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MONTANA ADMINISTRATIVE REGISTER

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ISSUE NO. 20
OCTOBER 27, 1994
PAGES 2771-2877



MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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BEFORE THE BOARD OF ARCHITECTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to examination, seals and professional conduct)	NOTICE OF PROPOSED AMENDMENT OF 8.6.407 EXAMINATION, 8.6.409 INDIVIDUAL SEAL AND 8.6.412 STANDARDS FOR PROFESSIONAL CONDUCT
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NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 26, 1994, the Board of Architects proposes to amend the above-stated rules.
2. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

"8.6.407 EXAMINATION (1) through (4) will remain the same.

(5) An applicant failing to pass the examination is entitled to re-examination on divisions of the examination that he failed to pass. Re-examination may be at the next scheduled examination. A re-examination fee will be charged. If the entire examination is not successfully completed within 4 consecutive years, the applicant must reapply and retake the entire examination, unless the board, in its sole discretion, provides an exception to the applicant. Such exceptions shall be provided only upon proof of medical hardship or other extraordinary circumstances."

Auth: Sec. 37-1-131, 37-65-204, 37-65-303, MCA; IMP, Sec. 37-65-303, MCA

REASON: This rule provides the Board of Architects with a hardship exception from the requirement that license examination candidates complete all portions of the examination within four years of the first examination.

"8.6.409 INDIVIDUAL SEAL (1) Every licensed architect shall have a seal, the impression of which must contain the name of the architect, ~~his or her~~ the architect's place of business, ~~his or her~~ the architect's Montana license number, and the words "LICENSED ARCHITECT, STATE OF MONTANA," with which ~~he or she~~ the architect shall stamp and sign all drawings and specifications issued from ~~his or her~~ the architect's office for use in this state.

(2) When there is a partnership or other business entity of architects, the individual names and license numbers of members may appear on one seal. All drawings and specifications prepared by an architect shall be stamped and signed with ~~his~~ the architect's seal or the seal of the firm."

Auth: Sec. 37-1-131, 37-65-204, MCA; IMP, Sec. 37-65-308, MCA

"8.6.412 STANDARDS OF PROFESSIONAL CONDUCT (1) through (c) will remain the same.

(d) accepting compensation for ~~his or her~~ architectural services from more than one party on a project, unless the circumstances are fully disclosed to, and agreed to (such disclosure and agreement to be in writing) by, all interested parties;

(e) will remain the same.

(f) misrepresentation to a prospective or existing client or employer ~~his or her~~ the licensee's qualifications and the scope of ~~his or her~~ architectural responsibility in connection with work for which ~~he or she~~ the architect is claiming credit or being compensated;

(g) and (h) will remain the same.

(i) making public statements on architectural questions, without disclosing that ~~he or she~~ the architect is being compensated for making such statements;

(j) will remain the same.

(k) representing the work of others as ~~his or her~~ the architect's own;

(l) through (p) (v) will remain the same.

(q) having ~~his or her~~ had a license to practice the profession suspended, revoked or restricted by competent authority of any state, federal or foreign jurisdiction for any of the above reasons;

(r) will remain the same."

Auth: Sec. 37-1-131, ~~37-65-204~~, MCA; IMP, Sec. ~~37-65-321~~, MCA

REASON: The amendments to ARM 8.6.409 and 8.6.412 are being proposed to implement gender neutrality.

3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Architects, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., November 24, 1994.

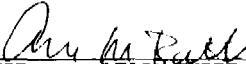
4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Architects, Lower Level, Arcade Building, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m., November 24, 1994.

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 120 based on the 1197 licensees in Montana each year.

BOARD OF ARCHITECTS
KEITH RUPERT, CHAIRMAN

BY:



ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 17, 1994.

BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PROPOSED AMENDMENT
amendment of rules pertaining) OF RULES PERTAINING TO THE
to board of stewards, defini-) HORSE RACING INDUSTRY
tions, annual license fees,)
general provisions, permissible)
medication, programs and exacta)
betting)

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 27, 1994, the Board of Horse Racing proposes to amend ARM 8.22.302, 8.22.501, 8.22.503, 8.22.601, 8.22.1402, 8.22.1605 and 8.22.1619, pertaining to the board of stewards, definitions, annual license fees, general provisions, permissible medication, programs and exacta betting.

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

"8.22.302 BOARD OF STEWARDS (1) and (2) will remain the same.

(3) Any persons affected by a ruling of the stewards may appeal to the board in the manner prescribed by the following rules of procedure-1

(a) No appeal shall be heard by the board and there shall be no appeal taken unless a written petition is filed with the board not later than 15 days after issuance of the order, regulation, rule or ruling.

(b) No appeal of a steward's decision disqualifying a horse in a race shall be heard by the board and there shall be no appeal taken until the stewards are notified before release of purses, and unless a written petition is filed with the board not later than three days after issuance of the ruling.

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

Auth: Sec. 23-4-202, MCA; IMP, Sec. 23-4-202, MCA

REASON: The proposed amendment will require the filing of a notice of appeal from a stewards' ruling disqualifying a horse within three days of the ruling, so the status of the purses in the race may be determined in a timely manner. Previously, the purses may have already been released before the stewards or the board become aware that there is some question on the correct order of finish in the race, which the board will have to review and decide.

"8.22.501 DEFINITIONS (1) through (23) will remain the same.

(24) Maiden for purposes of eligibility at race meetings is a horse which, at the time of starting, has never won a race on the flat in any country, except, commencing in 1995, a horse winning a maiden race in which the winner's share of the purse is \$300 600 or less, shall be considered a maiden at recognized tracks in the state of Montana. However, horses running in maiden races where the winner's share of the purse is less than \$600, after winning, must move up to the next higher condition.

(a) through (36) (r) will remain the same.

~~(s) Recognized meeting means any race meeting conducted under the jurisdiction of any legally constituted board or commission affiliated with the national association of state racing commissioners or conducted with approval of the American quarter horse association.~~

~~(t) Recognized tracks are those conducting recognized meetings.~~

(37) through (46) will remain the same.

~~(47) Winner means, for purposes of eligibility at race meetings whose race records are recorded in an official chart book or the Daily Racing Form in Montana, commencing in 1995, a horse which, at the time of starting, has won a race on the flat in any country, at a track whose racing records are recorded in an official chart or the Daily Racing Form in which the winner's share of the purse is \$600 or more. However, horses running in races where the winner's share of the purse is less than \$600, after winning, must move up to the next higher condition.~~

~~(48) A winner means, for purposes of eligibility at race meeting whose racing records are not recorded in an official chart book or the Daily Racing Form, a horse which at the time of starting, has won a race on the flat in any country:~~

~~(a) will remain the same.~~

~~(b) A statement on the definition of a winner shall appear in every race program as per ARM 8.22.1605.~~

~~(49) through (52) will remain the same, but will be renumbered (48) through (51)."~~

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-101, 23-4-104, 23-4-202, MCA

REASON: The proposed amendments will allow horses from other states as well as Montana to run at both big and small tracks to get a few outs without losing entry eligibility at bigger out-of-state tracks, and will encourage participation by more horses in Montana racing.

"8.22.503 ANNUAL LICENSE FEES The following fees shall be charged annually:

(1) through (14) (n) will remain the same.

(o) Horsemen's bookkeeper 20.00

(p) Office personnel 20.00

(15) through (16) (c) will remain the same.

~~(d) Horsemen's bookkeeper~~ 20.00

~~(e) - (k) remain the same, but renumbered (d) - (j).~~

~~(l) Office personnel~~ 20.00

~~(m) - (17) remain the same, but renumbered (k) - (17)."~~

Auth: Sec. 23-4-104, 23-4-201, 37-1-134, MCA; IMP, Sec. 23-4-104, 23-4-201, 37-1-134, MCA

REASON: The proposed amendment will re-define horsemens bookkeeper and office personnel as officials, to clarify the duties of those positions are subject to reporting, confidentiality and all other officials restrictions.

"8.22.601 GENERAL PROVISIONS (1) It shall be the duty of each official to enforce state statutes pertaining to racing, rules of racing and directives issued by the board, orders and rules issued by the stewards, and all rulings as they may pertain to his official jurisdiction. Any official who fails to comply with this rule may be fined, suspended or dismissed by the board. Each official shall be required to sign a confidentiality statement, on a form prescribed by the board, before beginning his/her official duties. The statement shall provide, at a minimum, that unauthorized release of confidential information shall be grounds for termination and/or license discipline.

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

(f) director of racing-i

(g) assistant racing secretary.

(3) and (3)(a) will remain the same.

~~(b) assistant racing secretary;~~

(c) through (q) will remain the same, but will be renumbered (b) through (p).

(4) will remain the same.

(5) No major official specified in ARM 8.22.601(2)(a) through ~~(f)~~ (q) may actively or passively participate in a race meet, nor may his/her spouse, parents, or child, living in the same household. Any other person who has a permanent or continuous residence in the household of the official is also excluded from actively or passively participating in a race meet, at which the major official is serving in his official capacity.

(a) through (9) will remain the same."

Auth: Sec. 23-4-104, 23-4-202, 37-1-131, MCA; IMP, Sec. 23-4-104, 23-4-201, 23-4-202, 37-1-131, MCA

REASON: The proposed amendment of subsection (1) will require a statement of confidentiality from all officials to alleviate the past problems with release of information to unauthorized persons, creating security and enforcement problems.

