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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

In the matter of the proposed repeal and adoption of new rules pertaining to the Municipal Finance Consolidation Act	)))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED REPEAL AND ADOPTION OF NEW RULES PERTAINING TO THE MUNICIPAL FINANCE CONSOLIDATION ACT (INCLUDING NEW RULES IMPLEMENTING THE INTERCAP PROGRAM)

TO: All Interested Persons:

1. On September 2, 1992, at 9:00 - 11:00 a.m., a public hearing will be held in the Board of Investments conference room, 555 Fuller, Helena, Montana, to consider the proposed repeal and adoption of new rules pertaining to the implementation of the Municipal Finance Consolidation Act.

2. The Board is proposing to repeal ARM 8.97.701 through 8.97.711 and 8.97.901 through 8.97.904. The text of these rules is located at pages 8-3509 through 8-3513, and 8-3527 and 8-3528, Administrative Rules of Montana. The reason for repealing these rules and adopting new rules is that the programs under the Municipal Finance Consolidation Act (Title 17, Chapter 5, Part 16) have evolved enough so as to justify a rewrite of the implementing rules. The Board believes that the rules must reflect the current practices regarding the programs, and is proposing this rulemaking action accordingly.

3. The proposed new rules will read as follows:

"I DEFINITIONS (1) The definitions contained herein shall govern with respect to subchapters 7 and 9.

(2) As used in subchapters 7 and 9, and unless the context clearly requires another meaning:

(a) "Act" means the municipal finance consolidation act of 1983 as set forth in Title 17, chapter 5, part 16, MCA.

(b) "Bond" means any bond or note issued by the board pursuant to Title 17, chapter 5, part 16, MCA.

(c) "INTERCAP revolving program" or "INTERCAP program" means the intermediate term capital program administered by the board pursuant to Title 17, chapter 5, part 16, MCA.

(d) "Loan agreement" means the agreement, including the exhibits attached thereto and the security instrument, if any, between the borrower and the board as originally executed or as they may from time to time be supplemented, modified or amended in accordance with the terms of the agreement and of the indenture.

(e) "Local government unit" means any municipal corporation or political subdivision of the state, including without limitation any city, town, county, water or sewer district, rural fire district, board of regents of the

university system, county hospital district, school district, or other taxing district.

(f) "Obligation" means any bond, note or bond anticipation note issued by a local government unit and payable from taxes, special assessments, revenues derived from an enterprise owned by the local government unit, or any combination thereof.

(g) "Program(s)" include, but are not limited to, the INTERCAP program and other board programs developed pursuant to the Act.

(h) "Reserve fund" means the municipal finance consolidation act reserve fund created in 17-5-1630, MCA."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, 17-6-1611, MCA

"II SCOPE OF SUBCHAPTER 7 (1) This subchapter shall govern the submittal of and processing of applications to the board for financing and the purchase of obligations under the Act including, but not limited to, the INTERCAP revolving program described in new rules XI through XXI."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, 17-5-1611, MCA

"III DESCRIPTION OF MUNICIPAL FINANCE CONSOLIDATION ACT PROGRAMS (1) Under the Act, the board is authorized to develop methods to provide access to capital for Montana local government units and to find ways to reduce borrowing costs through pooling and other efficiencies.

(2) The Act authorizes the board to lend its credit for up to $50 million for its programs, except for its short-term finance programs, which are excluded from this ceiling. The programs developed under the Act provide loans to local governments. The bonds which finance these programs are backed by the board through irrevocable agreements to lend monies and, if necessary, to replenish the bond reserves.

(3) The board may periodically authorize, issue, and offer for sale its bonds in an amount determined by the board to be sufficient to purchase obligations of local government units whose applications have been approved by the board pursuant to these rules, to pay costs of issuance of such bonds and to fund the reserve fund provided for in new rule IX.

(4) Separate bonds may be issued to finance the purchase of different types of obligations."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1602, 17-5-1606, 17-5-1611, MCA

"IV APPLICATION PROCEDURE (1) A local government unit may apply for financing under the Act by submitting an application to the board on a form provided by the board. The application shall contain:

(a) a complete description of the purpose or purposes for which the obligations are to be issued;

(b) evidence that the local government unit has taken all steps necessary for the authorization and issuance of the

obligations, including the holding of any required election or public hearings;

(c) a description of all outstanding obligations of the local government unit, if applicable;

(d) a description of the proposed issue of obligations including principal amount, proposed maturities and any interest rate limitations;

(e) a copy of the most recent audit of the enterprise, if the obligations are to be made payable from the revenues of an enterprise;

(f) a general description of the character of and value of the property to be assessed and the nature of the ownership thereof, and a map of the proposed district boundaries, if the obligations consist of special improvement district bonds or rural special improvement district bonds;

(g) a general financial statement of the governmental unit; and

(h) any other information deemed necessary by the board to evaluate the application in accordance with these rules and the Act.

(2) The bond program office of the board shall review the application to determine whether the application is complete under subsection (1) of this rule. The bond program office may request the local government unit to provide additional information relevant to the evaluation of the application under new rule V if applicable. When the bond program office determines that the application is complete, it shall make a recommendation to the board for action on the application.

(3) The board's bond program office may require additional information from a local government unit before acting on an application. If it approves the application, the board shall direct the bond program office to notify the local government unit and shall decide the nature of the agreement to be entered into with the local government unit under new rules V, VI and VII."

Auth: Sec. 17-6-1605, MCA; IMP, Sec. 17-6-1611, MCA

"V CRITERIA FOR EVALUATION OF ALL PROGRAM APPLICATIONS

(1) In evaluating applications for financing under the program, the board shall consider the following factors:

(a) the lawfulness and validity of the purpose to be considered by the financing;

(b) the ability of the local government unit to secure borrowed money from other sources and the costs thereof;

(c) the ability of the local government unit to pay principal of and interest on its obligations when due;

(d) the priority of need for the particular public improvement or purpose to be financed;

(e) the chronological order of receipt of a completed application;

(f) compliance with other eligibility requirements as set forth in these rules;

(g) compliance with the underwriting standards of the board used to determine whether the local government unit has sufficient funds or ability to repay a program loan. A copy

of the applicable underwriting standards may be obtained from the bond program office; and

(h) other information as the board may deem necessary.

(2) As required by section 2-4-305, MCA, notice is hereby given that (1)(a), (b), (c) and (d) repeat parts of section 17-5-1611, MCA, and are included in this rule in order to provide the public with full disclosure of all evaluation criteria."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1611, MCA

"VI AGREEMENTS (1) Upon approval of an application, the board will enter into one of the following agreements with the local government unit:

(a) If the board has proceeds available from the issuance of its bonds, it may enter into an agreement with the local government unit for the immediate purchase of obligations of the local government unit upon terms set by the board.

(b) If the board does not have proceeds available from the issuance of its bonds, it may enter into an agreement with the local government unit wherein the board will agree that it will purchase obligations of the local government unit, in an amount not to exceed a principal amount approved by the board, upon the issuance by the board of its obligations.

(2) As required by this rule, a loan agreement will be entered into between the local government unit and the board for a program loan. The loan agreement must be fully executed prior to disbursement of loan funds.

(a) The loan agreement will be secured by the local government unit's pledge to annually appropriate funds for the payment of principal and interest as due, and by a security interest, to the extent legally permissible.

(3) Prior to final closing, a local government unit may withdraw its application for a loan for any reason. If an application is withdrawn, the commitment fee will be returned to the local government unit."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1609, 17-5-1611, 17-5-1643, MCA

"VII FINANCIAL REQUIREMENTS AND COVENANTS (1) In agreeing to purchase obligations of a local government unit, the board shall require covenants in the resolution of the governmental unit authorizing the issuance of the obligations."

Auth: Sec. 17-6-1605, MCA; IMP, Sec. 17-5-1611, MCA

"VIII GENERAL TERMS, INTEREST RATES, FEES AND CHARGES (1) The terms of obligations shall be established by the board at the time of purchase, unless established at the time the agreements contemplated by new rule VII are executed.

(2) The board may require a local government unit to pay interest on its obligations at a rate or rates sufficient to enable the board to pay debt service on any bonds or notes issued by the board, to reimburse the board for its administrative costs incurred in undertaking the program and its general operating and administrative expenses and to

provide a reasonable allowance for losses that may be incurred in the program, including funding the reserve fund."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1611, 17-5-1630, MCA

"IX RESERVE FUND (1) As required by 17-5-1630, MCA, the board has established and will establish reserve funds for programs created under the Act. All money held in the reserve funds shall be used solely for the payment of the principal of or interest on bonds or notes issued by the board for programs under the Act."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1611, 17-5-1630, MCA

"X CLOSING REQUIREMENTS (1) Prior to the board providing funds under this Act, the local government unit shall provide the following:

(a) a complete transcript of all proceedings, if applicable, taken by the local government unit in connection with the authorization, issuance and sale of the obligations, certified by the recording officer of the local government unit;

(b) certificates of the chief executive officer and recording officer of the local government unit as to the absence of litigation and the application to be made of the proceeds of the obligations;

(c) a certification evidencing compliance with section 103(c) of the Internal Revenue Code of 1954, as amended, relating to arbitrage bonds, if applicable;

(d) a legal opinion acceptable to the board as to the validity of the obligations and the security thereof; and

(e) such other items as may be requested by the board or its counsel."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1611, MCA

"XI INTERCAP PROGRAM - PURPOSE (1) The purpose of the INTERCAP program is to provide loans for periods up to ten years (unless specific enabling legislation requires a shorter term) to local government units that are authorized to participate in the program to finance capital improvements and other needs, and to refinance outstanding short-term indebtedness.

(a) There is no limitation to the total volume of participation by a participating local government unit except for those limits legally imposed by statutory debt limitations and/or imposed by underwriting standards.

(2) Another purpose of the INTERCAP program is to provide short-term loans for a period of one year or less."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

"XII INTERCAP PROGRAM - LOCAL GOVERNMENT AUTHORITY (1) Financing received through the INTERCAP program will be through a loan agreement issued pursuant to the following: section 7-5-4305, for cities and towns; section 7-7-2306, for counties; sections 7-13-2217 and 7-13-2221, for water and sewer districts; section 7-33-2109, for fire districts;

section 17-34-2122, for county hospital districts; and section 20-9-471, for school districts; or other applicable statutory authority.

(a) These obligations constitute debt of the local government unit and will be payable from any and all revenues by annual appropriation by the local government."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

"XIII INTERCAP PROGRAM - ELIGIBILITY FOR PARTICIPATION, PROGRAM REQUIREMENTS (1) The board may consider INTERCAP funding for any local government unit debt or borrowing that is legally authorized by statute.

(a) Outstanding loans or leases may be refinanced through INTERCAP if economically advantageous to the applicant.

(2) In addition to the requirements of new rule IV, a local government unit must also execute and submit to the board, a commitment agreement, and a resolution, on forms provided by the board, together with a commitment acceptance fee as required in new rule XV or new rule XVII.

(a) Until an INTERCAP loan is actually made, an applicant who acts upon a commitment agreement by ordering equipment or commits funds for some other purpose, does so at its own risk.

(b) The board will refund the commitment acceptance fee to the local government unit if its application is withdrawn before closing.

(c) If a loan request is not approved by the board, or approved for an amount less than requested, the commitment acceptance fee or its pro-rata share will be returned to the local government unit.

(3) In determining the local government unit's eligibility to participate in the INTERCAP program, the board will determine if the local government unit is in compliance with section 17-5-1611(8).

(a) If the board determines that the local government unit has complied with section 17-5-1611(8), the board will reserve funds for the local government unit in the amount indicated in the commitment agreement."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

"XIV INTERCAP PROGRAM - PROGRAM REQUIREMENTS (1) As stated in new rule VI the local government unit must enter into a loan agreement and provide a legal opinion stating that the loan agreement is legal and binding upon the local government unit.

(2) Other program requirements include the following:

(a) The local government unit must obtain all necessary state and federal permits before closing.

