MONTANA ADMINISTRATIVE REGISTER

1991 ISSUE NO. 24
DECEMBER 26, 1991
PAGES 2516-2669

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 24

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM 2.21.6607 and 2.21.6609, the amendment of ARM 2.21.6606, 2.21.6608, and the adoption of new rules relating to record keeping	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED REPEAL OF ARM 2.21.6607 AND 2.21.6609, THE AMENDMENT OF ARM 2.21.6606, 2.21.6608, AND THE ADOPTION OF NEW RULES RELATING TO RECORD KEEPING

TO: All Interested Persons.

1. On Wednesday, January 22, 1992 at 9:00 a.m., in Room 136, Mitchell Building, Helena, Montana, a public hearing will be held to consider the repeal of ARM 2.21.6607 and 2.21.6609, the amendment of ARM 2.21.6606, 2.21.6608 and the adoption of new rules relating to record keeping.

2. The rules proposed to be repealed are on pages 2-1512 and 2-1513 of the Administrative Rules of Montana.

3. The proposed new rules provide as follows:

RULE I ADOPTION OF AGENCY POLICY (1) A department must adopt a procedure which is consistent with this subchapter and which contains, at a minimum, the following provisions:

(a) a list of the types of records which are maintained, pursuant to records management procedures found in Chapter 800, Montana Operations Manual, Volume I;

(b) a statement restricting access to confidential personnel records to those with a job-related purpose for viewing or using the records;

(c) a list or description of those with access to personnel records which includes the employee, and any limitations on that access;

(d) the acceptable location of records in the agency; and,

(e) security procedures for the records.

(2) The policy must be adopted and approved by the Department of Administration, as provided in ARM 2.21.1203, no later than 90 days after the effective date of this policy.

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

RULE II ACCESS TO EMPLOYEE PERSONNEL RECORDS (1) All employee personnel records are confidential and access is restricted, except an employee's position title, dates and duration of employment and salary which are public information and must be released on request. An agency may not require justification for the request. An agency may require that the request be in writing.

(2) Agencies must restrict access to confidential records to protect individual employee privacy.

(3) In addition to access provided in this chapter and a department procedure, the following provisions will apply to employee personnel records:

(a) The employee has access to all of his or her employee personnel records. An employee may file a written response to information contained in employee personnel records which becomes a permanent part of the record. The response must be filed within 10 working days of the date on which an employee is made aware of the information by the immediate supervisor.

(b) Information collected regarding medical examinations or inquiries must be treated as confidential medical records in compliance with the Americans with Disabilities Act (ADA) and collected and maintained on separate forms in separate files from employee personnel records. As provided in the ADA, access is restricted to supervisors and managers when identifying restrictions on the employee's work or duties or identifying necessary accommodations; first aid and safety personnel, when appropriate, if the disability might require emergency treatment, and on request from government officials investigating compliance with the ADA.

(c) Nothing in this rule prohibits those having authorized access to employee personnel records as provided in this rule or in any agency policy, from relying on the content of those records when responding to a request for employment information from organizations to which the employee has applied for employment.

(d) The office of the legislative auditor has access to employee personnel records pursuant to 5-13-309, MCA, for purposes of auditing state agencies.

(e) The human rights commission, department of labor and industry, has access to employee personnel records directly related to complaints of discrimination.

(f) The professional staff of the state personnel division has access to confidential records when gathering summary data on personnel programs or systems or to provide technical assistance at the request of an agency.

(g) Employee personnel records, as defined in this policy, do not include documents, information or other evidence developed as part of an investigation. Investigations may include, but are not limited to, grievance investigations, violation of agency rules, policies and procedures, or matters which may result in civil or criminal prosecution. Access to such documents shall be determined on a case by case basis, balancing the constitutional guarantees of The Right to Privacy, Art. II, Sec. 10, and The Public's Right to Know, Art. II, Sec. 9.

(h) Others may obtain access to employee personnel records only with the employee's informed and written permission or with a valid legal order. The agency will inform the employee when a valid legal order has been received allowing access to employee's personnel records.

(i) Fees may be charged to copy employee personnel records.

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

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

2.21.6606 POLICY AND OBJECTIVES (1) It is the policy of the state of Montana~~:~~ to collect and maintain employee personnel records while ~~(a) to~~ protecting an employee's right of privacy~~, as well as the public's right to know, in the collection and maintenance of personnel data,~~ pursuant to Article II, Section ~~9 and~~ 10 of the constitution of the state of Montana; and ~~principles developed by the 1974 federal privacy protection study commission;~~

~~(b)~~ (a) to insure employee awareness of ~~data~~ records held; access to records, and to allow ~~employees to~~ correction ~~or dispute data~~ of records;

~~(c)~~ (b) to restrict access to confidential employee personnel ~~data~~ records to only those with a job-related purpose for viewing or using the records. Others may have access to confidential records only with the informed and voluntary consent of the employee or with a constitutionally-valid legal order.~~; and~~

~~(d) not to make job-related decisions about an employee on the basis of secret files.~~

(2) It is the objective of this policy to provide minimum standards for employee record keeping and to require the adoption of a policy on employee record keeping by each department or agency. The department or agency policy must be adopted in compliance with this policy and in accordance with Title 2, Chapter 6, Montana code annotated, related to records management.

~~(b) collect and store personnel data which is relevant to an agency's purpose and to insure that records are accurate, timely, complete;~~

~~(c) inform employees about what personnel data is collected, why it is collected and who will have access to the information;~~

~~(d) provide security systems which to limit access to data and to operate under principles which govern who should have access to personnel data and when they should have access;~~

~~(e) grant employees the right to correct or dispute data;~~

~~(f) disclose confidential personnel data outside the agency only with the informed and voluntary consent of the employee or under a constitutionally valid order;~~

~~(g) not make job-related decisions about an employee on the basis of secret files. (Eff. 12/18/81.)~~

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

2.21.6608 DEFINITIONS As used in this sub-chapter the following definitions apply:

(1) "Access" means permission to view and use records.

(2) "Confidential records" means records concerning an employee to which there is restricted access.

(3) "Document" means an object upon which information is written, transcribed or recorded.

~~(1)~~(4) "Employee personnel ~~documents~~ record" means ~~proper documents maintained by each agency containing personnel data on~~

~~employee.~~ information relating to an employee's employment with the state of Montana or an agency of the state. An employee personnel record may be a paper document or it may be information maintained in an information system such as the payroll/personnel/position control system (P/P/P system).

Other programs including, but not limited to, Public Employees Retirement System (PERS), worker's compensation or unemployment insurance, develop records relating to an employee which are not part of the employee personnel record as defined in this policy.

(5) "Payroll/Personnel/Position control system (P/P/P)" means the automated system established by the state of Montana to maintain some types of personnel records for state employees.

(6) "Records" means a body of recorded information. This information may be manually or electronically recorded and maintained.

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

5. The Employee Record Keeping policy has not been updated for approximately 10 years. It is reasonably necessary to make the changes proposed in this notice to address the developing of issues of confidentiality and privacy rights of employees relating to their records. The confidential nature of most employee personnel records needs to be established. Limits on access to records need to be defined.

On a practical level, record keeping practices vary widely between departments to accommodate such factors as the organizational structure of the department, geographic location of employees and managers, the existence and use of various information systems, and historical practices and policies.

The proposed rules would require each department or agency to establish a policy delineating its record keeping practices. It does not require any department or agency to adopt a new record keeping system. Instead, the proposed rules establish the principles the state will follow in the collection and maintenance of employee personnel records and designate who may have access to those records. The agency procedures must incorporate these principles.

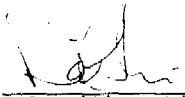
6. Interested parties may submit their data, views, or arguments concerning the proposed amendment to:

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

no later than January 29, 1992.

5. Liz Hayden, Personnel Policy Specialist, State Personnel Division, Department of Administration, Mitchell

Building, Helena, Montana, 59620, has been designated to preside over and conduct the hearing.



Dal Smilie, Chief Legal Counsel
Department of Administration

Bob Marks, Director
Department of Administration

Certified to the Secretary of State December 16, 1991.

BEFORE THE STATE COMPENSATION MUTUAL INSURANCE FUND
OF THE STATE OF MONTANA

In the Matter of the proposed adoption of new Rules I through XVII relating to the organization of the State Fund, public participation, board meetings and the establishment of premium rates.	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULES I THROUGH XVII RELATING TO THE ORGANIZATION OF THE STATE FUND, PUBLIC PARTICIPATION, BOARD MEETINGS AND THE ESTABLISHMENT OF PREMIUM RATES

TO: All Interested Persons:

1. On January 15, 1992, the State Compensation Mutual Insurance Fund will hold a public hearing at 2:00 p.m., in Room 303 of the State Compensation Mutual Insurance Fund Building, 5 South Last Chance Gulch, Helena, Montana, to consider the proposed adoption of Rules I through XVII.

2. The proposed rules were adopted as emergency rules effective on December 3, 1991. The proposed rules will generally replace the state fund's rules found in Title 2, chapter 55 of the Administrative Rules of Montana, as they have been declared invalid by the Lewis and Clark County First Judicial District Court in Montana Health Care Association, a Montana nonprofit corporation; Discovery Care Centre, a Montana corporation; and Valley Health Care Center, a Minnesota corporation, vs Montana Board of Directors of the State Compensation Mutual Insurance Fund; Montana Department of Administration; Patrick Sweeney, Executive Director of the State Compensation Mutual Insurance Fund; and State Compensation Mutual Insurance Fund; Cause No. CDV-91-1042, decided November 26, 1991. The rules will be repealed in due course by the state fund board of directors.

3. The proposed rules are as follows:

RULE I. ORGANIZATIONAL RULE (1) Organization of the State Compensation Mutual Insurance Fund:

(a) History. The State Compensation Mutual Insurance Fund (state fund) was implemented under the provisions of 39-71-2313, MCA (1989), on January 1, 1990. Its functions and responsibilities are set forth in Title 39, chapter 71, part 23, MCA.

(b) Departments. The state fund consists of the following departments:

(i) Underwriting department;
(ii) Benefits department;
(iii) Legal department;
(iv) Administrative and finance department; and
(v) Management information services department.

(c) Board of Directors. The board of directors, appointed by the governor, is responsible for the management and control of the state fund.

(d) President. The president, appointed by the board of directors, has general responsibility for the operations of the state fund.

(e) Executive Vice President. The executive vice president has the responsibility of assisting the president in the implementation of policy and procedures under the direction of the president.

(f) Executive Staff. The executive staff performs general administrative functions for the president and vice president of the state fund. Its activities include, but are not limited to, personnel, special projects, and support.

(2) Functions of Department.

(a) Underwriting Department. The underwriting department has the responsibility of underwriting and administering policies of workers' compensation insurance. Its activities include marketing, issuance, and cancellation of policies; safety; audits; and employer services regarding policies of insurance.

(b) Benefits Department. The benefits department has the responsibility for all aspects of administering and adjusting claims for benefits.

(c) Legal Department. The legal department is responsible for providing legal services to the state fund.

(d) Administrative and Finance Department. The administrative and finance department has the responsibility of performing accounting and related services, providing administrative support, and assisting in compliance with state budgetary laws and procedures.

(e) Management Information Services Department. The management information services department has the responsibility for collection, analysis and dissemination of data, and responsibility for programming and hardware administration.

(3) Information or submissions. General inquiries regarding the state fund may be addressed to the executive vice president. Specific inquiries regarding the functions of each department may be addressed to the vice president who heads the particular department. The address of the State Fund is 5 South Last Chance Gulch, Helena, Montana 59601.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 2-4-201, MCA

Rationale: Section 2-4-201(1), MCA, requires each state agency to adopt as a rule a description of its organization, stating the general course and method of its operation and methods whereby the public may obtain information or make submissions or requests. Rule I is necessary to effectuate this statutory requirement. It describes the operating organization of the state fund and provides the method for

obtaining information from and submitting information to the state fund.

RULE II. POLICIES AND OBJECTIVES IN PROVIDING CITIZEN PARTICIPATION IN THE OPERATION OF THE STATE COMPENSATION MUTUAL INSURANCE FUND (1) Participation of the public is to be provided for, encouraged, and assisted to the fullest extent practicable consistent with other requirements of state law and the rights and requirements of individual privacy. The major objectives of such participation include responsiveness of governmental actions to public concerns and priorities, and improved public understanding of official programs and actions. Prior to the adoption, amendment or repeal of rule or policy the state fund shall, where the decision is of significant public interest, give adequate notice that the decision is to be made and provide a means for public participation in the making of the decision.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 2-3-103, MCA

RULE III. GUIDELINES FOR DETERMINATION OF SIGNIFICANT PUBLIC INTEREST (1) The following will be deemed of a significant public interest to require notice and the availability of an opportunity for public participation in the decision making process:

(a) The adoption, amendment or repeal of an administrative rule which sets forth the process, procedure, formula and factors for adopting or changing premium rates for classifications or other administrative rulemaking pursuant to Title 2, chapter 4, MCA.

(b) Premium rate adjustments.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 2-3-103, MCA

RULE IV. GUIDELINES FOR STATE FUND PROGRAMS (1) The state fund shall maintain a current list of interested persons and organizations including any who in writing request inclusion on such list for prior notification of items of significant public interest.

(2) The state fund files, other than personnel files and those files required by law or requirements of personal privacy to remain confidential, are open to public inspection in accordance with established state fund policy. These files are located at the state fund office in Helena. Copies of specific documents are available within a reasonable time for a copying charge plus employee time upon a written request.

(3) One person appointed by the president shall be designated as contact person with the public on a proposed decision or action of significant public interest as enumerated in Rule III. This person should be a state fund employee familiar with the proposed decision or action.

(4) General inquires regarding the state fund may be addressed to the president. Specific inquires regarding the functions of each department or for requests for information may be addressed to the vice president who heads the particular department. The address of the State Fund is 5 South Last Chance Gulch, Helena, Montana 59601.

(5) The listing of specific measures in this section shall not preclude additional techniques for obtaining, encouraging or assisting public participation.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 2-3-103, MCA

RULE V. NOTICE AND MEANS FOR PUBLIC PARTICIPATION

(1) One or more of the following steps, as applicable, shall be taken to assist public participation in decision making or items of significant public interest as enumerated in Rule III:

(a) a proceeding or hearing shall be held in compliance with the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, MCA;

(b) notice shall be mailed to those persons on the list of interested persons in Rule IV above;

(c) a news release, legal advertisement, or other method of publication shall be given to news media which shall include the proposed action, and the date, time and place of the meeting where oral data, views or arguments may be submitted, or the name and address where written data, views or arguments may be submitted concerning the proposed action.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 2-3-103, MCA

RULE VI. AWARDING CONTRACTS (1) Opportunity for citizen involvement in the awarding of contracts shall be provided by observing the laws regarding the awarding of contracts by public agencies. Thus public notice is through the invitation to bid or requests for proposals.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 2-3-103, MCA

Rationale: Sec. 2-3-101, MCA, requires that each agency develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. Rules II through VI are necessary to effectuate this statutory requirement. The rules provide the guidelines under which public participation in state fund programs is determined and facilitated. The rules also provide the method for obtaining information from and submitting information to the state fund, and for public participation in the awarding of contracts.

RULE VII. OPEN MEETINGS (1) All meetings of the state fund board of directors are open to the public, subject to the provisions of Title 2, chapter 3, part 2, MCA. The date,

time, and place of a meeting of the board of directors may be obtained by contacting the State Fund, 5 South Last Chance Gulch, Helena, Montana 59601 or by calling (406) 444-6518. Persons interested in receiving written notice of the meeting and a copy of the agenda should write the president of the state compensation mutual insurance fund at the above address.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 2-3-103, MCA

Rationale: Section 2-3-103, MCA, requires each state agency to develop, by rule, procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. Rule VII is necessary to effectuate this statutory requirement because it provides that the meetings of the state fund board of directors will be open to the public and advises the public of the means of obtaining notice of the meetings.

RULE VIII. METHOD FOR ASSIGNMENT OF CLASSIFICATIONS OF EMPLOYMENTS (1) Risks insured by the state fund must be divided by the state fund into classifications. An individual classification must group together risks so that each classification reflects exposures common to those employers in the classification.

(2) An employer covered by a state fund policy must be assigned a classification according to the type of exposure to risk within the employer's business. The classification generally includes all the various types of labor of the business. If a single classification is not sufficient to describe the risk, more than one classification may be assigned to the employer.

(3) The state fund shall assign its insureds to classifications contained in the classifications section of the state compensation insurance fund policy services underwriting manual issued July 1, 1991. That section of the manual is hereby incorporated by reference. Copies of the classification section of the manual may be obtained from the Underwriting Department of the State Fund, 5 South Last Chance Gulch, Helena, Montana 59601.

AUTH: Sec. 39-71-2316, MCA; IMP: Sec. 39-71-2311 and 39-71-2316, MCA

Rationale: Section 39-71-2311, MCA, requires the state fund to be neither more nor less than self-supporting and that premium rates be set at least annually at a level sufficient to ensure the adequate funding of the insurance program. Section 39-71-2316, MCA, provides that the state fund may adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. The state fund is proposing to adopt Rules VIII through XVII to establish the process, procedure, formulas, and factors for adopting and changing premium rates that ensures that the state fund will be actuarially sound and not more nor less than self-supporting,

and that equitably distributes the costs of the state fund insurance program among its policyholders.

Rule VIII establishes a classification system that groups together employers with a similar exposure to losses. The system establishes each classification as both homogeneous and large enough to provide a meaningful statistical base in order to ensure an equitable distribution of costs. This classification system also ensures the integrity of the data base which is essential to pricing and experience rating. The rule requires the state fund to assign an employer to a classification that best describes the employer's business and includes all the various types of labor. The classification by the employer's general risk is intended to promote safety and loss prevention because grouping employers by the nature of their business provides an industry with the incentive to control its own workers' compensation costs through industrywide safety and loss prevention programs.

RULE IX. CALCULATION OF EXPERIENCE RATES (1) For each classification, the state fund shall calculate an experience rate based upon the experience of the class. The experience rate must be based on a review of the total incurred losses and total payroll in the classification during up to 10 full fiscal years immediately preceding the date of review, adjusted by an expense ratio. "Fiscal year" means the year beginning July 1.

(2) The experience rate for a classification must assume an expense ratio that takes into account operational and administrative costs.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 39-71-2311 and 39-71-2316, MCA

Rationale: Rule IX establishes a procedure by which the state fund may use the past insurance experience of a classification to forecast or predict future losses in order to provide the most appropriate rate of the classification. This process helps to ensure that the costs of providing workers' compensation insurance are equitably distributed among state fund policyholders.

RULE X. CALCULATION OF CREDIBILITY WEIGHTED RATE (1) If the payroll, premium, and losses in a particular classification are not sufficient to provide a meaningful and credible statistical basis for estimating an equitable distribution of costs, the state fund actuary shall determine a credibility weighted rate for each classification.

(2) The credibility weighted rate is assigned to a classification in order to modify the experience rate. It is based on the actuary's determination of the reliability and predictability of the classification's statistical data. In determining the credibility weighted rates, the state fund actuary shall consider the experience rate, existing manual rate, payroll, premium, and losses.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 39-71-2311 and 39-71-2316, MCA

Rationale: Rule X provides a procedure by which the state fund may, if a classification does not have sufficient experience to provide a meaningful statistical base, assign a credibility factor to the classification to arrive at a credibility weighted rate that allows the rate to be more fairly determined.

RULE XI. DETERMINATION OF AGGREGATE REVENUE REQUIREMENTS

(1) In order to determine the premium rate to be charged to an insured covered by the state fund for the following fiscal year, the state fund shall actuarially determine the projected revenue requirements for the year. The projected total revenue must be sufficient to cover:

(a) the value of claims, as determined by actuarial analysis, expected to be incurred as a direct result of covered accidents during the following fiscal year;

(b) operational and administrative expenses, claims adjustment expense related to covered claims, and other expenses required to operate the state fund for the fiscal year; and

(c) an amount sufficient to maintain appropriate contingency reserves and policyholder surplus.

(2) In determining the projected revenue requirements for the following state fund fiscal year, the state fund actuary shall consider:

(a) the present financial condition of the state fund;

(b) trends in the number of accidents incurred during the immediately preceding period of up to 12 years;

(c) trends in the cost of accidents incurred during the immediately preceding period of up to 12 years;

(d) the estimate of investment and other income accruing to the state fund for the following fiscal year;

(e) recent court decisions that may affect the liability of the state fund;

(f) legislative changes in the statutory benefit scheme;

(g) factors relating to maintenance of the policy base of the state fund;

(h) the anticipated changes in covered payroll during the year for which the premium rates will be in effect; and

(i) other factors the state fund considers relevant in establishing an accurate projection of revenue requirements.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 39-71-2311 and 39-71-2316, MCA

Rationale: Rule XI is necessary to ensure that, as required by 39-71-2311, MCA, premium rates are set at a level sufficient to adequately fund the insurance program and predict future costs. The proposed rule requires the state fund, through its actuary, to adequately predict the revenue requirements for the policy year. The rule states the cost elements that must be fully funded through premium collection

and the relevant factors that must be considered in arriving at an accurate projection of aggregate revenue requirements.

RULE XII. PREMIUM RATESETTING (1) Except as provided in subsections (2) through (5), to establish a premium rate for a classification for the following fiscal year, the state fund shall apply a factor to each credibility weighted rate in an amount sufficient to ensure that the aggregate of the premium for all classifications provides an amount sufficient to meet the actuarially determined aggregate revenue projections.

(2) The state fund shall evaluate an individual classification to determine whether the process for setting the premium rate results in an equitable rate based on an analysis of the losses and the premium amount and, if the rate is not equitable, may adjust it so that it is equitable. Payrolls have been determined not to be sufficiently verifiable for the horse racing industry and a fee basis shall be used. The fee shall be based on the aggregate revenue requirements of this classification and allocated among the projected number of industry participants.

(3) The state fund may set a classification's rate at a percentage of the National Council on Compensation Insurance (NCCI) rate based on a factor recommended by the state fund actuary of not more than 80% of the NCCI rate or not less than 50% of the NCCI rate or at the rate of an equivalent class code recommended by NCCI or the state fund actuary. These situations include, but are not limited to:

(a) an industry or occupation new to Montana or the state fund;

(b) an industry or occupation without state fund experience;

(c) an industry or occupation which has changed to the extent that a new classification code is applicable;

(d) an industry or occupation with significant changes in class code definition or application such that a portion of the experience of that classification code would be moved into two or more classification codes. A significant change may be determined by the impact on the experience of the class codes by review of the percent of payroll and liabilities affected, numbers of policyholders, the similarities or differences in experience and premium of those moving into or out of a class code and the feasibility of developing experience-based rates.

(4) The state fund, subject to the approval of the state fund board of directors, may limit the percentage amount of premium rate increases or decreases if the limitation is applied to all classifications and the state fund is maintained on an actuarially sound basis. In establishing a limitation, the state fund may consider such factors as market share, catastrophic or unusual losses, rate stabilization, and economic impact on the state fund.

(5) The state fund may, with concurrence of the state fund board of directors, implement interim premium rate changes. The interim adjustment of the premium rates for classifications may be either experience based for the remainder of the fiscal year as set forth in Rule IX through Rule XII (1) or the same percentage increase or decrease may be applied to each classification's rate. If the interim rate adjustment is experience based, the immediately preceding fiscal year may be excluded in the review of total incurred losses and total payroll as per Rule IX. In an interim rate adjustment, the Board may also use the exact experience utilized to set the rate for the fiscal year as in Rule IX.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 39-71-2311 and 39-71-2316, MCA

Rationale: Rule XII sets forth a process by which the state fund sets a premium rate for an individual classification in order to ensure that the insurance program is self-supporting, as required by 39-71-2311 and 39-71-2316, MCA. The rule in (1) requires the state fund to apply a load factor, either upwards or downwards, in order to raise sufficient premium to satisfy aggregate revenue projections.

The rule in (2) also allows the state fund to analyze an individual classification to determine if the rate is fair and to adjust it if it is not appropriate, based on an analysis of the losses and the premium amount. This process is necessary to allow the state fund to set its rates so that one classification is not assuming more than its equitable share of the costs of providing insurance. A fee-based method of premium is necessary for the horse racing industry as the state fund has had a policy contract with the board of horse racing and their licensees for several years. Even though they initially came to us and requested a different method of establishing rates for the horse racing industry, they are now considering not continuing that relationship. The state fund wishes to continue the fee based-system for the horse racing industry as a fee-based system is more verifiable than a payroll-based method.

Rule XII(3) is necessary to provide a process, procedure, formulas, and factors for determining premium rates for a new or changed industry or occupation by using NCCI rates as a basis or by following the state fund actuary's recommendations when the industry or occupation is new, lacks state fund experience, has changed to the extent a new classification code is applicable or has undergone a significant change in class code definition or application.

Rule XII(4) allows the state fund board to set a cap on rate changes, either upwards or downwards, in order to ensure that a rate for a classification does not fluctuate too widely.

Rule XII(5) is necessary to allow the state fund to implement an interim rate adjustment with the board's concurrence. It is statutorily required that the state fund

must be neither more nor less than self-supporting, that premium rates be set at least annually to ensure adequate funding of the state fund and that the board operate the state fund as would the governing body of a private mutual insurance carrier. This rule provides the method by which the board could implement an interim rate adjustment if financial conditions warrant an interim adjustment. An interim rate adjustment may be either experience based or on a percentage increase or decrease applied to each classification rate. An experienced-based rate adjustment on an interim basis may utilize the exact experience used to previously set the rate for the entire year in that the adjustment is to allow collection of adequate premium as required by revenue needs for the entire fiscal year. In addition, the experience from the most recent fiscal year could be excluded in an interim rate adjustment as it may be incomplete.

RULE XIII. EXPERIENCE MODIFICATION FACTOR (1) An insured, whose premium level qualifies, must be assigned an experience modification factor that reflects the insured's actual experience in comparison to the expected experience. "Experience modification factor" means a factor derived from an evaluation of payroll and accident experience in previous policy periods that is based on the formula of a national rating organization.

(2) The state fund shall use the methods used by the workers' compensation rating organization to identify a qualified insured and determine the insured's experience modification factor in order to reward an insured with a good safety record and penalize an insured with a poor safety record.

(3) The state fund may use only experience incurred within the state in determining an experience modification factor.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 39-71-2311 and 39-71-2316, MCA

Rationale: Rule XIII allows the state fund to provide the individual insured with a rate that best indicates the insured's own potential for incurring claims. This ensures that the insured's premium rate is appropriate for the insurance protection being provided and also provides an incentive for loss prevention.

RULE XIV. VARIABLE PRICING WITHIN A CLASSIFICATION

(1) Effective July 1, 1991, the state fund shall implement variable pricing categories within individual classifications based upon actuarially determined aggregate revenue requirements, annual premium threshold, and the insured's most recent policy effective date, loss ratio and qualification for experience modification. An analysis shall be conducted annually, and will result in placement of insureds into a pricing category for the next fiscal year.

(2) The annual analysis will include a determination of each insured's most recent policy effective date; earned premium for the most recent complete fiscal year; combined loss ratio, including any prior associated policies of up to three of the most recent complete fiscal years; and qualification for experience modification in the next fiscal year. The annual analysis will also include a variable pricing stabilization review.

(3) Variable pricing stabilization review means an annual analysis of total earned premium, state fund administrative and operating expenses, adequate reserve requirements and other relevant factors, to establish a premium threshold and loss ratio thresholds so as to reward employers with a good safety record and penalize employers with a poor safety record. Any adjustment in the preferred category shall be offset by an adjustment in the equitable category so as to assist the state fund to be neither more nor less than self-supporting.

(4) Insureds will be placed in one of the following three pricing categories established under this rule:

(a) For placement in the preferred category with the lowest premium rate, all of the following must apply:

(i) the insured's most recent policy effective date is prior to the beginning of most recent complete fiscal year;

(ii) the insured's premium in the most recent complete fiscal year is more than the threshold determined by a variable pricing stabilization review;

(iii) the insured's combined loss ratio for up to three of the most recent complete fiscal years places the insured in the lowest rated variable pricing category as determined by a variable pricing stabilization review; and,

(iv) the insured is not qualified for experience modification in the next fiscal year.

(b) For placement in the select category with the middle premium rate, any one of the following must apply:

(i) the insured's most recent policy effective date is subsequent to the beginning of the most recent complete fiscal year; or,

(ii) the insured's premium in the most recent complete fiscal year is less than the threshold determined by a variable pricing stabilization review; or,

(iii) the insured will qualify for experience modification in the next fiscal year; or,

(iv) the insured's most recent policy effective date is prior to the beginning of the most recent complete fiscal year; and all of the following apply:

(A) the insured's premium in the most recent complete fiscal year is more than the threshold determined by a variable pricing stabilization review;

(B) the insured's combined loss ratio for up to three of the most recent complete fiscal years is average as determined by a variable pricing stabilization review; and,

(C) the insured is not qualified for experience modification in the next fiscal year.

(c) For placement in the equitable category with the highest premium rate, all of the following must apply:

(i) the insured's most recent policy effective date is prior to the beginning of the most recent complete fiscal year;

(ii) the insured's premium in the most recent complete fiscal year is more than the threshold determined by a variable pricing stabilization review;

(iii) the insured's combined loss ratio for up to three of the most recent complete fiscal years places the insured in the highest rated variable pricing category as determined by a variable pricing stabilization review; and,

(iv) the insured is not qualified for experience modification in the next fiscal year.