The proposed amendment of (g) will move assistant racing secretary to the major official category, as this position may also create a conflict of interest if he/she or his/her immediate family is running horses at that same race meet. The amendment to subsection (5) will clarify that the major officials should not be approved for those positions if their spouses, parents, children or household members will be running horses at that same race meet, so no favoritism, prejudice or conflict of interest claims could be brought.

"8.22.1402 PERMISSIBLE MEDICATION (1) through (6) will remain the same.

(7) A horse which, during a race or following a race, or which, during exercise or following exercise, is found to be hemorrhaging from one or both nostrils or is found to have bled into its trachea as determined by endoscopic examination is eligible to be placed on a bleeder list and treated on race day to prevent bleeding during its race. In order to obtain authorization for race day treatment of the bleeder, the horse's trainer must obtain a certificate of examination from the state veterinarian or a practicing veterinarian, which must be approved by the state veterinarian and have the horse placed on the official bleeder list. The state veterinarian must, ~~by examination, and/or in consultation with the stewards,~~ establish that the horse did in fact hemorrhage from one or both nostrils or that an endoscopic examination ~~in the test barn or receiving barn~~ showed observable amounts of free blood in the horse's respiratory tract. When confirmed by the ~~track~~ state veterinarian, the horse shall be placed on the bleeder list which is maintained by the state veterinarian and the stewards. Once on the list, a horse may be removed from the bleeder list only upon the direction of the state veterinarian, who must certify in writing to the board his recommendation for removal of the horse from the list by the trainer. A horse removed from the bleeder list cannot be put back on said list for a period of 30 days, and only then after being determined to bleed after a race or work or through endoscopic examination. Bleeder lists will apply to horses listed at all tracks on a statewide basis.

(a) Horses on the current year's bleeder list leaving Montana to race in another jurisdiction which does not allow the use of lasix will assume their place back on the bleeder list upon returning to Montana.

(b) Horses certified as RIPH positive in another jurisdiction and not having run without lasix up until the time they race in Montana will automatically be placed on the Montana bleeder list, with the out-of-state certificate stating RIPH positive, year, and state name.

(8) A horse on a bleeder list cannot be treated within four hours prior to post time with furosemide (lasix). No other medication may be administered for bleeder treatment. Bleeder medication must be administered in the manner approved by the state veterinarian. Oral administration of furosemide (lasix) is not permitted for such purpose. Permitted bleeder medication shall be administered by the horse's regular veterinarian, ~~and shall be witnessed by the state veterinarian, or his designee, at a place designated by the state veterinarian.~~ Such administration may be performed at the trainer's barn.

(a) Trainers are required to have lasix forms completed by the practicing veterinarian, to include date, time and amount of lasix administered. After signature by the practicing veterinarian, the lasix form must be returned to the test barn personnel within 10 minutes of the time of administration of lasix.

(b) Test barn personnel, upon receipt of the medication form, shall log in date and time of receipt. If the time of receipt exceeds the 10 minute grace period, the test barn

personnel shall notify the stewards, and the horse will be scratched by the stewards for that day's racing.

~~(9) A bleeder shipped into Montana from another racing jurisdiction must conform to Montana rules. However, a horse on a bleeder list in another racing jurisdiction may be placed on the Montana bleeder list, provided that a current certificate from the jurisdiction in which it was first placed on a bleeder list is presented to the state veterinarian and, provided further that it is approved by the state veterinarian.~~

(10) through (21) will remain the same, but will be renumbered (9) through (20)."

Auth: Sec. 23-4-104, 23-4-202, MCA; IMP, Sec. 23-4-104, MCA

REASON: The proposed amendment will allow a practicing vet to place a horse on the bleeder list, with approval of the state vet, which will be less time-consuming for the state vet. The amendment will also allow endoscopic exams away from the test barn, and delete the necessity of a state vet recommendation to the board to also save time. The amendment to (7) will change the time frame for getting a horse back on the bleeder list; allow return to the list after running out of state; and require placement on the bleeder list when so designated in another jurisdiction, to standardize the use of lasix in Montana, and avoid potential problems with moving on and off the lists when coming in and out of the state to gain an unfair advantage in racing. The amendment to (8) will allow administration of lasix at the trainer's barn, rather than the test barn, with the requirement that the medication form be properly filled out and submitted to the test barn in a timely manner, which will aid trainers who do not like to move the horses before it is necessary on race day, and still regulate the time of administration of the lasix to comply with board rules.

"8.22.1605 PROGRAMS (1) through (5) will remain the same.

(6) All daily racing programs must state: 'If a winner's share of a purse is \$600 or less, it does not count as a win in the state of Montana.'"

Auth: Sec. 23-4-202, MCA; IMP, Sec. 23-4-202, 23-4-301, 23-4-302, 23-4-303, MCA

REASON: The proposed amendment will make the program rule consistent with the proposed amendment to ARM 8.22.501 on the definition of a winner and require a statement of this Montana definition to fully inform the betting public on the program lines.

"8.22.1619 EXACTA BETTING (1) through (2) will remain the same.

(3) Entry horses will be allowed in an exacta race in which there are at least ~~six~~ five other separate betting interests.

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

Auth: Sec. 23-4-202, MCA; IMP, Sec. 23-4-301, 23-4-302, 23-4-303, MCA

REASON: The amendment will change the language so it is consistent with the wording used for trifecta wagering in a later rule, in allowing entries, as long as five other separate betting interests are present.

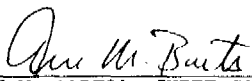
3. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Horse Racing, 1520 East 6th, Lee Metcalf Building, Room 50, Helena Montana 59620, to be received no later than 5:00 p.m., November 24, 1994.

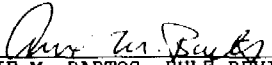
4. If a person who is directly affected by the proposed amendments wishes to present his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit the request along with any comments he has to the Board of Horse Racing, 1520 East 6th, Lee Metcalf Building, Room 50, Helena, Montana 59620, to be received no later than 5:00 p.m., November 24, 1994.

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 70 based on the 700 licensees in Montana.

BOARD OF HORSE RACING
MALCOLM ADAMS, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 17, 1994.

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

In the matter of the amendment of)	NOTICE OF PROPOSED
rule 16.32.1001 regarding adult)	AMENDMENT
day care center services)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

(Adult Day Care Centers)

To: All Interested Persons

1. On November 28, 1994, the department proposes to amend rule 16.32.1001 regarding the general services governing an adult day care center.

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

16.32.1001. GENERAL SERVICES, ADMINISTRATION AND STAFF-

ING (1)-(9) Remain the same.

(10) A client who is ambulatory only with mechanical assistance may ~~not only~~ be kept ~~above~~ on the ground floor of the center.

(11)-(17) Remain the same.


AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

3. The department is proposing to amend this rule because, after adopting the adult day care center rules, the department realized that, under the current language of the rule, the possibility exists that a mobility-impaired individual could be housed in a basement. The intention of the rule was to insure that a mobility-impaired individual could be safely evacuated and to ensure that these individuals were on the ground floor. Therefore, the amendment is necessary to close any loophole that exists because of current rule language.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment, in writing, to Cynthia Brooks, Department of Health and Environmental Sciences, Cogswell Building, PO Box 200901, Helena, Montana, 59620-0901, no later than November 25, 1994.

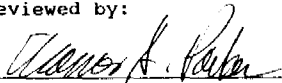
5. If a person who is directly affected by the proposed amendment wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Cynthia Brooks, Department of Health and Environmental Sciences, Cogswell Building, PO Box 200901, Helena, Montana, 59620-0901. A written request for hearing must be received no later than November 25, 1994.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; 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, 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 in excess of 25 persons, based on the number of adult day care centers in the State and the number of persons served by them.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State October 17, 1994.

Reviewed by:


Eleanor Parker, DHES Attorney

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

In the matter of the amendment of) NOTICE OF PROPOSED
rule 16.32.396 regarding kidney) AMENDMENT
treatment centers)
) NO PUBLIC HEARING
) CONTEMPLATED
(Kidney Treatment
Centers)

To: All Interested Persons

1. On November 28, 1994, the department proposes to amend rule 16.32.396 regarding kidney treatment centers.

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

16.32.396. MINIMUM STANDARDS FOR A KIDNEY TREATMENT CENTER (1) A kidney treatment center shall comply with the ~~maintenance and operation~~ requirements set forth in 42 CFR 405, Subpart M U.

(2) The department hereby adopts and incorporates by reference 42 CFR 405, Subpart U, which sets standards that suppliers of end-stage renal disease services must meet in order to be certified for reimbursement from the federal medicare or medicaid programs. A copy of the cited rule 42 CFR 405, Subpart U, is available at the department from the department's Licensure Bureau, Cogswell Building, PO Box 200901, Helena, Montana 59620-0901.

AUTH: 50-5-103, MCA; IMP: 50-5-103, MCA

3. ARM 16.32.396 currently incorporates by reference federal standards to be used by Montana as licensure requirements for kidney treatment facilities. A review of the rules revealed the fact that the reference to Subpart M of 42 CFR 405 was in error (i.e., subpart M sets standards for independent laboratories rather than kidney treatment centers); therefore, the amendments are necessary to correct the error in the original citation, and, in addition, to include the standard language for an incorporation by reference that is required by ARM 1.2.210.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment, in writing, to Cynthia Brooks, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than November 25, 1994.

