used when the lots were originally established. Reestablishment of the lot corners and a legal survey is required to transfer the property out of state ownership.

12. **COMMENT:** Access rights of way should be 60' in width in case the road were to become a county road in the future. (Ann Ibey)

RESPONSE: If 60' as right-of-way is feasible and in the best interests of the state and if the lessee who is purchasing the easements requests it and is prepared to pay the additional costs, a 60 foot right-of-way will be provided. Language to this effect has been added to the Rule I.

13. **COMMENT:** The lots and easements should be kept for Montana not sold to out-of-staters. (Burns)

RESPONSE: Under the law, any person who is a citizen of the United States or who has declared his or her intentions to become a U. S. citizen may purchase state lands. The suggested amendment therefore cannot be made.

14. **COMMENT:** The state has not allowed lessees to make some permanent improvements, such as putting foundations under buildings, and now intends to penalize the lessee because of it. (Benz)

RESPONSE: These rules are adopted to implement a law that was passed in 1989. Under that law and these rules, cabinsites on forested lands may not be sold unless the lessee applies for the sale.

15. **COMMENT:** The state should not be allowed to raise rentals or taxes on improvements of lessees who choose not to sell in order to force the lessee to apply for sale. (Mahugh)

RESPONSE: State Lands has no authority over taxes, which are imposed by the Legislature and local governments. Rental rates are currently capped at 3.5% of value by statute. These rules pertain to sales, not leasing.

16. **COMMENT:** Upon sale, what happens to the archaeological and mineral rights in the land? (Benz)

RESPONSE: In accordance with 77-2-304, MCA, the state would retain the mineral rights, not including sand, gravel, building stone, and brick clay. State Lands would perform an archaeological survey before selling the cabinsite. If some valuable archaeological resource is located, the state would provide for excavation, documentation, or other antiquities law compliance. All tracts would be sold free of any restriction regarding archaeological resources.

17. **COMMENT:** The Scobey Saddle Club has leased land which has been appraised by the county at \$650/acre, resulting in an annual rental of \$27.50/acre. This is exorbitant. If the building comes up for sale, someone from out of town could bid up the sale price. (Kaul)

RESPONSE: The proposed rules deal only with the sale of cabinsites and homesites, not commercial sites.

18. COMMENT: When the land is sold, it should be brought out that only the land and not the buildings are being sold. (Thoeny)

RESPONSE: Rule I (7)(c) requires the notice to provide a listing of the buildings that are on the cabinsite and a listing of those that will be removed. This provides adequate notice that certain buildings are not being sold.

19. COMMENT: Cabinsites should be appraised at the value of the surrounding land. If the surrounding land is grazing land, the cabinsite should be appraised as grazing land. (Ferestad)

RESPONSE: Lands are appraised according to their classified use in order to insure that the state will obtain fair market value as required by law. If the land is to be sold as a cabinsite, it must be appraised as a cabinsite.

20. COMMENT: There should be special consideration given to the fact that Eastern Montana homesites are in an area of declining population and that liveable homesites go vacant, or there should be an appeal procedure to take this into account. (Flakne)

RESPONSE: The appraisal for each individual cabinsite will take into consideration land values in the area. To the degree that economic conditions have affected land values in the area, those economic conditions will be taken into consideration.

RULE I

21. COMMENT: Section (1) should be amended to provide that, if State Lands will not sell the cabinsite, the lessee can be notified of this fact before he is required to pay the \$150 appraisal fee. (Tanberg, Clark)

RESPONSE: The rule has been amended to provide that a cabinsite lessee may apply for and receive a preliminary indication of intent to sell from the Board of Land Commissioners before he is required to pay the \$150 appraisal fee. Lessees should be aware, however, that even when the Board indicates that it is willing to consider sale, it must by law retain the authority to later decide not to sell if it later determines that sale would not be in the best interests of the state.

22. COMMENT: Rule I should be amended to grant the lessee the right to stop the sale process if he decides that he does not want to purchase the cabinsite after the appraisal. (Tanberg, Spurlock, Clark, Dake, Halverson) This right should allow the lessee to stop the auction if bidders bid too high. (Martens, Harker)

RESPONSE: The rule has been amended to allow the lessee to stop the sale within 30 days of receipt of the appraisal, conservation easement and access easement information. The lessee has not been given this right at the sale because the bidding process

would not be open and competitive if one bidder were to have the ability to defeat other bidders by calling off the sale.

23. COMMENT: State Lands should consider amending section (1) to allow those who are not 65 or older or handicapped to apply for sale of their cabinsites. (Yewusiak)

RESPONSE: The second sentence of section (1) grants those who are under 65 and not handicapped the right to apply for sale until October 1, 1999. The first sentence of Section (1) grants this same right for an additional ten years to persons who are over 64 or handicapped. Both of these sentences merely restate the law and therefore their provisions cannot be amended.

24. COMMENT: Section (6) should be amended to limit the notice of sale to the legal notice section of the newspaper in the state (Don Hulay) or in the county in which the cabinsite is located. (Martens, Perrodins, Dake, Harker, Negaard, Albright)

RESPONSE: Under federal law, the Montana Constitution and court decisions, State Lands holds these cabinsites in trust and is bound by the same principles as a private trustee to obtain the best return for its beneficiaries. State Lands must therefore retain the ability to advertise outside the county for sale of those cabinsites that would be of interest to persons outside the county. A competitive sale process can be attained by advertisement within the state and language requiring in-state advertisement has been added. In order to provide a competitive market, State Lands may need to advertise outside the legal notice section.