(5) Notwithstanding paragraphs (1) through (4), the state fund may at any time place an insured in a pricing category with a higher premium rate based upon consideration of other relevant factors including, but not limited to:

(a) timeliness of the insured's payroll reporting and premium payment history;

(b) an insured's prior policy was cancelled for nonsubmission of payroll reports, nonpayment of premium, failure to pay increased deposit when required, failure to cooperate in an audit or material misrepresentation;

(c) the prior insolvency of the insured or any of the insured's principals;

(d) determination that the insured is an increased risk pursuant to a state fund evaluation;

(e) the insured qualifies for the safety incentive or loss prevention program but refuses or fails to adequately implement or maintain a loss control program;

(f) the work is primarily performed at locations other than the insured's principal job site or place of business and the insured does not have control over the job site or place of business;

(g) the insured has a history of preventable losses;

(h) the insured or any of its principals have a prior history with any insurer where the most recent experience modification reflects a factor of greater than 1.00.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 39-71-2311 and 39-71-2316, MCA

Rationale: This rule implements section 39-71-2311, MCA, requiring the state fund to be neither more nor less than self-supporting by establishing premium levels sufficient to ensure the adequate funding of the insurance program. The rule incorporates the additional factors for variable pricing added by the legislature in 1991 to include timely reporting of payroll and premium payments as well as other relevant factors. In addition, the rule sets out the criteria by which an insured becomes qualified for one of the three pricing

categories, and provides an incentive for an insured to develop and maintain a good safety record.

RULE XV. MEDICAL DEDUCTIBLE (1) The state fund offers an annual medical deductible plan in increments of $500, $1,000, $1,500, $2,000 and $2,500 per claim. This plan allows qualified employers to reimburse the state fund for a selected deductible amount of the medical costs of each claim in exchange for a premium discount.

(2) To qualify for the plan, an employer must:

(a) file an endorsement form, provided by the state fund; and

(b) have annual premium which equals or exceeds the chosen deductible amount; and

(c) demonstrate the ability to promptly pay the deductible amounts by not having a poor premium payment history with the state fund.

(3) The state fund is responsible for initial payment of medical benefits; then bills the employer for reimbursement up to the chosen deductible amount. The state fund may cancel the employer's policy for failure to reimburse the state fund for expended medical deductible amounts.

AUTH: Sec. 39-71-2316, MCA; IMP: Sec. 39-71-434, 39-71-2311, MCA

Rationale: To describe the statutorily required medical deductible plan offered by the state fund and set forth qualifying criteria for individual insureds.

This rule is necessary in that the 1991 legislative session made offering the medical deductible plan mandatory on the insurer's part rather than discretionary. Therefore, the state fund needs qualifying criteria to fully implement this plan for its policyholders.

RULE XVI. VOLUME DISCOUNT (1) The state fund may provide to insureds covered by the state fund a fiscal year percentage reduction of premium, based on premium volume.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 39-71-2311 and 39-71-2316, MCA

Rationale: Rule XVI allows the state fund to provide a volume discount for its insureds based on their premium volume. This type of discount is offered by other workers' compensation insurers. The rule is necessary to allow the state fund to give its larger insureds credit for the economies of the scale in expenses to service them. The rule also allows the state fund to develop and maintain its market share in order to attract and keep the better risks that offset the poorer risks which the state fund, as the insurer of last resort, is required by 39-71-2311, MCA, to insure.

RULE XVII. MINIMUM YEARLY PREMIUM (1) As permitted by 39-71-2316, MCA, the state fund, subject to the approval of the state fund board of directors, may charge a minimum yearly

premium in order to cover its administrative costs for coverage of a small employer.

(2) In calculating a minimum yearly premium, the state fund shall identify the direct and indirect costs associated with the administration of all insurance policy contracts. The costs then must be divided by the number of employers insured by the state fund. Each employer insured by the state fund must be assessed and pay no less than the minimum yearly premium.

AUTH: Sec. 39-71-2315 and 2316, MCA; IMP: Sec. 39-71-2311 and 39-71-2316, MCA

Rationale: Rule XVII is necessary to establish the method whereby the state fund may set a minimum yearly premium, as allowed by 39-71-2316, MCA, to recoup the costs of servicing a smaller policyholder. The rule clarifies that the costs of administering all policies must be added together and all state fund insureds must pay at least the amount established by dividing those costs by the number of insureds.

4. Interested persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to state fund attorney Nancy Butler, Legal Department, State Compensation Mutual Insurance Fund, 5 South Last Chance Gulch, Helena, Montana 59601, no later than January 23, 1992.

5. Nancy Butler of the State Fund Legal Department and John L. King of the Underwriting Department have been designated to preside over and conduct the hearing.

Dal Smilie, Chief Legal Counsel
Rule Reviewer

James T. Harrison, Jr.
Chairman of the Board

Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State December 16, 1991.

BEFORE THE DEPARTMENT OF AGRICULTURE
STATE OF MONTANA

In the matter of the proposed adoption of New Rules pertaining to the importation of Purple Loosestrife and Wand Loosestrife and hybrids thereof into Montana	NOTICE OF PROPOSED ADOPTION OF NEW RULES PERTAINING TO THE IMPORTATION OF PURPLE LOOSESTRIFE AND WAND LOOSESTRIFE AND HYBRIDS THEREOF INTO MONTANA

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 25, 1992, the Department of Agriculture proposes to adopt new rules relating to the importation of Purple and Wand Loosestrife and their hybrids into Montana.

2. The proposed new rules will read as follows:

RULE I REGULATED LOOSESTRIFE ARTICLES Regulated articles include all varieties and hybrids of plants, seeds, and propagative plant parts of Lythrum salicaria commonly known as Purple Loosestrife, and Lythrum virgatum commonly known as Wand Loosestrife. Common horticultural variety names include, but are not limited to: The Beacon, Fire Candle, Brightness, Lady Sackville, Mr. Robert, Robert's, Happy, Roseum Superbum, var. Tomentosum, Purple Spire, Rose Queen, The Rocket, Morden Rose, and Dropmore Purple.

AUTH: 80-7-702 MCA IMP: 80-7-701 MCA

RULE II CONDITIONS GOVERNING IMPORTATION OF LOOSESTRIFE ARTICLES - PERMIT Loosestrife Articles may not be imported into Montana unless under Permit issued by the Department. The Department may issue Permits for herbarium, educational, and research purposes provided that there is no threat to Montana,s native plant community. The Permit shall include the name and address of the importer, the botanical and common variety name of the Loosestrife articles, the location in Montana where the Loosestrife articles will be located, and the terms and conditions under which the Loosestrife articles will be kept so as to prevent the introduction of the Articles into Montana's native plant community. The Department may also request other information as it deems necessary.

AUTH: 80-7-702 MCA IMP: 80-7-701 MCA

RULE III FAILURE TO OBTAIN PERMIT OR VIOLATION OF TERMS OF PERMIT Any person who imports Loosestrife Articles into Montana without a Permit, or who violates the terms or conditions under which a Permit was issued shall be subject to penalties provided for in Section 80-7-703 MCA. The Loosestrife Articles may also be subject to confiscation and destruction by the Department at the expense of the violator.

AUTH: 80-7-702 MCA IMP: 80-7-701 MCA

REASON Purple Loosestrife, Lythrum salicaria, and Wand Loosestrife, Lythrum virgatum, have in the past been imported into Montana as landscaping plants. However, it is known that Purple and Wand Loosestrife will choke out native plants in wetlands, eliminate open water and waterfowl nesting sites, and clog irrigation ditches. To address this problem Purple Loosestrife has been declared a Noxious Weed under 7-22-2101 MCA, however such a declaration does not restrict or control the importation of Purple Loosestrife and the closely related Wand Loosestrife into Montana. These rules are necessary to restrict the spread of Purple and Wand Loosestrife into Montana as an adjunct to the Noxious Weed Control Act.

3. Interested persons may present their data, views, or arguments either orally or in writing to O. Roy Bjornson, Montana Department of Agriculture, Plant Industry, Ag/Livestock Building, Capitol Complex, Helena, MT 59620, no later than January 23, 1992.

4. 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 O. Roy Bjornson, Administrator, Department of Agriculture, Ag/Livestock Building, Capitol Complex, Helena, MT 59620, no later than January 23, 1992.

5. 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 agency or subdivision or from any 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 and mailed to all interested persons.

E.M. Snortland, Director
Department of Agriculture

Timothy J. Meloy, Attorney
Rule Reviewer
Department of Agriculture

Certified to the Secretary of State Office December 16, 1991

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

In the matter of the proposed amendment of ARM 6.10.121) NOTICE OF PROPOSED AMENDMENT) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On January 27, 1992, the State Auditor and Commissioner of Securities proposes to amend ARM 6.10.121.

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

6.10.121 REGISTRATION AND EXAMINATION--SECURITIES SALESMEN, INVESTMENT ADVISER REPRESENTATIVES, BROKER-DEALERS, AND INVESTMENT ADVISERS (1) To become registered in this state as a securities salesman or an investment adviser representative, the individual applicant shall pass the National Association of Securities Dealers, Inc., Uniform Securities Agent State Law Exam or an examination designated by the commissioner. The applicant must also complete an application form described in subsection (2). ~~A/salesman/ applying/as/a/registered/with/an/issuer/does/not/have/to/take/an examination/~~

(2) through (8) remain the same.

3. The rule as proposed to be amended provides in substance that all securities salespersons, including those appointed directly by insurance companies which issue securities in the form of variable insurance products, will be required to take and pass an examination to become registered and sell as a securities salesperson. This amendment is necessitated by legislation enacted by the 1991 Montana Legislature which provided for the regulation of variable annuity products by the Montana Securities and Insurance Departments (Chapter No. 228). Exemptions to the examination requirement will continue to be considered pursuant to ARM 6.10.121(8).

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to David Barnhill, Deputy Securities Commissioner, Montana Securities Department, P.O. Box 4009, Helena, Montana 59604, no later than January 24, 1992.

5. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not 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.

6. The authority for the amendment is 30-10-107, MCA and the rule implements 30-10-201, MCA.

Andrea "Andy" Bennett
State Auditor and
Commissioner of Securities

Susan C. Witte
Rule Reviewer

Certified to the Secretary of State December 12, 1991

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of a new rule pertaining to Water safety provisions.) NOTICE OF PROPOSED ADOPTION OF A NEW RULE PERTAINING TO WATER SAFETY PROVISIONS. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 25, 1992, the Board of Outfitters proposes to adopt the above-stated new rule.

2. The proposed new rule will read as follows:

"I SAFETY PROVISIONS (1) All watercraft or vessels are required to carry on board a supplementary means of power, such as an extra motor or extra oars that will adequately motivate the craft.

(2) Each watercraft or vessel shall contain a serviceable U.S. coast guard approved personal floatation device for each person on board. Children under 12 are required to wear a personal floatation device.

(3) Each watercraft, vessel, primary, secondary and temporary base of operation will possess a basic first aid kit.

(4) Outfitters and guides are required to hold a current basic first aid or cardiopulminary resuscitation card within thirty (30) days of licensure."

Auth: Sec. 37-47-201, MCA; IMP, Sec. 37-47-201, MCA

REASON: This rule is being proposed to establish requirements to safeguard safety of persons using services of outfitters.

3. Interested persons may present their data, views or arguments concerning the proposed adoption in writing to the Board of Outfitters, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than January 23, 1992.

4. If a person who is directly affected by the proposed adoption wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Outfitters, Arcade Building, 111 North Jackson, Helena, Montana 59620-0407, no later than January 23, 1992.

5. If the Board receives requests for a public hearing on the proposed adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed adoption, 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 directed 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 240 based on the 2400 licensees in Montana.

BOARD OF OUTFITTERS
IRVING (MAX) CHASE, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 16, 1991.

BEFORE THE BOARD OF PSYCHOLOGISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of new rules pertaining to continuing education requirements	) NOTICE OF PUBLIC HEARING ON) PROPOSED ADOPTION OF NEW) RULES PERTAINING TO THE) PRACTICE OF PSYCHOLOGY

TO: All Interested Persons:

1. On January 21, 1992, at 9:00 a.m. a public hearing will be held in the Social and Rehabilitation Services Auditorium, 111 Sanders, Helena, Montana, to consider the proposed adoption of new rules pertaining to continuing education requirements.

2. The proposed new rules will read as follows:

"I. CONTINUING EDUCATION REQUIREMENTS (1) In accordance with 37-17-202, MCA, the Montana board of psychologists hereby establishes requirements for the continuing education of licensed psychologists as a condition of license renewal.

(2) The board/staff will not preapprove continuing education programs or sponsors. Qualifying criteria for continuing education are specified in these rules. It is the responsibility of the licensee to select quality programs that contribute to his/her knowledge and competence which also meet these qualifications.

(3) A continuing education activity must meet the following criteria:

(a) The activity must have significant intellectual or practical content. The activity must deal primarily with substantive psychological issues, psychological skills or laws, or rules and ethical standards related to one's role as a psychologist. In addition, the board may accept continuing education activities from other professional groups or academic disciplines if the psychologist demonstrates that the activity is substantially related to his or her role as a psychologist. The following are examples of activities that typically do not qualify for continuing education credit:

(i) management of a professional practice,
(ii) investments,
(iii) marketing,
(iv) profitability of the practice,
(v) office organization,
(vi) management,
(vii) legislative issues,
(viii) peer review,
(ix) general, non-specific supervision,
(x) general staffing, and
(xi) consultation, except if presented in a study group.

(b) The activity itself must be conducted by an individual or group qualified by practical or academic experience.

(c) All approved formal continuing education courses must issue a program and certificate of completion containing the following information:

(i) full name and qualifications of the presentor,

(ii) title of the presentation attended,

(iii) number of hours and date of each presentation attended, and

(iv) description of the presentation format.

(d) It is the responsibility of the licensee to establish and maintain detailed records of continuing education compliance for a period of three years following submission of a continuing education report."

Auth: Sec. 37-17-202, MCA; IMP, Sec. 37-17-202, MCA

"II CONTINUING EDUCATION PROGRAM OPTIONS (1) Acceptable continuing education may be chosen from subsections (a), (b) or (c) below. Up to twenty of the total continuing education units required can be met by subsection (b) and up to 15 continuing education units can be met by subsection (c).

(a)(i) Any American psychological association approved continuing education activity or program for psychologists that meets new rule I subsections (3)(a) through (c) above will qualify for continuing education credit.

(ii) Credit may be given for workshops and other educational activities offered at professional conferences and conventions sponsored by the American psychological association and its affiliates if the content of such presentations meets the standards established by new rule I subsections (3)(a) through (c) above. General business meetings do not qualify.

(iii) Any other specific activities, i.e. audio tapes or conference/workshops, meeting requirements of new rule I subsections (3)(a) through (c) above.

(b)(i) Documentation of successful completion of the ABPP examination may be submitted in fulfillment of 20 continuing education units.

(ii) Study groups may qualify for continuing education if:

(A) The psychologist submits with the continuing education form an explanation of the applicability of the study topic to the psychologist's practice in order to demonstrate the relevance of the study or case material and to substantiate that the material meets the requirements of continuing education.

(B) The psychologist provides the specific date and time for each study group session submitted for continuing education credit.

(C) At least three other psychologists or mental health professionals attend the activity.

(D) Minutes are kept of each study group meeting and are available to the board of psychologists upon request. The minutes shall include the names of the participants present, the subject matter, and references which relate to any written material utilized. Each such group shall designate an individual to serve as the recorder of the minutes. The name of the recorder shall be noted on the continuing education form.

(iii) Formally organized classes, with preassigned credit and attendance verifiable by transcript, offered under

the auspices of regionally accredited institutions of higher education that meet criteria specified in new rule I subsections (3)(a) and (b) above.

(iv) The following professional activities that meet criteria specified in new rule I subsections (3)(a) and (b) above may be submitted in fulfillment of 10 continuing education units:

(A) Presentation of meeting paper or poster presentation based on thorough review of the literature, and including theoretical ideas, with application to clinical work.

(B) Presentation of a workshop in the field of psychology.

(C) Publication of a review paper or a formal theoretical paper in a refereed journal in the field of psychology.

(D) Carrying out a research project reported in publishable form.

(c) For a maximum of 15 continuing education units personal growth activities that meet the following criteria:

(i) individual psychotherapy that:

(A) is obtained in a formal setting.

(B) conducted by a certified or licensed professional.

(C) has a fee charged for services rendered.

(D) is documented by stating the number of contact hours on the professional's letterhead.

(ii) group therapy that:

(A) has group meetings in a formal setting.

(B) has a qualified professional for a facilitator.

(C) has a fee charge for services rendered.

(D) is documented by stating the number of contact hours on the professional's letterhead."

Auth: Sec. 37-17-202, MCA; IMP, Sec. 37-17-202, MCA

"III CONTINUING EDUCATION IMPLEMENTATION (1) One continuing education credit will be granted for each hour of participation in the continuing education activity.

(2) A licensed psychologist must earn at least 40 continuing education credits during two consecutive calendar years. Continuing education activities and courses taken after January 1, 1991, will be accepted by the board of psychologists. Continuing education credit shall be reported as follows:

(a) Commencing on or before December 31, 1992, licensees with even-numbered licenses shall submit 20 hours of continuing education credit on their license renewals. Thereafter, licensees with even-numbered licenses shall submit 40 hours on or before December 31 of each even-numbered calendar year. Licensees in this category will not report continuing education on the odd-numbered years but must renew their licenses each year.

(b) Commencing on or before December 31, 1993, licensees with odd-numbered licenses shall submit 40 hours continuing education credit on or before December 31 of each odd-numbered calendar year. Licensees in this category will not report continuing education on the even-numbered years but must renew their licenses each year.

(c) No continuing education is required for licensees licensed less than one full calendar year on their first

reporting date. Licensees licensed less than two full calendar years, on the first reporting date shall submit 20 hours of continuing education.

(d) All licensed psychologists must submit to the board on the appropriate year's license renewal, a report summarizing their continuing education activities. The board will review these reports prior to April 30 of the subsequent year and notify the licensee regarding his/her noncompliance. Licensees found to be in noncompliance with the requirement will be asked to submit to the board for approval, a plan to complete the continuing education requirements for licensure. Prior to the next consecutive year's license renewal deadline, those licensees who were found to be in noncompliance will be formally reviewed to determine their eligibility for license renewal. Licensees, who at this time have not complied with continuing education requirements, will not be granted license renewal until they have fulfilled the board-approved plan to complete the requirements. Those not receiving notice from the board regarding their continuing education should assume satisfactory compliance. Notices will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education used to complete delinquent continuing education plan requirements for licensure can be used to meet the continuing education requirements for the next continuing education reporting period.

(e) If a licensee is unable to acquire sufficient continuing education credits to meet the requirements, he or she may request an exemption. All requests for exemptions will be considered by the board of psychologists and evaluated on an individual basis.

(f) The board will randomly audit 5% of the continuing education reports submitted each year. Certificates of completion for continuing education credits reported must be submitted upon request of the board."

Auth: Sec. 37-17-202, MCA; IMP, Sec. 37-17-202, MCA

REASON: Doctoral training for entry into the field is not considered adequate assurance of continued competence throughout a psychologist's career. Fulfillment of continuing education requirements is viewed as one necessary vehicle for maintaining standards of professional practice and for assuring the public of a high standard of psychological services.

3. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Psychologists, Arcade Building, Lower Level, 111 North Jackson, Helena, Montana 59620-0407, no later than January 23, 1992.

4. Steven J. Shapiro, attorney, has been designated to preside over and conduct the hearing.

BOARD OF PSYCHOLOGISTS

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

[signature]
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 16, 1991.

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment and repeal of rules implementing HB 479 (Ch. 25, 1991 Laws of Montana) authorizing the Board of Investments to allow non-profit corporations to qualify for in-state investment of state funds, and proposed adoption of a new rule implementing SB 26 (Ch. 589, 1991, Laws of Montana) authorizing an incentive to financial institutions for small business loan participation	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF 8.97.1410 COMMERCIAL AND MULTI-FAMILY LOAN PROGRAMS-GENERAL REQUIREMENTS, 8.97.1411 COMMERCIAL AND MULTI-FAMILY LOAN PROGRAMS - TERMS AND LOAN LIMITS, 8.97.1412 COMMERCIAL AND MULTI-FAMILY LOAN PROGRAMS - OFFERING CHECKLIST, REPEAL OF 8.97.1501 INVESTMENT POLICY, CRITERIA AND PREFERENCES INTEREST AND THE PROPOSED ADOPTION OF NEW RULE I INCENTIVE TO FINANCIAL INSTITUTION FOR SMALL BUSINESS LOAN PARTICIPATION

TO: All Interested Persons:

1. On January 17, 1992, from 9:00 a.m. to 11:00 a.m., a public hearing will be held in the conference room of the Board of Investments, 555 Fuller Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

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

"8.97.1410 COMMERCIAL AND MULTI-FAMILY LOAN PROGRAMS - GENERAL REQUIREMENT (1) through (10) will remain the same.

(11) A loan for refinancing purposes will be considered in conjunction with, but not limited to, a physical expansion and rehabilitation. For purposes of this rule, physical expansion means at least 15 percent of the loan proceeds will be used for improvements to the property. If a loan is made to a non-profit corporation for refinancing purposes, however, at least 15 percent of the loan proceeds must be used for improvements to the property.

(12) through (16) will remain the same."

Auth: Sec. 17-6-308, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-6-211, 17-6-315, 17-6-324, MCA

"8.97.1411 LOAN PROGRAMS FOR COMMERCIAL ~~AND~~ MULTI-FAMILY AND NON-PROFIT CORPORATIONS - TERMS AND LOAN LIMITS (1) will remain the same.

(2) The maximum loan-to-value ratio will be based upon the lower of the appraised value, market value or cost/purchase amount. The maximum loan-to-value ratio applies to the following types of collateral:

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

(3) ~~A loan agreement must contain the following signed and recorded addendum: "The grantors shall be liable for an agree to pay any deficiency owing under the promissory note notwithstanding any provision of Montana law which would excuse the grantors or any other obliger from liability of such deficiency."~~ In addition to (2)(a) through (i) above, for each $35,000 loan made to a non-profit corporation purchased by the board, one new private-sector job related to economic development must be created. This new private-sector job must pay at least 100 percent of the average wage as determined by the quarterly statistical report published by the Montana Department of Labor.

(a) If the job pays more than the average wage, job credit will be allowed for each 25 percent increment above the average wage to a maximum of two jobs; and

(b) If the job pays less than the average wage, job credit will be allowed for each 25 percent increment below the average wage.

(c) In order to qualify for this program, a job created by the borrower by use of loan proceeds, must be for a salary or wage that is equal to or greater than the minimum wage provided for in section 39-3-409, MCA."

Auth: Sec. 17-5-1053, 17-5-1521, 17-6-308, 17-6-324, MCA; IMP, Sec. 17-5-1504, 17-5-1521, 17-6-211, 17-6-308, 17-6-324, MCA

"8.97.1412 COMMERCIAL, ~~AND~~ MULTI-FAMILY, AND NON-PROFIT CORPORATIONS LOAN PROGRAMS - OFFERING CHECKLIST (1) If the offering contains multi-family or commercial loans, or a loan to a non-profit corporation, the seller/servicer may be required to submit any of the following for underwriting:

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

(r) ~~other pertinent information as required.~~ the title, description, and annual salary of the new private-sector job related to economic development;

(s) other pertinent information as required.

(2) through (2)(n) will remain the same."

Auth: Sec. 17-6-308, 17-6-324, MCA; IMP, Sec. 17-6-304, 17-6-305, 17-6-308, 17-6-314, 17-6-324, MCA

"8.97.1501 INVESTMENT POLICY, CRITERIA, AND PREFERENCES (1) through (4) will remain the same.

(5) The board will not fund loans to any governmental entity ~~or non-profit corporation~~.

(6) through (8) will remain the same."

Auth: Sec. 17-6-308, 17-6-324, MCA; IMP, Sec. 17-6-304, 17-6-305, 17-6-308, 17-6-314, 17-6-324, MCA

"8.97.1502 INTEREST RATE REDUCTION FOR LOANS TO FOR-PROFIT BORROWERS FUNDED FROM THE COAL TAX TRUST (1) The board will provide an interest rate reduction only to for-profit borrowers based on the number of jobs the loan generates over a two-year period. The date of the formal written interim or permanent loan application to the seller/servicer will be used as a beginning date for counting

jobs created. The interest rate reduction shall be limited to a maximum loan size of ~~four~~ one percent of the ~~portion of the~~ permanent coal trust fund ~~which has been designated for Montana investments by the board~~ at each fiscal year end and calculated as follows:

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

(2) A job credit interest rate reduction may not be allowed for a job created by the borrower using the proceeds of the loan for which the salary or wage is less than the minimum wage provided for in 39-3-409, MCA."

Auth: 17-6-308, 17-6-324, MCA; IMP, Sec. 17-6-304, 17-6-308, MCA

3. The proposed new rule will read as follows:

"I INCENTIVE TO FINANCIAL INSTITUTION FOR SMALL BUSINESS LOAN PARTICIPATION (1) A financial institution that originates a small business loan for no larger than 0.05% of the balance of the Montana permanent coal tax trust fund at the end of the last completed fiscal year, is entitled to an additional service fee in the form of a discount equal to 0.5% of the board's participation in the loan."

Auth: Sec. 17-6-211, 17-6-315, 17-6-324, MCA; IMP, Sec. 17-6-314, MCA

REASON: The proposed amendment of rules and the proposed adoption of a new rule is to implement HB 479 (Ch. 25, Laws of 1991) and SB 26 (Ch. 589, Laws of 1991), respectively. Chapter 25 and these rules expressly authorize the Board to allow non-profit corporations to qualify for in-state investment of state funds. Without these rules, no procedural requirements exist for making loans to non-profit corporations. In fact, an express regulatory prohibition against such loans presently exists in the current rules. This prohibition must be removed so the Board can comply with HB 479. These proposed amendments establish loan requirements for non-profit corporations and enable the Board to comply with HB 479 (Ch. 25, 1991, Laws of Montana).

Ch. 589 and the proposed new rule expressly authorize the board to provide an additional service fee discount to financial institutions that participate in loans to small businesses.

4. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Mr. Dave Lewis, Executive Director of the Board of Investments, no later than January 29, 1992.

5. Mona Jamison, administrative counsel to the Board, has been designated to preside over and conduct the hearing.

BOARD OF INVESTMENTS
WARREN VAUGHAN, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 16, 1991.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of rule relating to supervisors of special ed.	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF ARM 10.16.1705

To: All interested persons

The notice of proposed agency action published in the Montana Administrative Register, issue number 20, page 1970, on October 31, 1991, is amended as follows because the required number of persons designated therein have requested a public hearing.

1. On January 17, 1992, at 1:30 p.m., in the auditorium of the Scott Hart Bldg., 301 Roberts, Helena, Montana, a public hearing will be held to consider amending the rule pertaining to supervisors of special education.

2. The rule, as proposed to be amended, new material underlined, provides as follows:

10.16.1705 SUPERVISORS OF SPECIAL EDUCATION TEACHERS

(1) Supervisors of special education <u>teaching personnel</u> must have a Class III administrator's certificate with <u>a principal's endorsement or a</u> supervisor's endorsement in special education.

(AUTH: Sec. 20-7-402, 20-7-403, MCA; IMP: 20-7-402, 20-7-403, MCA)

3. The rule is proposed as the result of a complaint filed with the Office of Public Instruction. Specifically, the complaint alleged that ARM 10.16.1705 is not implemented as it is currently written.

4. Interested persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written testimony may be submitted to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on January 24, 1992.

5. An official of the Legal Services Unit, Office of Public Instruction, has been designated to preside over and conduct the hearing.

Beda J. Lovitt
Rule Reviewer

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State December 16, 1991.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 10.16.1314) NOTICE OF PROPOSED AMENDMENT OF ARM 10.16.1314

NO PUBLIC HEARING CONTEMPLATED

To: All interested persons

1. On January 27, 1992, the Superintendent of Public Instruction proposes to amend Rule 10.16.1314.

2. The rule effective through June 30, 1991 was temporary and is hereby deleted. The rule, as proposed to be amended, new material underlined, deleted material interlined, provides as follows. Full text of the rule is located at pages 10-245.1 through 10-245.5, ARM.

10.16.1314 FORMULA FOR SPECIAL EDUCATION TUITION RATES ~~(EFFECTIVE JULY 1, 1990*)~~ (1) The following formula shall be used by school districts to calculate maximum special education tuition rates. The source of data shall be the ~~immediate past~~ prior year trustees annual financial ~~report~~ summary, ~~and~~ pupil data reports, and the school accreditation fall report of student enrollment ~~used for the current year budget~~.