5. If a person who is directly affected by the proposed amendment wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she

must make written request for a hearing and submit this request along with any written comments he/she has to Cynthia Brooks, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana, 59620. A written request for a hearing must be received no later than November 25, 1994.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; 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, 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 in excess of 25 persons, based on the number of kidney treatment centers in the State, the number of potential kidney treatment centers in the State, and the number of persons served by them.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State October 17, 1994.

Reviewed by:


Eleanor Parker, DHES Attorney

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

In the matter of the amendment of) NOTICE OF PROPOSED
rule 16.32.922 regarding fees for) AMENDMENT
inspecting personal care facilities) NO PUBLIC HEARING
) CONTEMPLATED
(Personal Care Facilities)

To: All Interested Persons

1. On November 28, 1994, the department proposes to amend rule 16.32.922 regarding the fees for inspecting personal care facilities.

2. The rule, as proposed to be amended, appears as follows (new material is underlined):

16.32.922 FEES (1) Remains the same.

(2) The department shall collect fees for each initial inspection of a personal care facility at the rate of \$40 per proposed bed, provided there are no residents in the facility.

(2)(3) The With the exception noted in (2) above, the department shall collect the following fees for each inspection of a personal care facility:

(a) \$70 per bed for a category A facility;

(b) \$90 per bed for a category B facility.

(3)(4) The department shall collect a screening fee of \$100 from a prospective resident, resident, or facility appealing a rejection or relocation decision made pursuant to ARM 16.32.917.

AUTH: 50-5-103, 50-5-227, MCA; IMP: 50-5-227, MCA

3. The department is proposing to amend this rule because, after adopting the new personal care fee rules, the department realized that a difference should have been recognized between the effort necessary to make an initial inspection of a yet-unoccupied facility and a license renewal inspection of an occupied facility. Section 50-5-204(1), MCA, requires the department to conduct an initial, pre-licensing inspection. At the time of the initial inspection, the facility will not have residents in it and, thus, the time required to inspect the facility will be less because screening, medical record review, resident interviewing, care plan review, and other functions of a license renewal inspection will not have to take place. Therefore, since 50-5-227, MCA, requires inspection fees to be reasonably related to the department's cost to conduct them, it is appropriate and necessary to differentiate between the fees for an initial inspection of a vacant facility and a license renewal inspection of a category A or B facility. However, if a facility has residents in it but is not yet licensed, the initial

inspection rate will not apply because the inspection will require far more staff effort in order to cover all of the aforementioned additional areas.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment, in writing, to Cynthia Brooks, Department of Health and Environmental Sciences, Cogswell Building, PO Box 200901, Helena, Montana, 59620-0901, no later than November 25, 1994.

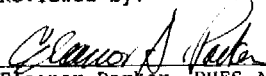
5. If a person who is directly affected by the proposed amendment wishes to express his/her data, views, and arguments orally or in writing at a public hearing, he/she must make written request for a hearing and submit this request along with any written comments he/she has to Cynthia Brooks, Department of Health and Environmental Sciences, Cogswell Building, PO Box 200901, Helena, Montana, 59620-0901. A written request for hearing must be received no later than November 25, 1994.

6. If the agency receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; 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, 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 in excess of 25 persons, based on the number of personal care facilities in the State, the number of potential new personal care facilities in the State, and the number of persons served by them.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State October 17, 1994.

Reviewed by:


Eleanor Parker, DHES Attorney

BEFORE THE PETROLEUM TANK RELEASE COMPENSATION BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PROPOSED
rule 16.47.342 pertaining to the) AMENDMENT OF RULE
review of corrective action plans)

NO PUBLIC HEARING
CONTEMPLATED

To: All Interested Persons

1. On January 9, 1995, the Petroleum Tank Release Compensation Board of the State of Montana proposes to amend ARM 16.47.342 which pertains to the Board's review of corrective action plans recommended by the Department of Health and Environmental Sciences.

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

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.~~

(1) Department recommended corrective action plans for sites that are potentially eligible for reimbursement by the board must be transmitted to the board staff for review and comment. The board staff must then convey any comment it has to

the department within 15 days unless an extension of board review time is mutually agreed upon by board and department staff. In its final approval process, the department must consider any information or suggestions board staff may offer on less expensive technologies which could accomplish equivalent cleanup goals, and the department may respond to other information from board staff before approving the final corrective action plan.

AUTH: 75-11-318; IMP: 75-11-318, MCA

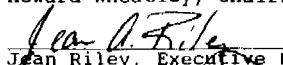
3. ARM 16.47.342 is being amended in response to an Attorney General's opinion dated December 31, 1992, and located at Volume 44 Attorney General Opinion Number 46. In that opinion, the Attorney General held that the rule to be amended was invalid because it conflicts with the pertinent statutory scheme in that it allowed the board to amend department approved corrective action plans. The amended rule corrects that defect and establishes the procedures required by 75-11-318(5)(c) for review by the board of corrective action plans.

4. Interested persons may submit their written data, views, or arguments concerning the proposed amendment to Jean Riley, Executive Director, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, Montana 59620, no later than December 16, 1994.

5. If a party who is directly affected by the proposed amendment wishes to express his/her data, views, and arguments orally or in writing at a public hearing, s/he must make written request for a hearing and submit this request along with any written comments s/he has to Jean Riley, Executive Director, Petroleum Tank Release Compensation Board, P.O. Box 200902, Helena, Montana 59620, no later than November 25, 1994.

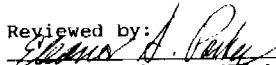
6. If the board receives requests for a public hearing under 2-4-315, MCA, on the proposed amendment, from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not fewer than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25, based on the number of people within Montana estimated to own underground storage tanks.

MONTANA PETROLEUM TANK RELEASE
COMPENSATION BOARD
Howard Wheatley, Chairman


Jean Riley, Executive Director

Certified to the Secretary of State October 17, 1994.

Reviewed by:


Eleanor Parker, DHES Attorney

BEFORE THE DIVISION OF FORENSIC SCIENCE
DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED AMENDMENT
of rules 23.4.201, 23.4.212,)
23.4.217, and 23.4.221,)
rules pertaining to sampling)
bodily substances for drug)
and alcohol analysis.)
)
) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 18, 1994, the Department of Justice proposes to amend rules 23.4.201, 23.4.212, 23.4.217, and 23.4.221. The department will also amend the titles of Subchapter 2 of Title 23, Chapter 4, and rule 23.4.220, in order to more accurately reflect the statutory changes allowing for the analysis of bodily substances for drugs in addition to alcohol.

2. The rules are proposed to be amended as follows (new material underlined; material to be deleted interlined):

FORENSIC SCIENCE DIVISION
Sub-Chapter 2
Drug and/or Alcohol Analysis

23.4.201 DEFINITIONS Unless the context requires otherwise, the following definitions apply to this subchapter: Subsections (1) through (6) remain the same.

(7) "Associated equipment" means

(a) any device which can be directly attached to the breath analysis instrument and is not considered an expendable item, i.e., a wet bath simulator; or

(b) any approved device which is designed to detect and verify the presence of alcohol. Analyses from this type of device, e.g. but is not to be considered as evidentiary, i.e. a roadside alcohol screening device, an alcohol interlock device for vehicles are to be considered as probable cause evidence only.

Subsections (8) through (21) remain the same.

(22) "Sample" means blood, breath, urine or other bodily substances to be analyzed for the presence of drugs and/or alcohol pursuant to this subchapter. All samples must be of sufficient volume so that complete analysis ~~for alcohol~~ may be performed.

Subsection (23) remains the same.

(24) "Test", in reference to a breath analysis, means a full and complete analysis of a properly delivered breath sample. Such analysis is to be considered complete when the breath analysis instrument has executed its prescribed program, a final ~~analysis result~~ is obtained, and ~~a report printed record is generated produced by the breath test instrument~~. All breath analysis must be performed in accordance with the procedures set forth by the forensic science division. In reference to other biological sample analysis, a test shall be defined as a full and complete analysis of the received sample or samples. A test of the sample may consist of more than one analysis of the submitted sample or samples in accordance with the procedures set forth by the forensic science division.

~~(25) "Testing device" means any instrument or device used to determine the presence and/or concentration of alcohol in blood, breath, urine or tissue pursuant to this subchapter.~~

Subsection (26) is renumbered (25), but is otherwise unchanged.

AUTH: Section 61-8-405, MCA.
IMP: Section 61-8-405, MCA.

23.4.212 BREATH ANALYSIS INSTRUMENTATION AND ASSOCIATED EQUIPMENT

(1) All manufacturers/vendors of breath analysis instruments, and associated equipment, and supplies and accessories are required to submit such breath analysis instrumentation, and/or associated equipment, or supplies and accessories to the division of forensic science for formal state approval prior to introduction into the state of Montana.

Subsection (2) remains the same.

(3) All associated equipment, and supplies and accessories which have met the approval criteria established by the division of forensic science shall be kept on file at the division of forensic science.