(b) The local government unit must submit its most recent audited financial statement if it falls under "Montana Single Audit Act"; otherwise the local government unit must submit financial statements as required by the board.

(c) The loan term may not exceed the expected useful life of the project.

(d) In order to be eligible for an INTERCAP loan, the local government unit must demonstrate that it is not in default on any other obligation.

(e) If a project is dependent on other outside sources of revenue, in addition to the INTERCAP loan, the local government unit must demonstrate to the board that such funds have been committed prior to the project and prior to the board's final action on the INTERCAP loan.

(f) The local government unit must demonstrate to the board that an INTERCAP loan will not cause the local government unit to exceed its legal indebtedness limitation.

(g) The local government unit must demonstrate to the board's satisfaction that it has the ability to repay the loan upon the terms and conditions set by the board."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

"XV INTERCAP PROGRAM - TERMS OF OFFER AND COMMITMENT ACCEPTANCE FEE (1) The board's commitment offer to lend INTERCAP funds is valid for 30 days.

(2) If a local government unit accepts the commitment offer within the 30 day offer period and pays the required commitment acceptance fee, the local government unit has 12 months from the commitment offer date to borrow the money.

(3) For INTERCAP loans, the local government unit shall pay a commitment acceptance fee to the board equal to one-half (1/2) percent of its total project funding amount. The commitment acceptance fee must accompany the commitment agreement.

(4) A loan origination fee of one and one-half (1 1/2) percent will be added to the principal amount of the loan.

(5) The commitment acceptance fee and the loan origination fee are used to offset the board's costs in issuing the bonds."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1611, 17-5-1643, MCA

"XVI INTERCAP PROGRAM - LOAN TERMS, INTEREST RATES, FEES AND CHARGES (1) On March 1 of each successive year, the interest rate established in the loan agreement will be adjusted. By March 15 of each successive year, the trustee will notify the local government unit of the new interest rate effective for the following 12 months and provide a payment schedule.

(a) The interest rate will be a function of the interest rate on the board's bonds in addition to 1.5 percent per annum, as necessary to meet program operating expenses.

(2) The local government unit will be required to make semiannual loan payments on each February 15 and August 15. Prepayments will be allowed without a prepayment penalty on each February 15 or August 15 with prior notice to the board as set forth in the loan agreement."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

"XVII INTERCAP PROGRAM - SHORT-TERM LOANS (1) A short-term loan of less than one year may be made to a local government unit if the local government unit has the ability

to repay the loan either from tax, revenue, grant or other lawfully available monies.

(2) A short-term INTERCAP loan will not be made if the granting of such a loan will exacerbate a current deficit situation.

(3) The board will set the payment date of the loan to the particular needs of the local government unit and is not bound to set those dates on February 15 and August 15 as required by new rule XVI for other INTERCAP loans.

(4) The loan rate for short-term INTERCAP loans will be set at the current INTERCAP loan rate and will adjust as per new rule XVI.

(5) The board may waive the commitment acceptance and origination fees for short-term loans.

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

"XVIII INTERCAP PROGRAM - GENERAL OBLIGATION BONDED DEBT - DESCRIPTION - REQUIREMENTS (1) The following requirements apply to all general obligation bonded debt:

(a) The term limit may not exceed 10 years;

(b) The loan limit may not exceed $500,000;

(c) an attorney general's certification will be required."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

"XIX INTERCAP PROGRAM - REVENUE OBLIGATION DEBT OF WATER AND SEWER DISTRICTS - DESCRIPTION - REQUIREMENTS (1) If the local government unit intends to finance equipment and improvements to a water or sewer district, and intends to use revenues of the system to repay the loan, the board will require a pledge of the revenues and certain covenants customary to revenue backed financings.

(2) The following requirements apply to these revenue backed financings:

(a) the board will require parity obligation where possible and reasonable;

(b) the term limit may not exceed 10 years;

(c) the loan limit may not exceed $500,000;

(d) the water or sewer district must submit an audited financial statement or certificate to the board prepared by an outside expert regarding the adequacy and accuracy of the rate base and project cost;

(e) the water or sewer district must covenant to maintain rates and charges sufficient to produce new revenues (gross revenue less operation and maintenance) on an annual basis equal to outstanding debt;

(f) the water or sewer district must submit documentation and proof of the rates and charges currently in effect;

(g) all project costs must be identified and certified;

(h) all sources of funds must be identified and committed; and

(i) the debt may be subordinated if (b) through (h) above are met, and no additional debt is incurred without board consent."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

"XX INTERCAP PROGRAM - SPECIAL ASSESSMENT BOND DEBT - DESCRIPTION - REQUIREMENTS (1) Special improvement district bonds (SID) are payable from special assessments levied against the real property in the district benefitted by the improvements financed by the bonds. Special assessments are a lien on the property in the principal amount of the assessment. They are prepayable in full on any payment date and may be secured by the issuer's revolving fund. The issuers annual liability to levy for the revolving fund is limited to 5% of the outstanding special improvement district bonds.

(2) The following requirements apply to SIDs:

(a) No loans will be made for raw land projects, and 80% of the property in the district must contain real property improvements and be occupied;

(b) The city or county revolving fund must secure the SID with a pledge to levy for and maintain the revolving fund to the maximum amount permitted by law;

(c) The term limit may not exceed 10 years;

(d) The loan amount may not exceed $100,000; and

(e) A loan covenant requiring that the local government unit will not create an additional SID unless it meets the "improvements" test as set forth in (a) above."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

"XXI INTERCAP PROGRAM - REVENUE BONDS SPECIAL DISTRICTS - COUNTY WATER AND SEWER DISTRICTS - VOTED DEBT AND NON-VOTED DEBT - DESCRIPTION - REQUIREMENTS - COUNTY HOSPITAL DISTRICTS

(1) County water and sewer districts are authorized to issue tax-backed revenue bonds upon approval of the property owners in the districts. The board of directors of the districts are authorized to impose rates and charges for services provided and to pay debt service on voted debt. If the revenue of the districts is inadequate to meet those obligations, a tax levy equal to the deficiency shall be imposed on property in the district.

(a) The following requirements apply to revenue bonds issued to finance county water and sewer districts when voted upon by the property owners in the district;

(i) the term limit may not exceed 10 years;

(ii) the loan limit may not exceed $250,000;

(iii) coverage of revenue over expenditure will be set by the board at a 25% minimum, but may be set higher where higher risk is perceived due to delinquencies and other fluctuations;

(iv) the water or sewer district must demonstrate the imposition of rate hikes necessary to reduce the debt;

(v) an attorney's opinion on the legal and binding nature of loan agreement must be submitted to the board; and

(vi) the water or sewer district must demonstrate that it has received all required federal and state permits, licenses or other approvals, where necessary.

(2) County water and sewer districts are authorized to borrow money without issuing bonds or obtaining voter approval. These bonds, however, would be payable solely from revenue of the districts, or from a tax deficiency levy

subject to the limitations of I-105. Where existing voted debt is outstanding, non-voted debt becomes subordinate and bears risk of a taxpayer challenge if a deficiency levy is needed.

(a) The following requirements apply to revenue bonds issued to finance county water and sewer districts when the debt is not approved by the property owners in the district.

(i) subsections (1)(a)(i) through (vi) apply;

(ii) the water or sewer district must establish that no existing debt is either outstanding or authorized;

(iii) the water or sewer district must agree not to incur additional debt without receiving prior board approval;

(iv) no community development block grant funds may be used as part of project financing; and

(v) the loan limit established for this type of bond issue will not exceed $50,000.

(3) County hospital districts are special taxing jurisdictions organized for the purpose of providing county hospital facilities. The ability to tax is limited to 3 mills a year, unless the voters authorize an additional levy for 2 years. If voters authorize the issuance of bonds, or other debt, property may be levied without the limitation as to the rate or amount.

(a) The following requirements apply to revenue bonds issued to finance county hospital districts:

(i) the bonds must be approved by the voters;

(ii) the bonds will be a general obligation of the district; and

(iii) a 22.5% of taxable value indebtedness limitation will be established for the bond issue."

Auth: Sec. 17-5-1605, MCA; IMP, Sec. 17-5-1606, MCA

5. 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 Investments, 555 Fuller Avenue, Helena, Montana 59620, to be received no later than 5:00 p.m., September 11, 1992.

6. Mona Jamison, attorney, Helena, Montana, has been designated to preside over and conduct the hearing.

BOARD OF INVESTMENTS
WARREN VAUGHAN, 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, August 3, 1992.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the proposed repeal of rules relating to secondary vo-ed program requirements	)))	NOTICE OF THE PROPOSED REPEAL OF RULES RELATING TO SECONDARY VO-ED PROGRAM REQUIREMENTS

NO PUBLIC HEARING CONTEMPLATED

To: All interested persons

1. On September 14, 1992, the Superintendent of Public Instruction proposes to repeal rules pertaining to secondary vocational education program requirements.

2. The proposed rules for repeal follow. Full text of the rules is found at pages 10-596 through 10-606, ARM.

10.44.201 GENERAL REQUIREMENTS (IS HEREBY REPEALED)
(AUTH: 20-7-301, MCA; IMP: 20-7-303, MCA)

10.44.202 AGRICULTURE EDUCATION PROGRAMS (IS HEREBY REPEALED)
(AUTH: 20-7-301, MCA; IMP: 20-7-303, MCA)

10.44.203 BUSINESS EDUCATION PROGRAMS (IS HEREBY REPEALED)
(AUTH: 20-7-301, MCA; IMP: 20-7-303, MCA)

10.44.204 DISTRIBUTIVE EDUCATION PROGRAMS (IS HEREBY REPEALED)
(AUTH: 20-7-301, MCA; IMP: 20-7-303, MCA)

10.44.205 HEALTH OCCUPATIONS PROGRAMS (IS HEREBY REPEALED)
(AUTH: 20-7-301, MCA; IMP: 20-7-303, MCA)

10.44.206 TRADE AND INDUSTRIAL EDUCATION PROGRAMS (IS HEREBY REPEALED)
(AUTH: 20-7-301, MCA; IMP: 20-7-303, MCA)

10.44.207 HOME ECONOMICS WAGE EARNING PROGRAMS (IS HEREBY REPEALED)
(AUTH: 20-7-301, MCA; IMP: 20-7-303, MCA)

10.44.208 VOCATIONAL COMPREHENSIVE CONSUMER AND HOMEMAKING EDUCATION PROGRAMS (IS HEREBY REPEALED)
(AUTH: 20-7-301, MCA; IMP: 20-7-303, MCA)

10.44.209 INDUSTRIAL ARTS PROGRAMS (IS HEREBY REPEALED)
(AUTH: 20-7-301, MCA; IMP: 20-7-303, MCA)

10.44.210 COOPERATIVE VOCATIONAL EDUCATION PROGRAMS (IS HEREBY REPEALED)
(AUTH: 20-7-301, MCA; IMP: 20-7-303, MCA)

3. These rules are being repealed because the requirements for K-12 vocational education courses and programs are found in the "Standards and Guidelines for Secondary Vocational Education" published by the State Superintendent of Public Instruction, in accordance with Section 20-7-301, MCA.

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 September 11, 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 Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than 5:00 p.m. on September 11, 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 repeal; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

Beda J. Hovitt
Rule Reviewer
Office of Public Instruction

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of State August 3, 1992.

BEFORE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 12.6.901 pertaining to the water safety regulations	NOTICE OF PROPOSED AMENDMENT OF RULE 12.6.901 NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons

1. On September 24, 1992, the Fish, Wildlife and Parks Commission proposes to amend rule 12.6.901 pertaining to the water safety regulations on a portion of the Clearwater River by closing the designated section to all motor-propelled water craft. The Commission is also considering the following alternatives for this designated section of the Clearwater River: (1) a horsepower restriction on motor-propelled water craft; (2) a no wake restriction; (3) a speed limit restriction; or, (4) taking no action to impose restrictions on motor-propelled water craft.