~~(a) The calculation of special education tuition at the kindergarten, elementary and high school levels shall not exceed the actual costs incurred.~~

~~(b) In the event that the school district has a 100% special education enrollment, then ADA (average daily attendance) shall be used in place of ANB and ARM 10.16.1312 does not apply. The calculation procedure shall be the same as for regular tuition.~~

(~~a~~) The maximum special education tuition rates ~~elementary formula~~ shall be calculated as follows:

(i) Elementary tuition

(A) Regular tuition rate calculations are determined pursuant to section 20-9-305, MCA, and ARM 10.10.302:

	In County	Out of County
1. Total Fund 101 Expenditures (last FY)		
2. Total Fund 114 Expenditures (last FY)	XXXXXXX	
3. Total Fund 150 Expenditures (last FY)		
4. Total (line 1 + 2 + 3)		
5. ~~ANB~~ Enrollment (~~current FY budget~~ last FY)		
6. Line 4 divided by line 5		
7. County Equalization Revenue (last FY) (Revenue Code 101-2110)		
8. State Equalization Revenue (last FY) (Revenue Code 101-3110 and -3111)		
9. ~~State Permissive~~ Guaranteed Tax Base for General Fund [Statewide mill value per elementary ANB (last FY) * ANB] * number of General Fund Permissive mills levied (last FY)		

_____ * _____ =

10. Guaranteed Tax Base Revenue for Retirement Fund
[Statewide mill value per elementary ANB (last FY) * ANB]
* number of Retirement Fund mills levied (last FY)

	XXXXXXX	
11. Total (Line 7 + 8 + 9 + 10)		
12. ANB (last FY)		
~~11~~13. Line ~~10~~ 11 divided by line ~~5~~ 12		
~~12~~14. Regular tuition - Elementary Line 6 minus line ~~11~~ 13		

(B) Special Education Elementary ~~T~~tuition ~~R~~rate calculations

~~13~~15. Mod~~erately~~- handic~~apped~~ rate (line ~~12~~4 doubled)		
~~14~~16. Plus ~~EHA~~ IDEA Part B flow-through per student rate (current year)		
~~15~~17. Mod. handic. rate (line ~~13~~5 + 14~~6~~)		
~~16~~18. Severe~~ly~~ handic~~apped~~- rate (line ~~12~~4 tripled)		
~~17~~19. Plus ~~EHA~~ IDEA Part B flow through per student rate (current year)		
~~18~~20. Severe handic. rate (line ~~16~~8 + ~~17~~9)		
~~19~~21. Profo~~undly~~- handic~~apped~~ rate (line ~~12~~4 quadrupled)		
~~20~~22. Plus ~~EHA~~ IDEA Part B flow through per student rate (current year)		
~~21~~23. Prof. handic. rate (line ~~19~~ 21 + ~~20~~2)		

(C) Kindergarten tuition rate (half ~~1/2~~ day program)

~~22~~24. Regular tuition (.5~~1/2~~ line ~~12~~4)		
~~23~~25. Mod. handic. rate (.5~~1/2~~ line ~~15~~7)		
~~24~~26. Severe handic. rate (.5~~1/2~~ line ~~18~~20)		
~~25~~27. Prof. handic. rate (.5~~1/2~~ of line ~~21~~3)		

(ii) High school tuition

(A) Regular tuition rate calculations are determined pursuant to section 20-9-312, MCA, and ARM 10.10.302.

	In County	Out of County
1. Total Fund 101 Expenditures (last FY)		
2. Total Fund 114 Expenditures (last FY)	XXXXXXX	
3. Total Fund 150 Expenditures (last FY)		
4. Total (line 1 + 2 + 3)		
5. ~~ANB~~ Enrollment (~~current FY budget~~ last FY)		
6. Line 4 divided by line 5		
7. County Equalization Revenue (last FY) (Revenue Code 101-2110)		
8. State Equalization Revenue (last FY) (Revenue Code 101-3110 and ~~-3111~~)		
9. ~~State Permissive~~ Guaranteed Tax Base for General Fund [Statewide mill value per elementary ANB (last FY) * ANB]		

* number of General Fund Permissive mills levied (last FY)

_____ * _____ = _____ _____

10. Guaranteed Tax Base Revenue for Retirement Fund [Statewide mill value per elementary ANB (last FY) * ANB] * number of Retirement Fund mills levied (last FY)

	XXXXXXX	
11. Total (Line 7 + 8 + 9 ± 10)		
12. ANB (last FY)		
~~11~~13. Line ~~10~~ 11 divided by line ~~5~~ 12		
~~12~~14. Regular tuition - High School Line 6 minus line ~~11~~ 13		

(B) Special Education High School Ttuition Rrate calculations

~~13~~15. Moderately~~,~~ handicapped rate (line 12~~4~~ doubled)		
~~14~~16. Plus ~~EHA~~ IDEA Part B flow-through per student rate (current year)		
~~15~~17. Mod. handic. rate (line 13~~5~~ + 14~~6~~)		
~~16~~18. Severely handicapped~~,~~ rate (line 12~~4~~ tripled)		
~~17~~19. Plus ~~EHA~~ IDEA Part B flow through per student rate (current year)		
~~18~~20. Severe handic. rate (line 16~~8~~ + 17~~9~~)		
~~19~~21. Profoundly~~,~~ handic~~,~~apped rate (line 12~~4~~ quadrupled)		
20~~2~~2. Plus ~~EHA~~ IDEA Part B flow through per student rate (current year)		
~~21~~23. Prof. handic. rate (line ~~19~~ 21~~+~~ 20~~2~~)		

(iii) K-12 district tuition

(A) Regular tuition rate calculations are determined pursuant to ARM 10.10.302.

(B) Special education tuition rate calculations will be applied to the elementary or high school regular tuition calculations in (A) in accordance with (i)(B) or (ii)(B).

~~[* ALTHOUGH THE NEW TUITION CALCULATION IDENTIFIED IN 20-5-312,MCA IS EFFECTIVE JULY 1, 1990, THE FINAL STATE ASSISTANCE FOR THE GUARANTEED TAX BASE SUBSIDY WILL NOT BE KNOWN UNTIL THE FOLLOWING FISCAL YEAR.]~~

(~~d~~c) Nothing within the rules for calculating the maximum regular special education tuition rates shall prevent districts from agreeing to lesser rates.

(AUTH: 20-5-305, 20-5-312, MCA; IMP: 20-5-305, 20-5-312, MCA)

3. The rules were revised to comply with legislative changes resulting from HB 962 and HB 335, L. 1991.

4. Interested persons may submit their data, views or arguments concerning the proposed rule changes in writing to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on January 27, 1992.

5. If a person who is directly affected by the proposed changes wishes to express his/her data, views and arguments orally or in writing at a public hearing, s/he must make written request for a hearing and submit this request along with any written comments s/he may have to the Office of Public Instruc-

tion, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on January 27, 1992.

6. If OPI receives requests for a public hearing on the proposed changes from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not 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.

Scott Campbell for
Beda J. Lovitt
Rule Reviewer

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State December 16, 1991.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed amendment, repeal, and transfer of rules relating to special education budgets	)	NOTICE OF THE PROPOSED AMENDMENT, REPEAL AND AND TRANSFER OF RULES RELATING TO SPECIAL EDUCATION BUDGETS

NO PUBLIC HEARING CONTEMPLATED

To: All interested persons

1. On January 27, 1992, the Superintendent of Public Instruction proposes to amend, transfer and repeal rules pertaining to special education budgets.

2. The rules, as proposed to be amended, new material underlined, deleted material interlined, provide as follows. Full text of the rules is located at pages 10-256 through 10-258, ARM.

10.16.2101 DEFINITIONS ~~SPECIAL EDUCATION PUPIL~~ (1) Special Education Pupil. ~~If a~~ A student who spends less than half ~~his~~ time in the regular program and the balance of ~~his~~ the time in school in the special education program, ~~he~~ shall be considered a full-time special pupil ~~but~~ and shall not be considered regularly enrolled for ANB purposes. If a student spends half or more of his the time in school in the regular program and the balance of his the time in the special education program, ~~he~~ the student shall be considered regularly enrolled for ANB purposes.

~~(2~~a) A student who spends time in school in the regular program while also receiving supplementary aid and services from ~~The specific number of full-time~~ special education ~~pupils is determined by using class assignments as of December 1 of the current year. Documentation of this determination must be reduced to writing and kept within the special education files for reference~~ will be considered a regularly enrolled student for that period of time.

(2) Current Year. The current year refers to the fiscal year which is in progress during budget preparation.

(3) Ensuing Year. The ensuing year refers to the period of time for which the budget is being prepared.

(AUTH: 20-7-403, MCA; IMP: 20-7-403, MCA)

10.16.2105 EXPANSION OR IMPLEMENTATION OF PROGRAM DURING A GIVEN SCHOOL TERM (1) ~~Provisions exist for adoption of emergency~~ A district may adopt a budgets amendment ~~under See. 20-7-403, MCA, for a school district which must~~ to initiate or ~~e~~xpand programs during a school term to serve ~~handicapped~~ children with disabilities not previously identified, pursuant to ~~. Regular emergency~~ budget~~ing~~ amendment procedures ~~must be followed under provisions~~ established in sections 20-9-161 ~~and~~ through 20-9-167, MCA, and ARM Title 10, chapter 22, subchapter 2.

(2) State special education payments in excess of prior

year special education revenue may be deposited in the miscellaneous fund for one year, pursuant to section 20-9-321, MCA.

(3) If the trustees determine that the special education expenditures from the revenue deposited in the miscellaneous fund set out in subsection (2) of this section will be continuing expenditures from the general fund for the future, the trustees shall petition the superintendent of public instruction for approval to add the expenditures to the current year's general fund budget for purposes of calculating the ensuing year's general fund budget, pursuant to section 20-9-147, MCA.

(AUTH: 20-7-403, MCA; IMP: 20-7-403, 20-9-147, 20-9-321, MCA)

10.16.2106 ~~COOPERATIVE~~ SPECIAL EDUCATION PROGRAMS **PROVIDED BY A COOPERATIVE** (1) Each application for a ~~cooperative~~ special education program provided by a cooperative shall be submitted through a single district or county superintendent. The applicant~~,tion on submission of both the budget and program applications, will~~ shall identify the districts to be served, ~~as well as~~ the projected population ~~and caseloads. A written agreement explaining how services will be provided must be submitted to the superintendent of public instruction and signed by all involved school districts. This procedure also applies to~~ , and the services ~~which are~~ to be provided ~~for under the contracted services portion of the special education budget~~ through the cooperative.

(AUTH: 20-7-457, MCA; IMP: 20-7-403, 20-7-457, MCA)

10.16.2107 **TRANSPORTATION FOR** SPECIAL EDUCATION CHILD**REN** ~~ELIGIBILITY FOR TRANSPORTATION~~ (1) With the approval of the superintendent of public instruction, any special education child shall be eligible for resident district transportation ~~which shall be provided~~ by the resident district when, pursuant to section 20-7-441, MCA.

~~(a) he is enrolled in a special education class or program operated by district of such child's residence;~~

~~(b) he is enrolled in a special education class or program operated by a Montana district other than the child's resident district;~~

~~(c) he is enrolled under an approved tuition agreement in a special education class or program operated outside of the state of Montana; and~~

~~(d) he is enrolled under an approved tuition agreement in a private institution.~~

(2) Special student transportation for ~~handicapped~~ children with disabilities to and from school is not an allowable cost under the special education budget in the general fund. Budget authority for transportation of ~~handicapped~~ children with disabilities must be established in the transportation fund of the local school district and must follow the budgeting procedures established in the Montana School ~~Finance and Statistics and Reference~~ Accounting Manual.

(3) Procedures for specialized transportation for children with disabilities is set out in sub-chapter 25 of this chapter.

(AUTH: 20-7-403, MCA; IMP: 20-7-403, 20-10-145, MCA)

3. The proposed rule for transfer, ARM 10.16.2201, follows with proposed amendments. Full text of the rule is located at page 10-258, ARM.

10.16.2110 RELATIONSHIP TO THE GENERAL FUND ~~Although the budget for a~~ (1) The district~~'s~~ special education program ~~is~~ will be developed as a distinct budget, but ~~it is folded into and becomes~~ a part of the ~~maximum budget without a voted levy portion of the~~ district~~'s~~ total general fund budget. The special education budget ~~follows~~ is subject to the ~~same~~ provisions of operation ~~as~~ of the general fund except for the following instances:

(~~1~~2) Funds approved to support the special education ~~budget~~ allowable costs may be expended only for special education purposes as approved by the superintendent of public instruction in accordance with the special education budgeting provisions;

(~~2~~3) ~~for accounting purposes, a separate register, in addition to the general fund register, shall be kept which will provide accurate information regarding the expenditure of special education allowable costs. Allowable costs will be construed to mean revenue or monies.~~ The trustee's annual report to the superintendent of public instruction will include provisions for reporting special education expenditures ~~separately~~; and

(~~3~~4) If at year end, ~~a~~ school district ~~has a balance left in the special education subfund of the general fund after the completion of a school year, those monies will be identified on the "Budget and Application for Tax Levies. . ." (Application for Payment of State Equalization Aid) under the statement of cash balances. Cash for reappropriation in special education~~ special education allowable costs expenditures do not equal or exceed the amount of special education allowable cost payments deposited in the general fund, as indicated by the annual trustees financial summary, the amount of the difference will be considered as the end-of-year special education fund balance. That balance cannot be used to reduce local levies or to increase the ~~district~~ operating reserves, but must ~~go~~ be used to reduce the state equalization aid payment of the district for the ensuing year. ~~In those cases where~~ If state equalization payments are not ~~made~~ received by that district in the ensuing year, the county superintendent will ~~be notified to make the~~ adjust~~ment within~~ the county equalization payment to the district. ~~The cash balance will be deducted from the district share of any equalization payment to which the district would be entitled. This cash balance has no effect on the budgeting authority of the school district.~~

(AUTH: 20-9-102, MCA; IMP: 20-7-431, 20-9-303, MCA)

4. The proposed rules for repeal follow. Full text of the rules is located at page 10-256, ARM.

10.16.2102 CURRENT AND ENSUING YEAR

(AUTH: 20-7-403, MCA; IMP: 20-7-403, MCA)

10.16.2103 SCHOOL DISTRICT BUDGET LIMITATION
(AUTH: 20-7-403, MCA; IMP: 20-7-403, MCA)

10.16.2104 TRANSFER OF LINE ITEM AMOUNTS
(AUTH: 20-7-403, MCA; IMP: 20-7-403, MCA)

5. These rules were revised or clarified to comply with changes resulting from legislation which affected special education definitions, budget amendment procedures, and general accounting practices.

6. Interested persons may submit their data, views or arguments concerning the proposed rule changes in writing to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on January 27, 1992.

7. If a person who is directly affected by the proposed changes wishes to express his/her data, views and arguments orally or in writing at a public hearing, s/he must make written request for a hearing and submit this request along with any written comments s/he may have to the Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on January 27, 1992.

8. If OPI receives requests for a public hearing on the proposed changes from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not 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.

Scott Campbell for
Beda J. Lovitt
Rule Reviewer

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State December 16, 1991.

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

In the matter of the adoption of new rules I through VIII dealing with license and operation fees for solid waste management	))))	NOTICE OF PUBLIC HEARINGS FOR PROPOSED ADOPTION OF NEW RULES I - VIII (Solid & Hazardous Waste)

To: All Interested Persons

1. On the following dates, times and locations, the Department will hold public hearings in Helena, Missoula and Billings, to consider the adoption of the above-captioned rules, which address the assessing and collecting of solid waste fees by the Department from owners or operators of solid waste management facilities.

January 28, 1992, 9 a.m., in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana.

January 30, 1992, 7 p.m., in Health Building Conference Room, 301 West Alder, Missoula, Montana.

February 3, 1992, 7 p.m., Petro Hall, Eastern Montana College, Billings, Montana.

Except for a few statutory exemptions found in Section 75-10-214, MCA, everyone in Montana who operates a solid waste management system, as defined in Section 75-10-203(12), MCA, is required to obtain a license from the Department and renew it annually. The Department provides forms for the license holders to file an annual report with the Department on the tonnage accepted by the facility, the service area and type of operation. Using the volume calculated and an estimated cost for the Department to provide one or more annual inspections to the facilities, the annual license fee is assessed by the Department on June 15 of every year. The licensees may remit their payments on a quarterly basis if they prefer. The Department requires all new license applications to be accompanied by an "application review fee" that, again, is tied directly to the estimated cost to the Department to review the application. This cost is estimated by the Department based on the projected volume of the operation, and in line with the statement of intent attached to the authorizing legislation. For operations that dispose of solid waste through landfill, an additional volume-based fee of $0.31 per ton is assessed by the Department. Late fees are assessed for late payments.

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

3. The rules, as proposed, appear as follows:

RULE I PURPOSE (1) The purpose of this subchapter is to establish solid waste management system licensing requirements and fee schedules provided for in 75-10-115, MCA.

AUTH: 75-10-115, MCA; IMP: 75-10-115, MCA

RULE II AUTHORITY (1) Authority for rules promulgated in this part is provided for in 75-10-115, MCA, under which the department may establish and collect fees for the management and regulation of solid waste disposal. These fees may include:

(a) A license application fee that reflects the cost of reviewing a new solid waste management system or substantial change to an existing facility;

(b) An annual license renewal fee that reflects a minimal base fee related to the fixed costs of an annual inspection and license renewal based upon the following formula:

(i) for a major facility with a planned capacity of more than 25,000 tons of solid waste a year, $3,500;

(ii) for an intermediate facility with a planned capacity of more than 5,000 tons of solid waste a year but not more than 25,000 tons a year, $3,000;

(iii) for a minor facility with a planned capacity of not more than 5,000 tons a year, $2,500; and

(c) A volume-based fee on solid waste disposal.

AUTH: 75-10-115, MCA; IMP: 75-10-115, MCA

RULE III DEFINITIONS Unless the context requires otherwise, in this sub-chapter the following definitions apply:

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

(2) "Co-composting" means the simultaneous composting of two or more diverse waste streams.

(3) "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

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

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

(6) "Facility" means a manufacturing, processing or assembly establishment; a transportation terminal, or a treatment, storage or disposal unit operated by a person at one site. This definition does not include infectious medical waste incinerators or other facilities that treat and destroy infectious medical waste, that are not operated for profit, and that are operated as part of a medical facility.

(7) "Household hazardous waste" means products commonly used in the home that due to corrosivity, ignitability, reactivity, toxicity, or other chemical or physical properties are dangerous to human health or the environment. Household hazardous waste includes but is not limited to cleaning, home maintenance, automobile, personal care, and yard maintenance products.

(8) "Household waste" means any solid waste derived from households, including single and multiple residences, hotels, and motels, crew quarters, campgrounds and other public recreation and public land management facilities.

(9) "MSW composting" means municipal solid waste composting and is the controlled degradation of municipal solid waste. This includes the composting of municipal solid waste after some form of preprocessing to remove non-compostable inorganic materials.

(10) "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste. The term does not include land application units, surface impoundments, injection wells, or waste piles.

(11) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(12) "Post-consumer recycling" means the reuse of materials generated from residential and commercial waste, excluding recycling of material from industrial processes that has not reached the consumer, such as glass broken in the manufacturing process.

(13) "Recyclables" are materials that still have useful physical or chemical properties after serving their original purpose and that can, therefore, be reused or remanufactured into additional products.

(14) "Recycling" means the process by which materials otherwise destined for disposal are collected, reprocessed or remanufactured, and reused.

(15) "Residue" is the materials remaining after processing, incineration, composting, or recycling have been completed. Residues are usually disposed of in sanitary landfills.

(16) "Resource recovery" is a term describing the extraction and utilization of materials and energy from the waste stream. The term is sometimes used synonymously with energy recovery.

(17) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(18) "Resource recovery system" means a solid waste management system which provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

(19) "Reuse" is the use of a product more than once in its same form for the same purpose; e.g., a soft drink bottle is reused when it is returned to the bottling company for refilling.

(20) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water

supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.

(21) "Solid waste management system" means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste. Such a system may be composed of one or more solid waste management facilities. This term does not include hazardous waste management systems.

(22) "Source reduction" is the design, manufacture, acquisition, and reuse of materials so as to minimize the quantity and/or toxicity of waste produced. Source reduction prevents waste either by redesigning products or by otherwise changing societal patterns of consumption, use, and waste generation.

(23) "Source separation" is the segregation of specific materials at the point of generation for separate collection. Residences source separate recyclables as part of a curbside recycling program.

(24) "Substantial change" means any change in the operation, ownership, or siting of a facility in which review by the department takes more than 8 hours.

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

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

(27) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in volume.

(28) "Yard waste" means leaves, grass clippings, prunings, and other natural organic matter discarded from yards, gardens, parks, etc.

AUTH: 75-10-115, 75-10-221, MCA; IMP: 75-10-115, 75-10-221, MCA

RULE IV APPLICABILITY (1) Except as provided in 75-10-214, MCA, this rule applies to any person disposing of solid waste or operating or maintaining a solid waste management system involved in the storage, treatment, recycling, recovery, or disposal of solid waste.

AUTH: 75-10-115, 75-10-221, MCA; IMP: 75-10-115, 75-10-221, MCA

RULE V ANNUAL OPERATING LICENSE REQUIRED (1) Except as provided in 75-10-214, MCA, no person may dispose of solid waste or operate or maintain a solid waste management system after July 1, 1991 without an operating license from the department. The license period shall be for a base year from July 1 of one year through June 30 of the subsequent year.

(a) All license holders shall file an annual report with the department by April 1 of each year. The report shall be filed on a form available from the department.

(b) The department shall mail invoices for license renewal fees to license holders by June 15 of each year. Payment may be submitted to the department quarterly, with the first payment due on or before July 31 of each base year. A late payment charge of 10% per month, or a minimum charge of $10, whichever is greater, will be assessed for all fee payments received later than sixty (60) days after the due date.

(2) Renewal of license.

(a) The department will mail application forms to renewal applicants. Application for renewal of a solid waste management system license shall be submitted to the department by April 1 of each year. Applicants failing to submit the relicensing application and appropriate fees within the specified time shall be subject to the provisions of 75-10-116, MCA.

(b) Application for an operating license shall be submitted on forms supplied by the department and shall be accompanied by the appropriate fees as shown in Table 1, "Annual License Fee Schedule".

(3) Upon payment of the transfer fee shown in Table 2, the department will issue a new operating license to a person acquiring rights of ownership, possession or operation of a licensed solid waste management system. Department approvals on operating plans are not transferable prior to licensing.

(4) License fees will end when the department declares the facility "closed". The license fee will be prorated on a quarterly basis by the department for the year of closure.

(5) Except for prorated fees when the department declares a facility "closed", license fees are not refundable.

TABLE 1. ANNUAL LICENSE FEE SCHEDULE

FACILITY	ANNUAL LICENSE FEE	DISPOSAL FEE/TON
Major Class II Landfill	$3,500	$0.31
Intermediate Class II Landfill	3,000	0.31
Minor Class II Landfill	2,500	0.31
Major Class III Landfill	1,000	
Minor Class III Landfill	500	
Major Incinerator	3,500	0.31
Intermediate Incinerator	3,000	0.31
Minor Incinerator	2,500	0.31
Container System (Initial Site)	360	
Each Additional Container Site	50	
Transfer Station (>10,000 tons/yr)	1,050	

Transfer Station (<10,000 tons/yr)	400
Large Composter Operation	1,500
Small Composter Operation	200

TABLE 2. LICENSE TRANSFER FEE

FACILITY	TRANSFER FEE
Major Class II Landfill	$500
Intermediate Class II Landfill	400
Minor Class II Landfill	300
Major Class III Landfill	200
Minor Class III Landfill	150
Major Incinerator	500
Intermediate Incinerator	400
Minor Incinerator	300
Container System (Initial Site)	100
Each Additional Container Site	40
Transfer Station (>10,000 tons/yr)	400
Transfer Station (<10,000 tons/yr)	250
Yard Waste Composting at Res. Rec. Fac.	150
Large Composter Operation	400
Small Composter Operation	250
Other Class II Materials	200

TABLE 3. APPLICATION REVIEW FEE SCHEDULE

FACILITY	APPLICATION REVIEW FEE
Major Class II Landfill	$10,000
Intermediate Class II Landfill	7,500
Minor Class II Landfill	5,000
Major Class III Landfill	3,000
Minor Class III Landfill	2,000
Major Incinerator	10,000
Intermediate Incinerator	7,500
Minor Incinerator	5,000
Container System (Initial Site)	1,000
Each Additional Container Site	100
Transfer Station (>10,000 tons/yr)	7,000
Transfer Station (<10,000 tons/yr)	4,000
Yard Waste Composting at Res. Rec. Fac.	1,000
Large Composter Operation	3,000
Small Composter Operation	1,500
Other Class II Materials	5,000

AUTH: 75-10-115, 75-10-221, MCA; IMP: 75-10-115, 75-10-221, MCA

RULE VI VOLUME-BASED DISPOSAL FEE (1) Except as provided for in 75-10-214, MCA, and in the attached fee schedules, any person licensed to dispose of solid waste shall submit to the department an annual fee of $0.31 per ton of solid waste received and disposed of at the licensed facility. This volume-based disposal fee shall be submitted to the department in addition to license fees subject to the same schedule as the license fees.

AUTH: 75-10-115, MCA; IMP: 75-10-115, MCA

RULE VII DETERMINATION OF SYSTEM CAPACITY FOR FEE ASSESSMENT (1) The department shall, by utilizing one of the following methods, determine the system capacity of each solid waste management system for purposes of assessing fees and issuing licenses.

(a) Any person owning or operating facilities that dispose of solid waste through landfilling or incineration shall submit to the department by April 1 of each year, on a form provided by the department, the following information:

(i) Service areas and population of those areas;

(ii) Total tonnage of solid waste received and disposed of during the previous year. Facilities that do not operate scales will use the following conversions to determine tonnage.

(A) Loose refuse (residential and commercial) = 300 pounds per cubic yard;

(B) Compacted refuse (packer truck) = 700 pounds per cubic yard;

(iii) Special situations; i.e., two or more landfills servicing the same area and population or acceptance of out-of-district waste;

(b) All commercial composting must be at a licensed solid waste management facility. For the purposes of licensing fees the following definitions apply:

(i) A small composter operation must meet all the following criteria:

(A) under two acres active working area;

(B) the operation must accept yard waste only;

(C) the operation must accept less than 10,000 cubic yards annually;

(D) less than 1000 tons annual production.

(ii) A large composter operation does not meet the above criteria and specifically includes the following:

(A) co-composters;

(B) any facility that accepts sewage sludge for composting.

(c) The storage, treatment, recycling, recovery, or disposal of used tires must be at a licensed solid waste management facility. Class III facilities that are licensed exclusively for tires must keep records of the number of tires accepted by the facility. For the purpose of fee determinations the following conversion factor will apply:

(i) the average tire weighs 20 pounds.

(d) For the purpose of fee determination, Class III solid waste management facilities are divided into the following categories:

(i) Major facility--disposes of 1000 tons or more of material per year.

(ii) Minor facility--disposes of less than 1000 tons of material per year.

(e) Any person owning or operating facilities that dispose of Group II solid wastes through landfilling shall not be charged additional fees for composting operations. Composting operations must be included in the facility's approved plan of operation.

AUTH: 75-10-115, 75-10-221, MCA; IMP: 75-10-115, 75-10-221, MCA

RULE VIII APPLICATION REVIEW FEES - INITIAL LICENSE OR SUBSTANTIAL CHANGE TO AN EXISTING FACILITY (1) Application for an initial license for a solid waste management system or substantial change to an existing solid waste management system may be submitted at any time during the license base year. Licenses issued during the base year shall expire at the end of that license base year. The applicant for initial licensing of a facility shall submit the appropriate fees as shown in Table 3, "Application Review Fee Schedule" of [RULE V]. Any solid waste management system that does not fit into one of the categories shall be assessed fees no greater than Class II facilities.

(2) Application for substantial change to an existing solid waste management system shall be subject to the fee schedule established for review of new or substantially changed applications contained in Table 2, "Fee Schedule".

AUTH: 75-10-115, 75-10-221, MCA; IMP: 75-10-115, 75-10-221, MCA

4. The Department is proposing these rules in order to meet the requirements of 75-10-115, MCA and the Statement of Intent appended to SB 209. The concerns for public health and environmental cleanup costs can be avoided by full implementation of the authority of the Department in its regulatory and licensing functions. The cost of compliance for owners and operators of hazardous waste management units increase. Failure to promulgate these rules could lead to a loss of primacy by the State of Montana.

5. Interested persons may submit their data, views, or arguments concerning the proposed rules, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Patti Powell, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than February 3, 1992.

DENNIS IVERSON, Director

Certified to the Secretary of State December 16, 1991

Reviewed by:

Eleanor Parker, Attorney

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

In the matter of the amendment of rules 16.44.102, 16.44.105, 16.44.118, 16.44.120, 16.44.202, 16.44.302-306, 16.44.610, 16.44.804 and new rule I dealing with boiler and industrial furnace (BIF) regulations	)	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES AND PROPOSED ADOPTION OF NEW RULE I
	)	(Solid & Hazardous Waste)

To: All Interested Persons

1. On January 27, 1992, at 9:00 a.m., the department will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment and adoption of the above-captioned rules.

2. The proposed amendments would augment the Department of Health and Environmental Sciences's regulatory authority under the federal Resource Conservation and Recovery Act (RCRA). Through prevention of interim status and the implementation of the regulation requiring the complete permitting process of hazardous waste fueled furnaces and boilers, protection of public health can be assured and environmental cleanup costs can be avoided.

3. The rules, as proposed to be adopted and amended, appear as follows (in the amended rules, new material is underlined and material to be deleted is interlined):

16.44.102 INCORPORATIONS BY REFERENCE (1)-(4) Remain the same.

(5) As of ~~March 15, 1991~~ [effective date of amendment], all of the incorporations by reference of federal agency rules listed below within the specific state agency rules listed below shall refer to federal agency rules as they have been codified in the July 1, ~~1990~~ 1991 edition of Title 40 of the Code of Federal Regulations (CFR). References in the state rules to federal rules contained in Titles 49 and 33 are updated to the extent that they have been updated by the federal rules which also incorporate these rules by reference. For the proper edition of these rules in Titles 49 and 33, see the reference in Title 40 of the CFR (~~1990~~ 1991 edition), provided in parenthesis. A short description of the amendments to incorporated federal rules which have occurred since the last incorporation by reference is contained in the column to the right. This rule supersedes any specific references to editions of the CFR contained in other rules in this chapter.

