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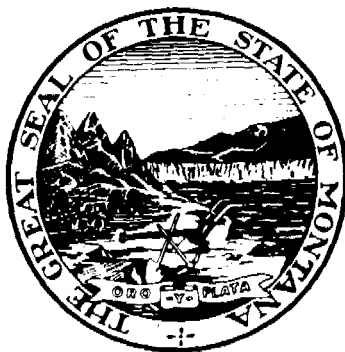
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MONTANA
OCT 30 1992
MONTANA
**ADMINISTRATIVE
REGISTER**

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1992 ISSUE NO. 20
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OCT 30 1992

OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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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In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
adoption of a new rule for the) THE PROPOSED ADOPTION OF A
administration of the Treasure) NEW RULE PERTAINING TO THE
State Endowment Program (TSEP)) TREASURE STATE ENDOWMENT
) PROGRAM

1. On November 18, 1992, at 1:30 p.m., a public hearing will be held in the large downstairs conference room at the Department of Commerce Building, 1424 - 9th Avenue, Helena, Montana, to consider the proposed adoption by reference of rules governing the administration of the Treasure State Endowment Program (TSEP).

"RULE 1 INCORPORATION BY REFERENCE OF RULES FOR
ADMINISTERING THE TREASURE STATE ENDOWMENT PROGRAM (TSEP)

(1) The department of commerce herein adopts and incorporates by this reference the Montana Treasure State Endowment Program Guidelines, September 1992, published by it as rules for the administration of the TSEP.

(2) The rules incorporated by reference in (1) above, relate to the following:

- (a) definitions of terms,
- (b) amount of TSEP funds available in FY 1994 and 1995,
- (c) eligible applicants,
- (d) application scoring system and ranking criteria,
- (e) forms of financial assistance available under TSEP,
- (f) general requirements for TSEP applications,
- (g) application review process, and
- (h) program administration.

(3) Copies of the regulations adopted by reference in subsection (1) of this rule may be obtained from the Department of Commerce, Local Government Assistance Division, Capitol Station, Helena, Montana 59620."

Auth: Sec. 6(5), Leg. Ref. 110, 1992; IMP, Sec. 6, Leg. Ref. 110, 1992

3. It is reasonably necessary to adopt the rule because section 6(5) of Legislative Referendum 110, 1992, requires the Department to adopt rules to implement the program.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Local Government Assistance Division, Department of Commerce, Capitol Station, Helena, Montana 59620, to be received no later than 5:00 p.m., November 27, 1992.

5. Richard M. Weddle, attorney, Helena, Montana, has been designated to preside over and conduct the hearing.

LOCAL GOVERNMENT ASSISTANCE
DIVISION

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, October 19, 1992.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING ON PROPOSED
adoption of Rule I and	)	ADOPTION OF RULE I AND THE AMENDMENT
the amendment of Rules	)	OF RULES 11.12.101, 11.12.413 AND
11.12.101, 11.12.413 and	)	11.12.416 PERTAINING TO YOUTH CARE
11.12.416 pertaining to	)	FACILITIES.
youth care facilities.)	

TO: All Interested Persons

1. On November 19, 1992, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Social and Rehabilitation Services building, located at 111 Sanders, Helena, Montana, to consider the proposed adoption of Rule I and the amendment of Rules 11.12.101, 11.12.413 and 11.12.416 pertaining to youth care facilities.

2. The rules as proposed to be adopted and amended read as follows:

RULE I THERAPEUTIC YOUTH GROUP HOME, MEDICAL NECESSITY
CRITERIA

(1) Moderate and intensive level therapeutic youth group home services must be ordered by a physician, a clinical psychologist, a master level social worker (MSW), or a licensed professional counselor (LPC), and must be authorized by the department.

(a) Providers of moderate level therapeutic youth group home services shall accept placement of only those children who meet at least two of the medical necessity criteria listed in section 2 below.

(b) Providers of intensive level therapeutic youth group home services shall accept placement of only those children who meet at least three of the medical necessity criteria listed in section 2 below.

(2) Medical Necessity Criteria:

(a) The child is at risk of psychiatric hospitalization or residential treatment.

(b) The child has been removed from his or her home due to a mental or emotional problem, the severity of which impairs his or her ability to function in a family setting.

(c) The child exhibits behavior which indicates disturbances of a severe or persistent nature, or is at risk of developing disturbances.

(d) The child is currently placed, or has a history of previous placement(s), at the inpatient psychiatric hospital or residential treatment level and continues to require 24 hour supervision and treatment at a less restrictive level of care.

(e) The child has a poor treatment prognosis in a level of care lower than the moderate or intensive therapeutic youth group home level.

(f) The child has a primary diagnosis of mental illness or serious emotional disturbance (SED) as reflected in the DSM-III-R, or the child is both SED and developmentally disabled.

(3) Medical Necessity Statement and Referral/Authorization forms must be completed and placed in the client record at the time of moderate or intensive level therapeutic youth group home placement.

(4) The moderate or intensive level therapeutic youth group home provider shall ensure appropriate involvement of a lead clinical staff (LCS) in each child's care. This involvement shall include an assessment, development of the treatment plan, and medical necessity determination with redetermination at 6 month intervals.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

11.12.101 YOUTH CARE FACILITY. DEFINITIONS Subsections

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

(c) "Youth care facility" (YCF) means a licensed facility in which substitute care is provided to youth in need of care, youth in need of supervision, or delinquent youth and includes youth foster homes, youth group homes, therapeutic youth group homes, and child care agencies.

(1)(d) through (2)(d) remain the same.

(3) The following definitions apply only to youth care facilities which are licensed as therapeutic youth group homes:

(a) "Therapeutic youth group home" is a youth care facility under contract with the department and licensed by the department as a therapeutic youth group home, in which staff who are trained to provide services to emotionally disturbed youth in a therapeutic environment, perform assessments, develop and implement planned treatment interventions designed to address a youth's therapeutic needs in accordance with an individualized written treatment plan, and provide group, individual and family therapy. Providers of moderate and intensive therapeutic youth group home services must directly employ or contract for services of clinicians, program managers, child care staff, relief staff, and administrative staff.

(b) "Basic level" means the supervision and intensity of treatment classified under ARM 11.7.313 as supervision matrix level IV, and treatment matrix level II.

(c) "Moderate level" means the supervision and intensity of treatment required in a therapeutic youth group home to manage and treat children who present emotional and/or behavioral problems as evidenced by meeting two or more of the medical necessity criteria set forth in [RULE 1]. Therapeutic interventions such as individual and group therapy are provided several times per week. In addition to the treatment, the children are provided with 24 hour awake supervision.

(d) "Intensive level" means the supervision and intensity of treatment required in a therapeutic youth group home to manage and treat children who present severe emotional and/or behavior management problems as evidenced by meeting three or more of the medical necessity criteria set forth in [RULE 1].

Treatment, therapeutic interventions and supervision are tailored to the age and diagnosis of the children served. Therapeutic group and individual interventions are provided several times per day. In addition, specialized behavior management techniques are incorporated into the treatment and supervision of children requiring intensive level services. The children are provided with 24 hour awake supervision.

(e) "Lead clinical staff (LCS)" is an employee of, or under contract with, the moderate or intensive level therapeutic youth group home provider who is responsible for the supervision and overall provision of treatment services to children in the group home(s). The LCS must be a clinical psychologist, master level social worker (MSW), licensed professional counselor (LPC), or have a masters degree in a human services field with a minimum of one year of clinical experience.

(f) "Program manager" is an employee of the moderate or intensive level therapeutic youth group home provider who trains and supervises child care staff, and provides treatment under the clinical supervision of the LCS. Program managers must have a bachelor's degree in a human services field, or the education and experience equivalent to a bachelor's degree.

(g) "Medical necessity statement" documents the moderate or intensive level of therapeutic youth group home services ordered by the physician, clinical psychologist, master level social worker (MSW), or licensed professional counselor (LPC).

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

11.12.413 YOUTH GROUP HOME, STAFF Subsections (1) through (5) remain the same.

(6) Moderate level therapeutic youth group home providers must meet additional minimum staffing requirements to provide a therapeutic environment and treatment interventions identified in the child's individual treatment plan as follows:

(a) Child/staff ratio must be no more than 4:1 from 7 a.m. to 3:30 p.m. and 3:1 from 3:30 p.m. to 10:00 p.m.

(b) Child/awake staff ratio must be no more than 8:1 from 10:00 p.m. to 7:00 a.m.

(c) Each program manager shall be responsible for no more than eight children.

(d) There must be adequate staff to allow the LCS, or the program manager who is providing services under the supervision of a masters or higher level clinician, to conduct the following on a weekly basis:

(i) two group treatment sessions per child;

(ii) one individual treatment session per child;

(iii) one treatment team meeting; and

(iv) family therapy when appropriate and medically necessary.

(7) Intensive level therapeutic youth group home providers must meet additional minimum staffing requirements to provide a therapeutic environment and treatment interventions identified in the child's individual treatment plan as follows:

(a) Child/staff ratio must be no more than 2:1 from 7 a.m. to 3:30 p.m. and 1.5:1 from 3:30 p.m. to 10:00 p.m.

(b) Child/awake staff ratio must be no more than 4:1 from 10:00 p.m. to 7:00 a.m.

(c) Each program manager shall be responsible for no more than four children.

(d) There must be adequate staff to allow the LCS, or the program manager who is providing services under the supervision of a masters or higher level clinician, to conduct the following on a weekly basis:

(i) three group treatment sessions per child;

(ii) two individual treatment sessions per child;

(iii) two treatment team meetings; and

(iv) family therapy when appropriate and medically necessary.

(8) In addition to the 4 hours of orientation referenced in subsection (4) above, child care staff in a moderate or intensive level therapeutic youth group home must receive 15 hours of initial training, and each year must complete 15 hours of additional in-service training in an area directly related to their duties. Initial and additional training must include the use of physical and non-physical methods of controlling children and adolescents to assure protection and safety of the client and staff.

(9) These rules do not preclude a medicaid eligible youth from receiving individual therapy services in addition to moderate or intensive level therapeutic youth group home services when there is compliance with medicaid requirements and reimbursement.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

11.12.416 YOUTH GROUP HOME, CHILDREN'S CASE RECORDS

Subsection (1) remains the same.

(2) The case record of each child receiving moderate or intensive level therapeutic youth group home services must contain the following additional documentation:

(a) referral form/authorization for services;

(b) medical necessity statement;

(c) individual treatment plan, signed by the LCS, which documents the child's response to treatment (progress or lack of progress), and the staff's interaction and involvement with the client; and

(d) weekly clinical progress notes, reviewed and signed by the LCS, which summarizes the child's program participation and psychosocial/behavioral status and functioning.

AUTH: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

IMP: Sec. 41-3-1103, 41-3-1142 and 52-2-111, MCA.

3. The proposed adoption of Rule I, and the amendments to rules proposed herein, are reasonably necessary to implement needed child welfare services, licensing of a new type of youth

care facility, and administering federal funds which will be available for payment of treatment in the new youth care facilities, which will be designated therapeutic youth group homes. Sections 41-3-1103, 41-3-1142, and 52-2-111, MCA, provide authority for rules for implementing of child welfare services, licensing of youth care facilities, and administration of federal funds for youth group homes.

The new rule outlines the department's medical necessity criteria, and will facilitate identification of providers and children who meet the medical necessity requirements for Medicaid reimbursement of Therapeutic Youth Group Home services. The department, in conjunction with the Department of Social and Rehabilitation Services (SRS), is initiating Medicaid reimbursement for the treatment portion of therapeutic youth group home services as a part of the State's refinancing and system's reform efforts.

ARM 11.12.101 YOUTH CARE FACILITY, DEFINITIONS is amended by adding therapeutic youth group homes to the definition of "youth care facility", and expanding the section to include definitions pertaining to therapeutic youth group homes.

ARM 11.12.413 YOUTH GROUP HOME, STAFF is amended to outline additional minimum staffing requirements of therapeutic youth group home providers.

ARM 11.12.416 YOUTH GROUP HOME, CHILDREN'S CASE RECORDS is amended to specify additional documentation required in the case records of children receiving therapeutic youth group home services.

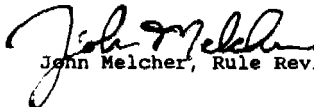
4. Interested persons may submit their data, views or arguments at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than November 27, 1992.

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

DEPARTMENT OF FAMILY SERVICES



Tom Olsen, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, October 19, 1992.

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

In the matter of the amendment of)	NOTICE OF PUBLIC
rules 16.44.102, 16.44.110,)	HEARING FOR PROPOSED
16.44.121, 16.44.202, 16.44.303,)	AMENDMENT OF RULES
16.44.304, 16.44.306, 16.44.320-)	AND THE ADOPTION OF
324, 16.44.402, 16.44.417,)	NEW RULE I
16.44.425, 16.44.505, 16.44.601,)	
16.44.702 and new rule I dealing)	
with HSWA Cluster I regulations.)	

(Hazardous Waste)

To: All Interested Persons

1. On November 24, 1992, at 9:00 a.m., the department will hold a public hearing in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment and adoption of the above-captioned rules.

2. The proposed rule adoption and amendments would make state rules governing the exportation of hazardous waste analogous to federal rules. Additionally, the proposed amendments and new rule establish state standards parallel with the federal rules for the restriction of certain hazardous wastes from land disposal. Finally, the amendments and new rule are intended to enable the state hazardous waste program to obtain authority from the EPA to implement certain portions of the federal hazardous and solid waste program, commonly referred to as "HSWA Cluster I", which primarily deals with land disposal and foreign shipment of hazardous waste.

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

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

(5) As of September 25, 1992, all of the incorporations by reference of federal agency rules listed below within the specific state agency rules listed below shall refer to federal agency rules as they have been codified in the July 1, 1991 edition of Title 40 of the Code of Federal Regulations (CFR). References in the state rules to federal rules contained in Titles 49 and 33 are updated to the extent that they have been updated by the federal rules which also incorporate these rules by reference. For the proper edition of these rules in Titles 49 and 33, see the reference in Title 40 of the CFR (1991 edition), provided in parenthesis. A short description of the amendments to incorporated federal rules which have occurred since the last incorporation by reference is contained in the column to the right. This rule supersedes any specific references to editions of the CFR contained in other rules in this

chapter.

(a)-(z) Remain the same.

Notation of Most Recent Changes to Federal Rules

<u>State Rule</u>	<u>Federal Rule Incorporated</u>
1.01	1.01
1.02	1.02
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16.44. . . . 40 CFR . . .

(aa) 425 262.58

Requirements for international agreements between the U.S. and foreign countries with different standards for international handling of hazardous waste.

(aa)-(ae) Remain the same but are renumbered (ab)-(af).

(ag) Rule I Part 268, (except sections Land disposal
268.5, 268.6, 268.42(b), restrictions and
and 264.44) as well as foreign shipment
Appendices I through IX of hazardous
waste.

(aq)-(al) Remain the same but are renumbered (ah)-(an).

(6) Remains the same.

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

16.44.110 ESTABLISHING PERMIT CONDITIONS (1) Remains the same.

(2) Each HWM permit shall include permit conditions necessary to achieve compliance with the Act and applicable rules including each of the applicable requirements specified in 40 CFR Parts 264, and 266, and 268. In satisfying this provision, the department may incorporate applicable requirements of 40 CFR Parts 264, and 266, and 268 directly into the permit or establish other permit conditions that are based on these parts.

(3)-(7) Remain the same.

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

16.44.121 PERMITS BY RULE (1) Notwithstanding any other provision of this subchapter or subchapter 9, the following persons shall be deemed to have a HWM permit if the conditions listed are met:

(a) the owner or operator of a publicly owned treatment works which accepts for treatment hazardous waste, if the owner or operator:

(i)-(ii) Remain the same.

(iii) complies with the appropriate ~~subsections of these~~ rules with respect to:

- (A)-(F) Remain the same.
 - (G) annual permit maintenance fees; and
 - (H) for surface water discharge permits issued after November 8, 1984, corrective action under 40 CFR 264.101; and
 - (iv) Remains the same.
- AUTH: 75-10-404, 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

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

- (1)-(16) Remains the same.
 - (17) "Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent.
 - (17)-(29) Remain the same but are renumbered (18)-(30).
 - (31) "EPA acknowledgement of consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.
 - (30)-(87) Remain the same but are renumbered (32)-(89).
 - (90) "Primary exporter" means any person who is required to originate the manifest for a shipment of hazardous waste, in accordance with ARM 16.44.408, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.
 - (88)-(90) Remain the same but are renumbered (91)-(93).
 - (94) "Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).
 - (91)-(107) Remain the same but are renumbered (95)-(111).
 - (112) "Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.
 - (108)-(126) Remain the same but are renumbered (113)-(131).
- AUTH: 75-10-405, MCA; IMP: 75-10-405, 75-10-406, MCA

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

(4) Any waste described in ARM 16.44.303(3) is not a hazardous waste if:

(a) it does not exhibit any of the characteristics of hazardous waste identified in ARM 16.44.320 through 16.44.324 (However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of [RULE 11, even if they no longer exhibit a characteristic at the point of land disposal.]); and

(b) remains the same.

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

16.44.304 EXCLUSIONS (1) Remains the same.

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

(f) waste which consists of discarded arsenical-treated wood or wood products which fails the test for the toxicity characteristic ~~solely for arsenic for hazardous waste codes D007-D017~~ and which is not a hazardous waste for any other reason, if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use;

(g)(i) wastes which fail the test for the toxicity characteristic because chromium is present or are listed in ARM 16.44.330 through 16.44.333 due to the presence of chromium, which do not fail the test for the toxicity characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A)-(C) Remain the same.

(ii) specific wastes which meet the standard in (i)(A), (B) and (C) (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not ~~fail the test for exhibit~~ any other characteristic) are:

(A)-(H) Remain the same.

(h)-(j) Remain the same.

(3)-(5) Remain the same.

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

16.44.306 REQUIREMENTS FOR RECYCLABLE MATERIALS

(1)(a)-(b) Remain the same.

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

(i) industrial ethyl alcohol that is reclaimed, except that unless provided otherwise in an international agreement meeting the terms of 40 CFR 262.58:

(A) a person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in ARM 16.44.425, export such materials only upon consent of the receiving country and in conformance with the EPA acknowledgment of consent as defined in ARM 16.44.425(2), and provide a copy of the EPA acknowledgment of consent to the shipment to the transporter transporting the shipment for export;

(B) a transporter transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA acknowledgment of consent, must ensure that a copy of the EPA acknowledgment of consent accompanies the shipment, and must ensure that it is delivered to the facility designated by the person initiating the shipment;

(ii)-(viii) remains the same.