25. COMMENT: The provision in (1) that State Lands is allowed to photograph the interior and exterior of the buildings should be removed because the photographs would be useful only to enhance the sale of the lot. This would be in violation of the definition of "full market value," specifically the portion of that rule which states that full market value assumes a price not affected by undue stimulus. (Perrodins)

RESPONSE: In order to ensure open and competitive bidding, State Lands must inform potential bidders of what is being sold. While the Department is not selling the improvements, their description, condition, and the value placed on them are important factors in whether a potential bidder is interested in a particular cabinsite when the lessee intends to require the bidder to purchase those improvements. It is common practice in the private real estate business to advertise using pictures. State Lands finds that this practice is reasonable for pictures of the cabinsite and the exterior of buildings that will remain after the sale. In the interests of the privacy of the lessee, the requirement that the interior of the building be photographed has been deleted.

26. COMMENT: Section (2) should be amended to include a provision that water rights held by the state revert to the purchaser. (Perrodins, Marten, Dake)

RESPONSE: This provision has been added.

27. COMMENT: Sections (1) and (6) both contain indications that State Lands is not following its stated purpose to "permit lessees to purchase their lots and to retain fair market value to the trust." (Perrodins)

RESPONSE: The provisions in (1) and (6) to which the commenter refers are not specified. The commenter should be advised, however, that in the context of sale, "full market value" has been defined to mean that value that is obtained through an open and competitive bidding process.

28. COMMENT: In Section (1), the 10% bid bond should be based on the appraised value of the lot and the improvements. (Spurlock, Dake)

RESPONSE: The property that is being bid on is only the lot. The State does not own the improvements and therefore the Department believes they should not be part of the sale process.

29. COMMENT: There should be added to the rule provision that the lessee has first option to buy and that the sale price must be fair appraised value and not fair market value (Andler). This could be implemented by obtaining three appraisals and adopting the highest. (Dennison)

RESPONSE: Under federal and state law, the cabinsite must be sold to the high bidder or the lessee if the lessee is willing to meet the high bid, at the high bid price. The suggested amendments are prohibited by law.

30. COMMENT: Many cabinsite lessees have leased for many years. It is not fair to the lessee to put the cabinsite up for bid and to allow someone to outbid the lessee. (Wood, Haines, Benjamin)

RESPONSE: State and federal law require the bidding process. The commenter should be aware that cabinsite on forested lands cannot be put up for sale unless the lessee makes application. Also, State Lands currently has no intention of placing up for sale cabinsites (homesites) on non-forested lands unless the lessee applies for the sale.

31. COMMENT: The rule should contain a requirement that the lessee be notified of the date and time of sale and that the lessee sale be canceled or postponed if the lessee cannot be present in person or by legal representative, especially in emergency situations, such as a death in the family. (Boone, Tanberg)

RESPONSE: State Lands has added language that the sale date be set in consultation with the lessee and that lessee or any other bidder may appear and bid through an attorney-in-fact.

32. COMMENT: The rule should not use county appraisers to set land values. (Haines)

RESPONSE: Section (1) provides that State Lands will hire an appraiser to conduct the cabinsite appraisal. The county appraiser is not used. The only use of the county appraisal is for the valuation of improvements, and, in this instance, the

lessee has the right to indicate whether he feels the appraisal is incorrect.

33. COMMENT: Is proof of age and citizenship required of potential bidders on the bid bond form? (Dake)

RESPONSE: The bid bond form has not been developed. However, State Lands will be certain that the citizenship and age requirements are met before the sale is consummated.

34. COMMENT: Who pays for advertising costs? Advertising costs could use up the \$850 fee. (Dake)

RESPONSE: State Lands intends that advertising costs be paid from the \$850 fee. Based on its experience, the Department expects that advertising will be substantially less than \$850.

35. COMMENT: All fees should be considered an improvement on the property. (Dake)

RESPONSE: As proposed, Rule I provided that all fees except the appraisal fee would be considered as improvements. The rule has been changed to include the appraisal fee as an improvement as well. This would make all fees paid by a lessee who is not the high bidder reimbursable to the lessee.

36. COMMENT: Once all appraisals and surveys are in, State Lands should set a time line, perhaps 30 days, so the lessee could arrange financing and so that the lessee would have no excuse for failing to attend the auction. (Ernest Ibey)

RESPONSE: Lessee attendance has been provided for. See response to Comment #31. State Lands has not set a post-bidding timeline because certain contingencies, such as settlement for improvements could require additional time.

37. COMMENT: Section (1) talks about submitting the value of the improvements as determined by the Department of Revenue. However, that agency does not value all improvements, such as septic systems or parking spots. Also, State Lands should not follow Revenue estimates for lot value. (Dake)

RESPONSE: Section (1) requires the lessee to list Department of Revenue appraisals only for buildings, which the Department of Revenue does appraise. Septic systems and parking spots would be covered by the requirement to submit an estimate of the value of other improvements. State Lands will not use the Department of Revenue appraisal for the lot. Rule I provides that State Lands will do or obtain its own appraisal.