State Rule	Federal Rule Incorporated	Notation of Most Recent Changes to Federal Rules
16.44. . . .	40 CFR . . .	
103	264.17(b), 264.96, 264.117, 264.171, 264.172	NC
109	264.72, 264.73(b)(9), 264.76	NC
110	Parts 264 and 266	~~Hazardous waste tank systems; miscellaneous units; Part 264, Appendix IX reference.~~ Boiler and industrial furnace (BIF) rules.
116	264.98, 264.99, 264.100, 264.112, 264.113, 264.117(a), 264.118, 264.147	~~Part 264, Appendix IX reference.~~ BIF rules.
118	~~264.112, 264.113, 264.271, 264.272~~	~~NC~~
120	270.14 - 270.23	~~Hazardous waste tank systems; miscellaneous units; ground water corrective action, Part 264, Appendix IX reference.~~ BIF rules.
123	264.343, 264.345	NC
124	Part 264, Subpart M	NC
126	Parts 264 and 266	~~Hazardous waste tank systems; miscellaneous units; Part 264, Appendix IX.~~ BIF rules.
202	Parts 264 and 266, Appendix to Part 262	~~Hazardous waste tank systems; miscellaneous units; Part 264, Appendix IX.~~ BIF rules.

~~305~~	~~Part 266, Subparts C, D, and F~~	~~Technical correction in 266.20.~~
306	Part 264, Subpart O; Part 265, Subpart O; Part 266, Subparts C-~~G~~ H; 265.71, 265.72	~~Technical correction in 266.20.~~ BIF rules.
	49 CFR . . .	
321	173.300 (40 CFR 261.21)	NC
323	173.51, 173.53, 173.88 (40 CFR 261.23)	NC
	40 CFR . . .	
331	261.31	NC
332	261.32	~~Correction to K062 waste listing; 'mining waste' listings K064, K065, K066, K088, K090, and K091.~~ NC
333	261.33(e) and (f)	~~Corrections; chemical abstracts numbers added.~~ NC
334	Part 265, Appendix V	NC
351	Part 261, Appendices I, II, III, and X	NC
352	Part 261, Appendices VII and VIII	~~Corrections; chemical abstracts numbers added.~~ NC
405	Part 262, the Appendix	~~Waste minimization certification language.~~ NC
	49 CFR . . .	
410	Parts 173, 178, and 179 (40 CFR 262.30)	NC
411	Part 172, Subpart E (40 CFR 262.31)	NC
412	Part 172, Subpart D (40 CFR 262.32)	NC

413	Part 172, Subpart F (40 CFR 262.33)	NC
	40 CFR . . .	
415	Part 265, Subparts C and D, 265.111, 265.114, Part 265, Subpart I, Part 265, Subpart J, (except 265.197(c) and 265.200)	~~Hazardous waste tank systems.~~ NC
	49 CFR . . . / 33 CFR . . .	
511	171.15, 171.16 / 153.203 (40 CFR 263.30)	NC
	40 CFR . . .	
601	264.250(c), 265.352, 265.383	NC
609	Part 265, Subparts B - Q, excluding Subpart H and 265.75	~~Hazardous waste tank systems; closure of surface impoundments.~~ BIF rules.
702	Part 264, Subparts B - X, excluding Subpart H and 264.75; Part 264, Appendices I, IV, V, VI, and IX	~~Hazardous waste tank systems; miscellaneous units; Appendix IX list of ground water monitoring parameters.~~ BIF rules.
802	264.197, 264.228, 264.258, 265.197, 265.228, and 265.258	~~Hazardous waste tank systems; closure of surface impoundments.~~ NC
803	264.112, 264.117 - 264.120, 265.112, 265.117 - 265.120	NC
804	264.111 - 264.115, 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.143(f)(3); 264.601 - 264.603; 265.111 - 265.115, ~~265.178,~~ 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, and 265.404	~~Hazardous waste tank systems; miscellaneous units; closure of surface impoundments.~~ NC

805	264.117 - 264.120; 264.228, 264.258, 264.280, 264.310, 264.145(f)(5); 264.603; 265.117 - 265.120, 265.228, 265.258, 265.280, 265.310	~~Miscellaneous units.~~ NC
811	264.143(f) and 264.145(f)	~~Corporate guarantee language.~~ NC
817	264.147(f), 264.147(g)	~~Corporate guarantee language.~~ NC
~~822~~	~~264.115~~	~~NC~~
823	264.151(a)-(j)	~~Corporate guarantee language.~~ NC

NC - Refers to no change in the material which is being incorporated by reference from the time of the last formally noticed incorporation by reference.

(6) Remains the same.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.105 TEMPORARY PERMITS (INTERIM STATUS)

(1)-(5) Remain the same.

(6) Interim status terminates:

(a)-(c) Remain the same.

(d) (For owners or operators of each incinerator facility which has achieved interim status prior to November 8, 1984) interim status terminates on November 8, 1989, unless the owner or operator of the facility submits a Part B application for an HWM permit for an incinerator facility by November 8, 1986.

(e) (For owners or operators of any facility - other than a land disposal or an incinerator facility - which has achieved interim status prior to November 8, 1984) interim status terminates on November 8, 1992, unless the owner or operator of the facility submits a Part B application for an HWM permit for the facility by November 8, 1988.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.118 MINOR MODIFICATIONS OF PERMITS; TEMPORARY AUTHORIZATIONS FOR MODIFICATIONS; AND AUTHORIZATIONS FOR MANAGEMENT OF NEWLY IDENTIFIED WASTES (1)-(2) Remain the same.

(3) The permittee is authorized to continue to manage wastes newly listed or identified as hazardous under subchapter 3 of this chapter, or to manage hazardous waste in units newly regulated as hazardous waste management units, if ~~he or she~~:

(a) the unit was in existence as a hazardous waste

facility with respect to the newly listed or characterized waste on the effective date of the final rule listing or identifying the waste or regulating the unit (refer to the "existing facility" definition in ARM 16.44.202 and the "existing or in existence" definition of ARM 16.44.306(5));

(b) the permittee submits a request for a modification under section (1) of this rule (whether the modification is a minor modification or not) on or before the date on which the waste or unit becomes subject to the new requirements ~~of this chapter~~;

(c) the permittee is in compliance with the standards of ARM 16.44.609 and 40 CFR part 266 (incorporated by reference in ARM 16.44.306);

(d) in the case of modifications which are not minor modifications under section (1), the permittee also submits a complete permit modification request under ARM 16.44.116 within 180 days after the effective date of the new rule or rule amendment listing or identifying the waste, or subjecting the unit to HWM requirements under this chapter; and

(e) in the case of land disposal units, the permittee certifies that such unit is in compliance with all applicable ARM 16.44.609 groundwater monitoring and financial responsibility requirements on the date 12 months after the effective date of the rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with these requirements, he or she shall lose authority to operate under this section.

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.120 CONTENTS OF PART B (1) Remains the same.

(2) Except as provided in ARM 16.44.701, the following information must be submitted by an applicant in a Part B application:

(a) Remains the same.

(b) the owners or operators of specific types of HWM facilities must describe the nature, design operation and maintenance of such facilities and must include the items of specific information applicable to such facilities listed in 40 CFR 270.15 through ~~270.21~~ 270.23.

(3) The department hereby adopts and incorporates by reference 40 CFR 270.14 through 270.23. The correct CFR edition is listed in ARM 16.44.102.

(a)-(h) Remains the same.

(i) 40 CFR 270.22 is a federal agency rule setting forth permit information requirements relating to the nature, design operation and maintenance of boilers and industrial furnaces which burn hazardous waste;

(i)-(j) Remain the same but are renumbered (j)-(k).

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

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

(1)-(10) Remain the same.

(11) "Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

(11)-(49) Remain the same but are renumbered (12)-(50).

~~(50)~~(51) "Incinerator" means ~~an~~ any enclosed device that:

(a) ~~using~~ uses controlled flame combustion~~, that~~ and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(b) meets the definition of infrared incinerator or plasma arc incinerator.

(51)-(52) Remain the same but are renumbered (52-53).

~~(53)~~(54) "Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use ~~controlled flame devices~~ thermal treatment to accomplish recovery of materials or energy:

(a)-(j) Remain the same.

(k) combustion devices used in the recovery of sulfur values from spent sulfuric acid; ~~and~~

(l) halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated; and

(l) remains the same but is renumbered (m).

(54)-(55) Remains the same but is renumbered (55)-(56).

(57) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat and which is not listed as an industrial furnace.

(56)-(84) Remain the same but are renumbered (58)-(86).

(87) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat and which is not listed as an industrial furnace.

(85)-(95) Remain the same but are renumbered (88)-(98).

(99) "Sludge dryer" means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

(96)-(125) Remain the same but are renumbered (100)-(129).

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.302 DEFINITION OF WASTE (1)-(3) Remain the same.

(4) The following materials are inherently waste-like when they are recycled in any manner:

(a) Remains the same.

(b) secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste in ARM 16.44.330 through 16.44.333, except for brominated material that meets the following criteria:

(i) The material must contain a bromine concentration of at least 45%; and

(ii) The material must contain less than a total of 1% of toxic organic compounds listed in ARM 16.44.352(1)(b); and

(iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

~~(b)~~(c) wastes added to this list by the department such as:

(i)-(ii) Remain the same.

(5)-(6) Remain the same.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.303 DEFINITION OF HAZARDOUS WASTE (1)-(2) Remain the same.

(3)(a)-(b)(i) Remain the same.

(ii) wastes from burning any of the materials exempted from regulation under ARM 16.44.306(1)(c)(v) through ~~(ix)~~(viii).

(4) Remains the same.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-403, 75-10-405, MCA

16.44.304 EXCLUSIONS (1)(a)-(k) Remain the same.

(l) when used as a fuel, coke and coal tar from the iron and steel industry that contains or is produced from decanter tank tar sludge, EPA Hazardous Waste K087. The process of producing coke and coal tar from such decanter tank tar sludge in a coke oven is likewise excluded from regulation.

(2)-(a) Remains the same.

(b) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by 40 CFR 266.112 (incorporated by reference in ARM 16.44.306(5)) for facilities that burn or process hazardous waste;

(c) Remains the same.

(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), except as provided by 40 CFR 266.112 (incorporated by reference in ARM 16.44.306(5)) for facilities that burn or process hazardous waste. 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; precipitation; 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 after EPA completes a report to congress and a regulatory determination on their ultimate regulatory status:

(i)-(xx) Remain the same.

(e) cement kiln dust waste, except as provided by 40 CFR 266.112 (incorporated by reference in ARM 16.44.306(5)) for facilities that burn or process hazardous waste;

(f)-(j) Remain the same.

(3)-(5) Remain the same.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-403, 75-10-405, MCA

16.44.305 SPECIAL REQUIREMENTS FOR COUNTING HAZARDOUS WASTES (1)-(a) Remain the same.

(b) must include all hazardous waste that is subject to regulation under this chapter, including wastes regulated under ARM 16.44.306(2) and (3) and 40 CFR Part 266, subparts C, ~~D, and~~ F and H (incorporated by reference in ARM 16.44.306(4) and (5));

(c)-(e) Remain the same.

AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.306 REQUIREMENTS FOR RECYCLABLE MATERIALS

(1)(a) Hazardous wastes that are recycled will be known as "recyclable materials".

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

(i) Remains the same.

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

(iii)-(v) Remain the same.

(c) The following recyclable materials are not subject to regulation under this chapter:

(i)-(vi) Remains the same.

~~(vii) coke and coal tar from iron and steel industry that contains hazardous waste from the iron and steel production process;~~

(viii)-(ix) Remain the same but are renumbered (vii)-(viii).

(2)-(4) Remain the same.

(5) The department hereby adopts and incorporates by reference subpart H of 40 CFR part 266, except for the definition of "existing or in existence" set forth in 40 CFR 266.103(a)(1)(ii), and appendices I through X of 40 CFR part 266. For the purposes of ARM 16.44.306(1)(b)(ii) and of this section, "existing or in existence" means a boiler or industrial furnace that was in operation burning or processing hazardous waste on or before August 21, 1991; facilities for which construction to burn or process hazardous waste had commenced, but which were not in operation, as of that date do

not quality for interim status. Subpart H of 40 CFR part 266 is a federal agency rule which addresses the burning of hazardous waste in boilers and industrial furnaces. Appendices I through X of 40 CFR part 266 contain materials which supplement 40 CFR part 266, subpart H. A copy of these provisions or any portion thereof may be obtained from the solid and hazardous waste bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, MT 59620.
AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

16.44.610 CHANGES DURING TEMPORARY PERMITTING (INTERIM STATUS) (1)(a)-(e) Remain the same.

(f) addition of newly regulated units for the treatment, storage, or disposal of hazardous waste if the owner or operator submits a revised part A permit application on or before the date on which the unit becomes subject to the new requirements.

(2)(a)-(f) Remain the same.

(g) addition of newly regulated units under section (1)(f) of this rule.
AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

16.44.804 COST ESTIMATE FOR FACILITY CLOSURE (1)-(4) Remain the same.

(5) The department hereby adopts and incorporates herein by reference 40 CFR 264.111 through 264.115, 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, and 264.351, and 264.601 through 264.603, and all of the corollary sections for interim-status facilities: 40 CFR 265.111 through 265.115, 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, and 265.404. The correct CFR edition is listed in ARM 16.44.102. 40 CFR 264.111 through 264.115 and 265.111 through 265.115 are federal agency rules setting forth general closure requirements applicable to all hazardous waste management facilities. 40 CFR 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, and 264.601 through 264.603, ~~and 265.178,~~ 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381 and 265.404 are federal agency rules setting forth specific closure requirements for different types of hazardous waste management units and address closure of permitted container storage areas, closure of tanks, closure of surface impoundments, closure of waste piles, closure of land treatment units, closure of landfills, incinerator closure, interim status thermal treatment unit closure, interim status chemical, physical and biological treatment unit closure, and closure of permitted miscellaneous units. The department also hereby adopts and incorporates herein by reference 40 CFR 264.143(f) (3), which is a federal agency rule pertaining to a letter by a chief financial officer, a report of a certified public accountant on financial statements, and a report by the certified public accountant regarding data in the letter by the chief financial officer. A copy of all of these sections, or any part thereof, may be obtained from the Solid Waste Management Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.

AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

RULE I PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE (1) Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of 40 CFR 266.103) are subject to sections (2) through (6) of this rule. Boilers and industrial furnaces operating under the interim status standards of 40 CFR 266.103 are subject to section (7) of this rule.

(2) A permit for a new boiler or industrial furnace shall specify appropriate conditions for the following operating periods:

(a) Pretrial burn period. For the period beginning with initial introduction of hazardous waste and ending with initiation of the trial burn, and only for the minimum time required to bring the boiler or industrial furnace to a point of operational readiness to conduct a trial burn, not to exceed 720 hours operating time when burning hazardous waste, the department must establish in the pretrial burn period of the permit conditions, including but not limited to, allowable hazardous waste feed rates and operating conditions. The department may extend the duration of this operational period once, for up to 720 additional hours, at the request of the applicant when good cause is shown. The permit may be modified to reflect the extension according to ARM 16.44.118(1).

(i) Applicants must submit a statement, with part B of the permit application, that suggests the conditions necessary to operate in compliance with the standards of 40 CFR sections 266.104 through 266.107 during this period. This statement should include, at a minimum, restrictions on the applicable operating requirements identified in 40 CFR 266.102(e).

(ii) The department will review this statement and any other relevant information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of 40 CFR sections 266.104 through 266.107 based on engineering judgment.

(b) Trial burn period. For the duration of the trial burn, the department must establish conditions in the permit for the purposes of determining feasibility of compliance with the performance standards of 40 CFR sections 266.104 through 266.107 and determining adequate operating conditions under 40 CFR 266.102(e). Applicants must propose a trial burn plan, prepared under section (3) of this rule, to be submitted with part B of the permit application.

(c) Post-trial burn period.

(i) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the department to reflect the trial burn results, the department will establish the operating requirements most likely to ensure compliance with the performance standards of 40 CFR sections 266.104 through 266.107 based on engineering judgment.

(ii) Applicants must submit a statement, with part B of

the application, that identifies the conditions necessary to operate during this period in compliance with the performance standards of 40 CFR sections 266.104 through 266.107. This statement should include, at a minimum, restrictions on the operating requirements provided by 40 CFR 266.102(e).

(iii) The department will review this statement and any other relevant information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of 40 CFR sections 266.104 through 266.107 based on engineering judgment.

(d) Final permit period. For the final period of operation, the department will develop operating requirements in conformance with 40 CFR 266.102(e) that reflect conditions in the trial burn plan and are likely to ensure compliance with the performance standards of 40 CFR sections 266.104 through 266.107. Based on the trial burn results, the department shall make any necessary modifications to the operating requirements to ensure compliance with the performance standards. The permit modification shall proceed according to ARM 16.44.116.

(3) The trial burn plan must include the following information. The department, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this section:

(a) An analysis of each feed stream, including hazardous waste, other fuels, and industrial furnace feed stocks, as fired, that includes:

(i) heating value, levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, thallium, total chlorine/chloride, and ash;

(ii) viscosity or description of the physical form of the feed stream;

(b) An analysis of each hazardous waste, as fired, including:

(i) An identification of any hazardous organic constituents listed in ARM 16.44.352(1)(b), that are present in the feed stream, except that the applicant need not analyze for constituents listed in ARM 16.44.352(1)(b) that would reasonably not be expected to be found in the hazardous waste. The constituents excluded from analysis must be identified and the basis for this exclusion explained. The analysis must be conducted in accordance with analytical techniques specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (incorporated by reference in ARM 16.44.351), or their equivalent.

(ii) An approximate quantification of the hazardous constituents identified in the hazardous waste, within the precision produced by the analytical methods specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods", or other equivalent.

(iii) A description of blending procedures, if applicable, prior to firing the hazardous waste, including a detailed analysis of the hazardous waste prior to blending, an analysis of the material with which the hazardous waste is blended, and blending ratios.

(c) A detailed engineering description of the boiler or industrial furnace, including:

(i) manufacturer's name and model number of the boiler or industrial furnace;

(ii) type of boiler or industrial furnace;

(iii) maximum design capacity in appropriate units;

(iv) description of the feed system for the hazardous waste, and, as appropriate, other fuels and industrial furnace feedstocks;

(v) capacity of hazardous waste feed system;

(vi) description of automatic hazardous waste feed cutoff system(s);

(vii) description of any air pollution control system; and

(viii) description of stack gas monitoring and any pollution control monitoring systems.

(d) A detailed description of sampling and monitoring procedures including sampling and monitoring locations in the system, the equipment to be used, sampling and monitoring frequency, and planned analytical procedures for sample analysis.

(e) A detailed test schedule for each hazardous waste for which the trial burn is planned, including date(s), duration, quantity of hazardous waste to be burned, and other factors relevant to the department's decision under section (2)(b) of this rule.

(f) A detailed test protocol, including, for each hazardous waste identified, the ranges of hazardous waste feed rate, and, as appropriate, the feed rates of other fuels and industrial furnace feedstocks, and any other relevant parameters that may affect the ability of the boiler or industrial furnace to meet the performance standards in 40 CFR sections 266.104 through 266.107.

(g) A description of, and planned operating conditions for, any emission control equipment that will be used.

(h) Procedures for rapidly stopping the hazardous waste feed and controlling emissions in the event of an equipment malfunction.

(i) Such other information as the department reasonably finds necessary to determine whether to approve the trial burn plan in light of the purposes of this section and the criteria in section (2)(b) of this rule.

(4) Trial burn procedures.

(a) A trial burn must be conducted to demonstrate conformance with the standards of 40 CFR sections 266.104 through 266.107 under an approved trial burn plan.

(b) The department shall approve a trial burn plan if it finds that:

(i) The trial burn is likely to determine whether the boiler or industrial furnace can meet the performance standards of 40 CFR sections 266.104 through 266.107;

(ii) The trial burn itself will not present an imminent hazard to human health and the environment;

(iii) The trial burn will help the department to determine operating requirements to be specified under 40 CFR 266.102(e);

and

(iv) The information sought in the trial burn cannot reasonably be developed through other means.

(c) The applicant must submit to the department a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and must submit the results of all the determinations required in section (3) of this rule. This submission shall be made within 90 days of completion of the trial burn, or later if approved by the department.

(d) All data collected during any trial burn must be submitted to the department following completion of the trial burn.

(e) All submissions required by this section must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under ARM 16.44.108.

(5) When a DRE trial burn is required under 40 CFR 266.104(a), the department will specify (based on the hazardous waste analysis data and other information in the trial burn plan) as trial principal organic hazardous constituents (POHCs) those compounds for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHCs will be specified by the department based on information including its estimate of the difficulty of destroying the constituents identified in the hazardous waste analysis, their concentrations or mass in the hazardous waste feed, and, for hazardous waste containing or derived from wastes listed in ARM 16.44.330 through 16.44.333, the hazardous waste organic constituent(s) identified in ARM 16.44.352(1)(a) as the basis for listing.

(6) During each approved trial burn (or as soon after the burn as is practicable), the applicant must make the following determinations:

(a) A quantitative analysis of the levels of antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, thallium, silver, and chlorine/chloride, in the feed streams (hazardous waste, other fuels, and industrial furnace feedstocks);

(b) When a DRE trial burn is required under 40 CFR 266.104(a):

(i) A quantitative analysis of the trial POHCs in the hazardous waste feed;

(ii) A quantitative analysis of the stack gas for the concentration and mass emissions of the trial POHCs; and

(iii) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in 40 CFR 266.104(a);

(c) When a trial burn for chlorinated dioxins and furans is required under 40 CFR 266.104(e), a quantitative analysis of the stack gas for the concentration and mass emission rate of the 2,3,7,8-chlorinated tetra-octa congeners of chlorinated dibenzo-p-dioxins and furans, and a computation showing conformance with the emission standard;

(d) When a trial burn for particulate matter, metals, or

HCl/Cl_2 is required under 40 CFR sections 266.105, 266.106 (c) or (d), or 266.107 (b)(2) or (c), a quantitative analysis of the stack gas for the concentrations and mass emissions of particulate matter, metals, or hydrogen chloride (HCl) and chlorine (Cl_2), and computations showing conformance with the applicable emission performance standards;

(e) When a trial burn for DRE, metals, or HCl/Cl_2 is required under 40 CFR sections 266.104(a), 266.106 (c) or (d), or 266.107 (b)(2) or (c), a quantitative analysis of the scrubber water (if any), ash residues, other residues, and products for the purpose of estimating the fate of the trial POHCs, metals, and chlorine/chloride;

(f) An identification of sources of fugitive emissions and their means of control;

(g) A continuous measurement of carbon monoxide (CO), oxygen, and where required, hydrocarbons (HC), in the stack gas; and

(h) Such other information as the department may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in 40 CFR sections 266.104 through 266.107 and to establish the operating conditions required by 40 CFR 266.102(e) as necessary to meet those performance standards.

(7) For the purpose of determining feasibility of compliance with the performance standards of 40 CFR sections 266.104 through 266.107 and of determining adequate operating conditions under 40 CFR 266.103, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of 40 CFR 266.103 must either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of this section or submit other information as specified in 40 CFR 270.22(a)(6) (incorporated by reference in ARM 16.44.120). Applicants who submit a trial burn plan and receive approval before submission of the part B permit application must complete the trial burn and submit the results specified in section (6) of this rule with the part B permit application. If completion of this process conflicts with the date set for submission of the part B application, the applicant must contact the department to establish a later date for submission of the part B application or the trial burn results. If the applicant submits a trial burn plan with part B of the permit application, the trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the department.

(8) Subpart H of 40 CFR part 266, and the various regulatory sections of subpart H referenced throughout this rule, are incorporated by reference in ARM 16.44.306(5).
AUTH: 75-10-405, MCA; IMP: 75-10-405, MCA

4. The department is proposing these amendments to the rules in order to implement House Bill 383, now codified as 75-10-405, MCA, allowing the Department of Health and Environmental Sciences to adopt regulations pertaining to the burning of hazardous waste in industrial furnaces and industrial

boilers that are more stringent than federal regulations. The Act gave the Department flexibility in adapting the federal hazardous waste burning regulations to the specific needs of the State of Montana when it became evident that the federal regulations did not adequately protect human health and the environment. These amendments generally parallel federal rules except that they required boilers and industrial furnaces burning hazardous waste as fuel to become fully permitted rather than allowing interim status, as do the federal rules.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Patti Powell, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than January 27, 1992.

DENNIS IVERSON, Director

Certified to the Secretary of State December 16, 1991.

Reviewed by:

Counsel for the Department

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.31.101, 42.31.102, 42.31.103, 42.31.105, 42.31.107, 42.31.131, 42.31.201, 42.31.202, 42.31.205, 42.31.211, 42.31.212, 42.31.213, 42.31.302, 42.31.303; and the REPEAL of 42.31.104, 42.31.106 and 42.31.301; and the ADOPTION of NEW RULES I through VI relating to commercial activities for cigarettes and tobacco products for the Income and Miscellaneous Tax Division	NOTICE OF PUBLIC HEARING on the PROPOSED AMENDMENT of ARM 42.31.101, 42.31.102, 42.31.103, 42.31.105, 42.31.107, 42.31.131, 42.31.201, 42.31.202, 42.31.205, 42.31.211, 42.31.212, 42.31.213, 42.31.302, 42.31.303; and the REPEAL of 42.31.104, 42.31.106, 42.31.301; and the ADOPTION of NEW RULES I through VI relating to commercial activities for cigarettes and tobacco products for the Income and Miscellaneous Tax Division

TO: All Interested Persons:

1. On January 28, 1992, at 9:30 a.m., a public hearing will be held in the Fourth Floor Conference Room, Mitchell Building, Helena, Montana, to consider the amendments of ARM 42.31.101, 42.31.102, 42.31.103, 42.31.105, 42.31.107, 42.31.131, 42.31.202, 42.31.205, 42.31.211, 42.31.212, 42.31.213, 42.31.302, 42.31.303; the repeal of ARM 42.31.104, 42.31.106, 42.31.301; and the adoption of New Rules I through VI, all relating to commercial activities for cigarettes and tobacco products.

2. The amendments as proposed provide as follows:

42.31.101 AFFIXING CIGARETTE TAX INSIGNIA (1) remains the same.

~~(2) The affixing of cigarette tax insignia must be accomplished by or under the direct and immediate supervision of an experienced and responsible employee or owner.~~

AUTH: Sec. 16-11-103, MCA; IMP: Sec. 16-11-113 and 16-11-115, MCA.

42.31.102 MARKING UNSTAMPED CIGARETTES (1) All ~~cases of unstamped~~ cigarettes sold in Montana must have a tax stamp except sales made to U.S. Government, Military and Indian purchasers which sales are subject to the provisions of ARM 42.31.108 ~~be marked immediately after receipt to indicate date of receipt~~.

(2) The method of marking may either be by metered stamp, or by hand and/or heat applied decals ~~shipping tag, or gummed label or by writing on the case with a felt tip pen~~. The system of marking must be uniform and consistent. The marking system

must facilitate a visible review to insure that cigarettes are stamped ~~within 72 hours of receipt~~ as required by ~~16-11-113~~ 16-11-111, MCA.

AUTH: Sec. 16-11-103, MCA; IMP: Sec. 16-11-111, MCA.

42.31.103 SECURITY OF UNSTAMPED CIGARETTES (1) ~~Every wholesaler or retailer who has been authorized by the department to affix cigarette tax insignia must maintain external and/or internal security for unstamped cigarettes. The internal organization of the warehouse or other storage area must be such that unstamped cigarettes are not intermingled with stamped cigarettes. Storage procedures must insure that there is no possibility of removing unstamped cigarettes with the thought that they are stamped cigarettes.~~ Persons authorized by the department to affix cigarette tax insignia must maintain external and internal security for unstamped cigarettes. External security must be provided in the form of a sound and properly maintained building to warehouse the cigarettes. The internal organization of warehouses operated by persons authorized to affix cigarette tax insignia shall provide for the separation of unstamped cigarettes from stamped cigarettes. The warehouses' procedures shall further provide that unstamped cigarettes may not be removed from the warehouse as stamped cigarettes. Examples of internal security may include, but are not limited to, the use of a separately controlled area, or a distinct separate location within the warehouse. In no case may unstamped cigarettes be easily accessible by unauthorized individuals.

AUTH: Sec. 16-11-103, MCA; IMP: Sec. 16-11-113 and 16-11-133, MCA.

42.31.105 STORAGE OF STAMPS AND TAX METERS (1) During periods of non-use, cigarette stamps and tax meters must be stored in a secure area. Meters may be left on stamping equipment which is located in a secure area.

AUTH: Sec. 16-11-103, MCA; IMP: Sec. 16-11-115, MCA.

