MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 2

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing and where written comments may be submitted.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

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NOTICE SECTION

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to licensure requirements for social workers and professional counselors	NOTICE OF PROPOSED AMENDMENT OF RULES PERTAINING TO THE PRACTICE OF SOCIAL WORK AND PROFESSIONAL COUNSELING

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On February 27, 1993, the Board of Social Work Examiners and Professional Counselors proposes to amend rules pertaining to the practice of social work and professional counseling.

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

"8.61.402 LICENSURE REQUIREMENTS FOR SOCIAL WORK

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

(2) The 3,000 hours shall have been completed in their entirety at the time of submission of the application."

Auth: Sec. 37-22-201, MCA; IMP, Sec. 37-22-102, 37-22-201, 37-22-301, MCA

REASON: The proposed amendment will clarify the requirement of completion of all 3,000 hours before submission of an application, rather than stating on the application the hours will be completed sometime in the future, as is currently being done.

"8.61.1201 LICENSURE REQUIREMENTS (1) For the purpose of section 37-23-202, MCA, a planned graduate program of study is one which ~~includes~~ requires 60 semester hours (90 quarter hours), primarily counseling in nature, six semester hours (nine quarter hours) of which were earned in an advanced counseling practicum which resulted in a graduate degree from an institution accredited to offer a graduate program in counseling. An institution accredited to offer such a degree program is a college or university accredited by various associations of colleges and secondary schools. ~~This list is available at the board office.~~ The planned graduate program shall be recognized by the department chairman. The applicant's planned graduate program shall meet the following minimum board requirements: an identifiable starting date evidenced by a letter of admission to the program, or other similar document; completion of CACREP core courses as evidenced by submission of a summary sheet on education on a form prescribed by the board; acceptance of a maximum of 12 post-baccalaureate graduate semester (18 quarter) credits or up to 20 semester (30 quarter) credits of a completed graduate

counseling degree transferred from other institutions or programs; and acceptance of credits granted six years or less from the applicant's date of graduation from the planned graduate program. Credits ~~will be acceptable~~ shall be completed in the following areas:

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

(3) "2,000 hours" is defined as 2,000 clock hours of experience working in a counseling setting. The 2,000 hours shall have been completed in their entirety at the time of submission of the application. Supervised experience in practica and/or internships taken at the graduate level may be utilized. The supervision acceptable for job internship experience shall include a minimum of one hour of face-to-face consultation with the supervisor for every 20 hours of job/internship experience. Some examples of acceptable experience would be:

(a) through (4) will remain the same."

Auth: Sec. 37-1-131, 37-23-103, MCA; IMP, Sec. 37-23-202, MCA

REASON: The proposed amendment will set forth the Board requirements for acceptance of planned graduate programs which qualify toward a professional counselor degree appropriate for licensure. The amendment will also clarify the requirement of completion of all 2,000 hours before, not after, submission of the application.

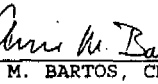
3. Interested persons may present their data, views or arguments concerning the proposed amendments in writing to the Board of Social Work Examiners and Professional Counselors, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., February 25, 1993.

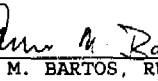
4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Social Work Examiners and Professional Counselors, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., February 25, 1993.

5. If the Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed amendments, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision or from an association having 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 59 based on the 595 licensees in the state of Montana.

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
RICHARD SIMONTON, CHAIRMAN

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


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 15, 1993.

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

In the matter of amendment of rule 8.79.301 relating to assessments	)	**NOTICE OF PROPOSED AMENDMENT**
	)	**NO PUBLIC HEARING CONTEMPLATED**
	)	**DOCKET #15-93**

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

1. On April 1, 1993, the department of commerce proposes to amend ARM 8.79.301 relating to an assessment to be levied upon licensees subject to 81-23-202, MCA. The proposed amendment will become effective July 1, 1993.

2. The purpose of the amendment is to change the amount of the assessment. The rule as proposed to be amended would read as follows. (new matter underlined, deleted matter interlined)

"8.79.301 LICENSEE ASSESSMENTS (1) Pursuant to section 81-23-202, MCA, the following assessments for the purpose of deriving funds to administer and enforce the Milk Control Act during the current fiscal year beginning July 1 and ending June 30, are hereby levied upon the Milk Control Act licensees of this department.

(a) A fee of ~~ten cents ($0.10)~~ eight cents ($0.08) per hundredweight on the total volume of all milk subject to the Milk Control Act produced and sold by a producer-distributor.

(b) A fee of ~~ten cents ($0.10)~~ eight cents ($0.08) per hundredweight on the total volume of all milk subject to the Milk Control Act produced and sold by a distributor home based in another state. Said fee is to be paid either by the foreign distributor or his jobber who imports such milk for sale within this state.

(c) A fee of ~~five cents ($0.05)~~ four cents ($0.04) per hundredweight on the total volume of all milk subject to the Milk Control Act sold by a producer.

(d) A fee of ~~five cents ($0.05)~~ four cents ($0.04) per hundredweight on the total volume of all milk subject to the Milk Control Act sold by a distributor, excepting that which is sold to another distributor."

AUTH: 81-23-104, 81-23-202, MCA IMP: 81-23-202, MCA

3. The proposed amendment changes the current assessment rate from $.10 per CWT to $0.08 per CWT. The purpose for lowering the rate is so fees collected are not excessive in relation to the current budget level of expenditure. The amendment is mandated by statute.

4. Interested persons may participate and present data, views, or arguments concerning the proposed amendments in writing to the Milk Control Bureau, 1520 East Sixth Avenue - Rm. 50, PO Box 200512, Helena, MT 59620-0512, no later than February 25, 1993.

5. 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 comments he has to the above address no later than February 25, 1993.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10 percent (10%) or twenty-five (25), whichever is less, of the persons who are directly affected by the proposed amendment, from the administrative code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent (10%) of those persons directly affected by this assessment has been determined to be 22 persons based on an estimate of 221 resident and nonresident producers, distributors, out-of-state distributors, and producer-distributors.

MONTANA DEPARTMENT OF COMMERCE

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

By: _____
Annie Bartos, Rule Reviewer
Commerce Chief Legal Counsel 2-4-110

Certified to the Secretary of State January 15, 1993.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 11.14.102 and 11.14.340 pertaining to family and group day care homes providing care only to infants, and Rules 11.14.105, 11.14.607, and 11.14.609 pertaining to day care facility registration for certain in-home providers for the purpose of receiving state payment.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES 11.14.102 AND 11.14.340 PERTAINING TO FAMILY AND GROUP DAY CARE HOMES PROVIDING CARE ONLY TO INFANTS, AND RULES 11.14.105, 11.14.607, AND 11.14.609 PERTAINING TO DAY CARE FACILITY REGISTRATION FOR CERTAIN IN-HOME PROVIDERS FOR THE PURPOSE OF RECEIVING STATE PAYMENT.

TO: All Interested Persons.

1. On February 17, 1993, at 1:30 p.m., a public hearing will be held in the second-floor conference room of the Department of Family Services, located at 48 North Last Chance Gulch, Helena, Montana, to consider the amendment of Rules 11.14.102 and 11.14.340 pertaining to family and group day care homes providing care only to infants, and Rules 11.14.105, 11.14.607, and 11.14.609 pertaining to day care facility registration for certain in-home providers for the purpose of receiving state payment.

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

11.14.102 DEFINITIONS Subsections (1) and (2) remain the same.

(3) "Family day care home" means a place in which supplemental parental care is provided to three to six children, no more than 3 children under 2 years of age from separate families on a regular basis -- including the provider's own children who are less than 6 years of age, unless care is provided for infants only. For places providing care only for infants, "family day care home" means a place in which supplemental parental care is provided for up to 4 infants. No other children shall be in attendance.

Subsection (4) remains the same.

(5) "Group day care home" means a place in which supplemental parental care is provided to 7 to 12 children on a regular basis including the provider's own children who are less than 6 years of age, unless care is provided for infants only. For places providing care only for infants, "group day care home" means a place in which supplemental parental care is provided for up to 8 infants. The staff/infant ratio of ARM 11.14.516 applies to all day care facilities, including group day care homes serving infants only.

Subsections (6) through (21) remain the same.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-731, MCA.

11.14.340 GROUP DAY CARE HOMES, ADDITIONAL REQUIREMENTS Subsection (1) remains the same.

(2) There shall be no more than six infants in a group day care home at any time, unless care is provided for infants only.

Subsections (3) through (6) remain the same.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-731, MCA.

11.14.105 DAY CARE FACILITIES, REGISTRATION AND LICENSING PROCEDURES (1) A family day care home or group day care home must be registered. A day care center must be licensed.

(2) Supplemental parental care provided to children of a single family within the home of the children is generally excluded from day care facility registration requirements. However, as set out in ARM 11.14.607(4), to obtain day care benefits from programs administered by the department, registration as a group or family day care home is required if care in the home of the children is provided to more than two children, not counting the children of the provider over the age of two.

Subsections (2) through (11) remain the same, except they are re-numbered (3) through (12).

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-713; 52-2-731, MCA.

11.14.607 REQUIREMENTS FOR DAY CARE FACILITIES, COMPLIANCE WITH EXISTING RULES, CERTIFICATION Subsections (1) through (3) remain the same.

(4) A provider of supplemental parental care to children of a single family in the home of the children must obtain a group or family day care home registration certificate if care is provided to more than two children, not counting the children of the provider over the age of two, prior to certification for payment of benefits under this subchapter.

(5) ARM 11.14.102(2) and ARM 11.14.102(5), determine the number of children counted as children in care for the purpose of determining whether a provider under subsection (4) of this rule must be registered as a group day care home, or a family day care home. The requirements for counting children in care in ARM 11.14.102(2) and ARM 11.14.102(5) should not be confused with the two child limit set out in this rule and in ARM 11.14.609(7).

(6) As required by ARM 11.14.604(4), applications for day care facility registration to receive benefits under subsection (4) of this rule to provide care in the home of the children where the provider is a parent of the children, or a member of the household of the children, must be denied.

(7) Group and family day care homes required to register to provide care in the home of the children under subsection (4)

of this rule must comply with all applicable registration requirements of Title 11, chapter 14, subchapters 1, 5, and 6 of the Administrative Rules of Montana except the following:

(a) proof of current fire and liability insurance coverage required by ARM 11.14.103(4)(d) and ARM 11.14.105 (4)(d); and

(b) requirements of ARM 11.14.501, regarding facilities caring for infants, documentation of the absence of unusual health risks.

(8) Group day care homes required to register to provide care in the home of the children under subsection (4) of this rule must comply with all the requirements of Title 11, chapter 14, subchapter 3, except the following:

(a) the building requirements of ARM 11.14.305(2) through (10)(d);

(b) the equipment requirements of ARM 11.14.311;

(c) the health care requirements of ARM 11.14.316(2) through (8), (10) through (14), (15)(c) through (d), and (16);

(d) the requirements regarding swimming pools of ARM 11.14.318; and

(e) the master list of parents under ARM 11.14.340(5).

(9) Family day care homes, registered to provide care in the home of the children under subsection (4) of this rule must comply with all the requirements of Title 11, chapter 14, subchapter 4 of the Administrative Rules of Montana, except the following:

(a) the building requirements of ARM 11.14.403(4) through (9)(d);

(b) the health requirements of ARM 11.14.414(2) through (4), (7), (8), and (9)(a) through (d).

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-713; 52-2-731, MCA.

11.14.609 LEGALLY UNREGISTERED PROVIDERS: BLOCK GRANT REGISTRATION AND CERTIFICATION REQUIREMENTS Subsections (1) through (6)(b) remain the same.

(c) care for no more than two children at a time, not counting the children of the provider over the age of two. Registration of providers caring for children of a single family in the home of the children where such providers care for more children than allowed under this subsection must be pursuant to the requirements of ARM 11.14.607; and

Subsections (6)(d) through (7) remain the same.

AUTH: Sec. 52-2-704, MCA. IMP: Sec. 52-2-704; 52-2-713; 52-2-731, MCA.

4. The department aims to expand availability of infant-care by allowing group and family day care homes to care for a greater number of children defined as infants, if only infants are cared for in the facility. Providers and licensing workers have expressed concern that under the current rules, the ratio of infants to staff members in day care centers may be as high as four to one, while in group and family day care homes the

maximum ratio is three to one. The change allows for the higher ratio for the smaller facilities, but to insure the safety of the infants, it also requires that group or family day care homes registered under the four to one ratio serve only infants. Further, the maximum number of children allowed in family day care homes under the higher ratio is four. In group day care homes the maximum number of children allowed for infant-care-only is eight, and any group day care home providing care to more than four infants must have two staff members present when such care is provided. Children of the provider under the age of six are counted in determining the number of children in the facility. The amendment to provide for these safety precautions should accompany the ratio change even though day care centers are not similarly restricted while providing four to one care to infants. Group and family day care homes are not subject to many of the health and safety requirements imposed on day care centers which provide additional safeguards for infants.

The amendments in this rule-making are reasonably necessary to prescribe minimum standards for the number of children served in the proposed infant-care only facilities. The amendments are also reasonably necessary to expanding day care for infants.

The department also aims to expand funds for providers coming into the home of the children to provide care, where the care is provided for more than two children, not counting the children of the provider over the age of two. Currently, such providers cannot participate as legally unregistered providers in department programs which provide payment for day care services. The department's position has been that it will not subsidize unregulated care for this number of children, even if the care is provided in the home of the children. The rationale for this limitation is set out in a previous rule-making. See 1992 MAR, issue number 7, pages 751, 760. And until recently, the department's definition of a day care facility excluded care provided in the homes of the children. See 1991 MAR, issue number 16, pages 1534, 1535.

To find middle ground on the issue, the department proposes to allow providers caring for the greater number of children in the home of such children to participate in programs paying day care benefits if the provider obtains certification as a group or family day care home. Requirements under rules for registration of group and family day care homes which should not apply to care within the home of the children of a single family are set out in the amendments to ARM 11.14.607. The language of the amendments also seeks to ensure that other prohibitions on payment for care, such as care provided by a member of the child's household, or care provided by a parent, regardless of whether the parent is a member of the household, apply to payment allowed under this rule-making.

The phrase "not counting the children of the provider over the age of two" is already referred to in ARM 11.14.607, covering

legally unregistered providers. The phrase as used in ARM 11.14.607 and in this rule-making should not be confused with the separate requirements in ARM 11.14.102(3) and (5) where group and family day care homes are defined. Under ARM 11.14.102(2) and (5), the number of children in group and family day care homes which are counted for the purpose of the defining the type of facility to be registered include the provider's children "who are less than 6 years of age."

The amendments are reasonably necessary to pay benefits for in-home care where the number of children exceed current limitations on legally unregistered providers. Without the amendments the rules fail to explain that registration as a group or family day care home is available for such providers.

Duties of the department implemented in connection with this rule-making include: prescribing minimum standards as set out in Sections 52-2-704(2)(e) and 52-2-731, MCA; payment of day care for eligible children, Section 52-2-713, MCA; and acceptance and administration of state and federal funds for day care programs, Section 52-2-704(3)(c), MCA.

4. Interested persons may submit their data, views or arguments to the proposed amendment either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than February 25, 1993.

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

DEPARTMENT OF FAMILY SERVICES

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, January 15, 1993.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 11.12.101, 11.12.204, 11.12.205 and 11.12.215 pertaining to maternity homes licensed as youth care facilities.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES 11.12.101, 11.12.204, 11.12.205 and 11.12.215 PERTAINING TO MATERNITY HOMES LICENSED AS YOUTH CARE FACILITIES

TO: All Interested Persons

1. On February 19, 1993, at 1:30 p.m., a public hearing will be held in the second-floor conference room of the Department of Family Services, located at 48 North Last Chance Gulch, Helena, Montana, to consider the amendment of Rules 11.12.101, 11.12.204, 11.12.205 and 11.12.215 pertaining to maternity homes licensed as youth care facilities.

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

11.12.101 YOUTH CARE FACILITY, DEFINITIONS
Subsections (1)(a) through (g) remain the same.
(h) "Maternity Home" means a YCF which ~~primarily~~ provides for the care and maintenance of minor girls and adult women during pregnancy, childbirth, and post-natal periods. A maternity home must meet the licensing requirements of a child care agency regardless of the number of residents served.
Subsections (1)(i) through (2) remain the same.

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

11.12.204 CHILD CARE AGENCY, PERSONNEL
Subsection (1) through (11)(b) remain the same.
(c) Maternity home staff, in addition to the above requirements, must employ an adequate number of trained professionals to provide the following services to residents:
(i) decision-making counseling to explore adoption and parenting options;
(ii) family systems counseling to explore parenting roles and potential abuse issues; and
(iii) pre-natal and parent training education.
Subsection (12) remains the same.

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

11.12.205 CHILD CARE AGENCY, CHILD/STAFF RATIO
Subsections (1)(a) through (d) remain the same.

(e) Maternity homes must maintain the following minimum child/staff ratios (excluding babies being cared for by their mothers):

(i) from ~~7~~3:00 ~~e~~p.m. to ~~8~~10:00 p.m., 1 to ~~15~~12; and

(ii) from ~~8~~10:00 p.m to ~~7~~3:00 ~~e~~p.m. 1 to ~~25~~16. ~~However, during this period,~~

(iii) ~~e~~Additional staff must be available for duty within 30 minutes.

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

11.12.215 CHILD CARE AGENCY, MEDICAL ~~Supervision of Medication~~ Subsections (1) through (4) remain the same.

(5) Maternity homes shall refer the residents to a certified nurse midwife or a physician licensed to practice in the state to provide assistance in pre-natal care and delivery at a licensed medical facility.

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

3. The department proposes amending these rules for the protection of pregnant adolescents and pregnant women, many of whom are being attracted to facilities that do not provide needed counseling, social services and medical care. The change to ARM 11.12.101 is reasonably necessary to this objective in that the youth care facility licensed as a maternity home should be dedicated exclusively to providing care and maintenance of minors and adults during pregnancy. Thus, "primarily" is deleted. The added language to this rule also provides increased protection for residents by subjecting maternity homes to child care agency requirements. These requirements should apply to maternity homes even though the number of residents may be less than required generally for application of the child care agency rules. Requirements of child care agency rules are needed to implement minimum standards for maternity homes.