(2)-(5) Remains the same.

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

16.44.320 CHARACTERISTICS OF HAZARDOUS WASTE -- GENERAL

(1) Remains the same.

(2) A hazardous waste which is identified by a characteristic in this subchapter, but is not listed as a hazardous waste in ARM 16.44.330 through 16.44.333, is assigned the each EPA hazardous waste number ~~that is applicable as set forth in the respective characteristic in ARM 16.44.321-16.44.324.~~ This number must be used in complying with all applicable requirements of this chapter.

(3) Remains the same.

AUTH: 75-10-204, 75-10-405, MCA; IMP: 75-10-203, 75-10-204, 75-10-405, MCA

16.44.321 CHARACTERISTIC OF IGNITABILITY (1) Remains

the same.

(2) A waste that exhibits the characteristic of ignitability, ~~but is not listed as a hazardous waste in ARM 16.44.330 through 16.44.333,~~ has the EPA hazardous waste number of D001.

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

16.44.322 CHARACTERISTIC OF CORROSIVITY (1) Remains the

same.

(2) A waste that exhibits the characteristic of corrosivity, ~~but is not listed as a hazardous waste in ARM 16.44.330 through 16.44.333,~~ has the EPA hazardous waste number of D002.

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

16.44.323 CHARACTERISTIC OF REACTIVITY (1)-(2) Remain

the same.

(3) A waste that exhibits the characteristic of reactivity, ~~but is not listed as a hazardous waste in ARM 16.44.330 through 16.44.333,~~ has the EPA hazardous waste number of D003.

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

16.44.324 TOXICITY CHARACTERISTIC (1) Remains the same.

(2) A waste that exhibits the characteristic of toxicity, ~~but is not listed as a hazardous waste in ARM 16.44.330 through 16.44.333,~~ has the EPA hazardous waste number specified in Table I which corresponds to the toxic contaminant causing it to be hazardous.

Table I remains the same.

AUTH: 75-10-204, 75-10-405, MCA; IMP: 75-10-203, 75-10-204, 75-10-405, MCA

16.44.402 HAZARDOUS WASTE DETERMINATION: APPLICABILITY OF RULES TO GENERATOR CATEGORIES: SPECIAL REQUIREMENTS FOR CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS (1)-(4) Remain the same.

(5) The following special requirements apply to a conditionally exempt small quantity generator:

(a) Remains the same.

(b) A conditionally exempt generator may either treat or dispose of his hazardous waste in an on-site facility, or en-

sure delivery to an off-site storage, treatment, or disposal facility. Either facility, if located in the United States, must meet one of the following conditions, as applicable. It must:

- (i)-(iii) remain the same.
- (iv) be licensed by the department ~~to operate a refuse disposal facility as a solid waste management system~~ pursuant to ARM Title 16, chapter 14, subchapter 5 (subject to any applicable restrictions of that subchapter and any applicable solid waste management system license restrictions);
- (v) remains the same.
- (vi) treat waste prior to beneficial use or re-use, or ~~legitimately recycle or reclaim the waste recycling or reclama-~~tion.

(c)-(e) Remain the same.

AUTH: 75-10-204, 75-10-405, MCA; IMP: 75-10-204, 75-10-225, 75-10-404, MCA

16.44.417 ANNUAL REPORTING (1) A generator who ships ~~his~~ any hazardous waste off-site to a designated facility within the United States must submit annual reports to the department, on forms obtained from the department, no later than March 1 of each year. The annual report must cover generator activities during the previous calendar year and must include the following information:

- (a)-(b) remain the same.
- (c) the EPA identification number, name, and address for each off-site ~~treatment, storage, or disposal facility in the United States~~ to which waste was shipped during the year; ~~for exported shipments, the report must give the name and address of the foreign facility;~~
- (d) the name and EPA identification number of each transporter used during the reporting year for shipments to a facility within the United States;
- (e) a description, EPA hazardous waste number, DOT hazard class, and quantity of each hazardous waste shipped off-site for shipments to a facility within the United States. This information must be listed by EPA identification number of each off-site facility to which waste was shipped;

(f)-(h) remain the same.

(2) Remains the same.

(3) Reporting for exports of hazardous waste is subject to the requirements of ARM 16.44.425(7) rather than the requirements of this rule.

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

16.44.425 INTERNATIONAL SHIPMENTS (1) Any person who exports a hazardous waste from Montana to a foreign country or imports hazardous waste from a foreign country into Montana must comply with the requirements of this chapter and with the special requirements of this rule. Except to the extent 40 CFR 262.58 provides otherwise, a primary exporter of hazardous waste must comply with the special requirements of this rule and a transporter transporting hazardous waste for export must

comply with applicable requirements of subchapter 5 of this Chapter.

~~(2) When shipping hazardous waste outside the United States, the generator must:~~

~~(a) notify the EPA administrator in writing four weeks before the initial shipment of hazardous waste to each country in each calendar year;~~

~~(i) the waste must be identified by its EPA hazardous waste identification number and its DOT shipping description;~~

~~(ii) the name and address of the foreign consignee must be included in this notice;~~

~~(iii) these notices must be sent to the Office of International Activities (A-106), United States Environmental Protection Agency, Washington, D.C. 20460.~~

~~(b) require that the foreign consignee confirm the delivery of the waste in the foreign country; a copy of the manifest signed by the foreign consignee may be used for this purpose;~~

~~(c) meet the requirements under ARW 16.44.405 for the manifest, except that:~~

~~(i) in place of the name, address, and EPA identification number of the designated facility, the name and address of the foreign consignee must be used;~~

~~(ii) the generator must identify the point of departure from the United States through which the waste must travel before entering a foreign country.~~

~~(3) A generator must file an Exception Report, if:~~

~~(a) he has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within 45 days from the date it was accepted by the initial transporter; or~~

~~(b) within 90 days from the date the waste was accepted by the initial transporter, the generator has not received written confirmation from the foreign consignee that the hazardous waste was received.~~

~~(4) Any person exporting hazardous waste identified or listed under this chapter shall file with the EPA administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.~~

(2) Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this rule. Exports of hazardous waste are prohibited unless:

(a) Notification in accordance with section (3) of this rule has been provided;

(b) The receiving country has consented to accept the hazardous waste;

(c) A copy of the EPA acknowledgment of consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)).

(d) The hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA acknowledgment of consent.

(3)(a) A primary exporter of hazardous waste must notify EPA of an intended export before such waste is scheduled to leave the United States. A complete notification must be submitted 60 days before the initial shipment is intended to be shipped off site. This notification may cover export activities extending over a 12 month or lesser period. The notification must be in writing, signed by the primary exporter, and include the following information:

(i) Name, mailing address, telephone number and EPA ID number of the primary exporter;

(ii) By consignee, for each hazardous waste type:

(A) A description of the hazardous waste and the EPA hazardous waste number, U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous waste;

(B) The estimated frequency or rate at which such waste is to be exported and the period of time over which such waste is to be exported.

(C) The estimated total quantity of the hazardous waste in units as specified in the instructions to the Uniform Hazardous Waste Manifest Form (8700-22);

(D) All points of entry to and departure from each foreign country through which the hazardous waste will pass;

(E) A description of the means by which each shipment of the hazardous waste will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

(F) A description of the manner in which the hazardous waste will be treated, stored or disposed of in the receiving country (e.g., land or ocean incineration, other land disposal, ocean dumping, recycling);

(G) The name and site address of the consignee and any alternate consignee; and

(H) The name of any transit countries through which the hazardous waste will be sent and a description of the approximate length of time the hazardous waste will remain in such country and the nature of its handling while there;

(b) Notification shall be sent to the Office of Waste Programs Enforcement, RCRA Enforcement Division (OS-520), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 with "Attention: Notification to Export" prominently displayed on the front of the envelope.

(c) Except for changes to the telephone number in subsection (a)(i) of this section, changes to subsection (a)(ii)(E) of this section, and decreases in the quantity indicated pursuant to subsection (a)(ii)(C) of this section, when the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous waste specified in the original notification), the primary exporter must provide EPA with a written renotification of the change. The shipment cannot take place until consent of the receiving country to the changes (except for changes to subsection (a)(ii)(H) of this section and in the ports of entry to and departure from transit countries pursuant to subsection (a)(ii)(D) of this section) has been obtained and the primary

exporter receives an EPA acknowledgment of consent reflecting the receiving country's consent to the changes.

(d) Upon request by EPA, a primary exporter shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.

(e) In conjunction with the department of state, EPA will provide a complete notification to the receiving country and any transit countries. A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of subsection (a) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by subsection (a) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

(f) Where the receiving country consents to the receipt of the hazardous waste, EPA will forward an EPA acknowledgment of consent to the primary exporter for purposes of section (4)(h) of this rule. Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, EPA will notify the primary exporter in writing. EPA will also notify the primary exporter of any responses from transit countries.

(4) A primary exporter must comply with the manifest requirements of subchapter 5 of this chapter except that:

(a) In lieu of the name, site address and EPA ID number of the designated permitted facility, the primary exporter must enter the name and site address of the consignee;

(b) In lieu of the name, site address and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee.

(c) In special handling instructions and additional information, the primary exporter must identify the point of departure from the United States;

(d) The following statement must be added to the end of the first sentence of the certification set forth in Item 16 of the Uniform Hazardous Waste Manifest Form: "and conforms to the terms of the attached EPA acknowledgment of consent";

(e) In lieu of the requirements of ARM 16.44.406, the primary exporter may obtain a manifest form from any source.

(f) The primary exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in 40 CFR 264.72(a)) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

(g) In lieu of the requirements of ARM 16.44.405(4), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter must:

(i) Renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with section (3)(c) of this rule and obtain an EPA acknowledgment of consent prior to delivery; or

(ii) Instruct the transporter to return the waste to the primary exporter or designate another facility within the

United States; and

(iii) Instruct the transporter to revise the manifest as appropriate.

(h) The primary exporter must attach a copy of the EPA acknowledgment of consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA acknowledgment of consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA acknowledgment of consent to the shipping paper.

(i) The primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the U.S. customs official at the point the hazardous waste leaves the United States in accordance with ARM 16.44.505(7).

(5) In lieu of the requirements of ARM 16.44.418, a primary exporter must file an exception report both with the department and with the administrator of the EPA if:

(a) He has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within 45 days from the date it was accepted by the initial transporter;

(b) Within 90 days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the consignee that the hazardous waste was received;

(c) The waste is returned to the United States.

(6)(a) Primary exporters of hazardous waste shall file with the department and with the administrator of the EPA, no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous calendar year. Such reports shall include the following:

(i) The EPA identification number, name, and mailing and site address of the exporter;

(ii) The calendar year covered by the report;

(iii) The name and site address of each consignee;

(iv) By consignee, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number, DOT hazard class, the name and US EPA ID number (where applicable) for each transporter used, the total amount of waste shipped and number of shipments pursuant to each notification;

(v) for reports filed with the department:

(A) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(B) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

(vi) for reports to be filed with the EPA, that information specified in 40 CFR 262.56(a)(5); and

(vii) A certification signed by the primary exporter which

states: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.

(b) Reports required to be filed with the EPA shall be sent to the following address: Office of Waste Programs Enforcement, RCRA Enforcement Division (OS-520), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(7)(a) For all exports a primary exporter must keep a copy of:

(i) each notification of intent to export for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(ii) each EPA acknowledgment of consent for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

(iii) each confirmation of delivery of the hazardous waste from the consignee for at least three years from the date the hazardous waste was accepted by the initial transporter; and

(iv) each annual report for a period of at least three years from the due date of the report.

(b) The periods of retention referred to in this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the administrator of the EPA.

(5)-(8)(a) When importing hazardous waste, a person must meet all requirements of ARM 16.44.405(1) for the manifest except that:

(a)(i) in place of the generator's name, address and EPA identification number, the name and address of the foreign generator and the importer's name, address and EPA identification number must be used; and

(b)(ii) in place of the generator's signature on the certification statement, the U.S. importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

(b) A person who imports hazardous waste must obtain the manifest form from the consignment state if the state supplies the manifest and requires its use. If the consignment state does not supply the manifest form, then the manifest form may be obtained from any source.

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

16.44.505 MANIFEST SYSTEM (1) A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest, signed by the generator in accordance with subchapter 4 of this chapter. In the case of exports, a transporter may not accept such waste from a primary exporter or other person:

(a) if he knows the shipment does not conform to the EPA

acknowledgment of consent: and

(b) unless, in addition to a manifest signed in accordance with provisions of ARM 16.44.405, such waste is also accompanied by an EPA acknowledgment of consent which, except for shipment by rail, is attached to the manifest (or shipping paper for exports by water [bulk shipment]).

(2) Remains the same.

(3) The transporter must ensure that the manifest accompanies the hazardous waste. In the case of exports, the transporter must ensure that a copy of the EPA acknowledgment of consent also accompanies the hazardous waste.

(4) Remains the same.

(5) The requirements of sections (3), (4), and (6) of this rule do not apply to rail or water (bulk shipment) transporters if:

(a) Remains the same.

(b) a shipping paper containing all the information required on the manifest, (excluding the EPA identification numbers, generator certification, and signatures) and, for exports, an EPA acknowledgment of consent accompanies the hazardous waste;

(c)-(e) Remain the same.

(6) For shipments involving rail transportation, the requirements of paragraphs (3), (4), and (5) do not apply and the following requirements do apply:

(a) Remains the same.

(b) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for exports, an EPA acknowledgment of consent accompanies the hazardous waste at all times.

(c)-(e) Remains the same.

(7) Transporters who transport hazardous waste out of Montana to a foreign country must indicate on the manifest the date the hazardous waste left the United States; sign the manifest and retain one copy in accordance with ARM 16.44.508(3); and return a signed copy of the manifest to the generator; and give a copy of the manifest to a U.S. customs official at the point of departure from the United States.

(8) Remains the same.

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

16.44.601 PURPOSE: APPLICABILITY (1) The purpose of the rules of this subchapter is to provide temporary permitting and standards for the operation of existing hazardous waste management facilities pending final administrative disposition of a HWM permit application under subchapter 1 of this chapter.

(2) The requirements of this subchapter apply to owners and operators of all facilities which treat, store or dispose of hazardous waste referred to in [RULE 1], and the 40 CFR Part 268 standards incorporated by reference in [RULE 1] are considered material conditions or requirements of the interim status standards of this subchapter.

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

MCA

16.44.702 STANDARDS AND REQUIREMENTS FOR PERMITTED FACILITIES (1)-(3) Remain the same.

(4) In 40 CFR 264.12(a) the term "regional administrator" refers to the EPA and should not be read to mean "department" as suggested in ARM 16.44.102(3).

(4)-(5) The department hereby adopts and incorporates herein by reference 40 CFR Part 264, subparts B through and including X, excluding subpart H and 40 CFR 264.75. The correct CFR edition is listed in ARM 16.44.102. The equivalent of subpart H is set forth in subchapter 8 of this chapter. The equivalent of 40 CFR 264.75 is set forth in ARM 16.44.703. Subparts B through O, excluding subpart H, are federal agency rules setting forth, respectively, general facility standards (B); requirements for preparedness and prevention (C); requirements for contingency plan and emergency procedures (D); manifest system, recordkeeping and reporting requirements (E); groundwater monitoring requirements (F); closure and post-closure requirements (G); requirements for use and management of containers (I); and requirements for tanks (J); surface impoundments (K); waste piles (L); land treatment (M); landfills (N); incinerators (O); and miscellaneous units (X). A copy of 40 CFR Part 264, subparts B through and including X, excluding subpart H, or any portion thereof, may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

(5)-(6) The department hereby adopts and incorporates herein by reference 40 CFR Part 264, appendices I, IV, V, VI and IX. These are appendices included as a part of federal agency rules setting forth respectively, recordkeeping instructions (I), Cockran's students' T-test for statistical analysis (IV), examples of potentially incompatible waste (V), political jurisdictions in which compliance with seismic location standards must be demonstrated (VI), and a list of groundwater monitoring parameters (IX). A copy of appendices I, IV, V, VI, and IX to 40 CFR Part 264 may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59620.

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

RULE I. RESTRICTIONS ON THE LAND DISPOSAL OF HAZARDOUS WASTES

(1) The department hereby adopts and incorporates herein by reference 40 CFR Part 268 (except sections 268.5, 268.6, 268.42(b), and 268.44) and Appendices I through IX to Part 268. The correct CFR edition is listed in ARM 16.44.102.

(2) 40 CFR Part 268 are federal agency rules setting forth land disposal restrictions for hazardous wastes. 40 CFR sections 268.5, 268.6, 268.42(b), and 268.44 are sections of the federal land disposal restriction regulations which are not delegable to states under authorization agreements with EPA. These sections remain enforceable by the EPA in Montana under

RCRA authorities.

(3) In 40 CFR 268.40, the term "administrator" refers to the EPA administrator and should not be read to mean "department" as suggested in ARM 16.44.102(3).

(4) Copies of 40 CFR Part 268 or any portion thereof may be obtained from the Solid and Hazardous Waste Bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana 59620.

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

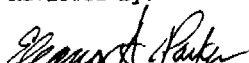
4. The department is proposing these amendments to the rules and the additional new rule because they are necessary in order to enable Montana to remain parallel in standards with the federal EPA, and insure the state retains primacy to operate its hazardous waste program in lieu of federal handling of the program.

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


DENNIS IVERSON, Director

Certified to the Secretary of State October 19, 1992.

Reviewed by:


Counsel for the Department

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed)	
amendment of rules and a proposed)	NOTICE OF PUBLIC HEARING ON
new rule regarding what is)	PROPOSED AMENDMENT OF
classified as wages for purposes)	ARM 24.11.813 AND 24.11.814
of Workers' Compensation and)	AND PROPOSED ADOPTION OF
Unemployment Insurance.)	NEW RULE I

TO ALL INTERESTED PERSONS:

1. On November 20, 1992, at 10:00 a.m., a public hearing will be held in the 1st Floor Conference Room of the Labor and Industry Building, 1327 Lockey, Helena, Montana, to consider the proposed amendments to rules and new rule stated above.