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

12.6.901 WATER SAFETY REGULATIONS (1) remains the same.

(a) The following waters are closed to use for any motor-propelled water craft except in case of use for official patrol, search and rescue, maintenance of hydroelectric projects and related facilities with prior notification by the utility, or for scientific purposes, or for special events such as testing motorized watercraft by prior written approval of the director;

Beaverhead County:	(A)	Big Hole River
Big Horn County:	(A)	Arapooish fishing access area
	(B)	That portion of the Bighorn River from Afterbay Dam to the Big Horn access area.
Cascade County:	(A)	Smith River
	(B)	Pelican Point fishing access ponds
	(C)	That portion of the Missouri River from the Burlington Northern Railway Bridge No. 119.4 at Broadwater Bay in Great Falls to Black Eagle and that portion of the Missouri River from the Warden Bridge on 10th

		Avenue South in Great Falls to the floater take-out facility constructed near Oddfellows Park at Broadwater Bay as posted.
Custer County:	(A)	Branum Pond
Deer Lodge County:	(A)	Big Hole River
Gallatin County:	(A)	Bozeman Ponds
	(B)	East Gallatin Pond
Granite County:	(A)	Bear Mouth rest area pond
Hill County:	(A)	Bearpaw Lake
Jefferson County:	(A)	Park Lake
Lewis & Clark County:	(A)	Wood Lake
	(B)	Spring Meadow Lake
Madison County:	(A)	Big Hole River
Meagher County:	(A)	Forest Lake
	(B)	Smith River
Missoula County:	(A)	Frenchtown Pond
	(B)	Harpers Lake
	(C)	The portion of Clearwater River from Boy Scout Road Bridge north of Seeley Lake to the mouth of Clearwater River at the north end of Seeley Lake
Ravalli County:	(A)	Twin Lakes
Richland County:	(A)	Gartside Reservoir
Silver Bow County:	(A)	Big Hole River
Toole County:	(A)	Henry Reservoir
	(B)	Fitzpatrick Lake
Yellowstone County:	(A)	Lake Elmo

(b) through (2) remains the same.

AUTH: Sec. 87-1-303 MCA IMP: Sec. 87-1-303 MCA

3. Rule 12.6.901 is being amended to address the safety issue that has arisen between motorized water craft and canoe use on the portion of Clearwater River from Boy Scout Road Bridge North of Seeley Lake to the mouth of this section of river at the north end of Seeley Lake. This section of river has been designated a canoe trail by the U.S. Forest Service. This portion of the Clearwater River is narrow in several places and meanders. The primary concern is safety, particularly with jet ski operations. The Commission is concerned that a potential for an accident currently exists and will increase with growing canoe use. The use of motorized water craft may also cause some resource damage by disrupting nesting waterfowl and other birds, including loons.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Rich Clough, Department of Fish, Wildlife and Parks, 3201 Spurgin Road, Missoula, Montana 59801. Any comments must be received no later than September 10, 1992.

5. If a person who is directly affected by the proposed amendment wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments he or she has to Rich Clough, Department of Fish, Wildlife and Parks, 3201 Spurgin Road, Missoula, Montana 59801. A written request for hearing must be received no later than September 10, 1992. The Department of Fish, Wildlife and Parks (Department), acting as staff to the Commission, has held three informal public meetings to discuss the proposed rule and options prior to this formal proposal of a rule amendment. Two meetings were held in Seeley Lake, on March 3, 1992, and on June 2, 1992, and one public meeting was held in Missoula on June 4, 1992. Based on these meetings, the Department has concluded that it is not necessary to schedule a public hearing unless requested.

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

Rule Reviewer

K.L. Cool, Secretary
Montana Fish, Wildlife and Parks
Commission

Certified to the Secretary of State August 3, 1992.

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

In the matter of the amendment of rule ARM 16.8.1903 dealing with permit fees.	)))	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULE

(Air Quality)

To: All Interested Persons

1. On September 25, 1992, at 9:00 a.m., the Board will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of the above-captioned rule.

2. The proposed amendment would increase the fees associated with the air quality bureau's permit fee program in response to action taken by the Legislature during the last two special sessions. The fees are raised from $2.50 to $4.00 per ton of pollutant for particulates, lead and sulfur dioxide, and from $0.60 to $1.00 for nitrogen oxides and volatile organic compounds. These amendments should generate approximately $160,000 in additional revenues for the department's air quality permitting program.

3. The rule, as proposed to be amended, appears as follows (new material is underlined; material to be deleted is interlined):

16.8.1903 AIR QUALITY OPERATION FEES (1)-(2) Remain the same.

(3) The air quality operation fee is based on the actual or estimated actual amount of air pollutants emitted during the previous calendar year and is the greater of a minimum fee of $250 or a fee calculated using the following formula:

tons of total particulate emitted,
multiplied by ~~$2.50~~ 4.00; plus
tons of sulfur dioxide emitted,
multiplied by ~~$2.50~~ 4.00; plus
tons of lead emitted,
multiplied by ~~$2.50~~ 4.00; plus
tons of oxides of nitrogen emitted,
multiplied by ~~$0.60~~ 1.00; plus
tons of volatile organic compounds emitted,
multiplied by ~~$0.60~~ 1.00.

(4)-(5) Remains the same.

AUTH: 75-2-111, MCA; IMP: 75-2-211, MCA

4. The board is proposing this amendment to the rule in response to action taken by the Legislature during the last two special sessions. During the January and July special sessions, the Legislature cut approximately $160,000 of general

funds from the budget of the department's Air Quality Bureau, and directed that this amount be recovered through increased fees for air quality permits, necessitating these amendments.

5. Interested persons may submit their data, views, or arguments concerning the proposed amendment, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Yolanda Fitzsimmons, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than September 25, 1992.

DENNIS IVERSON, Director

Certified to the Secretary of State August 3, 1992.

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 16.8.1307, 16.8.1308, and 16.8.1906, and the adoption of new Rule I dealing with open burning permit fees for conditional and emergency open burning permits.	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULES AND ADOPTION OF NEW RULE I (Air Quality)

To: All Interested Persons

1. On September 25, at 9:00 a.m., the Board 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 new rule and amendments to existing rules implement a fee program for the department's Air Quality Bureau, relating to permits for both conditional (ARM 16.8.1307) and emergency (ARM 16.8.1308) open burners. The proposed new rule and amendments implement a permit application fee requirement for applications for such permits. The failure to pay the required fee assessed by the department will result in the filed permit application being declared incomplete. In addition, the assessment of the fee by the department may be appealed to the board if the fee amount is determined incorrectly.

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

RULE I AIR QUALITY OPEN BURNING FEES FOR CONDITIONAL AND EMERGENCY OPEN BURNING PERMITS (1) Concurrent with the submittal of an air quality open burning permit application, as required in ARM Title 16, chapter 8, subchapter 13 (Open Burning), 16.8.1307 (Conditional Air Quality Open Burning Permit), and 16.8.1308 (Emergency Open Burning Permits), the applicant shall submit an air quality open burning fee.

(2) Air quality open burning fees are separate and distinct from any other air quality fee required to be submitted to the department pursuant to this subchapter. However, nothing in these rules may be deemed to allow the department to collect more than one fee simultaneously.

(3) An air quality open burning permit application is incomplete until the proper air quality open burning fee is paid to the department. If the department determines that the air quality open burning fee submitted with the open burning permit application is insufficient, it shall notify the applicant in writing of the appropriate fee which must be paid before the open burning permit application can be processed. If the fee assessment is appealed to the board pursuant to ARM

16.8.1906, and if the fee deficiency is not corrected by the applicant, the permit application is incomplete until issuance of the board's decision or until judicial review of the board's decision has been completed, whichever is later. Upon final disposition of the appeal, any portion of the fee which may be due to either the department or the applicant as a result of the decision is immediately due and payable.

(4) The open burning air quality permit application fee shall be:

(a) $100 for a wood and wood byproduct trade waste open burning permit under ARM 16.8.1307;

(b) $1,000 for a creosote-treated railroad tie open burning permit under ARM 16.8.1307;

(c) No fee is required for an untreated wood-waste burning permit at a licensed landfill site under ARM 16.8.1307. The required fee for this activity is included in the solid waste management system licensing fee, submitted pursuant to ARM Title 16, chapter 14, subchapter 4;

(d) $100 for an emergency open burning permit under ARM 16.8.1308. A fee for an emergency open burning permit application need not be submitted with the initial oral request to the department, but must be submitted with the subsequent written application required under ARM 16.8.1308. Submittal of the fee is a condition of any authorization given by the department under ARM 16.8.1308, and the failure to submit the fee is considered a violation of such authorization and may be subject to further enforcement action.

AUTH: 75-2-111, MCA; IMP: 75-2-211, MCA

16.8.1307 CONDITIONAL AIR QUALITY OPEN BURNING PERMITS

(1) The department may issue a conditional air quality open burning permit for the disposal of:

(a) Remains the same.

(b) Untreated wood waste at licensed landfill sites if:

(i) alternative methods of disposal would result in extreme economic hardship to the solid waste management system owner or operator;

(ii) emissions from such open burning would not endanger public health and welfare or cause a violation of any Montana or federal ambient air quality standard; and

(iii) the proposed open burning would occur at an approved burn site, as designated in the solid waste management system license issued by the department pursuant to ARM Title 16, chapter 14, subchapter 5;

~~(iii)~~(iv) prior to issuance of the conditional air quality open burning permit, the wood waste pile is inspected by the department or its designated representative and no prohibited materials listed in ARM 16.8.1302, other than wood waste, are present.

(c) Remains the same.

(2)-(3) Remain the same.

(4) An application for a conditional air quality open burning permit must be made on a form provided by the department, and must include the appropriate air quality permit

application fee required pursuant to [RULE I]. The applicant must provide adequate information to enable the department to determine that the application satisfies the requirements for a conditional air quality open burning permit contained in this rule. Proof of publication of public notice, as required in subsection (5) of this rule, shall be submitted to the department as part of any application, consistent with this rule.

(5)-(8) Remains the same.

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, 75-2-211, MCA

16.8.1308 EMERGENCY OPEN BURNING PERMITS (1) Remains the same.

(2) ~~Application for such a permit may be made to the department by telephone (406-444-3454) or in writing, and must include:~~ Oral authorization to conduct emergency open burning may be obtained from the department by telephone (406-444-3454), and must include the following information:

(a)-(d) Remain the same.

(e) A commitment to pay the appropriate air quality permit application fee required pursuant to [RULE I] within 10 working days of permit issuance;

~~(e)~~(f) The date and time of the proposed burn.

(3) Within 10 days of seeking oral authorization to conduct emergency open burning under (2) above, the applicant must submit to the department a written application for an emergency open burning permit which contains the information required above under (2)(a)-(f). The applicant shall also submit the appropriate air quality permit application fee required pursuant to [Rule I].

AUTH: 75-2-111, 75-2-203, MCA; IMP: 75-2-203, 75-2-211, MCA

16.8.1906 AIR QUALITY PERMIT APPLICATION/OPERATION FEE ASSESSMENT APPEAL PROCEDURES (1) Remains the same.

(a) receipt of the fee assessment notice described in ARM 16.8.1903(2) (Operation Fees); or

(b) issuance of a determination of incompleteness of a permit application based on the lack of the proper permit application fee pursuant to ARM 16.8.1905(2) (Permit Application Fees) or [RULE I] (Air Quality Open Burning Fees for Conditional and Emergency Open Burning Permits).

(2)-(4) Remain the same.

AUTH: 75-2-111, MCA; IMP: 75-2-211, MCA

4. The Board is proposing these rules because they are necessary to implement HB 781, enacted during the 1991 Legislature, which significantly amended section 75-2-211, MCA. The fees for conditional and emergency open burners will provide revenues to support the Air Quality Bureau's permitting program as required by 75-2-211, MCA.

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 Yolanda Fitzsimmons, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station,

Helena, Montana 59620, no later than September 25, 1992.

DENNIS IVERSON, Director

Certified to the Secretary of State August 3, 1992.