(4) The division of forensic science reserves the right to withdraw the approval status of any breath analysis instrument, or associated equipment, or supply, or accessory, or the manufacturer/vendor's approval to market said product, if the manufacturer/vendor fails to comply with the provisions set forth in the approval criteria or regulations pertaining to the manufacturers/vendors responsibilities to the state of Montana.

(5) Manufacturers/vendors of breath analysis instrumentation, equipment, and/or supplies and accessories must comply with the following regulations:

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

Subsections (6) through (8) remain the same.

AUTH: Section 61-8-405, MCA.
IMP: Section 61-8-405, MCA.

23.4.217 RECERTIFICATION OF BREATH TEST PERSONNEL

Subsection (1) remains the same.

(2) The breath test specialist/senior operator shall have the responsibility of presenting the recertification video and

monitoring the examination of all personnel seeking recertification. The division of forensic science may, if it determines that the circumstances warrant, give recertification training that is equivalent to that on videotape.

Subsections (3) through (13) remain the same.

AUTH: Section 61-8-405, MCA. IMP: Section 61-8-405, MCA.

23.4.220 COLLECTION OF BLOOD SAMPLES FOR DRUG AND/OR ALCOHOL ANALYSIS Subsections (1) through (7) remain the same.

AUTH: Section 61-8-405, MCA. IMP: Section 61-8-405, MCA.

23.4.221 COLLECTION OF POSTMORTEM SAMPLES FOR ALCOHOL AND/OR DRUG ANALYSIS

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

(3) In any postmortem collection of blood, the primary sample for analysis shall be femoral blood. If such sample is unattainable, the next sample of choice shall be heart blood. If a heart blood sample is ~~not available for alcohol analysis~~ unattainable, the sample of choice will be urine vitreous fluid. Any sample to be drawn will be an uncontaminated sample.

Subsection (4) remains the same.

AUTH: Section 61-8-405, MCA.

IMP: Section 61-8-405, MCA.

3. The proposed rule amendments set forth above, and the amendment of the title of rule 23.4.220 are necessary in order to implement the provisions of Ch. 564, L. 1993. That act provided that a person operating a vehicle upon the public ways of the State of Montana consents to tests for the presence of alcohol or drugs, and the amended rules will, therefore, add references to drugs other than alcohol.

4. Interested persons may present their data, views or arguments concerning the proposed rules, in writing, to the Division of Forensic Science, 554 W. Broadway, Missoula, Montana, 59802, attention: Jim Hutchison, no later than November 27, 1994.

5. If a person who is directly affected by the proposed rules wishes to submit data or express views and arguments at a public hearing, he must make a written request for a hearing and submit this request, along with any written comments he has, to the Division of Forensic Science, 554 W. Broadway, Missoula, Montana, 59802, attention: Jim Hutchison, no later than November 27, 1994.

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

Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

Kathy Seelby
KATHY SEELEY
Rule Reviewer

By: Joseph P. Mazurek
JOSEPH P. MAZUREK
Attorney General

Certified to the Secretary of State October 17, 1994.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

In the matter of the amendment)
to Rules 36.22.604 and 36.22.605) NOTICE OF PROPOSED
pertaining to the issuance,) AMENDMENT TO RULES
expiration, extension, and) 36.22.604, 36.22.605,
transfer of permits, and) AND 36.22.703
Rule 36.22.703 pertaining to)
horizontal wells.)

NO PUBLIC HEARING
CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On November 30, 1994, the Board of Oil and Gas Conservation proposes to amend rules 36.22.604 and 36.22.605 which pertain to the issuance, expiration, extension, and transfer of permits, and rule 36.22.703 pertaining to horizontal wells.

2. The amendments to the rules provide as follows:

36.22.604 PERMIT ISSUANCE - EXPIRATION - EXTENSION (1)

If no written demand for hearing has been filed within ~~seven~~ ⁽⁷⁾ ~~ten~~ ⁽¹⁰⁾ days following the date of publication of the notice as specified in ARM 36.22.601 and the planned drilling operations do not require further environmental review, and the application complies in all respects with the applicable rules of the board, a permit shall be issued promptly by the petroleum engineer or his authorized agent.

Subsections (2) through (4) remain the same.

AUTH: Sec. 85-11-111, MCA

IMP: Sec. 82-11-122 and Sec. 82-11-134, MCA

36.22.605 TRANSFER OF PERMITS (1) No person to whom a permit has been issued shall transfer the permit to any other location or to any other person until the following requirements have been complied with:

Subsections (1) and (2) remain the same but are renumbered to (a) and (b).

AUTH: Sec. 85-11-111, MCA

IMP: Sec. 85-11-122 and Sec. 85-11-134, MCA

36.22.703 HORIZONTAL WELLS Subsections (1) through (3) remain the same.

(4) The operator of a horizontal well may designate an optional drilling unit, which must consist of two or four contiguous drilling units of the size and shape otherwise authorized for a vertical well of the same projected depth. The operator must receive administrative approval of the optional drilling unit before starting to drill the horizontal drainhole. Minimum distance requirements from drilling unit boundaries that would apply to the

contiguous drilling units apply to the optional drilling unit, except that such requirements do not apply to the common boundary of the contiguous units. Any operator designating an optional drilling unit under this section must apply for proper well spacing within 90 days after the completion of a well capable of production.

Subsections 36.22.703(5) through 36.22.703(6) remain the same.

AUTH: Sec. 82-11-111, MCA

IMP: Sec. 82-11-124 and 82-11-201, MCA

3. Rule 36.22.604 is being amended to ten days instead of seven to be consistent with requirements in rule 36.22.601(5)(d). Rule 36.22.605 is being amended to correct an editing error marking the paragraph designation. Rule 36.22.703 is being amended to allow larger optional drilling units for horizontal wells to accommodate longer horizontal laterals and to provide additional flexibility in planning the direction of proposed horizontal wells in unspaced areas.

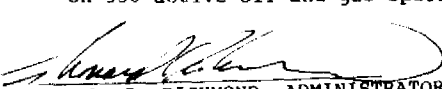
4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to:


Tom Richmond
Department of Natural Resources and Conservation
Oil and Gas Division
2535 St. Johns Avenue
Billings, MT 59102

no later than November 28, 1994.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Tom Richmond, Department of Natural Resources and Conservation, Oil and Gas Division, 2535 St. Johns Avenue, Billings, MT 59102 no later than November 28, 1994.

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 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 of those persons directly affected has been determined to be 35 persons based on 350 active oil and gas operators.


THOMAS P. RICHMOND, ADMINISTRATOR
BOARD OF OIL AND GAS CONSERVATION


DONALD D. MACINTYRE
RULE REVIEWER

Certified to the Secretary of State October 17, 1994

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

In the Matter of Proposed Amendment	)	NOTICE OF PROPOSED
of a Rule Pertaining to Pipeline Safety	)	AMENDMENT OF RULE
by Adopting Federal Rules Applicable to	)	38.5.2202
Liquified Natural Gas Facilities and)	
Reenacting the Existing Rule.	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On November 30, 1994 the Department of Public Service Regulation proposes to amend the rule identified in the above title and described in the following paragraphs, all related to incorporation by reference of federal pipeline safety regulations.

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

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The public service commission hereby adopts and incorporates by reference the U.S. Department of Transportation Pipeline Safety Regulations, Code of Federal Regulations, Title 49, Chapter 1, Subchapter D, Parts 191, and 192, and 193, including all revisions and amendments enacted by the department of transportation on or before ~~December 8, 1993~~ October 17, 1994. A copy of C.F.R. Title 49, Chapter 1, Subchapter D, Parts 191, and 192, and 193 may be obtained from the U.S. Department of Transportation, Research and Special Programs Administration, Western Region, Pipeline Safety, 555 Zang Street, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601. AUTH: Sec. 69-3-207, MCA; ~~IMP~~, Sec. 69-3-207, MCA


3. Rationale: The proposed amendments to this rule are necessary for protection of the public as the first regulated LNG facility is now being established in Montana and, also, to "reenact" the existing rule to incorporate changes in regulation which may have occurred at the federal level.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing (original and 10 copies) to Martin Jacobson, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601 no later than November 30, 1994.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has (original and 10 copies) to Martin Jacobson, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, no later than November 30, 1994.

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 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 of those persons directly affected has been determined to be in excess of 25 persons based upon the population of the state of Montana.

7. The Montana Consumer Counsel, 34 West Sixth Avenue, P.O. Box 201703, Helena, Montana 59620-1703, (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.


Bob Anderson, Chairman

CERTIFIED TO THE SECRETARY OF STATE OCTOBER 17, 1994.


Reviewed By

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of Rules I through	)	THE PROPOSED ADOPTION OF
IV pertaining to the	)	RULES I THROUGH IV
recovery by the state	)	PERTAINING TO THE RECOVERY
auditor's office of debts	)	BY THE STATE AUDITOR'S
owed to the department	)	OFFICE OF DEBTS OWED TO THE
	)	DEPARTMENT

TO: All Interested Persons

1. On November 16, 1994, 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 adoption of Rules I through IV pertaining to the recovery by the state auditor's office of debts owed to the department.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on November 7, 1994, to advise us of the nature of the accommodation that you need. Providing an interpreter for the deaf or hearing impaired may require more time. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

RULE I PURPOSE These rules implement for the department and the state auditor's office the recovery and offset of monetary sums owing to the state of Montana related to the provision of services through the programs administered by the department.