The amendment to ARM 11.12.204 serves the goal of the department to provide for better quality maternity homes by requiring services related to maternity issues. The addition of language altering staff ratios and time lines for changing staff ratios will require the presence of more staff during the late afternoon and evening hours. Experience has shown that staff are more likely to be needed during this period of time. The new version of this rule also requires 24 hour availability of staff within 30 minutes. The existing requirement is for staff to be available within 30 minutes only during the period of time from 8:00 p.m. to 7:00 a.m.

The added language to ARM 11.12.215 will insure involvement of medical professionals through referral by the home. In summary, the changes are reasonably necessary to implementing youth care facility requirements under authority of Section 41-3-1143, MCA,

and Section 5-2-111, MCA, to provide adequate protection to those served in maternity homes.

4. Interested persons may submit their data, views or arguments to the proposed amendment either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Family Services, 48 North Last Chance Gulch, P.O. Box 8005, Helena, Montana 59604, no later than February 25, 1993.

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

DEPARTMENT OF FAMILY SERVICES

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, January 15, 1993.

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

In the matter of the amendment of Rule 12.3.402 relating to license refunds.	)	NOTICE OF PROPOSED AMENDMENT OF RULE 12.3.402
	)	**No Public Hearing Contemplated**

To: All Interested Persons

1. On March 26, 1993, the Department of Fish, Wildlife and Parks proposes to amend rule 12.3.402 related to license refunds.

2. The proposed amendment provides as follows:

12.3.402 LICENSE REFUNDS (1) No refund will be issued for any hunting, fishing, or trapping license sold by the department except as provided in subsections (a) through ~~(e)~~ (d) of this rule.

(a) through (b) remain the same.

(c) Exchange of single licenses for a combination license. A resident who has purchased a conservation, bear, deer, elk, bird, or fishing license may request a refund by returning the license to the Helena or regional office at the time of application for a sportsman's license. A nonresident who has purchased a conservation, bird, ~~bear,~~ season fishing or deer combination license may request a refund by returning such license to the Helena office at the time of application for a nonresident big game combination license. A nonresident who has purchased a conservation, bird or season fishing license may request a refund by returning the license to the Helena office at the time of application for a nonresident deer combination license;

(d) Incorrect license. If an applicant is issued an incorrect license (e.g., a sportsman over 62 years old is issued a regular conservation license and elk license for full price instead of the half price elk license) through the fault of the department or a license agent, the license fees will be refunded;

(e) ~~Requests for refunds for nonresident combination licenses must be received before October 1 and need not specify a reason. After October 1, refunds will be issued only for reasons outlined in (a) through (e) above.~~ After December 31, refunds for nonresident combination or resident and nonresident general licenses will not be issued for any reason.

(f) Time of sale. For the purpose of considering refunds, any license ordered by mail shall be considered sold when the department receives a valid application.

(g) ~~Appeals to the director/commission.~~ The director may authorize exceptions to the refund policy due to

~~extenuating~~ circumstances including but not limited to the following: declaration of war or police action; catastrophic or major natural disaster or man-made event that necessitates the assistance from state or federal emergency management agency. ~~Any license holder who disagrees with the director's decision on a refund request may appeal that decision to the fish and game commission.~~

AUTH: Sec. 87-1-301, MCA; IMP, Sec. 87-1-301, MCA

3. Rule 12.3.402 is being amended because of the changes made in the annual rule for the sale of Nonresident Combination Licenses by the Montana Fish, Wildlife and Parks Commission. The change in the annual rule reduces a party from five to two for clients of outfitters. This change could create many requests for the refund of license fees. Staffing and funding are not available to process the anticipated requests.

Our current refund policy allows for refunds for any reason up to October 1. After October 1, refunds are given for death or medical problems. If this change is implemented, refunds will be issued only for death, medical problems or extenuating circumstances.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Jim Herman, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana 59620 no later than February 25, 1993.

5. If a person who is directly affected by the proposed amendment wishes to express his or her data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit this request along with any written comments he or she has to Jim Herman, Department of Fish, Wildlife and Parks, 1420 East Sixth, Helena, Montana 59620. A written request for hearing must be received no later than February 25, 1993.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the Administrative Code Committee or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

FISH, WILDLIFE AND PARKS COMMISSION

Robert N. Lane
Rule Reviewer

Patrick J. Graham
Secretary

Certified to the Secretary of State on January 11, 1993.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the adoption of proposed rules I through XVII, relating to medical services for workers' compensation, and the repeal of Rules 24.29.1403, Selection of Physician; 24.29.1405, Physicians' Reports; 24.29.1420, Relative Value Fee Schedule; and 24.29.2001, Treatment and Reporting)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION OF NEW RULES I THROUGH XVII AND REPEAL OF EXISTING RULES

TO: All Interested Persons.

1. On February 18, 1993, at 10:00 a.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the adoption of new rules I through XVII, and the repeal of rules 24.29.1403, 24.29.1405, 24.29.1420, and 24.29.2001.

2. The proposed new rules provide as follows:

RULE I PURPOSE (1) The purpose in developing utilization rules is to address the rising cost of medical services in workers' compensation. Health care programs outside the workers' compensation arena such as the federal Medicare and Medicaid programs, as well as private health insurers, have had medical cost containment measures in place for some time. While reimbursement for medical services will continue to be based on fee service, the need for cost containment measures similar to those implemented in the non-workers' compensation area has been recognized.

(AUTH: Sec. 39-71-203, MCA; IMP: Sec. 39-71-704, MCA.)

RULE II DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Documentation" means written information that is complete, clear, and legible, which describes the service provided and substantiates the charge for the service.

(2) "Improvement status" means written information that is complete, clear, and legible, which identifies objective evidence of the claimant's medical status.

(3) "Medical equipment and supplies" means durable medical appliances or devices used in the treatment or management of a condition or complaint, along with associated non-durable materials required for use in conjunction with the device or appliance.

(4) "Prior authorization" means that the provider receives (either verbally or in writing) authorization from the insurer to perform a specific procedure, prior to performing that specific procedure.

(5) "Physician" means those persons identified by section 33-22-111, MCA, practicing within the scope of the providers' license.

(6) "Treating physician" means the physician selected in accordance with RULE III.

(7) "Treatment plan" means a written outline of how the provider intends to treat a specific condition or complaint. The treatment plan must include a diagnosis of the condition, the specific type(s) of treatment, procedure, or modalities that will be employed, a timetable for the implementation and duration of the treatment, and the goal(s) or expected outcome of the treatment. Treatment, as used in this definition, may consist of diagnostic procedures that are reasonably necessary to refine or confirm a diagnosis. The treating physician may indicate that treatment is to be performed by a provider in a different field or specialty, and defer to the professional judgment of that provider in the selection of the most appropriate method of treatment; however, the treating physician must identify the scope of the referral in the treatment plan and provide guidance to the provider concerning the nature of the injury or occupational disease.

(AUTH: Sec. 39-71-203, MCA; IMP: Sec. 39-71-704, MCA.)

RULE III SELECTION OF PHYSICIAN (1) Although section 33-22-111, MCA, provides freedom of choice in selection of a physician, workers' compensation and occupational disease case law also recognizes that a worker must select a single physician who is responsible for the overall medical management of the workers' condition. That physician is known as the treating physician.

(2) The worker has a duty to select a treating physician. Initial treatment in an emergency room or urgent care facility is not selection of a treating physician. The selection of a treating physician must be made as soon as practicable. A worker may not avoid selection of a treating physician by repeatedly seeking care in an emergency room or urgent care facility. The worker should select a treating physician with due consideration for the type of injury or occupational disease suffered, as well as practical considerations such as the proximity and the availability of the physician to the worker.

(3) Only the treating physician may refer an injured worker to another health care provider. Except in an emergency, the treating physician must obtain prior authorization before making a referral. The treating physician remains responsible for the overall medical management of the injured worker, despite the referral. If the treating physician transfers that responsibility to another physician, the physician loses the status of being the worker's "treating physician" and will not be able to make referrals. Prior authorization is required for change of treating physician.

(AUTH: Sec. 39-71-203, MCA; IMP: Sec. 39-71-704, MCA.)

RULE IV DOCUMENTATION REQUIREMENTS (1) If the provider is seeing the claimant for the first time (related to the claim)

other than on referral, the provider must furnish to the insurer the initial report and initial treatment bill for their specialty area on the appropriate ERD form within 2 business days of the visit.

(2) By not later than the second visit, the provider must prepare a treatment plan and promptly furnish a copy to the insurer. Changes in the treatment plan must be noted and a copy of the amended treatment plan must be promptly furnished to the insurer.

(3) To be eligible for payment for the second and any subsequent visits, the provider must furnish:

(a) documentation;

(b) improvement status; and

(c) office notes with the bill every thirty days.

(4) (a) Certain treatment plans may require services be obtained from a vendor that is outside the tradition of being a professional health care provider. Under that circumstance, treating physician has the obligation to include the need for the service in the treatment plan and furnish improvement status as appropriate. The vendor, however, is responsible for furnishing documentation.

(b) The following are examples of services that are contemplated as falling within the meaning of this subpart:

(i) health club membership; and

(ii) home health care services.

(5) Documentation is considered to be a service to the injured worker and no charge is allowed for the documentation required by this rule.

(6) The physician should report immediately to the insurer the date total disability ends or the date the injured worker is released to return to work.

(AUTH: Sec. 39-71-203, MCA; IMP: Sec. 39-71-704, MCA.)

RULE V IMPROVEMENT STATUS (1) Improvement status must identify objective evidence of the claimant's medical status, and note the effect of the medical services (positive, neutral, or negative), with respect to the goals of the treatment plan.

(2) If there are any changes in the treatment plan, that fact must be noted and described.

(AUTH: Sec. 39-71-203, MCA; IMP: Sec. 39-71-704, MCA.)

RULE VI PRIOR AUTHORIZATION (1) When prior authorization is required, the provider must request the authorization a reasonable amount of time in advance of the time the procedure is scheduled to be performed. The request must contain enough information to allow the insurer to make an informed decision regarding authorization. The insurer may not unreasonably withhold its authorization. An insurers' denial should contain an explanation of the reasons for its denial. Reasonableness will be judged in light of the circumstances surrounding the procedure and the claim.

(2) If a provider makes a written request for prior authorization at least 14 days prior to the date the service is scheduled to be performed, authorization is presumed to be given

by the insurer if there is no written denial sent by the insurer to the provider before the date the procedure is to be done. If the written denial is made within three days of the date the procedure is to be performed, the insurer must also notify the provider of the denial by telephone or facsimile ("fax").

(3) If a provider makes a verbal request for prior authorization, the burden of proof for showing that authorization was granted by the insurer rests with the provider. The provider should promptly send to the insurer a written confirmation of any verbal authorization made by the insurer. Such written confirmation should refer not only to the name of the claimant, the claim number, and the procedure authorized, but also the name of the person giving the authorization and the date the authorization was given.

(4) Prior authorization is required when:

(a) the provider is not the treating physician; or

(b) there is a request for change of treating physician; or

(c) the claimant has not been treated for the injury (or occupational disease) within the past six months; or

(d) the claimant has been identified as having reached maximum medical improvement; or

(e) any of the following is proposed:

(i) non-emergency surgery;

(ii) an MRI or CT, if the same body part has been imaged within the last 12 months;

(iii) psychological counselling, other than provided by the treating physician;

(iv) membership in a health club;

(v) any pain clinic program;

(vi) pain medication prescribed for a period of six months or longer;

(vii) medical equipment and supplies if over $300.00;

(viii) a change of therapist for treatment of the same injury;

(ix) any rehabilitation program; or

(x) for any other procedure that by rule specifically requires prior authorization.

(5) For any service identified in subsection (4)(e), additional authorization is required if the duration or extent of the service is later modified because of a change in the treatment plan.

(6) Prior authorization is not required for emergency procedures.

(AUTH: Sec. 39-71-203, MCA; IMP: Sec. 39-71-704, MCA.)

RULE VII SECOND OPINIONS (1) The insurer may request a second opinion from a qualified provider as to whether the following services or procedures are reasonable, necessary, or well-advised:

(a) pain clinics;

(b) non-emergency surgery; or

(c) psychological counselling.

(2) Nothing in this rule effects the right of an insurer to obtain an independent medical examination as provided by the workers' compensation and occupational disease acts.

(AUTH: Sec. 39-71-203, MCA; IMP: Sec. 39-71-704, MCA.)

RULE VIII MEDICAL EQUIPMENT AND SUPPLIES (1) Reimbursement for physician supplied items is limited to the lesser of $30.00 or thirty percent (30%) above the cost of the item, except prescription medicines are limited to charges allowed under section 39-71-727, MCA. An invoice documenting the cost of the equipment or supply must accompany the billing.

(AUTH: Sec. 39-71-203, MCA; IMP: Sec. 39-71-704, MCA.)

RULE IX DISALLOWED PROCEDURES (1) Only reasonable and necessary medical expenses are payable. Procedures that are not generally accepted by the medical community may be determined not to be "reasonable" or "necessary". Providers are encouraged to seek prior approval from the insurer for experimental or controversial procedures.

(2) Thermography is not payable pursuant to this rule.

(AUTH: Sec. 39-71-203, MCA; IMP: Sec. 39-71-704, MCA.)

RULE X USE OF FEE SCHEDULES (1) The department's annual schedule of fees for medical non-hospital services is known as the Montana Workers' Compensation Medical Fee Schedule and is effective January 1, of each year. Effective April 1, 1993, the fee schedule in this rule is hereby adopted. The annual fee schedule is comprised of the following:

(a) The relative value scales given in the most current edition of the Relative Values for Physicians (RVP), published by Systemetrics/McGraw-Hill to be used by doctors of medicine, doctors of podiatry, doctors of osteopathy, and doctors of chiropractic, for the following specialty areas:

(i) surgery;
(ii) anesthesia;
(iii) radiology;
(iv) pathology;
(v) medicine; and
(vi) chiropractic, except chiropractic evaluations.

(b) The relative unit values provided by the department in separate fee schedules developed for medical non-hospital services provided by the following health care providers:

(i) acupuncture;
(ii) dental;
(iii) occupational therapy;
(iv) physical therapy; and
(v) chiropractic, evaluations only.

(c) Relative values have not been developed for nurse specialists, physicians assistants-certified, optometrists, psychologists, licensed social workers, or licensed professional counselors. These providers must charge reasonable fees for medical services.

(d) The conversion factors as established by the department.

(2) Copies of Relative Values for Physicians are available from the publisher. Ordering information may be obtained from the department.

(3) Relative Values for Physicians uses procedure codes listed in the copyrighted publication known as Current Procedure Terminology, or CPT, published by the American Medical Association. The edition in effect at the time the medical service is furnished shall be used to determine the proper procedure code, unless a special code or description is provided by rule.

(4) Interim unit values given in Relative Values for Physicians (designated by a box and the letter "I") are included in the fee schedule and are used to calculate maximum fees payable.

(5) Unit values given in the Relative Values for Physicians section titled "HCPCS Codes" are not included in the fee schedule; services listed in this section are considered to have unit values of "RNE" (relativity not established) for purposes of maximum fee calculation.

(6) All instructions, definitions, guidelines, and other explanations given in the most current edition including updates of the RVP, affecting the determination of individual fees, except as specifically revised or deleted by the department apply.

(7) Revisions to the conversion factors contained in the Medical Fee Schedule become effective January 1. An insurer is not obligated to pay more than the fee provided by the Medical Fee Schedule for a service. The conversion factor in effect on the date the service is provided must be used to calculate the fee.

(8) The maximum fee that an insurer is required to pay for a particular procedure is computed by the unit value times the conversion factor. Use the conversion factor approved by the department for each specialty area. For example, if the conversion factor is $5.00, and a procedure has a unit value of 3.0, the most that the insurer is required to pay the provider for that procedure is $15.00.

(9) Where a procedure is not covered by these rules, the insurer must pay a reasonable fee, not to exceed the usual and customary fee charged by the provider to non-workers' compensation patients.

(10) Where a unit value is listed as "BR", it means that the fee is calculated on a "by report" basis. The fee charged is to be reasonable, and may not exceed the usual and customary fee charged by the provider to non-workers' compensation patients.

(11) It is the responsibility of the provider to use the proper procedure code(s) on any bills submitted for payment. The failure of a provider to do so, however, does not relieve the insurer's obligation to pay the bill, but it may justify delays in payment.

(AUTH: Sec. 39-71-203, MCA; IMP: Sec. 39-71-704, MCA.)

RULE XI CONVERSION FACTORS - METHODOLOGY (1) Conversion factors shall be established annually by the department beginning January 1, 1994, by increasing the conversion factors from the preceding year by the percentage increase in the state's average weekly wage.

(2) Beginning in 1994 the special procedure codes and descriptions may be updated by the department as necessary to maintain the most current procedural terminology. Updates may include the addition or deletion of individual procedures or the revision of individual procedure codes or descriptions.

(AUTH: Sec. 39-71-203, MCA; IMP: Sec. 39-71-704, MCA.)

RULE XII ACUPUNCTURE FEES (1) Fees for acupuncture are payable only for the procedure codes listed in subsection (4), below, according to the unit values listed. None of the procedure codes, descriptions, or unit values in Relative Values for Physicians apply to acupuncture.

(2) Nothing in this rule is to be construed so as to broaden the scope of a provider's practice. Each provider is to limit their services to those which can be performed within the limits and restrictions of the provider's professional licensure. Providers may only charge for services performed that are consistent with the scope of their practice and licensure.

(3) The conversion factor used depends upon the date the service was rendered:

(a) Effective April 1, 1993, the conversion factor for acupuncture specialty area services is $3.77.

