MONTANA ADMINISTRATIVE REGISTER

1992 ISSUE NO. 22
NOVEMBER 25, 1992
PAGES 2482-2624

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

TABLE OF CONTENTS

BEFORE THE BOARD OF PLUMBERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

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

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 26, 1992, the Board of Plumbers proposes to amend the above-stated rule.

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

"8.44.412 FEE SCHEDULE

(1) through (3) will remain the same.

(4) Initial license fee prorated by quarter	~~85.00~~
(a) Journeyman	75.00
(b) Master	125.00
(5) Renewal fee	~~85.00~~
(a) Journeyman	75.00
(b) Master	125.00

(6) will remain the same."

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

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

3. Interested persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Plumbers, 1218 East Sixth Avenue, Helena, Montana 59620, to be received no later than 5:00 p.m., December 24, 1992.

4. If a person who is directly affected by the proposed amendment wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Plumbers, 1218 East Sixth Avenue, Helena, Montana 59620, to be received no later than 5:00 p.m., December 24, 1992.

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

from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 90 based on the 900 licensees in Montana.

BOARD OF PLUMBERS
ROBERT NAULT, CHAIRMAN

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 16, 1992.

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of a rule pertaining to uniform building code) NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF 8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE

TO: All Interested Persons:

1. On December 17, 1992, at 9:00 a.m., in the downstairs conference room of the Department of Commerce Building, 1424 - 9th Avenue, Helena, Montana, a public hearing will be held to consider the proposed amendment of the above-stated rule.

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

"8.70.101 INCORPORATION BY REFERENCE OF UNIFORM BUILDING CODE (1) through (c) will remain the same.

(d) Subsections (b) and (c) of section 304 of the Uniform Building Code, 1991 Edition, are amended to read as follows:

Sec. 304.(b) Permit fees. The fee for each permit shall be as set forth in Table No. 3-A.

Sec. 304.(c) Plan review fees: When a plan or other data are required to be submitted by subsection (b) of section 302, a plan review fee shall be paid. Said plan review fee shall be 25 percent of the building permit fee as set forth in Table No. 3-A. When only plan review services are provided, the plan review fee shall be 65% of the building permit fee as set forth in Table No. 3-A.

The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment. Whenever the building official is in the state of Montana, acting through the department of commerce, building codes bureau, the value or valuation of a building or structure under any of the provisions of this code will be determined using the cost per square foot method of valuation and the cost per square foot figures for the type and quality of construction listed in the most current "Building Valuation Data" table published by "International Conference of Building Officials Building Standards" magazine, the trade magazine published by the International Conference of Building Officials, as modified by the regional modifiers set forth in said "Building Valuation Data" table. The building codes bureau may, for public buildings or projects that exceed $25,000 in building value, use firm bids for establishing the building valuation as an alternative to using "Building

Valuation Data" table when such bids include all construction work associated with the building as described earlier in this section and the bidding process is determined as having been open and competitive. Valuation of projects may also be based on firm total project contract amounts if the entire project is contracted and such contracts cover all construction work associated with the building as described earlier in this section, provided this contracted valuation is less than 75% of the valuation as determined by use of "Building Valuation Data" table. Valuation of remodel and/or addition projects, where use of "Building Valuation Data" table is not appropriate, will be based on use of typical and reasonable construction costs. When only plan review fees are charged, the building valuation for determining fees will be based on the design professional's preliminary cost estimate, if such estimate is available or "Building Valuation Data" table, if such estimate is not available. As provided in ARM 8.70.208, local governments certified to enforce the state building code may establish their own permit fees. Local governments may also establish their own method of building valuation. During the period commencing with the date upon which this amendment is effective and ending on June 30, 1994, the building permit fee above shall be reduced to a sum equal to 85% of the sum calculated above and no plan review fee shall be applied, except where plan review services only are provided the plan review fee shall remain 65% of the building permit fee as set forth in Table No. 3-A.

(e) through (11) will remain the same."

Auth: Sec. 50-60-104, 50-60-203, MCA; IMP, Sec. 50-60-103, 50-60-104, 50-60-108, 50-60-109, 50-60-203, MCA

REASON: The Bureau is proposing this amendment to reduce revenues received from issuance of building permits to levels currently needed for support of the Building Codes Bureau programs.

3. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Building Codes Bureau, 1218 East Sixth Avenue, Helena, Montana 59620, to be received no later than December 24, 1992.

5. Rick Kopel, attorney, has been designated to preside over and conduct the hearing.

BUILDING CODES BUREAU
JAMES BROWN, BUREAU CHIEF

ANNIE M. BARTOS,
RULE REVIEWER

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

Certified to the Secretary of State, November 16, 1992.

BEFORE THE MONTANA STATE LOTTERY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to the organizational rule and retailer commissions and the adoption of a new rule pertaining to sales staff incentive plan	)))))	NOTICE OF PROPOSED AMENDMENT OF 8.127.101 ORGANIZATIONAL RULE AND 8.127.407 RETAILER COMMISSION AND THE ADOPTION OF NEW RULE I SALES STAFF INCENTIVE PLAN

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On December 26, 1992, the Montana State Lottery proposes to amend and adopt the above-stated rules.

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

"8.127.101 ORGANIZATIONAL RULE (1) and (2) will remain the same.

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

Ward Shanahan, P.O. Box 1715, Helena, Montana 59601
Becky Erickson, 114 Lomond, Glasgow, Montana 59230
Dwaine Iverson, 301 1st Street South, Shelby, Montana 59474
~~Gary D. Rebal, P.O. Box 2466, Gt. Falls, Montana 59405~~
David Kasten, SR 277, Box A-14, Brockway, Montana 59214
William J. Ware, 221 Breckenridge, Helena, Montana 59601

(4) The director of the Montana Lottery is appointed by the governor. The director is ~~Joann Attwood~~ Sandra Guedes, 2525 North Montana, Helena, Montana 59601. The assistant director for security is appointed by the lottery director. All other employees are hired by the lottery director. A chart of the organization of the lottery is attached as the following page and by this reference is herein incorporated."

Auth: Sec. 23-7-202, MCA; IMP, Sec. 23-7-202, MCA

REASON: Change is proposed to this rule because of the appointment of a new Commissioner and Director by the Governor, and also to incorporate the updated organizational chart.

"8.127.407 RETAILER COMMISSION (1) Each retailer is entitled to a base commission of ~~no more than~~ 5% of the face value of tickets and chances that ~~they~~ he purchases from the lottery and ~~do~~ does not return. However, to further the sale

of lottery products, the lottery commission may adopt rules providing additional commissions to sales agents based on incremental sales, as follows:

(a) Each retailer is assigned a weekly instant ticket sales base created by using his own average weekly sales over at least six months.

(b) For each instant ticket game sales period, the retailer's sales less returned tickets is measured against the assigned base.

(c) When a retailer's sales during the game sales period reach 20% over his established base sales, the retailer's commission shall be 6%.

(d) When a retailer's sales reach 40% over his established base sales, the retailer's commission shall be 7%.

(e) When a retailer's sales reach 60% over his established base sales, the retailer's commission shall be 8%.

(f) When a retailer's sales reach 80% over his established base sales, the retailer's commission shall be 9%.

(g) When a retailer's sales reach 100% over his established base sales, the retailer's commission shall be 10%.

(h) Retailer sales bases may be adjusted annually at the discretion of the commission."

Auth: Sec. 23-7-202, 23-7-301, MCA; IMP, Sec. 23-7-301, MCA

REASON: As presently stated, this rule does not accurately reflect the payment of base commissions, and further, bonus commissions, to the lottery instant ticket retailers. The Lottery Commission adopted this rule on September 11, 1989, and the rule was implemented effective September 29, 1989. However, it failed to clearly identify the actual base bonus paid to retailers (5%), and that additional bonuses are paid based on incremental increases in sales. Neither did the rule identify the method of determining how the bonus was applied.

Application of this rule to the sales of lottery tickets has been shown in Montana, as well as other lottery states, to significantly increase sales. Sales incentives have also been applied in the private sector.

3. The proposed new rule will read as follows:

"I SALES STAFF INCENTIVE PLAN (1) In order to further the sale of lottery products, the lottery commission adopts the following sales incentives and bonus plans for lottery sales staff. Incentive pay will be based on incremental increases in lottery ticket sales, as specified by the commission. Lottery bonuses will be based on recruiting and retaining new retailers, as specified by the commission.

(a) Field sales staff will receive a bonus of $20 for each new retailer recruited to sell lottery products, providing the retailer stays active for at least 90 days. Each field sales staff person will also receive a 1% commission for each instant ticket delivered, less returns, to the new retailer during the first six months of sales, excluding the first 2,000 tickets. Existing lottery chain

accounts will be excluded from this new retailer bonus for new stores added to the chain account.

(b) Field sales staff, the sales manager and the accounts manager will receive incentive pay, up to 3% of their annual salaries based on incremental increases in ticket sales.

(i) The sales period will be the instant ticket sales period established for each new game introduction, a period generally running six weeks. For the field sales staff, each employee's individual base will be calculated by totalling the retailer bases within his respective sales regions. The sales manager and accounts manager's bases will be the total of all retailer bases within the state.

(ii) When an employee's sales increase by 10% or more over his base sales, the employee will receive incentive pay of 1% of his annual salary.

(iii) When an employee's sales increase by 20% or more over his base sales, the employee will receive incentive pay of 2% of his annual salary.

(iv) When an employee's sales increase by 30% or more over his base sales, the employee will receive incentive pay of 3% of his annual salary.

(c) Employee sales bases may be adjusted annually at the discretion of the commission."

Auth: Sec. 23-7-202, MCA; IMP, Sec. 23-7-202, MCA

REASON: Section 23-7-202(10) requires the Montana Lottery Commission to implement rules to pay sales incentives or bonuses to lottery sales staff. In February 1990, the Montana Lottery Commission approved payment of bonuses and incentives to the Lottery's field staff. Due to an oversight and a change in administration, rules were not completed at that time, although the procedures for paying field staff commissions and bonuses were implemented.

At the September 11, 1992, Lottery Commission meeting, the Commission gave approval to extend the sales incentive plan for the accounts manager and sales manager.

The benefits to the state are increases in the sale of lottery tickets, and increases in the net revenue generated by the Lottery for the School Equalization Account and the Board of Crime Control. Unless there are significant incremental increases in sales, no incentive or bonus pay is awarded.

4. Interested persons may present their data, views or arguments concerning the proposed amendments and adoption in writing to the Montana State Lottery, 2525 North Montana, Helena, Montana 59620, to be received no later than 5:00 p.m., December 24, 1992.

5. If a person who is directly affected by the proposed amendments and adoption wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Montana State Lottery, 2525 North Montana, Helena, Montana 59620, to be received no later than 5:00 p.m., December 24, 1992.

6. If the Lottery receives requests for a public hearing on the proposed amendments and adoption from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendment, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 81 based on the 811 retailers and sales staff in the state of Montana.

MONTANA STATE LOTTERY
SANDRA GUEDES, DIRECTOR

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 16, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.18.105 and 42.18.123 relating to the Montana Reappraisal Plan	NOTICE OF THE PROPOSED AMENDMENT of ARM 42.18.105 and 42.18.123 relating to the Montana Reappraisal Plan

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 15, 1993, the Department of Revenue proposes to amend ARM 42.18.105 and 42.18.123 relating to the Montana reappraisal plan.

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

42.18.105 MONTANA REAPPRAISAL PLAN (1) The Montana reappraisal plan consists of seven parts: residential appraisal, commercial appraisal, agricultural and timber appraisal, industrial appraisal, certification and training requirements, manuals, and progress reporting. The Montana reappraisal plan implements the legislature's cyclical reappraisal program ~~and the annual sales assessment ratio adjustments~~ set forth in 15-7-111, MCA.

(2) The Montana reappraisal plan provides for the valuation of residential ~~property~~, commercial ~~property~~, agricultural and ~~timber~~ forest land ~~property~~, and industrial property. ~~A new~~ The computer assisted mass appraisal system (CAMAS) will be implemented to assist in the valuation process. The department will determine a new appraised value for ~~each parcel of land, each~~ residential, ~~improvement, each~~ commercial, ~~improvement, each agricultural improvement,~~ and ~~each~~ industrial land and improvements, and agricultural improvements by December 31, 1992. The department will determine a new appraised value for each parcel of agricultural land and forest land by December 31, 1993. Existing agricultural land valuation schedules will be reviewed and updated, as provided in 15-7-201, MCA. Taxpayers will receive a notification of their new appraised value by June 15, 1993 except for agricultural and forest property owners who will receive their new appraised values by June 15, 1994. ~~Taxpayer review and appeal of the new values will take place during tax year 1993. The department will enter the new appraised values on the tax rolls for tax year 1994.~~

AUTH: 15-1-201 MCA; IMP: 15-7-111; 15-7-133; and 15-7-134 MCA.

42.18.123 MANUALS (1) For residential and agricultural /forest lands new construction, the January 1, 1982 Montana Appraisal Manual will be used through tax year 1992.

(2) through (5) remain the same.

AUTH: 15-1-201 MCA; IMP: 15-7-111 MCA.

3. The above rules are proposed to be amended in order to comply with HB52 of the July 1992 special session which amended 15-7-111, 15-7-133 and 15-7-134, MCA.

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 December 28, 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 December 28, 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 November 16, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.11.211, 42.11.212, 42.12.102, 42.12.103, 42.12.104, 42.12.131, 42.12.141, 42.12.207, 42.12.313, 42.13.401; and NEW RULES I and II relating to the Liquor Division	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT of ARM 42.11.211, 42.11.212, 42.12.102, 42.12.103, 42.12.104, 42.12.131, 42.12.141 42.12.207, 42.12.313, 42.13.401; and NEW RULES I and II relating to the Liquor Division

TO: All Interested Persons:

1. This proposal was noticed with no hearing contemplated at page 1998 in MAR issue No. 17 on September 10, 1992. However, since the department has received a request for a hearing from the public, on December 16, 1992, at 9:30 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendments of ARM 42.11.211, 42.11.212, 42.12.102, 42.12.103, 42.12.104, 42.12.131, 42.12.141, 42.12.207, 42.12.313, and 42.13.401; and adoption of new rules I and II relating to the Liquor Division.

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

42.11.211 REGISTRATION OF REPRESENTATIVES (1) Any person acting as a representative of a vendor must be registered with the department by a vendor in accordance with the provisions of ARM 42.11.212 through 42.11.215 ~~and have been issued identification cards as provided for in ARM 42.11.232~~.

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

(d) not a resident of Montana ~~within 30 days of application for registration~~.

(3) remains the same.

~~(4) An application to register a representative must be accompanied by two recent unmounted photographs 1½ inches square, of the representative to be registered.~~

(5), (6), and (7) are renumbered (4), (5), and (6).

AUTH: 16-1-303, MCA; IMP: 16-3-103, MCA.

42.11.212 RESTRICTION ON NUMBER OF REPRESENTATIVES (1) remains the same.

~~(2) An identification card shall neither be issued to an applicant representative nor shall the application for a representative be approved if two identification cards have previously been issued for the vendor and are still outstanding. One of the previously issued identification cards must be returned to the liquor division before a new identification card may be issued unless the vendor has provided the liquor division~~

~~with an acceptable explanation in writing showing why it is impossible or impractical to return the card.~~

AUTH: 16-1-303, MCA; IMP: 16-3-103, MCA.

42.12.102 SUPPORTING DOCUMENTATION -- PUBLIC CONVENIENCE AND NECESSITY (1) remains the same.

(a) any new retail ~~all-beverages~~ license including a 16-4-204, MCA, all-beverages license; or

(b) ~~a new resort retail all-beverages license; or~~

~~(c) a new retail on-premises beer license for use at a premises situated more than five miles from the nearest corporate city boundaries~~ a transfer of location of an existing licensed premises.

(2) remains the same

(3) The department will find that the evidence supports the public convenience and necessity of the application where it indicates that the issuance of the license will materially promote the public's ability to engage in the licensed activity. This determination involves an evaluation of a variety of criteria, including all together the business abilities and character of the applicant, the demand for services in the area to be served, the impact on existing retail alcoholic beverages licensees, and any adverse impact on the area to be served. No single factor is a necessary or sufficient indicator of public convenience and necessity.

AUTH: Sec. 16-1-303 MCA; IMP, Sec. 16-4-105 and 16-4-203 MCA.

42.12.103 SUPPORTING DOCUMENTATION -- CORPORATE APPLICANTS (1) A corporate applicant applying for a retail on-premises consumption alcoholic beverages license must provide with its application a sworn statement by an officer or director attesting that the corporation meets the licensing criteria in section 16-4-401(2), MCA.

(2) A corporate applicant applying for a retail off-premises consumption alcoholic beverages license must provide with its application a sworn statement by an officer or director attesting that the corporation meets the licensing criteria in section 16-4-401(3), MCA.

(3) A corporate applicant applying for a license that permits the manufacture, importing or wholesaling of an alcoholic beverage must provide with its application a sworn statement by an officer or director attesting that the corporation meets the licensing criteria in section 16-4-401(4), MCA.

~~(1)~~ (4) A corporate application other than one whose stock is listed on a national exchange or a corporation with more than 10 stockholders shall list:

(a) the names, dates of birth and social security numbers of all owners of the issued stock, directors and officers;

(b) the ~~amount~~ number of shares of stock owned by each stockholder; and

(c) the residence addresses of all stockholders, directors

and officers.

AUTH: Sec. 16-1-303, MCA; IMP. Sec. 16-4-203, MCA.

42.12.104 ~~USE OF CENSUS DATA~~ ACTION TAKEN WITH CENSUS UPDATE (1) Upon receipt of the most recent census taken under the direction of congress or the most recent population estimates published by the bureau of the census, United States department of commerce, the department of revenue will determine the availability of any alcoholic beverage licenses subject to a quota system. The department will publish notice of increases in the availability of alcoholic beverages licenses subject to a quota limitation if the quota of licenses had previously been filled.

(2) In determining the availability of such licenses, the department will utilize only those boundaries that are recognized by the bureau of the census.

(3) The department will determine whether a license is available for a license applicant based on the verified census data in the department's possession on the date the department received the application except when the department has published a notice of availability of a license three months before or after receipt of the application, in which case, the verified census data in the department's possession on the date the notice is published shall be used. Census data is verified when the department has confirmation the federal census bureau has declared the census data to be official, the department has calculated the license quotas from the official census data, and the department has placed the revised quotas on file. AUTH: Sec. 16-1-303 MCA; IMP, 16-4-105, 16-4-106, 16-4-201, 16-4-203, and 16-4-502 MCA.

42.12.131 APPLICATION FOR LAST AVAILABLE LICENSE IN QUOTA AREA (1) When the liquor division receives an application for the last available license in a quota area, the following procedures apply:

(a) The applicant will be advised, in writing, that he has applied for the last available license and may choose to direct the license bureau to:

(i) publish notice of the last available license and set a final date for receipt of all applications for that license; or

(ii) continue processing the application with the knowledge that if another application is received before his application is approved the department will publish notice of the last available license and set a deadline for receipt of all applications for that license.

~~(1)~~ (b) ~~a~~All applications ~~timely~~ received at the liquor division office or postmarked on or before the final date for receipt of all applications will be considered; and

~~(2)~~ (c) ~~w~~When more than one application is filed, a public hearing shall be conducted in accordance with the provisions of the Montana Administrative Procedure Act.

AUTH: 16-1-303, MCA; IMP: 16-4-105 and 16-4-201, MCA.

42.12.141 CORPORATE LICENSES (1) No alcoholic beverages license shall be issued to a Montana corporation unless the following requirements are met:

~~(1)~~ (a) The corporation was organized and has existed as a Montana corporation or has been authorized to do business in Montana ~~for at least 30 days~~ prior to making application for an alcoholic beverages license~~.~~; and

~~(2)~~ (b) The corporate application must be accompanied by a copy of the corporation's certificate of incorporation issued by the secretary of state.

AUTH: 16-1-303, MCA; IMP: 16-4-401, MCA.

42.12.207 APPLICATION APPROVED SUBJECT TO FINAL INSPECTION OF PREMISES (1) remains the same.

(2) If, upon investigation, the department determines the applicant is qualified to own a license and it appears that the proposed premises, based on sufficient evidence provided by the applicant, meets all criteria for suitability, the department may enter a final agency decision conditionally approving the application. The conditional approval is subject to a final inspection of the completed premises conducted by department investigative personnel, state or local health officials, ~~or~~ state or local building codes personnel and state or local fire code officials.

(3) through (7) remain the same.

AUTH: 16-1-303, MCA; IMP: 16-4-104, 16-4-106, 16-4-201, 16-4-402, and 16-4-404, MCA.

42.12.313 WINE OR BEER TASTINGS (1) ~~Any person, association, or corporation conducting a wine tasting shall, in the discretion of the liquor division, be entitled to conduct a wine tasting for the general public under the following conditions:~~

~~(a) The wine tasting shall be conducted on premises licensed for the sale of wine.~~

~~(b) The wine furnished shall be purchased from the Montana state liquor store. Wine may be furnished by a winery or winery representative as provided by and subject to the limitations set forth in ARM Title 42, chapter 11, sub-chapter 2.~~

~~(c) The applicant shall advise the liquor division in writing at least 10 days beforehand of the date, place, name and address of the sponsor, and manner in which the wine tasting shall be conducted, including the brand names of the wines to be furnished.~~ Wine tastings must be conducted by a retail licensee, special permittee or catering permittee.

(2) In no case can a wine distributor, a beer wholesaler, a winery\wine importer or a brewer\beer importer conduct a wine tasting other than a domestic winery as allowed under 16-3-411, MCA.

~~(2)~~ (3) This rule shall not apply to wine tastings which

are held in a private home wherein no consideration, remuneration, contribution, donation, gift, or any other money or thing of value is solicited or charged for entry or attendance and which do not violate the provisions of 16-6-306, MCA.

AUTH: 16-1-303, MCA; IMP: 16-4-105 MCA.

42.13.401 IMPORTATION OF WINE (1) and (2) remain the same.

(3) Each winery or importer registration must be:

(a) submitted on forms supplied by the liquor division;

(b) accompanied by a $25 fee; and

(c) renewed annually on or before ~~July~~ October 1.

(4) Any winery or importer failing to renew ~~or not actively engaged in business in Montana for a period of one year~~ will be subject to cancellation or suspension as provided in 16-4-107, MCA.

AUTH: 16-1-303, MCA; IMP: 16-4-107, MCA.

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

RULE I SEVEN DAY CREDIT LIMITATION (1) A Montana brewer\beer importer license, a beer wholesaler license, a Montana winery\wine importer registration or a table wine distributor license will be suspended or revoked if credible evidence demonstrates that a brewer\beer importer, a winery\wine importer, a wholesaler or distributor extended credit to a retail licensee for more than seven days.

(2) A retailer's license will be suspended or revoked if credible evidence demonstrates that the retailer accepted credit extended by a brewer\beer importer or a beer wholesaler for more than seven days for the purchase of beer.

(3) The first day of the seven day credit period begins at 8:00 a.m. on the day after the delivery.

(4) Criteria which demonstrates credit has been extended are:

(a) wholesaler delivered product to retailer;

(b) retailer or wholesaler do not have documentation of payment;

(c) wholesaler has been without payment for more than seven days; and

(d) wholesaler does not have documentation of efforts to collect payment; or

(e) (a), (b), (c) and the wholesaler has no documentation to show further product delivery was terminated.

(5) Criteria which demonstrates credit has been accepted are:

(a) wholesaler delivered product to retailer;

(b) retailer or wholesaler do not have documentation of payment;

(c) wholesaler has been without payment for more than seven days;

(d) product has not been returned by retailer.
AUTH: 16-1-303, MCA; IMP: 16-3-243 and 16-3-406, MCA.

RULE II CLOSING HOURS DUE TO CHANGE TO OR FROM DAYLIGHT SAVINGS TIME (1) Hours of operation change twice yearly due to daylight savings time. The change in time will occur at 2:00 a.m., therefore:

(a) In the fall the establishment must close at 2:00 a.m. and then set the clock back to 1:00 a.m.; and

(b) In the spring the establishment must close at 2:00 a.m. and then set the clock forward to 3:00 a.m.

AUTH: 16-1-303, MCA; IMP: 16-3-304, MCA.

4. Section 2-4-314, MCA, requires each agency to conduct a biennial review of its rules. The amendments and adoptions of the above rules are the result of this review for the Liquor Division.

New rule I is proposed to make it clear there is a distinction in the circumstances under which a retailer is subject to the 7-day credit limitation when receiving product from either a beer wholesaler or a wine distributor. The rule explains the criteria that demonstrates when the wholesaler has extended credit to the retailer and when the retailer has accepted credit from the wholesaler, establishing a violation of the 7-day credit law. It also defines the day and time of the beginning of the 7 days and provides the penalty for violating the 7-day credit law.

New rule II is proposed to explain when a licensee must close his establishment during the year when the time changes for daylight savings time. In the past prior to the time change, the license bureau has received many calls inquiring about when an establishment selling alcoholic beverages must close. The rule is proposed to clarify this question.

5. 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 December 28, 1992.

6. 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 November 16, 1992.

BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to fees and the adoption of new rules pertaining to direct entry midwifery apprenticeship	))))	NOTICE OF AMENDMENT OF 8.4.301 FEES AND THE ADOPTION OF NEW RULES PERTAINING TO DIRECT ENTRY MIDWIFERY APPRENTICESHIP

TO: All Interested Persons:

1. On September 24, 1992, the Board of Alternative Health Care published a notice of public hearing at page 2106, 1992 Montana Administrative Register, issue number 18, on the proposed amendment and adoption of the above-stated rules. The public hearing was held on October 27, 1992, in Helena, Montana.

2. The Board has amended ARM 8.4.301 and adopted new rule II (8.4.503) exactly as proposed. The Board has adopted new rule I (8.4.502) as proposed, but with the following changes:

"I DEFINITIONS (1) will remain the same as proposed.

(2) "Morbidity" means A PATHOLOGICAL CONDITION OF THE MOTHER AND/OR BABY THAT PRESENTS WITH SYMPTOMS PECULIAR TO WHAT IS WITHIN NORMAL LIMITS DURING THE PRENATAL, INTRAPARTUM AND POSTPARTUM PERIODS WHICH REQUIRES ~~all~~ transfers of care to a physician, transports to a hospital, and/or emergency measures~~.~~. This, or client refusal to refer to transfer care, ~~which~~ shall be reported to the board within 72 hours, on a form prescribed by the board.

(3) will remain the same as proposed."

Auth: Sec. 37-27-105, MCA; IMP, Sec. 37-27-205, 37-27-320, MCA

3. The Board has thoroughly considered all comments and testimony received. Those comments and the Board's responses follow:

ARM 8.4.502

COMMENT NO. 1: The definition of morbidity should follow a dictionary definition such as "state of being diseased" instead of the proposed rule language. Suggested language is: " pathological condition of the mother and/or baby that presents with symptoms peculiar to what is within normal limits during the prenatal, intrapartum, and postpartum periods which require transfer of care to a physician, transport to a hospital, and/or emergency measures"; to be followed by 72 hour reporting requirements.

RESPONSE: The Board concurs with the comment and will amend the rule as shown above.

ARM 8.4.503

COMMENT NO. 2: Thirty three comments were received stating 25 supervised births should not be required to enter directly into a level III apprenticeship, as many direct entry midwives have not had any supervised births. Instead, the number of births as primary attendant (unsupervised) could be raised to 40-50 as a requirement for entry into level III.