42.31.107 ACCOUNTING CONTROL OF CIGARETTE DISTRIBUTION (1) Each wholesaler ~~will~~ shall prepare forms CT-205 and Schedule A.~~,~~ ~~together with supporting forms CT-206, and file~~ When appropriate, CT-206 and Schedule C are to be filed with the CT-205 form. The forms are filed with the department of revenue on or before the 15th day of the month ~~covering~~ following the preceding month's activities. Form CT-205 ~~will indicate~~ is a reconciliation of the purchase and distribution of cigarettes and the consumption of cigarette tax indicia. The back of form CT-205 reflects exempt U.S. Government, military, and Indian purchases for the month. CT-205 and supporting forms are hereby incorporated by reference and may be obtained by contacting the department at P.O. Box 5835, Helena, Montana 59604.

(2) remains the same.

AUTH: Sec. 16-11-103, MCA; IMP: Sec. 16-11-132, MCA.

42.31.131 CIGARETTE TAX REFUNDS (1) remains the same.

(2) Refund claims by a cigarette manufacturer must contain a notarized affidavit that the cigarette tax meter units claimed are all State of Montana cigarette tax insignia which are affixed to the unsalable cigarettes; that credit or refund for the net cost of the tax insignia has been given to a Montana cigarette dealer; and that the cigarettes will not be sold at any time. Refund claims must be accompanied by a copy of the credit memo or invoice issued to the Montana dealer. Refunds will be allowed for stale or damaged merchandise during the first 90 days after a change in the tax rate at the previous rate of tax unless it can be verified conclusively that the new tax has been paid on the specific product for which such refund is claimed.

(3) remains the same.

AUTH: Sec. 16-11-103 MCA; IMP: Sec. 15-1-503 and 16-11-112 MCA.

42.31.201 TOBACCO PRODUCTS ~~TAX~~ DEFINED (1) ~~There is imposed upon tobacco products, other than cigarettes, sold or possessed in this state a tax of 12 1/2% of the wholesale price of such products to the wholesaler.~~ Tobacco products, other than cigarettes, are defined by the following list, but are not inclusive to this list: cigars (large & small), smoking, chewing, and snuff tobaccos.

AUTH: Sec. 16-11-103, MCA; IMP: Sec. 16-11-202, MCA.

42.31.202 PAYMENT OF TAX -- BOND (1) The wholesaler shall remit the ~~tax of 12 1/2% of~~ appropriate tax calculated at the statutory rate on the wholesale price paid for tobacco products, other than cigarettes, purchased and delivered from manufacturers, less 5% of the computed tax for collection, together with copies of the itemized invoices and Form No. TP-101, Tobacco Products Tax Reporting Form. Such remittance shall be made to the department of revenue by the 10th of each month covering purchases of tobacco products, other than cigarettes, made during the previous month. Forms will be supplied by the department of revenue upon request.

(2) The department may in its discretion require that wholesalers be bonded under the provisions of these rules. AUTH: Sec. 16-11-103 MCA; IMP: Sec. 16-11-203 MCA.

42.31.205 DISPLAY OF NOTICE OF TAX (1) remains the same.

(2) Below is a sample format of the notice:

NOTICE

NOTICE is hereby given that a Montana tax, calculated at the statutory rate ~~tax of 12 1/2% of~~ on the wholesale price of tobacco products, other than cigarettes, to the wholesaler is included in the price of all tobacco products, other than cigarettes, sold in this store.

~~NOTICE is further given that a Montana tax of 12¢ per~~

~~package of cigarettes is included in the price of all cigarettes sold in this store.~~

AUTH: Sec. 16-11-103, MCA; IMP: Sec. 16-11-202, MCA.

42.31.211 WHOLESALER INVOICES (1) In order to comply with ARM 42.31.201 and 42.31.202, the wholesaler must procure from manufacturers itemized invoices of all tobacco products, ~~other than cigarettes,~~ purchased from and delivered by the manufacturer. ~~The wholesaler must obtain from the manufacturer separate invoices for tobacco products purchases and cigarette purchases.~~ The invoices shall show the name and address of the manufacturer and the date of purchase.

AUTH: Sec. 16-11-103 MCA; IMP: Sec. 16-11-202 and 16-11-203 MCA.

42.31.212 STATEMENT BY WHOLESALER (1) All invoices or sales slips issued by wholesalers covering sales to retailers of all tobacco products, other than cigarettes, must contain a statement (typed, printed, or stamped) that the applicable Montana tobacco products tax ~~of 12 1/2% of the wholesale price of such products to the wholesaler~~ is included in the total billing cost.

AUTH: Sec. 16-11-103 MCA; IMP: Sec. 16-11-202 and 16-11-203 MCA.

42.31.213 WHOLESALER AND RETAILER RECORDS (1) Every wholesaler shall keep at its place of business complete and accurate records for that place of business, including legible copies of all invoices for tobacco products, other than cigarettes, held, purchased and delivered, or sold in this state by the wholesaler. All records must be preserved for a period of ~~3~~ 5 years from the date of purchase or from the date of last entry in the records.

(2) Every retailer shall keep at its place of business complete and accurate records for that place of business, including legible copies of all itemized invoices of purchases of tobacco products, other than cigarettes, purchased and delivered from all wholesalers. The invoices shall show the name and address of the wholesaler and the date of purchase. All records must be preserved for a period of ~~3~~ 5 years from the date of purchase or from the date of last entry in the records.

AUTH: Sec. 16-11-103 MCA; IMP: Sec. 16-11-118 and 16-11-203 MCA.

42.31.302 COMPLAINTS AND INVESTIGATIONS (1) All complaints for violation of ~~16-10-305, MCA, and/or~~ these rules must be received in writing. No anonymous or oral complaints will be considered by the department.

(2) and (3) remain the same.

AUTH: Sec. 16-11-103, MCA; IMP: Sec. 16-11-118, MCA.

42.31.303 RECORDS (1) (a) through (c) remain the same.

(d) item or items sold or furnished; and
(e) retailer cost per item; ~~and~~ .
~~(f) date the wholesaler received payment.~~

(2) Commercial records or invoices may be used if they contain the information listed in subsection(1)(a) through ~~(f)~~ (e).

(3) The records or invoices shall be maintained for ~~three~~ five years.

AUTH: Sec. 16-11-103, MCA; IMP: Sec. 16-11-118, MCA.

3. The Department is proposing the amendments because of the passage of SB 116 of the 1991 Legislature. Also, changes in the industry and compliance issues which have surfaced indicated a need for clarification of the Department's requirements.

4. The Department proposes to repeal the following rules:

42.31.104 USE OF STAMPING EQUIPMENT, found at pages 42-3105 and 42-3106 of the Administrative Rules of Montana. AUTH: Sec. 16-11-103, MCA; IMP: Sec. 16-11-115, MCA.

42.31.106 EXAMINATION OF CIGARETTES, found at page 42-3106 of the Administrative Rules of Montana. AUTH: Sec. 16-11-103, MCA; IMP: Sec. 16-11-113, MCA.

42.31.301 GENERAL POLICY, found at page 42-3141 of the Administrative Rules of Montana. AUTH: Sec. 16-10-104, MCA; IMP: Sec. 16-10-305, MCA.

5. The Department proposes to repeal these rules because of the passage of SB 116 of the 1991 Legislature and as general housekeeping.

6. The Department proposes to adopt New Rules I through VI, which do not replace or modify any sections currently found in the Administrative Rules of Montana, as follows:

RULE I SALE OF OTHER STATE STAMPED CIGARETTES (1) Cigarettes stamped with other state stamps must be segregated from Montana stamped cigarettes in order to avoid the possibility of distributing other state stamped cigarettes in Montana.

(2) Cigarettes with other state stamps and distributed outside of Montana must be reported to the Montana department of revenue on Schedule C listing the name and address of purchaser, name of carrier, method of shipment, invoice date, invoice number and total cigarettes shipped. This form must be submitted along with Form CT-205 by the 15th day of the month following the sale.

AUTH: Sec. 16-11-103, MCA; IMP: Sec. 16-11-132, MCA.

Rule II WHOLESALE/RETAIL PRICES (1) Wholesaler prices to the retailer could be affected by tax increases enacted by the Montana Legislature.

(2) When tax increases occur, audits may be done on cigarette inventories located at the wholesaler's and/or retailer's premises in order to comply with the tax increase. These audits may be done by the Montana department of revenue or on a voluntary system basis by the wholesaler.

(3) Field or voluntary audits may also be required on inventories located at retail businesses in order to comply with tax increases.

AUTH: Sec. 16-11-103, MCA; IMP: Sec. 16-11-111, MCA.

RULE III PURCHASING METERED CIGARETTE TAX AND HAND APPLIED CIGARETTE TAX DECALS (1) Metered cigarette tax units shall be purchased at designated county treasurer offices on either a cash or credit basis.

(a) Cash remittances shall be made payable to the Montana department of revenue or the state treasurer and shall be collected by county treasurers before setting meters.

(b) A cigarette tax surety bond, as referenced in 16-11-117, MCA, must be on file with the Montana department of revenue and written authorization given to county treasurer by the department before credit purchases are allowed.

(c) The original copy of form CT-201, order for Montana metered cigarette tax or hand and/or heat applied cigarette tax decals, shall be submitted to the department by county treasurers to report each cash or credit purchase.

(d) County treasurers shall keep ledgers verifying ascending and descending settings on cigarette tax meters.

(2) Form CT-201 is submitted to the department by wholesalers requesting purchases of hand applied decals and is used for both cash and credit transactions.

AUTH: Sec. 16-11-103, MCA; IMP: Sec. 16-11-115 and 16-11-117, MCA.

RULE IV PRICING TO MEET COMPETITION (1) Any retailer or wholesaler may advertise or sell cigarettes priced to meet a competitive price as long as the advertised or sale price is not below minimum price set by the department of revenue as required by statute.

(2) Prices established in bankruptcy, liquidation, clearance sales, sales of damaged or imperfect cigarettes, or sales under the order of any court shall not be used as a basis for competitive pricing.

(3) The department, a trade association, or an industry group may make a cost survey to establish cost to retailer or a cost to wholesaler. Such a survey may be used to determine a "competitive price" as referenced in 16-10-203 and 16-10-303, MCA.

AUTH: Sec. 16-10-104, MCA; IMP: Sec. 16-10-203, 16-10-303 and 16-10-304, MCA.

* RULE V SALES/PURCHASES BELOW COST - REBATES (1) It shall be a violation of Title 16 Montana Code Annotated for any retailer or wholesaler to advertise or sell cigarettes at less than minimum price set by the department of revenue using methods known as rebates, gifts, or concessions.

(2) It shall also be a violation of Title 16 Montana Code Annotated for a retailer to attempt to obtain any rebate, gift, or concession in conjunction with cigarette purchases that will lower the cost.

AUTH: Sec. 16-10-104, MCA; IMP: Sec. 16-10-301, MCA.

RULE VI PREMIUM PROMOTIONS (1) Manufacturer's premiums may be attached to cigarette packs or cartons without being considered in violation of minimum pricing under the following conditions:

(a) the department is notified of the promotion 2 weeks in advance of the beginning date of the promotion; and

(b) the premiums are packaged along with each carton or package of cigarettes;

(i) manufacturer's representatives may attach premiums at the retail locations;

(ii) there is a written contract between the manufacturer and the wholesaler, sub-jobber or independent jobber directing the attachment of premiums.

(2) The contract and subsequent accounting transactions must be clearly segregated and reported from the normal purchase of product. For example, payments made to wholesalers, sub-jobbers, or any other agents must be maintained in separate accounts as documentation of the transaction and the payment for premium attachment services may not be netted against invoices for cigarette purchases.

AUTH: Sec. 16-10-104, MCA; IMP: Sec. 16-10-301, MCA.

7. The new rules as proposed are necessary because of the passage of SB 116 and for general housekeeping purposes. Rules IV and V clarify issues related to rebates and minimum price violations and competitive pricing. These rules are indirectly related to Rule VI. Rule VI deals specifically with the repeal of 16-10-202, MCA, as specified in SB 116, and gives direction regarding manufacturer premium promotions.

8. 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:

Cleo Anderson
Department of Revenue
Office of Legal Affairs
Mitchell Building
Helena, Montana 59620

no later than February 7, 1992.

9. Cleo Anderson, Department of Revenue, Office of Legal Affairs, has been designated to preside over and conduct the hearing.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State December 16, 1991.

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

In the matter of the amendment of rule 46.10.404 pertaining to Title IV-A day care for children	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.10.404 PERTAINING TO TITLE IV-A DAY CARE FOR CHILDREN

TO: All Interested Persons

1. On January 17, 1992, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rule 46.10.404 pertaining to Title IV-A day care for children.

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

46.10.404 TITLE IV-A DAY CARE FOR CHILDREN OF RECIPIENTS IN TRAINING OR IN NEED OF PROTECTIVE SERVICES

Subsection (1) remains the same.

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

(a) "full-day care" means care provided for a continuous period of six hours or more per day;

(b) "part-time care" means care provided for a continuous period of less than six hours per day;

(c) "day care home" means a private residence in which day care is provided for one to six children on a regular basis;

(d) "group day care home" means a private residence in which day care is provided for 7 to 12 children on a regular basis;

(e) "day care center" means a place in which day care is provided for 13 or more children on a regular basis; and

(f) "extra meal" means meals as defined in ARM 11.14.101(6)(c).

Subsections (2) through (2)(d) remain the same in text but are renumbered (3) through (3)(d).

(e) The maximum rate for full-day care in day care homes is ~~$11.25~~10.50 per day per child for children 24 months of age or older and $12.00 per day per child for infants under 24 months of age. The maximum rate for full-day care in group day care homes is ~~$11.25~~11.00 per child per day for children 24 months of age or older and $12.00 per child per day for infants under 24 months of age. The maximum rate for full-day care in day care centers is ~~$12.00~~11.00 per child per day for children 24 months of age or older and $13.00 per child per day for infants under 24 months of age.

~~(i) "Full-day care" means care provided for a continuous period of not less than six (6) hours per day.~~

(f) The maximum rate for part-time care in day care homes is $~~1.50~~1.35 per hour per child. The maximum rate for part-time care in group day care homes is $~~1.50~~1.35 per hour per child. The maximum rate for part-time care in day care centers is $~~2.00~~1.65 per hour per child. Part-time care payments may not exceed the full-day or night care rate.

Subsection (2)(g) remains the same in text but is renumbered (3)(g).

(i) extra meals at a rate of $~~1.10~~1.00 per meal per child; and

(ii) exceptional child care, as defined in ARM 11.14.101(6)(d), at a maximum of $12.00 per day per child for full-time care or $~~1.75~~1.65 per hour per child for part-time care in day care homes or group day care homes and $12.15 per day per child for full-time care and $~~2.00~~1.75 per hour per child for part-time care in day care centers.

Subsections (2)(g) and (i) remain the same in text but are renumbered (3)(h) and (i).

AUTH: Sec. 53-4-212 ~~and 53-4-503~~ MCA
IMP: Sec. 53-4-211, ~~53-4-514~~ and 53-4-716 MCA

3. This rule amendment is necessary to bring the rates paid to providers of day care to children of Aid to Families with Dependent Children (AFDC) recipients in line with the rates authorized by the 52nd Montana Legislature. The proposed rule will decrease rates from what is currently authorized by ARM 46.10.404.

The legislature appropriated funds to increase the rates paid to day care providers to 75% of the market rate. ARM 46.10.404 was therefore amended to increase day care rates to 75% of the market rate effective October 1, 1991. However, after the rule was amended, the Office of the Legislative Fiscal Analyst and the Governor's Budget Office advised the Department that the legislature intended the increase to 75% to occur in increments rather than all at once.

The legislative history of House Bill 2, the appropriations bill passed by the 52nd Legislature, shows that the legislature intended day care rates to be increased by $1.00 per day for family and group day care providers and $.50 per day for day care centers effective October 1, 1991, with additional increases in fiscal year 1993 to bring rates to 75% of the market rate. The rates provided in the current rule are thus too high and must be decreased to the level intended by the legislature. The proposed rates, though less than the current rates, will provide an increase over the rates prior to

October 1, 1991, of $1.00 per day for family and group day care providers and $.50 per day for day care centers.

Subsection (2)(g)(i) is being amended to reduce the amount being paid for extra meals from $1.10 to $1.00 per meal. When this rule was amended effective October 1, 1991 to increase day care rates to 75% of the market rate, the rate for extra meals was increased also. This increase was based on the assumption that the 52nd Montana Legislature intended to increase the extra meal rate along with the other rates. However, the legislative history of House Bill 2 indicates that the legislature did not authorize an increase in the extra meal rate. The rule must therefore be amended to eliminate the unauthorized increase and return the rate to that provided in the rule prior to the October 1, 1991 amendment.

Several other changes are being made in the wording and organization of this rule which do not reflect any change in the department's policy. Rather these changes are necessary to express the department's policies more clearly and precisely. Thus the rule is being amended to provide definitions of the terms "day care home," "group day care home," "day care center," "full-day care," "part-time care," and "extra meal." The definitions section has been inserted as section (2) and the current section (2) has been renumbered as section (3). The current subsection (2)(e)(i) has been moved to the definitions section.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than January 27, 1992.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 16, 1991.

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

In the matter of the amendment of Rules 46.12.4002, 46.12.4004 and 46.12.4006 pertaining to inpatient psychiatric services	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.4002, 46.12.4004 AND 46.12.4006 PERTAINING TO INPATIENT PSYCHIATRIC SERVICES

TO: All Interested Persons

1. On January 21, 1992, at 3:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of Rules 46.12.4002, 46.12.4004 and 46.12.4006 pertaining to inpatient psychiatric services.

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

46.12.4002 GROUPS COVERED, AFDC-RELATED INSTITUTIONALIZED INDIVIDUALS Subsections (1) through (1)(b) remain the same.

(c) Individuals under age 21 receiving active treatment as inpatients in psychiatric facilities or programs provided that the youth is in the custody of the department of family services or has been committed to the department of family services by district court pursuant to 41-3-403, 41-3-404, 41-3-406 or 41-5-523, MCA.

Subsections (2) and (2)(a) remain the same.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-131 MCA

46.12.4004 NON-FINANCIAL REQUIREMENTS, AFDC-RELATED INSTITUTIONALIZED INDIVIDUALS Subsection (1) remains the same.

(2) For individuals under age 21 in intermediate care facilities, including intermediate care facilities for the mentally retarded, or receiving treatment in psychiatric facilities or programs pursuant to the requirements of 46.12.4002(1)(c), the nonfinancial requirements for medicaid under this subchapter, whether as categorically needy or medically needy, consist of the age requirement and applicable service requirements.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-131 MCA

46.12.4006 FINANCIAL REQUIREMENTS, AFDC-RELATED INSTITUTIONALIZED INDIVIDUALS Subsection (1) remains the same.

(2) For individuals under age 21 in intermediate care facilities, including intermediate care facilities for the mentally retarded, or receiving treatment in psychiatric facilities or programs pursuant to the requirements of 46.12.4002(1)(c), the financial requirements for medicaid under this subchapter as categorically needy are the AFDC financial requirements which are set forth in ARM 46.10.401 through 406 and 46.10.505 through 514. These will be used to determine whether:

Subsections (2)(a) through (2)(c)(ii) remain the same.

(3) For individuals under age 21 in intermediate care facilities, including intermediate care facilities for the mentally retarded, or receiving treatment in psychiatric facilities or programs pursuant to the requirements of 46.12.4002(1)(c) who are ineligible under subsection (2) because of excess income, the financial requirements for medicaid under this subchapter as medically needy are the medically needy financial requirements for noninstitutionalized AFDC-related families and children which are set forth in subchapter 38. The financial provisions of this subchapter which apply to individuals under 21 who are ineligible for medicaid under ARM 46.12.3401(1)(b)(iii) and ARM 46.12.3401(3) apply identically to the above described individuals under 21.

AUTH: Sec. 53-6-113 MCA
IMP: Sec. 53-6-131 MCA

3. This notice supersedes the notice of proposed amendments to ARM 46.12.4002, 46.12.4004, and 46.12.4006 published on November 14, 1991, MAR No. 46-2-678. Since that time, considerable concern has been expressed regarding the care and treatment of those youths who have such severe disabilities that they have been placed in the custody of Department of Family Services (DFS). In order to address this concern, the department proposes to redefine rather than eliminate the medicaid coverage group of individuals under age 21 receiving treatment as inpatients in psychiatric facilities or programs set forth in 46.12.4002.

Under the amendments now being proposed, such individuals will be eligible for medicaid without consideration of parental income or resources if a court has made a finding pursuant to sections 41-3-406 or 41-5-523, MCA, that the youth is a "youth in need of care", a "youth in need of supervision", or "a delinquent youth" and has determined that it is necessary to commit or place the youth in the custody of DFS, or if the youth has otherwise been placed in the care and custody of DFS. Other youths receiving inpatient psychiatric treatment will be eligible for medicaid if they qualify under the eligibility rules applicable to any other applicant for medicaid, which require consideration of parental income and resources

in most cases. They will also have to meet the other eligibility requirements usually applicable for AFDC-related medicaid, such as deprivation of parental support.

The department has determined that in general it is more equitable to apply the same medicaid eligibility rules to youths receiving inpatient psychiatric treatment as apply to other applicants for medicaid. Specifically, it is appropriate to consider the resources and income of the individuals' parents. However, the department has weighed against this the need to guarantee inpatient psychiatric treatment to youths with severe emotional or mental problems regardless of parental income or resources. To accommodate these opposing concerns, the department has proposed the modified coverage group insuring treatment for youths in DFS' custody.

The department has the authority pursuant to sections 53-6-113, and 53-6-131, MCA, to adopt rules governing eligibility for the Montana medicaid program. In addition, section 53-6-101, MCA provides the department with authority to determine what federally defined optional services will be provided in Montana. The proposed rules are necessary to effectuate these statutory provisions. These proposed rules are necessary to make changes to current eligibility requirements for those persons under 21 years of age receiving inpatient psychiatric treatment.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than January 27, 1992.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State December 16, 1991.

BEFORE THE TEACHERS' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the adoption of rules implementing laws adopted by the 52nd legislature; amendment of Rules 2.44.306, 2.44.401, 2.44.409, 2.44.509, 2.44.510, 2.44.514 and 2.44.517 for the purpose of crediting military service, payment of benefits at death, payment of child's benefit, bonuses as compensation and correcting errors on wages not reported and repeal of Rules 2.44.504 and 2.44.601 relating to the Teachers' Retirement System	NOTICE OF THE ADOPTION OF ARM 2.44.412 (RULE I), THE AMENDMENT OF ARM 2.44.306, 2.44.401, 2.44.409, 2.44.509, 2.44.514 AND 2.44.517, AND THE REPEAL OF ARM 2.44.504 AND 2.44.601

TO: All Interested Persons.

1. On September 26, 1991, the Teachers' Retirement Board published notice of proposed adoption of new rules, amendment to rules: 2.44.306, 2.44.401, 2.44.409, 2.44.509, 2.44.510, 2.44.514 and 2.44.517, and repeal of rules: 2.44.504 and 2.44.601 concerning credible service, payment of benefits, compensation reported and correction errors as they relate to the Teachers' Retirement System at page 1770 through 1774 of the 1991 Montana Administrative Register, issue number 18.

2. Rule I is adopted as proposed, and shall be codified at ARM 2.44.412. ARM 2.44.306, 2.44.401, 2.44.409, 2.44.509, 2.44.514 and 2.44.517, are hereby amended as proposed.

3. Rules 2.44.504 and 2.44.601 are repealed.

4. Based upon the comments received, proposed Rule II and amendments to rule 2.44.510 are not adopted.

5. At a public hearing a representative of the Montana Education Association opposed the rule on purchase of salary credit for a temporary absence on the grounds that the 1/9 limitation on the amount of salary a member may purchase was overly restrictive. He suggested that since the full cost was paid by the member, there should be no limit on the amount of salary credit a member is eligible to purchase. It was determined that this rule would not be adopted at this time.

A written statement opposing amendments to rule 2.44.510 was received from Jody May, Director, Payroll Services Office, Montana State University. He argued that retired employees may be unable to accept full-time summer session post-retirement contracts their first year after retirement under the proposed amendments and suggested that the Board explore other possible alternatives. It was determined that this rule would not be adopted at this time.

The agency received comments from Valencia Lane, Legislative Council staff attorney, stating that the rationale for proposed Rule I should state why the rule is necessary to implement a 1974 act. Rule I is necessary to implement the provisions of the Vietnam Era Veterans' Readjustment Act, as this act applies to members of the Teachers' Retirement System returning from the Persian Gulf War.

6. The authority of the Board to make the proposed rules is based on section 19-4-701, MCA, and the rules implement Title 19, Chapter 4, Parts 101, 206, 401, 409, 801 through 804, 901, 1001, MCA.

By:

Dal Smilie, Chief Legal Counsel
Rule Reviewer

David L. Senn, Administrator
Teachers' Retirement System

Certified to the Secretary of State December 16, 1991.

BEFORE THE STATE COMPENSATION MUTUAL INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the adoption of emergency rules I through XVII relating to the organization of the State Fund, public participation, board meetings and the establishment of premium rates	NOTICE OF AMENDMENT TO PARAGRAPH 5 IN ADOPTION OF EMERGENCY RULES I THROUGH XVII RELATING TO THE ORGANIZATION OF THE STATE FUND, PUBLIC PARTICIPATION, BOARD MEETINGS AND THE ESTABLISHMENT OF PREMIUM RATES

TO: All Interested Persons:

1. On December 12, 1991, the State Compensation Mutual Insurance Fund published a Notice of Adoption of Emergency Rules I through XVII Relating to the Organization of the State Fund, Public Participation, Board Meetings and the Establishment of Premium Rates on page 2403 of the 1991 Montana Administrative Register, Issue No. 23. John MacMaster, Attorney for the Administrative Code Committee commented, and suggested an amended adoption notice be filed substituting language for paragraph 5 to clarify the adoption of the emergency rules by the board, which states the board of directors adopts the emergency rules. The amendment does not change the effective date of the emergency rules which were effective December 3, 1991, or any other portion of the previously adopted emergency rules. Paragraph 5 is hereby amended to read as follows:

5. The Board of Directors of the State Compensation Mutual Insurance Fund adopts the following emergency rules:

Dal Smilie, Chief Legal Counsel
Rule Reviewer

James T. Harrison, Jr.
Chairman of the Board

Nancy Butler, General Counsel
Rule Reviewer

Certified to the Secretary of State December 16, 1991.

BEFORE THE BOARD OF ATHLETICS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to scoring and number and the adoption of of a new rule pertaining to mouthpieces	))))	NOTICE OF AMENDMENT OF 8. 8.3103 POINT SYSTEM - SCORING AND THE ADOPTION OF A NEW RULE PERTAINING TO MOUTHPIECES

TO: All Interested Persons:

1. On October 17, 1991, the Board of Athletics published a notice of proposed amendment and adoption of the above-stated rules at page 1891, 1991 Montana Administrative Register, issue number 19.

2. The Board amended ARM 8.8.3103 exactly as proposed. The Board voted not to amend ARM 8.8.3104 as proposed in the notice. New rule I (8.8.3204) was adopted as proposed but with the following changes because the Board felt the punishment was too severe and voted to delete the language as shown below:

"8.8.3204 MOUTHPIECE (1) through (3)(b) will remain the same as proposed.

(c) Upon the third occurrence, disqualify the participant who spit out or allowed his mouthpiece to fall out of his mouth. The opponent shall be declared the winner due to disqualification. ~~The board representative shall immediately advise the promoter that the purse of such participant shall be forfeited and paid over to the board.~~"

Auth: Sec. 23-3-405, MCA; IMP, Sec. 23-3-405, MCA

3. No comments or testimony were received.

BOARD OF ATHLETICS
ANDY VANDOLAH, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 16, 1991.

**BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA**

In the matter of proposed amendments of Rule 8.86.301 as it relates to producer prices; and Rules 8.86.503, 8.86.504, and 8.86.505 as they relate to the quota rules.	)))))	**NOTICE OF AMENDMENTS OF RULE 8.86.301-PRICING RULES RULES 8.86.503, 8.86.504 AND RULE 8.86.505-QUOTA RULES DOCKET #10-91**

TO: ALL LICENSEES UNDER THE MONTANA MILK CONTROL ACT (SECTION 81-23-101, MCA, AND FOLLOWING), AND ALL INTERESTED PERSONS:

1. On October 17, 1991, the Board of Milk Control published notice of proposed adoption of rule 8.86.301 (8)(b)(vi) as it relates to the class I wholesale price; and rules 8.86.503(2), 8.86.504(1)(a),(j) and 8.86.505(1)(a)(iv),(b) as they relate to the statewide pool and quota plan. Notice was published at page 1894 of the 1991 Administrative Register, issue no. 19, as MAR NOTICE 8-86-43.

2. A hearing was held on November 19, 1991, at 9:00 a.m. in the Department of Transportation auditorium, 2701 Prospect Avenue, Helena, Montana. Five persons appeared at the hearing to offer data, views or arguments, and four persons spoke in favor of various parts of the proposed amendments. Only one person was opposed to the proposed change in ARM 8.86.504(1)(j), not because the change was detrimental, but because the change did not go far enough to correct the original inequity. The bureau received one (1) written comment prior to the hearing, which was in favor of adopting all of Montana Dairymen's Association (MDA) proposal.

3. After thoroughly considering all of the testimony and comments, the Board is adopting ARM 8.86.301(8)(b)(vi), 8.86.503(2) and 8.86.505(1)(iv) exactly as proposed. ARM 8.86.504(1)(j) is adopted as proposed with the following language change:

"8.86.504 TRANSFER OF QUOTA

(1)(a) same as proposed.

(b)-(i) remains the same.