2. The Department of Labor and Industry proposes to amend its rules specifically pertaining to those payments made by employers to employees which are expense reimbursements and may be excluded from the definition of wages.

3. The Department of Labor and Industry proposes, to the extent feasible, to make the rules regarding what may be excluded as expense reimbursements under these rules be as consistent as possible between the unemployment insurance and workers' compensation programs. The department is interested in public comment and suggestions on this issue; however, no proposal which has the effect of reducing an employee's actual wage, or that camouflages wages as expense payments, will be considered.

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

RULE I PAYMENTS THAT ARE NOT WAGES --- EMPLOYEE EXPENSES

(1) Effective January 1, 1993, payments made to an employee to reimburse the employee for ordinary and necessary expenses incurred in the course and scope of employment are not wages if all of the following are met:

(a) the amount of each employee's reimbursement is entered separately in the employer's records;

(b) the employee could reasonably be expected to incur the expenses while traveling on the business of the employer;

(c) the reimbursement is not based on a percentage of the employee's wages nor is it deducted from wages; and

(d) the reimbursement does not replace the customary wage for the occupation.

(2) Reimbursement for expenses may be based on any of the following methods that apply:

(a) for actual expenses incurred by the employee, to the extent that they are supported by receipts;

(b) for meals and lodging, at a flat rate no greater than

the amount allowed to employees of the state of Montana pursuant to section 2-18-501(1)(b) and (2)(b) for meals, and 2-18-501(5) for lodging;

(c) for mileage, at a rate no greater than that allowed by the United States Internal Revenue Service for the preceding year, provided that the individual actually furnishes the vehicle;

(d) for equipment other than vehicles, the reasonable rental value for that equipment, which for individuals involved in timber falling may not exceed \$22.50 per working day for chain saw and related equipment expenses;

(e) for drivers utilized or employed by a motor carrier with intrastate operating authority, meal and lodging expenses may be reimbursed by either of the methods provided in subsection (2)(a) or (b) for each calendar day the driver is on travel status; or

(f) for drivers utilized or employed by a motor carrier with interstate operating authority, meal and lodging expenses may be reimbursed by the methods provided in subsection (2)(a) or (b), or by a flat rate not to exceed \$30.00 for each calendar day the driver is on travel status.

AUTH: Sec. 39-71-203, MCA

IMP: Sec. 39-71-123, MCA

REASON: Enacting New RULE I in Workers' Compensation Rules. A 1991 amendment to 39-71-123(2)(a) MCA modified what was not "wages" insofar as what expenses were allowable for meals, lodging and travel and rental of equipment. This rule is enacted to establish per diem mileage and rental cost for certain tools, as well as establish a procedure that the employer can follow so as to exclude these expenses from "wages".

24.11.813. PAYMENTS THAT ARE NOT WAGES --- EQUIPMENT RENTAL

~~(1) Except for hand tools and vehicles as provided in this rule,~~
pPayments made by the employer to the employee for rental of equipment owned by the employee are not wages if:

(a) the equipment is necessary for the employee to perform the job;

(b) the employment contract provides for such payments; and

~~(c) the payments reflect reasonable rental fees compared with the customary wages for such services in the locality~~
amount of each employee's reimbursement is entered separately in the employer's records; and

(d) the reimbursement does not replace the customary wage for the occupation.

(2) The actual expenses incurred by the employee may be considered reasonable rental fees if the employer's records show:

- (a) the initial cost of the equipment;
- (b) the equipment's depreciation; and
- (c) maintenance and operational costs in connection with the services performed for the employer.

(3) ~~With respect to light equipment, such as chain saws, the reasonable rental value may not be greater than 25% of the employee's gross remuneration.~~ equipment other than vehicles, the employer may pay an allowance not greater than the reasonable rental value for that equipment, which for individuals involved in timber falling may not exceed \$22.50 per working day for chain saw and related equipment expense.

(4) With respect to heavy equipment, including but not limited to semi-tractors or bulldozers, the reasonable rental value may not exceed 75% of the employee's gross remuneration.

(5) ~~Hand tools customarily used in the employee's trade and vehicles used only in transporting the worker to and from the job site have no rental value for purposes of this rule.~~ Any rental payments made with respect to these items are considered wages.

(6) Passenger vehicle expenses may be reimbursed either on the basis of actual receipts or upon mileage, at a rate no greater than that allowed by the United States Internal Revenue Service for the preceding year, provided that the individual actually furnishes the vehicle.

AUTH: Sec. 39-51-301, 39-51-302, MCA IMP: Sec. 39-51-201, MCA

24.11.814 PAYMENTS THAT ARE NOT WAGES --- EMPLOYEE EXPENSES

(1) Payments made to an employee to reimburse the employee for ordinary and necessary expenses incurred during the course and scope of employment are not wages if all of the following are met:

- (a) the amount of each employee's reimbursement is entered separately in the employer's records;
- (b) the employer has documentation that the employee incurred the expenses in conducting business for the employer;
- (c) the reimbursement is not based on a percentage of the employee's wage;
- (d) the reimbursement does not replace the customary wage for the occupation; and
- (e) the reimbursement is may be based on any of the following that apply:

(i) actual expenses incurred by the employee supported by receipts; or

(ii) a flat rate for meals and lodging, no greater than the amount allowed to employees of the state of Montana under section 2-18-501 (1)(b) and (2)(b) for meals, and 2-18-501 (5) for lodging 509, MCA, unless, through documentation, the employer can substantiate a higher rate;

(iii) for drivers utilized or employed by a motor carrier with intrastate operating authority, meal and lodging expenses may be reimbursed by either of the methods provided in subsection (e)(i) or (ii) for each calendar day the driver is on travel status;

(iv) for drivers utilized or employed by a motor carrier with interstate operating authority, meal and lodging expenses may be reimbursed by the methods provided in subsection (e)(i) or (ii), or by a flat rate not to exceed \$30.00 for each calendar day the driver is on travel status; or

(v) for mileage, at a rate no greater than that allowed by the United States Internal Revenue Service for the preceding year, provided that the individual actually furnishes the vehicle.

AUTH: Sec. 39-51-301, 39-51-302, MCA IMP: Sec. 39-51-201, MCA

REASON: The Department is proposing these amendments to clarify what employee expenses are not to be considered wages for the reporting requirements of unemployment insurance. This is required by the amended Section 39-51-201(19)(b)(iii), MCA.

5. Interested parties may submit their data, views, or arguments concerning the proposed adoption either orally or in writing at the public hearing, or else in writing to:

Mark E. Cadwallader
Legal Services Division
Department of Labor and Industry
1327 Lockey
P.O. Box 1728
Helena, MT 59620

by not later than November 27, 1992.

6. The Department has appointed the Hearings Unit to preside over and conduct the hearing.



David A. Scott
Rule Reviewer



Mario A. Micone, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 19, 1992

BEFORE THE BOARD OF LIVESTOCK
DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the proposed)	NOTICE OF PROPOSED AMENDMENT
imposition of a fee pertaining)	OF 32.2.401 DEPARTMENT OF
to inspection of game farm)	LIVESTOCK LICENSE FEES,
animals)	PERMIT FEES AND MISCELLANEOUS
)	FEES

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 30, 1992, the Board of Livestock, acting through the Department of Livestock proposes to amend and adopt the above stated rule.

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

32.2.401 DEPARTMENT OF LIVESTOCK LICENSE FEES, PERMIT FEES, AND MISCELLANEOUS FEES (1) through (37) will remain the same. (38) for each game farm animal inspected as required by 81-3-211, MCA, a fee of \$3.00 per head, additionally the inspector may charge his or her necessary actual expenses if required to wait for the animals to be presented for inspection.

AUTH.	81-1-102, MCA	IMP.	81-3-211, MCA
	81-3-202, MCA		

3. HB 556, passed during the 1991 legislative session requires that the Department of Livestock participate in Game Farm regulation. Section 87-1-102(2), MCA provides that "the department shall by rule establish all fees that it is authorized to charge, commensurate with costs as provided in 37-1-134, MCA." This rule establishes a fee commensurate with those costs contemplated.

4. Interested persons may present their data, views or arguments concerning the proposed amendment in writing to the Department of Livestock, 6th and Roberts, Helena, Montana 59620, to be received no later than 5:00 p.m., November 29, 1992.

5. If a person who is directly affected by the proposed amendment wishes to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Mr. E.E. "Cork" Mortensen, Acting Executive Secretary to the Board of Livestock, at 6th and Roberts, Helena, Montana 59620 no later than November 29, 1992.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from any 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.



E.E. "Cork" Mortensen, Acting Executive Secretary
To the Board of Livestock



Lon Mitchell, Rule Reviewer

Certified to the Secretary of State October 15, 1992

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE PROPOSED
of ARM 42.14.102, 42.14.105,)	AMENDMENT of ARM 42.14.102,
42.14.106, 42.17.105, and)	42.14.105, 42.14.106,
42.31.204 relating to)	42.17.105, and 42.31.204
Miscellaneous Taxes)	relating to Miscellaneous Taxes

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 25, 1992, the Department of Revenue proposes to amend ARM 42.14.102, 42.14.105, 42.14.106, 42.17.105, and 42.31.204 relating to miscellaneous taxes.
2. The rules as proposed to be amended provide as follows:

42.14.102 WHO MUST COLLECT THE TAX AND FILE RETURNS

(1) Every owner/operator of a facility operating in Montana must collect ~~a~~ ~~the~~ accommodations tax, rounded to the nearest penny, from the users of facilities and file returns with the department of revenue as required in ARM 42.14.107.

(2) through (5) remain the same.

AUTH: 15-65-102 MCA; IMP: 15-65-101 and 15-65-111 MCA.

42.14.105 COMBINED CHARGE FOR SERVICES (1) When accommodations charges are combined with food, beverage, recreation or other charges which are a substantial portion of the charge, the owner or operator may allocate the accommodation charge using one of the following:

(a) A flat rate of ~~\$24~~ 30 per day per person;

(b) and (c) remain the same.

(2) through (5) remain the same.

AUTH: 15-65-102 MCA; IMP: 15-65-111 MCA.

42.14.106 FACILITY REGISTRATION (1) Every owner/operator required to impose ~~a~~ ~~the~~ accommodation tax must register and file an application for a state identification number on the form provided by the department for each facility owned/operated in Montana.

(2) through (5) remain the same.

AUTH: 15-65-102 MCA; IMP: 15-65-114 MCA.

42.17.105 COMPUTATION OF WITHHOLDING (1) The amount of tax withheld per payroll period shall be calculated according to the following four-step formula:

(a) $Y = PZ$

where Z is the individual's gross earnings for the payroll period; and

Y is the individual's annualized gross earnings.

In these calculations, the quantity P (number of payroll periods during the year) has one of the following values:

Annual payroll period P = 1
 Monthly payroll period P = 12
 Semimonthly payroll period P = 24
 Biweekly payroll period P = 26
 Weekly payroll period P = 52

(b) $T = Y - 1400N$

where T is the annualized earnings; and

N is the number of withholding allowances claimed.

If T in Step (b) is less than or equal to 0, then the amount to be withheld during the pay period is 0. If T is greater than 0, then the annualized tax liability is calculated using:

(c) $X = A + B(T-C)$ where X is the individual's annualized tax liability the parameters A, B and C are chosen from the following rate schedule:

At Least	But Less Than	A	B	C
\$ 0	\$ 6,590	0	2.6%	0
6,590	14,600	171.34	4.4%	6,590
14,600	32,000	523.76	6.1%	14,600
32,000 and over		1,585.16	6.5%	32,000

\$ 0	\$ 6,590	\$ 0	2.8%	\$ 0
6,590	14,600	184.52	4.7%	6,590
14,600	32,000	560.99	6.5%	14,600
32,000 and over		1,691.99	7.0%	32,000

(d) $W = \frac{X}{P}$

where W is the amount to be withheld for the payroll period;
 X is the annualized tax liability; and
 P is the number of payroll periods during the year.

(2) This rule is effective for tax periods beginning January 1, 1991 September 1, 1992.

AUTH: 15-30-305 MCA; IMP: 15-30-108 and 15-30-202 MCA.

42.31.204 PAYMENT OF TAX BY RETAILER (1) Any individual, firm, fiduciary, partnership, corporation, trust, organization, or association, however formed, who is engaged in the business of selling tobacco products to the ultimate consumer and who purchases tobacco products, other than cigarettes, on which the ~~12 1/2%~~ statutory tobacco products tax has not been precollected and paid to the department of revenue must comply with all the provisions of Title 16, chapter 11, part 2, MCA, and these rules to prepay the tax before offering to sell such tobacco products.

(2) A retailer must assume that the ~~12 1/2%~~ tobacco products tax has not been precollected and paid to the department of revenue in the absence of the statement required

by ARM 42.31.212 on his invoice or sales slip for tobacco products.

AUTH: 16-11-103 MCA; IMP: 16-11-202 and 16-11-205 MCA.

3. ARM 42.14.102, 42.14.105, 42.14.106, 42.17.105, and 42.31.204 are proposed to be amended because House Bill 44 enacted a 7% surtax which changed the rates.

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 November 27, 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 November 27, 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 October 19, 1992

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF THE PROPOSED
of ARM 42.15.118 relating to) AMENDMENT of ARM 42.15.118
Exempt Retirement Limitation) relating to Exempt Retirement
Limitation)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 25, 1992, the Department of Revenue proposes to amend ARM 42.15.118 relating to exempt retirement limitation.

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

42.15.118 EXEMPT RETIREMENT LIMITATION (1) For a person who is receiving more than one retirement benefit the following limitations apply:

(a) When one retirement benefit is 100% excludable and is greater than \$3,600, no other exclusion is allowed. For example, for a person who receives a Montana public retirement benefit of \$5,000 and also receives a civil service benefit of \$3,000, the exclusion is limited to \$5,000.

(b) When one retirement benefit is 100% excludable and is less than \$3,600, the maximum exclusion for all benefits is \$3,600. For example, for a person who receives a Montana public retirement benefit of \$3,000, and also receives a private benefit of \$4,000, the exclusion is limited to \$3,600.

(c) When the retirement benefits received are from federal, private or non-Montana public retirement plans the exclusion is the lesser of \$3,600 or the total benefits received.

(1) The retirement exclusion is limited to the lesser of the retirement income received or \$3,600 for a single person or married couple where only one person receives pension income. The exclusion is reduced \$2 for every \$1 over federal adjusted gross income of \$30,000.

(2) The limitations apply separately to individuals filing a joint return. For a married couple who file a joint return and each receive pension income, their individual exclusion is limited to the lesser of each person's retirement income or \$3,600. The total of both individuals' exclusion is reduced at the same rate as in subsection (1).

(3) For a married couple who file separately, the reduction of the exclusion over federal adjusted gross income of \$30,000 is computed independently of each other.

Example 1: A single taxpayer has a federal adjusted gross income of \$20,000 which is made up of \$5,000 of retirement income and \$15,000 of other income. His retirement exclusion

for Montana purposes is \$3,600.

Example 2: A married couple who both receive retirement income file a joint Montana income tax return. The husband receives \$5,600 of retirement income and his wife receives \$2,000 of retirement income. They have a federal adjusted gross income of \$25,000. For Montana purposes, their retirement exclusion is \$3,600 and \$2,000 or a total of \$5,600.

Example 3: A single taxpayer has a federal adjusted gross income of \$31,000 which is made up of \$8,000 of retirement income and \$24,000 of other income. His retirement exclusion for Montana purposes is \$1,600. ($\$3,600 - ((\$31,000 - \$30,000) \times 2)$).

Example 4: A married couple who both receive retirement income file a joint Montana income tax return. The husband receives \$5,600 of retirement income and his wife receives \$3,000 of retirement income. They have a federal adjusted gross income of \$33,000. For Montana purposes, their retirement exclusion is \$600. ($\$6,600 - ((\$33,000 - \$30,000) \times 2)$).

AUTH: 15-30-305 MCA; IMP: 15-30-111 MCA.

3. The amendments to ARM 42.15.118 are necessary because Senate Bill 226, 1991 Legislature, taxes all retirement equally. The amendment to the rule limits the retirement exclusion to the lesser of the \$3,600 or the amount of retirement benefits received. This exclusion amount is then reduced when a taxpayer's federal adjusted gross income exceeds \$30,000. The rule also addresses the exclusion limitations when a married couple have separate retirement incomes.

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 November 27, 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 November 27, 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 October 19, 1992

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)
to ARM 42.22.101 and 42.22.122)
relating to Situs Property for)
Centrally Assessed Railroads)
)
)

NOTICE OF PUBLIC HEARING ON
THE PROPOSED AMENDMENT to
ARM 42.22.101 and 42.22.122
relating to Situs Property
for Centrally Assessed Rail-
roads

TO: All Interested Persons:

1. On November 23, 1992, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendments to ARM 42.22.101 and 42.22.122 relating to situs property for centrally assessed railroads.

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

42.22.101 DEFINITIONS (1) through (17) remains the same.

(18)(a) "Situs property" for a centrally assessed company, other than a railroad is all operating property used by a centrally assessed company that is not part of a roadway or a transmission or distribution system, that is not rolling stock or airplanes, or that by nature is immovable.

(i) Situs property includes but is not limited to: buildings, dams, powerhouses, depots, stations, shops, furniture, fixtures, tools, substations, electronic switching equipment, machinery, meters, transformers, and operating lands not in the right-of-way.

(ii) Situs property does not include automobiles, trucks, and special mobile equipment (as defined in 61-1-104, MCA) upon which property taxes have been assessed and paid.

(b) "Situs property" for a centrally assessed railroad is all operating property used by the railroad that is:

(i) by its nature located at a specific site;

(ii) not part of the roadway, track structure, rails, roadbed or right-of-way;

(iii) not rolling stock; and

(iv) not signals or signal systems, such as computerized traffic control and computerized traffic control (CTC) buildings.

(c) By way of illustration but not limitation, situs property of a railroad includes:

(i) all operating land located outside the right-of-way;

(ii) depots, stations, microwave and radio sites and towers;

(iii) telecommunications equipment not specifically excluded;

(iv) all shops and buildings not specifically identified elsewhere;

(v) permanent fixed improvements, such as parking lots and

parking structures; and all associated costs of grading and improvements at the location;

(vi) construction work in progress associated with situs property; and

(vii) furniture and fixtures, materials and supplies, and machinery and equipment which are not moved or movable in the ordinary course of railroad operations.