RESPONSE: Section 37-27-201(4), MCA, states the qualifications for licensure as a direct entry midwife shall include "experience acquired through an apprenticeship or other supervisory setting." This statutory requirement does not allow the Board to promulgate a rule waiving the supervision requirement and recognizing non-supervised birth experience. This statutory section also requires 25 supervised births as primary birth attendant, as a requirement of licensure. The Board therefore proposed this same number of births to enter directly into a level III apprenticeship, instead of requiring more births for apprentice level III than are required for licensure.

COMMENT NO. 3: Twenty-five comments were received stating the two-year waiting period for a licensed direct entry midwife to become a supervisor is too restrictive and is without rationale, since these midwives have passed all requirements to become licensed and do not need more qualifications to become a supervisor.

RESPONSE: Two years is the minimum time necessary for a licensed direct entry midwife to gain experience necessary to supervise an apprentice. The public welfare and safety would not be protected by allowing newly licensed direct entry midwives to supervise apprentices. Direct entry midwives from out of state need the two years to gain unique Montana experience, and direct entry midwives licensed through the apprenticeship program need two more years to gain experience before supervising and teaching new apprentices.

COMMENT NO. 4: The proposed two years requirement is unfair to the public and to the direct entry midwives ineligible under the education and experience exemption to take the first exam and become an apprentice supervisor.

RESPONSE: All direct entry midwives who will be licensed under the education and experience exemption by taking the first exam already have sufficient experience to become apprentice supervisors. Section 37-27-203, MCA, required these applicants to certify 75 births as primary birth attendant. Also see response to Comment No. 3, above.

COMMENT NO. 5: Elimination of the proposed two year waiting requirement would open up supervision opportunities to many, including provisionally licensed direct entry midwives who may otherwise be shut out.

RESPONSE: See response to Comment No. 3, above.

COMMENT NO. 6: No differentiation should be made between direct entry midwives licensed under the education and experience exemption, who may have acquired her experience in an unsupervised setting, and direct entry midwives who have completed the necessary steps for licensure with supervision, as far as becoming a supervisor for apprentices.

RESPONSE: See response to Comments No. 3 and 4, above.

COMMENT NO. 7: The rule contains a double standard by allowing education and experience exempted direct entry midwives, who took the first licensing exam, to have no supervised birth requirements, while requiring supervised births for all other license applicants.

RESPONSE: Section 37-27-203, MCA, set forth the experience required for an exemption to educational and practical experience requirements at 75 births as primary birth attendant. Section 37-27-201, MCA, sets forth the 25 supervised birth requirements for all other applicants for licensure as direct entry midwives. The Board may not exceed nor otherwise waive these statutory requirements in promulgating rules to implement the statutes. Also see response to Comments No. 3 and 4, above.

BOARD OF ALTERNATIVE HEALTH CARE
DR. MICHAEL BERGKAMP, CHAIRMAN

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

_____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, November 16, 1992.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the repeal of Rules 11.2.401 and 11.2.403 pertaining to local service areas and local youth services advisory councils.	NOTICE OF REPEAL OF RULES 11.2.401 AND 11.2.403 PERTAINING TO LOCAL SERVICE AREAS AND LOCAL YOUTH SERVICES ADVISORY COUNCILS

TO: All Interested Persons

1. On August 27, 1992, the Department of Family Services published notice of the proposed repeal of ARM 11.2.401 and 11.2.403 pertaining to local service areas and local youth services advisory councils at page 1831, of the 1992 Montana Administrative Register, issue no. 16.

2. Paragraph 2 of the notice published on August 27, 1992, as referred to above, incorrectly set out ARM 11.2.402 in place of ARM 11.2.403. There is no ARM 11.2.402 because that rule number has been reserved. As is consistent with the notice as a whole, only ARM 11.2.401 and ARM 11.2.403, were proposed for repeal. The statutory authority for repealing these rules appears in the notice, and the authority following "ARM 11.2.402" in paragraph 2 of the notice is intended to support repeal of ARM 11.2.403. In addition, the authorizing statute cited in paragraph 2: Section 52-1-103(17), MCA, is corrected herein as Section 52-1-103(19), MCA.

3. ARM 11.2.401 and ARM 11.2.403 have been repealed as proposed.

4. No comments were received.

DEPARTMENT OF FAMILY SERVICES

Tom Olsen, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, November 16, 1992.

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

In the matter of the amendment of rules 16.44.101, 16.44.102, 16.44.105, 16.44.111, 16.44.116, 16.44.118, 16.44.120, 16.44.202, 16.44.302-306, 16.44.610, 16.44.612, 16.44.701, 16.44.804 and new rules I through XIII dealing with boiler and industrial furnace (BIF) regulations	)	NOTICE OF AMENDMENT OF RULES AND ADOPTION OF NEW RULES I THROUGH XIII (Solid & Hazardous Waste)

To: All Interested Persons

1. On December 26, 1991, the department published a notice at page 2567 of the 1991 Montana Administrative Register, Issue No. 24, of the proposed amendment of the above-captioned rules and proposed adoption of new rules. A subsequent notice was published March 12, 1992, at page 445 of the 1992 Montana Administrative Register, Issue No. 5, adopting amendments to ARM 16.44.306 and deferring further action on the balance of the proposal until a proper response to the extraordinarily large number of comments could be made. An interim notice was published on September 10, 1992 at page 1911 of the 1992 Montana Administrative Register, Issue No. 17, containing the text of twelve proposed new rules containing the substance of text that had been incorporated by reference in the original proposal and offering additional time for public comment on the new text.

2. After consideration of the comments received on the proposed rules, the department has adopted and amended the rules as proposed with the changes noted below (new material is underlined and material to be deleted is interlined); and amended, in addition, rules 16.44.101, 16.44.111, 16.44.116, 16.44.306, 16.44.612, and 16.44.701 to conform to changes made to the noticed rules. The rules, as finally amended and adopted, read as follows:

16.44.101 PURPOSE OF RULES (1) The purpose of the rules in subchapters 1 through ~~10~~ 11 of this chapter is to provide for the control of all hazardous wastes that are generated within, or transported to Montana for the purposes of storage, treatment and disposal or for the purposes of resource conservation or recovery.

(2) The rules in subchapters 1 through ~~10~~ 11 of this chapter are adopted to discharge the department's responsibilities under Title 75, chapter 10, part 4, Montana Code Annotated, the Montana Hazardous Waste and Underground Storage Tank Act (the "Act"), by establishing a management control system including permitting which assures the safe and acceptable management of hazardous wastes from the moment of their generation through each stage of management until their ultimate destruction or disposal.

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

16.44.102 INCORPORATIONS BY REFERENCE (1)-(4) Same as proposed.

(5) As of November 26, 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.

State Rule		Federal Rule Incorporated	Notation of Most Recent Changes to Federal Rules
16.44. . . .		40 CFR . . .	
(a)	103	264.17(b), 264.96, 264.117, 264.171, 264.172	NC
(b)	109	264.72, 264.73(b)(9), 264.76	NC
(c)	110	Parts 264 and 266	Boiler and industrial furnace (BIF) rules.
(d)	116	264.98, 264.99, 264.100, 264.112, 264.113, 264.117(a), 264.118, 264.147	~~BIF rules.~~ NC
(e)	120	270.14 - 270.23	BIF rules.
(f)	123	264.343, 264.345	NC
(g)	124	Part 264, Subpart M	NC
(h)	126	Parts 264 and 266	BIF rules.
(i)	202	Parts 264 and 266, Appendix to Part 262	BIF rules.

(i)	306	Part 264, Subpart O; Part 265, Subpart O; Part 266, Subparts C-G; 265.71, 265.72	BIF rules.
		49 CFR . . .	
(k)	321	173.300 (40 CFR 261.21)	NC
(l)	323	173.51, 173.53, 173.88 (40 CFR 261.23)	NC
		40 CFR . . .	
(m)	331	261.31	NC
(n)	332	261.32	NC
(o)	333	261.33(e) and (f)	NC
(p)	334	Part 265, Appendix V	NC
(q)	351	Part 261, Appendices I, II, III, and X	NC
(r)	352	Part 261, Appendices VII and VIII	NC
(s)	405	Part 262, the Appendix	NC
		49 CFR . . .	
(t)	410	Parts 173, 178, and 179 (40 CFR 262.30)	NC
(u)	411	Part 172, Subpart E (40 CFR 262.31)	NC
(v)	412	Part 172, Subpart D (40 CFR 262.32)	NC
(w)	413	Part 172, Subpart F (40 CFR 262.33)	NC
		40 CFR . . .	
(x)	415	Part 265, Subparts C and D, 265.111, 265.114, Part 265, Subpart I, Part 265, Subpart J, (except 265.197(c) and 265.200)	NC
		49 CFR . . . / 33 CFR . . .	

(y)	511	171.15, 171.16 / 153.203 (40 CFR 263.30)	NC
		40 CFR . . .	
(z)	603	264.250(c), 265.352, 265.383	NC
(aa)	609	Part 265, Subparts B - Q, excluding Subpart H and 265.75	BIF rules.
(ab)	702	Part 264, Subparts B - * BB, excluding Subpart H and 264.75; Part 264, Appendices I, IV, V, VI, and IX	BIF rules.
(ac)	802	264.197, 264.228, 264.258, 265.197, 265.228, and 265.258	NC
(ad)	803	264.112, 264.117 - 264.120, 265.112, 265.117 - 265.120	NC
(ae)	804	264.111 - 264.115, 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.143(f)(3); 264.601 - 264.603; 265.111 - 265.115, 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, and 265.404	NC
(af)	805	264.117 - 264.120; 264.228, 264.258, 264.280, 264.310, 264.145(f)(5); 264.603; 265.117 - 265.120, 265.228, 265.258, 265.280, 265.310	NC
(ag)	811	264.143(f) and 264.145(f)	NC
(ah)	817	264.147(f), 264.147(g)	NC
(ai)	823	264.151(a)-(j)	NC
(aj)	1111	Part 266, Appendices I through XII	BIF rules.

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

(6) Same as proposed.

16.44.105 TEMPORARY PERMITS (INTERIM STATUS) Same as proposed.

16.44.111 DURATION OF PERMITS (1)-(3) Remains the same.

(4) Each permit for a land disposal facility or a boiler or industrial furnace shall be reviewed by the department five years after the date of permit issuance or reissuance and shall be modified as necessary, as provided in ARM 16.44.116.

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

16.44.116 MODIFICATION OR REVOCATION AND REISSUANCE (1)-(2)(e) Remains the same.

(f) Notwithstanding any other provision in this rule, when a permit for a land disposal facility or a boiler or industrial furnace is reviewed by the department under ARM 16.44.111(4), the department shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements of this chapter.

(3)-(5) Remains the same.

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

16.44.118 MINOR MODIFICATIONS OF PERMITS; TEMPORARY AUTHORIZATIONS FOR MODIFICATIONS; AND AUTHORIZATIONS FOR MANAGEMENT OF NEWLY IDENTIFIED WASTES (1)-(2) Same as proposed.

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

(a) the unit was in existence as a hazardous waste facility with respect to the newly listed or characterized waste on the effective date of the final rule listing or identifying the waste or regulating the unit (refer to the "existing facility" definition in ARM 16.44.202 and the "existing or in existence" definition of ARM ~~16.44.306(5)~~ 16.44.1112;

(b)-(e) Same as proposed.

16.44.120 CONTENTS OF PART B (1)-(2) Same as proposed.

(3) The department hereby adopts and incorporates by reference 40 CFR 270.14 through 270.23 except for 270.22(a)(1)(ii), (a)(2), (a)(4) and (a)(6). The correct CFR edition is listed in ARM 16.44.102.

(a)-(k) Same as proposed.

16.44.202 DEFINITIONS (1)-(56) Same as proposed.

(57) "Infrared incinerator" means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an after-burner using controlled flame combustion and which is not listed as an industrial furnace.

(58)-(86) Same as proposed.

(87) "Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source

of heat followed by an after-burner using controlled flame combustion and which is not listed as an industrial furnace.

(88)-(129) Same as proposed.

16.44.302 DEFINITION OF WASTE (1)-(4) Same as proposed.

(5)(a) Same as proposed.

(b)(i)-(iii) Same as proposed.

(iv) materials listed in sections (4)(a) and (4)(b) of this rule.

(6) Same as proposed.

16.44.303 DEFINITION OF HAZARDOUS WASTE Same as proposed.

16.44.304 EXCLUSIONS (1)-(2)(a) Same as proposed.

(b) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by ~~40 CFR 266.112 (incorporated by reference in ARM 16.44.306(5)~~ ARM 16.44.1110~~)~~ for facilities that burn or process hazardous waste;

(c) Same as proposed.

(d) waste from the extraction, beneficiation and processing of ores and minerals (including coal, phosphate rock and overburden from the mining of uranium ore), except as provided by ~~40 CFR 266.112 (incorporated by reference in ARM 16.44.306(5)~~ ARM 16.44.1110~~)~~ for facilities that burn or process hazardous waste. For purposes of this exclusion, beneficiation of ores and minerals is restricted to the following activities: crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and *in situ* leaching. For the purposes of this exclusion, waste from the processing of ores and minerals will include only the following wastes, until the department further modifies this rule after EPA completes a report to congress and a regulatory determination on their ultimate regulatory status:

(i)-(xx) Same as proposed.

(e) cement kiln dust waste, except as provided by ARM ~~16.44.306(5)~~ ARM 16.44.1110 for facilities that burn or process hazardous waste;

(f)-(j) Same as proposed.

(3)-(5) Same as proposed.

16.44.305 SPECIAL REQUIREMENTS FOR COUNTING HAZARDOUS WASTES (1)-(a) Same as proposed.

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

(c)-(e) Same as proposed.

16.44.306 REQUIREMENTS FOR RECYCLABLE MATERIALS

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

(b) The following recyclable materials are not subject to the requirements of this rule but are regulated under subparts C through G of 40 CFR Part 266, ~~40 CFR 266.101 and 266.103~~ and all applicable provisions in subchapters 1, 8, ~~and~~ 9, and 11 of this chapter:

(i) Remains the same.

(ii) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under subpart O of 40 CFR Part 264 or subpart O of 40 CFR Part 265, ~~but are regulated under 40 CFR 266.101 or 266.103~~ (subchapter 11);

(iii)-(v) Remains the same.

(c) Remains the same.

(2)-(4) Remains the same.

~~(5) The department hereby adopts and incorporates by reference 40 CFR 266.101 and 266.103, except for the definition of "existing or in existence" set forth in 40 CFR 266.103(a)(i)(ii). For the purposes of ARM 16.44.306(1)(b)(ii) and of this section, "existing or in existence" means a boiler or industrial furnace that was in operation burning or processing hazardous waste on or before August 21, 1991; facilities for which construction to burn or process hazardous waste had commenced, but which were not in operation, as of that date do not qualify for interim status. A copy of these provisions or any portion thereof may be obtained from the solid and hazardous waste bureau, Department of Health and Environmental Sciences, Cogswell Building, Helena, MT 59620.~~

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

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

16.44.612 EXCLUSIONS The provisions of this subchapter do not apply to:

(1)-(2) Same as proposed.

(3) the owner or operator of a facility managing recyclable materials described in ARM 16.44.306(1)(b) and (c), except to the extent that requirements of this subchapter are referred to in subchapter 11 of this chapter or in subparts C, ~~D~~, F, or G of 40 CFR Part 266 (incorporated by reference in ARM 16.44.306(4));

(4)-(11) Same as proposed.

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

16.44.701 PURPOSE (1)-(2) Same as proposed.

(3) The standards set forth in this subchapter do not apply to:

(a)-(b) Same as proposed.

(c) owners or operators of facilities managing recyclable materials described in ARM 16.44.306(1)(b) and (c), except to the extent that requirements of this subchapter are referred to in subchapter 11 of this chapter or in subparts C, ~~D,~~ F, or G of 40 CFR Part 266 (incorporated by reference in ARM 16.44.306(4)).

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

16.44.804 COST ESTIMATE FOR FACILITY CLOSURE Same as proposed.

[RULE I] 16.44.1101 APPLICABILITY (1) The rules of this subchapter apply to hazardous waste burned or processed in a boiler or industrial furnace (as defined in ARM 16.44.202) irrespective of the purpose of burning or processing, except as provided by sections (2), (3), (4), and ~~(5)~~ (6) of this rule. In this subchapter, the term "burn" means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient. The emissions standards of ARM 16.44.1104 through ARM 16.44.1107 apply to facilities operating under a HWM permit as specified in ARM 16.44.1103.

(2)-(6) Same as proposed.

[RULE II] 16.44.1102 MANAGEMENT PRIOR TO BURNING

(1)-(2) Same as proposed.

(3)(a) Owners and operators of facilities that store hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of ~~subparts A through L of~~ 40 CFR Part 264 (incorporated by reference in ARM 16.44.702) and subchapter 1 of this chapter, except as provided by section (3)(b) of this rule. These standards apply to storage by the burner as well as to storage facilities operated by intermediaries (processors, blenders, distributors, etc.) between the generator and the burner.

(b) Owners and operators of facilities that burn, in an on-site boiler or industrial furnace exempt from regulation under the small quantity burner provisions of ARM 16.44.1108, hazardous waste that they generate are exempt from the regulations ~~under subparts A through L~~ of 40 CFR Part 264 and subchapter 1 of this chapter ~~with respect to the storage of~~ applicable to storage for those units that store mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage of hazardous waste prior to mixing with the primary fuel is subject to regulation as prescribed in section (3)(a) of this rule.

[RULE III] 16.44.1103 PERMIT STANDARDS FOR BURNERS

(1)-(4) Same as proposed.

(5)(a) Same as proposed.

(b)(i)-(iii) Same as proposed.

(iv) The following hazardous wastes ~~listed for dioxin, pentachlorophenol~~ or wastes derived from any of the following ~~dioxin listed~~ wastes may not be burned in a boiler or industrial furnace: EPA hazardous waste numbers D017, D037, D041, D042, F020, F021, F022, F023, F026, F027, F028, F032, and K001 (containing pentachlorophenol).

(c)(i)-(ii) Same as proposed.

(iii) In conjunction with the permit application, the department may require the owner/operator of a boiler or an industrial furnace (BIF) to submit a plan which will require a cessation of the burning of hazardous waste during prolonged inversion conditions. The department will consider the proximity of the boiler or industrial furnace to populated areas when determining the need for such a plan. The plan, if determined to be necessary by the department, must include an ambient air monitoring program in order to establish the conditions under which the burning will be halted and under which it may then be resumed, unless the owner/operator provides an alternate method for determining such conditions. ~~Any monitoring program must conform to methods contained in the Montana Quality Assurance Manual (July 1991 ed.). Any alternate method must be determined by the department as equivalent to applicable methods contained in the Montana Quality Assurance Manual.~~

(d)-(k) Same as proposed.

(6) Same as proposed.

[RULE IV] 16.44.1104 STANDARDS TO CONTROL ORGANIC EMISSIONS (1)(a) Same as proposed.

(b) Principal organic hazardous constituents (POHCs) are those compounds for which compliance with the DRE requirements of this rule shall be demonstrated in a trial burn in conformance with procedures prescribed in ARM 16.44.1112. One or more POHCs shall be designated by the department for each waste feed to be burned. POHCs shall be designated based on the degree of difficulty of destruction of the organic constituents in the waste and on their concentrations or mass in the waste feed considering the results of waste analyses submitted with part B of the permit application. POHCs are most likely to be selected from among those compounds listed in ~~Part 261,~~ Appendix VIII of 40 CFR 261, incorporated by reference in ARM 16.44.352(1)(b), that are also present in the normal waste feed. However, if the applicant demonstrates to the department's satisfaction that a compound not listed in ARM 16.44.352(1)(b), or not present in the normal waste feed is a suitable indicator of compliance with the DRE requirements of this rule, that compound may be designated as a POHC. Such POHCs need not be toxic or organic compounds.

(2)-(4) Same as proposed.

(5)(a)-(b) Same as proposed.

(c) Conduct dispersion modeling using methods recommended in Guideline on Air Quality Models (Revised) or the "Hazardous

Waste Combustion Air Quality Screening Procedure", which are provided in Appendices X and IX, respectively, ~~40 CFR 260.11~~ or "EPA SCREEN Screening Procedure" as described in Screening Procedures for Estimating Air Quality Impact of Stationary Sources, (as incorporated by reference in ARM 16.44.1111), to predict the maximum annual average off-site ground level concentration of 2,3,7,8-TCDD equivalents determined under section (5)(b) of this rule. The maximum annual average on-site concentration must be used when a person resides on-site; and

(d) Same as proposed.

(6) Alternative HC limit for furnaces with organic matter in raw material. For industrial furnaces that cannot meet the 20 ppmv HC limit because of organic matter in normal raw material, the department may establish an alternative HC limit on a case-by-case basis (under a part B permit proceeding) at a level that ensures that flue gas HC (and CO) concentrations when burning hazardous waste are not greater than when not burning hazardous waste (the baseline HC level) provided that the owner or operator complies with the following requirements. However, cement kilns equipped with a by-pass duct meeting the requirements of section (7) of this rule, are not eligible for an alternative HC limit.

(a) When the baseline HC (and CO) level is determined, ~~The~~ the owner or operator must demonstrate that the facility is designed and operated to minimize hydrocarbon emissions from fuels and raw materials ~~when the baseline HC (and CO) level is determined~~ and that the facility is producing normal products under normal operating conditions feeding normal feedstocks and fuels. The baseline HC (and CO) level is defined as the average over all valid test runs of the highest hourly rolling average value for each run when the facility does not burn hazardous waste, ~~and produces normal products under normal operating conditions feeding normal feedstocks and fuels~~ adjusted as appropriate to consider the variability of hydrocarbon levels under good combustion operating conditions. The baseline CO level is determined based on the test runs used to establish the baseline HC level and is defined as the average over all test runs of the highest hourly rolling average CO value for each run. More than one baseline level ~~may~~ must be determined if the facility operates under different modes that may generate significantly different HC (and CO) levels;

(b)-(d) Same as proposed.

(7)-(9) Same as proposed.

[RULE VI] 16.44.1105 STANDARDS TO CONTROL PARTICULATE MATTER Same as proposed.

[RULE VI] 16.44.1106 STANDARDS TO CONTROL METALS EMISSIONS (1) Same as proposed.

(2)(a)-(f) Same as proposed.

(g) Criteria for facilities not eligible for screening limits. If any criteria below are met, the tier I ~~+~~and tier II~~+~~ screening limits do not apply. Owners and operators of

such facilities must comply with either the tier III standards provided by section (4) of this rule or the adjusted tier I feed rate screening limits provided by section (5) of this rule.

(i)-(v) Same as proposed.

(h) Same as proposed.

(3) Same as proposed.

(4) Tier III and adjusted tier I site-specific risk assessment. The requirements of this section apply to facilities complying with either the tier III or adjusted tier I controls, except where specified otherwise.

(a) Conformance with the tier III metals controls must be demonstrated by emissions testing to determine the emission rate for each metal~~.~~. In addition, conformance with either the tier III or adjusted tier I metals controls must be demonstrated by air dispersion modeling to predict the maximum annual average off-site ground level concentration for each metal, and a demonstration that acceptable ambient levels are not exceeded.

(b)-(d) Same as proposed.

(e) Owners and operators of facilities with more than one on-site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on metals emissions under a ~~RCRA~~ HWM operating permit must conduct emissions testing (except that facilities complying with adjusted tier I controls need not conduct emissions testing) and dispersion modeling to demonstrate that the aggregate emissions from all such on-site stacks do not result in an exceedance of the acceptable ambient levels.

(f) Same as proposed.

(5)-(9) Same as proposed.

[RULE VII] 16.44.1107 STANDARDS TO CONTROL HYDROGEN CHLORIDE (HCL) AND CHLORINE GAS (Cl_2) EMISSIONS (1) The owner or operator must comply with the hydrogen chloride (HCl) and chlorine (Cl_2) controls provided by section (2), ~~or~~ (3), or (5) of this rule.

(2)-(8) Same as proposed.

[RULE VIII] 16.44.1108 SMALL QUANTITY ON-SITE BURNER EXEMPTION. Same as proposed.

[RULE IX] 16.44.1109 STANDARDS FOR DIRECT TRANSFER Same as proposed.

[RULE X] 16.44.1110 REGULATION OF RESIDUES (1)(a) Same as proposed.

(b) The owner or operator demonstrates that the hazardous waste does not significantly affect the residue by demonstrating conformance with either of the following criteria:

(i) Same as proposed.

(ii) Comparison of waste-derived residue concentrations with health-based limits.

(A) The concentrations of each nonmetal toxic constitu-

ents of concern (specified in section (1)(b)(i) of this rule) in the waste-derived residue must not exceed the health-based levels specified in Appendix VII (as incorporated by reference in ARM 16.44.1111), or the level of detection (using analytical procedures prescribed in SW-846), whichever is higher. If a health-based limit for a constituent of concern is not listed in Appendix VII, then a limit of 0.002 micrograms per kilogram or the level of detection (using analytical procedures prescribed in SW-846), whichever is higher, shall be used; and

(B)-(C) Same as proposed.

(c) Records sufficient to document compliance with the provisions of this rule shall be retained until closure of the boiler or industrial furnace unit. At a minimum, the following shall be recorded.

(i) Same as proposed.

(ii) If the waste-derived residue is compared with normal residue under section (1)~~(a)~~(b)(i) of this rule:

(A)-(B) Same as proposed.

[RULE XI] 16.44.1111 INCORPORATION BY REFERENCE

Same as proposed.

~~[RULE I]~~ [RULE XII] 16.44.128 PERMITS FOR BOILERS AND INDUSTRIAL FURNACES BURNING HAZARDOUS WASTE ~~(1) Owners and operators of new boilers and industrial furnaces (those not operating under the interim status standards of 40 CFR 266.103) are subject to sections (2) through (6) of this rule. Boilers and industrial furnaces operating under the interim status standards of 40 CFR 266.103 are subject to section (7) of this rule.~~

~~(2)~~(1) A permit for a new boiler or industrial furnace shall specify appropriate conditions for the following operating periods:

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

(i) Applicants must submit a statement, with part B of the permit application, that suggests the conditions necessary to operate in compliance with the standards of ~~40 CFR sections 266.104 through 266.107~~ ARM 16.44.1104-1107 during this period. This statement should include, at a minimum, restrictions on the applicable operating requirements identified in ~~40 CFR 266.102(e)~~ ARM 16.44.1103(5).

(ii) The department will review this statement and any

other relevant information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of ~~40 CFR 266.104 through 266.107~~ ARM 16.44.1104-1107 based on engineering judgment.

(b) Trial burn period. For the duration of the trial burn, the department must establish conditions in the permit for the purposes of determining feasibility of compliance with the performance standards of ~~40 CFR sections 266.104 through 266.107~~ ARM 16.44.1104-1107 and determining adequate operating conditions under ~~40 CFR 266.102(e)~~ ARM 16.44.1103(5). Applicants must propose a trial burn plan, prepared under section ~~(3)~~ (2) of this rule, to be submitted with part B of the permit application.

(c) Post-trial burn period.

(i) For the period immediately following completion of the trial burn, and only for the minimum period sufficient to allow sample analysis, data computation, and submission of the trial burn results by the applicant, and review of the trial burn results and modification of the facility permit by the department to reflect the trial burn results, the department will establish the operating requirements most likely to ensure compliance with the performance standards of ~~40 CFR sections 266.104 through 266.107~~ ARM 16.44.1104-1107 based on engineering judgment.

(ii) Applicants must submit a statement, with part B of the application, that identifies the conditions necessary to operate during this period in compliance with the performance standards of ~~40 CFR sections 266.104 through 266.107~~ ARM 16.44.1104-1107. This statement should include, at a minimum, restrictions on the operating requirements provided by ~~40 CFR 266.102(e)~~ ARM 16.44.1103(5).