AUTH: Sec. 17-4-110 and 53-2-201 MCA

IMP: Sec. 17-4-104, 53-2-108 and 53-2-201 MCA

RULE II DEFINITIONS (1) "Debt" means a monetary sum owed to the state of Montana including but not limited to sums owed arising out of overpayments received by recipients and providers of public assistance. Overpayments include payments made as the result of fraud, mistake or department error.

(2) "Department" means the department of social and rehabilitation services.

(3) "Offset" means a deduction from monies due to a person or entity from the state for the purpose of recovering in total

or in part a debt owed by the person or entity to the state. An offset is undertaken by the state auditor's office under the authority of section 17-4-105, MCA in accordance with that agency's rules and policies. Offset may include but is not limited to an offset of a person or entity's state tax return.

(4) "Program" means any program of services or benefits for the public administered by the department including but not limited to:

- (a) aid for dependent families (AFDC);
- (b) medicaid;
- (c) food stamps;
- (d) AFDC and JOBS related daycare;
- (e) low income energy assistance program (LIEAP);
- (f) the former state general relief program;
- (g) rehabilitation services; and
- (h) visual services.

(5) "Recovery" means any measure undertaken by the state auditor's office under the authority of section 17-4-101, MCA et seq. in accordance with that agency's rules and policies as a means of recovering a debt owed by a person or entity to the state of Montana. Recovery may include but is not limited to assignment to a collection agency and litigation.

AUTH: Sec. 17-4-110 and 53-2-201 MCA

IMP: Sec. 17-4-104, 53-2-108 and 53-2-201 MCA

RULE III REFERRAL FOR RECOVERY AND OFFSET (1) The department under the authority of section 17-4-104, MCA may refer to the state auditor's office for recovery and offset a debt owed to the department by a program recipient or by a provider of program services.

(2) The department may refer to the state auditor's office any debt of a program recipient or a provider of program services including but not limited to those arising out of intentional or unintentional actions of the recipient or provider and those due to mistake upon the part of the department.

(3) The department must determine that a debt is uncollectable by the department before the debt may be referred to the state auditor's office.

AUTH: Sec. 17-4-110 MCA

IMP: Sec. 17-4-104, 53-2-108 and 53-2-201 MCA

RULE IV UNCOLLECTABLE DEBT (1) A debt is uncollectable by the department, if the department has determined that:

- (a) the debt is owing to the department;
- (b) the debtor has either not pursued available administrative due process within the department or has failed to prevail in the available administrative due process within

the department or in any appeal from that administrative due process to the state or federal courts;

(c) the debtor has failed to pay the debt after the department has made all reasonable efforts to collect the debt; and

(d) the department has no administrative means such as recoupment from current payments to a recipient or provider by which to recover the debt.

(2) The department has made all reasonable efforts to collect a debt when the debt remains owed in whole or part after:

(a) the department has utilized appropriate notices directed at the debtor's last known address to inform the debtor of the debt owed and the debtor cannot be contacted; or

(b) the department has provided the debtor with an opportunity to enter into a repayment agreement based on a schedule for debt repayment that the Department determines is appropriate and the debtor has failed to cooperate or the debtor is failing to repay the debt.

(3) A debtor is failing to repay a debt when the debtor has failed to make three monthly payments for which the department has provided notice of delinquency.

AUTH: Sec. 17-4-110 and 53-2-201 MCA

IMP: Sec. 17-4-104, 53-2-108 and 53-2-201 MCA

3. The Department of Social and Rehabilitation Services administers several programs by which recipients and providers of services receive assistance or payments for services on behalf of recipients. At times payments of benefits or for services may be provided to recipients or providers as a result of fraud, mistake or department error. The department seeks to recover all overpayments that it or others discover. If a recipient or provider continues to receive payments as benefits or for services from the department on a continuing basis after an overpayment is discovered and the amount of overpayment determined, the department will recover the overpayment from those continuing payments. Often though, the department is without administrative recourse to recover overpayments.

Montana law at part 1 of Title 17, chapter 4, MCA provides that the Montana State Auditor act to collect debts owed to state agencies. Under this law the State Auditor is permitted to offset overpayments from tax refunds or other state payments. In addition the State Auditor may use other measures to accomplish debt collection.

The set of proposed rules are necessary to implement the debt collection services of the State Auditor's Office on behalf of the programs administered by the Department of Social and Rehabilitation Services. Section 17-4-110, MCA specifically

directs state agencies to adopt rules so as to participate in the state debt collection service.

The proposed rules will allow the Department of Social and Rehabilitation Services to use the debt collection services of the State Auditor's Office. Use of this service is necessary to provide for consistent collection practices and to assure that all appropriate recourses for collection of debts are pursued. This should result in more recoveries of overpayments for the programs administered by the department.

Proposed Rule II is necessary to provide the definitions of the principal terms used in the rules.

Proposed Rule III provides for the referral of an uncollectable debt to the State Auditor's Office. This rule is necessary to generally implement the referral process.

Proposed Rule IV provides criteria for determining whether a debt is not collectable by the Department of Social and Rehabilitation Services. This rule is necessary to comport with the requirement of section 17-4-104(1), MCA that a state agency make a determination that an overpayment is uncollectable prior to referral for debt collection. The proposed rule is necessary to provide the criteria to define uncollectable.

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 November 24, 1994.

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 October 17, 1994.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of rule 46.10.101	)	THE PROPOSED AMENDMENT OF
pertaining to safeguarding	)	RULE 46.10.101 PERTAINING
and sharing of AFDC	)	TO SAFEGUARDING AND SHARING
information	)	OF AFDC INFORMATION

TO: All Interested Persons

1. On November 16, 1994, 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 46.10.101 pertaining to safeguarding and sharing of AFDC information.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on November 7, 1994, to advise us of the nature of the accommodation that you need. Providing an interpreter for the deaf or hearing impaired may require more time. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406) 444-5622; FAX (406) 444-1970.

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

46.10.101 SAFEGUARDING/SHARING INFORMATION (1) Disclosure Use of information concerning applicants or recipients of aid to families with dependent children (AFDC) is restricted to purposes directly connected with the administration of such aid the AFDC and other federal programs. Such purposes include establishing eligibility, determining amount of assistance, and providing services for applicants and recipients.

(a) Requests for information from a government authority, a court, or a law enforcement agency, under a proper request will be released along with a notification of the confidentiality of the information and the penalty for misuse of such information. Whenever possible, the department will attempt to obtain the prior consent from the applicant or recipient, except in emergency situations where notification will be given after the release of information, and in cases where the information is released for legal and investigative actions concerning fraud, collection of support and third-party medical recovery.

(2) The department may use confidential information concerning an applicant for or recipient of AFDC, without notice or permission of the person for the following purposes:

(a) administration of AFDC or any of the other federal programs listed in (4);

(b) reporting of child abuse and neglect to an appropriate agency or authority; or

(c) the conduct of child support activities.

(3) Administration of a program includes the use of information by the program necessary for:

(a) establishing applicant eligibility;

(b) determining amount of assistance for recipient;

(c) providing services to recipient;

(d) conducting audits and similar activities; or

(e) any investigation, prosecution, or criminal or civil proceeding relating to the administration of the program.

(4) Other federal programs include the following:

(a) food stamps;

(b) medicaid;

(c) federally assisted unemployment compensation;

(d) federal old age assistance;

(e) federal aid to the blind;

(f) federal aid to the disabled;

(g) supplemental security income;

(h) social security;

(i) federally assisted child welfare services;

(j) federally assisted foster care;

(k) federally assisted adoption assistance;

(l) federally assisted weatherization;

(m) low income energy assistance;

(n) social services block grant;

(o) federally assisted work incentive; or

(p) any other federal or federally assisted program providing assistance, in cash, in kind or in services, directly to recipients on the basis of need.

(5) The department, without notice to or the permission of an applicant or recipient, may release the current address of the person to a state or local law enforcement officer, if the officer provides in the request the name and social security number of the person and satisfactorily demonstrates that the person is a fugitive felon, that the location or apprehension of a fugitive felon is a responsibility of the officer, and the request is proper.

(6) The department, without prior permission of the applicant or recipient, may within its discretion release confidential information necessary for the provision of emergency services to meet medical and other critical needs of the person. Notice of the release must be given as soon as possible to the person.

AUTH: Sec. 53-2-201 and 53-4-212 MCA
IMP: Sec. 53-2-105, 53-2-201, 53-2-206, 53-4-211 and
53-4-215 MCA

3. ARM 46.10.101 implements by rule the confidentiality of personal information relating to applicants for and recipients of the federal/state program of aid for dependent children (AFDC). A federal/state program of AFDC must comply with 45 CFR § 205.50 which governs the confidentiality of personal information relating to recipients of AFDC.

The confidentiality of personal information is also provided by the right of privacy at section 10 of Article II of the Montana Constitution and by the prohibition in section 53-2-105, MCA on the use of public assistance information for any purpose not directly connected with the administration of public assistance.

The proposed amendment of ARM 46.10.101 is necessary to conform the criteria in the rule governing the use of confidential information with the criteria which is set forth in 45 CFR § 205.50. The rule as amended would provide proper guidance to the program and specifically inform the public about the possible uses and releases of confidential information held by the AFDC 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 November 24, 1994.