(d) By way of illustration but not limitation, situs property of railroad does not include:

(i) railroad signalling and switching structures, equipment and devices;

(ii) ballast, grading, and construction work in progress associated with the track or roadbed;

(iii) machinery and equipment normally used to repair track; and

(iv) automobiles, trucks, and special mobile equipment (as defined in 61-1-104, MCA) upon which property taxes have been assessed and paid.

(e) Situs property for a railroad normally consists of property in the following accounts in Schedules 330 and 200 of the Annual Report R1 to the ICC:

(i) Schedule 330

<u>Line No.</u>	<u>Account No.</u>
<u>11</u>	<u>16 station and office buildings</u>
<u>12</u>	<u>17 roadway buildings</u>
<u>13</u>	<u>18 water station</u>
<u>14</u>	<u>19 fuel stations</u>
<u>15</u>	<u>20 shops and enginehouses</u>
<u>16</u>	<u>22 storage warehouses</u>
<u>17</u>	<u>23 wharves and docks</u>
<u>18</u>	<u>24 coal and ore wharves</u>
<u>19</u>	<u>25 tofc/cofc terminals</u>
<u>22</u>	<u>29 power plants</u>
<u>24</u>	<u>35 miscellaneous structures</u>
<u>27</u>	<u>44 shop machinery</u>
<u>28</u>	<u>45 power plant machinery</u>
<u>38</u>	<u>59 comp. systems and word proc. equipment</u>

(ii) Schedule 200

<u>Line No.</u>	<u>Account No.</u>
<u>12</u>	<u>712 materials & supplies</u>

(f) Situs property for a railroad normally consists of a portion of the property in the following accounts in Schedule 330 of the Annual Report R1 to the ICC:

(i) Schedule 330

<u>Line No.</u>	<u>Account No.</u>
<u>1</u>	<u>2 land for transportation purposes</u>

2	3	<u>grading</u>
10	13	<u>fences, snowsheds, and signs</u>
20	26	<u>communication systems</u>
23	31	<u>power-transmission systems</u>
25	37	<u>roadway machines</u>
26	39	<u>public improvements-construction</u>
29		<u>other</u>
37	58	<u>miscellaneous equipment</u>
42	90	<u>construction work in progress</u>

(19) through (21) remain the same.

AUTH: 15-23-108 MCA IMP: Title 15, chapter 23, part 1 MCA.

42.22.122 APPORTIONMENT PROCEDURE (1)(a) through

(1)(c)(ii) remains the same.

(iii) MSPV = MT Unit Value X $\frac{\text{Total System Situs Costs}}{\text{System Total Costs}}$

(2)(a) through (2)(a)(v) remain the same.

(vi) railroads - track mileage by type and branch;
weighted at 100% for main line, 60% for branch line and 40% for
side track.

(3) remains the same.

AUTH: 15-23-108 MCA IMP: Title 15, chapter 23 MCA.

3. The Department is proposing the amendments to clarify the definition of situs property as it specifically relates to railroads. The definition of situs property does not represent a substantive change in the definition as applied to operating railroad property or to utilities. The amendment of the apportionment language will more accurately reflect situs and track value.


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:

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

no later than November 30, 1992.

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


CLEO ANDERSON
Rule Reviewer


DENIS ADAMS
Director of Revenue

Certified to Secretary of State October 19, 1992

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of Rule I and the	)	THE PROPOSED ADOPTION OF
amendment of rules	)	RULE I AND THE AMENDMENT OF
46.12.514, 46.12.515 and	)	RULES 46.12.514, 46.12.515
46.12.516 pertaining to kids	)	AND 46.12.516 PERTAINING TO
count and early periodic	)	KIDS COUNT AND EARLY
screening diagnosis and	)	PERIODIC SCREENING
treatment services	)	DIAGNOSIS AND TREATMENT
	)	SERVICES

TO: All Interested Persons

1. On November 19, 1992, at 2:30 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 adoption of Rule I and the amendment of rules 46.12.514, 46.12.515 and 46.12.516 pertaining to kids count and early periodic screening diagnosis and treatment services.

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

[RULE I] KIDS COUNT/EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT

(1) The department will pay the lowest of the following for the early and periodic screening, diagnostic and treatment services specifically listed in these rules:

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

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

(c) the department's fee schedule for each type of service.

(2) The department's fee schedule for kids count/EPSDT services which are generally covered for recipients of all ages under this chapter shall be as specified in the department's rules applicable to each particular service.

(3) The department's fee schedule for kids count/EPSDT services which are not generally covered for recipients of all ages under this chapter shall be as follows:

(a) Reimbursement for nutritional, respiratory care and chiropractic services shall be as specified in a fee schedule set and maintained by the department in accordance with ARM 46.12.2003(3).

(b) Reimbursement for outpatient chemical dependency treatment services shall be as specified in ARM 46.12.624.

(c) Reimbursement for the therapeutic portion of intensive or moderate level therapeutic youth group home treatment

services shall be as specified in a fee schedule set and maintained by the department as follows:

(i) An initial per diem fee shall be set by the department for each level of service in an amount equal to a percentage of the department of family services (DFS) per diem rate effective January 1, 1993 for the same level of service, where such percentage is the same percentage of total DFS payments for therapeutic youth group home treatment services which is reasonably allocable to the therapeutic component of the services, which excludes room, board, maintenance and other non-therapeutic services.

(ii) Initial fees set under subparagraph (1) shall be increased or decreased only as authorized or directed by the legislature.

(4) Medicaid reimbursement for services not specifically listed as covered under the kids count/EPSDT program will be reimbursed at a rate negotiated in advance of providing the service. Such services provided before negotiating and agreeing upon a rate with the department will be reimbursed at a rate determined by the department.

(5) Information regarding current reimbursement or copies of fee schedules for kids count/EPSDT services may be obtained from the Department of Social and Rehabilitation Services, Medicaid Services Division, 111 Sanders, P.O. Box 4210, Helena, Montana 59604-4210.

(6) Providers of kids count/EPSDT services must comply with all applicable licensing and certification requirements and must comply with all enrollment, participation, billing and other requirements generally applicable to Medicaid providers under the department's rules.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111 and 53-6-113 MCA

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

46.12.514 KIDS COUNT/EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), DEFINITIONS PURPOSE AND SCOPE (1) ~~The "Kids count" or EPSDT program is a Medicaid program which provides coverage of the provides for preventive health screening and diagnostic services and medically necessary treatment services specified in these rules to eligible Medicaid recipients under age 21 to ascertain physical and mental defects and to provide treatment services to correct or improve defects and chronic conditions identified during screening.~~

~~(2) Limitations on the amount or duration of Medicaid services which apply generally to particular services, as specified in department rules applicable to such services, do not apply to such services when provided to Medicaid recipients under age 21, except as specifically provided in these rules.~~

~~(a) All requirements and limitations specified in the department's rules regarding the home and community services~~

waiver, ARM 46.12.1401, et seq., shall apply to medicaid recipients under age 21.

(b) The exception specified in subsection (2) shall not be construed to apply to requirements or restrictions generally applicable to medicaid services, recipients or providers, including but not limited to medical necessity requirements, experimental or cosmetic service exclusions, prior authorization, prescreening, certification or utilization review requirements, provider participation, billing or reimbursement requirements, recipient eligibility or copayment requirements, or other similar requirements or restrictions.

(2) Screening services are standardized tests performed under medical direction in a mass examination of a designated population or an individual examination.

(3) The periodicity screening schedule has been developed which meets reasonable standards of medical and dental practice. The screening services, vision services, hearing services and dental services schedules are contained in the kids count provider manual.

(4) Interperiodic screening vision, hearing and dental services may occur when considered medically necessary to determine the existence of suspected physical or mental illnesses or conditions.

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

IMP: Sec. 53-6-101 MCA

46.12.515 KIDS COUNT/EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), ALLOWABLE REQUIRED SCREENING AND PREVENTIVE SERVICES (1) The following are allowable services under this program subject to the requirements contained in subsection (2), (3) and (4). The kids count/EPSDT program provides coverage of screening and preventive services provided in accordance with these rules.

(a) Screening and diagnostic services may be performed by or under the supervision of appropriately licensed practitioners in a mass examination of a designated population or in an individual examination.

(b) The screening periodicity schedules contained in the department's kids count provider manual provide suggested guidelines for determining the minimum number and timing of comprehensive health, vision, hearing and dental screenings for children under age 21. More frequent screening services are covered when considered medically necessary to determine the existence of suspected physical or mental illnesses or conditions. A copy of the department's kids count provider manual is available from the Department of Social and Rehabilitation Services, Medicaid Services Division, P.O. Box 4210, Helena, MT 59604-4210.

(c) All of the components listed in subsection (2) are necessary for a complete kids count screen. Individual components must be performed by appropriate practitioners in accordance with state professional licensing laws.

(a2) Screening services ~~to~~ must include all of the following:

(ia) ~~a~~ A comprehensive age-appropriate health and developmental history, including assessment of both physical and mental health development, as specified in the kids count provider manual. A copy of the department's kids count provider manual is available from the Department of Social and Rehabilitation Services, Medicaid Services Division, P.O. Box 4210, Helena, MT 59604-4210.

(A) ~~The Denver prescreening developmental questionnaire (PDQ) or the Denver developmental screening test (DDST) must be administered to a child under age six.~~

(B) ~~The DDST must be administered to a child whose score on the PDQ is below the age norms for that test.~~

(C) ~~The use of alternative developmental screening tests in place of the PDQ or DDST must be approved by the department.~~

(Di) ~~A child 6 to 20 years must be screened for age-appropriate fine and gross motor development, speech and language development, and social development and cognitive development.~~

(iib) ~~a~~ A comprehensive unclothed physical exam, including a check of the general appearance of the child and a standardized physical exam. This exam should include an assessment of all body systems, and the child's growth and nutritional status. Assessment of pulse, respiration, blood pressure, head, eyes, ears, nose, mouth, pharynx, neck, chest, heart, lungs, abdomen, spine, genitals, extremities, joints, muscle tone, skin and neurological conditions.

(iic) ~~a~~ Appropriate immunizations according to age, health history and in accordance with state immunization laws.

(Ai) ~~Immunization status must be reviewed and immunizations must be offered in accordance with the recommended schedule for active immunization of normal infants and children, September 1987 American academy of pediatrics for active immunization for normal children from the Montana department of health and environmental sciences.~~

(ivd) ~~Laboratory tests to include lead blood level assessment appropriate to age and risk, and as specified in the kids count provider manual.~~

(ve) ~~Health education to appropriate to age and risks, including anticipatory guidance.~~

(bf) ~~Vision services, including age appropriate vision tests as specified in the kids count provider manual. A copy of the department's kids count provider manual is available from the Department of Social and Rehabilitation Services, Medicaid Services Division, P.O. Box 4210, Helena, MT 59604-4210.~~

(i) ~~for children under the age of three years.~~

(A) ~~a family history of maternal and neonatal infection and ocular abnormalities.~~

(B) ~~pupillary reflexes.~~

(C) ~~the presence of nystagmus.~~

(D) ~~muscle balance which includes an examination for esotropia, exotropia, phoria, and extraocular movements.~~

(E) ~~physical examination of the lids, conjunctiva, cornea, iris and pupils; and~~

(F) ~~The provider must inquire of the child's parent or the child must be asked if they have to identify concerns about the child's vision.~~

(ii) ~~children age three and older must have the screening defined in subsection (i)(a)(i) as well as a visual acuity test using the screening test for young children and retardates (STYCAR) or the Snellen alphabet chart; and~~

(iii) ~~any child over the age of three may be referred directly to an optometrist or ophthalmologist through a preschool or school vision screening program or self referral.~~

(eg) Dental services, to include:

(i) ~~at a minimum, an annual dental examination by a licensed dentist is required for children from eruption of the first tooth up to age 3 to 21 years;~~

(ii) ~~an oral examination of a child's mouth must be performed to detect deterioration of hard tissue, and inflammation or swelling of soft tissue.~~

(iii) ~~Counseling about the systemic use of fluoride must be given to a child when fluoride is not available through the community water or school programs; and,~~

(iii) ~~dental screening for children over the age of three may be initiated to a dentist through general public health/school screens or self-referral.~~

(d) Hearing services, to include:

(i) ~~for children under the age of three years:~~

(A) ~~assessment for a family history of hearing loss, disability, delay of language acquisition or history of such delay;~~

(B) ~~assessment of ability to determine the direction of a sound; and~~

(C) ~~assessment for a history of repeated otitis media.~~

(ii) ~~an exam of children between 3 and 20 21 years must includes the services outlined in subsection (i)(a)(i) plus an age appropriate history and exam and a pure tone audiometric test or referral for the test if the examination described above indicates the test is needed; and~~

(iii) ~~children identified as having a possible hearing problem through preschool/school hearing screening programs should be referred to a physician for additional evaluation of the identified problem.~~

(e) ~~Nutritional services when the child's physical growth performance indicates a problem. The nutritional services must be performed by a nutritionist or dietitian licensed or registered in accordance with the laws of the state in which he or she is practicing.~~

(i) ~~Nutrition services may include screening, assessment, counseling, consultation, education and related services.~~

(A) ~~Nutrition screening means the collection of subjective and objective nutritional and dietary data about the individual.~~

(B) ~~Nutrition assessment means to use information obtained in a nutrition screening to evaluate the individual's nutritional problems, and to design a plan to prevent, improve or~~

~~resolve the identified nutritional problems, based upon the health objectives, resources and capacity of the individual.~~

~~(C) Nutrition counseling means counseling directly with and to an individual, or to a responsible caregiver, to explain the nutrition assessment and to implement a plan of nutrition care.~~

~~(D) Nutrition consultation means consultation with or for health professionals, to research or resolve special nutrition problems or to refer an individual to other services, pertaining to the nutritional needs of an individual.~~

~~(E) Nutrition education means routine education for normal nutritional needs.~~

~~(ii) Nutrition services must be performed according to accepted standards of nutrition-dietetic practice.~~

~~(f) Chiropractic services when medically necessary. The chiropractic services must be performed by a licensed chiropractor in accordance with the laws of the state in which he or she is practicing.~~

~~(i) Chiropractic services are limited to treatment by means of manual manipulation of the spine, and x-rays to support the diagnosis of subluxation of the spine. X-rays must have been taken within 12 months preceding the date of service.~~

~~(g) Outpatient chemical dependency treatment when determined appropriate by a certified chemical dependency counselor. Services included are:~~

~~(i) intensive outpatient treatment. Treatment must be provided by a chemical dependency treatment program approved by the department of corrections and human services (DCHS) to provide intensive outpatient services according to applicable laws, rules and regulations;~~

~~(A) The plan of care must be in accordance with DCCHS approval criteria for intensive outpatient treatment, and must include aftercare.~~

~~(B) Aftercare means counseling services provided to a client who has completed inpatient or intensive outpatient care to enhance the chances of recovery. This service is provided at least once weekly (generally in a group setting) for a period of at least 12 weeks.~~

~~(ii) basic outpatient treatment. Treatment must be provided by a chemical dependency treatment program approved by DCCHS to provide basic outpatient services according to applicable laws, rules and regulations;~~

~~(A) The plan of care must be in accordance with DCCHS approval criteria for basic outpatient treatment.~~

~~(iii) aftercare treatment provided by DCCHS-approved providers to adjudicated youth who have received inpatient treatment funded by the department of family services.~~

~~(iv) When an eligible child receives outpatient chemical dependency treatment, and the certified chemical dependency counselor consults with the parent as part of the child's treatment, the time spent with the parent shall be billed to Medicaid under the child's name. The provider shall indicate on the claim that the child is the patient and state the child's~~

diagnosis. The provider shall also indicate consultation was with the parent.

~~(h) Respiratory care services when medically necessary and ordered by a physician. The respiratory care services must be performed by a licensed respiratory care practitioner in accordance with the laws of the state in which he or she is practicing.~~

~~(i) Necessary health care services to include:~~

~~(1) diagnostic and treatment services necessary to correct or improve physical or mental illnesses, defects or conditions;~~

~~(ii) pharmaceutical drugs approved for use under investigational drug status by the federal drug administration and provided under specific controlled medically supervised programs under the supervision of a physician licensed to practice medicine.~~

~~(j) Any vision, hearing, dental, nutrition or health care service which is medically necessary as defined in ARM 46.12.102 (2) to correct or improve a physical or mental illness, defect or condition which was identified or discovered to have increased in severity by EPSDT program if it is a service covered under the federal Medicaid program, regardless of whether such services are covered under the Montana Medicaid plan.~~

~~(k) Any limitations which normally apply as to amount or duration of Medicaid covered health care services may be waived if:~~

~~(a) the service is necessary to correct or improve a physical illness or mental illness, defect or condition which was identified or was discovered to have increased in severity by the screening service; and~~

~~(b) the service is medically necessary as defined in ARM 46.12.102(2).~~

~~(3) Services identified under the home and community based waiver, ARM 46.12.1401 through 46.12.1402, are not reimbursable under this rule.~~

~~(4) Only vision, hearing, dental, nutrition and health care services which are medically necessary as defined in ARM 46.12.102(2) to correct or improve a physical or mental illness, defect or condition which was identified or discovered to have increased in severity by EPSDT screening services shall be reimbursed under the EPSDT program.~~

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

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

46.12.516 KIDS COUNT/EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), ADDITIONAL SERVICES REIMBURSEMENT ~~(1) The department will pay the lowest of the following for early periodic screening diagnosis and treatment services:~~

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

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

~~(c) reimbursement for screening and treatment services under kids count will utilize the most current medicaid reimbursement schedules established for each type of service.~~

~~(d) medicaid reimbursement for nutrition services, respiratory care services, chemical dependency treatment, and chiropractic services will be the lowest of:~~

~~(i) medicaid fee;~~

~~(ii) billed charges; or~~

~~(iii) the medicare fee.~~

~~(e) medicaid reimbursement for services not regularly covered under the medicaid program will pay at a negotiated rate for the service.~~

(1) In addition to the services specified in ARM 46.12.515 and services generally available to medicaid recipients, the following services are covered by the medicaid program in accordance with these rules for medicaid eligible children under age 21.

(a) Nutrition services are covered when the child's physical growth performance indicates a nutritional deficiency. The nutrition services must be performed by a nutritionist or dietitian licensed or registered in accordance with the laws of the state in which he or she is practicing.

(i) Nutrition services may include screening, assessment, counseling, consultation, education and related services.