(4) The following special procedure codes, with the associated description and unit values, are recognized for acupuncture specialty area services:

	Procedure Code	Description	Unit Value
(a)	96300	Acupuncture; initial visit and treatment	8.0
(b)	96301	each subsequent visit	8.0

(AUTH: Sec. 39-71-203, MCA; IMP: Sec. 39-71-704, MCA.)

RULE XIII DENTAL SPECIALTY AREA FEES (1) Fees for dental medical specialty area services are payable only for the procedure codes listed in subsection (4), below, according to the unit values listed. None of the procedure codes, descriptions, or unit values in Relative Values for Physicians apply to dental services.

(2) Nothing in this rule is to be construed so as to broaden the scope of a provider's practice. Each provider is to limit their services to those which can be performed within the limits and restrictions of the provider's professional licensure. Providers may only charge for services performed that are consistent with the scope of their practice and licensure.

(3) The schedule and conversion factor used depends upon the date the service was rendered:

(a) Effective April 1, 1993, the conversion factor for dental specialty area services, procedure codes D0110 through D9960, is $7.27.

(4) Effective April 1, 1993, the following schedule of procedure codes, with the associated description and unit values, are recognized for the dental service areas:

	Procedure Code	Description	Unit Value
(a)	D0110	Initial oral examination	1.8
	D0120	Periodic oral examination	2.0
	D0130	Emergency oral examination	2.1
(b)	D0210	Intraoral--complete series	5.2
	D0220	Intraoral--periapical, first film	0.9
	D0230	Intraoral--periapical, each additional film	0.7
	D0272	Bitewings--two films	1.6
	D0274	Bitewings--four films	2.1
(c)	D0321	Other temporomandibular joint films	BR
	D0330	Panoramic film	4.7
	D0340	Cephalometric film	5.2
(d)	D0460	Pulp vitality tests	1.4
	D0470	Diagnostic casts	4.1
	D0471	Diagnostic photographs	2.4
(e)	D1110	Prophylaxis--adult	4.1
(f)	D2140	Amalgam--one surface, permanent	4.4
	D2150	Amalgam--two surfaces, permanent	4.5
	D2160	Amalgam--three surf., permanent	9.4
	D2161	Amalgam--four or more surf.,perm.	8.2
(g)	D2330	Resin--one surface	4.5
	D2331	Resin--two surfaces	7.1
	D2332	Resin--three surfaces	8.1
	D2335	Resin--four or more surfaces or involving incisal angle	10.6
(h)	D2740	Crown--porcelain/ceramic substrate	45.8
	D2750	Crown--porcelain fused to high noble metal	42.3
	D2751	Crown--porcelain fused to predominantly base metal	44.1
	D2752	Crown--porcelain fused to noble metal	45.7
	D2790	Crown--full cast high noble metal	41.4
(i)	D2810	Crown--3/4 cast metallic	41.1
(j)	D2950	Crown build-up, including any pins	6.3
	D2951	Pin retention--per tooth, in addition to restoration	0.9

	D2952	Cast post and core in addition to crown	14.8
	D2954	Prefabricated post and core in addition to crown	8.7
	D2970	Temporary (fractured tooth)	5.0
(k)	D3220	Therapeutic pulpotomy (excluding final restoration)	6.7
(l)	D3310	One canal (excluding final restoration	20.0
	D3320	Two canals (excluding final restoration)	26.7
	D3330	Three canals (excluding final restoration)	27.6
(m)	D3410	Apicoectomy (per tooth)-- first root	17.8
(n)	D5110	Complete upper	52.9
	D5120	Complete lower	67.5
(o)	D5211	Upper partial--acrylic base (including any conventional clasps and rests)	22.0
	D5213	Upper partial--predominantly base cast base with acrylic saddles (including any conventional clasps and rests)	55.8
(p)	D5640	Replace broken teeth--per tooth	4.7
(q)	D5820	Temporary partial--stayplate denture (upper)	20.6
(r)	D6210	Pontic--cast high noble metal	52.1
	D6240	Pontic--porcelain fused to high noble metal	38.9
	D6241	Pontic--porcelain fused to predominantly base metal	37.0
	D6242	Pontic--porcelain fused to noble metal	41.1
	D6251	Pontic--resin with predominantly base metal	48.4
(s)	D6750	Crown--porcelain fused to high noble metal	38.9
	D6751	Crown--porcelain fused to predominantly base metal	37.0
	D6752	Crown--porcelain fused to noble metal	41.1
(t)	D7110	Single tooth	4.7
	D7120	Each additional tooth	4.1
(u)	D7210	Surgical removal of erupted tooth requiring elevation of muco-periosteal flap and removal of bone and/or section of tooth	9.0
	D7250	Surgical removal of residual tooth roots (cutting procedure)	7.8
(v)	D7880	Occlusal orthotic appliance	33.5
(w)	D8999	Unspecified orthodontic procedure	BR
(x)	D9110	Palliative (emergency) treatment of dental pain--minor procedures.	2.4

(y)	D9220	General anesthesia	14.5
(z)	D9951	Occlusal adjustment--limited	3.8
	D9952	Occlusal adjustment--complete	5.9
	D9961	Special reports such as insurance forms, or the review of dental data to clarify a patient's status--more than information conveyed in the usual reports.	BR

(AUTH: Sec. 39-71-203, MCA; IMP: Sec. 39-71-704, MCA.)

RULE XIV PHYSICIAN FEES -- MEDICINE (1) Fees for medicine specialty area services are payable according the values listed in Relative Values for Physicians.

(2) Nothing in this rule is to be construed so as to broaden the scope of a provider's practice. Each provider is to limit their services to those which can be performed within the limits and restrictions of the provider's professional licensure. Providers may only charge for services performed that are consistent with the scope of their practice and licensure.

(3) The conversion factor used depends upon the date the service was rendered:

(a) Effective April 1, 1993, the conversion factor for each medical specialty area services performed by a doctor of medicine, doctor of osteopathy, doctor of podiatry, and doctor of chiropractic are as follows:

	Specialty Area	Procedure Codes	Conversion Factor
(i)	Medicine	90000 - 99999	$ 3.77
(ii)	Surgery	10000 - 69999	80.55
(iii)	Radiology (Professional or Total Component)	70000 - 79999	15.59
(iv)	Pathology	80000 - 89999	13.50

(AUTH: Sec. 39-71-203, MCA; IMP: Sec. 39-71-704, MCA.)

RULE XV PHYSICIAN FEES -- ANESTHESIA SPECIALTY AREA (1) Except as otherwise provided by this rule, fees for the anesthesia medical specialty area are payable according the values listed in Relative Values for Physicians. Special unit value rules listed in subsections (4) and (5), below, are established for anesthesia. Those special unit value rules supersede the corresponding unit values listed in Relative Values for Physicians, and apply to all providers. A physician who furnishes other medical services in addition to anesthesia must use the fee schedule that applies to the services rendered.

(2) Nothing in this rule is to be construed so as to broaden the scope of a provider's practice. Each provider is to limit their services to those which can be performed within the limits and restrictions of the provider's professional licensure. Providers may only charge for services performed that are consistent with the scope of their practice and licensure.

(3) The conversion factor used depends upon the date the service was rendered:

(a) Effective April 1, 1993, the conversion factor for anesthesia specialty area services, is $28.97.

(4) Time values for anesthesia specialty area services are calculated according to the Value Guidelines given at the beginning of the RVP Surgery/Anesthesia section, except the extra minutes after multiples of 15 (or 10) may be assigned fractions of a whole unit. For example, a total anesthesia time of 2 hours 20 minutes would have a prorated unit value of 9.3 (9 units for the first 2 hours 15 minutes, and .3 units for the remaining 5 minutes).

(5) Fees for the following anesthesia specialty area services are calculated using basic values only and the addition of time units is not allowed:

(a) Pulmonary Function Testing, procedure codes 94000 through 94799.

(b) Therapeutic and diagnostic services, including nerve blocks, which includes the following codes: 20550, 31500, 36400, 36420, 36425, 36488, 36489, 36490, 36491, 36600, 36620, 36625, 36660, 62270, 62273, 62274, 62276, 62277, 62278, 62279, 62280, 62282, 62288, 62289, 64400, 64402, 64405, 64408, 64410, 64412, 64413, 64415, 64417, 64418, 64420, 64421, 66425, 64430, 64435, 64440, 64441, 64445, 64450, 64505, 64508, 64510, 64520, 64530, 64600, 64605, 64610, 64620, 64630, 64640, 64680, 92960, 93503, and any other procedure codes that RVP identifies as "not appropriate for time units".

(AUTH: Sec. 39-71-203, MCA; IMP: Sec. 39-71-704, MCA.)

RULE XVI PHYSICIAN FEES -- CHIROPRACTIC EVALUATIONS

(1) Except as otherwise provided by this rule, fees for medical specialty area services rendered by chiropractors are payable according the values listed in Relative Values for Physicians.

(2) Nothing in this rule is to be construed so as to broaden the scope of a provider's practice. Each provider is to limit their services to those which can be performed within the limits and restrictions of the provider's professional licensure. Providers may only charge for services performed that are consistent with the scope of their practice and licensure.

(3) The conversion factor used depends upon the date the service was rendered:

(a) Effective April 1, 1993, the conversion factor for evaluation services, procedure codes C9201 through C9299, and other medical services performed by a doctor of chiropractic within the scope of the practice is $3.77.

(4) The unit value for each procedure listed in subsection 6 includes the value for the associated office visit.

(5) Where the fee for a procedure depends on the time spent by the provider, the time spent on the completion of reports is already included within the procedure code unless otherwise noted.

(6) The following special procedure codes, with the associated description and unit values, are recognized for chiropractic evaluations:

	Procedure Code	Description	Unit Value
(a)	C9201	Brief Consultation and Examination, New Patient. This examination includes a brief history of the problem only, as well as inspection of the problem area, not including Orthopedic and/or neurological testing. Very straight forward Chiropractic decision making involved. This is usually a self-limited or minor problem.	5.2
(b)	C9202	Limited Consultation and Examination New Patient. This includes an expanded, problem focused history with documentation of chief complaints, and nature of injury. An expanded, problem focused examination would include documentation of at least two of the following: Inspection, range of motion, palpatory findings, appropriate orthopedic tests, muscle strength, sensory tests, reflexes, mensuration. Presenting problems are usually of low to moderate severity involving straight forward Chiropractic decision making.	7.6
(c)	C9203	Intermediate Consultation and Examination, New Patient. This includes documentation of a detailed history of chief complaints, nature of injury and past history including pre-existing conditions. A detailed examination should include documentation of at least three of the following: Inspection, range of motion, palpatory findings, appropriate orthopedic tests, muscle strength, sensory test, reflexes, mensuration. Presenting problems are usually of moderate severity involving	11.2

		Chiropractic decision making of low complexity.	
(d)	C9204	Extended Consultation and Examination, New Patient. This includes documentation of a comprehensive history of chief complaints, nature of injury and past history, including pre-existing conditions. A comprehensive examination should include documentation of at least four the following: Inspection, range of motion, palpatory findings, appropriate orthopedic tests, muscle strength, sensory tests, reflexes, mensuration. Presenting problems are usually of moderate to high severity involving chiropractic decision making of moderate severity. Procedure includes preparation of short narrative and findings.	16.0
(e)	C9205	Comprehensive Consultation and Examination, New Patient. This includes documentation of a comprehensive history of chief complaints, nature of injury and past history, including pre-existing conditions. A comprehensive examination should include documentation of at least five of the following: Inspection, range of motion, palpatory findings, appropriate orthopedic tests, muscle strength, sensory tests, reflexes, mensuration. Presenting problems are usually of moderate to high severity involving Chiropractic decision making of high complexity. Procedure includes preparation of short narrative and findings.	20.8
(f)	C9211	Brief Office Visit for Evaluation and Management, Established Patient. May not require the presence of a physician. Presenting problems are usually minimal and typically 5 minutes or less are spent performing or supervising these services.	2.8

(g)	C9212	Limited Office Visit For Evaluation and Management, Established Patient. This includes at least two of the following three key components: (i) A problem focused history. (ii) A problem focused examination, including documentation of at least two of the following: Inspection, range of motion, palpatory findings, appropriate orthopedic tests, muscle strength, sensory tests, reflexes, mensuration. (iii) Straight forward chiropractic decision making. Usually, presenting problems are self limited or minor.	4.8
(h)	C9213	Intermediate Office Visit For Evaluation and Management, Established Patient. This includes at least two of the following three key components: (i) An expanded, problem focused history. (ii) An expanded, problem focused examination, including documentation of at least three of the following: Inspection, range of motion, palpatory findings, appropriate orthopedic tests, muscle strength, sensory tests, reflexes, mensuration. (iii) Chiropractic decision making of low complexity. Usually presenting problems are of low to moderate severity.	7.8
(i)	C9214	Extended Office Visit For Evaluation and Management, Established Patient. This includes at least two of the following three key components: (i) A detailed history. (ii) A detailed examination including documentation of at least four of the following: Inspection, range of motion, palpatory findings, appropriate orthopedic tests, muscle	11.6

		strength, sensory tests, reflexes, mensuration. (iii) Chiropractic decision making of moderate complexity. Usually presenting problems are of moderate to high severity. Procedure includes preparation of short narrative and findings.	
(j)	C9215	Comprehensive Office Visit For Evaluation and Management, Established Patient. This includes at least two of the following three key components: (i) A comprehensive history. (ii) A comprehensive examination, including documentation of at least five of the following: Inspection, range of motion, palpatory findings, appropriate orthopedic tests, muscle strength, sensory tests, reflexes, mensuration. (iii) Chiropractic decision making of high complexity. Usually, presenting complaints are of moderate to high severity. Procedure includes preparation of short narrative and findings.	17.6

(AUTH: Sec. 39-71-203, MCA; IMP: Sec. 39-71-704, MCA.)

RULE XVII PROVIDER FEES -- OCCUPATIONAL AND PHYSICAL THERAPY SPECIALTY AREA (1) Services rendered by occupational therapists and physical therapists are payable only for the procedure codes listed in subpart (7) of this rule. None of the procedure codes, descriptions, or unit values in Relative Values for Physicians apply to occupational therapy and physical therapy services.

(2) Nothing in this rule is to be construed so as to broaden the scope of a provider's practice. Each provider is to limit their services to those which can be performed within the limits and restrictions of the provider's professional licensure. Providers may only charge for services performed that are consistent with the scope of their practice and licensure.

(3) The conversion factor used depends upon the date the service was rendered:

(a) Effective April 1, 1993, the conversion factor for occupational therapists and physical therapists is $5.87.

(4) In addition to needing prior authorization for the initial referral for occupational and physical therapy,

occupational and physical therapists must obtain prior authorization for any of the following procedures:

(a) 97544, work hardening;
(b) 97546, work conditioning;
(c) 97750, off-site therapy;
(d) 97751, off-site equipment;
(e) 97764, job site visit; or
(f) 97770, physical capacity evaluation.

(5) The unit value for each procedure listed in subpart (7) includes the value for the associated office visit.

(6) Where the fee for a procedure depends on the time spent by the provider, the time spent on the completion of reports is already included within the procedure code unless otherwise noted.

(7) The following special procedure codes, with the associated description and unit values, are recognized for physical medicine services:

	Procedure Code	Description	Unit Value
(a)	97010	treatment to one area; hot or cold packs	2.0
	97012	traction, mechanical	2.0
	97014	electrical stimulation (unattended)	2.0
	97016	vasopneumatic devices	2.0
	97018	paraffin bath	2.0
(b)	97020	microwave	2.0
	97022	whirlpool	2.0
	97024	diathermy	2.0
	97026	infrared	2.0
	97028	ultraviolet	2.0
(c)	97039	unlisted modality, equivalent in level of service to 97010-97028 (specify)	2.0
(d)	97050	treatment to one area involving two or more procedures from series 97010-97039	2.4
(e)	97110	treatment to one area, each visit; therapeutic exercises (teaching and supervision of exercises which will improve or enhance strength, range of motion, flexibility, and endurance, including passive, isotonic [concentric and eccentric], isometric, relaxation, posture, and endurance training)	5.6
	97112	neuromuscular reeducation (incorporating the concepts of motor control and motor learning to improve movement, balance, proprioceptive sense, kinesthetic sense, and perceptual motor	5.6

		skills [for example, neuromuscular treatment approaches, facilitation procedures, closed kinetic chain activities, developmental approaches, and sensory integration approaches])	
	97114	functional activities (teaching of skills which will improve or enhance an individual's ability to perform functional activities [for example, bed mobility, transfers, gait, lifting, use of adaptive devices, joint protection and cognitive re-education] which are goal directed and task specific)	5.6
	97116	gait training (specific instructions in the proper patterns and components of walking and/or running; can be applied along a continuum from crutch training for very simple gait deviations to the application and instruction in complicated gait techniques for very complex gait dysfunctions)	5.6
	97118	electrical stimulation (manual)	5.6
(f)	97120	iontophoresis	5.6
	97121	phonophoresis	5.6
	97122	traction, manual	5.6
	97124	massage	5.6
	97126	contrast baths	5.6
	97128	ultrasound	5.6
(g)	97130	soft tissue mobilization	5.6
	97132	joint mobilization	5.6
	97133	rehabilitation taping	5.6
	97134	spray/stretch	5.6
	97136	postural drain	5.6
	97139	unlisted procedure, equivalent in level of service to 97110-97136 (specify)	5.6
(h)	97200	treatment involving two or more procedures from group A below, including at least one procedure also in group B	6.8

Group A	Group B
97010-97039	97118-97139
97118-97139	97260 (minutes n/a)
97260 (minutes n/a)	97261 (minutes n/a)
97261 (minutes n/a)	

(i)	97220	hubbard tank; each visit	7.2

(j)	97240	individual pool therapy or Hubbard tank with therapeutic exercises; each visit (practitioner-supervised exercises and activities performed in a pool to enhance flexibility, coordination, strength, and/or cardiovascular capacity where buoyancy and/or decreased weight bearing are indicated)	8.8
	97241	group pool therapy or Hubbard tank with therapeutic exercises, per person supervised; each visit	4.4
(k)	97260	manipulation (cervical, thoracic, lumbosacral, sacroiliac, hand, wrist) (separate procedure); one area	5.6
	97261	each additional area	2.6
(l)	97301	treatment involving two or more procedures from group A below, including at least one procedure also in group B	9.5