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 16.44.202, 16.44.303, 16.44.305, and 16.44.911 dealing with definitions related to hazardous waste regulation, requirements for counting hazardous wastes, and the issuance and effective date of permits.	NOTICE OF PROPOSED AMENDMENT OF RULES NO PUBLIC HEARING CONTEMPLATED (Hazardous Waste)

To: All Interested Persons

1. On September 14, 1992, the department proposes to amend the above-captioned rules dealing with technical corrections to the above specified hazardous waste rules.

2. The proposed amendments would bring current rules in line with EPA regulations.

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

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

(1)-(48) Remain the same.

~~(120)~~(49) ~~"Waste management unit" or "h~~Hazardous waste management unit" means a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system, and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

(49)-(119) Remain the same but are renumbered (50)-(120).

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

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

(3)(a) Remains the same.

(b) The following wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(i) remains 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

16.44.305 SPECIAL REQUIREMENTS FOR COUNTING HAZARDOUS WASTES (1) In accounting for the quantity of hazardous waste generated for the purpose of determining his proper category, a generator:

(a) need not include hazardous waste that is excluded from regulation under this chapter (e.g., wastes excluded under ARM 16.44.103, 16.44.304, 16.44.612, or 16.44.701, recyclable materials which are excluded under ARM 16.44.306(1)(c)(i), (ii), and (iv) through ~~(ix)~~ viii, or which are directly reclaimed on site without prior storage; and used oil which has not been mixed with any hazardous waste and which is excluded under ARM 16.44.306(1)(b)(iii) or (1)(c)(iii));

(b)-(e) remain the same.

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

16.44.911 ISSUANCE AND EFFECTIVE DATE OF PERMITS (1) After the close of the public comment period under ARM 16.44.905 on a draft permit, the department shall issue a final permit decision (or a decision to deny a permit for the active life of a hazardous waste management facility or hazardous waste management unit under ARM 16.44.127). The department shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision.

(2) Remains the same.

(3) A final permit decision (or a decision to deny a permit for the active life of a hazardous waste management facility or hazardous waste management unit under ARM 16.44.127) shall become effective 30 days after the service of notice of the decision under section (1) of this rule, unless:

(a)-(c) remain the same.

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

4. The department is proposing these amendments to the rules because they are necessary to bring current rules in line with EPA regulations so that the Montana Hazardous Waste Management Program may be continued to be authorized by EPA.

5. Interested persons may submit their written data, views, or arguments concerning these amendments to Patti Powell, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than September 14, 1992.

6. If a party who is directly affected by the proposed amendments wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Patti Powell, Department of Health

and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620, no later than September 14, 1992.

7. If the department receives requests for a public hearing under Section 2-4-315, MCA, on the proposed amendments, from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 105, based on a regulated community of 1,050 entities.

DENNIS IVERSON, Director

Certified to the Secretary of State August 3, 1992.

Reviewed by:

Eleanor Parker by [signature]
Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.14.102 relating to accommodations tax	NOTICE OF THE PROPOSED AMENDMENT of ARM 42.14.102 relating to accommodations tax

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 24, 1992, the Department of Revenue proposes to amend ARM 42.14.102 relating to accommodations tax.

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

42.14.102 WHO MUST COLLECT THE TAX AND FILE RETURNS

(1) remains the same.

(2) To determine taxability of a facility, the owner/operator should consider the type of operation.

If the operation is:	Use Step:
Hotel, motel, hostel, public lodginghouse or bed and breakfast facility	a and b
Resort, condominium inn, dude ranch, guest ranch facility	c
Campground	d
Dormitory	e

(a) Compute the average daily accommodation charge (ADAC). If the ADAC is ~~$14.90~~ $18.72 or less per day and the facility is a hotel, motel, hostel, public lodginghouse, or bed and breakfast facility, no further step is required. The owner/operator of the facility is not required to collect the tax. The ~~$14.90~~ $18.72 exemption applies only to a hotel, motel, hostel, public lodginghouse or bed and breakfast facility.

(b) If the ADAC is more than ~~$14.90~~ $18.72, and the facility is a hotel, motel, hostel, public lodginghouse or bed and breakfast facility, the second step is to look to the length of the rental period of the lodging facilities.

(i) If it is rented solely for 30 days or more the lodging facilities are not taxable.

(ii) If it is rented for less than 30 days the lodging facilities are taxable unless specifically exempted ARM 42.14.103.

(c) through (e) remain the same.

(3) through (5) remain the same.

AUTH: 15-65-102, MCA; IMP: 2-18-501, 15-65-101 and 15-65-111, MCA.

3. Amendments to ARM 42.14.102 are required due to statutory change for in-state lodging which became effective October 1, 1991. Therefore, the average daily accommodations charge also changed.

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

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

no later than September 11, 1992.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than September 11, 1992.

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

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State August 3, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.24.102, 42.24.103 42.24.107 and 42.24.123 relating to Subchapter S	NOTICE OF THE PROPOSED AMENDMENT of ARM 42.24.102 42.24.103, 42.24.107, and 42.24.123 relating to Subchapter S

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 24, 1992, the Department of Revenue proposes to amend ARM 42.24.102, 42.24.103, 42.24.107, and 42.24.123 relating to subchapter S.

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

42.24.102 ELECTION AS TO TAX TREATMENT (1) For taxable years beginning before December 31, 1991, ~~A~~ a qualified small business corporation may elect not to be subject to the tax imposed by Title 15, chapter 31, part 1, MCA. If a corporation elects not to be subject to Title 15, chapter 31, part 1, MCA, the stockholders of the corporation must include the corporate net income or loss in their Montana adjusted individual gross income.

(2) remains the same.

(3) For taxable years beginning before December 31, 1991, ~~A~~ a qualified corporation elects to be taxed as a Montana small business corporation if it does either of the following:

(a) files a copy of the approved federal election with the department on or before the 15th day of the third month of the tax year for which the election becomes effective. A statement that the election is requested for state tax purposes and the year the election is to become effective must be attached. This statement is to be signed by an officer of the corporation; or,

(b) attaches to the Montana corporate tax return a copy of the federal tax return filed in compliance with the provisions of Subchapter S, Chapter 1, Internal Revenue Code. This election method applies for taxable years ending after July 1, 1989, and beginning before December 31, 1991.

(4) For taxable years beginning after December 31, 1991, a corporation with a valid Subchapter S election for federal purposes must file as a small business corporation for state purposes and the stockholders of the corporation must include the corporate net income or loss in their Montana adjusted gross income. The only exception to this requirement is provided in 42.24.103(2).

AUTH: 15-31-501 MCA; IMP: 15-31-201 MCA.

42.24.103 NOTIFICATION TO DEPARTMENT THAT THE FILING OF A FEDERAL RETURN DOES NOT CONSTITUTE AN ELECTION UNDER ARM 42.24.102 (3)(b) (1) For taxable years beginning before December 31, 1991, ~~*~~ a corporation may choose to be a small business corporation for federal tax purposes but not a small business corporation for Montana tax purposes. The attachment of a copy of the federal small business corporation tax return will not be an election to be taxed as a Montana small business corporation if a statement is included with the Montana return stating that the corporation is not electing to be a small business corporation. This statement must be included every year the corporation attaches a Federal Subchapter S return but chooses not to be a small business corporation for state tax purposes. ~~If a corporation revokes its Montana small business election, the provisions of ARM 42.24.107 will apply and the corporation may not reelect for 5 years irregardless of whether a statement is attached to the return.~~

(2) A corporation may file as a regular corporation for state purposes for taxable years beginning after December 31, 1991, even though the corporation had a valid Subchapter S election for federal purposes. To do so, all the conditions under 15-31-201, MCA must be met.

AUTH: 15-31-501 MCA; IMP: 15-31-201 MCA.

42.24.107 REVOCATION OF ELECTION (1) Remains the same.

~~(2) If a corporation elects to revoke its small business election, as provided in (1) a new election cannot be made for 5 years. The department can also waive inadvertent terminations if certain conditions are met as covered under 1362(f) and (g) IRC (1986)~~

AUTH: 15-31-501 MCA; IMP: 15-31-202 MCA.

42.24.123 SHAREHOLDER RESPONSIBILITY AS TO CORPORATE INCOME (1) An electing corporation's net income or loss shall be included in its individual shareholder's Montana income tax adjusted gross income in the manner and to the extent provided for federal income tax purposes under sections 1373, 1374, and 1375 of the Internal Revenue Code, 1954, or as such sections may be labeled or amended. Unless the income or loss is so reported, the corporation's election ~~is ineffective~~ may be subject to revocation and the said income or loss ~~is~~ taxable directly to the corporation.

AUTH: 15-31-501 MCA; IMP: 15-31-202 MCA.

3. The Department is proposing to amend ARM 42.24.102 to bring the rule into conformity with the changes made by the 1991 legislature to 15-31-201, MCA. These changes, which became effective for taxable years beginning after December 31, 1991, require that a corporation which is a small business for federal purposes, must also file as a small business for state purposes. The only exception to this requirement is for those corporations

which were filing as a small business corporation for federal purposes and as a regular corporation for state purposes prior to the law change. Those corporations may continue to file in that manner. That provision is explained in ARM 42.24.103(2).

The Department is proposing to amend ARM 42.24.103 to bring it into conformity with the legislative changes to 15-31-201, MCA. The proposed amendment will allow those corporations that were filing as a small business corporation for federal purposes and as a regular corporation for state purposes prior to the law change to continue to do so.

The Department is proposing to amend ARM 42.24.107 to implement the changes to 15-31-201, MCA. The state election process is now tied directly to the federal election process and therefore language concerning the state election process is inappropriate.

The Department is proposing to amend ARM 42.24.123 to bring it into conformity with the change to 15-31-202, MCA, made in Chapter 807 by the 1991 legislature.

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

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

no later than September 11, 1992.

5. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than September 11, 1992.

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

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State August 3, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of 42.38.101, 42.38.102, 42.38.201, 42.38.203; REPEAL of 42.38.202 and ADOPTION of NEW RULES I through III relating to abandoned property)	NOTICE OF THE PROPOSED AMENDMENT OF 42.38.101, 42.38.102, 42.38.201, 42.38.203; REPEAL of 42.38.202; and ADOPTION of NEW RULES I through III relating to abandoned property

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 24, 1992, the Department of Revenue proposes to amend ARM 42.38.101, 42.38.102, 42.38.201, 42.38.203; repeal ARM 42.38.202, and adopt new rules I through III relating to abandoned property.

2. The amendments as proposed provide as follows:

42.38.101 PURPOSE (1) The Uniform Disposition of Unclaimed Property Act provides ~~custody of abandoned~~ that property~~, as defined, shall be acquired by the state when the owner cannot be located and does not appear to be aware of its existence. Except for certain types of abandoned property, the acquisition of custody of abandoned property does not deprive the owner of title.~~ presumed abandoned under the act shall be delivered to and taken into custody by the department of revenue. The department shall protect the unknown owners by returning property delivered to the department under the act upon the filing of a verified claim by the owner which is approved by the department.

AUTH: Sec. 70-9-105, MCA; IMP: Sec. 70-9-101 through 316, MCA

42.38.102 APPLICABILITY (1) The Uniform Disposition of Unclaimed Property Act primarily relates to money and ~~intangible property generally, but in certain cases includes personal property. When custody of tangible personal property is delivered for the deposit of the funds derived from the sale in the Common School Permanent Trust and Legacy Account of the State. Generally the act deals with bank and other financial institution deposits, insurance proceeds, utility deposits, corporate stocks or other certificates of ownership, corporate dividends and assets held for distribution, funds held by fiduciaries, and miscellaneous funds and intangible personal property held by public agencies and individuals.~~ most other kinds of intangible property, but may apply to tangible personal property such as the contents of a safe deposit box, a collateral deposit box, or personal property held in escrow.

(2) Holders required to report and deliver abandoned property in their possession to the department of revenue include but are not limited to:

(a) banks, trust companies, savings banks, and other banking organizations;

(b) credit unions, savings and loan associations, and other financial organizations;

(c) corporations, partnerships, medical facilities, insurance companies, cooperatives, and other business associations; and

(d) courts, public offices, agencies, and political subdivisions of Montana or the United States.