(iii) The department will review this statement and any other relevant information submitted with part B of the permit application and specify requirements for this period sufficient to meet the performance standards of ~~40 CFR sections 266.104 through 266.107~~ ARM 16.44.1104-1107 based on engineering judgment.

(d) Final permit period. For the final period of operation, the department will develop operating requirements in conformance with ~~40 CFR 266.102(e)~~ ARM 16.44.1103(5) that reflect conditions in the trial burn plan and are likely to ensure compliance with the performance standards of ~~40 CFR sections 266.104 through 266.107~~ ARM 16.44.1104-1107. Based on the trial burn results, the department shall make any necessary modifications to the operating requirements to ensure compliance with the performance standards. The permit modification shall proceed according to ARM 16.44.116.

~~(3)~~(2) The trial burn plan must include the following information. The department, in reviewing the trial burn plan, shall evaluate the sufficiency of the information provided and may require the applicant to supplement this information, if necessary, to achieve the purposes of this section:

(a)-(d) Same as proposed.

(e) A detailed test schedule for each hazardous waste for

which the trial burn is planned, including date(s), duration, quantity of hazardous waste to be burned, and other factors relevant to the department's decision under section ~~(2)(b)(1)(b)~~ of this rule.

(f) A detailed test protocol, including, for each hazardous waste identified, the ranges of hazardous waste feed rate, and, as appropriate, the feed rates of other fuels and industrial furnace feedstocks, and any other relevant parameters that may affect the ability of the boiler or industrial furnace to meet the performance standards in ~~40 CFR sections 266.104 through 266.107~~ ARM 16.44.1104-1107.

(g)-(i) Same as proposed.

~~(4)~~(3) Trial burn procedures.

(a) A trial burn must be conducted to demonstrate conformance with the standards of ~~40 CFR sections 266.104 through 266.107~~ ARM 16.44.1104-1107 under an approved trial burn plan.

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

(i) The trial burn is likely to determine whether the boiler or industrial furnace can meet the performance standards of ~~40 CFR 266.104 through 266.107~~ ARM 16.44.1104-1107;

(ii) Same as proposed.

(iii) The trial burn will help the department to determine operating requirements to be specified under ~~40 CFR 266.102(e)~~ ARM 16.44.1103(5); and

(iv) Same as proposed.

(c)-(e) Same as proposed.

~~(5)~~(4) ~~When a~~ For a DRE trial burn ~~is required~~ under ~~40 CFR 266.104(a)~~ ARM 16.44.1104(1), the department will specify (based on the hazardous waste analysis data and other information in the trial burn plan) as trial principal organic hazardous constituents (POHCs) those compounds for which destruction and removal efficiencies must be calculated during the trial burn. These trial POHCs will be specified by the department based on information including its estimate of the difficulty of destroying the constituents identified in the hazardous waste analysis, their concentrations or mass in the hazardous waste feed, and, for hazardous waste containing or derived from wastes listed in ARM 16.44.330 through 16.44.333, the hazardous waste organic constituent(s) identified in ARM 16.44.352(1)(a) as the basis for listing.

~~(6)~~(5) During each approved trial burn (or as soon after the burn as is practicable), the applicant must make the following determinations:

(a) Same as proposed.

(b) ~~When a~~ For a DRE trial burn ~~is required~~ under ~~40 CFR 266.194(a)~~ ARM 16.44.1104(1):

(i)-(ii) Same as proposed.

(iii) A computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in ~~40 CFR 266.104(a)~~ ARM 16.44.1104(1);

(c) When a trial burn for chlorinated dioxins and furans is required under ~~40 CFR 266.104(e)~~ ARM 16.44.1104(5), a

quantitative analysis of the stack gas for the concentration and mass emission rate of the 2,3,7,8-chlorinated tetra-octa congeners of chlorinated dibenzo-p-dioxins and furans, and a computation showing conformance with the emission standard;

(d) When a trial burn for particulate matter, metals, or HCl/Cl_2 is required under ~~40 CFR sections 266.105, 266.106 (c) or (d), or 266.107 (b)(2) or (c)~~ ARM 16.44.1105, 16.44.1106(3) or (4), or 16.44.1107(2)(b) or (3), a quantitative analysis of the stack gas for the concentrations and mass emissions of particulate matter, metals, or hydrogen chloride (HCl) and chlorine (Cl_2), and computations showing conformance with the applicable emission performance standards;

(e) When a trial burn for DRE, metals, or HCl/Cl_2 is required under ~~40 CFR sections 266.104(a), 266.106 (c) or (d), or 266.107 (b)(2) or (c)~~ ARM 16.44.1104(1), 16.44.1106(3) or (4), or 16.44.1107(2)(b) or (3), a quantitative analysis of the scrubber water (if any), ash residues, other residues, and products for the purpose of estimating the fate of the trial POHCs, metals, and chlorine/chloride;

(f)-(g) Same as proposed.

(h) Such other information as the department may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in ~~40 CFR 266.104 through 266.107~~ ARM 16.44.1104-1107 and to establish the operating conditions required by ~~40 CFR 266.102(c)~~ ARM 16.44.1103(5) as necessary to meet those performance standards.

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

~~(8) Subpart H of 40 CFR Part 266, and the various regulatory sections of subpart H referenced throughout this rule, are incorporated by reference in ARM 16.44.306(5).~~

[RULE XIII] 16.44.1112 INTERIM STATUS Same as proposed.

4. The department has thoroughly considered the comments received on the proposed rules. The following is a summary of comments received, along with department responses to these comments.

The Department of Health and Environmental Sciences received over 600 written and oral comments regarding the boiler and industrial furnace rules. This substantial response to the proposed rules, by far the largest ever received by the department, ranged from letters from school children opposing any handling of hazardous waste in the State of Montana to scientific research papers discussing the chemistry of the burning of hazardous waste as fuel. Over 500 of the comments received did not contain technical suggestions for amendment of the proposed state boiler and industrial furnace rules or other recommendations for amendments, but more generally opposed the burning of hazardous waste completely and asked the department to prohibit such burning, a request beyond the scope of the department's authority. Likewise, some commenters merely supported the rules as proposed and suggested no amendments or changes.

Two public comment periods were held. The first was from December 26, 1991 until February 10, 1992. The second was from September 10 until October 9, 1992. The majority of comments were received during the first public comment period. During the second public comment period, the public was able to comment on modifications made by the department to the federal boiler and industrial furnace rule. These modifications were made in response to public comments received during the first comment period.

Of the written comments received during the initial comment period, approximately 125 commenters put forth what the department termed "substantive comments"; that is, comments to which the department was able to respond. More particularly, commenters supporting the burning of hazardous waste as fuel in Montana and offering proposals numbered 13; those outlining more stringent requirements for the burning of hazardous waste as fuel numbered approximately 112. Twenty-five persons presented oral testimony during the January 27, 1992, formal hearing and eight additional comments were received during the second comment period.

The department was able to separate the substantive written and oral comments into eight broad categories. Within those eight categories, the department discusses and addresses the comments with seventy-three responses as follows: responses 1 through 13 pertain to items of general interest; 14 through 22 pertain to issues such as permits, penalties and fines; 23 through 50 pertain to air emissions; 51 through 54 pertain to the use of best available control technology and best management practices; 55 through 57 pertain to the handling of cement kiln dust residue; 58 pertains to siting issues; 59 through 66 pertain to transportation issues; and 67 through 73 pertain to the new rules which were published on September 10, 1992 in the Montana Administrative Register. The comments were summarized due to the volume of response re-

ceived.

The proposed rules issued by the department in December, 1991, contemplated that the federal regulations controlling boilers and industrial furnaces would be accepted as rules governing the State of Montana. The mechanism for accepting these rules was simple incorporation by reference of the federal rules into the ARM. However, as noted in the rulemaking action disallowing interim status for boilers and industrial furnaces taken in March, 1992, the department noted that sufficient comments had been received to call into question the adequacy of certain portions of the federal boiler and industrial furnace rules. Therefore, this rulemaking action appears to be much more lengthy than the one proposed in December, 1991. That is because the department is not "incorporating by reference" federal rules, but, where appropriate, is proposing full textual adoption of certain federal rules, and modifying other federal rules in line with and after consideration of the comments.

It must be noted that today's rules govern the burning of hazardous waste in boilers and industrial furnaces in the State of Montana. They do not simply govern cement kilns at the two sites of controversy in Montana City and Trident, Montana.

Summaries of the 125 substantive comments received during the initial public comment period, the comments received during the formal hearing and the eight comments received during the second comment period as well as the Department's responses are as follows:

Comment 1: Over forty commenters suggested that boilers and industrial furnaces (BIFs) should be regulated as stringently as hazardous waste incinerators.

Response: The United States Environmental Protection Agency (EPA) has noted that the nontechnical requirements are identical to those that currently apply to hazardous waste incinerators. These nontechnical standards address the potential hazards from spills, fires, explosions and unintended egress; require compliance with the manifest system; ensure that hazardous wastes are removed from the site upon closure; and ensure that the facilities are financially capable of complying with the standards. The BIF rules also apply the same controls on fugitive emissions that currently apply to hazardous waste incinerators.

The EPA has stated that technical standards for boilers and industrial furnaces are equivalent to those standards applicable to the burning of hazardous waste in hazardous waste incinerators. For instance, the destruction and removal efficiency (DRE) for toxic organics of 99.99 percent, the DRE for dioxin listed wastes of 99.9999 percent and the particulate matter standard of 0.08 grains per dry standard cubic foot are identical in the hazardous waste incinerator and in the BIF rules. The BIF rules limit hydrogen chloride (HCl) and chlorine gas by health based, site specific emission limits. The hazardous waste incinerator rules control HCl emissions

such that the rate of emissions is no greater than 4 pounds per hour or 1% of the HCl in the stack gas prior to entering the air pollution equipment. The BIF rules control metals emissions, whereas the hazardous waste incinerator rules do not. The BIF rules control products of incomplete combustion (PICs) by limiting carbon monoxide and/or hydrocarbons, whereas no such controls exist within the hazardous waste incinerator permit standards.

The department is of the opinion that the BIF rules are generally as stringent as the hazardous waste incinerator rules. The most significant difference has to do with the handling of waste residues. The BIF rules are not as stringent as the hazardous waste incinerator rules when it comes to the handling of hazardous waste residues due to the application of the Bevill amendment. However, there are safeguards in place in that a two part test for cement kiln waste residue exists. This test compares the waste derived residues to health based limits and/or "normal" residues.

A second comparison of the BIF rules and the hazardous waste incinerator rules has to do with interim status provisions as they apply to existing BIFs. The comparison of BIFs in interim status is sometimes made to fully permitted hazardous waste incinerators. Since interim status has been disallowed by the State, this comparison is no longer valid in Montana.

Comment 2: Twenty commenters expressed concern about the level of expertise within the State or concern that the BIF rules had not been adequately studied by EPA. Some of these commenters suggested that the State must demonstrate that it has the manpower and understanding of the effect of the BIF rules. Some of these commenters were concerned about the staffing and expertise within the State. Some of these commenters suggested that the State do its own research into the effect of the BIF rules. Some of the commenters suggested that more research into the BIF rules is needed at a national level. Some commenters requested that there be zero unknowns or that there be a demonstration of no detrimental effects.

Response: These comments were aimed at drawing the department's attention to possible deficiencies in EPA's analysis of BIF data and the state's lack of resources. The state does not have the ability to duplicate or expand upon EPA's research and direction for such research. This is not a legitimate subject of rulemaking. The department will continue to monitor federal and other states' research.

Comment 3: Over twenty commenters suggested that the wastes handled by BIFs should be regulated as hazardous wastes, not as recycled material. Two of the commenters suggested that the language contained in ARM 16.44.306 needs to be changed.

Response: The BIF rules apply to cement kilns that burn hazardous waste for any reason such as energy recovery,

materials recovery or destruction. The BIF rules supersede EPA's "sham recycling policy". The EPA believes that conformance with appropriate emission standards, and the applicable nontechnical standards will ensure protection of human health. The department concurs with this position.

The comments may be referring to the handling of cement kiln dust (CKD). The Bevill Amendment exempts cement kiln dust from hazardous waste regulations due to its "high volume, low risk" classification.

The language in ARM 16.44.306 was revised per the "Notice of Amendment of Rules 16.44.306", dated March 2, 1992.

Comment 4: Over ten commenters suggested that cement products made with hazardous waste fuels should be labelled as such. Some of these commenters suggested that cement made in kilns that use hazardous waste fuels should be banned from use.

Response: The department has determined that it does not have statutory authority for rulemaking which would impose a ban on the sale of cement made in kilns that use hazardous waste fuels. It is possible that other state agencies, such as Commerce or Transportation may have such authority; however, this inquiry properly belongs in the legislative arena.

The department is not aware of information which indicates that an increased risk exists when using cement made in a kiln that was fired with hazardous waste fuels. A recent study by the Portland Cement Association ("An Analysis of Selected Trace Metals in Cement and Kiln Dust", PCA 1992) suggests that neither cement kiln dust nor cement have the characteristics of hazardous waste as defined under the Resource Conservation and Recovery Act (RCRA).

The EPA is presently studying cement kiln dust. Samples of kiln dust from 15 cement kilns, 8 of which burn hazardous waste, have been taken by the EPA. These samples will be tested for metals and nonmetals (Appendices VII and VIII of the federal BIF rules, incorporated by [RULE XI]). The report is due in April, 1993.

Comment 5: Five commenters were concerned with the effect on the economy, especially to farmers and ranchers and to property values. One commenter was concerned that there be no boycott of agricultural products from the region.

Response: The department does not have the rulemaking authority, under BIF rules authorized by 75-10-405, MCA, which can address these comments. Local governments and/or the state legislature are the proper entities to consider these comments.

Comment 6: Ten commenters suggested that waste reduction and recycling be required. One commenter suggested that the companies which ship hazardous waste be required to contribute to a fund that would go towards development of procedures to reduce hazardous wastes.

Response: The department agrees that waste reduction and recycling should be encouraged, but that encouragement must go to the generator of the waste. Because BIFs are not the generators of the hazardous waste, the department lacks rule-making authority, under BIF rules authorized by 75-10-405, MCA, to address these comments.

EPA has stated that the BIF rules provide an incentive to reduce the generation of metal and chlorine-bearing hazardous waste at the source given that the metals and HCl emissions controls will be implemented by additional requirements attendant to the disposal of those wastes. These requirements are tied to the economics of disposing of waste. Waste generators will have the incentive to reduce the generation of metal and chlorine bearing wastes because waste management fees are likely to increase given that the BIF facility has a fixed metal and chlorine feed rate allotment.

The recent trend, from both mandatory and voluntary aspects, has been to encourage minimization of all wastes that pose risks to human health and the environment. Waste minimization techniques tend to focus on source reduction or recycling activities that reduce either the volume or the toxicity of waste generated. To date, the most successful individual programs have been initiated at the company or plant level. Also, the General Facility standards of Title 40 of the Code of Federal Regulations (40 CFR), Part 264.73(b)(9) (incorporated by reference in ARM 16.44.702) require the permittee to provide to the department: "A certification by the permittee no less often than annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that he generates to the degree determined by the permittee to be economically practicable . . . ."

Comment 7: Over thirty commenters suggested that the facilities absorb costs for increased regulation and monitoring.

Response: The department agrees that costs for increased regulations and monitoring should be borne by the facilities. However, the department cannot create these fees through rulemaking.

The department currently lacks the resources for increased regulation and monitoring of these facilities. The department is preparing suggested legislation for the 1993 legislative session which would statutorily create hazardous waste management fees payable by the facilities to the department for increased monitoring and regulation of BIFs and other types of hazardous waste facilities.

Comment 8: Two commenters suggested that the facilities must demonstrate adequate staffing and/or participate in an operator certification program.

Response: The substance of the comments, staffing criteria for BIFs, will be addressed in the operating permit as part of the Personnel Training requirements set forth in 264.16 (incorpo-

rated by reference in ARM 16.44.702). Therefore, in the opinion of the department, the existing and the new rules are sufficiently protective.

The department is not aware of a certification program that presently exists for operators of boilers and industrial furnaces. The American Society of Mechanical Engineers (ASME) has established a committee which will set standards for the qualification and certification of hazardous waste incinerator operators. There may be some information from ASME that can be incorporated into the personnel training program.

Comment 9: There were numerous commenters that indicated that they were pleased with the decision to disallow burning of hazardous waste under interim status. At least two commenters felt that it was unnecessary to disallow burning of hazardous waste under interim status.

Response: The department is of the opinion that the full part B permitting process is necessary to ensure protection of public health and the environment.

Comment 10: Over thirty commenters suggested that baseline and continued health and environmental studies be performed.

Response: The department is including a provision within the rules [RULE III(6)] for background and periodic testing of soils, surface waters and aquifers.

The Occupational Safety and Health Administration (OSHA) rules require that certain employees (see 40 CFR 1910.120(f)) involved in the handling of hazardous wastes at the facilities will be subject to a medical monitoring program. These employees are exposed to a greater extent than the public at large. The potential costs of performing medical monitoring for entire county populations would be prohibitive and unreasonable.

Comment 11: Over 50 commenters suggested that a "needs" demonstration be required, i.e. it should be demonstrated that proposed hazardous waste treatment or disposal facilities are needed to handle the wastes generated within the State before they can be permitted. Many of these commenters were concerned that Montana would become a net importer of hazardous wastes.

Response: Two recent cases by the United States Supreme Court indicate that neither the department nor the State of Montana has the authority at this time to require what the commenters termed a "needs demonstration." Currently, federal legislation has been proposed in the RCRA Re-Authorization bill and in separate bills that would give to local governments and the states this authority. The department will monitor this legislation and developing case law.

Comment 12: Approximately 20 commenters requested a moratorium or ban on burning hazardous waste in cement kilns.

Response: The Montana legislature, in 1991, gave authority to the department to "adopt rules and performance standards for industrial furnaces and boilers that burn hazardous wastes", 75-10-405(2)(f). This legislative grant does not include the authority to ban or place a moratorium on the burning of hazardous wastes in cement kilns. Such a ban or moratorium is a policy determination to be made by the legislature.

During Montana's special legislative session in July of 1992, a bill was signed that prevents the department from issuing a permit for a boiler or industrial furnace that burns hazardous waste or hazardous waste-derived fuel until after October 1, 1993. A bill that would have prohibited the importation of hazardous waste or hazardous waste-derived fuel into Montana was vetoed by the Governor.

Comment 13: One commenter suggested that a watch/oversight committee be established.

Response: Because of the stringent and rigorous nature of the permitting process and the opportunities for public comment on all phases of the permit, the department has decided, at this time, not to create an oversight committee. It is unlikely that such a committee could be established by rule. However, the department will continue to reassess the need for such a committee.

A citizen's advisory committee could be established, informally, between the facility seeking to become permitted and residents interested in this issue. This would be outside of rulemaking and would require the facility's voluntary cooperation.

Comment 14: Approximately fifty commenters requested that there be provisions for items such as substantial fines, stipulated penalties, permit revocation or shut down of plants for violations. Several of these commenters suggested that these provisions be spelled out in the permit to minimize State costs in pursuing fines. One commenter suggested that criminal penalties be spelled out in the permit.

Response: Provisions for terminating, modifying, revoking or denying permits can be found in paragraphs 16.44.109(1), 16.44.116 and 16.44.117 of the Administrative Rules of Montana (ARM).

Enforcement actions, such as seeking monetary penalties, must go through the civil court system as the Montana Hazardous Waste Program does not have administrative authority to assess fines. It should be noted, however, that the department is seeking administrative penalty authority in the 1993 legislature. Because the department, at this time, only has statutory authority to seek penalties through the judicial system, authority to assess penalties cannot be created by rule or permit.

Comment 15: Over twenty commenters requested that items such as citizen access to state records, telemetering of emissions measurements or plant tours, be available.

Response: Access to records and documents is already provided for by a Montana Constitutional provision, state statutes and regulations of the state. State records and public documents are available to the citizenry at the Solid and Hazardous Waste Bureau, 836 Front Street, Helena or at the Air Quality Bureau, Cogswell Building, Helena. Additional rules would not enhance the public's ability to garner information under state control on BIFs.

Telemetering of results from continuous emissions monitors (such as oxygen, carbon monoxide or hydrocarbon levels) directly to the Department of Health and Environmental Sciences would be costly and of questionable benefit. The existing and the new boiler and industrial rules require monitoring and inspection data to be recorded with the records placed in the operating record. The existing and the new rules are sufficiently protective in this regard.

Plant tours are a discretionary item for each plant manager. Citizens interested in a tour should contact the respective facilities.

Comment 16: Twenty commenters requested that compliance history be a part of the permit review process.

Response: The department is of the opinion that a facility's compliance history should be reflected by the frequency and/or thoroughness of monitoring, inspecting and reporting requirements. A review of compliance history as part of a determination as to whether a permit will be issued is outside of the department's rulemaking authority.

Comment 17: Approximately 50 commenters requested a full Environmental Impact Statement (EIS).

Response: The determination as to whether an EIS is required is part of the MEPA (Montana Environmental Policy Act) process. Prior to issuance of a permit, an Environmental Assessment (EA) is performed. One of the outcomes of the EA is a decision to proceed, or not to proceed, with a full EIS. This procedure will be followed in the permitting process for boilers and industrial furnaces.

Comment 18: Over fifty commenters requested that more frequent inspections at the plant be conducted by the State. Most of these commenters suggested 24 hour per day inspections, paid for by the plant. Some commenters wanted provisions that would require sampling and testing by a laboratory not associated with the facility.

Response: The fiscal note attached to H.B. 383 (now codified as 75-10-405(2)(f), MCA, allowing the department to implement

state rules more stringent than the federal BIF rules) indicated that no additional resources were to be used for implementation of the statute. The department agrees that additional inspections would be needed if any facility in the state obtained a permit to burn hazardous wastes. As noted above, the department is seeking the fiscal resources to perform such inspection through legislation that will be before the 1993 legislature.

The department is of the opinion that the facilities should have discretion as to who performs their sampling and testing. The department will require a sampling and analyses plan as part of the permit. This plan will include quality assurance and quality control procedures. The department may write permit conditions which will require the facility to notify the department prior to sampling episodes. In this manner, the department will be able to observe the sampling procedures. Similarly, the department can reserve the right to take duplicate samples in order to verify laboratory results.

Comment 19: Sixteen commenters suggested that the permit be renewed at regular intervals, such as every 3 or 5 years.

Response: Permits issued by the department to other treatment, storage and disposal facilities are issued for a finite period, not to exceed ten years per ARM 16.44.111.

The department proposes to issue the BIF operating permits for a period of ten years. However, the permit will be reviewed every five years and modified as necessary in accordance with ARM 16.44.116. This is consistent with the duration for a land disposal facility permit as outlined in ARM 16.44.111. It should be realized that this permit review would not ensure updated technology at five-year intervals.

In addition, the EPA has required that Title V permits under the Clean Air Act Amendments shall be reviewed and renewed at five-year intervals.

Comment 20: Three commenters requested that the permits be issued to the parent corporation.

Response: These comments, perhaps, were directed at removing the protection of a "corporate shield". The existing rules state that a permit is issued to the operator of a facility but that an owner, if different from the operator, must also sign the permit application. This language is paralleled in all pertinent federal regulations. Thus the department is able to currently pursue owners and operators for violations.

Comment 21: Two commenters requested that a comprehensive review period be in place prior to permit issuance.

Response: The permit review process has been estimated to take a minimum of two years. Prior to the issuance of a permit, a public comment period is required. A formal hearing would most likely follow, depending on the level of interest during the

public comment period. The public comment period/formal hearing process may be repeated after the trial burn since the results of a trial burn may result in the permit being modified. Permit modifications are classified as minor or major. Major modifications require that the public participation process be initiated.

Additionally, the Montana Hazardous Waste and Underground Storage Tank Act, 75-10-441, MCA, requires that "the owner or manager of a proposed commercial facility for the storage, collection, or transfer of hazardous waste shall conduct a public hearing in the nearest population center to provide information and answer questions . . . ."

The existing and the new rules are sufficiently protective due to the complexity and length of the permit review process and the already established public participation and comment periods.

Comment 22: Approximately five commenters requested that the permit contain environmental criteria prior to permit issuance. Some of these commenters expressed concern about impacts to fish and wildlife and the bioaccumulative effect to the environment.

Response: The EA and/or EIS process will examine environmental issues and impacts on environmental conditions. Many of the technical and nontechnical standards in the BIF rules already include issues related to environmental criteria.

Furthermore, the department is including a provision within the rules [RULE III(6)] for background and periodic testing of soils, surface waters and aquifers.

Comment 23: More than ten commenters suggested that trial burns should be conducted on a more frequent basis, such as semi-annual or quarterly.

Response: The trial burn is performed to establish permit conditions at the time of permit issuance. Planning for a trial burn, conducting the burn and reviewing the results could exceed some of the commenters' suggested time intervals between trial burns. Semi-annual or quarterly trial burns would be too costly and put unnecessary burden upon the regulatory agency.

It is proposed that the hazardous waste permit duration will be for ten years with a permit review at five years. A trial burn, or compliance test, will be part of the permit renewal process, i.e. every ten years.

The department is including a provision within the boiler and industrial furnace rules [RULE III (5)(h)(i)(C)] that requires stack testing of emissions on at least an annual basis. The constituents to be tested and the conditions of the testing will be established during the permit application and review process. The test results will be compared to the permit conditions established during the trial burns. It is not intended for this testing to be as inclusive as a full trial burn. Permit conditions may be written such that more

extensive and/or more frequent testing will occur within the first year or two after the initial trial burn as compared to later years of operation.

The Air Quality Bureau also has the authority under ARM 16.8.704 of the State of Montana Air Quality Rules to require testing. That rule states: "Any person or persons responsible for the emission of any air contaminant into the outdoor atmosphere shall upon written request of the department provide the facilities and necessary equipment including instruments and sensing devices and shall conduct tests, emission or ambient, for such periods of time as may be necessary using methods approved by the department . . . Such testing and sampling facilities may be either permanent or temporary . . . ."

Comment 24: Over twenty commenters suggested that there be no exclusions or exemptions allowed for trial burns.

Response: The federal BIF rules allow exemptions for small quantity burners (40 CFR 266.108), low risk waste (40 CFR 266.109) and boilers operating under special requirements (40 CFR 266.110). In addition, waivers of trial burn can be obtained for metals, hydrogen chloride and chlorine gas burning under the Tier I restrictions and particulate matter burning under the low risk waste exemption (40 CFR 270.22(a)(3),(4) and (5)). Data may also be submitted in lieu of trial burn under specified circumstances (40 CFR 270.22(a)(6)).

The department is including provisions within this rule that disallow the low risk waste exemption outlined in 40 CFR 266.109 and the exemption for boilers operating under special conditions in 40 CFR 266.110. The department is also including a provision which disallows using data in lieu of trial burns as set forth in 40 CFR 270.22(a)(6). The department is of the opinion that the destruction and removal efficiency (DRE) trial burn is necessary in order to prove that adequate combustion of toxic organics has occurred. The DRE trial burn also serves as a standard that is recognizable and understandable to members of the public. A successful DRE trial burn will demonstrate to the public that adequate combustion will occur when hazardous waste fuel is burned. The department understands that it is highly unlikely that any BIF could provide acceptable data in lieu of a trial burn due to even slight site and equipment differences. However, due to the importance of a DRE trial burn, supplying data in lieu of a trial burn will not be allowed.

The small quantity burner exemption only applies to wastes generated on site. Furthermore, the quantities that a small quantity burner will be allowed to burn are limited. Therefore, the department does not consider this exemption to represent a significant environmental threat.

The waivers of trial burn for metals, hydrogen chloride and chlorine gas are only allowed if the BIFs burn under conservative Tier I restrictions. The department agrees with EPA's conclusion that these conservative limits render a trial

burn unnecessary for metals, hydrogen chloride and chlorine gas.