38. COMMENT: In Section (5), language should be added giving State Lands the flexibility to eliminate the survey requirement if a divisible tract is sold. Perhaps language allowing the Board to waive other provisions of the rules should be added. (Humbert)

RESPONSE: The language regarding the survey requirement has been added. A general waiver provision has not been added because its inclusion would mean that State Lands would not be bound by the

rules and lessees and bidders could not be certain of the standards and procedures to be applied to sale applications.

39. COMMENT: Because the state owns the cabinsite, the state should pay the appraisal fee. (Ferestad)

RESPONSE: When SB 91, which is the bill under which these rules are being written, passed, State Lands submitted a budget for administration of the sales. The budget included appraisal fees. The Legislature chose not to fund the sales. It was therefore necessary to obtain funding from applicants.

40. COMMENT: Will the appraisal required in (2) be a Department of Revenue appraisal or will it be done by State Lands? (Humbert)

RESPONSE: The law requires that to set lease rates, State Lands must rely on Department of Revenue appraisals. For cabinsite sales under these rules, State Lands will do or have done a separate appraisal.

41. COMMENT: In Section (1), the application to "purchase" should be changed to application for "sale" because the lessee may not be the high bidder. (Legislative Council)

RESPONSE: The suggested amendment has been made.

42. COMMENT: The auction should not start at appraisal value. There should be no minimum bid. At Echo Lake, all lots have been appraised at the same value, but not all are of the same value. (Albertus)

RESPONSE: By law, the cabinsite may not be sold for less than appraised value. There is therefore no point in beginning bidding below appraisal value. Each lot will be appraised individually by an appraiser hired by State Lands. Therefore, the appraisal will take into account the individual characteristics of each tract.

RULE II

43. COMMENT: Section (1) should be amended by adding a provision to allow the lessee some control of the sale, such as maximum allowable bid. This would insure more sales, more revenue, and will protect the taxpayers from litigation from a misunderstood and unclear proposal. Also, lessees deserve better than the proposed rules (Perrodin). A section (3) should be added saying that the lessee can stop the auction at any time. (Albright)

RESPONSE: Federal law and state law require that the bidding process be open and competitive. That is, it must be designed to obtain the highest sale price. A provision setting a maximum sale price allowing lessee control would violate these requirements and be unlawful.

44. COMMENT: The provision in (1) that the bidding is reopened once the lessee has met the high bid is extremely unfair. (Clark, Haines)

RESPONSE: This procedure is required by 77-2-324, MCA.

RULE III

45. COMMENT: Whenever the bidding process results in a sale price that is higher than appraised value, the value of the improvements should be increased by the same percentage. (Martens)

RESPONSE: As described in the response to comment #28, the sale of the lot and the sale of the improvements are two separate transactions by two separate parties. The method of establishing the value of the improvements is established by statute. The method suggested by the commenter is not authorized by statute.

46. COMMENT: The requirement to remove moveable improvements in 60 days is unreasonable in view of Montana's winters. (Dake, Benz) It should be 120 days (Dake) or 18 months (Benz)

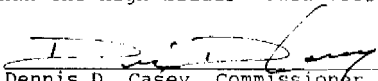
RESPONSE: Under 77-2-326, MCA, the purchaser would take possession on March 1 following the sale. The rule has been amended to extend the time for removal of buildings until August 1 of that year and other improvements by March 1 but allowing extensions for good cause until June 1.

47. COMMENT: In Section (2) State Lands should include a requirement that the bidder agree to abide by the State Lands rules. This would protect the lessee's improvements. (Tanberg) Each bidder should be required to sign an agreement to abide by the terms of the sale. (Clark)

RESPONSE: Section (2) has been so amended.

48. COMMENT: Section (2) should be amended to add language that, should the high bidder bow out, the lessee should be allowed to purchase if the lessee is the next highest bidder. (Beverly Hulay)

RESPONSE: The law provides that state lands must be sold to the high bidder at an auction. It is probable that a rule allowing sale to a person other than the high bidder would violate this provision.


Dennis D. Casey, Commissioner

Certified to the Secretary of State

12-17-90

BEFORE THE DEPARTMENT OF LIVESTOCK OF
THE STATE OF MONTANA

In the matter of a proposed	)	NOTICE OF ADOPTION OF
fee change for recording of	)	AMENDMENT OF ARM
brands	)	32.2.401 DEPARTMENT OF
	)	LIVESTOCK FEES, PERMIT
	)	FEES, AND MISCELLANEOUS
	)	FEES


TO: All Interested Persons

1. On September 27, 1990, the Board of Livestock acting through the department of livestock published notice of the proposed amendment of ARM 32.2.401(2) by increasing the recording fee on page 1823 of the Register, Issue No. 18.

2. The Board of Livestock acting through the department of livestock has amended the rule exactly as proposed.

3. No written comments or testimony were received.

4. This rule will be effective January 1, 1991.



NANCY ESBY, Chairman
Board of Livestock

Certified to the Secretary of State December 17, 1990.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rules	)	RULES 46.12.514, 46.12.515,
46.12.514, 46.12.515,	)	46.12.516 AND 46.12.2013
46.12.516 and 46.12.2013	)	PERTAINING TO EARLY
pertaining to early	)	PERIODIC SCREENING AND
periodic screening and	)	DIAGNOSIS (EPSDT)
diagnosis (EPSDT))	

TO: All Interested Persons

1. On October 25, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.514, 46.12.515, 46.12.516 and 46.12.2013 pertaining to early periodic screening and diagnosis (EPSDT) at page 1938 of the 1990 Montana Administrative Register, issue number 20.