(A) Nutrition screening means the collection of subjective and objective nutritional and dietary data about the individual.

(B) Nutrition assessment means use of the information obtained in a nutrition screening to evaluate the individual's nutritional problems, and to design a plan to prevent, improve or resolve the identified nutritional problems, based upon the health objectives, resources and capacity of the individual.

(C) Nutrition counseling means counseling directly with an individual, or with a responsible caregiver, to explain the nutrition assessment and to implement a plan of nutrition care.

(D) Nutrition consultation means consultation with or for health professionals, to research or resolve special nutrition problems or to refer an individual to other services, pertaining to the nutritional needs of an individual.

(E) Nutrition education means routine education for normal nutritional needs.

(ii) Nutrition services must be performed according to accepted standards of nutrition-dietetic practice.

(b) Chiropractic services are covered when medically necessary. The chiropractic services must be performed by a licensed chiropractor in accordance with the laws of the state in which he or she is practicing.

(i) Chiropractic services are limited to treatment by means of manual manipulation of the spine, and x-rays to support the diagnosis of subluxation of the spine. X-rays must have been taken within 12 months preceding the date of service.

(c) Outpatient chemical dependency treatment is covered when determined appropriate by a certified chemical dependency counselor. Services covered are:

(i) intensive outpatient treatment provided by a chemical dependency treatment program approved by the department of corrections and human services (DCHS) to provide intensive outpatient services according to applicable laws, rules and regulations:

(A) A plan of care for intensive outpatient treatment must be prepared in accordance with DCHS approval criteria for intensive outpatient treatment, and must include aftercare.

(B) Aftercare means counseling services provided to a client who has completed inpatient or intensive outpatient care to enhance the chances of recovery. This service is provided at least once weekly (generally in a group setting) for a period of at least 12 weeks.

(ii) basic outpatient treatment provided by a chemical dependency treatment program approved by DCHS to provide basic outpatient services according to applicable laws, rules and regulations:

(A) A plan of care for basic outpatient treatment must be prepared in accordance with DCHS approval criteria for basic outpatient treatment.

(iii) aftercare treatment provided by DCHS-approved providers to adjudicated youth who have received inpatient treatment funded by the department of family services; and

(iv) when an eligible child receives outpatient chemical dependency treatment, and the certified chemical dependency counselor consults with the parent as part of the child's treatment, the time spent with the parent shall be billed to Medicaid under the child's name. The provider shall indicate on the claim that the child is the patient and state the child's diagnosis. The provider shall also indicate consultation was with the parent.

(d) Respiratory care services are covered when medically necessary and ordered by a physician. The respiratory care services must be performed by a licensed respiratory care practitioner in accordance with the laws of the state where the services are provided.

(e) The therapeutic portion of therapeutic youth group home treatment is covered when the treatment is considered appropriate by a physician, psychiatrist, clinical psychologist, masters level social worker (MSW) or a licensed professional counselor (LPC).

(i) The therapeutic portion of intensive level therapeutic youth group home treatment, as defined in department of family services (DFS) rules, is covered when provided by a therapeutic youth group home, licensed by DFS to provide intensive level therapeutic youth group home services, to a child who meets DFS medical necessity criteria for placement at the intensive level of treatment.

(ii) The therapeutic portion of moderate level therapeutic youth group home treatment, as defined in DFS rules, is covered when provided by a therapeutic youth group home.

licensed by DFS to provide moderate level therapeutic youth group home services, to a child who meets DFS medical necessity criteria for placement at the moderate level of treatment.

(iii) Medicaid will not reimburse for room, board, maintenance or any other non-therapeutic component of youth group home treatment.

(f) Kids count/EPDST covers pharmaceutical drugs approved for use under investigational drug status by the federal drug administration and provided under specific controlled programs under the supervision of a physician licensed to practice medicine.

(g) Kids count/EPDST covers any vision, hearing, dental, nutrition or other health care service which is medically necessary as defined in department rules if it is a service which states are permitted by federal law, regulation and policy to cover under the medicaid program, regardless of whether such services are otherwise covered under the Montana medicaid state plan.

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

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

4. The proposed amendments are necessary to implement medicaid coverage of the therapeutic portion of youth group home treatment for medicaid eligible children under age 21. This coverage is being implemented under the "Kids Count"/Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT) program.

Under the federal EPSDT statutes, the state is required to provide to children under age 21 all medically necessary services which federal medicaid laws allow the states to cover, even if such services are not otherwise covered under the state's medicaid state plan. Therapeutic group care will be a state plan service under 42 CFR 440.130 "rehabilitative services", with the goal of restoring the child to his or her best possible functional level.

The proposed amendments are necessary to specify the requirements for coverage of therapeutic youth group home services and the reimbursement allowed for such services. Medicaid will reimburse for the therapeutic treatment portion of therapeutic youth group home services. Currently, such services are reimbursed by the Department of Family Services (DFS) with general fund dollars. Under the proposed rule, federal medicaid funds will be available to fund a share of the payments for the therapeutic component of the services. DFS will continue to provide the state general fund portion of the medicaid reimbursement. Room and board will not be reimbursed by medicaid, but will continue to be directly reimbursed by DFS.

The amount of medicaid reimbursement for the therapeutic services will be specified in a fee schedule to be established by the department in accordance with a methodology specified in

proposed [Rule I]. Fees will be based upon a reasonable allocation between therapeutic and other components of the per diem rate reimbursed by DFS beginning January 1, 1993.

Only those group homes licensed by DFS as intensive or moderate level therapeutic youth group homes may receive medicaid reimbursement. Medicaid reimbursement will be available for medicaid eligible children under age 21 who meet DFS medical necessity criteria for placement at either intensive or moderate level treatment and who are treated in a youth group home licensed by DFS to provide the level of treatment required. The service will not be limited to children in the custody of DFS.

The proposed amendments are also necessary to specify the services covered under the Kids Count/EPSDT program. The current rules are poorly organized and worded, making the rules difficult to understand and apply. Some important issues which have arisen under the EPSDT provisions of the Omnibus Budget Reconciliation Act (OBRA) 1989 are not adequately addressed under the current rules. Federal policy guidance provided since enactment of OBRA 1989 and the current rules has resolved some of these issues. Accordingly, the proposed amendments will reorganize and rewrite portions of the rule to bring the rules into compliance with current federal policy and to improve organization and readability.

Current ARM 56.12.514 purports to specify definitions applicable to the EPSDT rules. In fact, the rule contains a general statement of the rule's purpose and scope, and specifies certain components and requirements of screening services. The proposed amendments are necessary to revise ARM 46.12.514 to state the purpose and scope of the EPSDT program, to delete screening rules (which are being more logically located with other screening rules in proposed ARM 46.12.515) and to incorporate rules related to the scope of services which are currently located in ARM 46.12.515.

The proposed amendments to ARM 46.12.514 are also necessary to revise the statement of scope to comport with clarifications in federal policy received since the current rule was enacted. The current rule limits EPSDT services to those services necessary to treat defects or conditions discovered during an EPSDT screening. The proposed amendments are necessary to specify, in accordance with current federal law, that coverage is provided for all medically necessary covered services, regardless of whether the condition or defect is discovered during an EPSDT screen. The proposed amendment is also necessary to specify that only those services specified in the EPSDT rules are covered under the EPSDT program.

Additional amendments to ARM 46.12.514 are necessary to specify that certain limits on the amount or duration of medicaid services do not apply to children under age 21. For example, the department's rules regarding psychological services,

licensed social worker services, and licensed professional counselor services limit such services to 22 hourly visits or the equivalent per fiscal year. Under federal EPSDT law, such limitations cannot be applied to children under age 21. The proposed amendments are necessary to specify that such limits or restrictions do not apply to children under age 21, but that other specified types of restrictions and requirements remain applicable.

The proposed amendments to ARM 46.12.515 are necessary to reorganize the rules to specify and distinguish the services which must be provided as part of EPSDT screening services and the additional services which medicaid covers for EPSDT children. The proposed amendments divide current ARM 46.12.515 (which lists both required and permissible services) into two rule sections, which will be designated ARM 46.12.515 and 46.12.516. Rules regarding screenings, which are contained in current ARM 46.12.514, are incorporated into proposed ARM 46.12.515. The proposed amendments are also necessary to include all screening requirements in one rule section.

The proposed amendments to ARM 46.12.515 will also delete references to certain specific screening components which are currently specified in the department's Kids Count provider manual. These components are updated frequently to comport with current medical practice and inclusion in the manual rather than the rule allows for more timely updating and provider notification.

The proposed amendments to ARM 46.12.515 are also necessary to make grammatical corrections. Language deleted from current ARM 46.12.515 (1)(e) through (1)(j) is being re-enacted in proposed ARM 46.12.516 in substantially similar form.

The proposed amendments to ARM 46.12.516 are necessary to create a separate rule section specifying services covered under the EPSDT program in addition to the screening services listed in ARM 46.12.515. The current reimbursement rule language has been deleted and replaced by new [Rule I].

The proposed language of ARM 46.12.516 is substantially the same language of current ARM 46.12.515(1)(e) through (1)(j), plus the language implementing coverage of therapeutic youth group home services described above. Proposed ARM 46.12.516(1)(g) is based upon current ARM 46.12.515(4). The proposed amendment to the language of current ARM 46.12.515(4) is necessary to specify that additional services permitted under federal law are covered for EPSDT children regardless of whether the treated defect or condition was discovered in an EPSDT screen.

New [Rule I] is necessary to re-enact in more condensed form the substantial equivalent of current ARM 46.12.516 and to specify the methodologies used by the department to set reimbursement fees. In addition, the proposed language of [Rule I] is

necessary to specify that services not specifically listed as covered under the EPSDT program, i.e., those services covered under proposed ARM 46.12.516(1)(g), will be reimbursed under a rate negotiated in advance of provision of the service.

5. The proposed amendments shall be effective January 1, 1993.

6. 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 November 27, 1992.

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


Rule Reviewer


Director, Social and Rehabilitation Services

Certified to the Secretary of State October 19, 1992.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amend-	)	NOTICE OF ADOPTION OF THE
ment of ARM 2.21.908 relat-	)	AMENDMENT OF ARM 2.21.908
ing to disability and ma-	)	RELATING TO DISABILITY AND
ternity leave, the amendment	)	MATERNITY LEAVE, THE AMEND-
of ARM 2.21.122 and 2.21.132	)	MENT OF ARM 2.21.122 AND
relating to sick leave, and	)	2.21.132 RELATING TO SICK
the adoption of rules relat-	)	LEAVE, AND ON THE ADOPTION
ing to parental leave for	)	OF RULES RELATING TO PAREN-
state employees	)	TAL LEAVE

TO: All Interested Persons.

1. On April 30, 1992, the department of administration published notice of the proposed amendment of ARM 2.21.908 relating to disability and maternity leave, the amendment of ARM 2.21.122 and 2.21.132 relating to sick leave, and the proposed adoption of rules relating to parental leave for state employees at pages 827 through 830 of the Montana Administrative Register, issue number 8.

2. ARM 2.21.132 amended as proposed. The following have been amended with changes:

2.21.122 DEFINITIONS (1) - (6) Remain the same.

(7) "Sick leave" means, as provided in 2-18-601, MCA, "a leave of absence with pay for a sickness suffered by an employee or his immediate family or for a permanent state employee who is eligible for parental leave under the provisions of 2-18-601~~6~~ MCA."

(8) - (9) Remain the same.

2.21.908 MATERNITY LEAVE (1) - (6) Remain the same.

(7) A permanent employee who is adopting a child or who is a birth father may request parental leave immediately following the child's birth or placement for adoption as provided in the parental leave policy, ARM 2.21.1001 et seq. An employee may request the use of additional leave consistent with rules and agency department policy applicable to the type of leave requested.

3. New rules I (2.21.1001), III (2.21.1003), V (2.21.1011) have been adopted as proposed. The following have been adopted with changes:

2.21.1002 POLICY AND OBJECTIVES (1) - (3) Same as proposed rule.

(4) Each request will be judged by the agency department in accordance with this policy.

(5) Same as proposed rule.

2.21.1004 PARENTAL LEAVE REQUESTS (1) An agency depart-
ment must permit a permanent employee, as defined in 2-18-601,

MCA, to take a reasonable leave of absence not to exceed 15 working days for parental leave immediately following the birth of a child or placement of a child with the employee for adoption, as provided in 2-18-606, MCA.

(2) Same as proposed rule.

(3) Requests to take and approval of leave must comply with agency department procedures governing the use of leave. Requests and approval should be completed in advance of the anticipated leave date whenever possible. An eligible employee may take up to 15 working days of parental leave, unless a department determines that the length of leave requested is unreasonable. The employee will be given a response in writing explaining why the request is unreasonable and which describes the length of leave that is reasonable and would be approved.

(4) An agency department may require documentation for the use of parental leave. For example, a birth father may be asked to provide a certificate issued at birth or another document identifying him as the birth father. Documentation from an adoptive parent may include, but is not limited to, an affidavit of intent to adopt or other placement agreement indicating a child's placement for adoption.

(5) Same as proposed rule.

4. A public hearing was conducted on May 21, 1992, to receive testimony on the amendments and the proposed rules. Testimony and written comments are summarized below.

COMMENT: A comment suggests revising language in ARM 2.21.1004 (Rule IV), to allow a department to approve parental leave in combination with work time. This would effectively extend use of parental leave beyond the 15 working day limit set in the law. The comment also suggests allowing a department to approve the use of parental leave for eligible employees at any time mutually agreed upon by management and employee.

RESPONSE: The parental leave law, 2-18-606, MCA, requires departments to allow eligible employees to take leave immediately following the birth or placement of a child, for a period not to exceed 15 working days. . . " The law establishes a specific time period -- 15 days immediately following birth or adoption -- in which this benefit is available. Nothing in the rules prohibits a department from approving parental leave in combination with work time, provided that any parental leave is limited to the 15 working days immediately following the birth or placement of a child. There is nothing in the rules to preclude a request for additional leave of absence under the appropriate leave rules after the initial 15-working day period has elapsed.

COMMENT: A comment suggested that the rules provide additional guidance regarding the term "reasonable" as it is used in the parental leave rules.

RESPONSE: The department agrees that additional guidance will be helpful. ARM 2.21.1004(3) has been revised to show that if a department denies a request to use parental leave, it will

approve an alternate amount of leave as well as a written explanation about why the initial request was denied.



Dai Smith, Chief Legal Counsel
Rule Reviewer



Bob Marks, Director
Department of Administration

Certified to the Secretary of State October 19, 1992.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of a rule pertaining to fees) 8.28.1505 FEES

TO: All Interested Persons:

1. On August 27, 1992, the Board of Medical Examiners published a notice of proposed amendment of the above-stated rule at page 1784, 1992 Montana Administrative Register, issue number 16.
2. The Board has amended the rule exactly as proposed.
3. No comments or testimony were received.

BOARD OF MEDICAL EXAMINERS
PETER BURLEIGH, M.D.
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, October 19, 1992.

BEFORE THE BOARD OF OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT OF
of rules pertaining to	)	8.39.502 LICENSURE--
licensure qualifications and	)	OUTFITTER QUALIFICATIONS,
renewals and the adoption of a	)	8.59.508 LICENSURE--
rule pertaining to transfer of	)	RENEWAL AND THE ADOPTION
license	)	OF A NEW RULE PERTAINING
	)	TO TRANSFER OF LICENSE

TO: All Interested Persons:

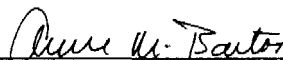
1. On June 25, 1992, the Board of Outfitters published a notice of proposed amendment and adoption of the above-stated rules at page 1292, 1992 Montana Administrative Register, issue number 12.

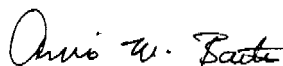
2. The Board has amended ARM 8.39.502 and 8.39.508 and adopted new rule I (8.39.511) exactly as proposed. The Board did not adopt the proposed amendment of 8.39.505 and that rule will remain as it currently exists in the Administrative Rules of Montana.

3. No comments or testimony were received.

BOARD OF OUTFITTERS
IRVING L. "MAX" CHASE, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 19, 1992.

BEFORE THE BOARD OF MILK CONTROL
OF THE STATE OF MONTANA

In the matter of proposed) NOTICE OF AMENDMENT
amendments of Rule 8.86.301)
as it relates to regulating)
the calculation of the price)
of class II and III milk paid)
to milk producers each month) DOCKET #14-92


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

1. On August 27, 1992, the Board of Milk Control published notice of the proposed amendments of ARM 8.86.301 (7)(a) and (8)(a) at page 1788 of the 1992 Montana Administrative Register, issue number 16, as MAR notice No. 8-86-46.

2. The board has adopted the amendments as proposed.
AUTH: 81-23-302, MCA
IMP: 81-23-302, MCA
3. No comments or testimony were received.

MONTANA BOARD OF MILK CONTROL
MILTON J. OLSEN, Chairman

By: 
Andy J. Poole, Deputy Director
Department of Commerce


Annie M. Bartos, Rule Reviewer
Commerce Chief Legal Counsel 2-4-110

Certified to the Secretary of State October 19, 1992.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT OF RULES
of Rules 11.5.607 and 11.5.608)	11.5.607 AND 11.5.608
pertaining to disclosure of)	PERTAINING TO DISCLOSURE OF
case records containing)	CASE RECORDS CONTAINING
reports of child abuse or)	REPORTS OF CHILD ABUSE OR
neglect.)	NEGLECT.

TO: All Interested Persons

1. On August 27, 1992, the Department of Family Services published notice of the proposed amendment of ARM 11.5.607 and 11.5.608 pertaining to disclosure of case records containing reports of child abuse or neglect, at page 1829, of the 1992 Montana Administrative Register, issue no. 16.

2. The department has amended the rules as proposed.

3. The department received one comment. An attorney for the administrative code committee commented that Section 41-3-205, MCA, grants the department discretion in making the decision on whether records should be released to an individual qualified to receive records under the statute. The existing rules were inconsistent with the statute. The commentator pointed out that in general a rule must not be in conflict with its implementing authority. The commentator also stated that the rationale for the amendment should state that the amendment is reasonably necessary to elimination of the contradiction between the rules and the statute. The department agrees and hereby adopts the reasoning of the comment as part of the rationale for this rule amendment.