Comment 25: Eight commenters requested an immediate stop to burning if the trial burn is not successful.

Response: The permit operating periods include the pretrial burn period, the trial burn period, the post-trial burn period and the final permit period. The post-trial burn period includes the time necessary to analyze the results of the trial burn. If the trial burn is unsuccessful, then the facility will not be allowed to enter the final permit period. Rather, modifications to the system would be proposed and portions of the trial burn may be repeated. Alternately, the facility could exercise their option of dropping plans for burning hazardous waste fuel.

Existing and new rules are sufficiently protective in this regard since interim status will not be allowed and since the steps described above do not allow a facility to pass into the final permit period without a successful trial burn.

Comment 26: One commenter suggested that a trial burn include all constituents for DRE testing. Another commenter expressed concern about burning polychlorinated biphenyls (PCBs) or radioactive wastes.

Response: Principal organic hazardous constituents (POHCs) are selected by the regulatory agency based primarily on the difficulty of destroying the constituents identified in the wastes and their concentrations within the waste feed. POHCs are those compounds for which destruction and removal efficiencies must be calculated during the trial burn. The EPA believes that using POHCs is protective of risks posed by emissions in virtually every scenario that the EPA is aware of. Generally, two or three POHCs are selected for the trial burn.

DRE testing for all constituents is not practical. Many of the organic constituents do not appear in the feed in high enough levels to calculate DREs. If all constituents were part of DRE testing, then the waste feed would have to be spiked with higher amounts of each constituent which would be very expensive and difficult to accomplish. Additionally, the benefit of requiring all constituents to be part of DRE testing would be minimal. Therefore, the department is of the opinion that the existing and the new rules are sufficiently protective and that all constituents do not need to be tested/sampled during the trial burn.

PCBs are regulated under the Toxic Substance and Control Act (TSCA), not RCRA. Similarly, radioactive wastes are regulated by the Atomic Energy Act. These wastes would not be in the feedstream of a boiler or industrial furnace above regulated quantities. Mixed hazardous and radioactive wastes would be partially regulated under RCRA, but are not anticipated to be part of the waste stream at the facilities which have been the focus of attention to date. The department could

exercise its omnibus authority to restrict mixed wastes, if necessary, during the permit application and review process.

Comment 27: One commenter suggested that the manner in which wastes are mixed should be governed by the trial burn.

Response: The manner in which wastes are mixed is controlled by the waste analysis plan. The waste analysis plan is a very detailed document that is carefully reviewed during the permit process. The department is of the opinion that existing rules adequately cover this issue.

Comment 28: One commenter suggested that the DRE be set at six nines rather than four for toxic organic constituents.

Response: The EPA believes that the four nines standard is protective and is consistent with other combustion devices, such as incinerators. EPA has stated that the increased lifetime cancer risks to the maximum exposed individual (MEI) from an incinerator operating at 99.99 percent DRE would generally be 10^{-6} or less.

In order for the department to establish another standard, such as the one suggested, the department would have to duplicate and enhance all research performed to date by the EPA. The department does not have the resources to do this, nor does the department want to begin years of research. At this time the department has no information to dispute the EPA's standard number and therefore will not establish the different DRE of six nines. The department will continue to monitor federal, industry and other states' research.

Comment 29: Two commenters suggested that the residual effects of emissions be considered, including threshold levels of certain parameters. Ten commenters suggested that monitoring of surface waters, aquifers and agricultural products be performed.

Response: The department considers these to be related comments. The department is including a provision within the rules [RULE III(6)] for background and periodic testing of soils, surface waters and aquifers. The department is of the opinion that background and annual testing for selected indicator parameters (pH and heavy metals or other constituents as determined by the department) is appropriate. The testing will be performed on surface water, soil and, in some cases, groundwater samples. The results of the annual testing will be evaluated at the time of permit application or permit review. If the department determines that statistically increased contamination from the facility is apparent, then the department will have the option to require additional testing, restrict the feed rates of certain hazardous wastes, deny reissuance of the permit or revoke the permit.

Rather than attempt to establish threshold levels, the department proposes that levels statistically above background

will be used during the permit renewal evaluation. Surface water samples will be taken from a point downstream of the facility. Soil samples will be taken from selected downwind locations of the facility. The exact locations for surface water and soil samples will be selected during the permitting process. Factors that will determine the soil sampling locations will include, but not be limited to, dispersion modeling, soil type and site access. The number of samples will have to be such that a statistically valid sampling could be achieved. The results will be evaluated during the permit renewal process and will consider the possibility of interferences from sources other than BIFs burning hazardous waste fuel. Applicants shall propose a sampling plan in their initial Part B application that considers the above referenced items.

The Air Quality Bureau has the authority to require ambient air monitoring under ARM 16.8.704 of the Air Quality Rules. That rule states: "Any person or persons responsible for the emission of any air contaminant into the outdoor atmosphere shall upon written request of the department provide the facilities and necessary equipment including instruments and sensing devices and shall conduct tests, emission or ambient, for such periods of time as may be necessary using methods approved by the department . . . Such testing and sampling facilities may be either permanent or temporary . . . ."

The department is of the opinion that the BIF rules are not the proper instrument for requiring testing of agricultural products.

Comment 30: Three commenters suggested that emissions be limited by mass rather than by stack gas concentrations.

Response: EPA recognizes that there are hypothetical situations in which risks from POHCs could be significant under a 99.99 percent DRE. These situations include BIFs in certain areas burning high volumes of highly potent carcinogenic organics. The EPA has stated that they are not aware of any such situations that are actually occurring. The EPA further suggests that if it appears that a high risk scenario exists, then the permit writer should invoke the omnibus authority (75-10-406(8), MCA). The department will adopt this approach, if deemed appropriate, rather than institute formal rules for mass emissions.

Additionally, it is possible that limits for mass emissions for certain compounds could be instituted as part of an Air Quality permit, if required by the Air Quality Bureau. Furthermore, existing Montana Air Quality standards for the prevention of significant deterioration of air quality include mass emission rates for criteria pollutants and other pollutants. A listing of these pollutants can be found in ARM 16.8.921(30).

Comment 31: One commenter suggested that a baseline test of

emissions be performed.

Response: The standards that the EPA has proposed for toxic organics, metals, hydrogen chloride and chlorine gas are based on stack gas concentrations which are irrespective of baseline emissions.

However, during the trial burn, several conditions may be proposed by the applicant. One of these conditions may be to test the existing emissions. Furthermore, the facility will be required to establish baseline emissions if they are going to seek the alternative hydrocarbon emission standard set forth in ARM 40 CFR 266.104(f), [RULE IV].

Additionally, and as part of any air quality permitting process that is ultimately required for these types of sources, the Air Quality Bureau has authority to request a baseline emissions test under ARM 16.8.1105(2)(d). This test would only be performed if it is determined, during the permit review process, that such a test is warranted.

The department is of the opinion that existing and new rules are sufficiently protective and that rulemaking to require a baseline emissions test is not warranted.

Comment 32: Six commenters suggested that additional provisions for continuous emission monitoring be incorporated into the rules. These suggestions included monitoring of all constituents and equipment. At least one commenter suggested that continuous emissions monitoring be utilized to prove which chemicals can be burned safely and another suggested specific detection levels for emissions.

Response: The BIF rules provide for monitoring carbon monoxide, hydrocarbons and oxygen on a continuous basis, if specified by the permit. For some constituents, such as metals, there are presently no commercially available continuous emissions monitors. Detection limits are based on the specific test methods approved by EPA; the department does not have the resources or ability to improve upon EPA's test methods. The rules also require that BIFs be equipped with automatic waste feed cutoff systems that will limit emissions under certain conditions.

The department is including a provision within the boiler and industrial furnace rules [RULE III (5)(h)(i)(C)] that will require stack testing of emissions on at least an annual basis. The constituents to be tested and the conditions of the testing will be established during the permit application and review process. The test results will be compared to the permit conditions established during the trial burns. Permit conditions may be written such that more extensive and/or more frequent testing will occur within the first year or two after the initial trial burn as compared to later years of operation.

Additionally, the Air Quality Bureau has the authority under ARM 16.8.704 of the State of Montana Air Quality Rules to require testing. That rule states: "Any person or persons responsible for the emission of any air contaminant into the

outdoor atmosphere shall upon written request of the department provide the facilities and necessary equipment including instruments and sensing devices and shall conduct tests, emission or ambient, for such periods of time as may be necessary using methods approved by the department . . . Such testing and sampling facilities may be either permanent or temporary . . . ."

Comment 33: Over twenty commenters expressed various concerns about burning chlorinated hydrocarbons. Most of these commenters suggested that chlorinated hydrocarbons should not be allowed. One commenter suggested that a test and limit be established for chlorine.

Response: The amount of chlorine bearing hazardous wastes is controlled by waste feed rate limits. These limits were developed by EPA based on a health-based risk assessment. The department does not have the ability to duplicate or expand upon EPA's research in developing these standards, nor does the department consider totally disallowing chlorinated hydrocarbons to be appropriate in light of EPA's research that went into crafting the BIF rule.

EPA has also stated that the highly alkaline particulate matter resulting from the limestone raw materials in a cement kiln effectively neutralizes much of the chlorine generated from hazardous waste fed into the kiln.

However, the department recognizes that one of the concerns with burning chlorinated hydrocarbons is their potential to reform in the stack into PICs, such as dioxins. The department is including two provisions in its rule to reduce the potential for dioxin formation. The first rule [RULE III (5)(b)(iv)] will prohibit the burning of certain wastes listed for dioxin or tri-, tetra- or pentachlorophenol or derived from these listed wastes. The prohibited wastes include D017, D037, D041, D042, F020, F021, F022, F023, F026, F027, F028, F032 and K001. The prohibition for K001 only applies to K001 wastes that contain pentachlorophenol. The second rule [RULE IV (5)] requires a site-specific risk assessment to demonstrate that emissions of chlorinated dibenzo-p-dioxins and dibenzofurans do not result in an increased lifetime cancer risk exceeding 1 in a 100,000.

Comment 34: Approximately twenty commenters expressed various concerns over the burning of heavy metals, especially lead. These commenters suggested items such as enacting emission standards for all heavy metals, monitoring metals emissions 24 hours per day or disallowing metals entirely.

Response: The BIF rules establish emission limits for ten toxic metals listed in Appendix VIII of 40 CFR Part 261 (incorporated by reference in ARM 16.44.352) based on projected inhalation health risks to a hypothetical maximum exposed individual (MEI). The standards for arsenic, beryllium, cadmium and chromium limit the lifetime increased cancer risk

to the MEI to a maximum of 1 in 100,000. The standards for antimony, lead, barium, mercury, silver and thallium are based on reference doses (RfDs) below which adverse health effects have not been observed. Two other metals listed in Appendix VIII, selenium and nickel, will be added to the list of regulated metals in a forthcoming amendment to the BIF rules from the EPA. The department will either amend the BIF rules, or use its omnibus authority during the permit process to include selenium and nickel.

EPA has stated that metals emissions are not feasibly monitored on a continuous basis. The department has no information to indicate that metals can be feasibly monitored on a continuous basis. Establishing emissions or ambient standards for metals that do not already have standards established would place excessive burden on the department. Furthermore, the department does not have the ability to duplicate or expand upon EPA's research in developing standards, nor does the department consider totally disallowing heavy metals, including lead, to be appropriate in light of EPA's research that went into crafting the BIF rule.

However, the department is including a provision within the boiler and industrial furnace rules [RULE III (5)(h)(i)(C)] that will require stack testing of emissions on at least an annual basis. The constituents to be tested and the conditions of the testing will be established during the permit application and review process. The test results will be compared to the permit conditions established during the trial burns. Permit conditions may be written such that more extensive and/or more frequent testing will occur within the first year or two after the initial trial burn as compared to later years of operation.

One of these commenters was concerned about metals being monitored for only six hours per day rather than 24 hours per day. That comment probably referred to 40 CFR 266.103(c)(3)(ii) which pertained to requirements for industrial furnaces that recycle collected particulate matter during interim status. Since interim status has been disallowed, this comment may not have applicability.

The department considered disallowing mercury from the hazardous waste feed stream. It is our understanding that the volatility of this metal makes it difficult to capture within air pollution control systems or in bottom ash. However, the reference air concentration for mercury may be lowered in a forthcoming amendment to the BIF rules from EPA. The department will continue to monitor rule changes in the federal system, and must, by agreement, operate a parallel program with the EPA. If need be, the department could also use its omnibus authority to restrict the quantity of mercury within the feed stream.

Comment 35: Approximately twenty commenters expressed concern over the burning of dioxins and furans. These commenters suggested that dioxins not be allowed, that furan emissions testing include all dioxin and furan isomers, that a risk

assessment should be required regardless of the air pollution control system (APCS) operating range or that the APCS be upgraded to better handle dioxins and furans.

Response: There are over 200 related compounds known as polychlorinated dibenzo-para-dioxins (PCDDs) and polychlorinated dibenzofurans (PCDFs). One of the most toxic man made substances is 2,3,7,8 tetrachloro-dibenzo-p-dioxin (2,3,7,8-TCDD). This substance is an unwanted by- product resulting chiefly from the manufacture of chemicals such as some pesticides, and incomplete combustion of some chlorinated compounds. EPA test data at incinerators, industrial boilers and calcining kilns have shown that PCDDs or PCDFs have been emitted at detectable levels in the part-per-trillion range. These low levels should present no health hazard. Additionally, none of the devices tested by EPA emitted the most toxic isomer - 2,3,7,8 TCDD.

Nonetheless, the department recognizes that one of the concerns with burning chlorinated hydrocarbons is their potential to reform in the stack into PICs, such as dioxins. The department is including two provisions in its rule to reduce the potential for dioxin formation. The first rule [RULE III (5)(b)(iv)] will prohibit the burning of certain wastes listed for dioxin or tri-, tetra- or pentachlorophenol or derived from these listed wastes. The EPA prohibits the burning of dioxin listed wastes (F020, F021, F022, F023, F026 or F027) during interim status. The department proposes that this restriction also apply to permitted status facilities as an added safety precaution. Additionally, the department is adopting a new rule to prohibit D017, D037, D041, D042, F028, F032 and K001 from the waste feed in BIFs as these wastes contain similar constituents as the dioxin listed wastes. The prohibition for K001 only applies to K001 wastes that contain pentachlorophenol.

The second rule [RULE IV (5)] requires a site-specific risk assessment to demonstrate that emissions of chlorinated dibenzo-p-dioxins and dibenzofurans do not result in an increased lifetime cancer risk exceeding 1 in a 100,000. The existing federal rules do not require this risk assessment if the air pollution control devices are operated outside of a specified temperature range. The department may waive the requirement for a risk assessment if the facility can demonstrate, to the satisfaction of the department, that raw materials and fuels used are such that dioxins would not be present in residues or emissions. This waiver would not apply to facilities with a dry particulate matter control device that operates within the temperature range of 450 to 750 degrees Fahrenheit and industrial furnaces operating under an alternative hydrocarbon limit.

The existing and new rules are adequately protective, thereby making costly testing of all dioxin and furan isomers and upgrading of the APCS unnecessary.

Comment 36: Ten commenters expressed concern about PICs. Most

of these commenters suggested that all products of incomplete combustion (PICs) should be identified. One of these commenters was concerned that carbon monoxide (CO) is an inappropriate indicator of PICs, another commenter indicated that the CO standards within the BIF rule are weak. Yet another commenter stated that CO levels should be closely controlled with instantaneous and average limits.

Response: PICs are incompletely burned inorganic compounds that are present in virtually any combustion process. The EPA has stated that PIC emissions do not pose significant risks when BIFs are operated under good combustion conditions. The EPA has also determined that low CO and/or hydrocarbons (HC) levels are indicative of good combustion. Therefore, the EPA utilizes CO and HC levels to control PIC emissions.

The EPA further indicates that it is very difficult to identify and quantify emissions of thousands of different compounds, some of which are present in minute quantities. Many PICs can not be quantified and identified with current techniques. Even if the techniques were available, health effects data are not likely to be available for the compounds so that a risk assessment could not be conducted.

The Coalition for Responsible Waste Incineration reports the following: "Products of Incomplete Combustion (known as PICs) are part of the tiny amounts of hazardous materials that are not completely burned or are chemically converted during incineration. PIC emissions have been exhaustively studied in a number of comprehensive risk assessments. These assessments show that even if the worst forms are present, the levels of emissions are so low that they pass even the most stringent health-based regulatory criteria". Although their report pertains to hazardous waste incinerators, the information generally applies to many boilers and industrial furnaces as well.

The department is aware that high levels of CO do not necessarily indicate poor combustion. However, generally accepted combustion theory holds that low CO flue gas levels, combined with low excess oxygen levels, indicate a BIF is operating at high combustion efficiency. The EPA has also stated that CO is a sensitive indicator of overall combustion conditions and may be a conservative indicator of POHC and PIC destruction.

The department is of the opinion that the existing and the new rules are sufficiently protective in this regard. In regards to a "weak" CO standard or further controls upon the CO standard, the department does not have the resources to duplicate or expand upon EPA's research in order to establish a different CO level.

Comment 37: Two commenters expressed concern about step change or hysteresis effects.

Response: The department will review these issues during the permit application review process. Where feasible, trial burn

conditions will be established to minimize these effects to the extent that they affect future operating conditions.

Comment 38: Two commenters expressed concern about nitrogen oxides (NO_x) and their relationship to CO.

Response: The department understands that it may be difficult to lower NO_x and CO simultaneously. The EPA has stated that alternative Tier II standards (i.e. HC limits) allow facilities flexibility in meeting both PIC controls and NO_x emission standards. (The PIC and the NO_x standards are controlled under different authorities). The EPA also implies that NO_x emissions will be better controlled with a CO standard that is predicated on a time-weighted average rather than a fixed or trigger limit.

The department is of the opinion that the existing and the new rules are adequately protective regarding the relationship between CO and NO_x, based on current information.

Comment 39: One commenter suggested that the effects of burning hazardous waste on the surroundings at other similar plants should be investigated.

Response: The department does not feel that this effort would be effective. There does not appear to be an accessible repository of information concerning cement kilns and their effect on the environment. There are also tremendous site and management differences from one kiln to another. As information becomes available, the department will review and consider such information each time the operating permit comes up for renewal.

Comment 40: One commenter suggested that the effects of existing sources, such as ASARCO, should be considered in the permit process. Two commenters suggested that the cumulative effect of emissions should be considered.

Response: The Air Quality Bureau does consider cumulative effects in terms of ambient concentrations and compliance with ambient standards, where applicable. For instance, an area that was classified as non-attainment for lead would require a review of lead emissions as part of the Air Quality Bureau's State Implementation Plan. Therefore, the BIF rules do not appear to be the appropriate instrument for addressing this issue.

Comment 41: Two commenters suggested that minimum oxygen levels be set.

Response: The department is of the opinion that a pre-alarm system and/or a tie to the auto cutoff system is sufficient for ensuring that excess oxygen is available. These oxygen levels can be established as part of the permit process.

Furthermore, a provision has been included within the

rules [RULE III (5)(g)(iv)] that will require the owner or operator to install and operate items such as additional stack monitoring devices and additional or duplicative instrumentation or alarm systems upon the request of the department, during the permit application or permit review process.

Comment 42: One commenter suggested that fugitive emissions be controlled and tied into the automatic cutoff system and incorporated into any risk assessment.

Response: The federal BIF rules apply the same controls to fugitive emissions that currently apply to hazardous waste incinerators. The controls apply to alternate control strategies including: 1) keeping the combustion zone where hazardous waste is burned totally sealed and 2) maintaining the combustion zone pressure lower than atmospheric pressure.

In addition, and as part of any air quality permitting process that is ultimately required for these types of sources, the Air Quality Bureau can review all major sources of fugitive emissions, if warranted.

It may not be technologically feasible to tie fugitive emissions into the automatic cutoff system. If the controls described above are properly applied, then, in the opinion of the department, the existing and the new rules are sufficiently protective.

Comment 43: One commenter suggested that the facilities should prove that emissions are no worse than when coal is burned.

Response: The standards that the EPA has proposed for toxic organics, metals, hydrogen chloride and chlorine gas are based on stack gas concentrations which are irrespective of baseline emissions. Furthermore, it will be required for the facility to establish baseline emissions if they are going to seek the alternative hydrocarbon emission standard set forth in 40 CFR 266.104(f), [RULE IV (6)]. Therefore, the department is of the opinion that the existing and the new rules are adequately protective and the facilities do not need to prove that emissions are no worse when burning hazardous waste fuel than when burning coal.

Comment 44: Three commenters suggested that a lower particulate matter (PM) standard should be required. One of these commenters suggested that PM be monitored on site and off site.

Response: The BIF rules limit particulate matter emissions to 0.08 gr/dscf, corrected to 7% oxygen. This is the same standard that currently applies to hazardous waste incinerators and is intended to supplement the risk based metals controls. The EPA considered lowering the PM standard to be consistent with the proposed standard for municipal waste incinerators (MWIs). However, the standard for MWIs also serves as a surrogate for controlling toxic metals, whereas the BIF rules have a separate means of controlling toxic metals.

Due to entrained particles of raw materials, it is unlikely that cement kilns could meet the proposed MWI standard for PM. The EPA believes that the 0.08 grains per dry standard cubic foot PM standard, when used as a supplement to the risk-based metals control, is protective of human health and the environment. However, the EPA will consider whether future PM controls should be promulgated under provisions of the Clean Air Act. Furthermore, as part of any air quality permitting process required by the Montana Clean Air Act, the Air Quality Bureau may determine that a lower standard for PM is appropriate. From the generic perspective of these rules, there does not appear to be evidence that PM will increase with substitution of hazardous waste fuel for coal. For this reason, and for the reasons listed above, the existing and the new rules are deemed to be adequately protective.

Comment 45: Two commenters suggested that burning be disallowed during winter inversions.

Response: The department agrees with this suggestion as it pertains to hazardous waste burning. A provision has been included within the rules [RULE III (5)(c)(iii)] to require the facility to submit a plan for the cessation of the burning of hazardous waste during prolonged inversion conditions. This plan will be reviewed during the part B permit review process. This plan is not intended to halt the burning of hazardous waste during all inversion occurrences. Rather, it is intended to halt the burning during winter conditions when the air quality is continuously poor over a period of days.

The department believes this measure to be prudent due to adverse health effects during winter inversions, which presumably are related to poor air quality.

Comment 46: Four commenters expressed concern about upset conditions. One commenter suggested an investigation of each upset condition and one commenter suggested that the facility be shut down until the problem which created the upset has been resolved. One of these commenters suggested that rolling averages should be taken on a much shorter time period than one hour to prevent the effects of an upset being hidden. This commenter also suggested that the baseline should not be set by the highest such average.

Response: The federal rules require that BIFs be equipped with automatic waste feed cutoff systems to limit emissions of hazardous compounds during combustion upset situations. Additionally, the BIFs must continue to comply with all permit operating conditions any time there is waste in the unit. This means that activation of the automatic waste feed cutoff system does not relieve the facility of its obligation to comply with permit conditions if there is waste remaining in the unit. For example, the air pollution control system must continue to be operated within the applicable permit conditions. Furthermore, after a cutoff the temperature in the combustion chamber must

be maintained at levels demonstrated during the test burn for as long as hazardous waste or residue remains in the chamber.

Pursuant to ARM 16.8.705 of the Air Quality rules, these upsets ("malfunctions"), and the reasons for these upsets, are required to be reported. Any upset of over four hours in duration or a violation of any permit condition or other applicable emission limitation results in a report to the Air Quality Bureau. An example of a permit violation would include exceedance of a six-minute opacity standard. The reporting of these upsets can continue to be handled under both ARM 16.8.705 and the hazardous waste permit and need not be incorporated into the BIF rules.

Rather than requiring a facility to shut down for upset conditions, the department is of the opinion that compliance with the conditions set forth in the operating permit will be sufficiently protective. As stated above, these conditions must be maintained at all times when waste is in the unit.

Rolling averages are used in a trial burn in order to establish permit parameters such as feed rate limits for carcinogenic metals and lead. A trial burn is performed in order to set realistic, enforceable and protective permit conditions. A trial burn is designed to show acceptable performance under worst case conditions. Acceptable performance is then assumed while operating under less severe conditions. For conformance with Tier III controls, emissions for metals, HCl and Cl_2 are based on a demonstration that acceptable ambient levels are not exceeded.

Comment 47: One commenter suggested that additional temperature monitoring locations be required.

Response: A provision has been included within the rules [RULE III (5)(g)(iv)] that will require the owner or operator to install and operate items such as additional stack monitoring devices and additional or duplicative instrumentation or alarm systems upon the request of the department, during the permit application or permit review process. The department will assess whether additional temperature monitoring locations are appropriate during the permit review process.

Comment 48: One commenter suggested that surrogate gases not be allowed as POHCs.

Response: The department agrees with this suggestion. The department is concerned that a gaseous surrogate may not be representative of a combustion device that burns liquids or solids. Principal organic hazardous constituents (POHCs) are selected by the regulatory agency based primarily on the difficulty of destroying the constituents identified in the wastes and their concentrations within the waste feed. Since selection (or approval) of POHCs is by the regulatory agency, restricting surrogate gases can be handled as a permit condition and does not need to be incorporated into the BIF rules.

Comment 49: Three commenters suggested that the waste analysis plan be improved. Their comments included suggestions to test each rail or truck load, to include all constituents, to analyze to a level of 10 parts per billion, to assign quantifiable limits to specific inputs or to require daily chemical analyses.

Response: In accordance with 40 CFR 266.102(b)(1), [RULE III (2)], the owner or operator must provide an analysis that quantifies the concentration of any constituent identified in Appendix VIII of Part 261, ARM 16.44.352, that may reasonably be expected to be in the waste. Such constituents must be identified and quantified at levels detectable by analytical procedures prescribed by "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods". The waste analysis plan must also comply with the General Facility Standards found in 40 CFR 264.13 (incorporated by reference in ARM 16.44.702).

Furthermore, in accordance with 40 CFR 270.66(c)(2) and [RULE XII], the trial burn plan must include an identification and an approximate quantification of any hazardous organic constituents that are present in the feed stream and a description of blending procedures.

The department is of the opinion that the present waste analysis requirements are adequately protective.

Comment 50: Two commenters suggested that the provisions of Montana House Bill 607 or the Clean Air Act (CAA) be considered.

Response: Montana House Bill 607 (75-2-215, MCA) does not apply to boilers and industrial furnaces as written.

Title III of the 1990 Clean Air Act Amendments (CAAA) addresses many of the same pollutants that are regulated under these rules. The EPA has stated that it is premature to provide a definitive opinion on the relationship of Title III of the CAAA to the BIF rules. They further state that Congress was concerned about duplicative regulation and that Congress urged the EPA to guard against such regulation. EPA is studying the issue further and notes that BIFs will likely be regarded as major sources which may, or may not, require further emissions controls.

The department will consider recommendations that the EPA makes, if any, concerning the interface between the BIF rules and the Clean Air Act.

Comment 51: Over fifty commenters suggested that "best available technology" (BAT) or "best available control technology" (BACT) be incorporated into the BIF rules or permit conditions.

Response: Best available control technology means an emission limitation based on the maximum degree of reduction for each pollutant subject to regulation under the Montana Clean Air Act. BACT technology, by definition, takes into account

energy, environmental and economic impacts. It includes an emission limitation through application of production processes or available methods, systems, and techniques, including fuel treatment or innovative fuel combustion techniques for control of pollutants subject to regulation.