Group A	Group B
97110	97118-97139
97112	97260 (minutes n/a)
97114	97261 (minutes n/a)
97116	

(m)	97500	orthotics training (dynamic bracing, splinting), upper extremities; each visit	6.6
(n)	97520	prosthetic training; each visit	6.6
(o)	97530	kinetic activities to increase coordination, strength and/or range of motion, one area (any two extremities or trunk); each visit (mechanized/ computerized therapeutic exercise or activity to rehabilitate joint/muscle function using, for example, isokinetic, isotonic, isoinertial and/or isometric equipment)	7.4
(p)	97540	training in activities of daily living (self care skills and/or daily life management skills); each visit	6.6
	97544	work hardening; each 1 hour [an individualized, therapist-supervised, work-oriented treatment process involving the worker in simulated or actual work tasks which are structured and graded to progressively increase physical tolerances,	5.5

		adaptability, pacing, knowledge of task performance, body-mechanics, efficiency, endurance, and productivity to return-to-work goals. To be conducted only when a job has been identified for the worker to return to and specific job demands have been identified through a job analysis.] Other services are billable separately from work hardening.	
	97546	work conditioning; each 1 hour [an individualized, therapist-established and -supervised therapeutic exercise program which may include aerobic conditioning, education, limited work tasks and simulation, and progressive resistive functional exercises.]	5.5
(q)	97705	orthotic/prosthetic evaluation--deleted; to report use evaluation procedure code applicable to profession of provider	
	97708	activities of daily living evaluation--deleted; to report use evaluation procedure code applicable to profession of provider	
(r)	97719	face-to-face conference by therapist with payor representative(s) to update status of patient, upon request of payor or payor's authorized representative (content must be documented)	BR
(s)	97720	extremity testing for strength, dexterity, or stamina--deleted; to report use evaluation procedure code applicable to profession of provider	
(t)	97750	physical or occupational therapy provided outside usual location of practice	12.0
	97751	physical or occupational therapy equipment and personnel provided outside usual location of practice	12.0
	97752	muscle testing with torque curves during isometric and isokinetic exercise, mechanized or computerized evaluations with printout (includes representation	7.4

		in graph form of muscle-joint measurements of velocity, acceleration, power, range of motion, endurance, and work)	
(u)	97762	computerized movement analysis testing--kinematic and/or kinetic (includes computerized measurement and analysis of functional human movement and the forces [velocity, acceleration, displacement, and muscle and joint reaction] involved in movement; can include interfacing or individual measurement of electromyogram muscle activity and/or force plate analysis [three-dimensional analysis of ground reaction forces during weight-bearing activities and movements])	7.4
	97764	job site visit, each 60 minutes (includes report)	12.0
(v)	97770	physical capacity evaluation, each 60 minutes, up to 6 hours (includes report) [Objective, directly observed measurement of a worker's ability to perform a variety of physical tasks combined with statements of abilities by worker and evaluator. Includes 97772 if requested along with physical capacity evaluation by insurer. Also called "physical tolerance screening", "functional capacity evaluation", "functional capacity assessment", or "work tolerance screening".]	14.0
	97772	completion of job descriptions or analysis forms requested by insurer or insurer's agent	5.6
(w)	97799	unlisted physical medicine service	BR
(x)	97800	New patient; routine level of service (one body part or localized area in otherwise generally healthy patient with few or no pre-existing conditions; service includes abbreviated history, clarifying tests, diagnosis, and limited treatment plan)	6.7
	97801	intermediate level of service (one or more body parts, areas, or systems affected in patient with	9.9

		significant but not complicated history or lengthy but not extended condition duration; service includes intermediate history, intermediate examination with up to three clarifying tests, diagnosis, and appropriate treatment plan)	
	97802	complex level of service (two or more body parts, areas, or systems affected, complicated history, extended condition duration, severe injury, or complicating or precautionary circumstances; service includes extensive history, comprehensive examination with four or more clarifying tests, diagnosis, and comprehensive treatment plan)	13.0
(y)	97810	Established patient; routine level of level of service (see 97800)	4.0
	97811	intermediate level of service (see 97801)	6.7
	97812	complex level of service (see 97802)	9.9
(z)	97880	physical medicine supplies and durable medical equipment (including but not limited to corsets, heel lifts, lumbar rolls, ankle wraps, taping supplies, TENS electrodes, knee immobilizer or other braces, cervical collars, Thera-Band, surgical tubing, and prescription medicines)	BR
(aa)	98950	Non-physician conference with payor representatives to update status of patient	2.2/ 15 min.
	98951	Report associated with non-physician conference, required by payor	3.4
(ab)	99085	Completion of job description or job analysis forms; initial 30 minutes	4.2
	99086	each additional 15 minutes	2.1

(AUTH: Sec. 39-71-203, MCA; IMP: Sec. 39-71-704, MCA.)

3. The proposed new rules address two areas of medical services; the first are utilization rules that identify and clarify the obligations of providers, claimants, and insurers when medical services are required, the second are the fee schedules upon which provider bills are calculated and paid. These rules implement the various 1991 amendments (Chapters 558 and 574, L. 1991) to section 39-71-704, MCA.

The department developed utilization rules as a result of input from insurers and medical providers at the November 1991 rules hearing concerning amending the medical fee schedule. Implementation of a new fee schedule was delayed until utilization rules were developed. The utilization rules (Rules I through IX) provide a framework which all parties can use to determine what are "reasonable services" that are payable under section 39-71-704 (a), and help implement the legislative objectives of Ch. 574 of limiting medical expenses. The utilization rules specify what documentation is required from a medical provider in order to receive payment for services. The documentation also provides a framework by which all the parties can evaluate the progress of an injured worker and the effectiveness of the treatment. The rules do not, and can not, address the medical decisions that go into deciding what is a proper course of treatment. The rules do, however, specify that the "treating physician" is the person that has the ultimate authority and responsibility for the treatment decisions for an injured worker.

Rule I states the purpose of the utilization rules. It has no counterpart in the existing rules.

Rule II is a definition section. It has no counterpart in the existing rules.

Rule III replaces ARM 24.29.1403, Selection of Physician, which is to be repealed. It incorporates references to section 33-22-111, MCA, pertaining to freedom of choice in selection of physician, and defines who is the "treating physician" and what responsibilities are associated with that status.

Rule IV replaces ARM 24.29.1405, Physician Reports, and ARM 24.29.2001, Treatment and Reporting, which are to be repealed. It requires all health care providers, not just physicians, to furnish documentation related to the services as a prerequisite to being paid.

Rule V specifies improvement status, which is one of the elements of the documentation required in Rule IV. It has no direct counterpart in the existing rules.

Rule VI provides the requirements for prior authorization, alternative ways of obtaining prior authorization, and a list of circumstances or procedures for which prior authorization for service is required.

Rule VII provides insurers a right to request second opinions when certain services are proposed for the worker. It has no direct counterpart in the existing rules.

Rule VIII relates to payment for items supplied by a physician, as opposed to other vendors. It has no counterpart in existing rules.

Rule IX clarifies that only procedures generally accepted by the medical community may be considered "reasonable" and "necessary" requirements of section 39-71-704, MCA. It has no direct counterpart in the existing rules.

The fee schedule rules (Rules X through XVIII) implement 1991 amendments (Chapter 558, L. 1991) to section 39-71-704 (2), MCA by providing for nonhospital fees. The 1991 amendments removed the requirement that the fee schedule be based on the California Relative Value Studies. A new system of establishing the relative values of services is being proposed to replace the existing California-based fee schedule. The existing fee schedule has its roots in a 1968 model, and was last updated in 1987. The proposed fee schedule, which is based upon the McGraw-Hill/Systemtrics Relative Value for Physicians, identifies additional and newer procedures, and is updated quarterly by the publisher. To the extent that Relative Value for Physicians does not adequately address usage by non-physician medical providers, the department has proposed separate fee schedules and values for certain medical specialty areas.

The fee schedule rules also implement other 1991 amendments (Chapter 574, L. 1991) to section 39-71-704 (4), MCA, in that increases in medical costs payable are limited to no more than the percentage increase in the state's average weekly wage. As a part of the revision of the fee schedule, ARM 24.29.1420 is to be repealed.

4. Rule 24.29.1403, which can be found at page 24-2153 of the Administrative Rules of Montana [ARM], is proposed to be repealed because it will be replaced by proposed rule III as part of a comprehensive revision of the medical service rules. Rule 24.29.1405, which can be found at page 24-2154 of the ARM, is proposed to be repealed because it will be replaced by proposed rule IV as part of a comprehensive revision of the medical service rules. Rule 24.29.1420, which can be found at pages 24-2157 through 59 of the ARM, is proposed to be repealed because it will be replaced by proposed rules X through XVII as part of a comprehensive revision of the medical service rules. Rule 24.29.2001, which can be found at page 24-2201 of the ARM, is proposed to be repealed because it will be replaced by proposed rule IV as part of a comprehensive revision of the medical services rules. Authority for these rules is 39-71-203, MCA, and they implement 39-71-203 and 39-71-704, MCA.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to:

Mark E. Cadwallader
Legal Services Division
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

and must be received by no later than 5:00 p.m., February 26, 1993.

6. Joseph Maronick of the Legal Services Division of the department has been designated to preside over and conduct the hearing.

David A. Scott
Rule Reviewer

Laurie A. Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: January 15, 1993

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of ARM 42.22.101, 42.22.105, 42.22.106, 42.22.121, 42.22. 122 and ADOPTION of New Rule I relating to Centrally Assessed Companies	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT of 42.22.101 42.22.105, 42.22.106, 42.22.121 42.22.122 and ADOPTION of New Rule I relating to Centrally Assessed Companies

TO: All Interested Persons:

1. On February 23, 1993, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.22.101, 42.22.105, 42.22.106, 42.22.121, 42.22.122, and adoption of rule I relating to centrally assessed companies.

2. The proposed rule I does not replace or modify any section currently found in the Administrative Rules of Montana.

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

RULE I TAX ON RAILROAD CAR COMPANIES (1) The department shall compute the taxes due on railroad car companies according to 15-23-201, MCA, using the average levy determined under 15-24-103, MCA.

AUTH: 15-23-108, MCA; IMP: 15-23-201 and 15-24-103, MCA.

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

42.22.101 DEFINITIONS (1) through (16) remain the same.

(17) "Rolling stock" includes but is not limited to all locomotives, passenger cars, dining cars, express cars, mail cars, baggage cars, grain cars, box cars, cattle cars, coal cars, flat cars, wrecking cars, special purpose cars, track repair and construction cars, and all other cars used by a railroad or railroad car company.

(18) and (19) remain the same.

AUTH: 15-23-108 MCA; IMP: Title 15, chapter 23, part 1 and 15-23-211 MCA.

42.22.102 CENTRALLY ASSESSED PROPERTY (1) The department of revenue shall centrally assess the interstate and intercounty continuous properties of the following types of companies: railroad, railroad car, microwave, telephone, telegraph, gas, electric, ditch, canal, flume, natural gas pipeline, oil pipeline, and airline.

(2) remains the same.

AUTH: 15-23-108 MCA; IMP: Title 15, chapter 23, part 1 and 15-23-211 MCA.

42.22.105 REPORTING REQUIREMENTS (1) Each year all

centrally assessed companies shall submit to the department of revenue a report of operations for the preceding year. Railroads, railroad car companies, and pipelines shall submit the report by April 15 and all others by March 31, on forms supplied by the department.

(2) and (3) remain the same.

AUTH: 15-23-108 MCA; IMP: 15-23-103, 15-23-201, 15-23-212, 15-23-301, 15-23-402, 15-23-502, 15-23-602, and 15-23-701 MCA.

42.22.106 ADDITIONAL REPORTING REQUIREMENTS FOR CENTRALLY ASSESSED RAILROADS (1) Each year all centrally assessed railroads shall submit by April 15 (except that information required under ARM 42.22.103(2)) a report of operations for the preceding year containing in addition to that information required by ARM 42.22.105 the following information and items:

(a) through (d) remain the same.

(e) Total miles traveled by each type of car for each railroad car company operating on track owned or used by the railroad in the state of Montana, and any additional information that may be required by the department for the valuation and allocation of the railroad car companies.

(2) and (3) remain the same.

AUTH: 15-23-108 MCA; IMP: 15-23-201 MCA.

42.22.121 ALLOCATION PROCEDURE (1) and (2) remain the same.

(3) For the purpose of allocating the unit value, quantity, use, and productivity ratios may be applied. Following are examples of possible ratios the department may apply to allocate unit value to Montana. The following examples shall not be construed to prohibit the use of other factors in the allocation process:

(a) for airlines:

(i) Western States Association of Tax Administrators formula which separates mobile and terminal property for the purpose of allocation;

(ii) originating and terminating tons;

(iii) equated ground hours;

(iv) equated flight hours;

(v) revenue ton miles;

(vi) arrivals and departures;

(b) for electric:

(i) cost;

(ii) revenue;

(iii) wire miles;

(iv) pole line miles;

(c) for gas:

(i) cost;

(ii) revenue;

(iii) pipe miles;

(iv) mcf miles;

(d) for pipelines:

(i) cost, trended cost, depreciated cost;
(ii) mcf miles;
(iii) pipe miles;
(iv) barrel miles;
(e) for railroads;
(i) track mileage;
(ii) train miles;
(iii) revenue traffic units;
(iv) revenue;
(v) car and locomotive miles;
(vi) cost;
(vii) originating and termination tonnage;
(f) for telephone:
(i) cost;
(ii) revenue;
(iii) telephone;
(g) for telegraph:
(i) cost;
(ii) revenue;
(h) for microwave:
(i) cost;
(ii) revenue.

(4) For allocation of railroad car company property for each company, the department, as an alternative to the allocation formula provided in 15-23-213(2), MCA, will use the two following factors giving equal consideration to both:

(a) car miles in Montana to total car miles in system; and

(b) equivalent car count in Montana to total cars in system. Equivalent car count is computed as follows:

(i) for railroad cars used exclusively for unit coal and intermodal trains, the equivalent car count is the total annual Montana car miles divided by the product of 500 miles/day x 365 days/year;

(ii) for all other railroad cars, the equivalent car count is the total annual Montana car miles divided by the product of 350 miles/day x 365 days/year.

~~(3)~~ (5) When computing allocation factors for airline companies, the department shall find separate mobile and terminal factors. These factors will be combined to make a single allocation factor. The combination will be made according to the relationship of the mobile and terminal properties cost.

AUTH: 15-23-108 MCA; IMP: Title 15, chapter 23, part 2, and 15-23-213 MCA.

42.22.122 APPORTIONMENT PROCEDURE (1) Except for railroad car companies, the department shall apportion the Montana allocated value of centrally assessed companies to the taxing units.

~~(1) through (3)~~ are renumbered (2) through (4)

AUTH: 15-23-108, MCA; IMP: Title 15, chapter 23, part 1 and 15-23-201 MCA.

5. The Department is proposing the amendments and the new rule concerning centrally assessed property to incorporate railroad car line companies which were transferred to ad valorem taxation from the gross receipts by House Bill 24 of the July 1992 special session of the 52nd Legislature.

6. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to:

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

no later than March 1, 1993.

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

CLEO ANDERSON
Rule Reviewer

NICK ROBINSON
Director of Revenue

Certified to Secretary of State January 15, 1993.

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

In the matter of the amendment of rule 46.10.406 pertaining to AFDC resources	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.10.406 PERTAINING TO AFDC RESOURCES

TO: All Interested Persons

1. On February 22, 1993, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rule 46.10.406 pertaining to AFDC resources.

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

46.10.406 PROPERTY RESOURCES Subsection (1) remains the same.

(a) "~~Property r~~Resources" means real or personal, tangible or intangible assets ~~owned by~~ which members of the assistance unit own or in which they have a legal interest.

(b) "Home" means the assistance unit's ~~principle~~ usual residence.

Subsection (1)(c) remains the same.

(d) "Market value" means the ~~prevailing~~ price that property would bring~~s when~~ if sold ~~on a given market~~ in the geographic area in which the property is located.

(e) "Currently available ~~property~~ resources" means assets which any member of the assistance unit has a legal right ~~and reasonable practical~~ or actual ability to liquidate for cash ~~market value~~.

(2) General rule: In determining eligibility for AFDC, the department will evaluate ~~property~~ resources which are currently available to an assistance unit requesting or receiving assistance, and will apply the limitations set out in this rule. ~~Property~~ For applicants, resources in excess of the limitations established in subsection (3) of this rule will disqualify the assistance unit for AFDC ~~assistance~~. For recipients, when the assistance unit's resources exceed the limitation established in subsection (3) of this rule, the department will suspend rather than terminate the assistance unit's AFDC.

(3) "General property resources limitation": The equity value of all currently available ~~property~~ resources ~~owned by members~~ of the assistance unit will be counted in the process of determining eligibility for assistance, unless such ~~property~~ resources are specifically excluded ~~by this section~~ in subsection (4)(a) through (4)(l) of this rule. If the value of countable resources exceeds $1000, the assistance unit is ineligible for AFDC.