AUTH: Sec. 70-9-105, MCA; IMP: Sec. 70-9-101 through 316, MCA

42.38.201 PRESUMPTION OF ABANDONMENT -- EXCEPTION

(1) Property ~~held for more than 7 years which has not been claimed or concerning which the holder has had no correspondence with the owner is presumed to be abandoned and must be reported as provided for in the Uniform Disposition of Unclaimed Property Act. Property held for 7 years as of June 30, of the annual report shall be included in the report and need not thereafter be reported, except any property previously reported but which was not paid or delivered in connection with that report to the department of revenue because of a claim to the holder by an alleged owner or not paid or delivered for any reason. If, however, the claim of ownership is not established for property reported and withheld from payment to the department of revenue, then upon the determination that the claim in fact was invalid or for any other reason the presumption of abandonment is again applicable, such property shall be reported again in the next succeeding annual report as if it had not previously been reported.~~

~~(2) The exception to the 7 year presumption of abandonment pertains to assets held in connection with the dissolution of business organizations, including financial organizations. Assets distributable in the course of voluntary dissolution which are held without claim upon the date for final distribution are presumed to be abandoned and must be reported.~~ in the possession of a holder that is presumed abandoned under the act must be reported and delivered to the department as abandoned property.

(2) Generally, property is presumed abandoned when it is held for 5 years by the holder and the owner has not contacted or corresponded with the holder concerning the property or otherwise indicated an interest in the property. An indication of interest in the property by the owner must be evidenced by a memorandum on file with the holder to defeat the presumption of abandonment.

(3) Any demand, savings, or matured time deposit held by a banking or financial organization or business association is presumed abandoned if the owner has not claimed it or corresponded in writing with the holder concerning the property within 5 years after the date of last deposit or withdrawal, or the date of the last memorandum from the owner indicating an interest in the deposit. The crediting of interest to an

account on the holders records does not in itself constitute an indication of interest by the owner in the deposit.

(4) Property such as stocks, dividends, gift certificates, credit memos, checks, money orders, certificates of deposit, and unclaimed funds held by a life insurance corporation are presumed abandoned if the owner has not claimed it or corresponded in writing with the holder concerning the property within 5 years after the date prescribed for payment, delivery, or distribution of the property of the owner.

(5) Property held by a fiduciary is presumed abandoned unless the owner has, within 5 years after it became payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary.

(6) Intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization that is unclaimed by the owner on the date of final dissolution is presumed abandoned.

AUTH: Sec. 70-9-105 MCA; IMP: Sec. 70-9-201 through 205, MCA

42.38.203 CLAIMS FOR RECOVERY OF PROPERTY DELIVERED TO STATE (1) The owner of property presumed abandoned which has been delivered to the department of revenue ~~because of the presumption of abandonment~~ shall claim such property or the proceeds of such property ~~after its sale by the department~~ upon forms supplied by the department. ~~and with the claim shall submit verified copies of documents in support of the claim. If the claim is for personal property and is made within 1 year or prior to sale by the department, the personal property itself may be recovered. After advertising and sale of the personal property by the department, the claim may be submitted for the proceeds of the sale only.~~

(2) General requirements:

(a) Submission of a claim and request for return of property in the possession of the department must be on a form prescribed by the department bearing the notarized signature of the owner. If the claim is for tangible personal property, such as safe deposit box contents and is made within one (1) year after delivery to the department the property itself may be recovered. After this period of time the department destroys all unsalable items.

(b) The department may require production of originals or copies of driver's licenses, social security cards, voter registration cards, or any other documents needed to verify a claimant's identity and signature.

(c) The department will publish notice as required by the act of named payees and remitters on cashier's checks and money orders delivered to the department as abandoned property. A return will only be made to a claimant who is named as payee on a cashier's check or a money order, unless the remitter provides

the original cashier's check or money order, or a notarized statement signed by the payee stating that the payee renounces any interest in the cashier's check or money order.

(d) A claim received from an owner of property held by the department shall have first payment priority over any other claim, unless; such other claim is supported by a court ordered judgment against the owner or upon bond or other indemnified claim received from the former holder of the property.

(3) The department is authorized to require reproduction of any of the following in the course of verifying a claim:

(a) A properly completed claim form prescribed by the department bearing notarized signature of the claimant; and/or

(b) originals or photo copies of any of the following documents to substantiate the right to claim property:

(i) death certificate;

(ii) birth certificate;

(iii) marriage license of claimant or decedent;

(iv) complete last will and testament;

(v) insurance policy;

(vi) document establishing trust;

(vii) power of attorney;

(viii) articles of loss, original copy;

(ix) indemnity bond;

(x) articles of incorporation;

(xi) final account of decree of distribution;

(xii) valid drivers license;

(xiii) social security card;

(xiv) voter registration card;

(xv) court document showing appointment as personal representative, executor, executrix, conservator, etc.;

(xvi) original negotiable instrument (stock certificate, check, money order, certificate deposit, cashier check, etc.); and

(xvii) affidavit of authority to receive and disburse funds for the person or company.

(4) (a) Claims for abandoned property submitted by a finder must include:

(i) a properly completed claim form as prescribed by the department, bearing the notarized signature of the claimant/client; and/or

(ii) an original, signed specific power of attorney authorizing the finder to prosecute a claim for abandoned property on behalf of a claimant. The specific power of attorney must also contain:

(A) specific authorization for the department to release private information concerning the owner's interest in the property; and

(B) specific instructions concerning payment. Only one check is prepared by the department. The check will be prepared in the name of the person signing the power of attorney and mailed to the finder, unless the power of attorney specifically states that the check is to be made out in the names of both the

finder and the person signing the power of attorney. If the check is made out in the name of the finder only, the power of attorney must specifically authorize "authority to receive the check in the name of the (fee finder's name)".

(b) The department may require any other documents as provided in (3) to verify the claim.

(c) Checks issued on claims submitted by finders or persons other than the owner will be made payable to the owner and the finder or such other person.

AUTH: Sec. 70-9-105, MCA; IMP: Sec. 70-9-310 and 70-9-311, MCA

3. The Department proposes to repeal the following rule:

42.38.202 COMMENCEMENT OF ABANDONMENT PERIOD, found at pages 42-3811 and 42-3812 of the Administrative Rules of Montana.

AUTH: Sec. 70-9-105 MCA; IMP: Sec. 70-9-101 through 316, MCA

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

NEW RULE I DEFINITIONS (1) "Finder" means an individual, company or corporation that locates owners of abandoned property and assists them in retrieving it for a fee or commission.

(2) "Payee" means a person to whom or to whose order a bill, note, check, or money order is made payable.

(3) "Remitter" means the purchaser of a check, money order, or cashier's check.

(4) "Holders" means an entity required to report and deliver unclaimed property under the act.

(5) "Memorandum" means but is not limited to:

(a) confirmation letter or card signed by the owner;

(b) personal letter of inquiry from the owner;

(c) note in file that owner did call to inquire about their account or property; or

(d) note in file that owner personally came in to inquire about their account or property.

AUTH: Sec. 70-9-105, MCA; IMP: Sec. 70-9-102, MCA

NEW RULE II SERVICE CHARGES (1) Property becomes subject to the act on the date it becomes reportable under the act. A service, handling, maintenance or other charge or fee of any kind may not be deducted after the date the property becomes reportable.

(2) A charge specifically permitted by a valid and enforceable contract may not be excluded, withheld, or deducted from property prior to the time it becomes reportable under the act if, under its normal procedure, the holder would not have excluded, withheld, or deducted the charges or fees if the property had been claimed by the owner prior to being reported or remitted to the department.

AUTH: Sec. 70-9-105, MCA; IMP: Sec. 70-9-303, MCA

NEW RULE III PROPERTY SEARCH REQUESTS (1) All requests for physical inspection of the department's unclaimed property records, must be made two weeks in advance.

(2) Subject to the exercise of discretion by the department, searches will normally be made during the hours of 8 a.m. to 5 p.m., weekdays except holidays.

(3) In the event of a written request by a finder that the department do a search on behalf of the finder's client, the department may require written confirmation of the request bearing the claimant or client's signature. If the claimant or client is a business, it will be sufficient if the confirmation letter is on company letterhead.

AUTH: Sec. 70-9-105, MCA; IMP: Sec. 70-9-310 and 70-9-311, MCA

5. The amendments, repeal, and adoption as proposed are necessary in order to update the last review of 1980, and also to help clarify laws passed in the 1987 and 1991 legislative session.

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

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

no later than September 11, 1992.

7. If a person who is directly affected by the proposed amendments wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Cleo Anderson at the above address no later than September 11, 1992.

8. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the Legislature; from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State August 3, 1992.

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

In the matter of the amendment of rule 46.10.409 pertaining to transitional child care	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.10.409 PERTAINING TO TRANSITIONAL CHILD CARE

TO: All Interested Persons

1. On September 2, 1992, at 1:30 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 rule 46.10.409 pertaining to transitional child care.

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

46.10.409 SLIDING FEE SCALE FOR TRANSITIONAL CHILD CARE
Subsection (1) remains the same.

(a) SLIDING FEE SCALE FOR TRANSITIONAL CHILD CARE (TCC)
~~May 1~~ October 16, 1992

Family Size	Gross Monthly Income	Co-payment (1 child)	Co-payment (2 children)*
2	0 - ~~740~~ 766	$ ~~4~~ 8	
767	~~741~~ - ~~840~~ 866	17	
867	~~841~~ - ~~940~~ 966	~~38~~ 29	
967	~~941~~ - ~~1040~~ 1066	~~42~~ 43	
1067	~~1041~~ - ~~1140~~ 1166	~~57~~ 58	
1167	~~1141~~ - ~~1240~~ 1266	~~74~~ 76	
1267	~~1241~~ - ~~1340~~ 1366	~~93~~ 96	
1367	~~1341~~ - 1440	115	
	~~1441 - 1640~~	~~139~~	
	~~1541 - 1640~~	~~148~~	
1441	~~1641+~~- ineligible		
3	0 - ~~930~~ 964	$ ~~6~~ 10	$ ~~8~~ 13
965	~~930~~ - ~~1038~~ 1064	~~20~~ 21	~~26~~ 28
1065	~~1039~~ - ~~1138~~ 1164	~~34~~ 35	~~44~~ 46
1165	~~1139~~ - ~~1238~~ 1264	~~49~~ 51	~~64~~ 67
1265	~~1239~~ - ~~1338~~ 1364	~~66~~ 68	~~86~~ 89
1365	~~1339~~ - ~~1438~~ 1464	~~86~~ 88	~~112~~ 115
1465	~~1439~~ - ~~1538~~ 1564	~~107~~ 109	~~140~~ 143
1565	~~1539~~ - ~~1638~~ 1664	~~130~~ 133	~~170~~ 174
1665	~~1639~~ - ~~1738~~ 1779	~~138~~ 142	~~181~~ 186
	~~1739 - 1938~~	~~165~~	~~216~~
1780	~~1939+~~- ineligible		