In the federal BIF regulations, EPA did not apply the concept of BACT, but rather chose to focus upon the use of pollutant and site-specific risk analyses to ensure the protection of public health. The EPA did expressly consider BACT-type standards for PM limits (e.g., NSPS), but concluded that these standards were unnecessary as a generic limitation when combined with the required risk-based metals controls. Further, it is not clear that the imposition of BACT would, in all cases, result in a lower emission limit.

In addition, and as part of any air quality permitting process that is required for these types of sources, the Air Quality Bureau may apply a BACT analysis to the BIF emissions, and may require additional emission reductions as a result.

For these reasons the department concludes that the imposition of a BACT-type requirement is inappropriate at this time.

Comment 52: Four commenters suggested that the facilities be required to upgrade to BAT or BACT on a periodic basis such as annually or every five years.

Response: The department is adopting a new rule requiring permit reviews at five year intervals and permit renewals at ten year intervals. Changes to the operating permit will occur if cause exists for modification in accordance with ARM 16.44.116 through 16.44.118. The department is of the opinion that the part B permit application and review process coupled with the testing that will accompany an operating permit are sufficiently protective.

Furthermore, the EPA has required that Title V permits under the Clean Air Act Amendments shall be reviewed and renewed at five-year intervals. While EPA has yet to determine the full interaction between the current BIF requirements and the provisions of the CAAA, at a minimum this renewal will offer an additional opportunity for prompt incorporation of any new requirements pertaining to air emissions that have been determined to be necessary for the protection of public health.

Comment 53: Approximately thirty commenters suggested that "best management practices" (BMP) be incorporated into the BIF rules or permit conditions.

Response: The department is of the opinion that BACT analysis performed as part of any permitting process that may be conducted by the Air Quality Bureau, the standards of part 264 of the Code of Federal Regulations and the Part B permit review process effectively encompasses much of the BMP concept. Furthermore, concepts such as BMP are somewhat nebulous and may be difficult to enforce. Therefore, the department is of the

opinion that the existing and the new rules are adequate without incorporating BMP.

Comment 54: One commenter suggested several specific best management practices that should be part of the BIF rules. These included duplicative instrumentation, weekly emissions testing, increased testing of cement kiln dust, allowing hot end feed only, disallowing direct transfer, limiting the number of resets and requiring oxygen assisted burners.

Response: A provision has been included within the rules [RULE III (5)(g)(iv)] that will require the owner or operator to install and operate items such as additional stack monitoring devices and additional or duplicative instrumentation or alarm systems upon the request of the department, during the permit application or permit review process.

The department will review the existing instrumentation at the applicant's facilities during the permit process to judge if it is adequate and reliable. If it is determined that duplicative instrumentation is appropriate, then the department will address this issue during the permit process.

A provision has been included within the boiler and industrial furnace rules [RULE III (5)(h)(i)(C)] that will require stack testing of emissions on at least an annual basis. The constituents to be tested and the conditions of the testing will be established during the permit application and review process. The test results will be compared to the permit conditions established during the trial burns. Permit conditions may be written such that more extensive and/or more frequent testing will occur within the first year or two after the initial trial burn as compared to later years of operation.

The BIF rules indicate that waste-derived residue shall be sampled and analyzed as often as necessary. The department is of the opinion that the cement kiln dust should be sampled whenever there is a change in raw materials or fuels. The frequency between sampling and analysis events will be specified as a permit condition.

The department is of the opinion that allowing other than "hot end feed" can be protective if all emission standards are met. It is important that the facilities demonstrate conformance with emission standards which have been designed to ensure public health and safety. If a BIF can meet the emission limitations, then the location of the hazardous waste feed is of lesser importance.

The EPA has discouraged the use of direct transfer. Concerns with direct transfer operations include: 1) the potential for fires, explosions or spills during transfer operations and 2) the stratification of waste in the transport vessel and the potential for waste fuel flow interruptions which could ultimately affect efficient combustion. Protective standards are included within the BIF rules to provide for items such as general operating requirements, containment and detection of releases and response to leaks or spills. The department will consider this issue further during the part B

permit application review process.

The EPA has elected not to limit the number of resets since: 1) there is no data to indicate that a specific number of cutoffs would be unacceptable given that the combustion chamber temperature and other conditions are maintained, 2) operating costs associated with cutoffs will provide incentive to encourage operators to minimize automatic waste feed cutoff incidents and 3) the recommended use of pre-alarm systems will reduce the number of waste feed cutoffs. Additionally waste feed can only be restarted when the hourly rolling average for CO/HC meet the permitted limits. The department concurs with this reasoning and is of the opinion that the existing and the new rules for limiting the number of resets is adequately protective.

The department will review the oxygen levels within the respective BIFs during the permit review process. The proposed use of pre-alarm and/or alarm levels set to the automatic cut-off system is protective and precludes the need for oxygen assisted burners.

Comment 55: Approximately fifty commenters expressed concern about the management of cement kiln dust. Most of the commenters suggested that cement kiln dust should be treated as a hazardous waste and/or be managed in a secured landfill.

Response: Residues from cement kilns are excluded from regulation by the Bevill Amendment. The EPA has stated that so long as the processing of hazardous waste does not significantly affect the character of the waste residues as high volume/low hazard, then those wastes can remain excluded under the Bevill Amendment. In order for the exclusion to apply, the wastes must be burned for energy recovery, not destruction.

Residues are evaluated by a two part test. The second part compares waste-derived residue concentrations with health-based limits. If the residues fail this test, then the first part of the test becomes effective. This involves a comparison of waste-derived residue with normal residue. If the residues fail both tests, then the residues must be considered to be a hazardous waste.

The EPA is presently studying cement kiln dust. Samples of kiln dust from 15 cement kilns, 8 of which burn hazardous waste, have been taken by the EPA. These samples will be tested for metals and nonmetals (Appendices VII and VIII of the federal BIF rules, [RULE XI]). The report is not due until April of 1993. A recent study by the Portland Cement Association ("An Analysis of Selected Trace Metals in Cement and Kiln Dust", PCA 1992) suggests that neither cement kiln dust nor cement have the characteristics of hazardous waste as defined under RCRA.

The department will request geologic and hydrogeologic information concerning any aquifers that lie beneath the quarries used for cement kiln dust disposal at cement kiln facilities. This request would be part of the Part B permit application and review process. Monitoring of the aquifer may

be required (in accordance with [RULE III (6)]) depending on the geologic/hydrogeologic information that is provided to us. It should also be realized that the facility will become subject to facility-wide corrective action provisions. Thus, problems of potential mismanagement of wastes may be addressed as part of the Hazardous and Solid Waste Amendments (HSWA) permitting process.

The department will continue to monitor research performed by the federal government, other states or industry. The results of this research will be reviewed as part of the permit application and review process. Additional conditions may be incorporated into the permit, if warranted.

Comment 56: One commenter suggested that cement kiln dust should be subjected to further testing.

Response: The BIF rules indicate that waste derived residue shall be sampled and analyzed as often as necessary. The department is of the opinion that the cement kiln dust should be sampled whenever there is a change in raw materials or fuels. The frequency between sampling and analysis events will be specified as a permit condition.

Comment 57: One commenter suggested that reclamation requirements be considered for the quarries which receive the kiln dust and at least two commenters expressed concern about windblown cement kiln dust originating from the quarries.

Response: Reclamation requirements is an issue that is within the jurisdiction of the Montana Department of State Lands (DSL). Both cement kilns in Montana that have been the focus of the public comments have permits issued by State Lands. Permits issued by DSL cover reclamation requirements as well as dust and erosion control. The department will consult with DSL to ensure coordination of approach if permits for boilers and industrial furnaces are written.

Windblown dust would be regulated under the Air Quality Rules (ARM 16.8.1401). As previously stated, the department will continue to monitor research performed by the federal government, other states or industry. The results of this research will be reviewed as part of the permit application and review process. Additional conditions may be incorporated into the permit, if warranted.

Comment 58: Over eighty commenters expressed concern about the siting of BIFs. The commenters suggested that BIFs not be sited next to items such as, but not limited to, waterways, population centers and schools.

Response: Existing hazardous waste facility location standards are outlined in 40 CFR 264.18 (ARM 16.44.702) and include seismic and floodplain considerations.

States which require siting criteria for BIFs do so after legislative debate and evaluation of possible siting issues.

Creation of such criteria are mandated by statute and not regulation. It is the department's understanding that siting issues will be brought before the 1993 session of the legislature. The department will make itself available for consultation with the Environmental Quality Council or the legislature as siting legislation is developed.

Comment 59: Over fifty commenters expressed concern about the transportation of hazardous wastes throughout the State of Montana.

Response: Changes in transportation of hazardous waste, on a state-wide basis, would likely result in minimal increased risk if the two kilns were to be permitted to burn hazardous waste. That is, hazardous materials and hazardous wastes are routinely transported by truck and rail through the State every day. However, on a localized basis, the transportation of hazardous wastes may present an increased risk on the highways nearest the facilities planning to burn hazardous wastes.

RCRA standards require that each hazardous waste transporter obtain an identification number before it can accept wastes for shipment. Transporters are required to take immediate action to notify the proper authorities if an accident causing the release of hazardous waste occurs. Transporters are liable for the costs of cleaning up any spills that may occur.

Transporters of hazardous waste are regulated jointly by EPA under RCRA and by the U.S. Department of Transportation (DOT) under the Hazardous Materials Transportation Act (HMTA). DOT standards cover shipping containers and labeling; placarding of vehicles; design, construction, and maintenance of containers; and the use of shipping papers. DOT has developed standards for driver qualifications and training as well as the design, construction and maintenance of vehicles. Please refer to 49 CFR Subchapter C, Parts 171 through 180, for more information pertaining to hazardous material regulations of the Department of Transportation.

The department supports proposals that would lower the speed limit for trucks on access roads nearest the boiler and industrial furnace facilities. The department also supports increased enforcement of existing transportation regulations governing commercial transport of hazardous materials and wastes. However, the BIF rules are not the proper instrument for regulating transportation, nor do these rules fall within the province of the department.

Comment 60: Approximately thirty commenters requested that the facility fund emergency response teams along designated routes.

Response: The department is of the opinion that a cooperative training effort between the facility and local first responders is reasonable in the vicinity of the facilities (20 mile radius for example); however, the department is of the opinion that this is not a reasonable request throughout the State. This is because of the existing hazardous materials and wastes that are

transported every day and the minimal incremental increase in risk, on a state-wide basis, that would be attributable to the BIFs.

The department does have the authority to address these concerns as permit conditions under General Facility Standards as they pertain to the facility property. Under permit conditions, facilities must have appropriate and sufficient plans for emergency responses.

Comment 61: Ten commenters suggested that tanker construction be improved.

Response: The design and construction of tankers are regulated by existing DOT rules. The department does not have the authority to alter DOT rules. Please refer to 49 CFR Subchapter C, Parts 171 through 180, for more information pertaining to hazardous material regulations of the Department of Transportation.

Comment 62: Five commenters suggested that rail transport of hazardous wastes or materials should be prohibited.

Response: Changes in transportation of hazardous waste, on a state-wide basis, would likely result in minimal increased risk if the kilns burn hazardous waste. That is, hazardous materials and hazardous wastes are routinely transported by rail through the State every day.

Rail transport within the State is regulated by the Public Service Commission. The department does not have the authority to alter their rules. Please refer to 49 CFR Subchapter C, Parts 171 through 180, for more information pertaining to hazardous material regulations of the U.S. Department of Transportation.

Comment 63: Approximately twenty commenters suggested that corridors be established for hazardous waste transport such that the trucks remain primarily on Interstate Highways.

Response: This issue is not within the rulemaking authority of the department. Please refer to 49 CFR Subchapter C, Parts 171 through 180, for more information pertaining to hazardous material regulations of the U.S. Department of Transportation.

Comment 64: One dozen commenters were concerned that clean-up costs be borne by the facility burning hazardous waste, not Montana citizens, in the event of a spill. Approximately twenty commenters suggested that a financial instrument, such as a trust account, tax, fee, or fund be established for transportation accidents or on-site spills.

Response: Transporters are liable for clean-up costs. Intrastate transporters are required to carry insurance which would cover the cost of an environmental spill. The facilities are liable for clean-up costs on their own property. Cleanup

Orders are addressed by statute in 75-10-416, MCA.

The department is of the opinion that the existing rules are adequately protective for on-site waste management concerns.

The BIF rules are not the proper instrument for addressing off-site concerns. This issue is not within the rulemaking authority granted to the department by the Montana legislature in 75-10-405(2)(f)(ii), MCA.

Comment 65: Over twenty commenters requested that emergency response and clean-up plans be in place. Some of these commenters were concerned about training of plant personnel.

Response: The existing rules already require a contingency plan, personnel training, and preparedness and prevention measures. These rules apply to on-site waste management only. The department believes that existing rules are sufficiently protective in this regard.

Comment 66: Thirteen commenters expressed concern about the storage of hazardous waste and the possibility of spills and explosions on site. One commenter suggested that an evacuation plan be prepared.

Response: RCRA standards require that the facility be designed, constructed, operated and maintained to minimize the possibility of releases and to prevent accidental releases from causing adverse health and environmental effects. The RCRA standards govern proper handling, storage and incineration of wastes. Applicants for a RCRA permit are also required to provide a complete chemical analysis of wastes they propose to combust, to use engineering controls to monitor operation, and to develop contingency plans and institute emergency response procedures that ensure quick and appropriate measures in response to incidents at the facility. Facilities must provide the local police and fire departments with information on the type of wastes that are handled.

The general facility standards governing storage, and requiring preparedness and prevention measures as well as preparation of a contingency plan are already part of the rules. The department believes that existing rules are sufficiently protective in this regard.

Comment 67: One commenter suggested that background and periodic testing (as proposed by New Rule III (6)) should correspond to the Hazardous and Solid Waste Amendments (HSWA) corrective action requirements. The commenter was concerned about redundant tests and unreasonable costs.

Response: Testing associated with HSWA would not be the same as the testing proposed by New Rule III (6). The department will make every effort to avoid redundant testing. For instance, if groundwater monitoring is required for both HSWA and for New Rule III (6) and if the locations of the monitoring

wells would be the same, then the same wells could be used for either HSWA or New Rule III (6).

New Rule III (6) is intended to show whether or not the burning of hazardous waste is contributing to long term cumulative or residual effects to soils, surface waters or groundwater. This testing, especially for soils, is not necessarily limited to the facility's property. HSWA requirements are site specific to individual Solid Waste Management Units (SWMUs).

Comment 68: One commenter expressed concern that New Rule III (5)(g)(iv) was an open-ended regulation. This commenter further suggested that additional devices, instrumentation and equipment should only be required if it is indicated during testing or operation that equipment required by the federal BIF rule is inadequate.

Response: The department reserves the right to require additional devices, instrumentation and equipment during the permit application and review process based on information obtained from sources other than operating and testing data. These sources might include EPA or industry sponsored technical literature that suggests the need for implementation of this regulation.

Comment 69: Two commenters expressed concern that New Rule III (5)(h)(i)(C) was an open-ended regulation. One of these commenters was concerned that testing costs could run from $10,000 to $500,000 depending on the extent of tests required. This commenter requested criteria that specifies the circumstances under which certain tests would be required.

Response: The department does not intend for this testing to be duplicative of a trial burn. Rather, the department intends to have annual testing for metals, organics and/or HCl/chlorine. It is the department's understanding that stack sampling for organics (volatiles and semi-volatiles) would be in the $30,000 range and that stack sampling for metals and HCl/chlorine would be in the neighborhood of $15,000 to $20,000 each. Permit conditions may be written such that more extensive and/or more frequent testing will occur within the first year or two after the initial trial burn as compared to later years of operation. Assuming satisfactory results and assuming the above costs are approximately correct, then the department would estimate that the annual testing costs would be in the $15,000 to $70,000 range based on 1992 dollars. These costs would be absorbed by the applicant.

Comment 70: Two commenters expressed concern that the conditions for inversions are not well defined in New Rule III (5)(c)(iii). Both commenters expressed concern that this regulation may be difficult to comply with. One commenter indicated that the rule does not describe who will decide when an inversion condition warranting the fuel-use restriction

exists, what such inversion conditions would consist of and how the decision would be conveyed to the facility. This commenter also expressed concern about the possibility of exceeding storage time limits for hazardous wastes due to this new rule.

Response: The department intends for this rule to prevent burning of hazardous waste during periods of poor air quality during the winter season. For instance, some counties issue air quality alerts during the winter if particulate matter exceeds certain levels. The air quality tends to continually worsen as this condition persists over a period of many days. The department is requiring that the applicant submit a plan to cease burning hazardous waste during periods of poor air quality during winter inversion conditions. The details of this plan are to be reviewed during the permit application process.

It is anticipated that poor air quality will be defined by measuring particulate matter levels (less than 10 microns) using a filter system near the facility or by use of a nephelometer. These measurements would be performed by the facility on a specified basis (possibly daily or every other day) during the time period from November 1 through March 1. The department anticipates that regulatory levels for determining poor air quality would include particulate matter levels exceeding 75 micrograms per cubic meter or corresponding nephelometer readings. The department recognizes that there may be lag times in analyzing data and reporting information. It is the department's intention that a flexible plan, which can reasonably be implemented by the facility, be incorporated into the permit. The department does not wish to create a condition that will require the facility to monitor the air quality such that the hazardous waste feed would have to be frequently stopped and started. Therefore, a reporting and compliance protocol will need to be negotiated during the permit review process. The department may consider issues such as: 1) allowing the facility to rely on data supplied by local government agencies that monitor air quality, 2) foregoing air quality measurements under atmospheric conditions that do not include inversions, or 3) allowing burning of hazardous waste during poor air quality conditions for short periods of time until the results of the next air quality measurements are available.

The department is of the opinion that storage of hazardous waste will not exceed time limits due to poor air quality conditions. This is because the facility will have to have a RCRA storage permit in order to receive hazardous wastes from off site sources. This type of storage permit would allow the facility to store hazardous wastes on site for up to one year.

The department does not wish to further define this rule at this time since each potential site has its own unique characteristics. The department would rather the permittee submit a plan that can be negotiated during the permit application and review process. Alternately, the department may accept documentation, based on testing at the facility, that

pollutants emitted during hazardous waste burning do not exceed levels when burning only fossil fuels.

Comment 71: One commenter requested that the technical amendments to the BIF rule be adopted.

Response: The department agrees and will include the most recent technical amendments that were published in the Federal Register on August 25, 1992.

Comment 72: Six commenters requested that an independent contractor be retained by the department to perform the sampling and analyses required by New Rule III (6). Most of these commenters stated that the costs associated with background and periodic testing should be the responsibility of the facility and not the state.

Response: The department is of the opinion that the facilities should have discretion as to who performs their sampling and testing. The department will require a sampling and analyses plan as part of the permit. This plan will include quality assurance and quality control procedures. The department may write permit conditions which will require the facility to notify the department prior to sampling episodes. In this manner, the department will be able to observe the sampling procedures. Similarly, the department can reserve the right to take duplicate samples in order to verify laboratory results.

It is the department's intent to have the facility be responsible for the costs of the sampling and testing program.

Comment 73: One commenter stated that there was no scientific basis for excluding the thirteen waste codes listed in New Rule III (5)(b)(iv).

Response: The department excluded these wastes because: 1) they are listed for dioxin or derived from dioxin listed wastes or are comprised of similar constituents as the dioxin listed wastes and 2) there was considerable concern raised by the public concerning dioxin emissions. The department recognizes that there is little scientific basis for these exclusions. Nevertheless, because of the toxicity of some of these wastes, the department elected to exclude them as an added safety precaution.

DENNIS IVERSON, Director

Certified to the Secretary of State November 16, 1992 .

Reviewed by:

Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the transfer of part of the organization and function of the Department of Commerce to the Department of Transportation	)	NOTICE OF TRANSFER OF ARM 8.106.101 THROUGH 8.106.808 RELATING TO AERONAUTICS DIVISION AND ARM 8.107.101 THROUGH 8.107.319 RELATING TO THE BOARD OF AERONAUTICS

TO: All Interested Persons.

1. On July 1, 1991, the Aeronautics Division and the Board of Aeronautics were transferred from the Department of Commerce to the Department of Transportation pursuant to 1991 Montana Laws, chapter 512 and Executive Order No. 11-91. See also section 2-15-2501, MCA.

2. The purpose of this notice is to transfer the administrative rules pertaining to the Aeronautics Division and the Board of Aeronautics to the Department of Transportation. The rules will be assigned the following numbers under the Department of Transportation title:

	OLD	NEW	
Rule	8.106.101	18.12.101	Registration of FAA Certificates
	8.106.102	18.12.102	Who Must Register
	8.106.103	18.12.103	Exemptions
	8.106.201	18.12.201	Agricultural Pilot Registration
	8.106.202	18.12.202	Agricultural Operation Certificate
	8.106.203	18.12.203	Responsibility for Compliance
	8.106.301	18.12.301	Definitions
	8.106.302	18.12.302	Registration of FAA Certificates
	8.106.303	18.12.303	Exemptions
	8.106.304	18.12.304	Expiration and Renewal
	8.106.401	18.12.401	Unlawful Use of Public Airports
	8.106.501	18.12.501	Penalty for Violation
	8.106.601	18.12.601	Liability Insurance Filing
	8.106.602	18.12.602	Liability Insurance Requirements

8.106.603	18.12.603	Liability Insurance Coverage Determination
8.106.604	18.12.604	Liability Insurance Protection
8.106.605	18.12.605	Insurance Deductable Clause
8.106.606	18.12.606	Insurance Cancellation
8.106.607	18.12.607	Approved by Department
8.106.608	18.12.608	Filing of Insurance Protector
8.106.609	18.12.609	Policy/Certificate Exclusion
8.106.610	18.12.610	Filing of Affidavit
8.106.611	18.12.611	Exception
8.106.612	18.12.612	Filing of Insurance Forms
8.106.701	18.12.701	Operating Rules and Regulations
8.106.801	18.12.801	Definitions
8.106.802	18.12.802	Airport Site Certification
8.106.803	18.12.803	Airport Licensing
8.106.804	18.12.804	Inspection
8.106.805	18.12.805	Revocation
8.106.806	18.12.806	Public Hearing
8.106.807	18.12.807	Exemptions
8.106.808	18.12.808	Liability
8.107.101	18.13.101	Organization of Board
8.107.201	18.13.201	Incorporation of Model Rules
8.107.202	18.13.202	Definitions
8.107.203	18.13.203	Application and Construction of Rules
8.107.204	18.13.204	Hearings
8.107.205	18.13.205	Investigations by Board
8.107.206	18.13.206	Scheduling and Format and Hearings

8.107.207	18.13.207	Communications
8.107.208	18.13.208	Evidence
8.107.209	18.13.209	Pleadings on Service
8.107.210	18.13.210	Parties
8.107.211	18.13.211	Complaints
8.107.212	18.13.212	Intervention
8.107.213	18.13.213	Responsive Pleadings
8.107.214	18.13.214	Witnesses
8.107.215	18.13.215	Subpoenas
8.107.216	18.13.216	Service of Documents
8.107.217	18.13.217	Orders
8.107.218	18.13.218	Briefs and Argument
8.107.219	18.13.219	Rehearing
8.107.220	18.13.220	Changes in Rates, Rules, or Service
8.107.221	18.13.221	Stipulations
8.107.222	18.13.222	Depositions
8.107.223	18.13.223	Application for Modifications of Tariff
8.107.224	18.13.224	Document Files, Form of
8.107.301	18.13.301	Definitions
8.107.302	18.13.302	Form of Application for Certificates of Public Convenience and Necessity
8.107.303	18.13.303	Instructions for Preparation and Filing
8.107.304	18.13.304	Hearing on Application
8.107.305	18.13.305	Terms, Conditions, and Limitations of Certificate
8.107.306	18.13.306	Air Carrier Tariffs

8.107.307	18.13.307	Tariff Form and Content
8.107.308	18.13.308	Amendment of Tariff
8.107.309	18.13.309	Tariff Rates
8.107.310	18.13.310	Suspension of Rates
8.107.311	18.13.311	Compliance with Federal Safety Laws and Regulations
8.107.312	18.13.312	Access to Information
8.107.313	18.13.313	Required Reports
8.107.314	18.13.314	Regulatory Power of Board
8.107.315	18.13.315	Accident Reports
8.107.316	18.13.316	Transfer of Certificates
8.107.317	18.13.317	Changes in Aircraft
8.107.318	18.13.318	Enforcement
8.107.319	18.13.319	Penalties

3. The history of each rule will remain the same insofar as the authority and implementation. Section 67-2-102, MCA, provides the rulemaking authority. 1991 Montana Laws, chapter 512, section 12 transfers the rulemaking authority from the Department of Commerce to the Department of Transportation.

JOHN ROTHWELL, Director
Department of Transportation

Lyle Manley, Rule Reviewer

Certified to the Secretary of State November 13, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.15.112, 42.15.113, 42.15.305, 42.15.309, 42.15.311, 42.15.314, 42.15.315, 42.15.321, 42.15.322, 42.15.431 and REPEAL of ARM 42.15.504 and 42.15.505 relating to Income Tax Returns and Tax Credit	NOTICE OF THE AMENDMENT of ARM 42.15.112, 42.15.113, 42.15.305 42.15.309, 42.15.311, 42.15.314 42.15.315, 42.15.321, 42.15.322 42.15.431 and REPEAL of ARM 42.15.504 and 42.15.505 relating to Income Tax Returns and Tax Credit

TO: All Interested Persons:

1. On September 10, 1992, the Department published notice of the proposed amendment of ARM 42.15.112, 42.15.113, 42.15.305, 42.15.309, 42.15.311, 42.15.314, 42.15.315, 42.15.321, 42.15.322, 42.15.431 and repeal of ARM 42.15.504 and 42.15.505 relating to income tax returns and tax credit at page 2005 of the 1992 Montana Administrative Register, issue no. 17.

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 November 16, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.15.116 relating to Net Operating Loss Computations	) NOTICE OF AMENDMENT of ARM) 42.15.116 relating to Net) Operating Loss Computations

TO: All Interested Persons:

1. On September 10, 1992, the Department published notice of the proposed amendment of ARM 42.15.116, relating to net operating loss computations at page 2023 of the 1992 Montana Administrative Register, issue no. 17.

2. A Public Hearing was held on October 7, 1992, to consider the proposed amendment. No one appeared to testify and no written comments were received.

3. The Department has amended the rule as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State November 16, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.16.104 relating to Interest on Unpaid Tax	NOTICE OF THE AMENDMENT of ARM 42.16.104 relating to Interest on Unpaid Tax

TO: All Interested Persons:

1. On September 10, 1992, the Department published notice of the proposed amendment of ARM 42.16.104 relating to interest on unpaid tax at page 2012 of the 1992 Montana Administrative Register, issue no. 17.

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 November 16, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.17.112 and 42.17.131 relating to Withholding Taxes	NOTICE OF THE AMENDMENT of ARM 42.17.112 and 42.17.131 relating to Withholding Taxes

TO: All Interested Persons:

1. On September 10, 1992, the Department published notice of the proposed amendment of ARM 42.17.112 and 42.17.131 relating to withholding taxes at page 2014 of the 1992 Montana Administrative Register, issue no. 17.

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 November 16, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.19.402, 42.19.1102, 42.19.1201, 42.19.1202, 42.19.1203, 42.19.1211, 42.19.1212, 42.19.1221, 42.19.1222, 42.19.1235 relating to Property Taxes for Low Income Property, Energy Related Tax Incentives, and New Industrial Property	NOTICE OF THE AMENDMENT of ARM 42.19.402, 42.19.1102, 42.19.1201, 42.19.1202, 42.19.1203, 42.19.1211, 42.19.1212, 42.19.1221, 42.19.1222, 42.19.1235 relating to Property Taxes for Low Income Property, Energy Related Tax Incentives, and New Industrial Property

TO: All Interested Persons:

1. On September 10, 1992, the Department published notice of the proposed amendment of ARM 42.19.402, 42.19.1102, 42.19.1201, 42.19.1202, 42.19.1203, 42.19.1211, 42.19.1212, 42.19.1221, 42.19.1222, 42.19.1235 relating to property taxes for low income property, energy related tax incentives, and new industrial property at page 2016 of the 1992 Montana Administrative Register, issue no. 17.