(4) "~~Property r~~Resources exclusions": The following ~~property~~ resources are specifically excluded from treatment as currently available ~~property~~ resources:

(a) ~~T~~the home regardless of value~~,~~;

(b) ~~O~~one vehicle ~~for family transportation~~ if equity value does not exceed $1500. Equity in this one vehicle over $1500 and equity in any additional vehicles must be counted as a currently available ~~property~~ resource~~,~~;

(c) ~~H~~household goods, clothing and other essential personal effects, equipment or other items necessary to secure or produce food, home produce for family use and consumption only, and other similarly essential day-to-day items of limited value~~,~~;

(d) ~~Essential~~ tools and equipment essential for the ~~owner's trade needed for this owner's employment.~~ self-employment of a member of the assistance unit;

~~(e) Equipment necessary for securing or producing food.~~

(~~f~~e) ~~O~~one burial space for each ~~family~~ member of the assistance unit and not more than $1,500 designated under a funeral agreement for burial arrangements for each member~~,~~;

(~~g~~f) ~~R~~real property the family is making a good faith effort to sell, but only for six months and only if they agree to use the proceeds from the sale to repay the department for any AFDC benefits received. The remainder is considered a resource~~,~~;

~~(h) Any other property resources not excluded in (4)(a) through (4)(g) of this section not to exceed $1000 in equity value.~~

(g) agent orange settlement payments;

(h) radiation exposure compensation payments; and

(i) Maine Indian Claims Settlement Act of 1980 payments.

AUTH: Sec. 53-4-212 MCA
IMP: Sec. 53-4-211 MCA

3. ARM 46.10.406 currently provides that a household is ineligible for Aid to Families with Dependent Children (AFDC) assistance if it has countable resources in excess of $1,000. Therefore, the department must terminate the assistance of any AFDC household whose resources exceed $1,000, even if the resources will exceed the resource limit only briefly.

Federal regulations governing the AFDC program at 45 CFR 233.34(d)(1) and (2) allow the states the option of suspending assistance for one month, rather than terminating assistance, in cases where a household receiving assistance becomes ineligible due to either income or resources in excess of the income or resource limits, provided there is reason to believe the household will be ineligible for only one month.

ARM 46.10.403(3)(b) permits the suspension of a household's assistance for one month rather than termination if the household's income exceeds the income standard due to receipt of an extra payment from a recurring income source, for example, an

extra weekly paycheck in a month which has five paydays instead of the usual four. As authorized by section 233.34(d)(1) and (2), the department is now electing to expand the policy to include suspension when the household is expected to be ineligible for only one month due to excess resources.

This policy is being adopted in order to simplify processing of cases in which the household's ineligibility lasts only one month. When a household's assistance is terminated due to excess resources and they then become eligible again the next month, the household must submit a new application and have an interview before assistance can again be received. The county office will have to re-enter client data, evaluate all factors of eligibility, and approve benefits. This is a time-consuming process, and the client may not receive benefits for the month following termination on a timely basis. The need to process the client's case as a new application also creates considerable work for both the client and the county office.

On the other hand, if assistance is suspended rather than terminated, the case remains in "open" status. This means that client data remains current and the household continues to submit a monthly report. The household will receive benefits for the month following termination on a timely basis without additional work by the county office or the client. The household also benefits due to Medicaid coverage continuing during the month of suspension.

The rule is also being amended to exclude resources not previously excluded in order to conform with federal statutes. Section 10405 of P.L. 101-239, the Omnibus Budget Reconciliation Act of 1989, specifies that no Agent Orange settlement payments may be considered a resource in determining eligibility for certain federally-funded assistance programs including AFDC. Similarly, Section 6(h)(2) of the Radiation Exposure Compensation Act, P.L. 101-426, and the Maine Indian Claims Settlement Act of 1980, P.L. 96-420, require the exclusion of payments made under those acts.

Other changes are being made to the rule to make it conform more closely to federal regulations governing the AFDC program. Subsection (1)(e) of the rule currently defines a resource as available if the recipient or applicant has a legal right and practical ability to liquidate it. However, the federal regulation actually states that if an individual has either the legal right or the practical ability to liquidate a resource it must be considered available. Therefore, the word "and" is being changed to "or" in subsection (1)(e) to state the policy required by the federal regulation.

Similarly, in subsection (1)(b) of the rule the definition of home is being changed from "principle" [sic] residence to "usual" residence to conform to the language of 45 C.F.R. 233.20 (a)(3)(i)(B)(1). In subsection (4)(b), which states the vehicle

exclusion, the words "family transportation" are being deleted because this limitation does not appear in the federal regulations at 45 C.F.R. 233.20(a)(3)(i)(B)(2). Subsection (4)(f) is being amended to specify that there must be a funeral agreement in order to exclude funds designated for burial arrangements, in order to conform to the requirements of 45 C.F.R. 233.20(a)(3)(i)(B)(4).

Subsection (4) (h) currently states that any resources which do not exceed $1000 in equity value which are not otherwise excluded will be excluded. This is being deleted because it does not accurately reflect the department's policy. All resources which are not specifically excluded are counted even if their equity value is less than $1000, but a recipient or applicant may have up to $1000 in countable resources and still be eligible for AFDC. Subsection (3) is being amended to set forth the $1000 resource limitation which was previously implied in subsection (4)(h).

Other changes are being made in the wording of the rule for purposes of style and clarity and do not indicate a change in department policy. The word "property" in the term "property resources" is being eliminated throughout the rule because it is redundant. Minor changes are being made in the definition of fair market value in subsection (1)(d). In subsection (4), (4)(e) is being combined with (4)(c) and changes are being made to the wording of (4)(d) for the sake of simplicity and clarity.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than February 25, 1993.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State January 15, 1993.

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

In the matter of the amendment of rule 46.25.725 pertaining to income for general relief assistance	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.25.725 PERTAINING TO INCOME FOR GENERAL RELIEF ASSISTANCE

TO: All Interested Persons

1. On February 22, 1993, at 10:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed amendment of rule 46.25.725 pertaining to income for general relief assistance.

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

46.25.725 INCOME Subsection (1) remains the same.
~~(a) The portion of student's educational grants and deferred educational loans which is provided for particular educational costs specified by the department is exempt.~~
Subsection (1)(b) remains the same in text but is renumbered (1)(a).
Subsections (2) through (2)(c) remain the same.

AUTH: Sec. 53-2-201, 53-2-803 and 53-3-114 MCA
IMP: Sec. 53-3-205 MCA

3. Recent Fair Hearing decisions and Board of Appeals cases have pointed out that the Department exempts certain portions of student grants and loans from being counted as income for the GRA program. In order to correct this improper exemption and follow the letter of the law, the Department proposes to delete that portion of the income rule which exempts portions of student grants or loans. Montana statute 53-3-3109(9), MCA specifically states that income means the value of all property of any nature, earned, unearned, or in-kind, including benefits, that is reasonably certain to be received or is actually received during the month by members of a household. This statute means that all sources of income must be counted. That would include grants and loans, even student loans. It was never the intention of the legislature to allow post-secondary or vocational education expenses to be excluded. Post-secondary and vocational education are not part of the job search, training and workfare program.

4. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written

data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than February 25, 1993.

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

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State January 15, 1993.

BEFORE THE BOARD OF PLUMBERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

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

TO: All Interested Persons:

1. On November 25, 1992, the Board of Plumbers published a notice of proposed amendment of the above-stated rule at page 2482, 1992 Montana Administrative Register, issue number 22.

2. The Board has amended the rule exactly as proposed.

3. No comments or testimony were received.

BOARD OF PLUMBERS
ROBERT NAULT, CHAIRMAN

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

BY: Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 15, 1993.

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment of a rule pertaining to definitions and the adoption of a new rule pertaining to ad valorem tax appraisal experience	NOTICE OF AMENDMENT OF 8.57.401, AND THE ADOPTION OF NEW RULE I (8.57.417) AD VALOREM TAX APPRAISAL EXPERIENCE

TO: All Interested Persons:

1. On November 12, 1992, the Board of Real Estate Appraisers published a notice of public hearing at page 2443, 1992 Montana Administrative Register, issue number 21. The public hearing was held on December 14, 1992, in the conference room of the Professional and Occupational Licensing Bureau, Helena, Montana.

2. The Board has amended 8.57.401 exactly as proposed. The Board has adopted new rule I (8.57.417) as proposed, but with the following changes:

"8.57.417 AD VALOREM TAX APPRAISAL EXPERIENCE (1) through (3)(b) will remain the same as proposed.

(4) Applicants shall also submit an experience log indicating the type of experience and hours applicable to each type of experience NECESSARY TO CONFIRM 2,000 EXPERIENCE HOURS, including without limitation, individual property appraisals, tax appeals, demonstration appraisal reports, model specifications, and model calibrations.

(5) Applicants shall hold, at a minimum, ~~a residential~~ THE FOLLOWING certification(S) issued by the Montana department of revenue, or equivalent from another state, as verified on supervisor's affidavit, or by separate documentation issued to applicant:

(a) APPLICANTS FOR LICENSURE AND RESIDENTIAL CERTIFICATION SHALL HOLD A DEPARTMENT OF REVENUE RESIDENTIAL CERTIFICATION.

(b) APPLICANTS FOR GENERAL CERTIFICATION SHALL HOLD A DEPARTMENT OF REVENUE COMMERCIAL, INDUSTRIAL OR AGRICULTURAL CERTIFICATION."

Auth: Sec. 37-54-105, MCA; IMP, Sec. 37-54-105, MCA

3. The Board has thoroughly considered all comments received. Those comments and the Board's responses thereto are as follows:

ARM 8.57.401

COMMENT NO. 1: One comment was received stating the proposed definitional change would be discriminatory to people currently in the process of becoming a certified appraiser, since others were licensed with less than 24 months experience. The original Montana rules were not established in line with the National Foundation's requirements, and should remain the same as established.

RESPONSE: The Foundation language on licensing criteria intends for a 24 month period to elapse to acquire the necessary experience hours. The Board's original rule language did not reflect this Foundation criteria, but this rule amendment will correct the oversight, and bring the Board in line with Foundation requirements.

COMMENT NO. 2: One comment was received stating if an applicant can get the required hours within a one calendar year, or 12 month period, the experience requirement should be considered to have been met.

RESPONSE: See response to comment No. 1 above.

COMMENT NO. 3: Three comments were received in support of the proposed definitional change, as the change would bring Montana in line with federal recommendations on two 12 month periods of time.

RESPONSE: The Board acknowledges receipt of the comments.

ARM 8.57.417

COMMENT NO. 4: One comment was received stating (1) should more clearly define the necessary experience requirement for ad valorem tax appraisers by addition of the language: "Experience requirements necessary for ad valorem appraisers to achieve residential licensure and certification include two years of employment as an appraiser with the Department of Revenue and Residential Certification from the Department of Revenue. Experience requirements necessary for ad valorem appraisers to achieve general certification include two years of employment as a non-residential appraiser with the Department of Revenue and a commercial, industrial or agricultural certification from the Department of Revenue.

RESPONSE: Subsection (1) is only one requirement for licensure or certification. Applicants must fulfill all of the statute and rule requirements. The proposed change adds two years of experience plus residential/commercial/industrial /agricultural certification from the Department of Revenue. The new rule will simplify and make compliance with the requirements less difficult. The proposed language change is unnecessary, as the language in (1) is from the Appraisal Foundation's criteria for mass appraisals.

COMMENT NO. 5: One comment was received stating (2) parenthetical language with brief explanations of model specification and model calibration should be maintained in the rule to avoid confusion with market modeling in association with computer assisted mass appraisal programs.

RESPONSE: The Board acknowledges receipt of the comment.

COMMENT NO. 6: One comment was received stating (3) should provide further clarification as to what is included under real property mass appraisals, by addition of the following language: ... mass appraisals, "including residential, commercial, industrial and agricultural real

estate and/or the productivity classification of agricultural land."

RESPONSE: The addition is not necessary, as the areas listed are covered within the rule, and specific language to this effect is not needed.

COMMENT NO. 7: One comment was received stating (3)(b) should emphasize the types of ad valorem experience which can receive experience credit by addition of the following language: ... similar to those used by "other" appraisers. "Credit can be awarded for residential, commercial, industrial and agricultural real estate and/or the productivity classification of agricultural land."

RESPONSE: The present proposed rule language is directly from the Appraisal Foundation's criteria. The suggested change is not needed to add to the criteria, and appears to be adding a production classification.

COMMENT NO. 8: One comment was received stating (3)(b) in definition of "model" should not be limited to computer assisted. "Model" is a mathematical expression used by the Department of Revenue even before computer systems were in use.

RESPONSE: The current proposed rule language is broad enough to include all definitions of "model," not necessarily computer models. The language is from the Appraisal Foundation's criteria.

COMMENT NO. 9: One comment was received stating (4) should clarify and define the time frame for the required experience log by addition of the following language: ... each type of experience "necessary to confirm 2,000 experience hours, including" individual ....

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

COMMENT NO. 10: Three comments were received stating the new rule appears to be directed only toward residential appraisal experience, when ad valorem tax appraisers also work in the areas of commercial, industrial and agricultural appraisals. Subsection (5) could be amended with the following language: Applicants "for residential licensing and certification" shall hold, ... "Applicants for general licensure and certification shall hold, at a minimum, a commercial, industrial or agricultural certification by the Montana Department of Revenue, or equivalent from another state, as verified on the supervisor's affidavit, or by separate documentation issued to the applicant."

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

COMMENT NO. 11: Two comments were received stating ad valorem tax appraisers must employ the same approaches to value, market and income analysis, modeling procedures, approach to statistical review of data, and quality control as their fee appraisers counterparts. The real difference is in

volume of appraisals and reporting requirements. The new rule will allow the Board to have confidence in the process and procedures used to conform to acceptable methods.

RESPONSE: The Board acknowledges receipt of the comments.

COMMENT NO. 12: One comment was received stating the independent fee appraisers do not support the proposed ad valorem rule, and feel the original laws and rules are adequate.

RESPONSE: The Board acknowledges receipt of the comment.

COMMENT NO. 13: Eight comments were received in support of the ad valorem rule in general.

RESPONSE: The Board acknowledges receipt of the comments.

BOARD OF REAL ESTATE APPRAISERS
PAT ASAY, CHAIRMAN

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

BY: _____
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 15, 1993.

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF COMMERCE
STATE OF MONTANA

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

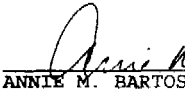
TO: All Interested Persons:

1. On November 25, 1992, the Building Codes Bureau published a notice of proposed amendment of the above-stated rule at page 2484, 1992 Montana Administrative Register, issue number 22.

2. The Building Codes Bureau has amended the rule exactly as proposed.

3. No comments or testimony were received.

BUILDING CODES BUREAU
JAMES BROWN, BUREAU CHIEF

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

BY: 
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, January 15, 1993.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 11.7.313 pertaining to determination of daily rates for youth care facilities	NOTICE OF AMENDMENT OF RULE 11.7.313 PERTAINING TO DETERMINATION OF DAILY RATES FOR YOUTH CARE FACILITIES

TO: All Interested Persons.

1. On December 10, 1992, the Department of Family Services published notice of the proposed amendment of Rule 11.7.313 pertaining to determination of daily rates for youth care facilities at page 2627, of the 1992 Montana Administrative Register, issue no. 23.

2. The department has amended the rule as proposed with the following additional language underlined:

11.7.313 CLASSIFICATION MODEL Subsections (1) through (3)(e) remain the same.

(f) In Level VI the facility provides the basic living needs of the youth including food, shelter, transportation, and clothing. The Montana department of social and rehabilitation services pays licensed providers for the treatment portion of the per diem payment for therapeutic youth group homes currently classified as level VI under this subsection. Therefore, no level of treatment in subsection (4) of this rule applies to therapeutic youth group homes. However, as a prerequisite to licensure under the department's licensing rules in Title 11, subchapter 12, therapeutic youth group homes must abide by the applicable child/staff ratios for all staff including but not limited to program managers and lead clinical staff persons. For the purpose of calculating the ratio to check for compliance under the licensing requirements, only full-time contracted or employed program managers and lead clinical staff persons, or the equivalent number of part-time program managers and lead clinical staff persons, may be counted as "one" program manager or lead clinical staff person. Full-time program manager or lead clinical staff person means a program manager or lead clinical staff person who normally works for the therapeutic youth group home 40 hours per week.

Subsections (4) through (6) remain the same.

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

COMMENT: (Mary Ann Akers, Department of Family Services, Residential Care Specialist) At least one provider has requested that the department allow it to meet the required lead clinical staff (LCS) child/staff ratio with part-time staff. As a result of SRS paying the treatment portion of the per diem payment, no

staffing requirements for treatment purposes have been proposed in the changes to ARM 11.7.316. Staffing levels in ARM 11.12.413 do not specifically address this issue.

The department should clarify treatment requirements in this rule-making by adding an explanation of what is required for program managers and LCS persons in regard to full versus part-time contractors or employees. The explanation should clarify that part-time staff may be used to fulfill the ratio, however, each one staff member counted to meet the ratio should be a full-time employee or contractor (1.0 FTE, with FTE standing for full time equivalent). If part-time staff are used for these positions, each part-time staff person should be counted as only a fraction of the required staff person. For example, intensive level homes must have one program manager for each four children. If only one program manager is employed or contracted for to provide treatment for four children, such program manager should be under contract or employed full-time (1.0 FTE). Similarly, if part-time program managers are used, for example, where a facility employs two program managers for treatment of four children, each should be contracted or employed half-time (each will be .5 FTE) in order for the facility to claim fulfillment of the requirement of one program manager per four children. Other combinations for both LCS persons and program managers would be acceptable, so long as sufficient part-time staff are contracted or employed so as to add up to one FTE for the purpose of calculating the ratio.

RESPONSE: The department agrees and has amended the proposal to make compliance with the staffing requirements as clarified herein a prerequisite to licensing.

DEPARTMENT OF FAMILY SERVICES

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, January 15, 1993.

BEFORE THE DEPARTMENT OF
FAMILY SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 11.18.125, pertaining to community homes for persons with developmental disabilities, and 11.19.114 pertaining to community homes for persons who are severely disabled.	NOTICE OF AMENDMENT OF RULES 11.18.125, PERTAINING TO COMMUNITY HOMES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES, AND 11.19.114 PERTAINING TO COMMUNITY HOMES FOR PERSONS WHO ARE SEVERELY DISABLED.

TO: All Interested Persons.

1. On December 10, 1992, the Department of Family Services published notice of the proposed amendment of Rules 11.18.125, pertaining to community homes for persons with developmental disabilities, and 11.19.114 pertaining to community homes for persons who are severely disabled at page 2630 of the 1992 Montana Administrative Register, issue no. 23.