4	0 - ~~1117~~ 1163 1164 ~~1118~~ - ~~1217~~ 1263 1264 ~~1218~~ - ~~1317~~ 1363 1364 ~~1318~~ - ~~1417~~ 1463 1464 ~~1418~~ - ~~1517~~ 1563 1564 ~~1518~~ - ~~1617~~ 1663 1664 ~~1618~~ - ~~1717~~ 1763 1764 ~~1718~~ - ~~1817~~ 1863 1864 ~~1818~~ - ~~1917~~ 1963 1964 ~~1918~~ - ~~2017~~ 2063 2064 ~~2018~~ - 2118 2119 +- ineligible	$ ~~8~~ 12 ~~24~~ 25 ~~40~~ 41 ~~57~~ 59 ~~76~~ 78 ~~97~~ 100 ~~120~~ 123 ~~145~~ 149 ~~153~~ 157 ~~182~~ 186 191	$ ~~10~~ 16 ~~31~~ 33 ~~52~~ 54 ~~75~~ 77 ~~100~~ 102 ~~107~~ 131 ~~157~~ 161 ~~190~~ 195 ~~200~~ 206 ~~238~~ 244 250
5	0 - ~~1305~~ 1361 1362 ~~1306~~ - ~~1405~~ 1461 1462 ~~1406~~ - ~~1505~~ 1561 1562 ~~1506~~ - ~~1605~~ 1661 1662 ~~1606~~ - ~~1705~~ 1761 1762 ~~1706~~ - ~~1805~~ 1861 1862 ~~1806~~ - ~~1905~~ 1961 1962 ~~1906~~ - ~~2005~~ 2061 2062 ~~2006~~ - ~~2105~~ 2161 2162 ~~2106~~ - ~~2205~~ 2261 2262 ~~2206~~ - 2361 2362 - 2456 2457 +- ineligible	$ ~~10~~ 14 ~~28~~ 29 ~~45~~ 47 ~~64~~ 66 ~~85~~ 88 ~~108~~ 112 ~~133~~ 137 ~~160~~ 165 ~~189~~ 173 ~~198~~ 203 212 246	$ ~~12~~ 18 ~~37~~ 38 ~~59~~ 62 ~~84~~ 86 ~~111~~ 115 ~~141~~ 147 ~~174~~ 179 ~~210~~ 216 ~~248~~ 227 ~~259~~ 266 278 322
6	0 - ~~1493~~ 1559 1560 ~~1494~~ - ~~1593~~ 1659 1660 ~~1594~~ - ~~1693~~ 1759 1760 ~~1694~~ - ~~1793~~ 1859 1860 ~~1794~~ - ~~1893~~ 1959 1960 ~~1894~~ - ~~1993~~ 2059 2060 ~~1994~~ - ~~2093~~ 2159 2160 ~~2094~~ - ~~2193~~ 2259 2260 ~~2194~~ - ~~2293~~ 2359 2360 ~~2294~~ - ~~2393~~ 2459 2460 ~~2394~~ - 2559 2560 - 2659 2660 - 2795 2796+- ineligible	$ ~~12~~ 16 ~~32~~ 33 ~~51~~ 53 ~~72~~ 74 ~~95~~ 98 ~~120~~ 124 ~~147~~ 151 ~~175~~ 181 ~~206~~ 189 ~~215~~ 221 230 266 280	$ ~~14~~ 21 ~~42~~ 43 ~~67~~ 69 ~~94~~ 97 ~~124~~ 128 ~~157~~ 162 ~~193~~ 198 ~~230~~ 237 ~~270~~ 248 ~~283~~ 290 301 348 367
7 or more	0 - ~~1683~~ 1758 1759 ~~1683~~ - ~~1783~~ 1858 1859 ~~1783~~ - ~~1883~~ 1958 1959 ~~1883~~ - ~~1983~~ 2058 2059 ~~1983~~ - ~~2083~~ 2158 2159 ~~2083~~ - ~~2183~~ 2258 2259 ~~2183~~ - ~~2283~~ 2358 2359 ~~2283~~ - ~~2383~~ 2458 2459 ~~2383~~ - ~~2483~~ 2558 2559 ~~2483~~ - ~~2583~~ 2658 2659 ~~2583~~ - 2758 2759 - 2859 2860+- ineligible	$ ~~14~~ 18 ~~36~~ 37 ~~56~~ 59 ~~79~~ 82 ~~104~~ 108 ~~131~~ 135 ~~160~~ 165 ~~191~~ 197 ~~223~~ 205 ~~232~~ 239 248 286	$ ~~16~~ 24 ~~47~~ 48 ~~73~~ 77 ~~103~~ 107 ~~136~~ 141 ~~172~~ 177 ~~210~~ 216 ~~250~~ 258 ~~292~~ 269 ~~304~~ 313 325 375

* Note: There will be no additional charge if a family places more than 2 children in child care; the maximum fee will be the 2 children rate.

(b) The co-payment for families using less than 20 hours per week of child care will be one-half of the co-payment shown in the tables in section (1)(a).

Subsection (2) remains the same.

AUTH: Sec. 53-4-212 and 53-4-719 MCA
IMP: Sec. 53-4-701, 53-4-716 and ~~53-4-726~~ MCA

3. The department of Social and Rehabilitation Services (SRS) provides transitional child care (TCC) assistance to participants of the Aid to Families with Dependent Children (AFDC) program who lose their financial assistance because of increased hours or earnings from employment, or as a result of the loss of income disregards used in computing eligibility due to the expiration of time limits on such disregards. Transitional child care assistance is available for 12 months from the date of termination of AFDC financial assistance.

During the TCC period, the department pays most of the former recipient's child care costs but also requires the client to contribute toward those costs based on the client's ability to pay. ARM 46.10.409 sets forth a sliding fee scale which indicates the maximum monthly income a family can have to qualify for assistance and the family's co-payment.

The department is proposing to align the TCC sliding fee scale with the fee scales used in two other programs which provide child care assistance to low income families, namely the block grant program administered by the Department of Family Services (DFS) and SRS' new at-risk program for families at risk of becoming eligible for AFDC. All three programs serve low income working families, and recipients may move from one program to another. Therefore, using the same fee scale for all three programs will make administration of the program easier for the department and less confusing for recipients. The alignment of the fee scales is also one step toward coordination of all state child care programs.

The amendment of ARM 46.10.409 is necessary to align the TCC fee scale with the block grant and at-risk fee scales. The proposed amendments will change the maximum income standards and the co-payments for some families. Currently, the maximum income a family can have to be eligible for TCC is set at 100% of the state median income for 1991. As amended, the maximum income standards will be based on 1992 state median income and will be set at 75% of median income. The co-payment at lower income levels previously were randomly established rather than being a fixed percentage of family income. The co-payments are being changed so that they will be based on a set percentage of income at all income levels.

The department is removing 53-4-726, MCA from the implementing cites as it was mistakenly cited.

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 September 10, 1992.

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

Dawn Sliva
Rule Reviewer

Julia E. Robinson
Director, Social and Rehabilitation Services

Certified to the Secretary of State August 3, 1992.

BEFORE THE BOARD OF PHARMACY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to fees and the adoption of new rules pertaining to wholesale drug distributors licensing	))))	NOTICE OF AMENDMENT OF 8.40.404 FEE SCHEDULE AND THE ADOPTION OF NEW RULES PERTAINING TO WHOLESALE DRUG DISTRIBUTORS LICENSING

TO: All Interested Persons:

1. On June 11, 1992, the Board of Pharmacy published a notice of proposed amendment and adoption of rules pertaining to wholesale drug distributors, at page 1178, 1992 Montana Administrative Register, issue number 11.

2. The Board has amended and adopted the rules exactly as proposed. The new rules will be numbered 8.40.1301 through 8.40.1306.

3. The Board received written comment prior to the end of the comment period. Summaries of the comments and the Board's responses follow:

ARM 8.40.1301

COMMENT NO. 1: Rule I (5) should include language granting an out-of-state license by reciprocity where a wholesale drug distributor possesses a valid license issued by another state.

RESPONSE: Montana statutes do not provide authority for granting licenses by reciprocity, but instead provide that each wholesale drug distributor must be licensed by Montana to do business in Montana. Rule IV also allows for registration in Montana through a national clearinghouse, thus eliminating duplication of effort in obtaining licensing in each state, and the need for reciprocity.

ARM 8.40.1302

COMMENT NO. 2: Rule II should include maintenance of lists of persons in charge of wholesale drug distribution, storage and handling, as well as a description of their duties and summary of their qualifications.

RESPONSE: Rule II already requires the name(s) of persons in charge of wholesale drug distribution at a licensed facility to be disclosed in the application. Additionally, Rule I (6) already requires compliance by licensees with all applicable federal law, including FDA guidelines on maintenance of lists, description of duties, and summary of qualifications.

ARM 8.40.1305

COMMENT NO. 3: Rule V should permit officials' entry and inspection of premises and delivery vehicles, and auditing of records and operating procedures.

RESPONSE: Rule V (3) already allows authorized inspection of records. Rule I (6) additionally requires compliance with all applicable federal law, including FDA guidelines on official entry and inspection of premises and vehicles.

COMMENT NO. 4: Rule V should address returned, damaged and outdated products, and their physical separation from other drugs until they are destroyed or returned.

RESPONSE: Rule V (5)(d) already requires a procedure for handling and segregating outdated prescription drugs. Rule I (6) additionally requires compliance with applicable federal law, including FDA guidelines on returned, damaged and outdated prescription drugs.

ARM 8.40.1301 through 8.40.1306

COMMENT NO. 5: The rules should require incoming shipments to be visually examined, and outgoing shipments to be inspected.

RESPONSE: Rule I (6) already requires compliance with applicable federal law, including FDA guidelines on visual examination or inspection.

COMMENT NO. 6: The rules should explicitly state that wholesalers are subject to applicable federal, state or local law on salvaging or reprocessing of prescription drug products.

RESPONSE: Rule I (6) already requires compliance with all applicable federal, state and local laws, including laws on salvaging or reprocessing of prescription drug products.

BOARD OF PHARMACY
ROBERT KELLEY, 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, August 3, 1992.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the amendment and repeal of rules relating to vo-ed weighted cost funding	)))	NOTICE OF AMENDMENT OF ARM 10.44.102 THROUGH 10.44.106 AND REPEAL OF ARM 10.44.101 AND 10.44.107

To: All interested persons

1. On May 14, 1992, the Superintendent of Public Instruction published notice of proposed amendment and repeal of the rules referenced above at page 970 of the 1992 Montana Administrative Register, issue number 9.

2. No public hearing was held nor was one requested. The Superintendent has received no written or oral comments concerning these rules.

3. Based on the foregoing, the Superintendent of Public Instruction hereby amends and repeals the rules as proposed.

Beda J. Lovitt
Rule Reviewer

Nancy Keenan
Superintendent
Office of Public Instruction

Certified to the Secretary of August 3, 1992.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the Matter of the adoption of an emergency rule to close Flint Creek below the dam	NOTICE OF ADOPTION OF EMERGENCY RULE TO AMEND ARM 12.6.904 TO CLOSE FLINT CREEK BELOW THE DAM

To: All Interested Persons

1. Statement of Reason for emergency. This rule is being requested in the interest of public safety. The recent addition of a stilling basin below the toe of the dam has become a swimming hole. There is concern for safety of people swimming or floating in the stilling basin because of the current and whirlpool on the left side of the dam and because a portion of the basin floor is constructed with gasbion cage "fencing" material that could trap an individual's foot. Without an emergency rule to prohibit swimming and other activities, there will be a threat to the safety of persons, particularly children, who will be able to continue use of the settling basin until a permanent rule is adopted.

Therefore, the Fish, Wildlife and Parks Commission has adopted the following emergency amendment of a rule to prohibit recreational use of the settling basin, which as adopted will be mailed to appropriate entities including the delivery to a state wire service and any other local news media the agency deems appropriate. The department intends to initiate rulemaking procedures to make the following amendment permanent.

2. The emergency rule is effective July 27, 1992.

3. ARM 12.6.904 is amended to read as follows:

12.6.904 USE RESTRICTIONS AT MONTANA POWER COMPANY DAMS

(1) remains the same.

(a) The following waters near Montana power company owned and operated hydroelectric dams are closed to all boating, sailing, floating and swimming:

Black Eagle:	500 feet above the dam to 100 feet below the waterfalls;
Cochrane:	500 feet above the dam to 500 feet below the dam;
Flint Creek:	100 feet above the dam to and 150 feet below the dam;
Hauser:	250 feet above the dam to 600 feet below the dam;
Hebgen:	100 feet above the dam and 100 feet below the outlet works;
Holter:	150 feet above the dam to 900 feet below the dam;
Madison:	600 feet above the dam to 900 feet below the dam;
Milltown:	200 feet above the dam to 200 feet

below the dam;

Morony:	500 feet above the dam to 500 feet below the dam;
Mystic:	100 feet above the dam to the dam;
Rainbow:	600 feet above the dam to 100 feet below the waterfalls;
Ryan:	500 feet above the dam to 100 feet below the waterfalls;
Thompson Falls:	1,020 feet above main channel dam to 500 feet below powerhouse;
West Rosebud:	100 feet above the dam to the dam.