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 November 16, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.22.103, 42.22.105, 42.22.106, 42.22.111, 42.22.112, 42.22.113, 42.22.115, 42.22.116, 42.22.1305, 42.22.1311, 42.22.1312, 42.22.1313, and 42.22.1401 relating to Property Taxes for Centrally Assessed Property	NOTICE OF THE AMENDMENT of ARM 42.22.103, 42.22.105, 42.22.106, 42.22.111, 42.22.112, 42.22.113, 42.22.115, 42.22.116, 42.22.1305 42.22.1311, 42.22.1312, 42.22.1313, and 42.22.1401 relating to Property Taxes for Centrally Assessed Property

TO: All Interested Persons:

1. On September 10, 1992, the Department published notice of the proposed amendments of ARM 42.22.103, 42.22.105, 42.22.106, 42.22.111, 42.22.112, 42.22.113, 42.22.115, 42.22.116, 42.22.1305, 42.22.1311, 42.22.1312, 42.22.1313, and 42.22.1401 relating to property taxes for centrally assessed property at page 1959 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. However written comments were received.

3. Written comments to the amendment of ARM 42.22.103 received from H. Durwood Cochrum, Burlington Northern Railroad, prior to the hearing are summarized as follows along with the response of the Department:

COMMENT: The proposed change to paragraph (1) should not be made. The wording "and if it is subject to scrutiny by a regulatory agency" should remain in the rule. By removing this portion of the language, determination of operating or nonoperating would be chaotic and result in arbitrary classification of property.

Such wording plays a significant role in the determination if a property is operating versus non-operating. If a property were not subject to regulatory scrutiny then it obviously would not be classed as operating property.

RESPONSE: For operating and nonoperating property the proposed deletion of "and if it is subject to scrutiny by a regulatory agency," cannot be the criteria for the Department when determining what is and what is not operating property. Since the current trend, which is expected to continue, is to deregulate industry, the use of the property must be the criteria. The Department appraises many different companies in many different lines of business using this rule. Many of these companies are not regulated. By striking this language the

definition now reflects all operating and nonoperating property regardless of whether the industry is regulated or non-regulated. Also in many cases regulatory agencies include and exclude types of property which may or may not be considered in the valuation of property for tax purposes.

COMMENT: The proposed change in paragraph (2) also should not be removed. The wording "agents, the county appraisers" should remain as written. By removing this language, the lease site report will impede the counties ability to efficiently and timely prepare appraisals for the tax roll. This report should continue to be furnished to the department's county appraisers to expedite their ability to appraise lease sites and leasehold interest.

RESPONSE: Currently lease site reports are sent to the department's Helena office to ensure that the leased property is not included in the centralized unit value. The department utilizes this information and distributes copies to industrial appraisers and to the county appraisers for their use and records.

COMMENT: The addition of a filing deadline of March 1 of each year creates compliance problems for our company. Presently, the filing deadline is April 15 of each year. This date should be, if anything extended or retained, but in no event accelerated. It is our recommendation that the filing date also allow an extension of 30 days if needed.

By reducing the time of filing the department is creating an undue and unrealistic burden on Burlington Northern.

RESPONSE: The March 1 deadline was added to reflect the Department's current policy for reporting of leased site reports. Most companies submit this information by March 1 of each year.

4. The department amends ARM 42.22.1313 as follows:

42.22.1313 ASSESSMENT OF GRAIN, SEED, AND FERTILIZER STORAGE FACILITIES (1) Grain storage facilities, seed treating plants, and fertilizer storage plants are improvements to real property for which the use is bulk storage of unprocessed grain, seed cleaning and treating, and bulk storage of fertilizers awaiting sale or processing. Blending, cleaning, treating, packaging, conditioning, dust removal, and pollution control are not considered a manufacturing process IN THESE FACILITIES.

(2) through (4) remain as proposed.

(5) All property described in paragraphs (1) and (2) shall be valued according to the reappraisal cycle established for other class 4 property in 15-7-103, MCA. The department will determine market value considering the cost approach, sales comparison approach, and income approach. When using the cost

approach, a separate age/life schedule will be applied to the product handling portion of the facility to reflect physical depreciation and functional obsolescence. Economic obsolescence will be addressed on a case by case basis. Cost data used in developing the cost approach for property included in this rule is found in the Marshall Valuation Service AND/OR Montana Appraisal Manual.

(6) and (7) remain as proposed.

4. Therefore, the department adopts ARM 42.22.1313 with the amendments listed above and further adopts the amendments to ARM 42.22.103, 42.22.105, 42.22.106, 42.22.111, 42.22.112, 42.22.113, 42.22.115, 42.22.116, 42.22.1305, 42.22.1311, 42.22.1312, and 42.22.1401 as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State November 16, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of ARM 42.31.110, the ADOPTION of NEW RULE I (42.31.308), and the AMENDMENTS of 42.31.107 and 42.31.131 relating to Untaxed Cigarettes Under Tribal Agreements	NOTICE OF REPEAL of ARM 42.31.110, the ADOPTION of NEW RULE I (42.31.308), and the AMENDMENTS of 42.31.107 and 42.31.131 relating to Untaxed Cigarettes Under Tribal Agreements

TO: All Interested Persons:

1. On September 10, 1992, the Department published notice of the proposed repeal of ARM 42.31.110, adoption of new rule I (42.31.308), and amendment of ARM 42.31.107 and 42.31.131 relating to untaxed cigarettes under tribal agreements at page 1994 of the 1992 Montana Administrative Register, issue no. 17.

2. A public hearing was held on October 6, 1992, where written and oral comments were received.

3. Oral and written comments received from Mark Staples, Executive Director and Legal Counsel for the Montana Association of Tobacco and Candy Distributors, during and subsequent to the hearing are summarized as follows along with the responses of the Department:

COMMENT: The Montana Association of Tobacco and Candy Distributors (MATCD) asserts the Montana Department of Revenue (the "Department"), lacks authority to execute quota agreements for untaxed cigarettes entered into by the Department and Montana Indian Tribes.

RESPONSE: Contrary to MATCD's assertion, the Department has the statutory authority to execute such quota agreements. Title 16, chapter 11, part 1 of the Montana Code Annotated governs state taxation of cigarettes. Section 16-11-103, MCA, delineates the powers of the Department concerning state taxation of cigarettes and reads in pertinent part:

> 16-11-103. Powers of department. (1) The department shall have the power and authority to prescribe all rules not inconsistent with the provisions of this part [part 1 - tax on cigarettes] for the detailed and efficient administration thereof. All such rules and orders promulgated shall be published promptly and a copy distributed to each wholesale licensee. . . .

To this end the Department has entered into cooperative agreements with Indian Tribes.

The Department is also authorized to enter into such agreements pursuant to § 18-11-103, MCA, which reads:

> 18-11-103. Authorization to enter agreement -- general contents. (1) Any one or more public agencies may enter into an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments entering into the contract is authorized by law to perform. The agreement shall be authorized and approved by the governing body of each party to the agreement.
>
> (2) The agreement shall set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.

Clearly under the terms of these statutes, the Department is authorized to enter into quota agreements with the Tribes to properly administer the Montana cigarette tax regarding cigarette sales occurring on Indian reservations.

COMMENT: The MATCD has stated that, "The statute in question [Chapter 697, Session Laws of 1991], does not confer any authority in this regard on DOR, but rather, clearly states that they are to 'discuss and negotiate' agreements and then report their findings to the Legislature in 1993."

RESPONSE: Chapter 697, Session Laws of 1991, section (1)(a), does direct the Department to "discuss and negotiate" agreements with the Tribes, but does not then limit the Department's ability to carry out the negotiations to their logical end and enter into appropriate agreements. The Department informed the Legislature's Revenue Oversight Committee of the agreements. The committee did not object. The MATCD commented on the agreements to the ROC without raising this issue.

The Legislature did not reverse its legislative grant of authority which allows state agencies to enter into cooperative agreements with the Tribes. Rather the Legislature specifically directed the Department to seek cigarette tax agreements and additionally to negotiate and report on comprehensive state-tribal taxation (taxes beyond just the cigarette tax).

The Department properly published notice of the above-referenced rule changes and upon public request, conducted a hearing. These administrative rules are repealed, adopted and amended to increase administrative efficiency in the collection of the Montana cigarette tax.

COMMENT: The statute directing these "negotiations and discussions" also clearly and unequivocally directs the Department to consult with the "wholesalers", among others. The consultation of the Department with MATCD has been, at best, minimal, as evidenced by receiving no notice or correspondence of the hearing regarding these rules and now being given this short of time to summarize the oral argument testimony. Indeed, and sadly, as stated at the hearing, the reason the hearing was called for in the first place by MATCD was because of the near total dearth of response by the Department to concerns of the wholesalers.

RESPONSE: The rulemaking process is the proper, formal forum for discussion of the proposed rules adopting procedures to handle cigarette quota sales, either by agreement or by statute. MATCD may have intended to enter into discussions related to the Department's proposed rules through its July 10, 1992, letter. However, the MATCD made a formal request for a hearing using the questions and comments as the basis thus precluding response at that time:

> For these and other reasons that will surface as the ramifications of these rules become more clear, the Montana Association of Tobacco and Candy Distributors requests the opportunity to express data, views, and arguments orally and/or in writing at a public hearing.

The matter was noticed for hearing and the hearing notification was sent to affected parties on September 15, 1992. In addition the notice was published at pages 1994 through 1997 in MAR issue No. 17 (Notice No. 42-2-522) on September 10, 1992.

COMMENT: Though several questions the wholesalers had submitted many months ago were finally answered at the hearing itself, via proposed amendments by the Department which were not presented until the hearing, many questions still remain:

i) How are the wholesalers to be made aware of the quota availabilities for each retailer so they might compete for sales? It is still not clear whether the Montana wholesalers will be forced to stamp Indian cigarettes before quota depletion, or indeed, even after quota depletion.

ii) The Department has been asked, both in writing and orally yesterday what the inevitable increase in stamp purchases by Montana wholesalers who sell to reservations will do in terms of the level of the surety bond required in 42.31.111(b).

RESPONSE:

i) The Department will notify the wholesalers of the initial quota and will notify the Tribe, the Tribal Smokeshop, and the affected wholesalers of quota availabilities (balance remaining) after each quota sale.

The agreement with the Tribes will address the stamping issue, if relevant. Under the two agreements recently negotiated, all cigarettes sold to the Reservation Smokeshops must be stamped. The Department will refund the tax paid on the non-taxed cigarettes, up to the quota amount, sold to the Smokeshops. The tax must be pre-collected on all other sales to that Smokeshop.

ii) The level of the surety bond required in 16-11-117, MCA, (ARM 42.31.111(b)) will not be affected by the requirement to stamp all cigarettes:

> 16-11-117. When payment for insignia due. The department shall permit a licensed wholesaler or licensed retailer to pay for the insignia purchased, or affixation of insignia, within 30 days after the date of purchase and shall require such licensee to file with the department a bond issued by a surety company approved by the state department of insurance as to solvency and responsibility and authority to transact business in the state, for such amount as the department may fix, but not in excess of an amount equal to the maximum insignia purchases incurred for any 30-day period in the previous calendar year; . . .

The bond is required for the net purchase amount in the 30 day period (purchases less tax refunded to wholesaler).

COMMENT: The MATCD points out that according to ARM 42.31.102, current rules allow sales without tax stamps affixed; this appears to be inconsistent with the current plan to stamp everything and recover the tax on quota cigarettes.

RESPONSE: At the present time cigarettes specifically exempted under 16-11-132, MCA, unless otherwise addressed under an agreement with an Indian Tribe, will remain unstamped. Thus, ARM 42.31.102 and other rules addressing exempt, unstamped cigarettes are appropriate.

COMMENT: ARM 42.31.131, as proposed in revised form at the hearing, provides specifically at subsection (4) for credit for refunds relative to sales of Indian cigarettes only pursuant to the quota established in the agreement between the Tribe and the Department. This leads to the questions of what is to take place on those reservations while the Department and the relevant Tribes are still negotiating the compacts the Department is confident of reaching. It would be helpful to those wholesalers doing business with such tribes that it be made clear that there is no prohibition against the status quo when and until a compact has been reached.

RESPONSE: The MATCD is correct that cigarettes sold to Smokeshop retailers on a Reservation where no agreement exists will remain unstamped as is the present practice until further notice.

4. At the hearing the Department provided additional amendments to ARM 42.31.131 as follows:

42.31.131 CIGARETTE TAX REFUNDS (1) Cigarette tax refunds will be issued ~~only to cigarette manufacturers,~~ as provided in subsections (2), (3) and ~~to Indian Tribes, as provided in subsection (3)~~ (4). All cigarette refunds TO MANUFACTURERS FOR RETURNED GOODS (STALES) will be calculated assuming a 3% discount rate.

(2) and (3) remain the same.

(4) Cigarette tax credits or refunds for INDICIA USED IN sales made on an Indian reservation with a quota agreement are made to wholesalers pursuant to the quota established in the agreement between the tribe and the department and the list provided by the tribe. The wholesaler can request a credit payable in stamps or a cash refund by filing CT-207. Upon receipt of CT-207 the department will mail the tax stamps within the next business day or mail a refund within ten (10) working days.

(5) No credit or refund ON NON-TAXED (QUOTA) SALES will be allowed to a wholesaler ~~for sales made to a retailer~~ once the retailer has depleted his/her quota amount. (See ARM 42.31.107 for qualifying sales.) Amounts on CT-207 received during the month will be reconciled with amounts on Form CT-206 filed at the appropriate time. Any discrepancies found will be added to or subtracted from the amount requested for stamps/refunds of the current month. Added/subtracted amounts will be applied to the request of the wholesaler that causes the discrepancy to develop.

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

5. Therefore, the Department adopts ARM 42.31.131 with the amendments listed above. The Department adopts new rule I (42.31.308), repeals ARM 42.31.110, and amends ARM 42.31.107 as proposed.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State November 16, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.31.404 relating to Emergency Telephone Service Fee	NOTICE OF THE AMENDMENT of ARM 42.31.404 relating to Emergency Telephone Service Fee

TO: All Interested Persons:

1. On September 10, 1992, the Department published notice of the proposed amendment of ARM 42.31.404 relating to emergency telephone service fee at page 2010 of the 1992 Montana Administrative Register, issue no. 17.

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 November 16, 1992.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.38.101, 42.38.102, 42.38.201, 42.38.203; REPEAL of ARM 42.38.202 and ADOPTION of RULE I (42.38.204), RULE II (42.38.205), and RULE III (42.38.206) relating to Abandoned Property	NOTICE OF THE AMENDMENT of ARM 42.38.101, 42.38.102, 42.38.201, 42.38.203; REPEAL of ARM 42.38.202; and ADOPTION of RULE I (42.38.204), RULE II (42.38.205), and RULE III (42.38.206) relating to Abandoned Property

TO: All Interested Persons:

1. On August 13, 1992, the Department published notice of the proposed amendment of ARM 42.38.101, 42.38.102, 42.38.201, and 42.38.203; repeal of ARM 42.38.202; and adoption of rule I (42.38.204), rule II (42.38.205), rule III (42.38.206) relating to abandoned property at page 1744 of the 1992 Montana Administrative Register, issue no. 15.

2. As a result of the comments received the Department amends rule I (42.38.204) as follows:

RULE I (42.38.204) DEFINITIONS (1) through (4) remains the same.

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

(a) and (b) remains the same.

(c) note in file that owner ~~did call to inquire about their~~ HAS DISCUSSED THE account or property WITH THE HOLDER OR AN EMPLOYEE OF THE HOLDER BY TELEPHONE, or

(d) note in file that owner personally came in ~~to inquire about their~~ AND DISCUSSED THE account or property WITH THE HOLDER OR AN EMPLOYEE OF THE HOLDER.

(E) COMMUNICATION IN WRITING OR VERBAL COMMUNICATION (EVIDENCED BY A NOTE IN FILE) FROM THE OWNER TO A BANKING OR FINANCIAL ORGANIZATION CONCERNING ANOTHER RELATIONSHIP WITH THE ORGANIZATION, INCLUDING A LOAN PAYMENT OR DISCUSSION CONCERNING ANOTHER ACCOUNT SO LONG AS THE ORGANIZATION SENDS REGULAR STATEMENTS TO THE OWNER CONCERNING THE SUBJECT PROPERTY OR ACCOUNT.

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

3. Written comments received are summarized as follows along with the response of the Department:

COMMENT: Robert C. Pyfer, with the Montana Credit Union Network asked if we could expand the definition of "memorandum".

RESPONSE: As a result of the comments received, the Department has amended rule I (42.38.204), subsection (5)(c), and (d) as listed above.

4. Therefore, the Department adopts the amendments proposed to ARM 42.28.101, 42.38.102, 42.38.201, and 42.28.203. The Department repeals 42.38.202 and adopts new rule II (42.38.205) and new rule III (42.38.206) as proposed. The Department adopts rule I (42.38.204) with the amendments listed above.

CLEO ANDERSON
Rule Reviewer

DENIS ADAMS
Director of Revenue

Certified to Secretary of State November 16, 1992.

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

In the matter of the adoption of [Rule I] 46.6.105, [Rule II] 46.6.412, [Rule III] 46.6.540, [Rule IV] 46.6.519, [Rule V] 46.6.520, [Rule VI] 46.6.521, [Rule VII] 46.6.1312, [Rule VIII] 46.6.1313, [Rule IX] 46.6.1203 and [Rule X] 46.6.103, the amendment of rules 46.6.102, 46.6.201, 46.6.303 through 46.6.307, 46.6.405, 46.6.406, 46.6.409, 46.6.410, 46.6.501 through 46.6.513, 46.6.517, 46.6.602, 46.6.701, 46.6.901, 46.6.903, 46.6.906, 46.6.907, 46.6.1201, 46.6.1302, 46.6.1304, 46.6.1305, 46.6.1306, 46.6.1309, 46.6.1601 through 46.6.1604 and the repeal of rules 46.6.302, 46.6.515, 46.6.601, 46.6.604, 46.6.605, 46.6.606, 46.6.710, 46.6.904, 46.6.905, 46.6.908 and 46.6.1501 through 46.6.1504 pertaining to the vocational rehabilitation, extended employment and independent living programs	)	NOTICE OF THE ADOPTION OF [RULE I] 46.6.105, [RULE II] 46.6.412, [RULE III] 46.6.540, [RULE IV] 46.6.519, [RULE V] 46.6.520, [RULE VI] 46.6.521, [RULE VII] 46.6.1312, [RULE VIII] 46.6.1313, [RULE IX] 46.6.1203 AND [RULE X] 46.6.103, THE AMENDMENT OF RULES 46.6.102, 46.6.201, 46.6.303 THROUGH 46.6.307, 46.6.405, 46.6.406, 46.6.409, 46.6.410, 46.6.501 THROUGH 46.6.513, 46.6.517, 46.6.602, 46.6.701, 46.6.901, 46.6.903, 46.6.906, 46.6.907, 46.6.1201, 46.6.1302, 46.6.1304, 46.6.1305, 46.6.1306, 46.6.1309, 46.6.1601 THROUGH 46.6.1604 AND THE REPEAL OF RULES 46.6.302, 46.6.515, 46.6.601, 46.6.604, 46.6.605, 46.6.606, 46.6.710, 46.6.904, 46.6.905, 46.6.908 AND 46.6.1501 THROUGH 46.6.1504 PERTAINING TO THE VOCATIONAL REHABILITATION, EXTENDED EMPLOYMENT AND INDEPENDENT LIVING PROGRAMS

TO: All Interested Persons

1. On June 25, 1992, the Department of Social and Rehabilitation Services published notice of the proposed adoption of [Rule I] 46.6.105, [Rule II] 46.6.412, [Rule III] 46.6.540, [Rule IV] 46.6.519, [Rule V] 46.6.520, [Rule VI] 46.6.521, [Rule VII] 46.6.1312, [Rule VIII] 46.6.1313, [Rule IX] 46.6.1203 and [Rule X] 46.6.103, the amendment of rules 46.6.102, 46.6.201, 46.6.303 through 46.6.307, 46.6.405, 46.6.406, 46.6.409, 46.6.410, 46.6.501 through 46.6.513, 46.6.517, 46.6.602, 46.6.701, 46.6.901, 46.6.903, 46.6.906, 46.6.907, 46.6.1201, 46.6.1302, 46.6.1304, 46.6.1305, 46.6.1306, 46.6.1309, 46.6.1601 through 46.6.1604 and the repeal of rules

46.6.302, 46.6.515, 46.6.601, 46.6.604, 46.6.605, 46.6.606, 46.6.710, 46.6.904, 46.6.905, 46.6.908 and 46.6.1501 through 46.6.1504 pertaining to the vocational rehabilitation, extended employment and independent living programs at page 1306 of the 1992 Montana Administrative Register, issue number 12.

2. The Department has adopted [Rule I] 46.6.105, [Rule II] 46.6.412, [Rule IV] 46.6.519, [Rule V] 46.6.520, [Rule VI] 46.6.521, [Rule VII] 46.6.1312, [Rule VIII] and [Rule X] 46.6.103 as proposed.

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

[RULE III] 46.6.540 VOCATIONAL REHABILITATION PROGRAM: SERVICES AVAILABLE TO APPLICANTS Subsections (1) through (1)(b) remain as proposed.

(c) ~~transportation~~ TRAVEL AND MOVING SERVICES as provided in ARM 46.6.504;

Subsections (1)(d) through (1)(g) remain as proposed.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-103, 53-7-105, 53-7-108, 53-7-303 and 53-7-310 MCA

[RULE IX] 46.6.1203 FAIR HEARINGS: REVIEW OF FAIR HEARING DECISIONS Subsections (1) through (2)(c) remain as proposed.

(3) ~~The appealing~~ ANY party TO AN APPEAL ~~and any representatives of the appealing party~~ may submit additional information to the administrator FOR PURPOSES OF THE REVIEW.

Subsections (4) through (6) remain as proposed.

AUTH: Sec. 53-7-102, 53-7-206, 53-7-302, 53-7-315 and 53-19-112 MCA
IMP: Sec. 53-7-103, 53-7-105, 53-7-106, 53-7-203, 53-7-205, 53-7-206, 53-7-302, 53-7-303, 53-7-310, 53-7-314, 53-19-103, 53-19-106 and 53-19-112 MCA

4. The Department has amended rules 46.6.201, 46.6.305, 46.6.307, 46.6.406, 46.6.410, 46.6.502, 46.6.505, 46.6.506, 46.6.508, 46.6.510 through 46.6.513, 46.6.602, 46.6.701, 46.6.901, 46.6.903, 46.6.906, 46.6.1601 through 46.6.1604 and repealed rules 46.6.302, 46.6.601, 46.6.604, 46.6.605, 46.6.606, 46.6.710, 46.6.904, 46.6.905, 46.6.908 and 46.6.1501 through 46.6.1504 as proposed.

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

46.6.102 DEFINITIONS Subsections (1) through (7) remain as proposed.

(~~6~~8) "Employability" means a determination that, with the provision of vocational rehabilitation services, a person is

likely to enter or retain, as a primary objective, full-time employment, and when appropriate part-time employment, consistent with the capacities or abilities of the person in the competitive labor market or TO REALIZE any other vocational outcome the department determines is appropriate. ~~that the provision of vocational rehabilitation services is likely to enable an individual to begin or continue in employment consistent with his abilities. The employment may be in the competitive labor market, self-employment, homemaking, farm or family work (including work for which payment is in kind rather than cash), sheltered or homebound employment, or gainful work of any other form.~~

Subsections (9) through (15) remain as proposed.

(~~5~~16) ~~"Handicapped person" means a person with a physical or mental handicap, inclusive of blindness, that can be diagnosed by a physician or appropriate specialist having recognized credentials. Handicapped person for the purposes of this rules is synonymous with disabled person.~~ "Person with an employment handicap" means a person who has a ~~physical or mental~~ disability which constitutes or results in a substantial handicap to employment for the person and who can be reasonably expected to benefit in terms of employability from vocational rehabilitation services.

Subsection (17) remains as proposed.

(a) who has ~~a severe physical or mental disability which~~ ONE OR MORE DISABILITIES;

(b) WHOSE DISABILITY OR DISABILITIES seriously limits one or more functional capacities such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills in terms of employability AND;

(~~b~~c) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; ~~and~~.

~~(c) who has one or more physical or mental disabilities.~~

(18) "Person with a severe disability" for purposes of sub-chapter 16 means a person whose ability to function independently in family or community or whose ability to engage or continue in employment is so limited by the severity of ~~physical or mental~~ disability that independent living rehabilitation services are required in order to achieve a greater level of independence in functioning in family or community or engaging or continuing in employment.

Subsections (19) through (21) remain as proposed.

(~~19~~22) "Rehabilitation facility" or "rehabilitation program" means, a facility OR PROGRAM operated primarily for the provision of vocational rehabilitation services to persons with disabilities. ~~a facility operated for the primary purpose of providing vocational rehabilitation services to or employment for handicapped persons by providing one or more of the following types of services:~~

Subsection (23) remains as proposed.

(~~11~~24) "Substantial handicap to employment" means a ~~physical or mental~~ disability which severely limits ~~an individual's~~ a person's ability to prepare for, obtain or retain

employment appropriate to ~~his~~ THE PERSON'S disabilities, background and potential for rehabilitation.

Subsections (25) through (30)(c) remain as proposed.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315 and 53-19-112 MCA
IMP: Sec. 53-7-101 through 53-7-109, 53-7-201 through 53-7-206, 53-7-301 through 53-7-315 and 53-19-101 through 53-9-112 MCA

46.6.303 VOCATIONAL REHABILITATION PROGRAM: APPLICATION

Subsection (1) remains as proposed.

(2) The department reviews and evaluates ~~shall consider~~ all applications ~~by individuals seeking vocational rehabilitation services offered through the department.~~ of persons to determine whether the person is eligible for VOCATIONAL REHABILITATION services as provided in these rules.

Subsection (3) remains as proposed.

AUTH: Sec. 53-7-102 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-303, 53-7-306 and 53-7-315 MCA

46.6.304 VOCATIONAL REHABILITATION PROGRAM: DETERMINATION OF ELIGIBILITY (1) A person may be eligible for vocational rehabilitation services if the department determines that the person has IS A PERSON WITH an employment handicap.

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

(ii) an appraisal of the applicant's patterns of work behavior, ability to acquire occupational skill, and ability to develop work attitudes, work habits, work tolerance, and social behavior patterns suitable for successful job performance ~~including~~. AN APPRAISAL MAY INCLUDE the utilization of work, simulated or real, to assess and develop the applicant's capacity to perform adequately in a work environment; and

Subsections (2)(a)(iii) through (5) remain as proposed.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-302, 53-7-315 and 53-19-112 MCA
IMP: Sec. 53-7-101 through 53-7-104, 53-7-105, 53-7-106, 53-7-107, 53-7-201 through 53-7-203, 53-7-301 through 53-7-305, 53-7-306, 53-7-307 through 53-7-309 and 53-19-103 MCA

46.6.306 VOCATIONAL REHABILITATION PROGRAM: FINANCIAL NEED ~~SPECIFIC~~ CRITERIA FOR RECEIPT OF CERTAIN SERVICES

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

(v) ~~transportation and travel expenses~~ TRAVEL AND MOVING SERVICES;

(vi) ~~occupational~~ licenseS AND ~~related~~ fees;

(vii) VOCATIONAL ITEMS;

Subsections (1)(c)(vii) through (1)(c)(x) remain as proposed, but are renumbered (1)(c)(viii) through (1)(c)(xi).