DEPARTMENT OF FAMILY SERVICES



Tom Olsen, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, October 19, 1992.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF RULE
of Rule 11.5.1002 pertaining) 11.5.1002 PERTAINING TO DAY
to day care rates) CARE PAYMENTS

1. On September 10, 1992, the Department of Family Services published notice of the proposed amendment of Rule 11.5.1002, pertaining to day care rates for benefits paid under day care programs administered by the department, at page 1908 of the 1992 Montana Administrative Register, issue number 17.

2. The department has amended the rule as proposed.

3. No comments were received.

DEPARTMENT OF FAMILY SERVICES



Tom Olsen, Director



John Melcher, Rule Reviewer

Certified to the Secretary of State, October 19, 1992.

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

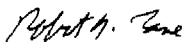
In the matter of the)
adoption of amendment to)
A.R.M. 12.6.904 regarding) NOTICE OF AMENDMENT
the closure of Flint Creek)
below the dam)

To: All Interested Persons

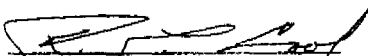
1. On August 27, 1992, the Fish, Wildlife and Parks Commission published notice at page 1844 of the 1992 Montana Administrative Register, issue number 16, of the proposed amendment to A.R.M. 12.6.904, imposing use restrictions on Flint Creek 150 feet below the dam.

2. The Fish, Wildlife and Parks Commission has amended A.R.M. 12.6.904 as proposed.

3. No comments or testimony were received.



Robert N. Lane
Rule Reviewer



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

Certified to the Secretary of State October 19, 1992.

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

In the matter of the)	
amendment, repeal and adoption)	
of new rules relating to	)	NOTICE OF ADOPTION,
falconry.	)	AMENDMENT, AND REPEAL
)	
)	
)	

To: All Interested Persons

1. On August 27, 1992, the Fish, Wildlife and Parks Commission published notice of new Rules I through XII, amendment of rules 12.6.1101, 12.6.1103, 12.6.1106, 12.6.1109, 12.6.1112, 12.6.1116, 12.6.1118, and the repeal of rules 12.6.1102, 12.6.1104, 12.6.1105, 12.6.1107, 12.6.1108, 12.6.1110, 12.6.1111, 12.6.1113, 12.6.1114, 12.6.1115, and 12.6.1117 relating to falconry, at page 1833 of the 1992 Montana Administrative Register, issue number 16.

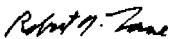
2. The commission has adopted Rules I through XII (12.6.1119 through 12.6.1130) as proposed.

3. The commission has amended rules 12.6.1101, 12.6.1103, 12.6.1106, 12.6.1109, 12.6.1112, 12.6.1116, and 12.6.1118 as proposed.

4. The commission has repealed rules 12.6.1102, 12.6.1104, 12.6.1105, 12.6.1107, 12.6.1108, 12.6.1110, 12.6.1111, 12.6.1113, 12.6.1114, 12.6.1115, and 12.6.1117 as proposed.

5. No comments or testimony were received.

FISH, WILDLIFE AND PARKS
COMMISSION


Robert N. Lane
Rule Reviewer


K.L. Cool, Secretary

Certified to the Secretary of State on October 19,
1992.

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

In the matter of the)
adoption of new rules)
pertaining to the) NOTICE OF ADOPTION
development of state parks)
and fishing access sites.)

To: All Interested Persons

1. On August 27, 1992, the Fish, Wildlife and Parks Commission published notice of proposed adoption of Rule I (12.8.601), Rule II (12.8.602), Rule III (12.8.603), Rule IV (12.8.604), Rule V (12.8.605), and Rule VI (12.8.606), at page 1841, issue number 16 of the 1992 Montana Administrative Register.

2. Public hearings were held on September 18, 1992, in Kalispell; September 21, 1992, in Helena; and September 22, 1992, in Billings. Comments following each rule were received in response to the proposed rules.

3. The commission has adopted new Rule I (12.8.601), Rule II (12.8.602), Rule III (12.8.603), Rule IV (12.8.604), Rule V (12.8.605), and Rule VI (12.8.606) with the following changes.

RULE I (12.8.601) PURPOSE (1) Section 23-1-110, MCA, requires the commission to adopt rules which will establish a policy on specific procedures for considering improvements or development of state ~~to~~ parks and fishing access sites that significantly change park or fishing access site features or use patterns. These rules must consider the wishes of users and the public. the capacity of the site for development, environmental impacts, long-range maintenance, protection of natural features and impacts on tourism.

AUTH: Sec. 23-1-110, MCA IMP: Sec. 23-1-110, MCA

Comment: "After considering improvements" add "or developments."

Response: Incorporated.

Comment: Include "that significantly change park or fishing access site features or use patterns" after "fishing access sites", and add "and the public" after "wishes of the users".

Response: Incorporated.

Comment: Add the words "and potential significant changes in use patterns" at the end, right after "and impacts on tourism".

Response: As a result of the previous comment, the revised proposed rule includes similar language, but not in the sentence requested by this comment. The statement of intent for the act lists six areas that the policy must address, and these six areas are covered in the sentence in question.

RULE II (12.8.602) DEVELOPMENT OR IMPROVEMENT (1) In implementing section 23-1-110, MCA, the commission considers the following ~~development or improvement or development~~ projects to be those that significantly change park or fishing access site features or use patterns:

- (a) new roadways or trails built over undisturbed land;
- (b) new buildings constructed ~~on undisturbed land~~ (with the exception of vault latrines and other buildings under 100 square feet);
- (c) any excavation of 20 cubic yards or greater;
- (d) new parking lots built over undisturbed land or the expansion of an existing lot that increases the parking capacity by 25% or more;
- (e) any new shoreline alteration that exceeds a double wide boat ramp or handicapped fishing station;
- (f) any new construction into lakes, reservoirs or streams;
- (g) any new construction in an area with National Registry quality cultural artifacts (as determined by the state historical preservation office); and,
- (h) any new above ground utility lines.

(i) any increase or decrease in campsites of 25% or more of the existing number of campsites.

(2) All ~~other~~ proposed improvement or development projects will be evaluated on a case-by-case basis to determine if they would significantly change park or fishing access site features or use patterns, including the cumulative effects of a series of individual projects.

AUTH: Sec. 23-1-110, MCA IMP: Sec. 23-1-110, MCA

Comment: Change "development or improvement projects" to "improvement projects or development" in subsection 1.

Response: Language from the act connects "improvement and development" without inserting "projects" after "improvements". The word "project" is used in the act to refer to both improvements and developments. To be consistent the phrase is changed to "improvement and development projects".

Comment: Change "development" to "developments" in subsection 1.

Response: The word "projects" is plural and accommodates this comment.

Comment: Delete "undisturbed land" in subsection 1 (b).

Response: Deleted.

Comment: Add "acquisition or divestiture" under subsection 1.

Response: The act does not mention acquisition and divestiture, nor does it imply that these activities are covered by it.

Comment: Add "imposition or any increase of access fees" under subsection 1.

Response: The act does not address management functions as part of improvements and developments. Fees are not considered improvements nor developments, and are authorized under Sec. 23-1-105, MCA, and are required to follow a separate review process with public involvement.

Comment: Add "campsite expansion beyond a 25% increase above the existing number of campsites" to subsection 1.

Response: This was incorporated and expanded to include any increase or decrease in campsites of 25% or more of the existing number of campsites.

Comment: Add "any change which would be expected to change the usage of the area by more than 25%, either by increase or decrease, within one year of the completion of the development or improvement" under subsection 1.

Response: This is covered under a broader sense by subsection 2 of this rule, and will be addressed in the draft report under capacity for development.

Comment: Add "change in management" to subsection 1.

Response: The act does not address management functions as part of improvement and development.

Comment: Add "limiting access through fencing, barriers, or other devices" to subsection 1.

Response: These are too detailed to be included as specific rules, and are addressed under subsection 2.

Comment: Add "limiting access hours" to subsection 1.

Response: The act does not address management functions as part of improvement and development.

Comment: Add "construction of toll booths" to subsection 1.

Response: "Toll booths" are installed on roadways, and cannot be construed as a significant change to a park. Under current law entrance fees cannot be charged for access to fishing access sites, and a "toll booth" would not be appropriate.

Comment: Add the word "All" to the beginning of subsection 2, and change the language to "improvement projects or development".

Response: The word "All" has been incorporated. To be consistent the phrase is changed to "improvement and development projects".

Comment: Consider the cumulative effects of a series of individual projects.

Response: This language has been incorporated in subsection 2.

Comment: Change "developments or improvement projects" to "improvement projects or developments" in subsection 2.

Response: Language from the act connects "improvements or developments" without inserting "project" after "improvement". The word "project" is used in the act to refer to both improvements and developments. To be consistent the phrase is changed to "improvement or development projects".

RULE III (12.8.603) DEPARTMENT ACTION (1) All improvement or development projects determined to be significant must comply with the review and report procedures set out in these rules prior to any final decision on their implementation.

AUTH: Sec. 23-1-110, MCA IMP: Sec. 23-1-110, MCA

Comment: Change "All improvement or development projects" to "All improvement projects or developments".

Response: Language from the act connects "improvements or developments" without inserting "project" after "improvement". The word "project" is used in the act to refer to both improvements and developments.

RULE IV (12.8.604) DRAFT REPORT (1) A draft report shall be produced prior to the public review meeting which addresses the following items:

(a) the "capacity for development" referred to in section 23-1-110(2)b), MCA, which is further defined as the physical capacity of the site to withstand the proposed modifications and shall include the likely impacts on the resource. Specific items to be considered include the site's soil, water, terrain, natural features and all practicable ways to preserve site aesthetics;

(b) the impacts to the physical and human environment;

(c) compliance with the Montana Environmental Policy Act;

(d) projected operation and maintenance costs and funding sources over the useful life of the proposed improvements under the following assumptions or conditions:

(i) the life expectancy used in the analysis of the

proposed improvements will not exceed 25 years; and

(ii) when sites generate income, that information shall be part of the analysis;

~~(iii) future funding for operation and maintenance costs are subject to appropriations each biennium by the legislature;~~

(e) information on the natural, cultural and historic features present on the site;

(f) the impacts, both positive and negative, that the site improvement or development will likely have on tourism where:

(i) tourism is defined as the guidance or management of tourists, who are individuals who make tours for pleasure or education; and,

(ii) site development projects will be sent to the department of commerce with a request for review as to the impacts on the tourism economy;

(g) how the proposed improvement or development project relates to long range department plans;

~~(g) how the commitment of financial resources through site improvements and the added operation and maintenance costs will cumulatively impact the entire system.~~

(h) desires of the public as expressed to the department, including comments received by the department which may be on file or user surveys; and

(i) site specific modifications as they relate to the park or fishing access site system as a whole.

AUTH: Sec. 23-1-110, MCA IMP: Sec. 23-1-110, MCA

Comment: Add "the likely impacts of the development on the resources of the park or fishing access site" to subsection 1(a). Include the site's resources in the definition of capacity for development.

Response: Rephrased and included; "water" added to items to be considered.

Comment: Add "projected funding sources for operation and maintenance of improvements" to subsection 1(d).

Response: Rephrased and incorporated.

Comment: Delete subsection 1(d)(iii) "for obvious reasons".

Response: Deleted. This subsection is not needed and added nothing to the rule.

Comment: Change the words "that the site development will likely have on tourism where" to "that the site development or improvement will likely have on usage and tourism where" in subsection 1(f).

Response: Subsection 1(f) deals directly with tourism issues. Subsection 1(b) deals with usage in general. The word

"improvement" has been incorporated.

Comment: Add "the department will document how the proposed improvement project or development relates to long range department plans" in subsection 1.

Response: Rephrased and incorporated as subsection 1(g).

Comment: Strike the department's language [subsection 1(g)] because it incorrectly interprets both the statute and legislative intent. While fiscal concerns are to be addressed, the "modifications as they relate to the park or fishing access site system as a whole" is not limited in the statute.

Response: Deleted.

Comment: Add "the desires of the public as expressed to the department including but not limited to comments received by the department on the particular park or fishing access site which may be on file, user surveys conducted by the department, and fisherman surveys conducted by the department on the lake, reservoir, or stream" to subsection 1.

Response: Rephrased and incorporated as subsection 1(h).

Comment: Add "proposed site specific modifications as they relate to the park or fishing access site system as a whole, including but not limited to: a) the capacity for the department to continue to maintain the improvements or developments; b) how these developments or improvements fit into the department's long range plans for the system as a whole, as well as its goals for the area; c) the impact on usage patterns, both by Montana residents and out of state residents; and d) why this particular improvement or development should take priority in funding over other potential improvements or developments to other parks" to subsection 1.

Response: The first clause was incorporated as subsection 1(i). However, item "a" is covered under subsection 1(d), item "b" is covered under subsection 1(g), item "c" is covered under subsections 1(b) and (f), and item "d" is covered under subsection 1(g).

Comment: Add "proposed site specific modifications as they relate to the long range plans for parks and fishing access sites including but not limited to: a) commitment of financial resources for purchase, operations, and maintenance costs; b) department goals for the area; c) coordination with other federal or private parks or fishing access sites in the area; and d) the ability of the resource to sustain any increased user pressures and maintain the values desired by the park users and the public" to subsection 1.

Response: This comment is very close to the previous comment in content. With modification the first clause was incorporated as subsection 1(i). Item a) is covered under subsection 1(d); item b) is covered under subsection 1(g); item c) is covered under subsections 1(f), (g), and (i); and item d) is covered under subsections 1(a), (b), (c), and (h).

RULE V (12.8.605) PUBLIC COMMENT (1) ~~The desires of the users and the public pertaining to proposed site development or improvement projects shall be solicited and used in the following manner:~~

(1) The public notification requirement of Sec. 23-1-110, MCA shall be met by:

(a) Notice of public meetings describing the proposed modification and comment period shall be published twice in local newspaper, at least once per week for a minimum of three weeks the newspaper of the state capital, and on the state's electronic bulletin board. In addition, a statewide press release shall be sent to the print and broadcast media.

(b) The public notice shall detail the nature of the development or improvements, and state whether the department intends to hold a public meeting, and the date and place of the public meeting. If the department does not intend to hold a public meeting, an opportunity for a public meeting will be granted if requested by any one within the comment period provided in the notice. If such a request is made, notice of public meeting shall be published as provided in (1)(a).

(c) The public meetings. In the event a public meeting is held, it may take the form of:

- (i) open houses;
- (ii) informal hearings;
- (iii) facilitated interactions; or
- (iv) department presentations.

(d) The public shall be given the opportunity to submit verbal and written comments during the public meeting and to submit written comments for seven thirty days following the meeting last publication of the notice provided in (1)(a).

- (e) Mail-in comments shall be addressed to:
Montana Department of Fish, Wildlife and Parks
Design and Construction Bureau
1420 East Sixth Avenue
Helena, Montana 59620

(f) Comments shall be summarized and included in the final report; and

(g) Concerns shall be addressed in the final report without regard to whether they result in modifications of the final project plan.

AUTH: Sec. 23-1-110, MCA IMP: Sec. 23-1-110, MCA

Comment: Strike subsection 1 introductory clause, and insert "the public notification requirement of Sec. 23-1-110, MCA shall be met by:"

Response: Incorporated.

Comment: The notice of public meeting should also specify the comment period, be done prior to the meetings, and be published in a local paper, the state capital paper, and on the state's electronic bulletin board. In addition, a statewide press release should be sent out.

Response: Internal reviewers pointed out that original language in the HB 495 required a public hearing. This language was struck by the legislators and replaced by "opportunity for a public meeting." Consequently Rule V has been somewhat restructured to reflect this change. In addition, the publication requirement was changed to reflect current department policy for public notice publication. Our current system has been in existence for several years, and is accepted by the public.

Comment: Change the time period for accepting written comments from 7 to 30 days.

Response: Incorporated under subsection 1(d).

RULE VI (12.8.606) FINAL REPORT (1) A final report development or improvement report shall be produced and filed in the respective fishery or parks division and available for public review. A copy of the report shall be sent to members of the public who commented and requested a copy of the report.

AUTH: Sec. 23-1-110, MCA IMP: Sec. 23-1-110, MCA

Comment: Comments received from the public should not be summarized. Include all the comments in the final report.


Response: Comments will be summarized in the report, and the originals will be kept on file with the report. The public have access to these files.

Comment: Add "a copy of the report shall be sent to members of the public who commented on the proposed improvement project or development."

Comment: Add "a copy of the report shall be sent to members of the public that requested a copy."

Response: These two comments have been combined and rephrased and added to this subsection.


Robert N. Lane
Rule Reviewer


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

Certified to the Secretary of State October 19, 1992.

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

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

(Air Quality)

To: All Interested Persons

1. On August 13, 1992, the board published a notice at page 1730 of the 1992 Montana Administrative Register, Issue No. 15, to consider the amendment of the above-captioned rule.

2. The board has adopted the rule amendments as proposed, with no changes. These amendments are necessary to implement action taken by the Legislature during the last two special sessions. For the state fiscal year 1992, the legislative appropriation for the Air Quality Bureau's fee program was in the amount of \$395,973. During the special legislative sessions in January and July, 1992, the Legislature shifted approximately \$160,000 of funding from the general fund to the fee program. This change is not an expansion of the air quality program, but represents only a change in funding sources.

The legislative appropriation for fiscal year 1993 is \$562,168. The fees as adopted will generate approximately \$509,000 of revenue, and the remainder of the appropriation will be derived from new permit application fees and open burning permit fees. As proposed, the fees are based on a two-tier system, and the 4:1 ratio is based upon workload associated with the respective pollutants.

3. The board has thoroughly considered the various comments which were submitted in regard to the proposed rules. The following is a summary of the comments received, along with the board's responses to these comments.

Comment: The Montana Environmental Information Center noted that the proposal was clearly within the goals set by both the Legislature and Congress in regards to implementation of the 1990 Amendments to the federal Clean Air Act. The appropriation was set by the Legislature and the board's role is not to look at the level of that appropriation, but rather to determine how the appropriation shall be recovered from the regulated community.

Response: The board agrees that the proposed fee changes are well within the requirements of both the federal Clean Air Act and the pertinent state statutory authority. As noted in the testimony of Jeff Chaffee, in the future up to 60 or 70% of the state air program may be funded through these fees. In addition, the Legislature has determined through its appropriations process the amount of revenue to be recovered through fees, and has limited the board's role to adopting the appro-

prate schedule of fees to recover those revenues. Section 75-2-111(5), MCA.