2. The Department has amended Rule 46.12.516 as proposed.

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

46.12.514 KIDS COUNT/EARLY PERIODIC SCREENING DIAGNOSIS AND TREATMENT SERVICES (EPSDT), DEFINITIONS Subsections (1) through (3) remain as proposed.

(4) Interperiodic screenings VISION, HEARING AND DENTAL SERVICES may occur when considered medically necessary to determine the existence of suspected physical or mental illnesses or conditions.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

46.12.515 KIDS COUNT/EARLY PERIODIC SCREENING DIAGNOSIS AND TREATMENT, REQUIREMENTS/ALLOWABLE SERVICES (1) ~~These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308. The following are allowable services under this program subject to the requirements contained in subsection (9), (10) AND (11):~~

Subsection (2) remains as proposed.

(a) a comprehensive AGE-APPROPRIATE health and developmental history to include assessment of both physical and mental health development;

Subsections (2)(a)(i) through (7)(a) remain as proposed.

(i) Diagnostic and treatment services to correct or improve physical or mental illnesses, defects, or conditions will be reimbursable if they are services covered under the federal medicaid program and if:

~~(A) such illness, defect or condition was identified or discovered to have increased in severity by the screening service; and~~

~~(B) such diagnostic or treatment service is medically necessary as defined in ARM 46.12.102(2).~~

Subsections (7)(b) through (9) remain as proposed.

(10) ONLY VISION, HEARING, DENTAL, NUTRITION AND HEALTH CARE SERVICES WHICH ARE MEDICALLY NECESSARY AS DEFINED IN ARM 46.12.102(2) TO CORRECT OR IMPROVE A PHYSICAL OR MENTAL ILLNESS, DEFECT OR CONDITION WHICH WAS IDENTIFIED OR DISCOVERED TO HAVE INCREASED IN SEVERITY BY EPSDT SCREENING SERVICES SHALL BE REIMBURSED UNDER THE EPSDT PROGRAM.

(11) ANY VISION, HEARING, DENTAL, NUTRITION OR HEALTH CARE SERVICE WHICH IS MEDICALLY NECESSARY AS DEFINED IN ARM 46.12.102(2) TO CORRECT OR IMPROVE A PHYSICAL OR MENTAL ILLNESS, DEFECT OR CONDITION WHICH WAS IDENTIFIED OR DISCOVERED TO HAVE INCREASED IN SEVERITY BY EPSDT SCREENING SERVICES WILL BE REIMBURSABLE UNDER THE EPSDT PROGRAM IF IT IS A SERVICE COVERED UNDER THE FEDERAL MEDICAID PROGRAM, REGARDLESS OF WHETHER SUCH SERVICES ARE COVERED UNDER THE MONTANA MEDICAID PLAN.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

46.12.2013 NURSE SPECIALIST SERVICES, REIMBURSEMENT

Subsections (1) through (3)(a)(i) remain as proposed.

(ii) NURSE SPECIALISTS SHALL BE REIMBURSED FOR KIDS COUNT SCREENING SERVICES AND IMMUNIZATIONS AT THE SAME RATE AS PHYSICIANS.

Subsections (3)(b) through (7)(h) remain as proposed.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

4. The Department has thoroughly considered all commentary received:

COMMENT: Could a child under the age of three be referred for a dental examination?

RESPONSE: Yes. Any child regardless of age, may be referred for dental examination when medically necessary. It is the intent of EPSDT to encourage parents and guardians to establish a primary dental care provider for a child around the age of three. Usually the primary health care provider (pediatrician, nurse practitioner, family practitioner) will examine the mouth of a child under the age of three. Based on the health care provider's evaluation of the child's gums, presence of baby teeth or other infections, a referral to a dentist may be necessary prior to the age of three.

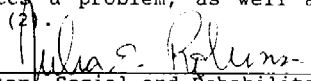
COMMENT: Could a child be referred to a dentist by the WIC program?

RESPONSE: The WIC program may refer any child to a primary health care provider or dental health provider when there is a determination that the child's health is at risk.

The intent of the Kids Count/EPSTD program is to encourage parents and legal guardians to establish a relationship with a primary health care provider and dentist for each child. The emphasis of EPSTD is to seek "well child" evaluations and examinations on a scheduled basis. The exams differ depending upon the child's growth and development. By identifying medical, mental, emotional or developmental problems early, the treatment for correcting or improving the condition may be less costly than if the problem is allowed to reach an extremely serious or emergency state.

COMMENT: Do the terms "screening service" and "screening services" as used in ARM 46.12.515(8)(a), (10) and (11) refer only to the screening services defined in ARM 46.12.515(2)? For example, when ARM 46.12.515(10) states that vision, hearing, dental, nutrition and health care services will be reimbursed only if they are for the treatment of a condition identified by an EPSTD screening, does this mean such services will be reimbursed only if they are for treatment of a condition discovered in a formal screening as defined in subsection (2), that is, as part of the comprehensive physical examination, health and developmental history, or other elements which comprise the formal screening?