2. The department has amended the rules as proposed with the following language deleted from the amendments as previously published (deleted material interlined):

11.18.125 FIRE, HEALTH AND SAFETY CERTIFICATION (1) Community homes are required by the Montana Department of Justice to comply with the fire safety requirements and procedures found in ARM 23.7.110. ~~The department hereby adopts and incorporates ARM 23.7.110 by this reference. A copy of ARM 23.7.110 may be obtained from the Department of Family Services, P.O. Box 8005, Helena, Montana 59604.~~ A community home must comply with the certification requirements of ARM 23.7.110 to obtain licensure, and during licensure, the community home must remain current on its fire safety certification under ARM 23.7.110.

Subsection (2) remains the same.

AUTH: Sec. 53-20-305, MCA. IMP: Sec. 53-20-307, MCA.

11.19.114 PHYSICALLY DISABLED GROUP HOMES, FIRE SAFETY CERTIFICATION (1) Community homes are required by the Montana Department of Justice to comply with the fire safety requirements and procedures found in ARM 23.7.110. ~~The department hereby adopts and incorporates ARM 23.7.110 by this reference. A copy of ARM 23.7.110 may be obtained from the Department of Family Services, P.O. Box 8005, Helena, Montana 59604.~~ A community home must comply with the certification requirements of ARM 23.7.110 to obtain licensure, and during licensure, the community home must remain current on its fire safety certification under ARM 23.7.110.

AUTH: Sec. 52-4-205, MCA. IMP: Sec. 52-4-203, MCA.

3. The department has thoroughly considered all comments received. Only one comment was received:

COMMENT: Montana law only allows for the adoption and incorporation of material by reference in situations where it would be unduly cumbersome, expensive, or otherwise inexpedient to include the material in the ARM or register. An argument could be made that publication of ARM 23.7.110 is not unduly cumbersome, expensive, or otherwise inexpedient.

RESPONSE: The department agrees and has considered setting out the text of the requirements of ARM 23.7.110 in place of the adoption and incorporation by reference. However, the department has re-considered the proposed adoption and incorporation of the rule and determined that such adoption and incorporation is not necessary. The requirements of the Department of Justice rule on fire safety are imposed on community homes regardless of whether the Department of Family Services adopts and incorporates ARM 23.7.110. Therefore, in this notice, language adopting and incorporating the rule has been deleted. The remaining amendments serve to clarify that fire certification is requirement for licensure in accordance with statute and the rules of the Montana Department of Justice.

DEPARTMENT OF FAMILY SERVICES

Hank Hudson, Director

John Melcher, Rule Reviewer

Certified to the Secretary of State, January 15, 1993.

BEFORE THE DEPARTMENT OF CORRECTIONS AND
HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the amendments, repeal and adoption of new rules pertaining to the certification system for chemical dependency personnel.	) NOTICE OF AMENDMENTS of ARM 20.3.413 AND 20.3.416, REPEAL) OF ARM 20.3.414 AND ADOPTION) OF NEW RULES I 20.3.417, II 20.3.418, III 20.3.419,) IV 20.3.420, AND V 20.3.421) (PERTAINING TO THE CERTIFICATION SYSTEM FOR CHEMICAL) DEPENDENCY PERSONNEL.

TO: ALL INTERESTED PERSONS

1. On December 10, 1992, the Department of Corrections and Human Services published a Notice of public hearing on the proposed amendments of ARM 20.3.413 and 20.3.416, the repeal of ARM 20.3.414 and adoption of ARM 20.3.417 through 20.3.421 at page 2633 of the Montana Administrative Register, Issue No. 23. The public hearing was held December 30, 1992, at 9:00 a.m. in the downstairs conference room at the Department of Corrections and Human Services building, 1539 11th Avenue, Helena, MT.

2. No written comments or testimony were received.

3. The agency has amended ARM 20.3.413 and 20.3.416, repealed ARM 20.3.414 and adopted new rules ARM 20.3.417 through 20.3.421 as proposed.

SALLY JOHNSON, Deputy Director
Department of Corrections & Human Services

JAMES OBIE
Rule Reviewer

Certified to the Secretary of State January 15, 1993.

BEFORE THE BOARD OF OIL
AND GAS CONSERVATION
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION OF NEW RULES AND THE AMENDMENT OF RULES PERTAINING TO THE BONDING OF OIL AND GAS WELLS, REPORTS, WELL PLUGGING REQUIREMENTS, AND THE REFERRAL OF ADMINISTRATIVE MATTERS.	NOTICE OF ADOPTION OF AMENDED RULES 36.22.302, 36.22.1242, AND 36.22.1308, AND NEW RULES I AND II.

TO: All Interested Persons:

1. On September 10, 1992, the board published notice at page 1950 of the Montana Administrative Register, Issue No. 17, of the proposed adoption of new rules and amended rules.

2. The board held a public hearing on the proposed new rules and amended rules at 9:00 a.m. on October 8, 1992, at the Billings Petroleum Club, Sheraton Hotel, corner of 27th Street and 1st Avenue North, Billings, Montana. No written or oral comments were received on Rule I (36.22.309) or Rules 36.22.302 and 36.22.1242, and these rules are adopted as proposed. After consideration of the comments received on the remaining proposed new rules and amended rules, the board has adopted those rules as proposed with the following changes (new material is underlined, deleted material is interlined):

RULE II (36.22.1240) REPORT OF WELL STATUS CHANGE The owner or operator of any oil, gas, service, or injection well must report the change in status of such well from active to inactive or from producing ~~or~~ to non-producing. Said owners or operators must report the return of a well to active or producing status if such well was idle for six (6) or more consecutive months. If the owner or operator expects that the well will be returned to an active or producing status within six (6) months of the date idled, filing of the report may be deferred until the end of such six (6) month period, and the report need not be filed if the well is returned to service during that period. Such reports are due within thirty (30) days of the date of status change or within thirty (30) days after the end of the deferred reporting period, and must be submitted on Form No. 2. Well status reports shall include the date of and reason for the well status change. A report describing a change to inactive or non-producing status must outline the operator's plan and a time frame for returning the well to active or producing status, plugging, or other intended action.

Comment: The Montana Petroleum Association (MPA) says that the standard monthly report should suffice. Shell Western E & P, Inc. (SWEPI) notes that the board previously said it would accept form 5 "Report of Subsurface Injections" as the filing of monthly injection well status reports required by ARM

36.22.1414(5). SWEPI asks that the board accept these reports on either form 2 or form 5.

Response: The "standard monthly report" referred to by the MPA is either form 5 "report of subsurface injections," or form 6 "report of production." Neither form is designed to provide detailed well status change information. Also, these forms provide for uniform monthly filing dates which may not correspond with the date a well status change report must be filed under this proposed rule. Form 2 is best suited for well status change reporting.

An injection well operator will continue to note the status of the injection well on form 5, but must also file a form 2 report when required by this proposed rule. The board must closely monitor well status changes in order to strictly enforce well plugging and mechanical integrity requirements for injection wells. The report required by this rule will enable the board to track well status changes on a timely basis. The recommended amendments are not adopted.

Comment: SWEPI recommends adding a sentence repeating the need for an operator to report a change in well status.

Response: The board believes the first sentence is adequate.

Comment: SWEPI suggests the operator provide the date on which well status changed when a report is filed.

Response: The board agrees and adds the sentence suggested. The board also amends the rule to require additional information on reasons for changing well status and plans for inactive or non-producing wells.

Comment: SWEPI notes a typographical error in the first sentence and suggests a syntax change in the second sentence.

Response: The board amends the rule to correct the typographical and syntax errors.

Comment: SWEPI asks the board to advise whether a "report of well status" would be required in the following situation:

Well is idled for five months and three weeks. (Operator has expected to return the well to producing status within six months.)

Attempt is made to return the well to production. Well produces marginally, or only water.

One week later (or six months from original shut-in date) well is returned to non-producing status.

Response: The question contains two hypotheticals. The first concerns a well which produced marginally after workover/repairs prior to the expiration of the six-month period. No well status report need be filed in this situation since the well was returned to production before six months elapsed. The second hypothetical involves an unsuccessful effort to bring an idled well back on production. In that case, the well remained in non-producing status for the entire six months. A well status report must be filed within thirty days.

36.22.1308 PLUGGING AND RESTORATION BOND (1) through (5) same as proposed.

(6) A well must remain covered by a bond, and such bond must remain in full force and effect until:

(a) and (b) same as proposed.

(c) ~~an application~~ notification is made by the owner or operator for the release of ~~a producing~~ the well from a bond on Form No. 21, and such ~~application~~ notification is approved by the board.

(7) through (8)(a) same as proposed.

(b) for actual beneficial water uses of ~~less than 100~~ 35 gallons or less per minute, not to exceed ten acre feet per year, a copy of the notice of completion of groundwater development (Water Rights Bureau Form 602) filed with the Department of Natural Resources and Conservation (DNRC); or

(c) for actual beneficial water uses of more than ~~100~~ 35 gallons per minute, or in excess of ten acre feet per year, a ~~copy of Form 602 as required in (b) above, and~~ a copy of the beneficial water use permit (Water Rights Bureau Form 600) received from the DNRC; or

(8)(d) same as proposed.

(e) for a domestic gas well~~, a federally insured certificate deposit in the amount of $10,000~~;

(i) a federally insured certificate of deposit in the amount of $5,000 for a single well or in the amount of $10,000 for more than one well; or

(ii) a real property bond in the amount of two times the amount of the required federally insured certificate of deposit.

(9) The real property bond required in subsection (8)(e)(ii) above must be:

(a) provided on a board-approved form; and

(b) accompanied by a certified real property appraisal and abstract of title which evidence unencumbered owner equity in an amount equal to or greater than the amount of the bond required.

~~(9)~~ (10) A domestic well must be plugged, abandoned, and restored in accordance with ~~board rules within ninety (90) days~~ 36.22.1301 through 36.22.1304, 36.22.1306, 36.22.1307, and 36.22.1309, or transferred to a bonded operator in accordance with subsection (7) of this rule, after the well ceases to be used for domestic purposes.

Comment: MPA says the board should not require increased bonding when a well is covered by another government agency's (e.g., Bureau of Land Management, EPA) bond.

Response: The board is aware that some wells, particularly injection wells, might be covered by more than one agency's financial assurance requirements. Each agency's financial assurance requirements are unique and are designed to assure different regulatory obligations. For instance, the EPA's financial assurance requirements for an injection well on fee-owned surface assures proper plugging of the injection well, but do not assure surface restoration.

Section 82-11-123(5), MCA, states that the board must require "a reasonable bond with good and sufficient surety . . . which bond may not be canceled or absolved." The board does not adopt MPA's suggestion.

Comment: Nance Petroleum Corporation (Nance) says the increased bond amount will increase operating cost burdens for each well.

Nance contends that surety companies are reluctant to write new bonds and do so only at high cost to the operator. FBS Insurance Company comments that many sureties will not write new bonds. MPA comments that the board will hear concerns about the overall increase in the bond amounts. MPA contends that standard surety companies will not increase or write bonds in Montana and many will use the rule amendments to get out of the bond they now underwrite.

Response: The bonding increases and limitations proposed in the rule are reasonable and necessary, especially in light of the orphan well crisis and plugging/restoration liability the state now faces. The bond amounts are certainly reasonable when compared to bond requirements in neighboring states. Both Wyoming and North Dakota require $25,000 multiple well bonds. The previous bond amounts ($5,000 and $10,000) were the lowest in the nation for those states with appreciable amounts of oil or gas production. Montana's new bond amounts ($5,000, $10,000, and $25,000) remain among the lowest in the nation.

In an effort to alleviate the operator's difficulty in obtaining a bond, the board and legislature have incorporated several programs designed to provide bonding alternatives. These alternatives include:

1. an option to provide a certificate of deposit rather than a surety bond (ARM 36.22.1308(5)(b));
2. single well bonds which may be transferred to another well after the initially drilled or acquired well is plugged and restored (36.22.1308(1)(a)(i), (ii)), or after a producing well is released from the bond (Section 82-11-162, MCA, and ARM 36.22.1308(6)(c)); and
3. the release of a producing well from a multiple well bond (Section 82-11-162, MCA, and ARM 36.22.1308(6)(c)).

Under these alternative programs, an operator can drill a well in Montana with a $5,000 bond. If the well produces, the operator can have it removed from the bond for $125, and can drill or acquire another well without increasing the amount of the bond. If the well does not produce, the operator can drill or acquire another well with that bond as soon as the first well is plugged and restored. An operator could conceivably drill and produce an entire discovery field, one well at a time, with a $5,000 certificate of deposit or surety bond. When finished drilling, the operator could operate the producing wells in the field without any bond.

Comment: MPA asks whether the board will require a new operator to obtain a bond for a producing well released from a previous operator's bond under Section 82-11-162, MCA.

Response: Section 82-11-162, MCA, allows an operator to have a producing well released from that operator's bond if the operator is subject to paying any amount of Resource Indemnity Trust Tax (RIT) for at least two consecutive quarters of production from the well. Once released from a bond under Section 82-11-162, MCA, a producing well will remain unbonded even if it is transferred to a new operator (NOTE: a well converted to an injection well will require a bond).

Comment: MPA comments that Section 82-11-162, MCA, does not

appear to give the board any discretion in whether to release a producing well from a bond if the operator simply notifies the board that the well should be released. MPA notes that subsection (6)(c) of ARM 36.22.1308, as amended, requires the operator to submit an "application" for release of a producing well from a bond, while Section 82-11-162, MCA, only requires that "notification" be made to the board.

Response: Section 82-11-162, MCA states:

> "Upon receipt of notification by the owner on a form prescribed by the board, payment by the owner of $125, and proof from the owner that a well completed after June 30, 1989, is producing oil or gas in commercial quantities and is subject to the tax under 15-38-104, the board shall release and absolve the owner of the well from the bond required under 82-11-123."

Rule 36.22.1308(6)(c) refers to an "application" while the statute refers to a "notification by the owner on a form prescribed by the board." Regardless of whether the operator submits a "notification" or an "application," the board must ensure that the statutory requirements are met before a producing well is released from a bond. The board amends the rule for continuity of word usage between the statute and rule.

Comments: MPA requests clarification as to whether the board can require an increased bond under paragraph (7) of the rule if a producing well was previously released from a bond under Section 82-11-162, MCA.

Response: The board may not require a bond for a producing well once that well is released under Section 82-11-162, MCA, unless the well is converted to a Class II injection well. The board may require that a non-producing or inactive well be bonded if the operator wishes to leave the well unplugged.

Comment: MPA asks why the board refers to the bond as a "penal bond" in the amended rule. MPA also asks whether the word change will cause some confusion.

Response: The rule was amended to make it clear that the board must recover the entire face value of a forfeited bond. The board does not believe the change will cause any confusion.

Comment: Sands Oil Company requests that subsection (3) of ARM 36.22.1308 be amended to include specific criteria under which the board might increase the amount of a bond or limit the number of wells covered by a bond. SWEPI wishes "to know what the contributing factors will be in determining any potential limit on wells covered by any multiple well bond." Nance asks "what criteria would be used . . . to affect the dollar increase and [limit on] the number of wells in a multiple well bond."

Response: The possible circumstances under which the board might consider increasing a bond or limiting the number of wells under a bond are more numerous than the number of well-operator combinations present in this state. To list specific criteria in this rule, or in this comment, for determining bond increases or well limits would be speculative and space-prohibitive. The board would only take such action after notice to the operator and an opportunity for a public hearing. The board would determine appropriate action on a case-by-case basis considering

the evidence and testimony presented at the hearing.

Comment: Nance comments that subsection (4) would require all operators to obtain a new bond for any new well or wells to be drilled or acquired after the effective date of these rule amendments.

Response: An operator with an existing $5,000 one well bond may continue to use that bond to drill a well or to acquire an existing well with a total depth of 3,500 feet or less. Otherwise, a new bond must be obtained for any new well or wells drilled or acquired after the effective date of this rule.

Comment: Nance asks if an operator may transfer all wells under its existing bond to a new bond that complies with the requirements of the amendments to this rule.

Response: Once an operator obtains a bond which complies with ARM 36.22.1308 as amended, all wells on that operator's previously existing bond may be transferred to the new bond (NOTE: only one well may be transferred to a new one well bond). The operator may chose to keep both the new and old bonds, but no new wells may be transferred or substituted to the old bond.

Comment: SWEPI requests that the board amend subsection (9) (now subsection (10)) to allow for a domestic well to be acquired or reacquired by an oil or gas operator as an alternative to plugging. SWEPI and Nance also request that the subsection be amended to refer to specific rules for plugging and abandonment rather than requiring a domestic well to be plugged within 90 days after cessation of domestic use.

Response: The rule should be amended to allow the landowner to return the well to an oil or gas operator if such action is a reasonable alternative to plugging. The board accepts SWEPI's proposed amendment. For consistency and fairness, the board also amends the rule to refer to specific rules for plugging, abandonment, and surface restoration.

Comment: The board comments that the water use permit criteria in subsection (8)(b) and (c) are incorrect. The board also comments that subsection (8) must be amended to allow for domestic well real property bonds as provided for in Section 82-11-163, MCA.

Response: The water use permit criteria in subsection (8)(b) and (c) are amended to correspond with those used by the DNRC Water Rights Bureau.

Subsection (8)(e) is amended to allow the use of real property bonds. Subsection (9) is added to outline criteria for an acceptable real property bond.

3. The effective date of these new and amended rules is July 1, 1993.

Donald D. MacIntyre
Chief Legal Counsel

Dee Rickman, Executive Secretary
Board of Oil and Gas Conservation

Certified to the Secretary of State, January 13, 1993.

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 (42.13.109) and II (42.13.110) relating to Liquor	NOTICE OF 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 (42.13.109) and II (42.13.110) relating to the Liquor Division

TO: All Interested Persons:

1. On November 25, 1992, the Department published notice of the proposed amendments and adoptions of the above-referenced liquor rules at page 2492 of the 1992 Montana Administrative Register, issue no. 22.