(2) The provision of VOCATIONAL REHABILITATION services to a client ~~is~~ WITH A supported employment GOAL is contingent on

the client receiving continuing financial OR OTHER support ~~for the client's extended employment~~ from a state, federal or private resource FOR SUPPORT SERVICES FOLLOWING CASE CLOSURE.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-108, 53-7-203, 53-7-302, 53-7-303, 53-7-306, 53-7-307 and 53-7-310 MCA

46.6.405 PURPOSE OF FINANCIAL NEED STANDARD Subsection (1) remains the same.

(2) The department will use the financial need standard in determining the eligibility of an individual for any of those vocational rehabilitation services listed in ARM 46.6.306(~~2~~1)(c) and for calculating in ARM 46.6.411 the amount of financial supplementation to be provided by the department to a client for maintenance.

AUTH: Sec. 53-7-102 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-105, 53-7-108 and 53-7-310 MCA

46.6.409 FINANCIAL NEED STANDARD (1) An individual will be considered to have financial need for the purposes of determining eligibility for those services listed in ARM 46.6.306(~~2~~1)(c), if he has insufficient financial resources by which to meet the estimated cost of subsistence and the cost of necessary vocational rehabilitation services conditioned on financial need.

Subsection (2) remains the same.

AUTH: Sec. 53-7-102 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-105, 53-7-108 and 53-7-310 MCA

46.6.501 VOCATIONAL REHABILITATION PROGRAM: AVAILABILITY OF SERVICES Subsections (1) through (1)(c) remain as proposed.

(d) vocational ~~assistance~~ ITEMS as provided in ARM 46.6.507;

Subsection (1)(e) remains as proposed.

(f) ~~transportation~~ TRAVEL AND MOVING SERVICES as provided in ARM 46.6.504;

Subsections (1)(g) and (1)(h) remain as proposed.

(i) placement SERVICES as provided in ARM 46.6.506;

Subsection (j) remains as proposed.

(k) ~~occupational~~ licenses AND FEES AS PROVIDED IN [RULE V] ARM 46.6.520;

Subsections (1)(l) through (6) remain as proposed.

(a) The department will authorize for a client only those ~~v~~vocational rehabilitation services that the department determines ~~will~~ ~~should~~ CAN BE EXPECTED TO eliminate or ~~reduce an individual's~~ REHABILITATE a person's employment handicap. ~~disability within a reasonable period of time. Rehabilitation will not be undertaken if the condition of disability is~~

~~medically diagnosed to be continuing in nature with little or no prospect of rehabilitation.~~

Subsection (6)(b) remains as proposed.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

46.6.503 VOCATIONAL REHABILITATION PROGRAM; PHYSICAL AND MENTAL RESTORATION SERVICES Subsections (1) through (3) remain as proposed.

(4) Physical and mental restoration services are available to an applicant if essential to the determination of an applicant's ELIGIBILITY FOR vocational rehabilitation SERVICES.

Subsection (5) remains as proposed.

(a) the clinical status of the person's ~~physical or mental condition~~ DISABILITY is stable or of slow progression. For a person under an extended evaluation plan, the condition need not be stable or of slow progression;

Subsections (5)(b) through (6) remain as proposed.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

46.6.504 VOCATIONAL REHABILITATION PROGRAM; ~~TRANSPORTATION~~ TRAVEL AND MOVING SERVICES (1) ~~The department may furnish t~~Transportation TRAVEL AND MOVING SERVICES may be provided to ~~an individual and,~~ an applicant or client when ~~where~~ necessary~~, family members to secure diagnosis, treatment, training, or other~~ for the person to receive the benefit of vocational rehabilitation services.

(~~2~~a) ~~Such t~~Transportation ~~will~~ TRAVEL SERVICES may include, as necessary, TRANSPORTATION, MEALS AND LODGING ~~the cost of travel and subsistence~~ during travel for ~~an individual~~ a person and ~~his~~ necessary attendants or escorts~~, where such financial assistance is needed~~.

(~~3~~b) Transportation, MEALS AND LODGING ARE ~~and subsistence is~~ reimbursed at cost or state per diem, whichever is lower.

(~~3~~42) ~~Such t~~Transportation ~~may~~ includes relocation ~~and moving expenses necessary for the achievement of a vocational rehabilitation objective~~ MOVING SERVICES MAY BE PROVIDED for a move necessary to the vocational rehabilitation of the client.

(a) MOVING EXPENSES ARE REIMBURSED AT COST.

(3) TRAVEL SERVICES ARE ONLY AVAILABLE FOR OUT OF STATE TRAVEL IF THE DEPARTMENT DETERMINES THAT THE TRAVEL IS NECESSARY TO RECEIVE SERVICES THAT ARE NOT AVAILABLE IN MONTANA.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

46.6.507 VOCATIONAL REHABILITATION PROGRAM: VOCATIONAL ~~ASSISTANCE~~ ITEMS (1) VOCATIONAL ITEMS, INCLUDING C~~c~~ustomary tools, equipment, initial stocks and supplies~~,~~ ~~including livestock,~~ may be provided to a client for the operation of a business or ~~agricultural~~ other enterprise or the pursuit of a trade, occupation, or profession if these are determined by the department in accordance with the client's IWRP to be necessary ~~vocational rehabilitation plan to be appropriate~~ for the client's vocational rehabilitation.

~~(2) The department may provide advice and assistance to a client in obtaining appropriate occupational licenses.~~

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and

46.6.509 VOCATIONAL REHABILITATION PROGRAM: SERVICES TO FAMILY MEMBERS AND DEPENDENTS (1) The department may ~~furnish~~ provide a ~~necessary~~ service to any family member or dependent of an applicant or client if the service is determined by the department to be necessary for the EVALUATION OF AN APPLICANT'S ELIGIBILITY FOR VOCATIONAL REHABILITATION SERVICES OR FOR A client's vocational rehabilitation. ~~individual where the service is required as part of the extended evaluation or vocational rehabilitation plan of the individual and can be provided through no other resource.~~

Subsections (2) and (3) remain as proposed.

(4) Family member or ~~member of the family~~ DEPENDENT includes a person's relative by blood or marriage or a person living in the same household with whom the ~~person with an employment handicap~~ APPLICANT OR CLIENT has a close interpersonal relationship.

AUTH: Sec. 53-7-102, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

46.6.517 VOCATIONAL REHABILITATION PROGRAM: FINANCIAL LIMITATIONS Subsections (1) through (1)(b)(i) remain as proposed.

(ii) ~~$200 total for tools~~ the amount of assistance for ~~tools and equipment~~ VOCATIONAL ITEMS is determined by the department based on the financial needs of the client and the availability of funding;

Subsections (1)(b)(iii) and (1)(b)(iv) remain as proposed.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-108, 53-7-203, 53-7-302, 53-7-303, 53-7-306, 53-7-307 and 53-7-310 MCA

46.6.907 STANDARDS FOR ~~SPECIFIC TYPES OF~~ PROVIDERS; PROFESSIONAL PROVIDERS (1) Providers of PROFESSIONAL services to applicants and clients must be licensed or certified in accordance with any state laws or regulations and profes-

sional standards applicable to the conduct of their profession and the delivery of their services.

Subsection (2) and (3) remain as proposed.

(4) Reimbursement is not available to a provider of services that the department determines does not have appropriate or necessary PROFESSIONAL qualification necessary for the delivery of the service.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302 and 53-7-315 MCA;
IMP: Sec. 53-7-102, 53-7-103, 53-7-203, 53-7-302 and 53-7-303 MCA

46.6.1201 FAIR HEARINGS ~~ON APPLICANT'S APPEALS~~

Subsection (1) remains as proposed.

(2) An adverse action is any determination made by the department concerning ~~the furnishing or denial~~ ELIGIBILITY FOR, TERMINATION FROM, OR THE SELECTION AND DELIVERY of services delivered under this chapter.

Subsections (3) through (8)(e) remain as proposed.

(9) AN ADMINISTRATIVE REVIEW OF THE ADVERSE ACTION MAY BE CONDUCTED PRIOR TO THE FAIR HEARING IF THE DEPARTMENT DETERMINES THAT IT SHOULD BE CONDUCTED. AN APPEALING PARTY MAY PROCEED TO A FAIR HEARING, IF DISSATISFIED WITH THE ADMINISTRATIVE REVIEW.

Subsections (9) through (16) remain as proposed, but are renumbered (10) through (17).

~~(17)~~18) ~~Extensions of time may be granted except for the time period in (6).~~ Reasonable extensions of the periods of time in this rule, EXCEPT FOR THE TIME PERIOD IN (6), MAY BE GRANTED BY THE HEARING OFFICER if requested by a party.

Subsection (18) remains as proposed, but is renumbered (19).

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302, 53-7-315 and 53-19-112 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-105, 53-7-106, 53-7-203, 53-7-205, 53-7-206, 53-7-302, 53-7-303, 53-7-310, 53-7-314, 53-19-103, 53-19-106 and 53-19-112 MCA

46.6.1302 EXTENDED EMPLOYMENT ~~PROGRAM~~ SERVICES: ~~OBJECTIVES OF THE NONVOCATIONAL EXTENDED EMPLOYMENT PROGRAM~~

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

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206 and 53-7-302 MCA
IMP: Sec. 53-7-203 AND 53-7-206 MCA

46.6.1304 EXTENDED EMPLOYMENT ~~PROGRAM~~ SERVICES: RESPONSIBILITIES ~~OF~~ FOR ~~THE NONVOCATIONAL EXTENDED EMPLOYMENT PROGRAM~~ FUNCTIONS Subsections (1) through (a)(iii) remain as proposed.

(b) assuring that all clients referred for extended employment are evaluated and a determination is made ~~as to~~ whether they are ~~appropriate for placement in~~ ELIGIBLE FOR extended employment;

Subsections (1)(c) and (1)(d) remain as proposed.

(2) Support~~ive~~ services required by persons in the extended employment program will be arranged by the ~~designated representatives of~~ AD HOC MEMBERS OF THE EXTENDED EMPLOYMENT COMMITTEES REPRESENTING the ~~community services and~~ developmental disabilities divisions of the department and of the department of family services.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206 and 53-7-302 MCA
IMP: Sec. 53-7-203, 53-7-205 and 53-7-206 MCA

46.6.1305 ~~EXTENDED EMPLOYMENT PROGRAM~~ SERVICES; EXTENDED EMPLOYMENT COMMITTEES (1) A multi-agency committee shall be established at each ~~sheltered workshop and work activity center~~ rehabilitation program participating in the ~~nonvocational~~ extended employment program. Each committee shall have at a minimum one representative~~s~~ MEMBER EACH from the ~~facility, the community services division,~~ program and the ~~vocational~~ rehabilitative/visual services~~, and~~ divisions of the department. The department of family services, the developmental disabilities division of the department and the REHABILITATION facility specialist OF THE REHABILITIVE/VISUAL SERVICES DIVISIONS OF THE DEPARTMENT shall be ad hoc members of the committee. ~~The rehabilitative facilities specialist shall be an ad hoc member of the committee.~~

Subsection (2) remains as proposed.

(a) to screen referrals for ~~appropriateness of certification to~~ ELIGIBILITY FOR the extended employment program. The rehabilitative facilities specialist ~~should~~ must be consulted if there is any question as to the appropriateness of the program for a ~~given facility for a given~~ client;

(b) to ~~certify~~ DETERMINE ELIGIBILITY OF persons with severe disabilities ~~handicapped persons~~ for ~~an~~ extended employment services ~~slot, in a particular sheltered workshop or work activity center~~;

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

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206 and 53-7-302 MCA
IMP: Sec. 53-7-203, 53-7-205 and 53-7-206 MCA

46.6.1306 ~~EXTENDED EMPLOYMENT PROGRAM SERVICES; PROGRAM FACILITY REQUIREMENTS FOR THE NONVOCATIONAL EXTENDED EMPLOYMENT PROGRAM~~ Subsections (1) through (4) remain as proposed.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-203 and 53-7-206 MCA

46.6.1309 ~~EXTENDED EMPLOYMENT PROGRAM SERVICES; DETERMINING ELIGIBILITY FOR NONVOCATIONAL EXTENDED SLOTS~~ (1) The ~~non-vocational~~ extended employment committee ~~shall~~ develop~~s~~ and maintain~~s~~ a prioritized waiting list from which candidates ~~shall be~~ are drawn when vacancies occur~~:~~. The ~~such~~

prioritized list ~~shall be~~ is developed ~~along the lines of~~ in accordance with the criteria described in subsection ~~(3)~~ (4).

Subsections (2) through (6) remain as proposed.

(~~4~~7) Whenever the extended employment committee is unable to arrive at a decision concerning ~~certification~~ ELIGIBILITY, the committee will submit the matter to the facilities specialist of the division ~~administrator~~ with relevant materials for a final decision.

AUTH: Sec. 53-7-102, 53-7-203, 53-7-206, 53-7-302 and 53-7-315 MCA
IMP: Sec. 53-7-203, 53-7-205 and 53-7-206 MCA

6. The Department has also repealed rule 46.6.515 on page 46-373 of the Administrative Rules of Montana.

AUTH: Sec. 53-7-102 and 53-7-315 MCA
IMP: Sec. 53-7-102, 53-7-103, 53-7-108, 53-7-303 and 53-7-310 MCA

7. The Department has thoroughly considered all commentary received:

COMMENT: The criteria in ARM 46.6.306(2) providing that the provision of services should be contingent upon the client receiving financial support from other sources should be changed to provide that support need not only be financial in nature since the support provided by many programs is not always financial in nature.

RESPONSE: The rule has been modified as requested.

COMMENT: The language in ARM 46.6.501(2)(a) providing that the Department will only authorize "services that the Department determines will eliminate or reduce a person's employment handicap" does not reflect the type of judgment that is to be made in this process and may lead to inconsistent and discriminatory treatment. The appropriate language would be "the Department determines can be expected."

RESPONSE: The rule has been modified as requested.

COMMENT: Inclusion of treatment of end stage renal disease in the list of physical and mental restoration services in ARM 46.6.503(2) is inappropriate. It differs from the other services in nature and is not appropriate given the purposes of the program.

RESPONSE: The Department considers treatment for end stage renal disease to be an appropriate restoration service in those circumstances where the treatment can restore a person to the health necessary for employment. Consequently the rule has been adopted as proposed.

The Department in reviewing the proposed rules and rule amendments determined that certain changes were needed for purposes of understanding and substance.

The Department has modified several definitions and some of the provisions of the rules to more thoroughly conform the terminology generally used and to provide for the use of more appropriate terminology.

ARM 46.4.405 and 46.6.409 are being amended in the final notice to revise the references to a provision in a rule which has been amended.

The Department, in reviewing ARM 46.6.504, concerning transportation services, determined that the term "transportation" and the rule were confusing as to the nature of the service and the coverage provided through the program. The rule has been changed to use the term "travel" as a general term which encompasses transportation, meals and lodging. In addition moving services have been included in the rule to meet that particular client need. A rate of reimbursement has been added for moving services. A criteria for out of state travel has been included in the rule. That criteria was previously provided in ARM 46.6.515 is being repealed in this notice. References to transportation services in other rules have been changed accordingly.

The Department in reviewing ARM 46.6.507, concerning vocational assistance services, found the term "vocational assistance" to be too general and confusing. The term is being replaced with the term "vocational items." References to vocational assistance in other rules have been changed accordingly.

The Department in reviewing ARM 46.6.509, concerning the provision of services to family members and dependents, determined that the provision of services should expressly include family members and dependents of applicants. Language for the inclusions of applicants family members and dependents has been added.

The Department in reviewing ARM 46.6.907 determined that while the rule concerned standards for the delivery of services by professionals, the rule did not expressly indicate its applicability to professionals. The rule has been modified to indicate that it concerns standards for professionals.

The Department in reviewing ARM 46.6.1201, concerning fair hearings, determined the description of adverse action needed to be further developed, an administrative review needed to be provided for, and reasonable extensions of time periods granted by the hearing officer should not apply to the time period for the actual request for a fair hearing. The rule has been changed to address these matters.

The Department, in reviewing ARM 46.6.1203, found that only the appealing party could present additional information for the review before the administrator. This limitation was clearly unfair. The rule has been changed to provide that any party may present additional information for the review. The language concerning "any representatives of the appealing party" was removed since ARM 46.6.1201 provides for representation of a party by others.

ARM 46.6.515, concerning out of state services, has been repealed because the rule had out of state travel as its only subject. The substance of this provision has been placed in ARM 46.6.504 which concerns travel. This consolidation of provisions is similar to other rules on services and will make it easier for persons to determine what are the limitations placed on travel services.

The rationale for the repeal of ARM 46.6.302 was inadvertently deleted from the first notice. ARM 46.6.302 concerning the purpose of the vocational rehabilitation program, is being repealed because the provisions of the rule were unnecessarily redundant of other provisions and were generalizations of more specific provisions proposed for amendment which govern determinations of eligibility. Repeal of the rule will end confusion over what provisions govern eligibility.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State November 16, 1992.

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

In the matter of the amendment of rules 46.25.101, 46.25.711, 46.25.725 through 46.25.728, 46.25.730, 46.25.731, 46.25.733, 46.25.742, 46.25.746, 46.25.751 and 46.25.752 and the repeal of rules 46.25.743 and 46.25.744 pertaining to general relief	)))))))))	NOTICE OF THE AMENDMENT OF RULES 46.25.101, 46.25.711, 46.25.725 THROUGH 46.25.728, 46.25.730, 46.25.731, 46.25.733, 46.25.742, 46.25.746, 46.25.751 AND 46.25.752 AND THE REPEAL OF RULES 46.25.743 AND 46.25.744 PERTAINING TO GENERAL RELIEF

TO: All Interested Persons

1. On September 10, 1992 the Department of Social and Rehabilitation Services published notice of the proposed amendment of rules 46.25.101, 46.25.711, 46.25.725 through 46.25.728, 46.25.730, 46.25.731, 46.25.733, 46.25.742, 46.25.746, 46.25.751 and 46.25.752 and the repeal of rules 46.25.743 and 46.25.744 pertaining to general relief at page 2035 of the 1992 Montana Administrative Register, issue number 17.

2. The Department has amended rules 46.25.101, 46.25.711, 46.25.725 through 46.25.728, 46.25.730, 46.25.731, 46.25.733, 46.25.742, 46.25.746 and 46.25.752 and repealed rules 46.25.743 and 46.25.744 as proposed.

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

46.25.751 SELECTION OF MEDICAL PROVIDER (1) The department may through a managed care system or other means designate a medical provider to provide diagnosis and treatment of the serious medical condition for eligible persons. ~~Payment for services to all medical providers is contingent on the providers participation and cooperation with the managed care contractor.~~ THE DEPARTMENT OR ITS MANAGED CARE CONTRACTOR SHALL, AT ITS REQUEST, BE INVOLVED IN THE DISCHARGE PLANNING OF STATE MEDICAL RECIPIENTS RECEIVING INPATIENT HOSPITAL CARE. IF REQUESTED, A HOSPITAL SHALL PROVIDE THE DEPARTMENT OR ITS CONTRACTOR REASONABLE ACCESS TO DISCHARGE PLANNING STAFF AND MEDICAL RECORDS OF THE PATIENT. ACCESS TO THE PATIENT SHALL BE GRANTED IN A TIMELY MANNER PRIOR TO DISCHARGE OF THE PATIENT IF FEASIBLE. AFTER REVIEW BY THE DEPARTMENT, PAYMENT TO THE PROVIDER MAY BE DENIED IF IT IS DETERMINED THAT THE DEPARTMENT OR ITS MANAGED CARE CONTRACTOR WAS UNREASONABLY DENIED ACCESS TO THE PATIENT, MEDICAL RECORDS OR DISCHARGE PLANNING STAFF.

Subsections (2) through (2)(j)(iii) remain as proposed.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-313 MCA

4. The Department has thoroughly considered all commentary received:

COMMENT: Are persons 55 years old also limited to four months of GRA?

RESPONSE: To be unemployable, they would have to meet the criteria specified in law. If they do not meet that criteria, they would be classified as employable with a time limit of four months of benefits or employable with serious barriers or temporarily unemployable with six months of benefits in a 12 month period.

COMMENT: Do benefits begin after 10 or 20 days of participation in the project work program (PWP)?

RESPONSE: Benefits for eligible individuals begin with the date of application. Issuance of benefits to employable individuals will be after 20 days of participation in PWP.

COMMENT: When does entitlement to state medical begin?

RESPONSE: State medical coverage for eligible individuals begins with the first day of the month of application. Retroactive coverage for services received in any of the three months prior to application which remain the obligation of the household, is available. Individuals must be determined eligible for state medical for any retroactive months in which services were received.

COMMENT: How will infirmity be established in areas where no doctors will do infirmity reports?

RESPONSE: Presently, a person applying for general relief assistance (cash benefit) who claims to be infirm is sent to a local physician by the PWP vocational specialist. We have medical providers in all 12 assumed counties willing to do these exams.

COMMENT: Does entitlement to state medical benefits end after four months?

RESPONSE: No, medical assistance is not time limited.

COMMENT: Will there be any exceptions to the "new to Montana" definition in ARM 46.25.101, such as individuals who are natives?

RESPONSE: No, anyone moving to Montana who is a resident of another state just prior to the move is considered "new to Montana."

COMMENT: Persons in need of medical attention will suffer because they cannot prove their infirmity to gain access to state medical benefits.

RESPONSE: A person applying for state medical does not have to prove an infirmity of any kind to be eligible. Eligibility for state medical is determined based on income and resources. If eligible, a person's expenses for inpatient and outpatient hospital services, physician services and prescribed drugs will be covered. Infirmity determinations are done only for the general relief cash assistance program.

COMMENT: The proposed rule amendment, ARM 46.25.728(10), reducing benefits by $50 for three months for persons "new to Montana", violates the constitutional right to travel and equal protection as declared by the U.S. Supreme Court in Shapiro v. Thompson, 394 U.S. 618(1969).

RESPONSE: The plaintiff in the Shapiro case was denied all benefits in a federal program (aid to families with dependent children) which was available in all states. A complete elimination of all benefits is a significant determent to one's right to travel. The restrictions in Montana's law is substantially less intrusive. Only the amount of $50 is reduced from the regular benefit amount. In addition, unlike AFDC, state general assistance cash payments are only available in a limited number of states.

COMMENT: A singular definition of household in ARM 46.25.101 (24) for general relief financial assistance and for general relief medical (GRM) assistance would not be beneficial. We should not tie persons who are not legally related to each other in terms of payment of medical bills. One definition would result in more fair hearings and even has a potential for further legal ramifications.

RESPONSE: Part (b) of the household definition in ARM 46.25.101 (24) groups together persons who by choice or necessity are mutually dependent upon each other. Mutually dependency may be rebutted with a written statement by the individuals involved. In GRM cases, counties review any such statements prior to defining a GRM household. Use of such a statement would eliminate the threat of potential fair hearings or legal ramifications when using a singular definition of household for both financial and medical assistance. Instructions to staff will be changed to reflect this consideration.

COMMENT: The rule permitting the department authority to deny payment to a hospital over its inability to cooperate with individuals over whom the department has no direct authority or control is unbalanced and unfair.

RESPONSE: The state of Montana has a contract with Managed Care of Montana which gives the department all the authority and control necessary to manage this program appropriately.

COMMENT: The proposed rule, ARM 46.25.751, is flawed in its lack of any specific appeal process or mechanism.

RESPONSE: ARM 46.12.409 provides the provider with the right for a fair hearing when a provider has an objection to department actions.

COMMENT: The access to the patient by a managed care contractor can only be allowed when the patient's medical condition tolerates the intrusion and when the patient freely consents. The term "access" is vague.

RESPONSE: The department and Managed Care of Montana agree that the patient's medical condition should be considered when determining when access to the patient is authorized, but access to the patient's records and access to hospital personnel should not be determined on patient's medical condition. Participation in managed care by state medical recipients is not optional, it is a requirement under ARM 46.25.741(3).

COMMENT: The department has no need for ARM 46.25.751, and no basis in law for its adoption as a necessary component of program administration.

RESPONSE: The last legislature mandated that the department develop cost savings measures for the state medical program. If the department is to achieve the cost savings that are mandated by this legislation the department must and has developed rules and regulations requiring both recipients and providers to cooperate with the program and its managed care contractor. The department needs the ability to make rules so the required cost saving can be achieved.

COMMENT: Concerns have been expressed regarding the terms, "timely manner", "access" and "prior to discharge." (These terms were used by the department in alternatives to the proposed rule.) The terms are objectionable because hospitals must adhere to the demands without limit.

RESPONSE: Generally, 24 hours or one working day from the time managed care first makes contact is "timely." This is a standard time frame used by the department. This time frame is also used by many other providers of health care services.

It is not unreasonable for the managed care contractor to have "access" to the recipient "prior to discharge" when the length of stay allows. The department also realizes that in some cases when the recipient's length of stay at the facility was short term and there may not have been sufficient time or notification by the contractor of their involvement, access to the recipient

prior to discharge may not occur. The department does not expect the hospital to delay discharge of state medical recipients beyond the patient's medical needs for the convenience of the government. The wording of ARM 46.25.751 has been modified to address these concerns.

5. The provisions of this rule notice, except for ARM 46.25.751, are effective retroactive to October 1, 1992. The retroactive application of these rules coincide with the effective date of Senate Bill No. 10, which was passed by the July 1992 Special Session of the Montana Legislature. Due to time constraints, other work obligations of employees within the department, the recent changes as a result of SB10, and the formal requirements imposed by section 2-4-302, MCA, it was not possible to formally adopt the rule at an earlier date.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State November 16, 1992.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1992. This table includes those rules adopted during the period September 1, 1992 through December 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 September 30, 1992, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1992 Montana Administrative Register.