Comment: The Montana Power Company supported the proposed fee increase, and stated that the department should maintain primacy in the air program. Accordingly, the fees need to be maintained at a level which is sufficient to allow the department to obtain the resources that are needed to achieve this objective.

Response: The board agrees that, as reflected in the testimony of Jeff Chaffee, the proposed fee increase is ultimately necessary to allow the department to maintain primacy in the air program.

Comment: Written comments were submitted by Edwin Zaidlicz, of Billings, Montana, who challenged the level of the proposed fee increase as too low. Mr. Zaidlicz asserted that the department should be charging twenty-five dollars (\$25.00) per ton, as directed by the 1990 amendments to the federal Clean Air Act. Similar written comments were received from John R. White, also of Billings.

Response: The department's fee collection authority is limited by the Legislature to approximately \$562,000 for the 1993 fiscal year. When this authority is spread among the existing air pollution sources in Montana, and with the proposed fee tier, the proposed fee levels are the result. As noted in the testimony of Jeff Chaffee, the department intends to demonstrate that it can operate an approvable permitting program for less than the presumptive \$25 per ton, but does not believe that the current proposed fee level will be sufficient for EPA approval.

Comment: Written comments were submitted by the Exxon Company, U.S.A., who requested that each proposed fee change be accompanied by a description of how fees will change over the following five years. This would allow a planning basis for those who will need to pay the fees, and will also allow for future comparisons in reviewing the justification for proposed fee changes. This will promote business sector support to ensure reasonable fee increases are approved by the board.

Response: The board does not determine the total amount of revenue to be recovered through fees. This is determined by the Legislature through its appropriations process. The board's role has been limited to adopting the appropriate schedule of fees to recover those revenues. Section 75-2-111(5), MCA. See response to comments of the Montana Environmental Information Center. Accordingly, the board finds that imposing the planning requirement suggested by Exxon would be impractical and of little or no benefit.

Comment: The Montana Wood Products Association noted that

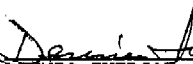
these fees amount to another cost of being in business. Unlike the hearing on fees for major open burners, there is little information to suggest that the department could do an effective job with the air quality permit program with less than the proposed new fee levels. The regulated community wants to maintain a high level of confidence which assures that every effort is and will be made to prevent these fees from being excessive.

Response: The analogy to the hearing on the fees for major open burners is inappropriate, since the smoke management program is a component of the air quality permit program in its entirety. The board may determine, in adopting a schedule of fees, the level of funding that is necessary for the department to operate the smoke management program as a discrete part of the overall permitting program. As reflected in the prefiled testimony of Jeff Chaffee, the amount of revenues from the major open burner fees is subtracted from the total legislative appropriation for the air quality permit program. As described above in response to the comments of the Montana Environmental Information Center, the Legislature sets the overall amount of the appropriation for the air quality permit program. See responses to the comments of the Montana Environmental Information Center, and the Exxon Company, U.S.A.

Comment: The Yellowstone Valley Citizens Council (YVCC) and the Northern Plains Resource Council supported the proposed fees, and asked if special geographic studies are needed under section 75-2-211(4), MCA, for the Yellowstone County area. If such studies are needed, YVCC asked what level of funding would be required.

Response: This question is beyond the scope of the proposed amended fee rules, and involves an issue that will require further evaluation. At this point, the department finds it difficult to address its future resource needs for special geographic studies in Yellowstone County, and is awaiting further regulatory and policy guidance from the Environmental Protection Agency.

RAYMOND W. GUSTAFSON, CHAIRMAN, BOARD OF
HEALTH AND ENVIRONMENTAL SCIENCES

By 
DENNIS IVERSON, Director
Department of Health and Environmental
Sciences

Certified to the Secretary of State October 19, 1992.


Reviewed by: 
Eleanor Parker, DHES Attorney

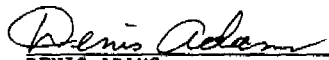
BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT) NOTICE OF THE AMENDMENT of
of ARM 42.14.102 relating to) ARM 42.14.102 relating to
Accommodations Tax) Accommodations Tax

TO: All Interested Persons:

1. On August 13, 1992, the Department published notice of the proposed amendment of ARM 42.14.102 relating to accommodations tax at page 1739 of the 1992 Montana Administrative Register, issue no. 15.
2. No public comments were received regarding the rule.
3. The Department has adopted the rule as proposed.


CLEO ANDERSON
Rule Reviewer


DENIS ADAMS
Director of Revenue

Certified to Secretary of State October 19, 1992

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT)	NOTICE OF THE AMENDMENT of ARM
of ARM 42.21.106, 42.21.107,)	42.21.106, 42.21.107, 42.21.113
42.21.113, 42.21.123,)	42.21.123, 42.21.124, 42.21.131
42.21.124, 42.21.131,)	42.21.137, 42.21.138, 42.21.139
42.21.137, 42.21.138,)	42.21.140, 42.21.151, 42.21.155
42.21.139, 42.21.140,)	42.21.157, and 42.21.305
42.21.151, 42.21.155,)	relating to Property Taxes for
42.21.157, and 42.21.305)	Market Value of Personal
relating to Property Taxes for) Property	
Market Value for Personal)	
Property)	

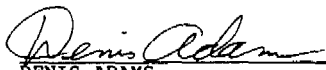
TO: All Interested Persons:

1. On September 10, 1992, the Department published notice of the proposed amendment of ARM 42.21.106, 42.21.107, 42.21.113, 42.21.123, 42.21.124, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.155, 42.21.157, and 42.21.305, relating to property taxes for market value of personal property at page 1971 of the 1992 Montana Administrative Register, issue no. 17.

2. A Public Hearing was held on October 8, 1992, to consider the proposed amendments. No one appeared to testify and no written comments were received.

3. The Department has adopted the rules as proposed.


CLEO ANDERSON
Rule Reviewer


DENIS ADAMS
Director of Revenue


Certified to Secretary of State October 19, 1992


BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

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

TO: All Interested Persons:

1. On August 13, 1992, the Department published notice of the proposed amendment of ARM 42.24.102, 42.24.103, 42.24.107, and 42.24.123 relating to subchapter S at page 1741 of the 1992 Montana Administrative Register, issue no. 15.
2. No public comments were received regarding these rules.
3. The Department has adopted the rules as proposed.


CLEO ANDERSON
Rule Reviewer


DENIS ADAMS
Director of Revenue

Certified to Secretary of State October 19, 1992

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of rules	)	RULES 46.10.305, 46.10.402,
46.10.305, 46.10.402,	)	46.10.403 AND 46.10.505
46.10.403 and 46.10.505	)	PERTAINING TO AFDC
pertaining to AFDC standards	)	STANDARDS OF ASSISTANCE
of assistance)	

TO: All Interested Persons

1. On September 10, 1992, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.10.305, 46.10.402, 46.10.403 and 46.10.505 at page 2025 of the 1992 Montana Administrative Register, issue number 17.

2. The Department has amended rules 46.10.305, 46.10.402 and 46.10.403 as proposed.

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

46.10.505 INCOME, DEFINITIONS Subsections (1) through (2)(a) remains as proposed.

(3) "Earned income" means all income earned by an individual through ~~receipt of~~ wages, salary, commissions, tips, or any other profit from activity in which he is ~~actively~~ engaged, INCLUDING BUT NOT LIMITED TO ALL AMOUNTS WITHHELD OR DEDUCTED FOR INCOME OR SOCIAL SECURITY TAXES, GARNISHMENTS, ATTACHMENTS, INCOME DEDUCTIONS OR INSURANCE PREMIUMS, OR ANY OTHER WITH-
HOLDINGS.

Subsections (3)(a) through (7) remains as proposed.

AUTH: Sec. 53-4-212 53-4-241 MCA

IMP: Sec. 53-4-211, 53-4-231, 53-4-241 and 53-4-242 MCA

4. The Department has thoroughly considered all commentary received:

COMMENT: It is noted that additional language has been added to the definition of earned income in ARM 46.10.505(3).

RESPONSE: In order to make the definition of earned income clearer, language has been added to state explicitly that amounts earned but not received by the recipient because they have been withheld or deducted for taxes, garnishments or any other purpose are included as earned income. The department is not changing the definition of earned income but is merely making its definition more specific.

Dawn Glavin
Rule Reviewer

Henry A. Hudson
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 19, 1992.

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

In the matter of the	)	NOTICE OF THE AMENDMENT OF
amendment of rule 46.12.3803	)	RULE 46.12.3803 PERTAINING
pertaining to medically	)	TO MEDICALLY NEEDY INCOME
needy income standards	)	STANDARDS
)	

TO: All Interested Persons

1. On September 10, 1992, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.12.3803 pertaining to medically needy income standards at page 2033 of the 1992 Montana Administrative Register, issue number 17.

2. The Department has amended rule 46.12.3803 as proposed.

3. No written comments or testimony were received.

Dawn Silva
Rule Reviewer

Henry A. Clark
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 19, 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 | 1. Consult ARM topical index. |
| Subject | Update the rule by checking the accumulative |
| Matter | table and the table of contents in the last |
| | Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each |
| Number and | title which lists MCA section numbers and |
| Department | 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.

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BOARD APPOINTEES AND VACANCIES

House Bill 424, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of HB 424 was that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on these boards and councils.

In this issue, appointments made in September, 1992, are published. Vacancies scheduled to appear from November 1, 1992, through January 31, 1993, are also listed, as are current recent vacancies due to resignations or other reasons.

Individuals interested in serving on a new board should refer to the bill that created the board for details about the number of members to be appointed and qualifications necessary.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of October 5, 1992.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

Appointee	Appointed by	Succeeds	Appointment/End Date
BOARD AND COUNCIL APPOINTMENTS: SEPTEMBER, 1992			
Board of Medical Examiners (Commerce)			
Dr. Richard Beighle	Governor	reappointed	9/1/1992
Missoula			9/1/1996
Qualifications (if required):	doctor of medicine		
Dr. James Bonnet	Governor	Grimm	9/1/1992
Kalispell			9/1/1994
Qualifications (if required):	doctor of medicine		
Board of Veterinary Medicine (Commerce)			
Dr. Kenneth Joe Bruchez	Governor	Leads	9/18/1992
Hobson			7/31/1996
Qualifications (if required):	veterinarian		
Dr. W. Dean Holmes	Governor	Killian	9/18/1992
Harlowton			7/31/1997
Qualifications (if required):	veterinarian		
Burial Preservation Board (Commerce)			
Mr. Germaine DuMonteair	Governor	reappointed	9/14/1992
Havre			8/22/1994
Qualifications (if required):	representative of Little Shell Tribe		
Mr. Gilbert Horn	Governor	reappointed	9/14/1992
Harlem			8/22/1994
Qualifications (if required):	representative of Gros Ventre & Assiniboine Tribes		
Mr. Mickey Nelson	Governor	reappointed	9/14/1992
Helena			8/22/1994
Qualifications (if required):	representative of Montana coroners' assoc.		

BOARD AND COUNCIL APPOINTEES: SEPTEMBER, 1992

Appointee	Appointed by	Succeeds	Appointment/End Date
Burial Preservation Board (Commerce) cont.			
Mr. Richard Parلمان	Governor	reappointed	9/14/1992
Butte			8/22/1994
Qualifications (if required): representative of Montana archaeological assoc.			
Mr. John Pretty On Top	Governor	reappointed	9/14/1992
Crow Agency			8/22/1994
Qualifications (if required): representative of Crow Tribe			
Mr. John Sunchild	Governor	reappointed	9/14/1992
Box Elder			8/22/1994
Qualifications (if required): representative of Chippewa-Cree Tribe			
Council for Transportation of Hazardous Wastes & Materials (Natural Resources and Conservation)			
Mr. Rick Bartos	Governor	not listed	9/22/1992
Helena			9/22/1994
Qualifications (if required): none specified			
Mr. Dennis Christenson	Governor	not listed	9/22/1992
Kalispell			9/22/1994
Qualifications (if required): none specified			
Mr. John Delano	Governor	not listed	9/22/1992
Helena			9/22/1994
Qualifications (if required): none specified			
Mr. Dave Galt	Governor	not listed	9/22/1992
Helena			9/22/1994
Qualifications (if required): none specified			

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Council for Transportation of Hazardous Wastes & Materials (Natural Resources and Conservation) cont.			
Mr. Bill Good	Governor	not listed	9/22/1992
Helena			9/22/1994
Qualifications (if required): none specified			
Colonel Robert Griffith	Governor	not listed	9/22/1992
Helena			9/22/1994
Qualifications (if required): none specified			
Mr. Ben Havdahl	Governor	not listed	9/22/1992
Helena			9/22/1994
Qualifications (if required): none specified			
Mr. Greg Munther	Governor	not listed	9/22/1992
Missoula			9/22/1994
Qualifications (if required): none specified			
Mr. Duane Robertson	Governor	not listed	9/22/1992
Helena			9/22/1994
Qualifications (if required): none specified			
Mr. George Teslovick	Governor	not listed	9/22/1992
Great Falls			9/22/1994
Qualifications (if required): none specified			
Family Support Services Advisory Council (Social and Rehabilitative Services)			
Mr. John Bandy	Governor	not listed	9/9/1992
Helena			9/9/1994
Qualifications (if required): none specified			

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Montana Administrative Register

BOARD AND COUNCIL APPOINTEES: SEPTEMBER, 1992

<u>Appointees</u>	<u>Appointed by</u>	<u>Succeeded</u>	<u>Appointment/End Date</u>
Family Support Services Advisory Council (Social and Rehabilitative Services) cont.			
Ms. Linda Botten	Governor	not listed	9/9/1992
Bozeman			9/9/1994
Qualifications (if required): none specified			
Ms. Sylvia Danforth	Governor	not listed	9/9/1992
Miles City			9/9/1994
Qualifications (if required): none specified			
Ms. Becky Flemming	Governor	not listed	9/9/1992
Helena			9/9/1994
Qualifications (if required): none specified			
Ms. Sue Forrest	Governor	not listed	9/9/1992
Missoula			9/9/1994
Qualifications (if required): none specified			
Ms. Nita Freeman	Governor	not listed	9/9/1992
Helena			9/9/1994
Qualifications (if required): none specified			
Ms. Margaret Grogan	Governor	not listed	9/9/1992
Great Falls			9/9/1994
Qualifications (if required): none specified			
Senator Ethel M. Harding	Governor	not listed	9/9/1992
Polson			9/9/1994
Qualifications (if required): none specified			
Ms. Bath Kenny	Governor	not listed	9/9/1992
Helena			9/9/1994
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES: SEPTEMBER, 1992

Appointee	Appointed by	Succeeds	Appointment/End Date
Family Support Services Advisory Council (Social and Rehabilitative Services) cont.			
Mr. Ted Maloney	Governor	not listed	9/9/1992
Missoula			9/9/1994
Qualifications (if required): none specified			
Ms. Sandi Marisdotter	Governor	not listed	9/9/1992
Helena			9/9/1994
Qualifications (if required): none specified			
Mr. Dan McCarthy	Governor	not listed	9/9/1992
Helena			9/9/1994
Qualifications (if required): none specified			
Ms. Jeanette McCormick	Governor	not listed	9/9/1992
Choteau			9/9/1994
Qualifications (if required): none specified			
Ms. Maria Pease	Governor	not listed	9/9/1992
Lodge Grass			9/9/1994
Qualifications (if required): none specified			
Mr. Pete Surdock, Jr.	Governor	not listed	9/9/1992
Helena			9/9/1994
Qualifications (if required): none specified			
Ms. Chris Volinkaty	Governor	not listed	9/9/1992
Missoula			9/9/1994
Qualifications (if required): none specified			
Ms. Judy Wright	Governor	not listed	9/9/1992
Helena			9/9/1994
Qualifications (if required): none specified			

BOARD AND COUNCIL APPOINTEES: SEPTEMBER, 1992

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Rock Creek Advisory Council Mr. Karl Englund Missoula Qualifications (if required): none specified	(Natural Resources and Conservation) director not listed		9/3/1992 9/3/1994
Ms. Lorraine Gillies Phillipsburg Qualifications (if required): none specified	director not listed		9/3/1992 9/3/1994
Mr. Chris Marchion Anaconda Qualifications (if required): none specified	director not listed		9/3/1992 9/3/1994
Mr. Jim Posewitz Helena Qualifications (if required): none specified	director not listed		9/3/1992 9/3/1994
Ms. Tracy Stone Manning Missoula Qualifications (if required): none specified	director not listed		9/3/1992 9/3/1994
Mr. Greg Tollefson Missoula Qualifications (if required): none specified	director not listed		9/3/1992 9/3/1994
Mr. Wayne Wetzel Helena Qualifications (if required): represents DNRC	director not listed		9/3/1992 9/3/1994

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1992 through January 31, 1993

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alfalfa Seed Committee (Agriculture) Mr. Duri Heiken, Billings Qualifications (if required): public member	Governor	12/21/1992
Mr. Keith Reynolds, Winnett Qualifications (if required): public member	Governor	12/21/1992
Appellate Defender Commission (Administration) Mr. Daniel Donovan, Great Falls Qualifications (if required): public defender	Governor	1/1/1993
Ms. Randi Mae Hood, Helena Qualifications (if required): public defender	Governor	1/1/1993
Judge Dorothy B. McCarter, Helena Qualifications (if required): district judge	Chief Justice	1/1/1993
Board of Aeronautics (Commerce) Mr. Howard W. Gipe, Kalispell Qualifications (if required): rep. MT County Commissioners Association	Governor	1/2/1993
Mr. Phil "Pete" Pederson, Glasgow Qualifications (if required): rep. MT Pilot's Association	Governor	1/2/1993
Board of Chiropractors (Commerce) Dr. Christopher Buzan, Missoula Qualifications (if required): chiropractor	Governor	1/1/1993

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1992 through January 31, 1993