RESPONSE: No. The terms "screening service" and "screening services" as used in ARM 46.12.515(8)(a), (10) and (11) are used in a broader sense than the definition in subsection (2). Vision, hearing, dental, nutrition and health care services will be reimbursed if they are for treatment of a condition identified as part of the child's participation in the EPSTD program, which includes periodic vision, hearing, and dental screenings, interperiodic screenings to determine the existence of a suspected illness or condition (as provided in ARM 46.12.514(4)), and nutritional services when the child's physical growth performance indicates a problem, as well as the screening defined in subsection (2).



Director Social and Rehabilitation Services

Certified to the Secretary of State _____ December 14 _____, 1990.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rules	)	RULES 46.12.575 AND
46.12.575 and 46.12.577	)	46.12.577 PERTAINING TO
pertaining to family	)	FAMILY PLANNING SERVICES
planning services)	

TO: All Interested Persons

1. On October 25, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.575 and 46.12.577 pertaining to family planning services at page 1934 of the 1990 Montana Administrative Register, issue number 20.

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

46.12.575 FAMILY PLANNING SERVICES Subsections (1) through (1)(g) remain as proposed.

(2) "Annual visit" means a return visit at least once per year, following the initial visit, for a physical examination, laboratory services, and health history. The physical will include all examinations required for the initial physical and the laboratory services will MAY include a urinalysis, hematocrit, and PAP test.

Subsection (3) remains as proposed.

(4) "Contraceptive supplies" means FDA APPROVED INTRA-UTERINE DEVICES (IUD), SPERMICIDALS, BARRIER METHODS AND ORAL contraceptiveS pills, foams, IUDs, condoms, sponges, jellies and creams.

Subsections (5) through (8) remain as proposed.

(9) "Medical counseling" means counseling services provided by a physician, nurse practitioner, or OTHER MEDICAL PROFESSIONAL ~~registered nurse~~ under the supervision of the clinic's medical director regarding:

Subsections (9)(a) through (9)(e) remain as proposed.

(f) sexuality and THE ~~developmentally delay~~ DISABLED CLIENT; and

Subsections (9)(g) through (10) remain as proposed.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

46.12.577 FAMILY PLANNING SERVICES, REIMBURSEMENT

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

(b) the fees in the fee schedule for fiscal year 1991 may not exceed 2% 102% of the fee schedules provided in fiscal year 1990; and

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

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

3. The Department has thoroughly considered all commentary received:

COMMENT: "Annual visit" described in ARM 46.12.575(2) should allow fitting and insertion of IUD's and examination, treatment and counseling of vaginal infections or sexually transmitted diseases (STDs).

RESPONSE: The department agrees and will change the word "will" which follows ".....and the laboratory services" to "may". The department feels that this will give sufficient latitude to the definition to allow the inclusion of the above activities to this definition. The department will review the multiple level of service codes as defined in the Physicians' Current Procedural Terminology (CPT-4) and determine how to apply a similar billing series for the family planning program.

COMMENT: "Contraceptive supplies" as defined in ARM 46.12.575 (4) should be revised to include: "Contraceptive supplies include all FDA approved methods of contraception."

RESPONSE: The department agrees that the definition for contraceptive supplies should be revised. That definition now reads: "Contraceptive supplies means FDA approved intra-uterine devices (IUD), spermicidal, barrier methods and oral contraceptives."

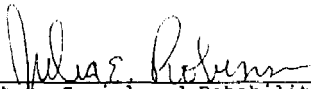
COMMENT: "Medical counseling" as described in ARM 46.12.575 (9) should include the services of a physician assistant and a registered dietitian. Reimbursement for the nutrition services could be taken from the EPSDT rule.

RESPONSE: The department partially agrees. This part has been revised to read: "Medical counseling means counseling services provided by a physician, nurse practitioner or other medical professional under the supervision of the clinic's medical director regarding:..". This will include the physician's assistant.

Nutrition/dietary outpatient services are limited to children under the age of 21 in ARM 46.12.514. This is the rule covering the operation of the "Kids Count" (EPSDT) program. Therefore, any such services in the family planning program may only be provided to an individual under the age of 21.

Reimbursement for dietary services counseling will be at the same rate as other counseling services in 46.12.514. These

services and their reimbursement are for the family planning program. The reimbursement for the EPSDT program has been written for that program.



Director, Social and Rehabilitation Services

Certified to the Secretary of State December 14, 1990.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of Rules	)	RULES 46.12.2003 AND
46.12.2003 and 46.12.2013	)	46.12.2013 PERTAINING TO
pertaining to pharmacy	)	PHARMACY PRICING CODES FOR
pricing codes for drugs	)	DRUGS ADMINISTERED BY
administered by physicians	)	PHYSICIANS AND NURSE
and nurse specialists	)	SPECIALISTS

TO: All Interested Persons

1. On November 15, 1990, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rules 46.12.2003 and 46.12.2013 pertaining to pharmacy pricing codes for drugs administered by physicians and nurse specialists at page 2031 of the 1990 Montana Administrative Register, issue number 21.

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

46.12.2003 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS Subsections (1) through (3) remain as proposed.

(4) Reimbursement to physicians for physician-administered drugs which are billed under HCPCS "J" and "Q" codes will be EITHER ACCORDING TO A FEE SCHEDULE ESTABLISHED BY THE DEPARTMENT AND UPDATED AT LEAST ANNUALLY BASED UPON the Montana estimated acquisition cost or maximum allowable cost, AS DEFINED IN ARM 46.12.102 or the provider's usual and customary charge, whichever is lower. No dispensing fee will be paid to physicians.