(j) A producer who was assigned quota under ARM 8.86.502(9) may not transfer his quota for three years after the assignment of such quota, unless such transfer is an intrafamily quota transfer as defined in paragraph (f) above. However, he may transfer his quota if the transfer ~~is part of the assets to be included in the sale or other transfers of the entire dairy farm of such producer~~ INCLUDES THE SALE OF THE HERD AND PRODUCTION FACILITIES. SUBJECT TO THE JUDGEMENT OF THE PRODUCER QUOTA COMMITTEE, THE PURCHASER MUST BE

SUBSTANTIALLY STANDING IN THE SHOES OF THE SELLER AND CONTINUING THE PRODUCTION OPERATION WITHOUT INTERRUPTION. In such cases, the three-year transfer restriction of this rule shall continue to apply to the new owner(s) ~~of the farm~~."

4. The authority for the board to amend the rule is section 81-23-302, MCA, and implements section 81-23-302, MCA.

5. Principal reasons given for adoption of the rules were as follows:

a. All written and oral comments at the hearing favored the adoption of the rule as proposed except for a comment on ARM 8.86.504(1)(j). One person objected to the proposed language in (1)(j), not because the change was detrimental, but because the amendment did not go far enough in correcting the original inequities.

b. Prior to the statewide pool, dairy processors and producers shared the cost of surplus milk disposal. Since the establishment of the statewide pool, the producers incur all of the cost on excess milk over quota. It is reasonable that the processors incur all the cost of disposing of surplus milk.

c. Adoption of ARM 8.86.504(1)(j) does not hurt the opponents position, in fact they are actually in a better position than they were prior to the rule amendment.

d. Changing the rule to alleviate requiring additional production during periods when ample supplies of milk already exist is consistent with the policy of the Act and the change is necessary so the milk industry will not be overburdened with costly excessive milk supplies.

e. Permitting producers to sell unproduced quota in lieu of forfeiture, will best serve the needs of all concerned because it will permit the quota to go directly to an individual who will more likely produce the milk.

6. The principal reasons urged against the adoption come from the testimony of one individual and they pertain only to ARM 8.86.504(1)(j) for the purpose of requesting the Board to delete the section entirely. Those reasons appear as follows:

a. The three-year moratorium prohibiting the Carnation producers from selling their quota is discriminatory, it creates unequal treatment and requires those producers to operate under a different set of rules when in fact, there is no reasons or justification for doing so.

b. ARM 8.86.504(a)(j) conflicts with ARM 8.86.506(8)(e).

c. The rule as amended is too restrictive and it will not enable the Carnation producers to sell their quota.

7. The principal reasons for the Board rejecting the reasons given against the adoption is as follows:

a. The amended language is not as detrimental as the current language in the rule.

b. The language necessary to grant the opponents request was beyond the scope of the notice.

MONTANA BOARD OF MILK CONTROL
MILTON J. OLSEN, Chairman

MONTANA DEPARTMENT OF COMMERCE

BY: _____
Andy J. Poole, Deputy Director

BY: _____
Annie M. Bartos, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State December 16, 1991.

BEFORE THE MONTANA BOARD OF SCIENCE
AND TECHNOLOGY DEVELOPMENT
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of rules pertaining to application procedures for a research and development project loan, medical research facility projects and the adoption of new rules pertaining to research and development loans made by the Montana Board of Science and Technology Development	)))))))))	NOTICE OF AMENDMENT OF 8.122.607 AND 8.122.616, AND THE ADOPTION OF NEW RULES PERTAINING TO RESEARCH AND DEVELOPMENT LOANS MADE BY THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT TO MONTANA COMPANIES, MEDICAL RESEARCH FACILITIES AND UNIVERSITY-BASED RESEARCH AND DEVELOPMENT PROGRAMS

TO: All Interested Persons:

1. On September 12, 1991, the Montana Board of Science and Technology Development published a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 1632, 1991 Montana Administrative Register, issue number 17. The public hearing was held on October 22, 1991, from 9:00 a.m. to 11:00 a.m., in the fourth floor conference room of the Power Block Building in Helena, Montana.

2. The Board has amended and adopted the rules exactly as proposed. The new rules will be numbered as follows and will be located under Sub-Chapter 7: I (8.122.701), II (8.122.702), III (8.122.703) and IV (8.122.704)

3. No comments or testimony were received.

MONTANA BOARD OF SCIENCE
AND TECHNOLOGY DEVELOPMENT
RAY V. TILMAN, CHAIRMAN

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

Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, December 16, 1991.

BEFORE THE STATE LIBRARY COMMISSION
STATE OF MONTANA

In the matter of the adoption of Rule I pertaining to direct state aid to public libraries for per capita and per square mile served and the amendment of ARM 10.102.4001 pertaining to reimbursement to libraries for interlibrary loans	)	NOTICE OF ADOPTION OF RULE I PERTAINING TO DIRECT STATE AID TO PUBLIC LIBRARIES FOR PER CAPITA AND PER SQUARE MILE SERVED AND ON THE AMENDMENT OF ARM 10.102.4001 FOR REIMBURSEMENT TO LIBRARIES FOR INTERLIBRARY LOANS

TO: All Interested Persons

1. On October 31, 1991, the State Library commission published notice of the proposed adoption of Rule I pertaining to direct state aid to public libraries for per capita and per square mile served and the amendment of 10.102.4001 pertaining to reimbursement to libraries for interlibrary loans, at p. 1971 of the Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 20, 1991. There was testimony from one neutral party.

3. The State Library commission has adopted this rule as Rule I (10.102.4003) DIRECT STATE AID TO PUBLIC LIBRARIES FOR PER CAPITA AND PER SQUARE MILE SERVED with the following changes:

(1) through (4) remain as proposed.

(5) In each county which has no public libraries, the state library will contact the county commission indicating that the county will qualify for per capita and per square mile state aid if the county commission establishes county-wide library service as provided for in state statute, or if the county commission contracts for library services with another county or municipal library as provided for in state statute. If such means are not established within a six-month period following written notice received from the state library, the state aid which would have gone to the county will be distributed ~~according to guidelines approved by the state library commission~~ to the federation headquarters library in whose area this county is located for use in federation activities.

4. The State Library commission has amended 10.102.4001 REIMBURSEMENT TO LIBRARIES FOR INTERLIBRARY LOANS as follows:

(1) remains as in the current rule.

(2)(a) remains as proposed.

(2)(a)(i) through (2)(h) remain as in the current rule.

Richard T. Miller, Jr.
State Librarian
Rule Reviewer

Mary Doggett, Chairman
Montana State Library
Commission

Certified to the Secretary of State December 16, 1991

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 11.12.101; 11.12.102; 11.12.104; 11.12.106; and 11.12.108 pertaining to youth care facilities	NOTICE OF AMENDMENT OF RULES 11.12.101; 11.12.102; 11.12.104; 11.12.106; AND 11.12.108 PERTAINING TO YOUTH CARE FACILITIES

1. On October 17, 1991, the Department of Family Services published notice of the proposed amendment of Rules 11.12.101, 11.12.102, 11.12.104, 11.12.106, and 11.12.108 pertaining to youth care facilities, at page 1903 of the 1991 Montana Administrative Register, issue no. 19.

2. The department has amended the rules as proposed.

3. No comments were received.

DEPARTMENT OF FAMILY SERVICES

Tom Olsen, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, December 16, 1991.

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

In the matter of the adoption of new rules I-VI; and amendment of 16.8.930 and 16.8.1105, dealing with air quality fees	))))	NOTICE OF ADOPTION OF NEW RULES I THROUGH VI AND AMENDMENT OF RULES 16.8.930 AND 16.8.1105

(Air Quality Bureau)

To: All Interested Persons

1. On October 17, 1991, the Board published notice at page 1906 of the Montana Administrative Register, Issue No. 19, of the proposed adoption of new rules I-V and the amendment of 16.8.930 and 16.8.1105, which implement a fee program for the department's air quality bureau.

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, deleted material is interlined) and added an additional new Rule VI requiring annual review of the fees.

RULE I (16.8.1901) DEFINITIONS Same as proposed.

RULE II (16.8.1903) AIR QUALITY OPERATION FEES

(1) Same as proposed.

(2) The department shall give written notice of the amount of the air quality operation fee to be assessed and the basis for such fee assessment to the owner or operator of the air contaminant source annually. The air quality operation fee is due ~~20~~ 30 days after receipt of the notice unless the fee assessment is appealed pursuant to [RULE V]. If any portion of the fee is not appealed, that portion of the fee that is not appealed is due ~~20~~ 30 days after receipt of the notice. Any remaining fee which may be due after completion of the appeal is immediately due and payable upon issuance of the board's decision or when judicial review of the board's decision has been completed, whichever is later.

(3) Same as proposed.

(4) An air quality operation fee is separate and distinct from any air quality permit application fee required to be submitted to the department pursuant to [RULE IV] by a source of air contaminants. However, nothing in these rules may be deemed to allow the department to collect more than one fee simultaneously.

(5) Same as proposed.

RULE III (16.8.1904) ADDITIONAL AIR QUALITY OPERATION FEES REQUIRED TO FUND SPECIFIC ACTIVITIES OF THE DEPARTMENT DIRECTED AT A PARTICULAR GEOGRAPHICAL AREA Same as proposed.

RULE IV (16.8.1905) AIR QUALITY PERMIT APPLICATION FEES

(1)-(2) Same as proposed.

(3) Air quality permit application fees are separate and distinct from any air quality operation fee required to be submitted to the department pursuant to [RULE II] by a source of air contaminants. However, nothing in these rules may be deemed to allow the department to collect more than one fee simultaneously.

(4) The air quality permit application fee is based on the estimated amount of air pollutants to be emitted annually from the source of air contaminants. The estimated amount of air pollutants to be emitted annually is determined according to the emissions inventory included in the permit application. Permit application fees may not be assessed for that amount of emissions which are covered by either an air quality permit in existence at the time of the application, or an air quality permit application which is pending at the time of the application and for which the appropriate fee has been paid. However, the department may assess the minimum fee for those permit applications that do not result in an increase in emissions.

(5) Same as proposed.

RULE V (16.8.1906) AIR QUALITY PERMIT APPLICATION/-OPERATION FEE ASSESSMENT APPEAL PROCEDURES Same as proposed.

NEW RULE VI (16.8.1902) ANNUAL REVIEW (1) No later than September 30 of each year, the department shall report to the board regarding the air quality permit fees which are anticipated for the next calendar year. This report shall include a description of the legislative appropriation to be recovered, the status of the specific appropriation account as of the end of the previous fiscal year, the emissions upon which such fees will be based, the tier system to be implemented, and the status of any anticipated rulemaking activity necessary to adopt the new fees.

AUTH: 75-2-111, MCA; IMP: 75-2-211, MCA

16.8.930 PERMIT REVIEW--INFORMATION REQUIRED Same as proposed.

16.8.1105 NEW OR ALTERED SOURCES AND STACKS -- PERMIT APPLICATION REQUIREMENTS Same as proposed.

3. The department has thoroughly considered the comments received on the proposed rules. The following is a summary of comments received, along with department responses to these comments.

Comment: Montana Wood Products Assn. recommends that Rule II (1)(b) be clarified to indicate that the fees apply only to "operating" permits and not "construction" permits.

Response: Rule II(1)(b) describes a category of sources that would be subject to the operation fees. This includes those sources that are subject to the requirements of Title V of the 1990 Clean Air Act Amendments (CAAA) but not currently required to hold an air quality permit issued by the AQB. The language

of this section is not tied to the holding of an air quality permit; it is meant to assure that sources "grandfathered" from current permitting requirements, but subject to Title V permitting in the future, pay their share of fees. Adding "operating" at this point will be confusing since no such permit currently exists.

Comment: Montana Wood Products Assn. recommends that the payment period be extended to 30 days from 20 days, since many companies make payments from centralized locations and would not be able to meet the 20 day deadline.
Response: HB 781 requires payment upon receipt of notice of a fee assessment. There are, however, 20 days allowed for appeal of any fee assessment after notice. The AQB agrees to the proposed amendment to allow 30 days for payment of the fees. The department's revised the language in Rule II(2) as suggested.

Comment: Montana Wood Products Assn. recommends a one-time permit application fee system, since an annual operation fee does not seem to be necessary after the program is in place.
Response: There are several reasons why an annual operating fee is necessary. First, payment of an annual operating fee based on the amount of emissions is a requirement of the 1990 CAAA. If Montana does not develop an approvable operating permit program containing annual permit fees, the EPA will impose their own program. This would lead to a dual permitting system and loss of primacy for Montana's permitting program. Secondly, HB 781, as passed by the 1991 Legislature, is consistent with the 1990 CAAA by stating in its legislative intent that the fees are to be assessed annually. Therefore, the department is proceeding with a clear legislative mandate for annual operating fees. In addition, the responsibilities and needs of the permitting program are ongoing and will increase, not diminish, after the program development phase. Annual fees are necessary to support these ongoing efforts. These responsibilities, as delineated in HB 781, include all reasonable costs of implementing and enforcing the terms and conditions of the permits, such as emissions and ambient monitoring, preparation of applicable regulations or guidance, modeling analysis and demonstrations and preparation of emission inventories.

Comment: Montana Wood Products Assn. recommends that if an annual operation fee is adopted, it should be based on accurate emissions data and not on estimated emissions.
Response: Some emissions must be estimated since it is not possible to test some sources using currently available testing technology. Standard EPA approved (AP-42) emission factors will be used for those sources that cannot be or have not been source tested. If a source can present a better procedure for determining emissions, then the department will consider adopting an alternative approach. If fees were based entirely on measured emissions, charges would be allowed for only those

sources that have stacks where continuous emissions monitors could be installed. This would place the entire burden of supporting the permitting program on a very limited number of sources in relation to the amount of emissions actually regulated by the permit program.

Comment: Montana Wood Products Assn. questioned the accuracy of the 1989 emission inventory.
Response: The AQB realizes that the 1989 emission inventory contains a few errors and inconsistencies, and has increased its efforts with regard to compilation and review of the 1990 emission inventory to increase its accuracy and consistency. The AQB has also assigned various members of the staff to review emission inventories in assigned industrial groups for consistency and, in addition, will send copies of each source's emission inventory to the sources in December for review prior to any fee assessments.

Comment: Montana Wood Products Assn. recommends that a factor for pollution control equipment, activities and procedures be included.
Response: The AQB uses pollution control efficiencies or actual controlled emission rates in its emission inventory calculations. Therefore, credit is given for efforts a source makes to reduce its emissions.

Comment: Montana Wood Products Assn. suggests that the department be required to prorate the fee for any part of a year rather than leaving it discretionary.
Response: The proposed operating fee is based on a plant's actual emissions. If a plant does not operate for a portion of a year, their emissions will be less and their operating fee will automatically be reduced by a similar amount. The department intends to place all sources on an annual track for the payment of operation fees and will not charge a full annual fee for a permit that is not effective for a full year.

Comment: Montana Wood Products Assn. believes that the burden for funding activities of the department directed at a particular geographic area should not fall entirely on industry sources, but should be borne equally by all sources of air pollution in an area, not only those that would be subject to the regular operating fees.
Response: The additional operation fees were the subject of substantial discussion and debate during all phases of the legislative process. The inclusion of this section in the rules is intended to meet the legislative requirements and intent of HB 781. The language has been adopted verbatim from HB 781. This suggestion was specifically addressed in the legislative debate and no authorization for the assessment of fees on additional sources was given. HB 781 only gave the department the authority to collect fees from those sources that are required to hold an air quality permit issued by the department or are subject to the requirements of Title V of the

1990 CAAA (but not currently required to hold an air quality permit issued by the department). Additional legislative action would be required to assess permit fees to other sources of air pollution, such as wood stoves.

Comment: Montana Wood Products Assn. recommends that there be a requirement that any special study in any area be based on a defined reason and not based simply on a complaint.
Response: HB 781 requires both legislative and board review and approval of any special study proposed by the department. The department believes that in the course of these reviews the department will be required to provide sufficient rationale to demonstrate the need for any proposed study.

Comment: Asarco commented that the permit fee rules are premature since the department is not required, under the 1990 CAAA, to submit an operating permit program, including the permit fee rules, to the EPA until November 15, 1993.
Response: The permit fee system authorized by the legislature in HB 781 is intended to fund six additional staff positions and several existing staff positions. The additional positions were specifically approved by the legislature to be utilized to develop the operating permit system, as well as to alleviate the current lack of resources in the permitting area. It would not be possible for the AQB to develop the required operating permit system by November 1993, given the current level of resources, since we are already experiencing difficulty complying with EPA requirements and deadlines for submittal of State Implementation Plans, completion of inspections, and the submittal of annual emission inventories. In addition, we have not been able to process permits within the required statutory time frames.

Comment: Asarco commented that the inclusion of non-Title V sources that are required to hold an air quality permit issued by the department in the permit fee system goes beyond the requirements of the 1990 CAAA.
Response: During the legislative debate on HB 781, the application of the fees to non-Title V sources was considered and the legislature opted for this system. Per HB 781, the permit fee system is intended to fund the permitting and compliance functions related to all sources required to hold an air quality permit. The department is following legislative direction to spread the permit fee burden over all of the sources required to obtain a permit, rather than only those sources covered by Title V. This is consistent with the workload of the department in permitting and compliance activities for all regulated sources.

Comment: Asarco asked if the AQB expects the current funding level of $395,973 to continue or will it increase?
Response: The department intends to demonstrate that it can operate an approvable permitting program for less than the presumptive $25 per ton contained in the 1990 CAAA. However,

the department does not believe that it will be able to operate a fully approvable program at the current proposed fee level. The level proposed is intended to fund program development and will need to be increased in the future. The department will address growth in the fee program as part of the planning process for the 1993 Legislature.

Comment: Asarco questioned the accuracy and consistency of the 1989 emission inventory and expressed concern that an inaccurate emission inventory may result in an inequitable allocation of annual operation fees among the affected sources.
Response: See Montana Wood Products Assn. response.

Comment: Asarco believes that the rule is unclear as to the basis for calculating the emission inventory included in the permit application. Is the emission inventory based on allowable emissions or projected actual emissions or some other measure of emissions?
Response: All emission inventories submitted in conjunction with permit applications must be calculated on the basis of a source's "potential to emit." This means that the emissions are calculated based on a source's maximum achievable operating rate unless enforceable permit conditions limiting hours of operation or operating rate are contained in the permit. Emission inventories are also calculated on a controlled basis for every source that has a control requirement included as part of their permit. Thus, the permit application fees are based on allowable emissions.

Comment: Asarco believes that there may be inconsistencies in the permit application fee system since the application fees would be based on emission inventories submitted to the AQB by the various applicants as part of their permit application.
Response: The applications will be reviewed for completeness by department staff. This will include a review of the emission inventory to ensure that all relevant emissions are included and that the emission calculations and estimates are done according to established department policy. If there are discrepancies in the emission inventory, the application will be declared incomplete until the source submits an acceptable emission inventory along with the proper permit application fee. Since a source will be limited to the amount of emissions detailed in the emission inventory submitted as part of their permit application, a source should be very reluctant to underestimate their emissions to escape permit application fees.

Comment: Asarco believes that fugitive emissions are much more difficult to quantify than are point source emissions. AP-42 emission fugitive factors are rated D or E, indicating that emission factors for fugitive sources are of questionable quality with a low level of accuracy and reliability. Given this low level of accuracy, permit fees assessed on the basis of fugitive emissions would likely be disproportionate and

inequitable. Requiring sources to develop better estimates of fugitive emissions would be cost-prohibitive. The costs for developing these estimates could easily exceed the permit fees. Therefore, permit fees should not be charged for fugitive emissions or should be charged at a lesser rate to reflect the uncertainty of the fugitive emissions estimates.
Response: The AQB agrees that fugitive emissions are often more difficult to quantify than are point source emissions. Fugitive emissions must be estimated since it is not possible to test fugitive sources using currently available emission testing technology. The AQB does not believe that the use of emission factors for estimation of emissions from fugitive sources produces significant inequities in fee assessments. Emission factors will be applied consistently across industry (for each source type) to assure that all sources are on a level playing field. Furthermore, we would be concerned that fees based entirely on point source emissions would be charged to only those sources that have stack emissions, thereby leaving out a significant part of the emissions inventory. This would place the entire burden of supporting the permitting program on a limited number of sources in relation to the amount of emissions actually regulated by the permit program.

Comment: Asarco believes that unless there is a demonstrable cost-per-ton difference in administering permit programs for NOx and VOCs versus particulates, lead and SO_2, the permit fees for the two classes of pollutants should be the same.
Response: The AQB expends more resources on permitting and compliance activities that are devoted to particulate, SO_2 and lead when compared with NOx and VOCs. Furthermore, Montana's non-attainment areas are non-attainment for particulate, SO_2, lead and CO. While NOx and VOCs have not required major resources in the past, the increased focus on air toxics (many of which are VOCs) and NOx increment tracking will probably require the AQB to propose increases in the relative fee for NOx and VOCs at some time in the future. AQB will continue to assess the fee breakdown in relation to program workload and activity, and will propose needed adjustments in future rulemaking.

Comment: Is lead being double counted, once under total particulates and once under lead?
Response: Yes, it is the intention of the AQB to count lead both as particulate and as lead. This is due to the regulatory focus on lead issues and the amount of staff time devoted to lead-related air quality efforts, including state implementation plan (SIP) development and compliance activities.

Comment: Asarco believes the assessment of permit application fees and operation fees is redundant and may cause the department to violate the provision of HB 781 that requires that fees collected not exceed the legislative appropriation.
Response: The AQB will complete the annual emission inventory prior to the assessment of any fees. The only changes in the

total emission inventory will be minor changes from appealed fee assessments. The AQB interprets the requirement that fees equal appropriations to be applied as a carryover to the next fiscal year. Thus, the total annual operation fees charged for a fiscal year would be the amount of that fiscal year's appropriation minus any permit application fees carried over from the previous fiscal year.

Comment: Asarco believes the assessment of application fees may violate the provision of HB 781 that prohibits the department from collecting more than one annual fee designed to cover the costs associated with the permitting program.
Response: The intent of the language referred to [75-2-211 Section 2 (7), MCA] is to prohibit the collection of more than one annual fee and not to prohibit the collection of one-time application fees. Existing sources paying an annual operation fee would be required to submit an additional permit application fee if they applied for a permit alteration. The application fee for a permit alteration will be calculated only on the change in emissions caused by the alteration and not the emissions from the entire facility.

Comment: Asarco believes the rules do not clearly indicate whether the permit application fees apply to Title V operating permit applications, existing air quality permits or to both.
Response: The rule states that the permit application fees would apply to air quality permit applications submitted to the department in response to current permitting requirements in ARM 16.8, subchapters 9 and 11. Applications for Title V operating permits are not presently addressed in the rules. The air quality permitting rules will change significantly with the implementation of Title V and the other requirements of the 1990 CAAA. These changes will be reflected in future revisions of the permit fee rules.

Comment: Exxon Company, USA, requests that the payment period be extended to 30 days from 20 days to better fit their accounting system and to ensure that payments are made in a timely manner.
Response: See Response to Montana Wood Products Association.

Comment: Exxon recommends clarification that the same amount of fees required under Rule II(4) are not applicable for permit applications required under Rule IV. They recommend the insertion of "pursuant to rules 16.8.1102, 16.8.17.. or 16.8. (Rule IV)" in Rule II(4) between "department" and "by". They also recommend the deletion of the last sentence. They believe that it is confusing except in the context that the operating fee will not be due at the same time a permit fee is due.
Response: The AQB agrees to the clarification of the rule as to the method of determining the amount of the applicable fee. The department feels that the last sentence is important since it clarifies that the department may not assess both a permit application fee and an operating fee at the same time (not just

that they may not be due at the same time). The department has revised Rule II(4).

Comment: Exxon recommends the addition of "under 16.8. (Rule II)" at the end of Rule IV(3) to clarify that the application fees apply to permit applications and only to those facilities covered by the application. They also recommend the deletion of the last sentence. They believe that it is confusing except in the context that the operating fee will not be due at the same time a permit fee is due.
Response: The AQB agrees to the clarification of the rule. The department feels that the last sentence is important since it clarifies that the department may not assess both a permit application fee and an operating fee at the same time (not just that they may not be due at the same time). The department has revised Rule IV(3).

Comment: Exxon recommends further clarification that the application fee only applies to the facilities and/or operational changes requiring a permit application and that the fee required in Rule II is not required each time a permit application is submitted. They believe that the current language indicates that the fee will be based on the entire emission inventory for the facility and not on the change in emissions caused by the alteration. They recommend the addition of "...annually by the proposed new facilities or change in operation described in the application" at the end of the first sentence in Rule IV(4) and the deletion of the remainder of the paragraph. They believe that a permit alteration which does not increase emissions should not require submittal of a permit application fee.
Response: The AQB proposes that the permit application fee for a new permit will be determined by the proposed emissions from the entire facility. The application fee for a permit alteration or modification will be calculated only on the change in emissions caused by the alteration. Fees for permit alterations or modifications which do not increase emissions would be the specified minimum fee amount ($250). This is necessary due to the fact that any permit alteration or modification, regardless of its effect on the amount of emissions coming from a source, will generate a certain amount of work. The department revised Rule IV(4) to reflect this change, but has not adopted Exxon's proposal. The department's revision makes it clear that permit application fees will not be assessed for emissions covered by either existing permits or pending applications for which the appropriate fee has been paid.

Comment: Exxon recommends that the appeal period be increased to 30 days from 20 days.
Response: HB 781 specifically sets the fee appeal period at 20 days after receipt of a fee assessment notice. This appeal period cannot be changed without legislative action.

Comment: Yellowstone Valley Citizens Council (YVCC) questioned what the justification is for the $2.50 and $0.60 per ton fees in lieu of EPA's proposal of a minimum of $25 per ton for the same fees?
Response: The department's fee collection authority is limited by the legislature to approximately $400,000 per year for the 92-93 biennium. When this authority is spread among the existing air pollution sources in Montana, we arrive at a fee level as proposed. In response to the concerns over the presumptive $25 per ton fee level outlined in the 1990 Federal CAAA, the department intends to demonstrate that it can operate an approvable permitting program for less than the presumptive $25 per ton. However, the department does not believe that it will be able to operate a fully approvable program at the proposed fee level. The level currently proposed is only intended to fund program development and some base compliance activities and will probably need to be increased in the future. The EPA has indicated that it will require substantial documentation that a state can operate an adequate permitting and enforcement program before it approves a permit fee less than $25 per ton.

Comment: (YVCC) asked the department to explain how our proposed fees are going to ensure sufficient revenue for the 40% match, as well as the resources necessary for an adequate permitting and enforcement program.
Response: For the federal CAAA, the 40% match requirement must be met no later than three years from date of enactment, which is state fiscal year 1994. AQB is carefully watching this requirement in relation to budgeting for the 94-95 biennium and will assure that our budget proposal has adequate state funding (both general fund and fees) to match the projected federal grant. As part of the FY 94-95 budgeting process, we will also address the resources needed to address the permitting and compliance/enforcement programs. When the legislative authority for fee collection is set for FY 94-95, then adjustments in the fees will be presented to the board to implement that authority.

Comment: (YVCC) asked if special geographical studies are needed in Yellowstone County and other non-attainment areas for writing permits and enforcement stipulations for those permits.
Response: This question goes beyond the scope of the proposed fee rules into an area which will require further evaluation and development before presentation to the legislature and the board. At this point, the department cannot address the need for special geographic studies in Yellowstone County or other nonattainment areas without further regulatory and policy guidance from EPA. For example, EPA's final Title V operating permit rules have not been issued, nor has EPA provided guidance in the specific requirements of Title V permits. AQB will strive to keep YVCC and other interested parties informed as more guidance and information becomes available.

Comment: (YVCC) asked, if they are needed, what level of fees would be necessary to fund these studies.
Response: It is not possible to estimate the level of fees needed to fund special geographic studies until those studies are developed.

Comment: (YVCC) questioned if the department is willing to ask the 1993 Legislature for these studies?
Response: As explained above, the need for special geographic studies must be defined before legislative proposals can be prepared.

Comment: (YVCC) questioned if the special studies are not the answer to clean up Yellowstone County and other nonattainment areas to protect the health of Montana's citizens and provide the impetus for sustainable economic development, what is?
Response: Special studies serve as technical support for the development of regulatory programs (including changes to the State Implementation Plan [SIP]). Changes in the regulatory program/SIP would be the tool for achieving reductions in air pollutants in an area.

Comment: (YVCC) question what level of fees will realistically be necessary to run a strong air quality program that will meet new federal standards and clean up Montanans' air and protect their health?
Response: This question is extremely difficult to answer at this point in the growth and development of the air quality program. As stated at the November 15, 1991 board hearing, growth in the level of fees collected will likely be necessary to meet the requirements in state and federal law. Until we more clearly understand these requirements, an ultimate level of fees cannot be projected.

Finally, the board has inserted an annual review requirement (NEW RULE VI) to insure that the air quality permit fee system is tracked on an annual basis to assess the need for revision.

DAVID W. SIMPSON, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

by _____
DENNIS IVERSON, Director

Certified to the Secretary of State December 16, 1991.

Reviewed by:

_____
Eleanor Parker,
DHES Attorney

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

In the matter of the amendment of rules 16.20.255 and new rule I concerning service connection fees for public water supplies	NOTICE OF AMENDMENT OF 16.20.255 AND ADOPTION OF NEW RULE I

(Water Quality Bureau)

To: All Interested Persons

1. On September 12, 1991, the Board published notice at page 1636 of the Montana Administrative Register, Issue No. 17, to consider the amendment of 16.20.255 and the adoption of new rule I.