ADMINISTRATION, Department of, Title 2

2.21.619 and other rules - Holidays, p. 351, 1004
2.21.803 and other rule - Sick Leave Fund, p. 353, 1005
2.21.908 and other rules - Disability and Maternity Leave - Sick Leave - Parental Leave for State Employees, p. 827, 2372
2.21.5007 Reduction in Work Force, p. 719, 2047
(Public Employees' Retirement Board)
2.43.431 Purchase of Military Service in the Sheriffs' Retirement System, p. 466, 1132
2.43.612 and other rules - Certifying Annual Benefit Payments for Distributing Lump Sum Benefit Increases to Montana Resident Retirees, p. 1900
(State Compensation Mutual Insurance Fund)
I and other rules - Construction Industry Premium Credit Program - Classifications and Establishment of Premium Rates, p. 257, 907

AGRICULTURE, Department of, Title 4

4.5.109 and other rule - Reporting Procedures - Field Evaluations - Council Appointments for the Noxious Weed Trust Fund, p. 1440, 1861

STATE AUDITOR, Title 6

I-III Rules Implementing the Second Tier of the Limited Offering Exemption, p. 354, 1006

I-IV Prohibiting Unfair Discrimination for Previously Uninsured Personal Automobile Insurance Applicants, p. 2436

COMMERCE, Department of, Title 8

(Board of Alternative Health Care)

I Direct Entry Midwife Education Standards, p. 2225

I Licensing by Exam for Midwives, p. 1282, 2048

8.4.301 and other rules - Fees - Direct Entry Midwifery Apprenticeship, p. 2106

(Board of Architects)

8.6.407 Examinations, p. 721, 1468

(Board of Chiropractors)

8.12.601 and other rules - Applications - Examination - Unprofessional Conduct - Definitions, p. 1542, 2131

(Board of Dentistry)

8.16.601 and other rules - Introduction - Dental Auxiliaries - Exams - Licensure by Credentials - Unprofessional Conduct - Qualifying Standards - Dental Auxiliaries - Denturist Interns, p. 2229

8.17.501 Fee Schedule, p. 725, 1469

8.17.702 and other rules - Renewal - Continuing Education - Continuing Education for the Practice of Dentistry, Dental Hygiene and Denturitry, p. 2236

8.17.808 and other rule - Prior Referral for Partial Dentures - Insert Immediate Dentures, p. 723, 1177, 2132

(Board of Hearing Aid Dispensers)

8.20.401 and other rules - Traineeship Requirements - Fees - Record Retention - Unethical Conduct - Complaints - Disciplinary Actions - Testing Procedures - Continuing Educational Requirements - Notification - Definitions - Forms of Bills of Sale - Contracts and Purchase Agreements - Inactive Status, p. 1284

(Board of Horse Racing)

8.22.601 and other rules - General Provisions - Racing Secretary - Veterinarians - General Requirements - General Rules - Duties of the Licensee - Breakage, Minus Pools and Commissions, p. 1077, 1605, 1862

(Board of Landscape Architects)

8.24.409 Fee Schedule, p. 265, 912

(Board of Medical Examiners)

8.28.402 and other rules - Definitions - Applications - Fees and Renewals - Reactivation of Inactive or Inactive Retired Licenses - Verifications - Fees, p. 356, 1607, 2050

8.28.1505 Fees, p. 1784, 2375

8.80.307 Dollar Amounts to Which Consumer Loan Rates Are to be Applied, p. 968, 1353

(Board of Milk Control)

8.86.301 Regulating the Calculation of the Price of Class II and III Milk Paid to Milk Producers Each Month, p. 1788, 2377

8.86.301 Pricing Rules - Class I Wholesale Prices, p. 1194

(Board of County Printing)

8.91.101 and other rule - Organization of the Board - Official Publications and Legal Advertising, p. 184, 1012

(Local Government Assistance Division)

I Administration of the Treasure State Endowment Program (TSEP), p. 2323

8.94.4001 and other rules - Implementation of the State Single Audit Act - Criteria for the Selection of an Independent Accountant/Auditor - Criteria for Executing a Contract with an Independent Accountant/Auditor - Audit and Reporting Standards, p. 727, 1354

(Board of Investments)

I-XXI and other rules - Municipal Finance Consolidation Act - Rules Implementing the INTERCAP Program, p. 1715, 2275

8.97.1410 and other rules - Commercial and Multi-Family Loan Programs - General Requirements - Terms and Loan Limits - Offering Checklist - Investment Policy, Criteria and Preferences Interest - Incentive to Financial Institution for Small Business Loan Participation, p. 2546, 1014, 1470

(Science and Technology Development Board)

I-V Seed Capital Project Loans to Venture Capital Companies, p. 1791

EDUCATION, Title 10

(Superintendent of Public Instruction)

10.6.101 and other rules - School Controversy Contested Cases Rules of Procedure, p. 2110

10.10.301 and other rules - Regular and Special Education Tuition, p. 832, 1365

10.10.301 and other rules - Special Accounting Practices, p. 2334, 209, 1238

10.16.1108 and other rules - Special Education Complaint Procedures, p. 1442

10.16.1705 Supervisors of Special Education Teachers, p. 1970, 2550, 1360

10.20.202 Foundation Payments, p. 1447, 2142

10.22.104 Spending and Reserve Limits, p. 1449, 2143

10.41.101 and other rules - Vocational Education General Rules, p. 1795

10.44.201 and other rules - Secondary Vocational Education Program Requirements, p. 1725, 2144

HEALTH AND ENVIRONMENTAL SCIENCES, Department of, Title 16

I Categorical Exclusion from EIS Requirements for State Revolving Fund Loan Assistance for Wastewater Systems, p. 468, 1239

I-VI Establishing Procedures for Local Water Quality District Program Approval - Procedures for Granting Enforcement Authority to Local Water Quality Districts, p. 2445

I-VI Minimum Standards for On-Site Subsurface Wastewater Treatment, p. 513, 2148

16.8.1004 and other rules - Incorporating Federal Regulatory Changes for the Air Quality Bureau, p. 2243

16.8.1304 and other rules - Air Quality - Major Open Burning Source Restrictions - Air Quality Permit Application/Operation Fee Assessment Appeal Procedures - Air Quality Open Burning Fees, p. 1300, 1453, 2061

16.8.1307 and other rules - Air Quality - Open Burning Permit Fees for Conditional and Emergency Open Burning Permits, p. 1732, 2285

16.8.1903 Air Quality - Permit Fees, p. 1730, 2390

16.14.201 and other rules - Solid and Hazardous Waste - Junk Vehicles, p. 762, 1370

16.16.101 and other rules - Subdivision Review and Fees - Fee Requirements for Subdivision Applications, p. 1556, 2145

16.20.401 and other rules - Plan and Specification Review for Small Water and Sewer Systems and Review Fees - Drilling of Water Wells, p. 505, 2152

16.20.602 and other rules - Surface Water Quality Standards - Nondegradation Policy, p. 501, 2064

16.20.1303 and other rules - Montana Pollutant Discharge Elimination Systems and Pretreatment Rules, p. 471, 1241

16.28.1005 Tuberculosis Control Requirements for Employees of Schools and Day Care Facilities, p. 1303

16.44.102 and other rules - Hazardous Waste - Exportation of Hazardous Waste - HSWA Cluster I Regulations, p. 2330

16.44.102 and other rules - Solid and Hazardous Waste - Wood Preserving Operations, p. 1547, 2162

16.44.102 and other rules - Solid and Hazardous Waste - Boiler and Industrial Furnace (BIF) Regulations, p. 2567, 445, 1911

16.44.202 and other rules - Hazardous Waste - Definitions Related to Hazardous Waste Regulation - Requirements for Counting Hazardous Wastes - Issuance and Effective Date of Permits, p. 1736, 2164

TRANSPORTATION, Department of, Title 18

18.7.105 and other rule - Encroachment of Mailboxes and Newspaper Delivery Boxes on Highway Rights-of-Way, p. 1198, 1868

CORRECTIONS AND HUMAN SERVICES, Department of, Title 20

20.3.202 and other rules - Definitions - Organization and Management - Personnel - Staff Development and Certification - Seven Treatment Component Requirements, p. 849, 1477
20.7.201 and other rules - Resident Reimbursement at Community Correctional Centers, p. 1454, 2286
20.7.1101 Conditions on Probation and Parole, p. 977, 1482
20.14.302 and other rules - Application for Voluntary Admissions to the Montana State Hospital, p. 979, 1483, 2287
20.14.501 and other rules - Certification of Mental Health Professional Persons, p. 865, 1485

JUSTICE, Department of, Title 23

I Drug Abuse Resistance Education (DARE) Trust Fund, p. 2452
I-II Peace Officer Standards and Training - Public Safety Communications Officers, p. 1086
I-V Investigative Protocol by the Department of Justice in the Performance of its Investigative Responsibilities, p. 2117, 2466
1.3.206 and other rules - Amendment of Model Rules and Forms Attached to the Model Rules, p. 770, 1242
23.7.105 and other rule - Adoption of the Uniform Fire Code, International Conference of Building Officials - 1991 Edition of the UFC Standards, p. 1202, 1759, 2074
23.12.101 and other rules - Department of Justice Standardization of Criminal History Information Collection - Implementation of an Arrest Numbering System, p. 2246
23.14.404 Peace Officers Standards and Training, p. 2450
23.17.314 Physical Performance Requirements for the Basic Course, p. 1457, 2075

LABOR AND INDUSTRY, Department of, Title 24

24.11.475 Unemployment Insurance - Approval of Training, p. 1570, 2076
24.11.813 and other rules - What is Classified as Wages for Purposes of Workers' Compensation and Unemployment Insurance, p. 2344

24.11.814 and other rule - What is Classified as Wages for Purposes of Workers' Compensation and Unemployment Insurance, p. 1577, 1949, 2251
24.16.9007 Prevailing Wage Rates - Building Construction, p. 873, 2165
24.29.706 Exclusions from the Definitions of Employment in the Unemployment Insurance and Workers' Compensation Acts, p. 1573, 1948, 2250

STATE LANDS, Department of, Title 26

I-XI Regulations for Forest Practices in the Streamside Management Zone, p. 2252
26.4.301 and other rules - Regulation of Coal and Uranium Mining and Prospecting, p. 2260

LIVESTOCK, Department of, Title 32

32.2.401 Imposition of a Fee Pertaining to Inspection of Game Farm Animals, p. 2348

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

I-VII Requiring Measuring Devices on Watercourses Identified as Chronically Dewatered, p. 2454
36.12.101 and other rules - Definitions - Forms - Application Special Fees, p. 874, 1615
36.12.1010 and other rule - Definitions - Rejection, Modification or Conditioning Permit Applications in the Musselshell River, p. 519, 1396
(Board of Oil and Gas Conservation)
I-XVII Underground Injection Control Program for Class II Injection Wells Under the Federal Safe Drinking Water Act (SDWA), p. 521, 2171
36.22.302 and other rules - Definitions - Bonding of Oil and Gas Wells - Reports - Well Plugging Requirements - Referral of Administrative Matters, p. 1950

PUBLIC SERVICE REGULATION, Department of, Title 38

I Pictorial Information Requirements, p. 296, 1760
I-II and other rule - Fuel Cost Surcharge - Temporary Rate Reductions - Defining "Miles", All Regarding Motor Carriers, p. 2121
I-XII and other rules - Establishing Policy Guidelines on Integrated Least Cost Resource Planning for Electric Utilities in Montana - Cogeneration and Small Power Production, p. 1846, 2269
38.5.3345 Change In Customer's Interexchange Carriers - Deferring of Implementation Until January 1, 1993, p. 298, 1400

REVENUE, Department of, Title 42

SECRETARY OF STATE, Title 44

I-IX Voting by Facsimile Transmission for Members of the United States Military Service, p. 1461, 1870
1.2.419 Filing, Compiling, Printer Pickup and Publication Schedule for the Montana Administrative Register for 1993, p. 2270

(Commissioner of Political Practices)

44.10.331 Limitations on Receipts for Political Committees to Legislative Candidates, p. 389, 1871

SOCIAL AND REHABILITATION SERVICES, Department of, Title 46

I and other rules - Kids Count and Early Periodic Screening Diagnosis and Treatment Services, p. 2359
I Statistical Sampling Audits, p. 2272
I At-Risk Child Care Program, p. 1089, 1767
I-VII and other rules - Targeted Case Management for Children and Adolescents, p. 548, 1248
I-VIII Passport to Health Program, p. 998, 1231, 2288
I-XL Medicaid Home and Community Services for Persons Who are Developmentally Disabled, p. 880, 1490
46.2.201 and other rules - Hearing Procedures for Medicaid Providers, p. 1094, 1496
46.6.102 and other rules - Vocational Rehabilitation - Extended Employment and Independent Living Programs, p. 1306
46.10.105 and other rules - Aid to Families with Dependent Children Disqualification for Fraud, p. 1464, 2080
46.10.302 Aid to Families with Dependent Children Provision for Living with a Specified Relative, p. 899, 1247
46.10.305 and other rules - AFDC Standards of Assistance, p. 2025, 2396
46.10.403 AFDC Standards of Assistance, p. 985, 1494
46.10.404 Title IV-A Day Care for Children, p. 2125, 2469
46.10.409 Transitional Child Care, p. 1750, 2200
46.10.823 Self-Initiated Education or Training, p. 2460
46.12.501 and other rule - Exclusion of Medicaid Coverage of Infertility Treatment Services, p. 982, 1105, 1401
46.12.515 and other rule - Medicaid Coverage of Respiratory Care - Chemical Dependency and Chiropractic Services for Children in Kids Count/Early and Periodic Screening Diagnosis and Treatment (EPSDT) Program, p. 902, 1402
46.12.565 and other rules - Private Duty Nursing, p. 2127
46.12.570 and other rules - Medicaid Payments to Mental Health Centers, p. 991, 1404
46.12.801 and other rules - Durable Medical Equipment, p. 1129, 1872
46.12.1222 and other rules - Medicaid Nursing Facility Reimbursement, p. 1106, 1617
46.12.3803 Medically Needy Income Standards, p. 2033, 2398
46.12.3803 Medically Needy Income Standards, p. 905, 1256, 1405

BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments made in October, 1992, are published. Vacancies scheduled to appear from December 1, 1992, through February 28, 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 November 4, 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.

BOARD AND COUNCIL APPOINTEES: OCTOBER, 1992

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Outfitters (Commerce)			
Mr. Jack Billingsley Glasgow Qualifications (if required): licensed outfitter from District 4	Governor	reappointed	10/1/1992 10/1/1995
Mr. R. Craig Madsen Great Falls Qualifications (if required): licensed outfitter from District 3	Governor	reappointed	10/1/1992 1/1/1995
Board of Psychologists (Commerce)			
Dr. Barbara Ann Looby Livingston Qualifications (if required): none specified	Governor	reappointed	10/23/1992 9/1/1998
Pastor Jeff Olsgaard Rudyard Qualifications (if required): public member	Governor	McCaslin	10/23/1992 9/1/1997
Historical Records Advisory Council (Education)			
Mr. Nathan Bender Bozeman Qualifications (if required): none specified	Governor	not listed	10/6/1992 10/6/1994
Mr. Timothy Bernardis Crow Agency Qualifications (if required): none specified	Governor	not listed	10/6/1992 10/6/1994
Mr. Robert M. Clark Helena Qualifications (if required): none specified	Governor	not listed	10/6/1992 10/6/1994

BOARD AND COUNCIL APPOINTEES: OCTOBER, 1992

Appointee	Appointed by	Succeeds	Appointment/End Date
Historical Records Advisory Council (Education) cont.			
Mr. Brian E. Cockhill Helena Qualifications (if required): none specified	Governor	not listed	10/6/1992 10/6/1994
Ms. Connie Flaherty-Erickson Helena Qualifications (if required): none specified	Governor	not listed	10/6/1992 10/6/1994
Ms. Peggy Lamberson Great Falls Qualifications (if required): none specified	Governor	not listed	10/6/1992 10/6/1994
Ms. Georgia Lomax Kalispell Qualifications (if required): none specified	Governor	not listed	10/6/1992 10/6/1994
Ms. Kathryn Otto Helena Qualifications (if required): none specified	Governor	not listed	10/6/1992 10/6/1994
State Emergency Response Commission (Governor)			
Mr. Rick Bartos Helena Qualifications (if required): none specified	Governor	not listed	10/27/1992 10/27/1994
Mr. Thomas M. Ellerhoff Helena Qualifications (if required): none specified	Governor	not listed	10/27/1992 10/27/1994
Mr. Gary Gingery Helena Qualifications (if required): none specified	Governor	not listed	10/27/1992 10/27/1994

BOARD AND COUNCIL APPOINTEES: OCTOBER, 1992

Appointee	Appointed by	Succeeds	Appointment/End Date
State Emergency Response Commission (Governor) cont.			
Mr. William K. Good Helena Qualifications (if required): none specified	Governor	not listed	10/27/1992 10/27/1994
Mr. David E. Hollatz Billings Qualifications (if required): none specified	Governor	not listed	10/27/1992 10/27/1994
Mr. Erwin Kent Helena Qualifications (if required): none specified	Governor	not listed	10/27/1992 10/27/1994
Mr. Curt Laingen Helena Qualifications (if required): none specified	Governor	not listed	10/27/1992 10/27/1994
Mr. Bill Rhoads Butte Qualifications (if required): none specified	Governor	not listed	10/27/1992 10/27/1994
Lt. Colonel W. James Stotts Helena Qualifications (if required): none specified	Governor	not listed	10/27/1992 10/27/1994
Mr. Bill Strizich Helena Qualifications (if required): none specified	Governor	not listed	10/27/1992 10/27/1994
Mr. Bruce Suenram Helena Qualifications (if required): none specified	Governor	not listed	10/27/1992 10/27/1994

BOARD AND COUNCIL APPOINTEES: OCTOBER, 1992

Appointee	Appointed by	Succeeds	Appointment/End Date
State Emergency Response Commission (Governor) cont.			
Mr. Thomas Taylor	Governor	not listed	10/27/1992
Glendive			10/27/1994
Qualifications (if required): none specified			
Mr. Seldon "Butch" Weeden	Governor	not listed	10/27/1992
Great Falls			10/27/1994
Qualifications (if required): none specified			
Transportation of Hazardous Wastes and Materials (Natural Resources and Conservation)			
Mr. Pat Keim	Governor	not listed	10/9/1992
Helena			9/22/1994
Qualifications (if required): none specified			

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1992 through February 28, 1993

Board/current position holder	Appointed by	Term end
Alfalfa Seed Committee (Agriculture)		
Mr. Durl Heiken, Billings	Governor	12/21/1992
Qualifications (if required): public member		
Mr. Keith Reynolds, Winnett	Governor	12/21/1992
Qualifications (if required): public member		
Appellate Defender Commission (Administration)		
Mr. Daniel Donovan, Great Falls	Governor	1/1/1993
Qualifications (if required): public defender		
Ms. Randi Mae Hood, Helena	Governor	1/1/1993
Qualifications (if required): public defender		
Judge Dorothy B. McCarter, Helena	Chief Justice	1/1/1993
Qualifications (if required): district judge		
Board of Aeronautics (Commerce)		
Mr. Joe Attwood, Great Falls	Governor	2/1/1993
Qualifications (if required): representative of Montana Airport Managers Association		
Mr. Joel Fenger, Chester	Governor	2/1/1993
Qualifications (if required): none specified		
Mr. Douglas Freeman, Hardin	Governor	2/1/1993
Qualifications (if required): from MT League of Cities and Towns/ Attorney on Board		
Mr. Howard W. Gipe, Kalispell	Governor	1/2/1993
Qualifications (if required): represents MT County Commissioners Association		
Mr. Phil "Pete" Pederson, Glasgow	Governor	1/2/1993
Qualifications (if required): represents MT Pilot's Association		

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1992 through February 28, 1993

Board/current position holder	Appointed by	Term end
Board of Chiropractors (Commerce)		
Dr. Christopher Buzan, Missoula Qualifications (if required): chiropractor	Governor	1/1/1993
Board of Crime Control (Justice)		
Ms. Diane G. Barz, Billings Qualifications (if required): rep. court system	Governor	1/2/1993
Mr. Don Bjertness, Billings Qualifications (if required): rep. court system	Governor	1/2/1993
Dr. Gordon Browder, Missoula Qualifications (if required): none specified	Governor	1/7/1993
Mr. Robert Butorovich, Butte Qualifications (if required): none specified	Governor	1/2/1993
Mr. John T. Flynn, Townsend Qualifications (if required): rep. local law enforcement	Governor	1/2/1993
Mr. Rick Later, Dillon Qualifications (if required): rep. local law enforcement	Governor	1/2/1993
Mr. Rex Manuel, Fairfield Qualifications (if required): none specified	Governor	1/2/1993
Mr. Don Peterson, Big Arm Qualifications (if required): rep. local government	Governor	1/2/1993
Rep. Mary Lou Peterson, Eureka Qualifications (if required): rep. state government	Governor	1/2/1993

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1992 through February 28, 1993

Board/current position holder	Appointed by	Term end
Board of Crime Control (Justice) cont.		
Mr. John Pfaff, Miles City Qualifications (if required): none specified	Governor	1/2/1993
Chief Mike Shortell, Havre Qualifications (if required): chief of police	Governor	1/2/1993
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 Veterinary medicine engaged in 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

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1992 through February 28, 1993

Board/current position holder	Appointed by	Term end
Board of Housing (Commerce) cont.		
Mr. Tom Mather, Great Falls	Governor	1/2/1993
Qualifications (if required): informed & experienced in economics, housing or finance		
Mr. George McCallum, Plains	Governor	1/2/1993
Qualifications (if required): informed & experienced in economics, housing or finance		
Board of Investments (Commerce)		
Mr. David E. Aageson, 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 Teachers' 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		

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1992 through February 28, 1993

Board/current position holder	Appointed by	Term end
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		
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 and 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 and gas industry		
Mr. David Schaenen, Billings	Governor	2/2/1993
Qualifications (if required): member from oil and gas industry		
Board of Pardons (Institutions)		
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		

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1992 through February 28, 1993

Board/current position holder	Appointed by	Term end
Board of Personnel Appeals (Labor and Industry)		
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. Schneckloth, Helena	Governor	1/2/1993
Qualifications (if required): member or employee of employee organization		
Board of Public Education (Education)		
Mr. Bill Thomas, Great Falls	Governor	2/1/1993
Qualifications (if required): none specified		
Board of Regents of Higher Education (Education)		
Mr. Thomas F. Topel, Billings	Governor	2/1/1993
Qualifications (if required): Republican residing in Second Congressional District		
Board of Respiratory Care (Commerce)		
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		
Ms. Pat Johnson, Helena	Governor	1/1/1993
Qualifications (if required): respiratory care practitioner		

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1992 through February 28, 1993

Board/current position holder	Appointed by	Term end
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		
Board of Social and Rehabilitation Appeals (Social and Rehabilitation Services)		
Ms. Bonnie Frey, Helena	Governor	1/2/1993
Qualifications (if required): public member		
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. & member from coal impact area		
Mr. Gerald Feda, Glasgow	Governor	1/2/1993
Qualifications (if required): represents 2nd District		
Mr. Ted Fletcher, Ashland	Governor	1/2/1993
Qualifications (if required): represents 2nd District		

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1992 through February 28, 1993

Board/current position holder	Appointed by	Term end
Committee for the Humanities (Governor)		
Mr. Ron Bibler, Great Falls Qualifications (if required): none specified	Governor	1/2/1993
Ms. Ann Cogswell, Great Falls Qualifications (if required): public member	Governor	1/1/1993
Ms. Jamie Doggett, White Sulphur Springs Qualifications (if required): none specified	Governor	1/2/1993
Ms. Lee Rostad, Martinsdale Qualifications (if required): none specified	Governor	1/2/1993
Council for Montana's Future (Governor)		
Mr. John Bailey, Livingston Qualifications (if required): none specified	Governor	12/15/1992
Mr. Kurt Baltrusch, Glendive Qualifications (if required): none specified	Governor	12/15/1992
Mr. Jerry Black, Shelby Qualifications (if required): none specified	Governor	12/15/1992
Ms. Anne Boothe, Malta Qualifications (if required): none specified	Governor	12/15/1992
Mr. Tony Colter, Deer Lodge Qualifications (if required): none specified	Governor	12/15/1992
Mr. Jim Crane, Helena Qualifications (if required): none specified	Governor	12/15/1992

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1992 through February 28, 1993

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

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1992 through February 28, 1993

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

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1992 through February 28, 1993

Board/current position holder	Appointed by	Term end
Developmental Disabilities Planning and Advisory Council (Social and Rehabilitation Services) cont.		
Mr. Ken Kronebusch, Conrad	Governor	1/2/1993
Qualifications (if required): consumer member on the council		
Dr. Richard Offner, Missoula	Governor	1/1/1993
Qualifications (if required): representative of university affiliated program		
Mr. Thomas Price, Eureka	Governor	1/1/1993
Qualifications (if required): represents Region V		
Mr. Robert Runkel, Helena	Governor	1/2/1993
Qualifications (if required): represents Superintendent of Public Instruction		
Mrs. Othelia Schulz, Butte	Governor	1/2/1993
Qualifications (if required): representative of Region IV		
Mr. Don Sekora, Helena	Governor	1/1/1993
Qualifications (if required): representative from Department of Family Services		
Mr. Peyton Terry, Glasgow	Governor	1/2/1993
Qualifications (if required): Represents Region I		
Fire Marshal Advisory Council (Governor)		
Mr. Vern Erickson, Missoula	Attorney General	12/31/1992
Qualifications (if required): rep: Montana State Firemens' Association		
Mr. Ted Main, Kalispell	Attorney General	12/31/1992
Qualifications (if required): rep: MT Chapter of Internat'l Assoc. of Arson Investigators		
Mr. Larry McCann, Billings	Attorney General	12/31/1992
Qualifications (if required): rep: MT Fire Chiefs' Assoc.		

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1992 through February 28, 1993

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

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1992 through February 28, 1993

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

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1992 through February 28, 1993

Board/current position holder	Appointed by	Term end
ICC Administered Economic Development Programs (Governor) cont.		
Ms. Julia Robinson, Helena Qualifications (if required): none specified	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
Judicial Nomination Commission (Justice)		
Mr. C. David Bliss, Conrad Qualifications (if required): lay member	Governor	1/1/1993
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 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

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1992 through February 28, 1993

Board/current position holder	Appointed by	Term end
Local Government Records Advisory Council (Secretary of State) cont.		
Ms. Lorraine VanAusdol, Bozeman Qualifications (if required): not specified	Secretary of State	1/22/1993
Medical Care Advisory Council (Social and Rehabilitation Services)		
Dr. Paul S. Donaldson, Helena Qualifications (if required): none specified	Director	1/31/1993
Ms. Nancy Ellery, Helena Qualifications (if required): member	Director	1/31/1993
Mr. Jon Frantsvog, Deer Lodge Qualifications (if required): none specified	Director	1/31/1993
Mr. Dennis Iverson, Helena Qualifications (if required): none specified	Director	1/31/1993
Dr. R.D. Marks, Missoula Qualifications (if required): none specified	Director	1/31/1993
Mr. Mike Mayer, Missoula Qualifications (if required): none specified	Director	1/31/1993
Mr. Erich Merdinger, Helena Qualifications (if required): none specified	Director	1/31/1993
Dr. Bill Peters, Bozeman Qualifications (if required): none specified	Director	1/31/1993
Mr. Hugh Standley, Missoula Qualifications (if required): none specified	Director	1/31/1993

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1992 through February 28, 1993

Board/current position holder	Appointed by	Term end
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 Congress. District, affiliated w/ Republican party		
Mr. Milton Swede Olson, Whitewater	Governor	1/1/1993
Qualifications (if required): from 2nd Congress. District, affiliated w/ Republican party		
Montana Arts Council (Education)		
Mr. Henry Badt, Hamilton	Governor	2/1/1993
Qualifications (if required): public member		
Ms. Shirley L. Hanson, Havre	Governor	2/1/1993
Qualifications (if required): none specified		
Ms. Sonia M. Hoffmann, Helena	Governor	2/1/1993
Qualifications (if required): none specified		
Mr. James D. Kriley, Missoula	Governor	2/1/1993
Qualifications (if required): none specified		
Ms. Susan A. Talbot, Missoula	Governor	2/1/1993
Qualifications (if required): none specified		
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 w/ expertise in banking		

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1992 through February 28, 1993

Board/current position holder	Appointed by	Term end
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		
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		
Science and Technology Development Board (Commerce)		
Ms. Annie M. Bartos, Helena	Governor	1/1/1993
Qualifications (if required): attorney and from public sector		
Mr. Tom Breum, Missoula	Governor	1/1/1993
Qualifications (if required): from private sector		
Dr. John Brower, Butte	Governor	1/1/1993
Qualifications (if required): experience in applied technology devel. & from public sector		
Mr. Ken Thuerbach, Victor	Governor	1/1/1993
Qualifications (if required): from public sector		
Mr. Ray Tilman, Butte	Governor	1/1/1993
Qualifications (if required): from private sector		

VACANCIES ON BOARDS AND COUNCILS -- December 1, 1992 through February 28, 1993

Board/current position holder	Appointed by	Term end
Tourism Advisory Council (Commerce)		
Mr. Tom Johnson, Missoula	Governor	1/1/1993
Qualifications (if required): president of Montana Innkeepers Association		