Subsections (4)(a) through (5) remain as proposed.

AUTH: Sec. 53-6-113 MCA

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

46.12.2013 NURSE SPECIALIST SERVICES, REIMBURSEMENT Subsections (1) through (6) remain as proposed.

(7) Reimbursement to nurse specialists for drugs administered by nurse specialists and which are billed under HCPCS "J" and "Q" codes will be EITHER ACCORDING TO A FEE SCHEDULE ESTABLISHED BY THE DEPARTMENT AND UPDATED AT LEAST ANNUALLY BASED UPON the Montana estimated acquisition cost or maximum allowable cost, or the provider's usual and customary charge, whichever is lower. Reimbursement will be available only to nurse specialists who are authorized to prescribe or dispense the medication provided. No dispensing fee will be paid to nurse specialists.

Subsections (7)(a) through (8)(h) remain as proposed.

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

IMP: Sec. 53-6-101 MCA

3. The Department has thoroughly considered all commentary received:

Comment: The rules have jumped the gun as to the legal ability of nurse specialists to prescribe drugs.

Response: The rule changes do not grant "prescriptive authority" to any provider. "Prescriptive authority" is defined within practitioners' licensing requirements. The Board of Medical Examiners, Board of Nursing and other boards are responsible for licensure of practitioners. This rule does not grant prescriptive authority to any practitioner.

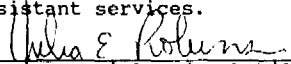
Comment: The rules have completely excluded a growing segment of health care providers in Montana, that being physician assistants.

Response: Under current Medicaid rules, any service provided by a physician assistant must be billed by the supervising physician. ARM 46.12.2003 refers to physician reimbursement, which includes physician assistant services because Medicaid does not reimburse physician assistants directly. The J and Q coded drugs would be reimbursed under the current methodology.

Comment: ARM 46.12.2003(4)(a) speaks only of when a "physician" certifies in their own handwriting and should be expanded to include specifying a brand drug when so written by a physician assistant.

Response: In accordance with subsection 37-20-404, MCA Medicaid will reimburse the cost of a specific brand of drug if the physician assistant certifies the need in their own handwriting.

ARM 46.12.2013 refers to reimbursement to nurse specialists who bill Medicaid directly. It is inappropriate to change ARM 46.12.2013 to include physician assistant services.



Director, Social and Rehabilitation Services

Certified to the Secretary of State _____ December 14 _____, 1990.

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

In the matter of the)	
amendment of Rule	)	CORRECTED NOTICE OF
46.13.401 pertaining to)	
the low income energy	)	AMENDMENT
assistance program (LIEAP))	

TO: All Interested Persons

1. On October 25, 1990, the Department of Social and Rehabilitation Services published notice of the amendment of Rule 46.13.401 pertaining to the low income energy assistance program (LIEAP) at page 1959 of the 1990 Montana Administrative Register, issue number 20.

2. The notice of amendment for ARM 46.13.401, BENEFIT AWARD MATRICES, incorrectly listed the fuel oil matrix for LC District XII for Powell, Granite, Deer Lodge, Silver Bow, Beaverhead and Madison Counties. The maximum benefit award matrix was increased and should appear as follows:

MAXIMUM BENEFIT AWARD MATRIX FOR
LC DISTRICT XII

Powell, Granite, Deer Lodge, Silver Bow,
Beaverhead and Madison Counties

5.12

Single Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$213 235 177	\$520 611 459	\$447 406 483 205 363	\$448 561 421	\$104 223 167	\$120 206 154
two	\$240 288 216	\$595 747 560	\$508 465 589 221 442	\$507 686 516	\$243 279 209	\$224 257 193
three	\$204 326 244	\$723 849 637	\$578 543 670 323 503	\$548 779 584	\$294 335 251	\$269 309 232
four	\$331 366 275	\$808 951 713	\$642 641 751 428 563	\$723 873 654	\$340 390 293	\$314 360 270

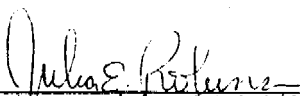
Multi Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$185 205 154	\$453 532 399	\$343 353 421 245 315	\$404 488 366	\$460 494 446	\$184 179 136
two	\$244 280 208	\$553 620 467	\$443 441 513 328 385	\$444 528 417	\$514 543 488	\$198 226 168
three	\$246 280 212	\$608 737 534	\$493 490 563 337 407	\$444 678 508	\$546 621 519	\$224 269 207
four	\$248 319 232	\$703 827 620	\$543 540 613 448 520	\$448 731 569	\$596 650 525	\$272 313 235

Mobile Family Units

bedrooms	natural gas	electricity	fuel oil	propane	wood	coal
	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%	100% 75%
one	\$108 219 164	\$483 569 426	\$388 378 450 284 337	\$438 522 391	\$181 207 156	\$162 191 144
two	\$242 268 201	\$594 695 521	\$473 441 548 345 411	\$438 638 478	\$236 259 194	\$208 239 179
three	\$273 303 227	\$621 790 592	\$532 524 623 393 467	\$440 725 543	\$271 311 233	\$280 287 215
four	\$300 341 255	\$734 884 663	\$602 582 698 440 524	\$472 812 690	\$316 363 272	\$303 335 251

3. Replacement pages for the corrected notice of amendment will be submitted to the Secretary of State for the December 31, 1990 deadline.