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, October 17, 1994.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
amendment of rules	)	THE PROPOSED AMENDMENT OF
46.12.1901, 46.12.1902 and	)	RULES 46.12.1901, 46.12.1902
46.12.1935 through	)	and 46.12.1935 THROUGH
46.12.1940 pertaining to	)	46.12.1940 PERTAINING TO
targeted case management for	)	TARGETED CASE MANAGEMENT FOR
developmental disabilities	)	DEVELOPMENTAL DISABILITIES

TO: All Interested Persons

1. On November 16, 1994, at 9:30 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 rules 46.12.1901, 46.12.1902 and 46.12.1935 through 46.12.1940 pertaining to targeted case management for developmental disabilities.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on November 7, 1994, to advise us of the nature of the accommodation that you need. Providing an interpreter for the deaf or hearing impaired may require more time. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

46.12.1901 CASE MANAGEMENT SERVICES, GENERAL PROVISIONS

Subsections (1) through (4) remain the same.

~~(5) Referral and arrangements for treatment of a client are a case management service, but the direct provision of medical services to the client is not part of the case management service.~~

Subsections (6) through (7)(b) remain the same in text but are renumbered (5) through (6)(b).

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

46.12.1902 CASE MANAGEMENT SERVICES, GENERAL ELIGIBILITY

Subsections (1) and (1)(a) remain the same.

(b) adults with severe and disabling mental illness; and Subsections (1)(c) and (1)(d) remain the same.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

46.12.1935 CASE MANAGEMENT SERVICES FOR PERSONS AGE 16 AND OVER WITH DEVELOPMENTAL DISABILITIES. DEFINITIONS

Subsection (1) remains the same.

~~(2) "Level I case management service" means the assessment and evaluation of a client's need for services.~~

~~(3) "Level II case management service" means assistance in obtaining for a client the services identified in Level I.~~

~~(4) "Level III case management service" means assisting a client in entry into the services identified in Levels I and II.~~

~~(5) "Level IV case management service" means the coordinated comprehensive development of an individual service plan for a client who has entered a service or services that require on-going case management.~~

~~(6) "Level V case management service" means crisis intervention on behalf of a client which requires the case manager's assistance within 24 hours.~~

~~(72) "Intermediate care facility for the mentally retarded (ICF/MR)" means a residential facility as defined at 42 USC 1396d(d) and licensed by the Montana department of health and environmental sciences that to provides active treatment services to persons with developmental disabilities.~~

~~(83) "Nursing facility" means a residential facility as defined at 42 USC 1396r(a) and licensed by the Montana department of health and environmental sciences that to provides nursing services.~~

~~(94) "Monitor" means periodic review of the implementation of services identified in the individual service plan.~~

~~(105) "Individual service plan (ISP/IP)" means a written plan developed with the client's participation for the provision and management of services in the least restrictive manner to recipients. The plan must contain:~~

Subsections (10)(a) through (10)(f) remain the same in text but are renumbered (5)(a) through (5)(f).

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

46.12.1936 CASE MANAGEMENT FOR PERSONS AGE 16 AND OVER WITH DEVELOPMENTAL DISABILITIES. ELIGIBILITY

(1) through (2) remain the same.

(a) a person residing in an intermediate care facility for the mentally retarded (ICF/MR) or in a medicaid certified nursing facility except as provided for in subsection (3); and
OK

Subsection (2)(b) remains the same.

(3) A person residing in a medicaid certified nursing facility or intermediate care facility for the mentally retarded (ICF/MR) may receive case management services during the 30-day period immediately preceding the scheduled discharge from a nursing facility in order to coordinate post-discharge services in a non-institutional setting.

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

46.12.1937 CASE MANAGEMENT FOR PERSONS AGE 16 AND OVER WITH DEVELOPMENTAL DISABILITIES. COVERAGE (1) Reimbursable case management services which are reimbursable for persons age 16 and over with developmental disabilities are:

- (a) Level I;
- (b) Level II;
- (c) Level III;
- (d) Level IV; and
- (e) Level V.
- (a) service coordination which includes the following:
 - (i) assessment and evaluation of the appropriateness and need for case management and other community services for which the client might be eligible;
 - (ii) assistance in accessing and obtaining needed services as requested by the client;
 - (iii) assisting the client's entry into services; and
 - (iv) monitoring and follow up services received by the client.
- (b) planning which includes the following:
 - (i) development, facilitation, coordination, and monitoring of an individual plan (IP) for the client.
 - (c) crisis intervention which includes the following:
 - (i) crisis intervention for personal, financial, social, legal or medical crisis; and
 - (ii) preventative problem solving with the client and where appropriate the client's family to prevent a crisis.
 - (d) quality of life which includes the following:
 - (i) building of personal relationship, communication, trust and a basic understanding of the client as a unique human being by establishing a rapport with the client and the client's family and friends;
 - (ii) getting an understanding for how the client is doing or for how client wants to be doing; and
 - (iii) conducting a quality of life assessment for the client.

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

46.12.1938 CASE MANAGEMENT FOR PERSONS AGE 16 AND OVER WITH DEVELOPMENTAL DISABILITIES. GEOGRAPHICAL COVERAGE
Subsection (1) remains the same.

(2) The Montana department of family services developmental disabilities division of the department of social and rehabilitation services may contract for the delivery of case management services by a case management provider in designated geographical areas of the state where it determines it is unable

to deliver case management services ~~may contract for the delivery of these services by a case management provider.~~

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

46.12.1939 CASE MANAGEMENT FOR PERSONS WITH DEVELOPMENTAL DISABILITIES. PROVIDER REQUIREMENTS Subsection (1) remains the same.

(2) The case management provider for persons age 16 and over with developmental disabilities is the ~~Montana department of family services developmental disabilities division of the department of social and rehabilitation services.~~ The Montana department of family services division may subcontract with other case management providers for the delivery of case management services.

(3) ~~Contractors with the division for the provision of case management services must be either accredited by one of the national accreditation agencies for developmental disabilities services specified in ARM 46.8.901 or licensed under section 50-5-201, MCA as a health care facility by the Montana state department of health and environmental sciences.~~

(3A) ~~The A case manager must be employed by the Montana department of family services developmental disabilities division of the department of social and rehabilitation services or by a case management provider contracting with the Montana department of family services division.~~

(45) A case manager must meet the following criteria:

(a) a ~~A~~ case manager, except as otherwise provided for in subsection (b), must:

(i) have a bachelor's degree in social work or a related field from an accredited college; and

(ii) ~~either~~ one year experience in developmental disabilities or other human services;

~~(A) have one year of experience in human services; or~~

~~(BA) if the experience is in a human service other than developmental disabilities, the case manager must have completed at least 40 hours of training in the delivery of services to persons with developmental disabilities under a training curriculum approved by the Montana department of family services developmental disabilities division of the department of social and rehabilitation services within no more than three (3) months of hire or designation as a case manager.~~

~~(b) a A social worker case manager currently employed by the department of family services developmental disabilities division of the department of social and rehabilitation services who has provided case management services for the department to persons with developmental disabilities for at least 5 years since July 1, 1985 but who does not meet the criteria in subsection (a) may serve as a case manager.~~

~~(5) Level I case management services must be completed for all persons receiving services.~~

(6) All ~~case management~~ services provided to the client will be monitored by the case manager and the case manager's supervisor. The I&P IP will be reviewed and revised according to the client's needs at least annually, or when major changes are needed.

Subsection (7) remains the same.

(8) A ~~person furnishing case management services case manager~~ must participate in a minimum of 20 hours of advanced training in services to persons with developmental disabilities each year under a training curriculum approved by the ~~Montana department of family services developmental disabilities division of the department of social and rehabilitation services~~. On-going documentation of the qualifications of case managers and completions of mandated training will be maintained by the ~~Montana department of family services employer of the case manager~~.

Subsections (9) through (9)(b) remain the same.

AUTH: Sec. ~~53-6-113~~ MCA

IMP: Sec. ~~53-6-101~~ MCA

46.12.1940 CASE MANAGEMENT FOR PERSONS WITH DEVELOPMENTAL DISABILITIES. REIMBURSEMENT ~~(1) Case management services for persons age 16 and over with developmental disabilities are reimbursed based on a flat rate for each unit of service.~~

(1) Reimbursement for targeted case management services for persons with developmental disabilities is provided to the developmental disabilities division of the department of social and rehabilitation services in accordance with subsections (2) through (4).

(a) This rule does not govern reimbursement provided to contract providers of case management services for the developmental disabilities division of the department of social and rehabilitation services.

(a2) A unit of service is a minimum of two client or client resource contacts per month 1 contact in person or otherwise with or on behalf of the client.

(2) During fiscal years 1992 and 1993, the interim reimbursement rate per unit of service will be for each fiscal year is based on a per unit of service rate determined by dividing the estimated total costs on a statewide basis for the delivery of case management services during the for the fiscal year by the estimated total number of units of service to be delivered on a statewide basis during that fiscal year.

(3) For fiscal years subsequent to fiscal year 1993, the reimbursement rate will be based upon actual case management data from the previous year. The reimbursement rate per unit of service will be determined by dividing the total costs on a statewide basis for the delivery of case management services

~~during the prior fiscal year by the total number of units of service provided on a statewide basis during that year.~~

(4) The final reimbursement for each fiscal year is the actual total cost for delivery of the service for the fiscal year.