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term and</u>
Board of Crime Control (Justice)		
Ms. Diane G. Barz, Billings	Governor	1/2/1993
Qualifications (if required): rep. court system		
Mr. Don Bjertness, Billings	Governor	1/2/1993
Qualifications (if required): rep. court system		
Dr. Gordon Browder, Missoula	Governor	1/7/1993
Qualifications (if required): none specified		
Mr. Robert Butorovich, Butte	Governor	1/2/1993
Qualifications (if required): none specified		
Mr. John T. Flynn, Townsend	Governor	1/2/1993
Qualifications (if required): rep. local law enforcement		
Mr. Rick Later, Dillon	Governor	1/2/1993
Qualifications (if required): rep. local law enforcement		
Mr. Rex Manuel, Fairfield	Governor	1/2/1993
Qualifications (if required): none specified		
Mr. Don Peterson, Big Arm	Governor	1/2/1993
Qualifications (if required): rep. local government		
Rep. Mary Lou Peterson, Eureka	Governor	1/2/1993
Qualifications (if required): rep. state government		
Mr. John Pfaff, Miles City	Governor	1/2/1993
Qualifications (if required): none specified		
Chief Mike Shortell, Havre	Governor	1/2/1993
Qualifications (if required): chief of police		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1992 through January 31, 1993

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Crime Control (Justice) cont. Mr. Jean A. Turnage, Helena Qualifications (if required): none specified	Governor	1/2/1993
Board of Health and Environmental Sciences (Health and Environmental Sciences) Ms. Verna Green, Helena Qualifications (if required): public member	Governor	1/1/1993
Dr. Raymond W. "Rib" Gustafson, Conrad Qualifications (if required): licensed Dr. of vet. medicine engaged food animal medicine	Governor	1/2/1993
Dr. Stuart Reynolds, Havre Qualifications (if required): qualified in Human Health services licensed by board	Governor	1/2/1993
Board of Horseracing (Commerce) Mr. Gibson G. Goodman, Helena Qualifications (if required): member from 4th District	Governor	1/20/1993
Board of Housing (Commerce) Mr. Russ Dahl, Glasgow Qualifications (if required): public member	Governor	1/2/1993
Mr. Joe Gerbase, Billings Qualifications (if required): public member	Governor	1/2/1993
Mr. Tom Mather, Great Falls Qualifications (if required): none specified	Governor	1/2/1993
Mr. George McCallum, Plains Qualifications (if required): informed & experienced in economics	Governor	1/2/1993

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1992 through January 31, 1993

Board/current position holder	Appointed by	Term end
Board of Investments (Commerce)		
Mr. David E. Ageson, Gilford	Governor	1/2/1993
Qualifications (if required): public member		
Mr. John D. Connors, Whitefish	Governor	1/2/1993
Qualifications (if required): public member		
Mr. James E. Cowan, Seeley Lake	Governor	1/2/1993
Qualifications (if required): member of Teacher's Retirement Board		
Ms. Eleanor D. Pratt, Glasgow	Governor	1/2/1993
Qualifications (if required): representative of Public Employees Retirement Bd		
Mr. Warren Vaughan, Billings	Governor	1/2/1993
Qualifications (if required): informed & experienced in subject of investments		
Board of Labor Appeals (Labor and Industry)		
Mr. Daniel Johns, Kalispell	Governor	1/2/1993
Qualifications (if required): attorney & not a state government employee		
Mr. Joseph E. Thares, Helena	Governor	1/2/1993
Qualifications (if required): none specified		
Board of Natural Resources and Conservation (Natural Resources and Conservation)		
Mr. Fred Booth, Highwood	Governor	1/1/1993
Qualifications (if required): informed & experienced in natural resources & conservation		
Ms. Mary Ann Sharon, Dillon	Governor	1/1/1993
Qualifications (if required): attorney		
Board of Occupational Therapy Practice (Commerce)		
Ms. Leigh Ann Rosemore, Plentywood	Governor	12/31/1992
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1992 through January 31, 1993	Board/current position holder	Appointed by	Term end
Board of Oil and Gas Conservation (Natural Resources and Conservation)	Mr. Scott O. Gage, Cut Bank	Governor	1/2/1993
Qualifications (if required): landowner not associated with oil & gas industry			
Mr. Stanley Lund, Reserve	Governor	1/2/1993	
Qualifications (if required): landowner who owns mineral rights			
Mr. Robert Rhodes Jr., Billings	Governor	1/2/1993	
Qualifications (if required): member from oil & gas industry			
Board of Pardons (Institutions)	Governor	1/2/1993	
Mr. Ian Elliot, Bozeman	Governor	1/2/1993	
Qualifications (if required): none specified			
Ms. Kathleen M. Fleury, Helena	Governor	1/1/1993	
Qualifications (if required): auxiliary member w/ knowledge of Indian culture & problems			
Board of Personnel Appeals (Labor and Industry)	Governor	1/2/1993	
Ms. Barbara Kapinos, Bozeman	Governor	1/2/1993	
Qualifications (if required): member or employee of an employee organization			
Mr. Bob Poore, Butte	Governor	1/2/1993	
Qualifications (if required): attorney & has general labor-management experience			
Ms. Becky B. Schneekloth, Helena	Governor	1/2/1993	
Qualifications (if required): member or employee of employee organization			
Board of Respiratory Care (Commerce)	Governor	1/1/1993	
Mr. Michael R. Biggins, Missoula	Governor	1/1/1993	
Qualifications (if required): respiratory care practitioner			
Mr. Philip J. Grainey, Polson	Governor	1/1/1993	
Qualifications (if required): public member			

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1992 through January 31, 1993	Board/current position holder	Appointed by	Term and
Board of Respiratory Care (Commerce) cont.			
Ms. Pat Johnson, Helena	Governor		1/1/1993
Qualifications (if required): respiratory care practitioner			
Board of Social Work Examiners and Professional Counselors (Commerce)			
Mr. C. James Armstrong, Fort Harrison	Governor		1/2/1993
Qualifications (if required): licensed professional social worker			
Mr. Ervin Booth, Roundup	Governor		1/2/1993
Qualifications (if required): licensed professional counselor			
Ms. Mary Meis, Shelby	Governor		1/2/1993
Qualifications (if required): licensed social worker			
Mr. Patrick Wolberd, Billings	Governor		1/2/1993
Qualifications (if required): licensed social worker			
Ms. Bonnie Frey, Helena	Governor		1/2/1993
Qualifications (if required): public member			
Board of Social and Rehabilitation Appeals (Social and Rehabilitation Services)			
Ms. Laura Lee, Billings	Governor		1/2/1993
Qualifications (if required): public member & an attorney			
Coal Board (Commerce)			
Mr. Robert E. Carroll, Helena	Governor		1/2/1993
Qualifications (if required): represents 1st Congressional District			
Mr. Alan Evans, Roundup	Governor		1/2/1993
Qualifications (if required): rep. 2nd Congress. Dist. & a member from coal impact area			
Mr. Gerald Feda, Glasgow	Governor		1/2/1993
Qualifications (if required): represents 2nd Congressional District			

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1992 through January 31, 1993			
<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term and</u>	
Coal Board (Commerce) cont.			
Mr. Ted Fletcher, Ashland	Governor	1/2/1993	
Qualifications (if required):	represents 2nd Congressional District		
Committee for the Humanities			
Mr. Ron Bibler, Great Falls	Governor	1/2/1993	
Qualifications (if required):	none specified		
Ms. Ann Cogswell, Great Falls	Governor	1/1/1993	
Qualifications (if required):	public member		
Ms. Jamie Doggett, White Sulphur Springs	Governor	1/2/1993	
Qualifications (if required):	none specified		
Ms. Lee Rostad, Martinsdale	Governor	1/2/1993	
Qualifications (if required):	none specified		
Council for Montana's Future			
Mr. John Bailey, Livingston	Governor	12/15/1992	
Qualifications (if required):	none specified		
Mr. Kurt Baltrusch, Glendive	Governor	12/15/1992	
Qualifications (if required):	none specified		
Mr. Jerry Black, Shelby	Governor	12/15/1992	
Qualifications (if required):	none specified		
Ms. Anne Boothe, Malta	Governor	12/15/1992	
Qualifications (if required):	none specified		
Mr. Tony Colter, Deer Lodge	Governor	12/15/1992	
Qualifications (if required):	none specified		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1992 through January 31, 1993

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Council for Montana's Future (Governor) cont.		
Mr. Jim Crane, Helena	Governor	12/15/1992
Qualifications (if required): none specified		
Mr. Michael Grove, White Sulphur Springs	Governor	12/15/1992
Qualifications (if required): none specified		
Ms. Constance Jones, Sheridan	Governor	12/15/1992
Qualifications (if required): none specified		
Ms. Alyce Kuehn, Sidney	Governor	12/15/1992
Qualifications (if required): none specified		
Ms. Debbie Leeds, Havre	Governor	12/15/1992
Qualifications (if required): none specified		
Ms. Jane Lopp, Kalispell	Governor	12/15/1992
Qualifications (if required): none specified		
Mr. Rich Pavlounis, Great Falls	Governor	12/15/1992
Qualifications (if required): none specified		
Mr. Russ Ritter, Helena	Governor	12/15/1992
Qualifications (if required): none specified		
Ms. Lynn Robson, Bozeman	Governor	12/15/1992
Qualifications (if required): none specified		
Mr. Craig Smith, Wolf Point	Governor	12/15/1992
Qualifications (if required): none specified		
Mr. Daniel Smith, Missoula	Governor	12/15/1992
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1992 through January 31, 1993

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Council for Montana's Future (Governor) cont.		
Mr. Alan Solum, Kalispell	Governor	12/15/1992
Qualifications (if required): none specified		
Mr. David Spencer, Willow Creek	Governor	12/15/1992
Qualifications (if required): none specified		
Mr. Herman Wessell, Billings	Governor	12/15/1992
Qualifications (if required): none specified		
Mr. Craig Wilson, Billings	Governor	12/15/1992
Qualifications (if required): none specified		
Mr. Robert Wuttke, Jr., Missoula	Governor	12/15/1992
Qualifications (if required): none specified		
Developmental Disabilities Planning and Advisory Council (Social and Rehabilitation Services)		
Ms. Kris Bakula, Helena	Governor	1/1/1993
Qualifications (if required): advocacy representative		
Ms. Jean Bradford, Billings	Governor	1/1/1993
Qualifications (if required): Represents Region III		
Mr. H. P. Brown, Great Falls	Governor	1/1/1993
Qualifications (if required): consumer member on the council		
Ms. Joyce Curtis, Choteau	Governor	1/2/1993
Qualifications (if required): represents Region II		
Sen. Delwyn "Del" Gage, Cut Bank	Governor	1/2/1993
Qualifications (if required): state senator		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1992 through January 31, 1993		
<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Developmental Disabilities Planning and Advisory Council (Social and Rehabilitation Services) cont.		
Rep. Betty Lou Kasten, Brockway Qualifications (if required): state representative	Governor	1/2/1993
Mr. Ken Kronebusch, Conrad Qualifications (if required): consumer member on the council	Governor	1/2/1993
Dr. Richard Offner, Missoula Qualifications (if required): representative of university affiliated program	Governor	1/1/1993
Mr. Thomas Price, Eureka Qualifications (if required): represents Region V	Governor	1/1/1993
Mr. Robert Runkel, Helena Qualifications (if required): represents Superintendent of Public Instruction	Governor	1/2/1993
Mrs. Othella Schulz, Butte Qualifications (if required): representative of Region IV	Governor	1/2/1993
Mr. Don Sekora, Helena Qualifications (if required): representative from Department of Family Services	Governor	1/1/1993
Mr. Peyton Terry, Glasgow Qualifications (if required): represents Region I	Governor	1/2/1993
Fire Marshal Advisory Council (Governor)		
Mr. Vern Erickson, Missoula Qualifications (if required): rep: Montana State Firemen's Association	Attorney General	12/31/1992
Mr. Ted Main, Kalispell Qualifications (if required): rep: MT Chapter of Internat'l Assoc. of Arson Investigators	Attorney General	12/31/1992

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1992 through January 31, 1993

Board/current position holder	Appointed by	Term end
Fire Marshal Advisory Council (Governor) cont.		
Mr. Larry McCann, Billings	Attorney General	12/31/1992
Qualifications (if required): rep: MT Fire Chiefs' Assoc.		
Mr. Barry Michelotti, Great Falls	Attorney General	12/31/1992
Qualifications (if required): rep: MT County Sheriffs		
Mr. Lyle Nagel, Simms	Attorney General	12/31/1992
Qualifications (if required): rep: MT Volunteer Firemens' Assoc.		
Mr. Michael A. Walker, Great Falls	Attorney General	12/31/1992
Qualifications (if required): rep: MT Council of Professional Firefighters		
Fish and Game Commission (Fish, Wildlife & Parks)		
Mr. Errol T. Galt, Martinsdale	Governor	1/2/1993
Qualifications (if required): none specified		
Mr. William Glenn Stratton, Billings	Governor	1/2/1993
Qualifications (if required): none specified		
Hard Rock Mining Impact Board (Commerce)		
Mr. David R Calahan, Missoula	Governor	1/2/1993
Qualifications (if required): from Western Congressional District, representative of major financial institution & resides in an area impacted by large-scale mineral development		
Mr. James McCauley, Boulder	Governor	1/7/1993
Qualifications (if required): elected County Commissioner, resides in an impacted area, from Western Congressional District		
Mr. Rick Young, Absarokee	Governor	1/2/1993
Qualifications (if required): public member & resides in Eastern Congressional District		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1992 through January 31, 1993

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term and</u>
Highway Commission (Highways) Mr. Murray Ehlers, Billings Qualifications (if required): from District #5	Governor	1/2/1993
Mr. Dan Huestis, Great Falls Qualifications (if required): from District #3	Governor	1/2/1993
Mr. Dennis Shea, Butte Qualifications (if required): from District #2	Governor	1/2/1993
Human Rights Commission (Labor and Industry) Ms. Sarah Arnott, Utica Qualifications (if required): public member	Governor	1/2/1993
Mr. John B. Kühr, Havre Qualifications (if required): none specified	Governor	1/2/1993
Mr. Ed Regan, Judith Gap Qualifications (if required): none specified	Governor	1/2/1993
ICC Administered Economic Development Programs Ms. Karen Barclay-Paggy, Helena Qualifications (if required): none specified	(Governor) Governor	12/31/1992
Mr. Charles A. Brooke, Helena Qualifications (if required): none specified	Governor	12/31/1992
Dr. John Hutchinson, Helena Qualifications (if required): none specified	Governor	12/31/1992
Mr. Mike Wicome, Helena Qualifications (if required): none specified	Governor	12/31/1992

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1992 through January 31, 1993

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
ICC Administered Economic Development Programs Ms. Julia Robinson, Helena Qualifications (if required): none specified	(Governor) cont. Governor	12/31/1992
Mr. John Rothwell, Helena Qualifications (if required): none specified	Governor	12/31/1992
Mr. Everett Snortland, Helena Qualifications (if required): none specified	Governor	12/31/1992
Local Government Records Advisory Council (Secretary of State) Mr. Donald Dooley, Helena Qualifications (if required): none specified	Secretary of State	1/22/1993
Mr. Edward Eaton, Helena Qualifications (if required): none specified	Secretary of State	1/22/1993
Ms. Peggy Jean Lamberson, Great Falls Qualifications (if required): none specified	Secretary of State	1/22/1993
Ms. Kathryn Otto, Helena Qualifications (if required): none specified	Secretary of State	1/22/1993
Ms. Marcia Porter, Missoula Qualifications (if required): none specified	Secretary of State	1/22/1993
Ms. Bonnie Ramey, Boulder Qualifications (if required): none specified	Secretary of State	1/22/1993
Ms. Lorraine VanAusdol, Bozeman Qualifications (if required): not specified	Governor	1/22/1993

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1992 through January 31, 1993

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Milk Control Board (Commerce)		
Mr. Jesse Russell Gleason, Fairfield	Governor	1/2/1993
Qualifications (if required): from 2nd Congressional District		
Ms. Dixie Hertel, Moore	Governor	1/1/1993
Qualifications (if required): from 2nd Congressional District, affiliated Republican party		
Mr. Milton Swede Olson, Whitewater	Governor	1/1/1993
Qualifications (if required): from 2nd Congressional District, affiliated Republican party		
Montana Health Facility Authority Board (Commerce)		
Mr. John Bartos, Hamilton	Governor	1/1/1993
Qualifications (if required): hospital administrator		
Ms. Sandy Johnson, Fairfield	Governor	1/1/1993
Qualifications (if required): professional with expertise in banking		
Montana State Lottery Commission (Commerce)		
Ms. Becky Erickson, Glasgow	Governor	1/1/1993
Qualifications (if required): public member		
Mr. William J. Ware, Helena	Governor	1/1/1993
Qualifications (if required): 5 yrs experience as law enforcement officer		
Natural Resources Advisory Council (Natural Resources and Conservation)		
Mr. John Anderson, Alder	Director	11/30/1992
Qualifications (if required): Western Montana		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1992 through January 31, 1993

Board/current position holder	Appointed by	Term end
Passenger Tramway Advisory Council (Commerce)		
Mrs. Van Kirke Nelson, Kalispell	Governor	1/1/1993
Qualifications (if required): skiing public member		
Mr. Kevin Taylor, Marysville	Governor	1/1/1993
Qualifications (if required): ski area operator		
Resource Conservation Advisory Council (Department of Natural Resources)		
Mr. Sever Enkerud, Glasgow	Director	11/30/1992
Qualifications (if required): grazing districts		
Mr. Ellis Hagen, Westby	Director	11/30/1992
Qualifications (if required): Eastern Montana		
Mr. Herb Karst, Sunburst	Director	11/30/1992
Qualifications (if required): North Central Montana		
Mr. Arville Lammers, Shawmut	Director	11/30/1992
Qualifications (if required): General Public		
Mr. Ken Minnie, Roundup	Director	11/30/1992
Qualifications (if required): South Central Montana		
Mr. Bob Schroeder, Missoula	Director	11/30/1992
Qualifications (if required): Conservation Districts		
Science and Technology Development Board (Commerce)		
Ms. Annie M. Bartos, Helena	Governor	1/1/1993
Qualifications (if required): attorney & from public sector member		
Mr. Tom Braum, Missoula	Governor	1/1/1993
Qualifications (if required): from private sector		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1992 through January 31, 1993	Board/current position holder	Appointed by	Term and
Science and Technology Development Board (Commerce) cont.			
Dr. John Brower, Butte		Governor	1/1/1993
Qualifications (if required): experience in technology development and from public sector			
Mr. Ken Thuerbach, Victor		Governor	1/1/1993
Qualifications (if required): from public sector			
Mr. Ray Tilsan, Butte		Governor	1/1/1993
Qualifications (if required): from private sector			
Tourism Advisory Council (Commerce)			
Mr. Tom Johnson, Missoula		Governor	1/1/1993
Qualifications (if required): president of Montana Innkeepers Association			