(i) through (b) remains the same

AUTH: Sec. 87-1-303, MCA IMP: Sec. 87-1-303, MCA

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

4. A standard rulemaking procedure will be undertaken prior to the expiration of this emergency rule.

5. Interested persons are encouraged to submit their comments during the upcoming standard rulemaking process. If interested persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to Erv Kent, Enforcement Division, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, Helena, Montana 59620.

Robert N. Lane
Rule Reviewer

for K.L. Cool, Secretary
Fish, Wildlife and Parks
Commission

Certified to the Secretary of State July 27, 1992.

BEFORE THE FIRE PREVENTION AND INVESTIGATION BUREAU
OF THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of rule 23.7.105 pertaining to the adoption of the Uniform Fire Code, International Conference of Building Officials and the 1991 edition of the UFC Standards and rule 23.7.110 pertaining to correction of MCA cites	)))))))	NOTICE OF AMENDMENT OF RULE 23.7.105 AND 23.7.110.

TO: All Interested Persons:

1. On June 11, 1992, the Fire Prevention and Investigation Bureau published a notice to adopt the 1991 edition of the Uniform Fire Code and correct 23.7.110 MCA cites on page 1202 of the 1992 Montana Administrative Register, issue #11.

2. The Fire Prevention and Investigation Bureau has adopted the rules as proposed.

3. One comment was received as follows:

Comment: Valencia Lane, Legislative Council Staff Attorney, noted that the statement of reasonable necessity was ommitted. Response: The statement of reasonable necessity is as follows: The Department is proposing the amendment to adopt the most current UFC standards.

By: Marc Racicot
MARC RACICOT, Attorney General

Judy Browning
Rule Reviewer

Certified to the Secretary of State July 31, 1992.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of Adoption of a Rule Regarding Pictorial Information Requirements.	)))))	NOTICE OF ADOPTION OF A RULE REGARDING PICTORIAL INFORMATION REQUIREMENTS

TO: All Interested Persons

1. On February 27, 1992 the Department of Public Service Regulation published notice of the proposed adoption of a rule regarding pictorial information requirements at page 296, issue number 4 of the 1992 Montana Administrative Register.

2. The Department has adopted and amended the rule as proposed with the following changes:

RULE I. 38.5.190 STATEMENT O -- PICTORIAL EXHIBIT REQUIREMENTS (1) Applicant utilities that submit information in accordance with the minimum rate case filing standards for electric, gas and private water utilities shall provide pictorial exhibits, as defined below, for those items which affect the unallocated utility results of operations and the allocated costs of service/rate designs pertaining to Montana operations. Applicant utilities may provide such other pictorial exhibits as will further understanding of their filing.

(a) Each adjustment that is identified in textual or numerical information and causes a ratemaking change to the actual unallocated test year results of operations shall be presented in a flow chart or decision matrix that depicts each factor that caused the adjustment. Alternatively, adjustments may be identified and explained in a report that summarizes each adjustment.

(b) The total revenue requirements requested, both interim and permanent, shall be depicted in ~~a pie chart that shows~~ graphs or charts which show actual unallocated test year results of operations and each adjustment referred to in subsection (a).

(c) Each account, excluding subaccounts, which affects the adjusted unallocated results of operations shall be shown in ~~an individual bar chart~~ tabular form. ~~Each bar chart~~ The tables shall include the test year adjusted account value, the test year actual account value, the account value most recently approved by the Montana public service commission in a final rate case order and the actual account values from the previous four years. Values for functionalized categories which are accumulated from various accounts such as the distribution expense category shall be presented as bar charts. Each chart shall include the actual test year value, the adjusted test year value, and the actual value for the year preceding the test year.

(d) Applicant utilities that submit testimony and exhibits which are in response to rebuttal testimony and exhibits of other parties shall include pictorial exhibits which show the effect that the rebuttal submissions have upon the original filings. The submitted testimony and exhibits of each re-

butting party shall be depicted in ~~a pie chart that shows~~ graphs or charts which show the actual unallocated test year results of operations and each adjustment that causes a ratemaking change to the actual unallocated test year results. The allocated cost of service/rate design study of each rebutting party shall be depicted in charts that show each item referred to in subsection (e).

(e) Each component of an applicant's allocated cost of service/rate design study shall be depicted in pie charts or bar charts. ~~Pie~~ The charts shall include values for functionalizations by customer class of all cost categories, classifications by customer class of each functionalized cost category, ~~and~~ moderations and rate designs by customer classes~~,~~. ~~The values for each functionalized and classified cost category, and for each~~ allocators that were most recently approved by the Montana public service commission in a final rate case order and ~~the values~~ that are ~~currently~~ proposed ~~shall be depicted on bar charts~~. AUTH: Sec. 69-3-103, MCA; IMP, Sec. 69-2-101, MCA

3. Comment: The rule should be discretionary thereby allowing a utility the flexibility to submit pictorial exhibits that it feels will best highlight and explain important issues and concepts.

Response: The intent of the rule is best served by requiring that particular issues and information be presented using particular types of pictorial exhibits. If a utility retained discretion as to when and how it provided pictorial exhibits, participants in the ratemaking process would be subjected to uncertainty as to when and how pictorial exhibits would be used.

Comment: It is unclear how a flow chart or decision matrix would work for normalizing adjustments as required by section (a). Such adjustments could be explained in a summary report.

Response: Since summary reports would facilitate the explanation of normalizing adjustments the rule has been amended to allow such reports to be filed in the alternative.

Comment: It is unclear how the information required in section (b) or (d) can be shown using a pie chart. The utility should be given the discretion to determine what type of graph or chart would work best.

Response: In this instance the Commission believes that a utility should be allowed to select the type of graph or chart used to present section (b) and (d) information. The rule has been amended accordingly.

Comment: Section (c) would require significant additional resources and an inordinate number of graphs to provide the required exhibits. Rather than each account, it is recommended that pictorial exhibits be required for functional categories such as distribution expense and transmission expense, etc. In addition, the exhibits will be more representative of current operations if only three sets of data are utilized: the year prior to the actual year, actual test year results and adjusted test year results.

Response: The Commission agrees that the rule as originally drafted would require an inordinate number of bar charts. The rule has therefore been amended to allow the use of bar charts for functional categories when appropriate. Also, the data requirement for these functional categories has been limited to the suggested three types.

Comment: The inclusion of individual graphs showing functionalizations by all cost categories and graphs showing classification by class of each functionalized cost category, as required by section (e), would confuse rather than inform parties. Instead of numerous graphs, understanding would be improved with summaries of cost of service/rate design results by customer class or rate schedule in a short narrative with a summary table.

Response: The purpose of the rule is to improve understanding through the use of pictorial exhibits. Allowing short narratives with summary tables would defeat this purpose.

Comment: The section (e) requirement that moderations and rate designs by customer classes be shown in pie charts may be unworkable.

Response: The rule has been amended to allow the use of either bar or pie charts.

DANNY OBERG, Chairman

CERTIFIED TO THE SECRETARY OF STATE AUGUST 3, 1992.

Reviewed By

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) of ARM 42.20.454 relating to) Market Value for Property)	NOTICE OF THE AMENDMENT of ARM 42.20.454 relating to Market Value for Property

TO: All Interested Persons:

1. On June 11, 1992, the Department published notice of the proposed amendment of ARM 42.20.454 relating to market value for property at pages 1207-1208 of the 1992 Montana Administrative Register, issue no. 11.

2. No public comments were received regarding these rules.

3. The Department has adopted the rule as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State August 3, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.23.211, 42.23.311, 42.23.403, 42.23.411, 42.23.514, 42.23.515, 42.23.604, and 42.23.605; REPEAL of ARM 42.23.523; and ADOPTION of NEW RULES I (42.23.503), II (42.23.606), III (42.23.607), IV (42.23.608), and V (42.23.609) relating to the Corporation License Tax Division	NOTICE OF AMENDMENT of ARM 42.23.211, 42.23.311, 42.23.403, 42.23.411, 42.23.514, 42.23.515, 42.23.604, 42.23.605; REPEAL of ARM 42.23.523; and ADOPTION of NEW RULES I (42.23.503), II (42.23.606), III (42.23.607), IV (42.23.608) and V (42.23.609) relating to the Corporation License Tax Division

TO: All Interested Persons:

1. On June 11, 1992, the Department published notice of the proposed amendment of ARM 42.23.211, 42.23.311, 42.23.403, 42.23.411, 42.23.514, 42.23.515, 42.23.604, 42.23.605; repeal of ARM 42.23.523; and adoption of rules I (42.23.503), II (42.23.606), III (42.23.607), IV (42.23.608), and V (42.23.609) relating to the Corporation License Tax Division at page 1209 of the 1992 Montana Administrative Register, issue no. 11.

2. The Department received the following written comment and responds accordingly.

COMMENT: Charles Bailly & Company was concerned because item (5) states that no underpayment interest penalty will accrue, regardless of the taxpayer's current year tax liability, as long as 100% of last year's tax liability is submitted in four equal quarterly payments. Charles Bailly & Company suggested that in order to clarify circumstances that constitute an acceptable reason for waiver of the penalty, the proposed ruling should also state the underpayment penalty can be avoided even if the taxpayer's prior year tax liability was zero.

RESPONSE: In response to comments received regarding item (5) of Rule IV, the rule adequately explains the circumstances necessary for avoiding underpayment penalties. Because there is a $50.00 minimum tax, a tax liability will always exist. The only instance the tax liability would be zero is if the taxpayer is inactive. Inactivity in the prior year, however, is not an exception for avoiding estimated payment requirements in the current year. The rule, therefore, should not be expanded to include the proposed revision.

3. The Department has amended, repealed, and adopted the rules as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State August 3, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.32.104, 42.32.105, 42.32.106, 42.32.107 relating to Resource Indemnity Trust Taxes	NOTICE OF THE AMENDMENT of ARM 42.32.104, 42.32.105, 42.32.106, 42.32.107 relating to Resource Indemnity Trust Taxes

TO: All Interested Persons:

1. On June 11, 1992, the Department published notice of the proposed amendment of ARM 42.32.104, 42.32.105, 42.32.106, 42.32.107 relating to Resource Indemnity Trust Taxes at pages 1203-1206 of the 1992 Montana Administrative Register, issue no. 11.

2. No public comments were received regarding these rules.

3. The Department has adopted the rule as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State August 3, 1992.

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

In the matter of the adoption of [Rule I] 46.10.410 pertaining to the at-risk child care program	))))	NOTICE OF THE ADOPTION OF [RULE I] 46.10.410 PERTAINING TO THE AT-RISK CHILD CARE PROGRAM

TO: All Interested Persons

1. On May 28, 1992, the Department of Social and Rehabilitation Services published notice of the proposed adoption of [Rule I] 46.10.410 pertaining to the at-risk child care program at page 1089 of the 1992 Montana Administrative Register, issue number 10.

2. The Department has adopted the following rule as proposed with the following changes:

[RULE I] 46.10.410 AT-RISK CHILD CARE SERVICES

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

(d) All children living in the home, who need to be cared for in order for a family member to work, are eligible under this funding source. They must be under age 13 or if age 13 or older BUT LESS THAN 18 YEARS OF AGE, physically or mentally incapable of self-care or under court supervision. The children do not have to meet AFDC dependent child deprivation criteria. Children in common, step-children, supplemental security income (SSI) or Title IV-E foster care children are eligible.

Subsections (2)(e) through (2)(f)(i) remain as proposed.

(ii) Eligibility will be reviewed every ~~six~~ THREE months.

Subsections (2)(f)(iii) and (2)(f)(iv) remain as proposed.

(g) Families may choose any legally operating child care provider to care for their children, as long as the person is age 18 or over and does not reside in the same household. If not already licensed or registered, the provider must register with the local ~~child care resource and referral agency under contract with~~ OFFICE OF the department of family services in order to receive payment.