Director, Social and Rehabilitation Services

Certified to the Secretary of State December 14, 1990.

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

In the matter of the	)	NOTICE OF THE ADOPTION OF
adoption of Rules I and II	)	RULES I AND II AND THE
and the amendment of Rules	)	AMENDMENT OF RULES
46.25.101, 46.25.751 and	)	46.25.101, 46.25.751 AND
46.25.752 pertaining to	)	46.25.752 PERTAINING TO
general relief medical	)	GENERAL RELIEF MEDICAL
assistance	)	ASSISTANCE

TO: All Interested Persons

1. On November 15, 1990, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rules I and II and the amendment of Rules 46.25.101, 46.25.751 and 46.25.752 pertaining to general relief medical assistance at page 2033 of the 1990 Montana Administrative Register, issue number 21.

2. The Department has amended Rules 46.25.101 and 46.25.751 as proposed.

3. The Department has adopted [Rule I] 46.25.753, USE OF DESIGNATED REVIEW ORGANIZATIONS, and [Rule II] 46.25.754, FAIR HEARINGS, as proposed.

4. The Department has amended the following rule as proposed with the following changes:

46.25.752 SCOPE OF GENERAL RELIEF MEDICAL ASSISTANCE

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

~~(b) inpatient or residential psychiatric services~~ FOR INDIVIDUALS UNDER 21 YEARS OF AGE.

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

~~(35) Prior authorization must be received prior to The department may require prior authorization for services rendered within the period of the treatment of the serious medical condition except for covered emergency services rendered within 90 days prior to application. THE PROVIDER MUST OBTAIN AUTHORIZATION FOR INPATIENT SERVICES FROM THE DEPARTMENT OR ITS DESIGNEE PRIOR TO PAYMENT.~~

~~(6) Emergency services will only be reimbursed if:~~

~~(a) reviewed and approved by a designated review organization; and~~

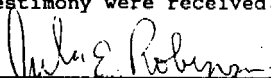
~~(b) the care is an allowable service;~~

~~(76) The department will review the medical necessity of hospitalization for acute care.~~

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA

IMP: Sec. 53-3-310, 53-3-313 and 53-2-803 MCA

5. No written comments or testimony were received.



Director, Social and Rehabilitation Services

Certified to the Secretary of State December 14, 1990.

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

In the matter of the)	
adoption of Rule 46.30.1549)	
pertaining to child support	)	CORRECTED NOTICE OF
enforcement procedures and	)	ADOPTION
administration)	

TO: All Interested Persons

1. On July 12, 1990, the Department of Social and Rehabilitation Services published notice of the proposed adoption of Rule 46.30.1549 pertaining to child support enforcement procedures and administration at page 1337 of the 1990 Montana Administrative Register, issue number 13.

2. The notice of adoption for Rule 46.30.1549, SUPPORT GUIDELINE TABLE/FORMS, Worksheet #2, incorrectly listed the annual child support obligation formula at number 1. The worksheet should appear as follows:

(c) WORKSHEET #2
SPLIT CUSTODY

	<u>Mother</u>	<u>Combined</u>	<u>Father</u>
1. Annual child support obligation (line 12 15, Worksheet #1)		_____	
2. Percent of resources (line 3 divided by line 4, Worksheet #1)	_____ %		_____ %
3. Parent's share of children (number of children with each parent divided by total children)	_____ %		_____ %
4. Pro-rated basic obligation for children with each parent (multiply line 1 by line 3)	_____ %		_____ %
5. Mother's adjusted obligation (line 2, times line 4, of father column)	_____		

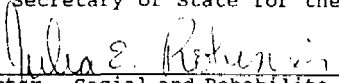
6. Father's adjusted obligation _____
(line 2, times line 4, of
mother column)

7. Monthly adjusted support _____
obligation (lines 5 and 6
each divided by 12) _____

* * * * *

8. Amount to be paid to other _____
parent (subtract lesser
amount on line 7 from the
greater)

3. Replacement pages for the corrected notice of
amendment will be submitted to the Secretary of State for the
December 31, 1990 deadline.



Director, Social and Rehabilita-
tion Services

Certified to the Secretary of State _____ December 14 _____, 1990.

VOLUME NO. 43

OPINION NO. 78

FEES - Collection of annual fee established for refuse disposal district;
REFUSE DISPOSAL DISTRICTS - Collection of annual fee established for;
MONTANA CODE ANNOTATED - Sections 7-13-231, 7-13-233;
OPINIONS OF THE ATTORNEY GENERAL - 43 Op. Att'y Gen. No. 46 (1989), 42 Op. Att'y Gen. No. 21 (1987), 40 Op. Att'y Gen. No. 45 (1984), 40 Op. Att'y Gen. No. 22 (1983).

HELD: The entire annual fee established for a refuse district may be collected on the tax notices due in the initial year of operation, even though services will be provided for only a portion of that calendar year.

November 30, 1990

John C. McKeon
Phillips County Attorney
P.O. Box 1279
Malta MT 59538-1279

Dear Mr. McKeon:

You have requested my opinion concerning the following question:

May the entire annual fee established for a refuse disposal district be collected on the tax notices due in the initial year of operation, even though services will be provided for only a portion of that calendar year?