AUTH: Sec. 53-6-113 MCA

IMP: Sec. 53-6-101 MCA

3. Case management services for persons with developmental disabilities has been a medicaid reimbursed service since 1991. The rules governing medicaid reimbursement of a variety of case management services are in subchapter 19 of ARM Title 46, chapter 12. ARM 46.12.1901 through 46.12.1903 provide general requirements for all the medicaid reimbursed case management services. The rules governing in particular the delivery of medicaid reimbursed case management services for persons with developmental disabilities are ARM 46.12.1935 through 46.12.1940.

Case management services for persons with developmental disabilities have been the administrative responsibility of the Department of Family Services since that department was formed in 1987. The 1993 Montana Legislature directed the move of administrative responsibility for case management services from the Department of Family Services to the Developmental Disabilities Division of the Department of Social and Rehabilitation Services effective July 1, 1994.

The proposed amendments are generally necessary to change references in the rules from the Department of Family Services as the administrative agency for case management for persons with developmental disabilities to the Developmental Disabilities Division of the Department of Social and Rehabilitation Services and to implement changes in reimbursement methodology.

The proposed amendment of ARM 46.12.1901, Case Management Services, General Provisions, is necessary to remove language which is duplicative of criteria expressed in the definition of "case management" at ARM 46.12.1903 and more particularly in the rules for each type of case management.

The proposed amendment of ARM 46.12.1902, Case Management Services, General Eligibility, is necessary to remove an inappropriately placed word.

The proposed amendment of ARM 46.12.1935, Case Management Services For Persons Age 16 And Over With Developmental Disabilities, Definitions, is necessary to remove definitions that are no longer applicable to reimbursement and to clarify terms and language.

The proposed amendment of ARM 46.12.1936, Case Management Services For Persons Age 16 And Over With Developmental Disabilities, Eligibility, is necessary to clarify language and to remove an inappropriate hyphen.

The proposed amendment of ARM 46.12.1937, Case Management Services For Persons Age 16 And Over With Developmental Disabilities, Coverage, is necessary to remove terms that are no longer applicable and to replace them with more detailed and appropriate descriptions of the services for which reimbursement is available.

The proposed amendment of ARM 46.12.1938, Case Management Services For Persons Age 16 And Over With Developmental Disabilities, Geographical Coverage, is necessary to change the reference from the Department of Family Services to the Developmental Disabilities Division of the Department of Social and Rehabilitation Services and to clarify language.

The proposed amendment of ARM 46.12.1939, Case Management Services For Persons Age 16 And Over With Developmental Disabilities, Provider Requirements, is necessary to change the references from the Department of Family Services to the Developmental Disabilities Division of the Department of Social and Rehabilitation Services, to clarify terms, to provide for basic provider qualifications by directing case management contractors to receive accreditation or certification, to distinguish in the criteria for case managers between persons with experience in developmental disabilities and persons with experience in human services other than developmental disabilities, to remove a reference to level 1 services which will no longer be applicable, and to expand the scope of the case manager's responsibilities to the monitoring of all services.

The proposed amendment of ARM 46.12.1940, Case Management Services For Persons Age 16 And Over With Developmental Disabilities, Reimbursement, is necessary to modify the methodology for reimbursement, inclusive of the unit of service, for ease of application, to clarify the language providing for an estimated interim rate of reimbursement on a fiscal year basis, to provide that the interim rate is applicable to all future fiscal years by removing references to actual fiscal years, to provide for a final adjustment of total reimbursement based on actual costs rather than on a rate recalculation, and to remove reference to a final rate determined from prior fiscal year's actual costs since the new methodology for final reimbursement is predicated on actual total costs for the current fiscal year.

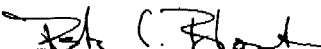
4. Since the Legislature directed that the change of administrating agencies occur on July 1, 1994 and the proposed rule amendments will not adversely impact the Developmental Disabilities Division of the Department of Social and Rehabilitation Services, the proposed amendments are proposed to be effective retroactively on July 1, 1994. The delay in the development of these rules for adoption occurred as a result of limited availability of staff time for work on the rules.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Russell E. Cater, Chief Legal Counsel, Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604-4210, no later than November 24, 1994.

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



Rule Reviewer



Director, Social and
Rehabilitation Services

Certified to the Secretary of State, October 17, 1994.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING ON
adoption of Rule I	)	THE PROPOSED ADOPTION OF
pertaining to exceptions to	)	RULE I PERTAINING TO
the developmental	)	EXCEPTIONS TO THE
disabilities placement rules	)	DEVELOPMENTAL DISABILITIES
	)	PLACEMENT RULES

TO: All Interested Persons

1. On November 16, 1994, at 1:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the proposed adoption of Rule I pertaining to exceptions to the developmental disabilities placement rules.

The Department of Social and Rehabilitation Services will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you request an accommodation, contact the department no later than 5:00 p.m. on November 7, 1994, to advise us of the nature of the accommodation that you need. Providing an interpreter for the deaf or hearing impaired may require more time. Please contact Dawn Sliva, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970.

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

[RULE I] PLACEMENT DETERMINATIONS: CATEGORICAL EXCEPTIONS TO PLACEMENT RULES (1) This rule specifies those circumstances in which the selection of a person for a developmental disabilities service position is not subject to or is subject only in part to the screening process specified otherwise in this subchapter. The specified circumstances are those in which there is further development of community services in response to administrative, legislative or federal direction necessitating the movement of a particular person or an identified group of persons into lesser restrictive settings.

(2) A service position serving a person under any of the following circumstances is not subject to the screening process specified otherwise in this subchapter:

(a) an administrative decision is made to expand services so as to serve four or more persons who are committed to the Montana developmental center, the eastmont human services center, or the Montana state hospital or who are residing in a nursing facility but for whom appropriate services can be provided in a community setting;

(b) a budgeting decision in the legislative process is made to expand services so as to serve 4 or more persons who are committed to the Montana developmental center, the eastmont human services center, or the Montana state hospital or who are residing in a nursing facility but for whom appropriate services can be provided in a community setting; or

(c) a person is placed out of a nursing facility in accordance with the requirements of federal law into a service position which is funded with federal monies that are specifically available for the provision of services to that particular person.

(3) A current or new service position that is available for placement of a person currently in community services whose placement into the position is necessary to open up a placement appropriate for any persons being placed into a community setting as described in subsections (2)(a) and (2)(b) is not subject to the screening process specified otherwise in this subchapter.

(4) A service position arising out of a legislative decision in the budgeting process to expand services so as to serve 4 or more persons who are on a waiting list for services and who are not committed to the Montana developmental center, the eastmont human services center, or the Montana state hospital is not available to a person who is committed to one of those facilities. Placement into one of these positions of noncommitted persons is subject to the screening process specified otherwise in this subchapter.

(5) A service position used to provide services for the purposes stated in subsections (2)(a), (2)(b) and (4) will be available for those purposes for a period not to exceed 1 year in duration. After the 1 year period, the service position when it may come open will be available to any person who is selected for it in accordance with the screening process otherwise specified in this subchapter.

AUTH: Sec. 53-2-201, 53-20-203 and 53-20-204 MCA

IMP: Sec. 53-20-203 and 53-20-209 MCA

3. The placement of persons with developmental disabilities into state funded community situated developmental disabilities services is generally governed by the "placement determination" rules in subchapter 15 of ARM Title 46, chapter 8. Those rules provide a process and criteria by which persons are referred and selected for placement into openings that become available.

The proposed rule is necessary to allow specific persons or groups of persons to receive community situated developmental disabilities services which are intended to serve them. The proposed rule exempts from the general placement rules community developmental disabilities service settings that serve specified

persons or groups of persons. These exemptions are necessary to allow for conformance with the federal mandate in relation to persons inappropriately placed in nursing facilities and for the placement of persons for whom service expansion is targeted. The deinstitutionalization of inappropriately placed persons with developmental disabilities will be facilitated.

The executive or the legislature at times provide monies for the expansion of service settings. These settings are intended to provide services to specific populations of persons who are in need of community situated services. One of those populations are persons currently institutionalized who would likely be able to reside in the community if there were the community resources to serve them. Another population are those persons who reside in the community, who are without services, and for whom services are needed to prevent a crisis which may result in institutionalization.

Federal authority directs that persons with developmental disabilities generally not be placed into nursing care facilities if there is not a primary need for nursing care. Federal monies are made available to develop community situated services for those persons who are leaving nursing facilities in response to the federal mandate. Those service positions are specific to the person and may not otherwise be made available for other persons when vacated.

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 November 24, 1994.

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 October 17, 1994.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF
of new rule I and	)	ADOPTION OF RULES
amendments of Rules	)	AND AMENDMENTS
2.5.201, 2.5.301, 2.5.302,	)	PERTAINING TO STATE
2.5.403, 2.5.404, 2.5.501	)	PURCHASING.
2.5.502, 2.5.605, 2.5.606 relating)	
to state purchasing.)	


TO: All Interested Persons

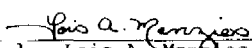
1. On September 8, 1994, the Department of Administration published notice to adopt Rule I relating to protest procedures for vendors, and to amend rules 2.5.201, 2.5.301, 2.5.302, 2.5.403, 2.5.404, 2.5.501, 2.5.502, 2.5.605 and 2.5.606, relating to state purchasing at page 2469 of the 1994 Montana Administrative Register, issue no. 17.