Subsections (2)(h) and (2)(i) remain as proposed.

(3) SUBJECT TO THE PROVISIONS OF SECTION (4) BELOW, T~~t~~he maximum income a family may have to be eligible for at-risk child care and the co-payment by the family required if the family is eligible are ~~as follows~~:

(a) THROUGH SEPTEMBER 30, 1992, AS FOLLOWS:

Family Size	Gross Monthly Income	Monthly Co-payment (1 child)	Monthly Co-payment (2 children)*
2	0 - 740	$ 4	
	741 - 840	17	
	841 - 940	28	
	941 - 1040	42	
	1041 - 1140	57	
	1141 - 1240	74	
	1241 - 1340	93	
	1341 - ~~1440~~ 1374	115	
	~~1441 - 1540~~	~~139~~	
	~~1541 - 1640~~	~~148~~	
	1375 ~~1641+~~ ineligible		
3	0 - 928	$ 6	$ 8
	929 - 1028	20	26
	1029 - 1128	34	44
	1129 - 1228	49	64
	1229 - 1328	66	86
	1329 - 1428	86	113
	1429 - 1528	107	140
	1529 - 1628	130	170
	1629 - ~~1728~~ 1698	138	181
	~~1729 - 1828~~	~~165~~	~~216~~
	1699 ~~1829+~~ ineligible		
4	0 - 1117	$ 8	$ 10
	1118 - 1217	24	31
	1218 - 1317	40	52
	1318 - 1417	57	75
	1418 - 1517	76	100
	1518 - 1617	97	107
	1618 - 1717	120	157
	1718 - 1817	145	190
	1818 - 1917	153	200
	1918 - ~~2017~~ 2021	182	238
	2022 ~~2018+~~ ineligible		
5	0 - 1305	$ 10	$ 12
	1306 - 1405	28	37
	1406 - 1505	45	59
	1506 - 1605	64	84
	1606 - 1705	85	111
	1706 - 1805	108	141
	1806 - 1905	133	174
	1906 - 2005	160	210
	2006 - 2105	189	248
	2106 - 2205	198	259
	2206 - 2305	207	271
	2306 - 2344	234	306
	2345 ~~2206+~~ ineligible		

6	0 - 1493	$ 12	$ 14
	1494 - 1593	32	42
	1594 - 1693	51	67
	1694 - 1793	72	94
	1794 - 1893	95	124
	1894 - 1993	120	157
	1994 - 2093	147	193
	2094 - 2193	175	229
	2194 - 2293	206	270
	2294 - 2393	215	283
	2394 - 2493	224	294
	2494 - 2593	259	339
	2594 - 2668	267	350
	2669 ~~2394~~ - ineligible		
7	0 - 1682	$ 14	$ 16
	1683 - 1782	36	47
	1783 - 1882	56	73
	1883 - ~~1992~~ 1982	79	103
	1983 ~~1993~~ - 2082	104	136
	2083 - 2182	131	172
	2183 - 2282	160	210
	2283 - 2382	191	250
	2383 - 2482	223	292
	2483 - 2582	232	304
	2583 - 2682	268	351
	2683 - 2728	273	358
	2729 ~~2583~~ - ineligible		

* Note: There will be no additional charge if a family places more than 2 children in child care; the maximum fee will be the 2 children rate.

(b) EFFECTIVE OCTOBER 1, 1992, AS IN ARM 46.10.409.

(4) THE CO-PAYMENT FOR FAMILIES USING LESS THAN 20 HOURS PER WEEK OF CHILD CARE WILL BE ONE-HALF OF THE CO-PAYMENT SHOWN IN THE TABLES IN SECTIONS (3)(a) OR (3)(b).

(5) WHEN A FAMILY RECEIVES AT-RISK CHILD CARE ASSISTANCE FOR WHICH IT IS NOT ELIGIBLE OR IN A LARGER AMOUNT THAN THAT TO WHICH IT IS ENTITLED:

(a) THE FAMILY MUST REPAY THE DEPARTMENT 100% OF THE AMOUNT WHICH THE FAMILY WAS OVERPAID IF THE OVERPAYMENT OCCURRED BECAUSE THE FAMILY'S ASSISTANCE WAS CONTINUED PENDING A HEARING DECISION AS PROVIDED IN ARM 46.2.206 AND THE HEARING DECISION SUSTAINS THE DEPARTMENT'S ACTION TO TERMINATE OR REDUCE THE FAMILY'S ASSISTANCE;

(b) THE FAMILY MUST REPAY THE DEPARTMENT 125% OF THE AMOUNT WHICH THE FAMILY WAS OVERPAID IF THE FAMILY OBTAINED ASSISTANCE TO WHICH IT WAS NOT ENTITLED THROUGH FRAUDULENT MEANS.

(i) "FRAUDULENT MEANS" IS DEFINED AS A WILLFULLY FALSE STATEMENT, REPRESENTATION OR IMPERSONATION OR OTHER FRAUDULENT DEVICE.

(6) THE FAMILY IS NOT REQUIRED TO REPAY AN OVERPAYMENT CAUSED BY THE DEPARTMENT'S ERROR OR THE FAMILY'S NON-FRAUDULENT ERROR.

(7) THE AMOUNT WHICH THE FAMILY IS REQUIRED TO REPAY UNDER SUBSECTIONS (5)(a) OR (5)(b) OF THIS RULE IS A DEBT DUE TO THE STATE UNTIL FULLY REPAID.

(8) ALL ADULT MEMBERS OF THE FAMILY RESIDING IN THE HOUSEHOLD AT THE TIME AN OVERPAYMENT OCCURS SHALL BE JOINTLY AND SEVERALLY LIABLE FOR THE AMOUNT WHICH THE FAMILY IS REQUIRED TO REPAY.

(9) A FAMILY WHICH IS DISSATISFIED WITH AN ACTION TAKEN ON ITS APPLICATION FOR AT-RISK CHILD CARE ASSISTANCE OR THE CONTINUATION OF SUCH ASSISTANCE SHALL BE GIVEN THE OPPORTUNITY FOR INFORMAL CONCILIATION. IF CONCILIATION FAILS TO RESOLVE THE DISPUTE TO THE FAMILY'S SATISFACTION, THE FAMILY IS ENTITLED TO A FAIR HEARING AS PROVIDED IN ARM 46.2.202.

(a) THE FAMILY IS ENTITLED TO CONCILIATION AND A FAIR HEARING WITH REGARD TO THE ISSUES OF:

(i) THE FAMILY'S ELIGIBILITY FOR ASSISTANCE;

(ii) THE AMOUNT OF THE FAMILY'S CO-PAYMENT;

(iii) WHETHER THE FAMILY, WHILE ELIGIBLE, WAS DEEMED A SLOT IN VIOLATION OF THE REQUIREMENTS OF SUBSECTION (2) OF THIS RULE; AND

(iv) WHETHER AN OVERPAYMENT OF AT-RISK CHILD CARE ASSISTANCE HAS OCCURRED AND/OR THE AMOUNT OF SUCH OVERPAYMENT.

AUTH: Sec. 53-2-201 and 53-4-212 MCA
IMP: Sec. 53-2-108, 53-2-201, 53-2-606, 53-4-212 and 53-4-231 MCA

3. The Department has thoroughly considered all commentary received:

COMMENT: A child care resource and referral agency expressed the opinion that eligibility for At-Risk Child Care assistance should be reviewed every six months, rather than every three months. The commenter felt that responsibility for reporting changes which might affect eligibility should rest with the parent.

RESPONSE: As originally proposed, the rule provided for eligibility reviews every six months. Subsequently it was decided to require reviews at three month intervals as is done in the block grant sliding fee scale child care program which is administered by the Department of Family Services (DFS). Although the department agrees with the commenter that it is the parent's responsibility to report changes between reviews, the department has decided to keep the requirement of eligibility reviews every three months in order to have consistency in the administration of the block grant child care program and the At-Risk Child Care program. The review process will be kept as simple as possible.

COMMENT: The same commenter also suggested that child care providers who are not already licensed or registered should be required to register with DFS, rather than with the local child care resource and referral agency, in order to receive At-Risk Child Care payments.

RESPONSE: The Department agrees. The rule has been changed to require unlicensed and unregistered providers to register with the Department of Family Services.

Rationale for Additional Changes

A number of other changes have also been made to the proposed rule since the publication of the first notice. Section (2)(d) has been changed to limit child care assistance for children age 13 or older who are physically or mentally incapable of self-care or are under court supervision to persons less than 18 years of age. This limitation was added to make the department's policy consistent with DFS' policy in the block grant sliding fee scale child care program. This limitation also brings the rule into conformity with the age limitation contained in the proposed regulations governing the At-Risk Child Care program at 45 CFR 257.30(b)(2), which allows child care assistance for children who are 13 or older but under 18, or at state option under 19, who are unable to care for themselves for certain specified reasons.

The sliding fee scales in section (3), which indicate the maximum monthly income a family can have to qualify for assistance and the family's co-payment, are being changed effective October 1, 1992. The rule is being changed to make the sliding fee scales the same as the scales used in DFS' block grant child care program and the department's Transitional Child Care (TCC) program.

The block grant program serves low-income families employed at least 15 hours per week who may also be participating in training or education. The TCC program serves families who have lost eligibility for Aid to Families with Dependent Children (AFDC) due to receipt of earned income for up to one year after the cessation of their AFDC benefits.

Since many individuals move from one program to another or receive assistance from more than one program at different times, it will make sense from the recipient's point of view to use the same fee scales in all three programs. Administration of the three programs will also be simplified by aligning the fee scales for the programs.

As originally proposed, the maximum income families could have to be eligible was based on the state median income for 1991 but was not an exact percentage of the median income. Some of the maximum income standards were slightly above and others slightly below 75% of median income. The maximum is now set at exactly 75% of the state median income for 1992. The co-payments for all income brackets are now based on a percentage of family income. Previously the co-payments for the lower income brackets were arbitrarily chosen rather than being a percentage of income. Also, a new section (4) has been inserted indicating that the co-payment for families who use

child care less than 20 hour per week will be half of the co-payment listed in the sliding fee scales. This change was made because it is logical and more equitable to require a smaller co-payment of families who are using less child care and are receiving less assistance from the department.

Provisions have been added to the rule regarding repayment of At-Risk Child Care assistance to which the family was not entitled. These provisions implement 53-2-108, MCA, which authorizes the department to recover overpayments of public assistance and to recover 125% of any public assistance obtained through fraudulent means. The rule will now provide that a family which obtains assistance to which it was not entitled through fraudulent means must repay 125% of the amount it was overpaid. If a family is overpaid because their assistance is continued pending a fair hearing decision which is ultimately unfavorable to the family, the family must repay 100% of the amount they were overpaid. The family will not be required to repay any overpayment caused by the department's error or the family's non-fraudulent error.

A section has also been added specifying that a family is entitled to conciliation and ultimately a fair hearing if the family is dissatisfied with an action taken on its application for At-Risk Child Care assistance or the continuation of its assistance. This was added to comply with 53-2-606, MCA, which mandates the department to provide a fair hearing to an applicant for or recipient of any kind of public assistance who is dissatisfied with a decision made concerning that assistance. Provision for a fair hearing was originally overlooked because there is no requirement for a dispute resolution procedure in the proposed federal regulations governing the At-Risk Child Care program.

The department at this time will be providing At-Risk Child Care assistance only in Yellowstone County. This is consistent with section (1) of the proposed rule, which indicates that the program will be operated only in a limited number of geographic areas of the state. Depending on the success of this pilot program in Yellowstone County and whether funding is available in the future, the department may either expand the program to other counties or eliminate it altogether at some future date.

Dave Hunt
Rule Reviewer

Julia E. Rohena
Director, Social and Rehabilitation Services

Certified to the Secretary of State August 3, 1992.

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 June 30, 1992. This table includes those rules adopted during the period July 1, 1992 through September 30, 1992 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 June 30, 1992, 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 1992 Montana Administrative Register.

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