2. A Public Hearing was held on December 16, 1992, to consider the proposed amendments and adoptions. Public comments were received at the hearing.

3. Oral and written comments received from Roger Tippy, representing the Montana Beer and Wine Wholesalers Association. Those comments along with the comments of the department are as follows:

COMMENT: ARM 42.12.313(2) should be modified by adding: "other than at licensed retail premises or" after (2) In no case can a wine distributor, a beer wholesaler, a winery/wine importer or a brewer/beer importer conduct a wine tasting.

RESPONSE: The department has incorporated this modification into the language of the rule.

COMMENT: ARM 42.13.401(4) should be modified by addition "or failing to file copies of its agreements of distributorship pursuant to 16-3-402" after the proposed deleted language.

RESPONSE: The department has incorprotated this modification into the language of the rule.

COMMENT: NEW RULE I should be modified by addition "or otherwise sanctioned under 16-6-406, MCA" in subsection (1) after, "will be suspended or revoked" and in subsection (2) after, "will be suspended or revoked".

RESPONSE: The department has incorporated this modification into the language of the rule. The department will strike the references to beer importer and wine importer in this rule because these entities do not sell directly to retailers and therefore the rule is not applicable to beer and wine importers.

3. The Department has amended the rules as follows:

42.12.313 WINE OR BEER TASTINGS (1) 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 AT LICENSED RETAIL PREMISES OR other than a domestic winery as allowed under 16-3-411, MCA.

(3) remains the same.

42.13.401 IMPORTATION OF WINE (1) through (3) remain the same.

(4) Any winery or importer failing to renew OR FAILING TO FILE COPIES OF ITS AGREEMENTS OF DISTRIBUTORSHIP PURSUANT TO 16-3-402, MCA, will be subject to cancellation or suspension as provided in 16-4-107, MCA.

RULE I (42.13.109) 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 OR OTHERWISE SANCTIONED UNDER 16-4-406, MCA, 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 OR OTHERWISE SANCTIONED UNDER 16-4-406, MCA, 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) through (5) remain the same.

4. Therefore, the Department adopts the rules with the amendments to 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; and New Rule II (42.13.110) as originally noticed and ARM 42.12.313; 42.13.401 and New Rule I (42.13.109) with the additional amendments listed above.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State January 15, 1993.

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 AMENDMENT of ARM 42.18.105 and 42.18.123 relating to the Montana Reappraisal Plan

TO: All Interested Persons:

1. On November 25, 1992, the Department published notice of the proposed amendment of ARM 42.18.105 and 42.18.123 relating to the Montana reappraisal plan at page 2490 of the 1992 Montana Administrative Register, issue no. 22.

2. No public comments were received regarding these rules.

3. The Department has adopted the amendments as proposed.

CLEO ANDERSON
Rule Reviewer

MICK ROBINSON
Director of Revenue

Certified to Secretary of State January 15, 1993.

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

In the matter of the amendment of rule 46.10.823 pertaining to self-initiated education or training	)))	NOTICE OF THE AMENDMENT OF RULE 46.10.823 PERTAINING TO SELF-INITIATED EDUCATION OR TRAINING

TO: All Interested Persons

1. On November 12, 1992, the Department of Social and Rehabilitation Services published notice of the proposed amendment of rule 46.10.823 pertaining to self-initiated education or training at page 2460 of the 1993 Montana Administrative Register, issue number 21.

2. The Department has amended rule 46.10.823 as proposed.

3. No written comments or testimony were received.

Rule Reviewer

Director, Social and Rehabilitation Services

Certified to the Secretary of State January 15, 1993.

VOLUME NO. 44 OPINION NO. 46

ADMINISTRATIVE LAW AND PROCEDURE - Statutory authority of Petroleum Tank Release Compensation Board to promulgate rule for review and approval of corrective action plan for release from underground storage tank;
HEALTH AND ENVIRONMENTAL SCIENCES, DEPARTMENT OF - Statutory authority of Petroleum Tank Release Compensation Board to promulgate rule for review and approval of corrective action plan for release from underground storage tank;
WATER AND WATERWAYS - Review of reimbursable expenses in cleanup of release from underground storage tank;
ADMINISTRATIVE RULES OF MONTANA - Section 16.47.342;
MONTANA CODE ANNOTATED - Title 75, chapter 10, parts 4, 7; sections 75-11-301 to 75-11-321, 75-11-302, 75-11-307, 75-11-309, 75-11-313, 75-11-314, 75-11-318;
MONTANA LAWS OF 1989 - Chapter 528;
OPINIONS OF THE ATTORNEY GENERAL - 44 Op. Att'y Gen. No. 4 (1991), 44 Op. Att'y Gen. No. 3 (1991), 42 Op. Att'y Gen. No. 1 (1987), 41 Op. Att'y Gen. No. 23 (1985), 40 Op. Att'y Gen. No. 50 (1984).

HELD: 1. The Petroleum Tank Release Compensation Board does not have statutory authority to modify the technical methodologies or requirements of corrective action plans approved by the Department of Health and Environmental Sciences. The Board's rule, which purports to grant the Board corrective action plan review and approval authority, is invalid as it conflicts with the provisions of section 75-11-309(1), MCA.

2. The Board does not have discretion to deny a claim for reimbursement from the petroleum tank release cleanup fund for expenses "actually, necessarily, and reasonably incurred" in preparation or implementation of a Department-approved corrective action plan, assuming the reimbursement criteria of section 75-11-309(2), MCA, are satisfied.

December 31, 1992

Dennis D. Iverson, Director
Department of Health
and Environmental Sciences
Cogswell Building
Helena MT 59620-0901

Dear Mr. Iverson:

You have requested my opinion upon the following questions:

1. Does the Petroleum Tank Release Compensation Board have authority to modify the technical methodologies or requirements of corrective action plans approved by the Department of Health and Environmental Sciences?

2. May the Board refuse to pay a claimant's actual, necessary and reasonable expenses incurred in performing the Department's approved corrective action plan?

These questions involve the interpretation of House Bill 603, enacted in 1989 by the Fifty-first Montana Legislature and codified at sections 75-11-301 to 321, MCA, and administrative regulations promulgated under the authority of the bill.

A corrective action plan is a method of physically remediating a release of petroleum products from a leaking underground storage tank. In the vernacular of tank owners, regulators and private contractors, a "corrective action plan" is known as a "work plan" or a "cleanup plan." The phrase is defined by Montana statute as the "investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release." § 75-11-302(5), MCA. A "release" is defined as "any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils." § 75-11-302(18), MCA.

In January 1989 federal regulations became effective which imposed financial responsibility requirements on owners or operators of underground storage tanks (hereinafter owners). Insurance coverage of $1 million per occurrence was required and various mechanisms by which owners could comply with the financial responsibility requirements were provided. One such mechanism was reliance upon a state fund.

House Bill 603 established a regulatory framework through which the owners in Montana could comply with the new financial responsibility requirements. A state fund (the petroleum tank release cleanup fund, hereinafter "fund") was created from use fees collected from distributors of petroleum products. See §§ 75-11-313, 75-11-314, MCA. The fund was designed to pay for the costs of corrective action and compensation paid to third parties for damages caused by releases from storage tanks. § 75-11-307(1), MCA. House Bill 603 established a board (the Petroleum Tank Release Compensation Board, hereinafter Board) to administer the fund and pay owners for claims submitted for the eligible costs of corrective action. §§ 75-11-309(2), 75-11-318, MCA. The law allows the Board to reimburse owners for 50 percent of the first $35,000 of eligible costs and 100 percent of subsequent eligible costs, up to a maximum total reimbursement of $982,500. § 75-11-307(4)(a), MCA. The

Department of Health and Environmental Sciences (hereinafter Department) was given the responsibility for formulating a plan for corrective action to be undertaken by a tank owner in response to a release and overseeing the implementation of the corrective action plan. § 75-11-309(1), MCA.

Your opinion request concerns the proper method by which a tank owner is compensated under House Bill 603 for costs of corrective action. The bill sets out in detail the procedures for reimbursement of eligible costs. Since these procedures are germane to your inquiry I will briefly review them. Section 75-11-309, MCA, establishes the following steps for reimbursement of corrective action costs:

1. Upon discovery of a release from a tank, the owner notifies the Department of the release and conducts an "initial response" to the release. § 75-11-309(1)(a), MCA. An initial response is dictated by federal and state law and would include, for example, the removal of remaining petroleum product from the leaking tank.

2. After notification and initial response, the owner conducts an investigation of the release and submits a proposed corrective action plan, meeting state, tribal and federal law, to the Department. § 75-11-309(1)(b), MCA.

3. The Department reviews the proposed corrective action plan and circulates the plan to other affected governmental agencies, including local government offices and any affected tribal government. § 75-11-309(1)(c)(i), MCA.

4. The Department approves the corrective action plan following its review and consideration of comments received by outside sources. Prior to this approval, the Department may ask the owner to modify the proposed plan originally submitted or the Department may prepare its own plan for compliance by the owner. § 75-11-309(1)(c)(ii), MCA. In any event, the plan approved by the Department after this process becomes "the approved corrective action plan." Id.

5. The Department notifies the owner and the Board of its approval of the corrective action plan. § 75-11-309(1)(d), MCA.

6. The owner implements the approved plan. The Department oversees implementation of the plan and exercises its authority pursuant to applicable state and federal law, including the Montana Hazardous Waste and Underground Storage Tank Act and the Comprehensive Environmental Cleanup and Responsibility Act (CECRA), Title 75, chapter 10, parts 4 and 7, respectively. § 75-11-309(1)(e), MCA.

7. The owner documents and submits to the Board all expenses incurred in preparing and implementing the corrective

action plan in a manner required by the Board. The Board forwards all such claims to the Department which notifies the Board of any costs not meeting the requirements set forth above. § 75-11-309(1)(f), MCA.

8. The Board reviews the claims received and determines whether the claims meet the following four criteria: (i) the claimed expenses are "eligible costs," as defined by sections 75-11-302(8) and 75-11-307, MCA; (ii) the expenses were "actually, necessarily, and reasonably incurred" for the preparation or implementation of a corrective action plan approved by the Department; (iii) the owner meets eligibility criteria established by section 75-11-308, MCA; and (iv) the owner has complied with all the requirements of section 75-11-309, MCA, set forth above, and rules adopted pursuant to this section. Providing the Board affirmatively determines these four criteria are met, the Board may then approve the claim and reimburse the owner from the fund. § 75-11-309(2), MCA.

As this process indicates, it is essential that, in order to be a reimbursable corrective action expense, the expense be incurred in the implementation of a corrective action plan approved by the Department.

The clarity of the described reimbursement process was clouded by an amendment adopted by the Senate Committee on Taxation to House Bill 603 prior to its enactment. In relevant part, the statutory authority of the Board to adopt rules, presently codified at section 75-11-318(5), MCA, was amended by the addition of rulemaking authority for "procedures for the review and approval of corrective action plans." § 75-11-318(5)(c), MCA. In reliance upon this authority, the Board adopted a rule in 1990 that reads in full as follows:

16.47.342 REVIEW OF CORRECTIVE ACTION PLAN; WHEN BOARD APPROVAL REQUIRED (1) The Act authorizes the department and the board to each review and approve a corrective action plan. The department's authority appears at section 75-11-309(1)(c)(ii), MCA, with rulemaking power delegated to establish requirements for approval at section 75-11-319(1), MCA. The board's power to establish procedures for approval is delegated at section 75-11-318(5)(c), MCA, and is also reflected in the statement of intent as amended by the senate taxation committee on March 29, 1989.

(2) The board may review upon its own motion, or the applicant's request, department decisions on cleanup or corrective action plans. If the responsible party does not request the board to review a corrective action plan, and if all comments submitted by board staff to the department have been accepted by the department, then the department-approved plan will be

presumed as approved by the board without further formal action by the board. However, this presumptive approval may be reconsidered by a motion to reconsider adopted by the board.

(3) Review or reconsideration of a cleanup or corrective action plan approved by the department, when set in motion by any of the events described in the preceding paragraph, will be conducted by the board at a scheduled meeting, after notice to all interested parties, including the local governments concerned. The board may modify a corrective action plan if the testimony it hears establishes that another cleanup strategy would provide equal or greater improvement of the affected environment at less cost.

The validity of this rule, which arguably grants the Board authority to approve and modify corrective action plans previously approved by the Department pursuant to section 75-11-309(1)(c)(ii), MCA, is the essence of your opinion request.

In recent years, the Attorney General frequently has been requested to determine the validity of administrative rules promulgated under a legislative delegation of authority. See 44 Op. Att'y Gen. No. 4 (1991), 44 Op. Att'y Gen. No. 3 (1991), 42 Op. Att'y Gen. No. 1 at 1 (1987), 41 Op. Att'y Gen. No. 23 at 79 (1985), 40 Op. Att'y Gen. No. 50 at 203 (1984). Within these opinions this Office has consistently relied upon section 2-4-305, MCA, and a handful of applicable Montana Supreme Court decisions which state settled principles of administrative law in this area. Bick v. State Dept. of Justice, 224 Mont. 455, 730 P.2d 418 (1986); Board of Barbers v. Big Sky College, 192 Mont. 159, 626 P.2d 1269 (1981); McPhail v. Montana Board of Psychologists, 196 Mont. 514, 730 P.2d 906 (1982); Bell v. Dept. of Professional and Occupational Licensing, 182 Mont. 21, 594 P.2d 331 (1979).

The precedent of these cases and opinions controls my analysis. No rule adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute. § 2-4-305(6), MCA. Administrative rules have been found invalid if they engraft additional and contradictory requirements on the statute or if they engraft additional noncontradictory requirements on the statute which were not envisioned by the Legislature. See, e.g., Bick, supra; Board of Barbers, supra; 44 Op. Att'y Gen. No. 3.

Section 16.47.342, ARM, is invalid for several reasons. First, the rule engrafts an additional and contradictory requirement on section 75-11-309, MCA. In the absence of the rule, an owner must only secure Department approval of a proposed corrective action plan before implementing the plan and obtaining

reimbursement for actual, necessary and reasonable expenses incurred in performing that plan. Pursuant to the rule, owners are required to additionally obtain Board approval of the corrective action plan. The additional requirement conflicts with the statutory provision that an owner, if found otherwise eligible, may be reimbursed for costs which were incurred "for the preparation or implementation of a corrective action plan approved by the department." § 75-11-309(2)(a)(ii), MCA. Second, the notion that the Board may amend or review a Department-approved corrective action plan conflicts with the express thrust of section 75-11-309(1)(c)(ii), MCA: Once a plan is approved by the Department, it becomes "the" approved corrective action plan for purposes of reimbursement. Finally, Board approval of corrective action plans is not necessary to effectuate the purposes of House Bill 603. Financial responsibility for owners of underground storage tanks is provided under the legislation without the oversight of Department-selected cleanup methodologies by the Board.

In the Statement of Intent for House Bill 603, the Board is directed to enact rules that "provide procedures for the review and approval of corrective action plans" and are necessary for the administration of the bill, provided "that the rules do not alter or conflict with the eligibility requirements and procedures provided in [sections 75-11-301 to 314, MCA, and sections 75-11-318 to 321, MCA]." 1989 Mont. Laws, ch. 528. Thus, while the Statement of Intent reinforces the amendment language of section 75-11-318(5)(c), MCA, it does so consistent with the administrative law principles discussed herein.

It has been suggested that the amendment language of section 75-11-318(5)(c), MCA, was intended to expand the Board's rulemaking authority such that proposed corrective action plans would undergo "dual review." The legislative history of the bill supports the proposition that those testifying in support of the amendment intended the language to expand the Board's review authority. Notwithstanding such expectations, the Legislature enacted amendment language that simply provided rulemaking authority for "procedures for the review and approval of corrective action plans." § 75-11-318(5)(c), MCA (emphasis supplied). Authority for the adoption of rules governing procedures is clearly distinct from authority which would grant the Board a substantive power of dual review and approval. See Amerada Hess Pipeline v. Alaska Public Utilities Comm'n, 711 P.2d 1170, 1176 (Alaska 1986) (legislative grant of discretion to agency to adopt "practice and procedure" regulations must be narrowly construed). A substantive power of dual review, upon which section 16.47.342, ARM, is premised, is not found within the rulemaking authority granted by section 75-11-318(5)(c), MCA. As discussed above, this rule, which purports to establish dual review in conflict with the statute, is invalid.

Summarizing my response to your first question, the Board does not have the authority to modify the technical methodologies or

requirements of corrective action plans approved by the Department. House Bill 603 granted corrective action plan review and approval authority solely to the Department. While the Board was granted rulemaking authority for procedures governing such review and approval, this authority may only be exercised consistent with the statutory framework by which the Department determines and approves cleanup methods and technologies. For example, the Board could adopt rules formalizing the review procedures currently followed whereby the Board's staff submits written comments to the Department on proposed corrective action plans prior to Department approval. Employing such procedures, the Board's staff may convey information on alternative technologies to accomplish the Department's corrective action plan. Section 16.47.342, ARM, is invalid because it attempts to grant the Board a substantive review and approval power that conflicts with the statutory scheme.

You have also requested my opinion on whether the Board may refuse to reimburse an owner's actual, necessary, and reasonable expenses incurred in performing the Department-approved corrective action plan. The governing statute is section 75-11-309(2), MCA. While this subsection has been paraphrased in my discussion of your first question, it states in full as follows:

> (2) The board shall review each claim received under subsections (1)(f) and (1)(g), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:
>
> (a) the expenses for which reimbursement is claimed:
>
> (i) are eligible costs; and
>
> (ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and
>
> (b) the owner or operator:
>
> (i) is eligible for reimbursement under 75-11-308; and
>
> (ii) has complied with this section and any rules adopted pursuant to this section.