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

16.20.255 COMPLIANCE PLAN -- EXEMPTIONS Same as proposed.

RULE I (16.20.240) SERVICE CONNECTION FEES (1) A public water supply system must pay to the department an annual fee for each state fiscal year. The annual fee must be postmarked or delivered to the department no later than March 1 of each year. Payment for fiscal year 1992 must occur no later than March 1, 1992. ~~Each annual fee is considered payment for the next /state fiscal year.~~

(2)(a) For purposes of this rule, an active service connection is one that provides water service ~~to a customer who pays for that service~~ for human consumption to a customer that is billed directly or otherwise held directly responsible by a public water supply system supplier for payment for that service. Activities that do not qualify as human consumption include water used exclusively by livestock or for fire protection.

(b)-(e) Same as proposed.

(3)-(4) Same as proposed.

(5) Failure to pay the annual fee by March 1 of the fiscal year for which the fee is assessed subjects the system supplier to an additional charge to be calculated by multiplying the fee by ~~10~~ 1.50% for each calendar month in which the fee is not paid.

(6) The board shall review the public water supply program, including the service connection fee amounts imposed by this rule, on or before December 26 of each year.

COMMENT: Several commenters opposed the levying of a fee based on connections because they felt they were paying the fee only to be regulated (or to support more bureaucracy).

RESPONSE: The Public Water Supply Task Force, appointed by the Governor's office in Spring 1990, recommended that Montana retain primacy for enforcement of the federal Safe Drinking Water Act. The task force also recommended that the Department maintain existing public water supply services. Fees were the only viable funding source. The Legislature endorsed these recommendations by passing Senate Bill 407 (Chapter 645, Mont. Laws 1991).

COMMENT: Seeley Lake Water District and Montana Rural Water urged that a full annual fee not be charged for service connections that are in use only seasonally.
RESPONSE: Allowing pro-rated fees for a seasonal connection would exacerbate the difficulty in determining the fees for a public water supply system supplier. Plus, any system in a given year's time is going to have a period when some connections are not in use, thus making it difficult to verify whether or not the fee submitted meets the requirements of the rule.

COMMENT: Several commenters stated that the minimum fee is too much, or should not exist at all.
RESPONSE: The minimum fees were set by the Legislature. The DHES cannot go under this amount.

COMMENT: The City of Billings, Town of Melstone, City of Ronan, Somers County Water and Sewer District, and some school districts requested that fees be delayed until state fiscal year 1993 so that public entities can budget for the payment.
RESPONSE: DHES' public water supply program requires immediate, additional staffing to address a critical workload imposed by extensive new state regulations that are adopted to meet federal primacy requirements as well as adequately protect public health. Further, there are no other funding avenues available to facilitate hiring additional FTEs during fiscal year 1992.

COMMENT: Montana Rural Water, the Montana Association of County Water and Sewer Districts, and the City of Great Falls stated that fees should not be charged for service connections that are for livestock purposes or fire protection only.
RESPONSE: RULE I is amended to clarify that a service connection for any strictly non-domestic use would not be assessed a fee.

COMMENT: The U.S. Forest Service commented that fees for a campground might be excessive if the campground had more than one well.
RESPONSE: The DHES lists each campground as having one public water supply. Therefore, only the minimum fee would be assessed.

COMMENT: The Montana Department of Fish, Wildlife and Parks stated that state agencies should not charge each other fees.

RESPONSE: The public water supply law directs that each public water supply system supplier, whether or not it is a governmental entity, must pay a connection fee.

COMMENT: The U.S. Bureau of Reclamation suggested that a single $50 fee should be assessed to governmental units that operate multiple public water supply systems.
RESPONSE: As indicated in the previous response, the public water supply law does not contemplate different treatment for governmental entities.

COMMENT: Brook Drive Water Association requested an increase in the service connection fee with a corresponding reduction in the minimum fees.
RESPONSE: The public water supply law does not provide this flexibility.

COMMENT: Richard Johnson and other commenters expressed concern about rising and/or cumulative costs of governmental fees. Concerns were also expressed regarding the use of fees as a replacement for taxes.
RESPONSE: The program and associated fees were authorized by the Legislature in response to federal Safe Drinking Water Act legislation enacted in 1986. An expanded state program is necessary to retain primacy in the public water supply area and adequately protect public health.

COMMENT: Robert Dunlop expressed concern that his community water supply system would be assessed fees for campground spaces in addition to mobile home park spaces.
RESPONSE: For public water supplies that serve a combination of mobile home and campground spaces, the DHES would assess fees only for the mobile home park portion of the public water supply system (the minimum fee for a transient system is met by payment of the fee for the mobile home portion).

COMMENT: The City of Billings stated that the Department should provide a detailed estimate of costs and that the fee schedule must be commensurate with costs of providing services to public water suppliers.
RESPONSE: The Department presented a detailed budget to the Board that included a breakdown of types of expenditures and services authorized by the Legislature and projected fee revenue. Those figures indicated that projected fee income from RULE I and other funding sources would not exceed authorized expenditures for those services.

It is not intended nor does SB 407 require that the fee for a given public water supplier equal the value of the services provided to the supplier. The City of Billings may, as a public water supplier, request any of the various educational, technical review and other services offered by the Water Quality Bureau.

COMMENT: The City of Billings argues that the time frame for assessing fees has passed for state fiscal year 1991; and that most municipalities are past the point of being able to budget for this fee.
RESPONSE: Section 4 of SB 407 specifically states that annual fees may be assessed for the biennium beginning July 1, 1991. The affected parties were given notice of the bill's fiscal effect when the bill was introduced to the Legislature and formally when the bill was signed into law by the Governor (April 26, 1991).

COMMENT: The City of Billings questioned (1) how the number of service connections would be determined this fiscal year; (2) how multiple connections to one service line would be handled; and (3) what provision is made to allow entities to recover delinquent payments.
RESPONSE: For FY 1991, the number of service connections is determined by counting the number of such connections during the month of July, 1991. This can be calculated by referring to the billing records for that month. As to multiple connections, fees would be paid only for the customers that are billed by the public water supply system supplier. As to recovery of delinquent payments, no special provision is made through these rules.

COMMENT: The City of Billings questioned whether the 25 cent fee for the groundwater assessment account is reasonable, and what services will be provided through this fee.
RESPONSE: The 25-cent fee is imposed by the Legislature. The services provided through this fee are explained in SB 94 (Chapter 769, Mont. Laws 1991), but specifically include better characterization of the groundwater resource in Montana.

COMMENT: The City of Billings stated the late payment of fee of 10% per calendar month is excessive and arbitrary.
RESPONSE: The fee is amended to 1.5% per calendar month.

DENNIS IVERSON, Director

Certified to the Secretary of State December 16, 1991.

Reviewed by:

Eleanor Parker, DHES Attorney

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

In the matter of the amendment of rules 16.44.103, 16.44.105-106, 16.44.109, 16.44.114-116, 16.44.118, 16.44.123-124, 16.44.202, 16.44.610, 16.44.901-902, 16.44.911, and new Rule I dealing with permits for owners and operators of hazardous waste	CORRECTED NOTICE OF ADOPTION (Solid & Hazardous Waste)

To: All Interested Persons

1. On October 31, 1991, the department published a notice at page 2035 of the Montana Administrative Register, Issue No. 20, of the amendment and adoption of the above-captioned rules which are part of the ongoing process of seeking re-authorization from the Environmental Protection Agency under RCRA for the State of Montana to continue to operate an independent hazardous waste program.

2. The notice of amendment of Rule 16.44.202 incorrectly showed a new definition for "component", when it should have shown an amendment of the existing definition of "component", and inadvertently omitted mention of definitions (109) through (124). The corrected rule amendment reads as follows and will affect the numbering of the definitions as shown.

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

(1)-(14) Same as original rule.

(15) "Component" means any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple). For the purposes of application to tanks or tank systems, "Ecomponent" means either the tank or ancillary equipment of a tank system.

(16)-(35) Same as original rule.

(37)(36) Same as proposed.

(36-124) Same as original rule but renumbered as (37)-(125).

AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

3. Replacement pages for the corrected notice of amendment will be submitted to the Secretary of State on December 31, 1991.

Certified to the Secretary of State December 16, 1991.

Reviewed by:

Eleanor Parker, DHES Attorney

DENNIS IVERSON, Director

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

In the matter of the adoption of rules implementing laws adopted by the 52nd Legislature, amendments of Rules 24.29.1401 to 24.29.1405, 24.29.1415, and 24.29.1425; repeal of Rule 24.29.1420 relating to Workers' Compensation Medical Services	NOTICE OF ADOPTION OF NEW RULE AND AMENDMENT OF RULES RELATING TO WORKERS' COMPENSATION MEDICAL SERVICES

TO ALL INTERESTED PERSONS:

1. On October 31, 1991, the Department of Labor and Industry published notice of the proposed adoption of new rules, amendment and repeal of rules relating to Workers' Compensation medical services at page 1975 of the Montana Administrative Register, issue number 20.

2. The Department has adopted [Rule I] 24.29.1416, APPLICABILITY OF DATE OF INJURY, DATE OF SERVICE as proposed. Proposed RULE II was not adopted. Rule 24.29.1420 was not repealed.

3. The Department has amended Rules 24.29.1401, 24.29.1404, 24.29.1405, and 24.29.1415 as proposed.

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

24.29.1402 PAYMENT OF MEDICAL CLAIMS (1) Payment of medical claims ~~will~~shall be made in accordance with ~~a~~the schedule of nonhospital medical fees and the hospital rates~~charges~~ adopted by the ~~division~~department.

(2) No fee or charge shall be payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer. THE INSURER SHALL MAKE TIMELY PAYMENTS OF ALL MEDICAL CLAIMS FOR WHICH LIABILITY IS ACCEPTED.

(3) Payment of private room charges ~~will~~shall be made only if ordered by the treating physician.

(4) Special nurses ~~will~~shall be paid only if ordered by the treating physician.

AUTH: 39-71-203 MCA IMP: 39-71-704, MCA

24.29.1403 SELECTION OF PHYSICIAN (1) Remains the same.

(2) Remains the same.

(3) Except in an emergency, approval of the insurer ~~must~~shall be obtained before referral of a worker to a medical specialist for consultation. The report of the consultant shall

be available to the insurer upon request. Insurers may request consultation and evaluation by a physician of their choice.

(4) Remains the same.

(5) AUTHORIZATION OR APPROVAL AS REQUIRED IN SUBSECTIONS (1) AND (2) SHALL NOT BE UNREASONABLY WITHHELD.

AUTH: 39-71-203, MCA IMP, 39-71-704, MCA.

24.29.1425 RATES FOR HOSPITAL SERVICES (1) Beginning January 1, 1988, through December 31, 1991, hospital rates payable by workers' compensation insurers shall not exceed those rates prevailing in the hospital in effect on January 1, 1988.

~~(2) Rates for hospital services must be furnished to the division no later than December 31, 1987, on division approved forms. All rate filings will be subject to division approval.~~

~~(3) An insurer is not obligated to pay more than the maximum rate filed with the division for the particular services rendered, or the prevailing rates in the hospital in effect on January 1, 1988, for services not provided for in the hospital's rate filing. Any new service not being provided on or before January 1, 1988, must be filed with the division accompanied by a detailed explanation of such service.~~

(2) Beginning January 1, 1992, hospital rates payable shall not exceed the product of the rates prevailing in the hospital ~~on the date of service~~ and the APPLICABLE discount factor issued by the department. ~~for the corresponding date of service.~~ APPLICABLE DISCOUNT FACTORS ARE IDENTIFIED FOR INPATIENT SERVICES ACCORDING TO THE DATE OF DISCHARGE, AND FOR OUTPATIENT SERVICES ACCORDING TO THE DATE OF SERVICE. The department shall establish discount factors according to the following methodology:

(a) The discount factor in effect for a hospital beginning January 1, 1992, is the discount factor in effect on December 31, 1991, multiplied by 1.0402, and divided by the quantity 1 + ORI, where ORI is the overall percent rate increase, if any, adopted by the hospital for January 1, 1992, divided by 100. Discount factors in effect December 31, 1991, are those established by the department in accordance with subsection (1). These discount factors are available from the department upon request.

(b) The discount factor in effect for a hospital beginning JANUARY 1, 1993, ~~July 1, 1992,~~ is the discount factor in effect on DECEMBER 31, 1992, ~~June 30, 1992,~~ multiplied by the quantity 1 + AWW93, and divided by the quantity 1 + ORI, where AWW93 is the percent increase in the state's average weekly wage over fiscal year 1992, divided by 100, and ORI is the overall percent rate increase, if any, adopted by the hospital for JANUARY 1, 1993, ~~July 1, 1992,~~ divided by 100. ~~The discount factor in effect beginning July 1, 1993, is determined according to the equivalent formula for fiscal year 1993.~~

(c) In addition to the dates given in subsections (2)(a) and (2)(b), the discount factor for a hospital is also updated on any date(s) through December 31, 1993, for which a rate change is adopted by the hospital. The discount factor in

effect beginning the date of rate adoption is the previous discount factor divided by the quantity 1 + ORI, where ORI is the overall percent rate increase adopted by the hospital, divided by 100.

(3) The overall rate increase adopted by a hospital shall be reported to the department on a department-approved form BEFORE THE EFFECTIVE DATE OF ANY RATE CHANGE. ~~within thirty (30) days after the effective date of any rate change.~~ Notification by the Montana Hospitals Rate Review System of the amount and date of an overall rate increase shall be accepted in lieu of direct rate change reporting by the hospital.

~~(4) The division~~The department may in its discretion conduct audits of any hospital's financial records, ~~for hospitals required to file rates with the division,~~ to determine proper reporting of rate filings. ~~Each hospital filing rates with the division must retain records for at least five (5) years substantiating such rates were those in effect on January 1, 1988.~~

~~(5) The division may develop new, amended or modified rules governing rates for hospital services.~~

(4) Charges billed by a hospital are not subject to reduction under the Montana ~~Medical~~ RELATIVE VALUE Fee Schedule, except that hospital professional fees may be paid according to either the fee schedule or the applicable hospital rates, but not both.

(5) Insurers shall make timely payments of hospital bills. IN CASES WHERE THERE IS NO DISPUTE OVER LIABILITY THE INSURER SHALL, WITHIN~~as follows:~~

~~(a) Within~~ thirty (30) days of receipt of a hospital's charges, ~~an insurer shall~~ either pay the charges according to the rates established in subsection (2), or notify the hospital that ADDITIONAL INFORMATION IS REQUESTED, AND SPECIFY THAT INFORMATION. THE INSURER SHALL THEN PAY THE CHARGES WITHIN THIRTY (30) DAYS OF RECEIPT OF THE REQUESTED INFORMATION. ~~there will be a delay in payment. Notification must include the reasons for the delay;~~

~~(b) in cases where an insurer elects to conduct an audit of a hospital's charges with no dispute over liability, the insurer shall pay within thirty (30) days of receipt of charges, seventy (70) percent of the amount determined according to the rates established in subsection (2) for the charges being audited.~~

AUTH: 39-71-203, MCA IMP: 39-71-704, MCA

5. The Department has thoroughly considered all commentary received.

Comment: PROPOSED NEW RULE I

1. The New Rule calls for application of the new generic drug statute, section 39-71-727, MCA, according to the date of service instead of the date of injury. This statute is a substantive provision and therefore cannot be applied retroactively.

Response: It is true that, generally, new workers' compensation laws apply according to the date of injury. However, payments for medical services are determined according to the rates in effect on the date the services are provided. Section 39-71-727, MCA concerns maximum payment obligations for prescription drugs; it is consistent, therefore, to apply this statute according to the date of service.

Furthermore, application of the new statute by date of injury would be unworkable. The statute requires the pharmacist to bill for only the cost of the generic-name product for any prescription. Application by date of injury would mean the pharmacist would be required to identify the correct date of injury associated with each prescription before submitting a claim to the insurer. Identification of the date of injury correctly associated with a particular medical service can be a complex task, involving consultation with several of the other parties involved in the claim or claims, and knowledge of the many provisions of the Workers' Compensation and Occupational Disease Acts. It is the appropriate responsibility of the insurer. The pharmacist cannot be expected to assume that responsibility.

Comments: PROPOSED NEW RULE II

1. Utilization not adequately controlled. The fee schedule described in New Rule II contains, by itself, no restrictions or guidelines concerning the utilization of medical services. Utilization guidelines necessary to control medical costs will not be ready until after the fee schedule implementation date of January 1, 1992, given in the New Rule. If the fee schedule is adopted as described before these guidelines are in place, increases in medical costs payable are likely to be significantly greater than authorized by statute or than planned for by insurers.

For example, "unbundling" of physical medicine charges--the practice of billing separately for office visits, modalities, and procedures--is allowed under the proposed schedule. This practice, if applied, could lead to higher costs payable than would be predicted by the simple statutory increase. This in turn could lead specifically to the perception of certain professions, such as physical therapy, as "opportunistic", and to the establishment of indiscriminate policies toward physical therapists by insurers.

2. Additional procedure codes needed. Certain services currently provided to injured workers by Montana physical therapists are not included in the proposed fee schedule. Fees are needed, for example, for work hardening, physical therapy evaluation, functional capacities evaluation, and other services.

3. Adoption needed as soon as possible for medical profession. For medical doctors and osteopaths, the proposed fee schedule is a much-needed improvement on the current schedule, and should be implemented as soon as possible. Many

procedures are now being performed that are not recognized, or are not assigned maximum fees, in the current (1987) schedule. Certain new radiology and surgery procedures, for example, are not currently scheduled and are very expensive. Also, the proposed schedule corresponds to the current AMA procedure coding used by all physicians.

The new schedule could be adopted as proposed for the medical profession only on January 1, 1992; fees for the services of other professions, such as physical therapy and chiropractic, could be established using the current schedule, with conversion factors increased to conform to statute.

4. Separate schedules needed for individual professions. While the proposed fee schedule is appropriate for medical doctors and osteopaths, separate schedules should be developed for all other health care professions. Physical medicine descriptions and fees, especially, were developed for physicians and are often not appropriate for physical therapists or chiropractors. Also, the proposed schedule would not allow for accurate tracking of utilization by professions; this tracking is needed to prevent inaccurate decision-making by insurers.

The State Compensation Mutual Insurance Fund and the Montana physical therapy profession have worked together for the past one and one-half years to produce a complete fee schedule for physical therapy. The draft schedule includes utilization guidelines as well as individual fees, and recognizes all physical therapy services currently performed for injured workers. Similar projects should be undertaken for chiropractic and for other professions.

5. Equity between chiropractors and medical doctors important. It is appropriate that the proposed fee schedule applies uniformly to chiropractors and medical doctors. In recent years the chiropractic profession has promoted the concept of equity; it endorses the application of the schedule as described in the proposed New Rule.

6. Cost increase limits not ensured by methodology. The Department cannot be sure that the proposed methodology for establishing the new fee schedule will limit overall increases in medical fees as required by statute. Conversion factors produced by the methodology given in the New Rule lead to increases in payments for the most frequent services that are, in total, almost 50 percent more than the increases allowable. Also, physical therapy data used with the methodology are known to be inaccurate and should not be used to set new fees, as they do not reflect a majority of what physical therapists do for injured workers. Furthermore, because the new schedule would allow unbundling of various physical medicine charges (discussed earlier), and significantly higher payments for some services typically provided by chiropractors, it appears that other professions would have to receive lower payments than given in the current schedule, which would give rise to questions of equity.

7. Timely payment requirements needed. Whereas the proposed amendments to ARM 24.29.1425 require timely payments by insurers to hospitals, there are no similar requirements in the New Rule for individual medical providers such as physical therapists; timely payment is as important to the practices of these providers as it is to hospital finances.

8. Physical therapy services valued too low, passive procedures too high. The proposed fee schedule values many procedures typically performed by physical therapists lower, relative to other Medicine area procedures, than does the current schedule. Also, the proposed schedule values "passive" physical medicine procedures higher than procedures where the provider is more actively involved. This is not an appropriate direction for the treatment of injured workers within the Montana workers' compensation system.

9. Updates subject to section 2-4-307, MCA. For each update of a publication incorporated by reference in ARM, adoption of the update requires a separate rulemaking, following the procedures given in Title 2, Chapter 4, MCA.

10. Reference to "all health care practitioners" unclear. Subsection (8) of the New Rule refers to "all health care practitioners authorized to provide medical services under the Workers' Compensation or Occupational Disease Acts". Is there a list of these practitioners?

General Response: Upon consideration of the comments received on the proposed New Rule II the Department will not adopt the New Rule at this time, nor will it repeal ARM 24.29.1420. The following specific responses to Comments 1 through 10 assume continuation of the current fee schedule system; an increase in the current conversion factors effective January 1, 1992; and coordination of utilization rulemaking with adoption of the new fee schedule at some time in the future.

Comment No.	Response
1	The Department is working with insurers and providers to develop utilization guidelines; implementation of the new schedule will be coordinated with adoption of these guidelines.
2	The Department is developing additional procedure codes to be included in the new schedule.
3	Adoption of the new schedule for certain provider groups and not for others would result in a piecemeal, unnecessarily complex system of medical payment requirements. The Department recognizes the need for a more current system and is working to implement the new fee schedule--with its up-to-date coding, and maximum fees for new procedures--as soon as possible.

Comment No.	Response
4	In keeping with the concepts of equal protection the Department will pursue a single fee schedule, where a procedure is reimbursed at the same level regardless of the profession of the provider. This does not preclude the development of additional codes to be included in the schedule, as mentioned earlier, nor does it prohibit the development of utilization guidelines to specify differences in services, or to limit "unbundling".
5	The Department intends to maintain equity among professions in the new fee schedule.
6	The Department has revised its intended methodology slightly; the revision has resulted in the correct overall percent increase in payments for the most frequent services. With utilization guidelines in place, then, any individual differences in reimbursement levels by provider type will be the result of the one-time transition to a different relative payment scale.
7	ARM 24.29.1402 has been amended to include a general requirement for timely payment. The more specific requirements of ARM 24.29.1425 as amended are not included, as the Department understands insurer compliance in cases of individual providers would be extremely difficult.
8	Relativities of procedures within the Medicine specialty, as within all other specialty areas, can be expected to change somewhat with the new schedule. The Department has confidence in the nationally recognized relative value scale upon which the new schedule is based.
9	The Department intends to comply with the requirements of section 2-4-307, MCA in adopting updates to the new fee schedule.
10	The language cited is generally understood to mean any providers whose medical services could, under any circumstances, be payable under either of the two Acts. There is no comprehensive listing of these providers; however, the Department feels the language is clear.

Comments: PROPOSED AMENDMENTS TO RULES

1. ARM 24.29.1401 Initial Liability. The proposed amendment should be clarified by noting that the new provisions

of section 39-71-704, MCA apply only to accidents occurring after July 1, 1991.

Response: The suggested clarification would repeat the language already given in New Rule I, subsection (1).

2. ARM 24.29.1403 Selection of Physician. The rule should be further amended in subsection (1) to provide that approval shall not be unreasonably withheld.

Response: The rule has been further amended as suggested, through the addition of a new subsection. The new amendment is intended to reduce the need for mediation and litigation.

3. ARM 24.29.1404 Disputed Medical Claims. The rule should allow the exception that parties who are already in other forums on other issues may be allowed to also dispute access to medical records in those forums.

Response: While the Department's mediation unit would allow discussion of the records access issue when that issue affected a benefit dispute, the unit has no authority to order release of medical records. If an access issue were to be resolved in the course of a benefit mediation there would be, of course, no need for a hearing.

4. ARM 24.29.1405 Physicians' Reports. The requirement for impairment ratings to be based on the AMA Guides to the Evaluation of Permanent Impairment should be retained, as section 39-71-703, MCA now requires the use of the Guides in determining the permanent partial disability award.

Response: The requirement for use of the Guides in determining permanent impairment ratings is retained in section 39-71-711, MCA. The amendment simply deletes language that repeats the statute.

5. ARM 24.29.1415 Impairment Rating Dispute Procedure. The proposed amendment is improper, as the statutory change in this area was procedural in nature and should, therefore, be applied retroactively. Specifically, regardless of the date of injury, a claimant should be allowed to obtain an impairment rating from a chiropractor as allowed by section 39-71-711, MCA.

Response: Workers' compensation benefits are determined by the statutes in effect as of the date of injury. Ingraham v. Champion Int'l (1990), 243 Mont. 42, 793 P.2d 769: and numerous other Supreme Court cases. The 1991 amendments to section 39-71-711, MCA, deleted both substantive and procedural provisions which cannot be separated. Therefore, the Department will amend the rule as proposed.

The Department does not believe that the proposed amendment affects the question of whether a claimant may obtain an impairment evaluation from a chiropractor, regardless of the

date of injury. The Department believes this question will have to be resolved through the judicial process.

6. ARM 24.29.1425 Rates for Hospital Services

Comment: For inpatient services, new subsection (2) should identify the applicable discount factor as the factor in effect on the date of discharge, not on the date of service.

Response: The Department has incorporated the above comment in the final amendments to this rule.

Comment: New subsection (3) should require a rate increase to be reported before its effective date, not within thirty days after the increase.

Response: The Department has incorporated the above comment in the final amendments to this rule.

Comment: The amendment listed in new subsection (5) regarding timely payment of hospital bills should go beyond requiring notification of delay. Notification of delay, with a request for additional information, should be required within 30 days and, further, payment should be required within 30 days of receipt of the specified information.

Response: The Department has incorporated the above comment in the final amendments to this rule.

Comment: In subsection (2)(b) the change in the discount factor associated with the July 1, 1992, change in the state's average weekly wage should be effective no sooner than January 1, 1993, to comply with the statutory requirement that approved rates be in effect for a period of 12 months.

Response: The Department has incorporated the above comment in the final amendments to this rule.

William E. O'Leary, Chief Counsel
Rule Reviewer

Mario A. Micone, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: December 16, 1991

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

In the Matter of Amendment of Rules Regarding Telecommunications Service Standards.	NOTICE OF ADOPTION OF NEW RULES I AND II AND AMENDMENT OF ARM 38.5.2715, 38.5.3302, 38.5.3332 AND 38.5.3339

TO: All Interested Persons

1. On June 27, 1991 the Department of Public Service Regulation published notice of the proposals identified in the above titles at page 989, issue number 12 of the 1991 Montana Administrative Register.

2. The Department has adopted the following rule as proposed:

38.5.3302 DEFINITIONS

Comment: No comments were received.

RULE I. THIRD-NUMBER BILLING. NOT ADOPTED.

Comment: The rule is burdensome in that it fails to account for special circumstances such as when a customer needs to place a call from a hospital and charge the call to his residence, or when third-number billing is attempted late at night or early in the morning.

Response: The rule as drafted is unduly burdensome and will not be adopted.

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

RULE II. 38.5.3345 CHANGE IN CUSTOMER'S INTEREXCHANGE CARRIER (1) A local exchange carrier shall not change a customer's choice of interexchange carrier to another carrier at a carrier's request unless the customer's written authorization ~~accompanies the request for such a change~~ has been obtained by the requesting carrier prior to the request.

(2) A written authorization must contain the following information:

(a) name and address of customer.

(b) phone number affected by the change.

(c) all fees associated with the change.

(d) statement that the written authorization is for the purpose of changing the customer's choice of interexchange carrier.

(e) customer's signature. AUTH: Secs. 69-3-103 and 69-3-822, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

Comment: Administrative burden would be reduced by requiring that written authorizations be kept with the requesting interexchange carrier not the local exchange carrier.

Response: The proposed rule effectively required local exchange companies to process and maintain the written authorizations. This requirement would be unduly burdensome. The rule has been modified to remove the requirement that the writ-

ten authorization accompany the request for change. However, this modification should not be read as precluding a local exchange company from requiring independent verification from a requesting carrier.

Comment: The rule should be modified to require that a written authorization contain information such as the customer's billing name and address, fees associated with the change, and the decision to change interexchange carriers.

Response: The purpose of this rule is to protect customers from the unauthorized switching of their chosen interexchange carrier. Since unauthorized switching can result for many reasons including fraud or misunderstanding, requiring threshold information in the written authorizations will further this purpose. The rule has been modified to require a written authorization to contain such threshold information.

Comment: Requiring written authorizations is burdensome and costly.

Response: The problem of unauthorized switching is widespread and itself creates significant administrative costs and burdens. Requiring written authorizations is not unduly burdensome and represents the least restrictive means available to effectively address the problem.

Comment: Requiring written authorizations will impede competition.

Response: Requiring all interexchange carriers to obtain written authorizations will not impede competition. On the contrary, the requirement will promote fair competition by ensuring that only those customers who actually want to be switched are in fact switched.

Comment: The rule may be inconsistent with rulemaking currently under consideration by the Federal Communications Commission.

Response: No rules have been adopted by the FCC. The existence of any federal-state conflict is properly addressed if and when the FCC adopts rules that are in fact inconsistent with the rule presented here.

Comment: The rule does not address the causes of errors and disputes such as honest misunderstandings, customer confusion, customer remorse, bogus orders and computer error.

Response: Requiring a written authorization that clearly indicates that a customer is switching interexchange carriers and identifies any associated fees will certainly reduce errors and disputes arising from confusion, misunderstanding and bogus orders. Incidents of customer remorse (change in mind) about switching carriers should also be reduced since a customer will have the opportunity fully consider his/her decision before signing the written authorization. Computer error has not previously been perceived as a problem by the Commission.