As you are aware, the board of directors of a refuse disposal district (the board) is authorized by section 7-13-231, MCA, to defray the cost of maintenance and operation of the district by establishing a fee for service. It is the duty of the Department of Revenue (the department) to collect this fee by placing the appropriate amount on the tax notices. § 7-13-233, MCA. Your question is whether the board may have the department assess, on the November 1991 tax notices, the entire annual fee which reflects 12 months of service in calendar year 1991, when service will not actually begin until completion of the refuse disposal site in July 1991.

The only statutory limitation on the method of collecting service fees is section 7-13-233, MCA, which requires the department to place the amount of the fee on the tax notices in the month service begins. Thus, no fee can be assessed in advance of actual commencement of the service. See 40 Op. Att'y Gen. No. 45 at 180 (1984). According to the facts you have

Montana Administrative Register

24-12/27/90

presented, the refuse disposal site will have been in operation for several months when the tax notices are sent out in November 1991. The board's proposed method of fee assessment will therefore not conflict with section 7-13-233, MCA.

None of the statutes governing refuse disposal districts mandate that assessment fees accrue on a monthly basis only for those months in which services are provided. In fact, the nature of assessment fees is such that an annual charge for the first year of operation would be fully consistent with their intended purpose. Unlike taxes, assessment fees are levied against specific property according to the benefit actually conferred. Vail v. Custer County, 132 Mont. 205, 217, 315 P.2d 993, 1000 (1957); 43 Op. Att'y Gen. No. 46 (1989); 42 Op. Att'y Gen. No. 21 at 76 (1987).

[T]he dominant purpose of an assessment is not to require a property owner to pay the cost of a public improvement, but to require him to reimburse the city for an expenditure which enhanced the value of his property.

70A Am. Jur. 2d Special or Local Assessments § 21, at 1144.

In a prior opinion, Attorney General Greely held that refuse disposal fees go not to individuals but to the property itself, so that even nonusers must pay assessment fees. 40 Op. Att'y Gen. No. 22 at 85 (1983). It follows that the benefit conferred goes not to the property owner personally, but to the property itself in that the availability of the service enhances the value of the property. Accrual of such a benefit is not dependent upon actual use. I find no inconsistency between the board's proposed method of assessment and the purpose of the fee, which is to reimburse the county for enhancing the value of property.

THEREFORE, IT IS MY OPINION:

The entire annual fee established for a refuse district may be collected on the tax notices due in the initial year of operation, even though services will be provided for only a portion of that calendar year.

Sincerely,



MARC RACICOT
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1990. This table includes those rules adopted during the period October 1, 1990 through December 31, 1990 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 September 30, 1990, 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 1990 Montana Administrative Register.

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- 2.13.102 Use of the State Telecommunication Systems, p. 397, 928
- 2.21.1812 Exempt Compensatory Time, p. 2062
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- 2.43.302 and other rules - Montana's Retirement Systems - State Social Security Program - Purchasing Service Credit - Post-retirement Benefit Adjustments - Return to Covered Employment After Retirement, p. 1999, 994A, 1250
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- I-XI Organization and Board Meetings of the State Fund - Establishment of Premium Rates, p. 1975

AGRICULTURE, Department of, Title 4

- I-LV Montana Agricultural Chemical Ground Water Protection Act, p. 1199
- 4.12.1012 Grain Fee Schedule, p. 1056, 1452
- 4.12.1229 Fees Established for Service Samples, p. 2065

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- I-VI Pricing of Noncompetitive or Volatile Lines, p. 2067
- I-VII Loss Cost System in Property-Casualty Lines Other Than Workers' Compensation, p. 1806, 2171
- I-XVI Long-term Care Insurance, p. 1990
- 6.6.505 and other rules - Medicare Supplement Insurance Minimum Standards, p. 1285, 1688

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- 8.8.2804 and other rules - Licensing Requirements - Contracts and Penalties - Boxing Contestants - Physical Examination - Ring - Equipment - Disciplinary Actions - Relationship of Managers and Boxers, p. 765, 1143

(Board of Chiropractors)

- I-V Applications - Minimum Requirements for Certification - Approval of Training Programs - Recertification - Fees of Impairment Evaluators, p. 399, 1453
- 8.12.601 and other rules - License Applications - Educational Standards for Licensure - License Examinations - Temporary Permits - Renewals - Unprofessional Conduct Standards - Reinstatement of Licenses - Disciplinary Actions - Recordation of License - Definitions, p. 258, 995
- 8.12.601 and other rules - Applications - Renewal Fees - Consolidating Board Fees Into One Central Rule, p. 769, 1144, 1251

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- 8.14.401 and other rules - Practice of Cosmetology - Booth Rentals, p. 658, 1145
- 8.14.605 and other rule - Curriculum for Students - Fees, p. 1644

(Board of Hearing Aid Dispensers)

- 8.20.401 Traineeship Requirements and Standards, p. 771, 1698

(Board of Horse Racing)

- 8.22.304 and other rules - Rules of Procedure - General Rules - Occupational Licenses - General Conduct of Racing - Medication - Corrupt Practices and Penalties - Trifecta Wagering, p. 1500, 1891

(Board of Landscape Architects)

- 8.24.409 Fee Schedule, p. 1062, 1699

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