You have framed your question in a manner which facilitates my response. Assuming, as I have interpreted your question, that

a claim has been affirmatively determined by the Board to be "actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department" and the Board affirmatively determines that the other three reimbursement criteria are satisfied, the claim reimbursement must be approved for payment from the fund. The Board has no discretion to deny such a claim. Section 75-11-307(1), MCA, provides in full:

> Reimbursement for expenses caused by a release. (1) Subject to the availability of money from the fund under subsection (5), an owner or operator who is eligible under 75-11-308 and complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:
>
> (a) corrective action costs; and
>
> (b) compensation paid to third parties for bodily injury or property damage. [Emphasis supplied.]

The concern of the Department and the Board is whether the Board may use the reimbursement review authority within section 75-11-309(2)(a)(ii), MCA (the Board shall affirmatively determine that the expenses were "actually, necessarily, and reasonably incurred"), to determine, as a condition of reimbursement, that a particular cleanup expense was necessary to achieve remediation of the release. In other words, does the Board have the discretion to deny a claim because the cleanup could have been accomplished with a different, less expensive, choice of technology?

The discretion of the Board is statutorily limited. The Board's relevant reimbursement review authority is confined to whether an expense was "actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department." § 75-11-309(2)(a)(ii), MCA (emphasis supplied). Significantly, the Board is not granted authority to review whether an expense was necessary or reasonable for cleanup. The parameters of a cleanup -- that is, the selection of a choice of technology and method for achieving the remediation of a release -- are established by the Department's review and approval of the corrective action plan. Once a particular cleanup plan is selected, the Board may not preempt or frustrate the Department's technology determinations by denying an owner's claims for reimbursement of expenses incurred in furtherance of the Department plan.

Within the statutory limits discussed above, the Board does have discretion in reviewing the reasonableness of claims submitted for reimbursement. For example, an owner's cleanup contractor

might perform work that arguably furthers the Department-approved corrective action plan, but was not expressly ordered by the plan. In these situations, assuming the contractor has not sought and received an amendment to the approved corrective action plan, the Board will exercise discretion in determining whether the work was "actually, necessarily, and reasonably incurred" in performing the approved corrective action plan. Other situations may arise where work is specifically ordered by a Department-approved corrective action plan, but is performed or billed in an exorbitant manner. Here again, the Board will exercise discretion in determining whether the work was reasonably performed in furtherance of the plan.

In summary, the Board has no discretion to deny a claim for reimbursement upon consideration of criteria outside the scope of subsection 309(2), MCA -- for example, the fact that a cleanup could have been accomplished through a less expensive method or technology. As previously discussed, the essential requirement that must be met for a claim reimbursement under the statute is that the work was performed for the preparation or implementation of the Department-approved corrective action plan. Assuming the claim otherwise satisfies section 75-11-309(2), MCA, work "actually, necessarily, and reasonably incurred" in performing the Department cleanup plan must be approved for reimbursement by the Board, regardless of the Board's opinion of the effectiveness or necessity of the particular cleanup response.

THEREFORE, IT IS MY OPINION:

1. The Petroleum Tank Release Compensation Board does not have statutory authority to modify the technical methodologies or requirements of corrective action plans approved by the Department of Health and Environmental Sciences. The Board's rule, which purports to grant the Board corrective action plan review and approval authority, is invalid as it conflicts with the provisions of section 75-11-309(1), MCA.

2. The Board does not have discretion to deny a claim for reimbursement from the petroleum tank release cleanup fund for expenses "actually, necessarily, and reasonably incurred" in preparation or implementation of a Department-approved corrective action plan, assuming the reimbursement criteria of section 75-11-309(2), MCA, are satisfied.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

VOLUME NO. 44 OPINION NO. 47

CITIES AND TOWNS - Authority of municipal government to prohibit sand and gravel operations in areas zoned as residential;
LAND USE - Authority of municipal government to prohibit sand and gravel operations in areas zoned as residential;
LOCAL GOVERNMENT - Authority of municipal government to prohibit sand and gravel operations in areas zoned as residential;
MINES AND MINING - Regulation of sand and gravel operations through zoning;
MUNICIPAL GOVERNMENT - Authority of municipal government to prohibit sand and gravel operations in areas zoned as residential;
NATURAL RESOURCES - Regulation of sand and gravel operations through zoning;
PROPERTY, REAL - Regulation of sand and gravel operations in areas zoned as residential;
MONTANA CODE ANNOTATED - Sections 76-1-113, 76-1-113(1), (2), 76-2-209, 82-4-431, 82-4-432;
MONTANA LAWS OF 1991 - Chapter 408, section 1.

HELD: Consistent with section 76-1-113, MCA, a municipal zoning authority may prohibit future, as defined in section 5, chapter 408, 1991 Montana Laws, sand and gravel operations and operations which mix concrete and batch asphalt in areas zoned as residential, as long as the zoning authority is exercised in accordance with constitutional principles.

December 31, 1992

Jim Nugent
Missoula City Attorney
435 Ryman
Missoula MT 59802-4297

Dear Mr. Nugent:

You have requested my opinion concerning the following issue:

> Does section 76-1-113, MCA, allow a municipal zoning authority to prohibit future sand and gravel operations and concrete and asphalt batching operations throughout the local government's jurisdiction or just in areas zoned as residential?

Section 76-1-113(1), MCA, generally exempts property with natural resource value from zoning regulations which would affect the use, development, or recovery of those resources:

> (1) Except as provided in subsection (2), nothing in this chapter may be considered to authorize an

> ordinance, resolution, or rule that would prevent the complete use, development, or recovery of any mineral, forest, or agricultural resources by the owner thereof.

The exception to this general rule is found in section 76-1-113(2), MCA, which specifically addresses sand and gravel operations and operations which mix concrete or batch asphalt:

> (2) The complete use, development, or recovery of a mineral by an operation that mines sand and gravel and an operation that mixes concrete or batches asphalt on a site that is located within a geographic area zoned as residential are subject to the zoning regulations adopted under Title 76, chapter 2.

Subsection (2) was recently enacted following passage of House Bill 952, 1991 Mont. Laws, ch. 408, § 1. Prior to this amendment, section 76-1-113, MCA, contained only the general exemption from zoning regulations set forth in subsection (1). See § 76-1-113, MCA (1989).

House Bill 952 was largely a response to the Montana Supreme Court's opinion in Missoula County v. American Asphalt, Inc., 216 Mont. 423, 701 P.2d 990 (1985). See Minutes, House Committee on Natural Resources, February 22, 1991, at 6; Minutes, Senate Committee on Local Government, March 19, 1991, at 17-18. In American Asphalt, the Montana Supreme Court interpreted section 76-1-113, MCA (1985), to exempt sand and gravel operations from county zoning regulations. Thus, Missoula County zoning authorities were unable to restrict the excavation of sand and gravel from portions of the Clark Fork River floodplain, despite the fact that the area was zoned for single-family residential uses. Id., 216 Mont. at 426-28, 701 P.2d at 991-92.

The stated purpose of the new legislation was to "provide for an orderly development of sand and gravel pits in areas already zoned." See Minutes, Senate Committee on Local Government, March 19, 1991, Exhibit 17. The new law was to have no effect upon an area for which a contract was issued prior to April 9, 1991, or for which an application for contract or contract amendment was filed with the Department of State Lands prior to February 23, 1991. In addition, any existing sand or gravel operation could notify the Department of State Lands by January 1, 1992, of its intention to mine adjacent land which was not then under contract. Id. Several statutes were affected by these changes and were amended accordingly. See §§ 76-2-209, 82-4-431, 82-4-432, MCA. Your question is whether, in light of these statutory changes, a municipal zoning authority may, in the future, prohibit sand and gravel operations and concrete and asphalt batching operations throughout the local government's jurisdiction or just in areas zoned as residential.

If the intent of the Legislature is to be given any effect, section 76-1-113, MCA, and its related statutes must be interpreted to mean that a municipal zoning authority, in addition to other zoning authorities, may regulate the kind of mining operations described in subsection (2) in areas zoned as residential. These regulations may include prohibition of such operations. It is a well-known rule of statutory construction that the intent of the Legislature controls. State ex rel. Roberts v. Public Service Commission, 242 Mont. 242, 790 P.2d 489 (1990). A statute must be construed, if possible, so as to give effect to the intent of the Legislature. Theil v. Taurus Drilling Ltd., 218 Mont. 201, 710 P.2d 33 (1985).

Subsection (2) of section 76-1-113, MCA, was a direct legislative response to the rule announced in American Asphalt, which held that regardless of the nature of an area or the uses for which it is zoned, sand and gravel operations are not subject to restrictions imposed by zoning authorities. The Legislature intended through the enactment of section 76-1-113, MCA, to reverse that opinion by subjecting future, as defined in the legislation, sand and gravel operations, as well as concrete and asphalt batching operations, to zoning regulations contained in Title 76, chapter 2. The result of the Legislature's action is that the general exemption from zoning for property with natural resource value does not apply to such operations on property zoned as residential. Instead, the general grant of zoning authority to a municipal zoning authority in section 76-2-301, MCA, is controlling. That statute, in conjunction with section 76-2-304, MCA, authorizes such an authority to regulate and restrict the use of land in order to promote the health, safety, and general welfare of the community.

Assuming that the zoning restrictions are reasonably related to the health, safety, and general welfare of the community, and are applied consistent with constitutional principles, see Reinman v. Little Rock, 237 U.S. 171 (1915); Hadacheck v. Los Angeles, 239 U.S. 394 (1915); Anderson, American Law of Zoning 3d, vol. III, at 149-52, municipal governments may regulate and even prohibit future sand and gravel operations and operations which mix concrete or batch asphalt in residential areas. To the extent that section 76-1-113, MCA, restricts a municipality's zoning authority, the amendments to this section lift such restrictions in areas zoned as residential with respect to the mining of sand and gravel and the operation of concrete or asphalt batch plants.

THEREFORE, IT IS MY OPINION:

Consistent with section 76-1-113, MCA, a municipal zoning authority may prohibit future, as defined in section 5, chapter 408, 1991 Montana Laws, sand and gravel operations and operations which mix concrete and batch asphalt in areas zoned as residential, as long as the zoning authority is exercised in accordance with constitutional principles.

Sincerely,

Marc Racicot

MARC RACICOT
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules, amendment or repeal of existing rules filed with the Secretary of State, except rules proposed by the Department of Revenue. Proposals of the Department of Revenue are reviewed by the Revenue Oversight Committee.

The Administrative Code Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition, the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt or amend a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with the existing or proposed rules. The address is Room 138, Montana State Capitol, Helena, Montana 59620.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 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.

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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments made in December, 1992, are published. Vacancies scheduled to appear from February 1, 1993, through April 30, 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 January 7, 1993.

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: DECEMBER, 1992

Appointee	Appointed by	Succeeds	Appointment/End Date
Alfalfa Seed Committee (Agriculture)			
Mr. Durl Heiken Billings Qualifications (if required): public member	Governor	reappointed	12/21/1992 12/21/1995
Mr. Keith Reynolds Winnett Qualifications (if required): public member	Governor	reappointed	12/21/1992 12/21/1995
Board of Chiropractors (Commerce)			
Dr. Christopher Buzan Missoula Qualifications (if required): chiropractor	Governor	reappointed	12/10/1992 1/01/1996
Flathead Basin Commission (Governor)			
Mr. William G. Gregg Polson Qualifications (if required): public member	Governor	Bennington	12/22/1992 10/01/1996

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1993 through April 30, 1993

Board/current position holder	Appointed by	Term end
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): represents MT Chamber of Commerce		
Mr. Douglas Freeman, Hardin	Governor	2/1/1993
Qualifications (if required): from MT League of Cities and Towns/ Atty on Board		
Board of Architects (Commerce)		
Mr. Keith Eugene Rupert, Billings	Governor	3/27/1993
Qualifications (if required):		
Board of County Printing (Commerce)		
Ms. Mona L. Nutting, Red Lodge	Governor	4/1/1993
Qualifications (if required): county commissioner		
Mr. Bruce Smith, Bozeman	Governor	4/1/1993
Qualifications (if required): member of printing industry		
Mr. Ronald Dale Fossen, Scobey	Governor	4/1/1993
Qualifications (if required): county commissioner		
Ms. Jane Lopp, Kalispell	Governor	4/1/1993
Qualifications (if required): public member		
Mr. Verle L. Rademacher, White Sulpher Springs	Governor	4/1/1993
Qualifications (if required): printing industry representative		
Board of Dentistry (Commerce)		
Mr. John T. Noonan, Great Falls	Governor	3/29/1993
Qualifications (if required): licensed dentist		

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1993 through April 30, 1993

Board/current position holder	Appointed by	Term end
Board of Hail Insurance (Agriculture)		
Mr. Grant Zerbe, Frazer	Governor	4/18/1993
Qualifications (if required): member		
Board of Livestock (Livestock)		
Mr. Leonard Grove, Judith Gap	Governor	3/1/1993
Qualifications (if required): sheep producer		
Mr. Donald L. Herzog, Rapelje	Governor	3/1/1993
Qualifications (if required): representative of hog producers		
Mr. Jerry E. Leep, Amsterdam	Governor	3/1/1993
Qualifications (if required): dairy producer		
Board of Oil and Gas Conservation (Natural Resources and Conservation)		
Mr. David Schaenen, Billings	Governor	2/2/1993
Qualifications (if required): member from oil and gas industry		
Board of Optometrists (Commerce)		
Dr. Kenneth R. Zuroff, Glendive	Governor	4/3/1993
Qualifications (if required):		
Board of Professional Engineers and Land Surveyors (Commerce)		
Mr. Dennis F. Carver, Kalispell	Governor	4/23/1993
Qualifications (if required): professional engineer		
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		

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1993 through April 30, 1993

Board/current position holder	Appointed by	Term end
Executive Bd of MT College of Mineral Science & Technolog (Education)		
Mr. Haley Beaudry, Butte	Governor	4/19/1993
Qualifications (if required): resides in county where unit is located		
Executive Board of Eastern Montana College (Education)		
Mr. Dale Fasching, Billings	Governor	4/19/1993
Qualifications (if required): resides in county where unit is located		
Executive Board of Montana State University (Education)		
Ms. Cindy Shewey, Bozeman	Governor	4/19/1993
Qualifications (if required): resides in county where unit is located		
Executive Board of Northern Montana College (Education)		
Mr. Robert D. Morrison, Havre	Governor	4/16/1993
Qualifications (if required): member		
Executive Board of University of Montana (Education)		
Mr. Bob Greil, Missoula	Governor	4/19/1993
Qualifications (if required): resides in county where unit is located		
Executive Board of Western Montana College (Education)		
Ms. Agnes Helle, Dillon	Governor	4/19/1993
Qualifications (if required): resides in county where unit is located		
Independent Living Advisory Council (Social and Rehabilitation Services)		
Ms. Ellen Alweis, Billings	Director	4/1/1993
Qualifications (if required): none specified		
Mr. Paul Braut, Miles City	Director	4/1/1993
Qualifications (if required): none specified		
Ms. Kathy Collins, Helena	Director	4/1/1993
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1993 through April 30, 1993

Board/current position holder	Appointed by	Term end
Independent Living Advisory Council (Social and Rehabilitation Services) cont.		
Ms. June Hermanson, Polson Qualifications (if required): none specified	Director	4/1/1993
Ms. Jan LaValley-Miller, Great Falls Qualifications (if required): none specified	Director	4/1/1993
Ms. Annette Lyman, Helena Qualifications (if required): none specified	Director	4/1/1993
Mr. Terry Salinas, Billings Qualifications (if required): none specified	Director	4/1/1993
Ms. Zana Smith, Helena Qualifications (if required): none specified	Director	4/1/1993
Mr. Merle I. Weldele, Four Buttes Qualifications (if required): none specified	Director	4/1/1993
Ms. Lynn Winslow, Helena Qualifications (if required): none specified	Director	4/1/1993
Montana Arts Council (Education)		
Mr. Henry Badt, Hamilton Qualifications (if required): public member	Governor	2/1/1993
Ms. Shirley L. Hanson, Havre Qualifications (if required): none specified	Governor	2/1/1993
Ms. Sonia M. Hoffmann, Helena Qualifications (if required): none specified	Governor	2/1/1993

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1993 through April 30, 1993

Board/current position holder	Appointed by	Term end
Montana Arts Council (Education) cont.		
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		
Public Employees Retirement Board (Administration)		
Ms. Mona Jamison, Helena	Governor	4/1/1993
Qualifications (if required):		
Mr. Troy W. McGee, Helena	Governor	4/1/1993
Qualifications (if required):		
State Compensation Mutual Insurance Fund (Administration)		
Mr. James T. Harrison, Helena	Governor	4/28/1993
Qualifications (if required):		
Mr. Robert S. Short, Great Falls	Governor	4/28/1993
Qualifications (if required): rep. state policy holder in private for-profit enterprise		
Mr. Clyde B. Smith, Kalispell	Governor	4/28/1993
Qualifications (if required): rep. state policy holder in private for-profit enterprise		
Tax Appeals Board (Administration)		
Mr. Patrick E. McKelvey, Helena	Governor	3/1/1993
Qualifications (if required):		

VACANCIES ON BOARDS AND COUNCILS -- February 1, 1993 through April 30, 1993

Board/current position holder	Appointed by	Term end
Visual Services Advisory Council (Social and Rehabilitation Services)		
Mr. Mike Bullock, Helena Qualifications (if required): none specified	Director	4/1/1993
Mr. George Gloege, Billings Qualifications (if required): none specified	Director	4/1/1993
Mr. Richard James, Bozeman Qualifications (if required): none specified	Director	4/1/1993
Ms. Sandra Jarvie, Helena Qualifications (if required): none specified	Director	4/1/1993
Ms. June Miller, Helena Qualifications (if required): none specified	Director	4/1/1993
Ms. Anita Nelson, Missoula Qualifications (if required): none specified	Director	4/1/1993
Ms. Lucy Nottingham, Billings Qualifications (if required): none specified	Director	4/1/1993
Ms. Virginia Sutich, Sand Coulee Qualifications (if required): none specified	Director	4/1/1993