Comment: The rule should be clarified as to whether it applies to initial equal access balloting.

Response: The rule clearly applies to a request by a carrier for a change in a customer's choice of interexchange carrier, not the initial selection of an interexchange carrier by a customer.

Comment: GTE Northwest opposes the rule claiming that its own procedures provide sufficient safeguards against unauthorized switching.

Response: A GTE Northwest customer who has had his/her choice of interexchange carrier switched without his/her permission can have the original choice restored at no charge and can request that all future changes be subject to written authorization. Further, GTE Northwest penalizes a carrier who cannot provide proof of authorization $17.57. However, these measures are only reactive to an unauthorized switch and are not preventive. The public interest is best served by taking steps to prevent the initial unauthorized switch.

38.5.2715 FORBEARANCE (1) through (3) No changes

~~(3)~~ (4) The commission shall approve or deny the application within ~~ten~~ 15 days of receipt of the completed application. If the commission takes no action within ~~ten~~ 15 days, the application is granted. The commission may by order defer action for up to five days. AUTH: Secs. 69-3-822 and 69-3-103, MCA; IMP, Sec. 69-3-808, MCA

Comment: The ten-day deadline contained in subsection (4) is inconsistent with fifteen-day requirement set forth in 69-3-808, MCA.

Response: The deadline is inconsistent and has been amended accordingly.

38.5.3332 CUSTOMER BILLING (1)(a) through (iii) No changes.

(iv) a statement that regulated services may not be disconnected for nonpayment of nonregulated services or services provided by other carriers, except for other carriers' regulated services that cannot be disconnected or discontinued separate from local service;

(1)(v) through (4) No changes.

(5) Billing. Telecommunications service regulated by the Montana public service commission cannot be denied or terminated because of nonpayment for nonregulated services or services provided by other carriers, except for other carriers' regulated services that cannot be disconnected or discontinued separate from local service. A telecommunications provider's bill to its customer shall clearly distinguish between both regulated and nonregulated service and tariffed and detariffed service. Regulated and nonregulated service may appear on the same bill but must be presented as separate line items.

(a) Undesignated partial payments of a bill shall be applied first to local exchange carrier regulated services and then to service other than local exchange carrier regulated services in such percentage as each other service provider's charges represent of the total charges to the customer for services other than local exchange carrier regulated services. Regulated service may not be affected by billing disputes over nonregulated service or service provided by other carriers.

AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102, 69-3-201 and 69-3-221, MCA

Comment: In instances where selective carrier denial is unavailable local exchange companies should be allowed to continue to disconnect local regulated service for failure to pay for service provided by other carriers.

Response: The rule has been amended to allow the local exchange company to disconnect local regulated service for failure to pay for regulated service provided by other carriers but only in those instances where both the local exchange company and the other carrier are unable to disconnect the other carrier's service separate from local regulated service.

Comment: Requiring local exchange companies to terminate toll service separate and apart from overall service will be more complicated and costly.

Response: There is no evidence suggesting that terminating toll service alone is any more costly or complex than terminating a customer's entire service.

Comment: The proposed amendment would be less effective in controlling bad debt.

Response: Since it is the declared policy of the State of Montana to maintain universal availability of basic telecommunications service at affordable rates (Section 69-3-802, MCA), it would be inappropriate to allow the local exchange carrier to disconnect local regulated service in order to control bad debt owed for services other than local regulated service.

Comment: The phrase "or services provided by other carriers" should be deleted from Section 38.5.3302(1)(a)(iv) because it suggests to customers that they may withhold payment owing for other carrier's services without fear of interruption of their telephone service.

Response: Customers can withhold payment owing for other carrier's services without fear of interruption of their local regulated service except in those instances where both the local exchange company and the other carrier are unable to disconnect the other carrier's regulated service separate from local regulated service.

Comment: Terminating toll service separate and apart from overall service will jeopardize local exchange carriers' billing and collection revenues that help defray common costs.

Response: Billing and collection revenues are deregulated and are not calculated into a local exchange carrier's revenue requirements for rate-making purposes. It is inappropriate for the Commission, through these rules, to protect or subsidize the non-regulated activities of a utility.

Comment: Applying undesignated partial payments first to local exchange carrier regulated service and then, on a pro-rata basis, to the services of all other carriers is unfair in that it suggests to customers that local exchange company toll charges are of greater value or necessity than the toll services provided by other carriers. The amendment should be rejected or, in the alternative, modified to allocate partial payments pro rata without regard to the type of service.

Response: If a portion of a customer's undesignated partial payment is distributed amongst other carriers before all the local exchange company's regulated charges are satisfied, the potential exists for disconnection of a customer's local service. Therefore, the Commission's policy of protecting local telephone service is furthered by first applying an undesignated partial payment to all regulated charges owed to the local exchange company.

38.5.3339 TERMINATION OF SERVICE (1) through (6) No changes.

(a) Toll usage. For purposes of this rule toll usage includes regulated toll charges whether already billed or as yet unbilled, but excludes all amounts owed or owing for nonregulated services or services provided by other carriers, except for other carriers' regulated services that cannot be disconnected or discontinued separate from local service.

(b) Excessive toll usage. For purposes of this rule, "excessive toll usage" is defined as toll usage for an estimated one month billing period that:

(i) exceeds 200 percent of the monthly average of the customer's toll charges, if any, from the preceding six months; and

(ii) through (6)(f). No changes. AUTH: Sec. 69-3-103, MCA; IMP, Secs. 69-3-102 and 69-3-201, MCA

Comment: Termination of regulated local exchange service for failure to pay for service provided by other carriers should be permitted in those end offices where selective carrier denial is unavailable.

Response: The rule has been amended to allow the local exchange company to disconnect local regulated service for failure to pay for regulated service provided by other carriers but only in those instances where both the local exchange company and the other carrier are unable to disconnect the other carrier's service separate from local regulated service.

Comment: Because Section 38.5.3339(6)(b) would prevent a carrier from terminating service until an actual one month billing period had transpired, the rule should be amended to read "toll usage for an estimated one month billing period."

Response: The Commission agrees and the rule has been amended accordingly.

Comment: The conjunction between Section 38.5.339(6)(i) and (ii) should be changed to "or." Without this change, customers with less than six months service would be exempt from expedited termination.

Response: The requested change would redefine excessively high toll usage to include one-month charges exceeding $100, without regard to a customer's normal usage. Except in those cases where the customer has less than six months service, such a definition would be arbitrary. The rule has been amended accordingly.

Comment: Section 38.5.3339(6)(i) should be amended to read "exceeds 150 percent of the monthly average of the customer's toll charges from the preceding six months."

Response: The exception to the seven-day notice requirement is intended to be used only when a customer exhibits "excessive toll usage." 200 percent ($200 for a customer who normally averages $100) comports more closely with "excessive toll usage" than 150 percent ($150/$100).

Comment: Risk of nonpayment should be defined as including those instances where there is an inadequate deposit.

Response: Since this rule already establishes what will constitute excessive toll usage, it is incumbent on the carrier to adjust its deposit requirements accordingly.

Comment: The definition of toll usage should be expanded to include all toll charges including those owed to other carriers.

Response: By virtue of the amendments to ARM 38.5.3332, local regulated service may not be disconnected for failure to pay for regulated service provided by another carrier except when both the local exchange company and the other carrier are unable to disconnect the other carrier's service separate from local regulated service. The amendment therefore has been modified to include regulated toll charges owed to other carriers but only to the extent that the local exchange company can disconnect local regulated service for such charges under ARM 38.5.3332.

Howard L. Ellis

HOWARD L. ELLIS, Chairman

CERTIFIED TO THE SECRETARY OF STATE DECEMBER 16, 1991.

Ron A. McHugh

Reviewed by

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.14.107 and 42.14.108 relating to accommodations tax	NOTICE OF THE AMENDMENT of ARM 42.14.107 and 42.14.108 relating to accommodations tax

TO: All Interested Persons:

1. On October 31, 1991, the Department published notice of the proposed amendment of ARM 42.14.107 and 42.14.108 relating to accommodations tax at page 2009 of the 1991 Montana Administrative Register, issue no. 20.

2. No public comments were received regarding these rules.

3. The Department has adopted the amended rules as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State December 16, 1991.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.19.1202, 42.19.1211, 42.19.1212, 42.19.1213, 42.19.1221 through 42.19.1224 and TRANSFER AND AMENDMENT of 42.19.1220 (42.19.1235) relating to New Industry	NOTICE OF THE AMENDMENT of ARM 42.19.1202, 42.19.1211 42.19.1212, 42.19.1213, 42.19.1221 through 42.19.1224 and TRANSFER AND AMENDMENT of 42.19.1220 (42.19.1235) relating to New Industry

TO: All Interested Persons:

1. On October 31, 1991, the Department published notice of the proposed amendment of ARM 42.19.1202, 42.19.1211, 42.19.1212, 42.19.1213, 42.19.1221 through 42.19.1224 and transfer and amendment of 42.19.1220 (42.19.1235) relating to new industry at page 2011 of the 1991 Montana Administrative Register, issue no. 20.

2. No public comments were received regarding these rules.

3. The Department has amended and transferred the rules as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State December 16, 1991.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION of RULE I (42.22.1313) relating to grain elevator equipment from Class 8 to Class 4	))))	NOTICE OF THE ADOPTION of Rule I (42.22.1313) relating to grain elevator equipment from Class 8 to Class 4

TO: All Interested Persons:

1. On October 31, 1991, the Department published notice of the proposed adoption of Rule I and Rule II relating to grain elevator equipment from Class 8 to Class 4 at page 2016 of the 1991 Montana Administrative Register, issue no. 20.

2. A Public Hearing was held on November 22, 1991, to consider the proposed adoption. Written and oral comments were received and as a result of the comments the Department has adopted Rule I (42.22.1313) with amendments and has decided not to adopt Rule II.

3. The Department has amended Rule I (42.22.1313) as follows:

RULE I (42.22.1313) ASSESSMENT OF GRAIN, SEED, AND FERTILIZER STORAGE FACILITIES (1) through (5) remains the same.

(6) All property described in paragraphs (1) and (2) shall be valued according to the reappraisal cycle established for other class 4 property in 15-7-103, MCA. The department will determine market value considering the cost approach, sales comparison approach, and income approach. When using the cost approach, a separate age/life schedule will be applied to the product handling portion of the facility to reflect physical depreciation and functional obsolescence. ~~Any extraordinary obsolescence, including~~ eEconomic ~~or external~~ obsolescence~~, inherent to the facility~~ will be addressed on a case by case basis. Cost data used in developing the cost approach for property included in this rule is found in the Marshall Valuation Service Manual.

(7) and (8) remain the same.

AUTH: Sec. 15-1-201, MCA; IMP: Secs. 15-6-134; 15-7-103; and 15-8-111, MCA.

4. Oral and written comments received during and subsequent to the hearing are summarized as follows along with the response of the Department:

COMMENT: Include economic obsolescence with the age/life schedule in Rule I paragraph six (6) which reflects physical depreciation and functional obsolescence.

RESPONSE: Economic obsolescence does not occur with the normal aging of a facility and cannot be included within the

age/life schedule. Inherent in the age/life concept of depreciation there is value loss through normal wear and tear and technological advances. Age/life schedules are applied only to the "product handling portion of the facility" as defined in paragraph (2) of this rule as short-lived assets.

Economic obsolescence is any loss in value brought about by economic conditions. This affects the value of the entire plant and is not limited to the "product handling portion of the facility". It must be addressed on a case by case basis.

The Department has amended the rule to clarify that economic obsolescence is determined on a case by case basis.

COMMENT: Rule II be stricken in its entirety, and if not, at least strike reference to "reliable" in subsection (1)(d).

RESPONSE: The department will withdraw Rule II.

5. Therefore, the Department adopts Rule I with the amendments listed above and withdraws Rule II.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State December 16, 1991.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 1.2.419 regarding scheduled dates for the Montana Administrative Register	))))	NOTICE OF AMENDMENT OF ARM 1.2.419 FILING, COMPILING, PRINTER PICKUP AND PUBLICATION OF THE MONTANA ADMINISTRATIVE REGISTER

TO: All Interested Persons.

1. On November 14, 1991, the office of the Secretary of State published a notice of proposed amendment to ARM 1.2.419 regarding the scheduled dates for the Montana Administrative Register at page 2210 of the 1991 Montana Administrative Register, Issue number 21.

2. No comments or testimony were received.

3. The rule is amended as proposed.

MIKE COONEY
Secretary of State

GARTH JACOBSON
Rule Reviewer

Dated this 16th day of December, 1991.

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, 1991. This table includes those rules adopted during the period October 1, 1991 through December 31, 1991 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, 1991, 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 1991 Montana Administrative Register.

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BOARD APPOINTEES AND VACANCIES

House Bill 424, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of HB 424 was that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments made in November, 1991, are published. Vacancies scheduled to appear from January 1, 1992, through March 31, 1992, are also listed, as are current recent vacancies due to resignations or other reasons.

Individuals interested in serving on a new board should refer to the bill that created the board for details about the number of members to be appointed and qualifications necessary.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of December 6, 1991.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES: NOVEMBER, 1991

Appointee	Appointed by	Succeeds	Appointment/End Date
American Indian Monument and Tribal Circle of Flags (Commerce)			
Mr. Deane Blanton	Governor	not listed	11/1/1991
Helena			6/30/1993
Qualifications (if required): rep. Dept. of Administration, Architecture & Engineering Div.			
Ms. Kathleen M. Fleury	Governor	not listed	11/1/1991
Helena			6/30/1993
Qualifications (if required): represents Coordinator of Indian Affairs			
Rep. Floyd "Bob" Gervais	Governor	not listed	11/1/1991
Browning			6/30/1993
Qualifications (if required): represents Blackfeet Tribe			
Mr. James King, Sr.	Governor	not listed	11/1/1991
Lame Deer			6/30/1993
Qualifications (if required): represents Northern Cheyenne Tribe			
Mr. Warren Matte	Governor	not listed	11/1/1991
Harlem			6/30/1993
Qualifications (if required): represents Gros Ventre & Assiniboine Tribes			
Mr. Dave Schwab	Governor	not listed	11/1/1991
Helena			6/30/1993
Qualifications (if required): represents Montana Historical Society			
Mr. Caleb Shields	Governor	not listed	11/1/1991
Poplar			6/30/1993
Qualifications (if required): represents Assiniboine and Sioux Tribes			
Ms. Nelvette Siemion	Governor	not listed	11/1/1991
Crow Agency			6/30/1993
Qualifications (if required): represents Crow Tribe			

BOARD AND COUNCIL APPOINTEES: NOVEMBER, 1991

Appointee	Appointed by	Succeeds	Appointment/End Date
American Indian Monument and Tribal Circle of Flags (Commerce) cont.			
Mr. Duncan Standing Rock, Sr. Box Elder Qualifications (if required): represents Chippewa-Cree Tribe	Governor	not listed	11/1/1991 6/30/1993
Mr. Nicholas Peterson Vrooman Helena Qualifications (if required): represents Montana Arts Council	Governor	not listed	11/1/1991 6/30/1993
Mr. Tim Zimmerman Havre Qualifications (if required): represents Little Shell Tribe	Governor	not listed	11/1/1991 6/30/1993
Appellate Defender Commission (Administration)			
Mr. Daniel Donovan Great Falls Qualifications (if required): public defender	Governor	new position	11/1/1991 1/1/1993
Ms. Randi Mae Hood Helena Qualifications (if required): public defender	Governor	new position	11/1/1991 1/1/1993
Judge Dorothy B. McCarter Helena Qualifications (if required): district judge nominate by Chief Justice of Supreme Court	Governor	new position	11/1/1991 1/1/1994
Mr. Tom McElwain Butte Qualifications (if required): public member	Governor	new position	11/1/1991 1/1/1992
Mr. Mark Parker Billings Qualifications (if required): attorney	Governor	new position	11/1/1991 1/1/1994

BOARD AND COUNCIL APPOINTEES: NOVEMBER, 1991

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Pardons (Institutions)			
Mr. John G. Thomas	Governor	Bosch	11/1/1991
Helena			0/0/0
Qualifications (if required): Chairman			
Northern Cheyenne-Montana Compact Board ()			
Ms. Karen Barclay	Governor	not listed	11/20/1991
Helena			0/0/0
Qualifications (if required): none specified			
Western Interstate Commission for Higher Education (Education)			
Mr. John Dallum	Governor	McGregor	11/5/1991
Cascade			6/19/1995
Qualifications (if required): professional			

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1992 through March 31, 1992

Board/current position holder	Appointed by	Term end
Appellate Defender Commission (Administration)		
Mr. Tom McElwain, Butte	Governor	1/1/1992
Qualifications (if required): public member		
Board of Architects (Commerce)		
Mr. Robert Utzinger, Bozeman	Governor	3/27/1992
Qualifications (if required): 1 reg. architect on MSU School of Architecture staff		
Board of Chiropractors (Commerce)		
Dr. Arvin R. Wilson, Whitefish	Governor	1/2/1992
Qualifications (if required): none specified		
Board of Dentistry (Commerce)		
Ms. Fern Flanagan, Helena	Governor	1/4/1992
Qualifications (if required): public member		
Ms. Elsie Fox, Miles City	Governor	3/29/1992
Qualifications (if required):		
Mr. Ronald L. Olson, Billings	Governor	3/29/1992
Qualifications (if required): denturist		
Mr. Stan Rogers, Billings	Governor	1/1/1992
Qualifications (if required):		
Board of Horseracing (Commerce)		
Mr. Steve Christian, Whitefish	Governor	1/20/1992
Qualifications (if required): rep. from Fifth District		
Mr. Dale Hoffman, Billings	Governor	1/20/1992
Qualifications (if required): rep. from Second District		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1992 through March 31, 1992

Board/current position holder	Appointed by	Term end
Board of Public Education (Education)		
Mr. Alan D. Nicholson, Helena	Governor	2/1/1992
Qualifications (if required): affiliated with Democratic Party		
Board of Regents of Higher Education (Education)		
Mr. James M. Kaze, Havre	Governor	2/1/1992
Qualifications (if required): none specified		
Mr. John Scully, Bozeman	Governor	2/1/1992
Qualifications (if required):		
Capitol Finance Advisory Council (Administration)		
Rep. Francis Bardanouve, Harlem	Governor	1/23/1992
Qualifications (if required): legislator		
Mr. Chuck Brooke, Helena	Governor	1/23/1992
Qualifications (if required): Director of Commerce		
Sen. Delwyn "Del" Gage, Cut Bank	Governor	1/23/1992
Qualifications (if required): legislator		
Mr. Dennis Iverson, Helena	Governor	1/23/1992
Qualifications (if required): Director of Health and Environmental Sciences		
Dr. Amos Little, Helena	Governor	1/23/1992
Qualifications (if required): Chairman of Montana Health Facility Authority Board		
Mr. Bob Marks, Helena	Governor	1/23/1992
Qualifications (if required): Director of Department of Administration		
Mr. Tom Mather, Great Falls	Governor	1/23/1992
Qualifications (if required): Chairperson Board of Housing		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1992 through March 31, 1992

Board/current position holder	Appointed by	Term end
Capitol Finance Advisory Council (Administration) cont.		
Mr. William L. Mathers, Miles City	Governor	1/23/1992
Qualifications (if required): chairperson Board of Regents		
Ms. Mary D. Munger, Helena	Governor	1/23/1992
Qualifications (if required): chairperson of Montana Health Facility Authority		
Mr. John Rothwell, Helena	Governor	1/23/1992
Qualifications (if required): Director of Department of Transportation		
Mr. Everett Snortland, Helena	Governor	1/23/1992
Qualifications (if required): Director of Department of Agriculture		
Mr. Rod Sundsted, Helena	Governor	1/23/1992
Qualifications (if required): Director of Office of Budget Program Planning		
Mr. Warren Vaughn, Billings	Governor	1/23/1992
Qualifications (if required): chairperson Board of Investments		
Mr. Steve Yeakel, Helena	Governor	1/23/1992
Qualifications (if required): Budget Director for Governor's Budget Office		
Childrens Trust Fund Board (Social and Rehabilitation Services)		
Ms. Darlene Dowen, Kalispell	Governor	1/1/1992
Qualifications (if required): none specified		
Mr. Arnie A Hove, Circle	Governor	1/1/1992
Qualifications (if required): none specified		
Mr. Richard Kerstein, Billings	Governor	1/2/1992
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1992 through March 31, 1992

Board/current position holder	Appointed by	Term end
Childrens Trust Fund Board (Social and Rehabilitation Services) cont.		
Mr. Randy Koutnik, Great Falls Qualifications (if required): none specified	Governor	1/1/1992
Ms. Dollean Lind, Hardin Qualifications (if required): none specified	Governor	1/1/1992
Mr. Mike Males, Bozeman Qualifications (if required): none specified	Governor	1/1/1992
Mr. Gaylord Walls, Havre Qualifications (if required): none specified	Governor	1/1/1992
Developmental Disabilities Planning and Advisory Council (Social and Rehabilitation Services)		
Rep. Timothy J. Whalen, Billings Qualifications (if required): member of House of Representatives	Governor	1/1/1992
Employment of People with Disabilities Advisory Council (Administration)		
Mr. Lowell L. Bartels, Helena Qualifications (if required): private sector employer member	Governor	2/9/1992
Mr. Mark Bowlds, Helena Qualifications (if required): ex-officio member	Governor	2/9/1992
Mr. H. P. Brown, Great Falls Qualifications (if required): disabled advocacy and advisory organization members	Governor	2/9/1992
Mr. William Comp, Fort Harrison Qualifications (if required): disabled advocacy and advisory organization members	Governor	2/9/1992
Ms. Linda Currey, Helena Qualifications (if required): none specified	Governor	2/9/1992

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1992 through March 31, 1992

Board/current position holder	Appointed by	Term end
Employment of People with Disabilities Advisory Council (Administration) cont.		
Mr. Fred Fisher, Helena	Governor	2/9/1992
Qualifications (if required): disabled advocacy and advisory organization members		
Mr. Ron Garbarino, Butte	Governor	2/9/1992
Qualifications (if required): member at large		
Mr. Gary Garlock, Billings	Governor	2/9/1992
Qualifications (if required): public sector employer member		
Mr. Pat Goodover, Great Falls	Governor	2/9/1992
Qualifications (if required): private sector employer member		
Ms. Judy Harris, Helena	Governor	2/9/1992
Qualifications (if required): member at large		
Mr. William Heinecke, Belgrade	Governor	2/9/1992
Qualifications (if required): member at large		
Mr. Richard James, Bozeman	Governor	2/9/1992
Qualifications (if required): representative of Visual Services Advisory Council		
Mr. Wade Johnston, Missoula	Governor	2/9/1992
Qualifications (if required): private sector employer member		
Mr. Bob LeMieux, Great Falls	Governor	2/9/1992
Qualifications (if required): disabled advocacy and advisory organization member		
Mr. Ronald W. McDonald, Helena	Governor	2/9/1992
Qualifications (if required): private sector employer member		
Ms. Julia Robinson, Helena	Governor	2/9/1992
Qualifications (if required): public sector employer member		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1992 through March 31, 1992

Board/current position holder	Appointed by	Term end
Employment of People with Disabilities Advisory Council (Administration) cont.		
Ms. Linda Valentine, Billings Qualifications (if required): member at large	Governor	2/9/1992
Mr. Brett Vieke, Butte Qualifications (if required): disabled advocacy and advisory organization members	Governor	2/9/1992
Mr. James Whealon, Helena Qualifications (if required): ex-officio member	Governor	2/9/1992
Fertilizer Advisory Council (Education)		
Mr. Bill Koenig, Kalispell Qualifications (if required): none specified	Director	1/1/1992
Mr. Allan Peace, Fairfield Qualifications (if required): none specified	Director	1/1/1992
Health Care Services Availability Advisory Council (Governor)		
Dr. Jimmie L. Ashcraft, Sidney Qualifications (if required):	Governor	1/26/1992
Mr. John Bartos, Hamilton Qualifications (if required):	Governor	1/26/1992
Mr. Paul F. Boylan, Bozeman Qualifications (if required):	Governor	1/26/1992
Mr. Charles Butler Jr., Missoula Qualifications (if required):	Governor	1/26/1992
Rep. Paula A. Darko, Libby Qualifications (if required):	Governor	1/26/1992

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1992 through March 31, 1992

Board/current position holder	Appointed by	Term end
Health Care Services Availability Advisory Council (Governor) cont.		
Dr. Donald Espelin, Helena Qualifications (if required):	Governor	1/26/1992
Ms. Laura Grinde, Lewistown Qualifications (if required):	Governor	1/26/1992
Ms. Peggy Guthrie, Choteau Qualifications (if required):	Governor	1/26/1992
Dr. Jim Hoyne, Clancy Qualifications (if required):	Governor	1/26/1992
Mr. Loren Jenkins, Big Sandy Qualifications (if required):	Governor	1/26/1992
Mr. Leonard A. Kaufman, Billings Qualifications (if required):	Governor	1/26/1992
Rep. John Mercer, Polson Qualifications (if required):	Governor	1/26/1992
Dr. Gordon K. Phillips, Great Falls Qualifications (if required):	Governor	1/26/1992
Mr. Larry E. Riley, Missoula Qualifications (if required):	Governor	1/26/1992
Mr. Chadwick Smith, Helena Qualifications (if required):	Governor	1/26/1992

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1992 through March 31, 1992

Board/current position holder	Appointed by	Term end
Health Facility Authority Board (Commerce)		
Mr. John H. Solheim, Glendive	Governor	1/1/1992
Qualifications (if required): expert in hospital administration		
Housing Discrimination Advisory Council (Labor)		
Ms. Jean Bear Crane, Billings	Governor	1/31/1992
Qualifications (if required): none specified		
Reverend Phillip Caldwell, Great Falls	Governor	1/31/1992
Qualifications (if required): none specified		
Mr. Tim Harris, Helena	Governor	1/31/1992
Qualifications (if required): none specified		
Ms. Maria Stephens, Billings	Governor	1/31/1992
Qualifications (if required): none specified		
Ms. Dallas Teboe, Poplar	Governor	1/31/1992
Qualifications (if required): none specified		
Mr. Michael Wangen, Missoula	Governor	1/31/1992
Qualifications (if required): none specified		
Mr. Walt Wetzel, Billings	Governor	1/31/1992
Qualifications (if required): none specified		
Ms. Pam Willett, Billings	Governor	1/31/1992
Qualifications (if required): none specified		
Mr. Larry Witt, Bozeman	Governor	1/31/1992
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1992 through March 31, 1992

Board/current position holder	Appointed by	Term end
Judicial Nomination Commission (Governor)		
Mr. Ken Byerly, Lewistown	Governor	1/1/1992
Qualifications (if required):		
Mr. John R. Devier, Glendive	Governor	1/1/1992
Qualifications (if required):		
Ms. Donna Metcalf, Helena	Governor	1/1/1992
Qualifications (if required):		
Ms. Norma C. Wood, Loma	Governor	1/1/1992
Qualifications (if required):		
Management Development Advisory Council (Administration)		
Ms. Karen Barclay, Helena	Director	1/1/1992
Qualifications (if required):		
Mr. Peter Blouke, Helena	Director	1/1/1992
Qualifications (if required):		
Ms. Carolyn Doering, Helena	Director	1/1/1992
Qualifications (if required):		
Ms. Laurie Ekanger, Helena	Director	1/1/1992
Qualifications (if required):		
Ms. Maureen J. Fleming, Missoula	Director	1/1/1992
Qualifications (if required):		
Mr. Michael A. Lavin, Helena	Director	1/1/1992
Qualifications (if required):		

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1992 through March 31, 1992

Board/current position holder	Appointed by	Term end
Management Development Advisory Council (Administration) cont.		
Mr. Russell G. McDonald, Helena Qualifications (if required):	Director	1/1/1992
Mr. Mike Micone, Helena Qualifications (if required):	Director	1/1/1992
Dr. Kenneth L. Weaver, Bozeman Qualifications (if required):	Director	1/1/1992
Montana Arts Council (Education)		
Ms. Kitty Belle Deernose, Crow Agency Qualifications (if required):	Governor	2/1/1992
Mr. James M. Haughey, Billings Qualifications (if required):	Governor	2/1/1992
Ms. Helen Guthrie Miller, Butte Qualifications (if required):	Governor	2/1/1992
Ms. Carol Novotne, Fort Harrison Qualifications (if required):	Governor	2/1/1992
Mr. Randall S. Ogle, Kalispell Qualifications (if required):	Governor	2/1/1992
Rep. Jessica Stickney, Miles City Qualifications (if required):	Governor	2/1/1992
Mr. Charles F. Tooley, Billings Qualifications (if required):	Governor	2/1/1992

VACANCIES ON BOARDS AND COUNCILS -- January 1, 1992 through March 31, 1992

Board/current position holder	Appointed by	Term end
Montana Arts Council (Education) cont.		
Mr. Patrick Zentz, Laurel	Governor	2/1/1992
Qualifications (if required):		
Passenger Tramway Advisory Council (Commerce)		
Mr. J.R. Crabtree, Choteau	Governor	1/1/1992
Qualifications (if required):		
Mr. Tim Prather, Red Lodge	Governor	1/1/1992
Qualifications (if required):		
State Employee Sick Leave Advisory Council (Governor)		
Mr. Bob Robinson, Helena	Governor	3/1/1992
Qualifications (if required): office of elected official		