2. No written or oral comments were received.

3. The proposed new rule was adopted as proposed and will be numbered 2.5.406.

4. The rules will be amended as proposed.


Dal Smilie, Chief Legal Counsel
Rule Reviewer


Lois A. Menzies, Director
Department of Administration

Certified to the Secretary of State on October 17, 1994.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of a rule pertaining to fees) 8.32.425 FEES

TO: All Interested Persons:

1. On August 25, 1994, the Board of Nursing published a notice of public hearing on the proposed amendment of the above-stated rule at page 2375, 1994 Montana Administrative Register, issue number 16. The hearing was held on September 14, 1994, at 9:00 a.m. in the conference room of the Professional and Occupational Licensing Bureau, 111 N. Jackson, Helena, Montana.

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

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

Barbara Booher, Executive Director of the Montana Nurses' Association, appeared at the hearing and submitted oral comments and read written comments into the record by a variety of individuals, as follows:

COMMENT NO. 1: John Honsky, registered nurse and commenting as president of the Missoula District of the Montana Nurses' Association, opposes any fee increase at this time. Mr. Honsky states that there was insufficient notice provided to licensees of the proposed fee increase, as there was no direct communication provided to all registered professional nurses in the State of Montana. Mr. Honsky also states that the Board has failed to establish sufficient justification of the need for additional revenues, and contends that the Board's rationale for raising fees is to replenish the Board's reserve account. Mr. Honsky requests further clarification on the need for a fee increase prior to enactment of any changes in the fee structure.

RESPONSE: Sufficiency of Notice - Notice of the proposed rule change was submitted in accordance with Section 2-4-302, MCA and published in the MAR, No. 16, August 25, 1994. Within twenty days of notice, a public hearing was held to receive comments. The representative of one professional organization was the only person to appear to comment at the hearing. All written comments received before 5:00 p.m. September 22, 1994 were considered. Generally, public hearings are not required unless requested. However, due to the importance of the fee increase for its licensees, the Board of Nursing held a public hearing. Notices were sent to all interested parties who requested such information, and to all nursing-related professional organizations. The cost to mail notices of every rule change to every licensee would be prohibitive. The Board further responds that it discussed a proposed fee increase at public meetings as early as November 1993. The Board does not accept the comment that there was insufficient notice provided.

Justification for Additional Revenue - In the past two to four years, the number of licensees and number of complaints against licensees have dramatically increased. The Board of Nursing has taken an aggressive role in its duty to protect the health, welfare, and safety of the public. The Board feels that carrying out this duty also benefits the profession.

The Board added subcommittees on School Standards, Prehospital, Prescriptive Authority, Delegation, and IV-LPN Practice to the existing subcommittees for Screening, Nursing Education, and Credentials and Nursing Practice. The Board implemented the Prescriptive Authority and Clinical Nurse Specialist programs, and as required by statute, the Nurses' Assistance program. The Board sends speakers to professional association conventions to keep its members up-to-date.

The increase in the number of complaints necessitated the hiring of a full-time investigator and additional staff for the Board. The addition of staff has made it possible to answer practice questions over the telephone. While the changes have been numerous and complex, the overall efficiency of the Board has increased and allows the Board to issue declaratory rulings (where it did not previously have the time) and to take an active role in rule-making and legislation.

The addition of computer equipment to the office has allowed exams to be accessible at all times to an unlimited number of examinees and processed faster. The result is that nurses are licensed and ready to go to work faster. Plans for bar coding will speed up the renewal process.

The last fee increase occurred in 1987. Including the proposed fee increase, Montana nurses still pay one of the lowest fees in the country. Although this may correspond to the fact that Montana nurses earn among the lowest salaries in the country, the services they receive from the Board of Nursing are among the best.

Reserve Fund - The Department of Commerce recommends that all administratively attached boards, including the Board of Nursing, maintain a reserve fund in an amount between 50% and 100% of the Board's one full fiscal year budget to allow the Board to continue to operate in emergency situations such as extended litigation or elimination of funding sources; i.e., a category of licensure.

In providing the services listed above, legislatively-approved expenses for the Board increased without a corresponding increase in income. To meet these expenses, a portion of the reserve fund was spent. At the time the notice of the proposed rule change, the cash balance was \$139,000. Presently, the cash balance is \$16,000 and estimated to run into a negative figure by October 20, 1994. The fund will be replenished in future years only after the Board's operating expenses are met. The projected amount to be placed in the reserve account is \$70,000 per year until approximately 50% of the budget, or \$300,000 is maintained. The Board has determined that given its large budget, it is reasonable to maintain the lower percentage of the amount recommended by the Department.

COMMENT NO. 2: Teresa Henry, commenting as president elect of the Montana Nurses Association, questions what will be done with revenues that are brought in above the immediate costs of running the program. Ms. Henry notes that the fee increase, as proposed, will increase the reserve account of the Board from \$139,000 to \$266,667 for fiscal year 1995, and seeks clarification as to what will be done with the fee structure at that time. Ms. Henry seeks clarification as to how the Nurses Assistance Program has been able to function with 40 nurses enrolled when original estimates on program participation ran around 15. Ms. Henry questions where the additional funding came from. Ms. Henry suggests that the fee increase, as proposed is too high, and suggests that the Board increase the fees to \$60.00 and provide for a two year renewal cycle. Ms. Henry opposes a fee increase without clarification as to the use of such funds, notification of all licensees in the State of Montana, and consideration of a biannual renewal cycle.

RESPONSE: Please see Response to Comment 1 with regard to the Reserve Fund. In addition, the Board responds that all budget figures are approximate until approved by the Governor's budget office. Further, the Board is operating on the reserve fund which is currently \$16,000. Excess revenue, after expenses are met, will be applied to the reserve account. When the \$300,000 figure is reached, the fee structure will be re-examined. However, there is a cost involved with a rule change and the Board determined that it was preferable to increase fees once to sufficiently provide for a longer period of time rather than to increase the fees by a smaller amount on a more frequent basis.

Nurses' Assistance Program - The Board responds that due to the unanticipated number of participants (40 rather than 15) the contract was amended to provide an additional \$25,113.16 for the biennium. Section 37-8-202(6), MCA requires the Board of Nursing to provide the NAP to assist licensed nurses who are found impaired by the use of chemicals. The statute mandates the board to provide assistance to licensees in seeking treatment and monitoring rehabilitation. Finally, the statute states that for purposes of funding this program, the board shall adjust the license fee provided for in 37-8-431 commensurate with the cost of the program. The fee increase will fund this program through FY 97 by providing funds under contracted services as part of the Board expense. The proposed budget allocates for an increase in the use of this program.

NAP has streamlined and increased the efficiency of the Board's processing of complaints and initiation of disciplinary action. This program is perhaps the most important to ensuring the public safety and improving the profession as a whole.

Biannual Renewal Cycle - Presently, the board is legislatively mandated to renew licenses annually pursuant to section 37-8-431, MCA. To require otherwise would be a violation of the law. Furthermore, the Board has experienced some difficulty locating licensees who fail to notify the Board of an address change even within the one-year renewal

process. A renewal cycle of two years would add to this problem and would not save a significant amount of money because renewals do not constitute a large portion of board staff time.

COMMENT NO. 3: Senator Eve Franklin states that insufficient notice was provided to licensees of the proposed fee increase. Senator Franklin questions whether other fiscal management options have been considered as alternatives to fee increases, and whether the Board has offered a sound rationale for accruing a "seemingly excessive reserve fund balance." Senator Franklin requests a sound explanation of staffing decisions based on the legislative intent of the spending authority provided to the Board by the 1993 legislature. Senator Franklin questions whether decisions regarding contract services for the nurses assistance program have met reasonable contract considerations. Senator Franklin suggests that the Board develop a dialogue around other management options before considering a fee increase.

RESPONSE: Please refer to Response to Comment 1 with regard to sufficiency of notice, justification for additional revenue, and the reserve fund; Comment 2 with regard to NAP; and Comment 5 with regard to the FTE Nurse position.

The Board further responds that it has considered "other fiscal management options" and has implemented them. The Nurse FTE has not been filled, resulting in a vacancy savings; computer-adapted testing has been implemented to streamline the testing process and the NAP has moved disciplinary cases along in an unprecedented manner in terms of time and satisfaction. The Board has attempted to operate as efficiently as possible; however, fee increases are absolutely necessary to cover the budget as approved by the 1993 Legislature.

COMMENT NO. 4: Barbara Landrum, registered professional nurse, requests an explanation as to why Board expenditures doubled and how much of the fee increase is retained by the Department of Commerce. She opposes any fee increase by the Board of Nursing if the Department of Commerce has not fully released all income collected from licensed nurses to the Board.

RESPONSE: Please refer to Response to Comment 1 in total, Comment 2, and comment 3.

Recharges - Pursuant to section 37-1-101(6), MCA, the Department of Commerce must assess financial, management, and administrative costs to the boards on an equitable basis, according to the number of licensees and amount of the bureau resources used by a particular board. All Boards in the Professional & Occupational Licensing Bureau pay this "recharge" for miscellaneous overhead and staffing provided, including investigators, legal counsel, and a licensing certification specialist employed full time by the Board of Nursing. The amount paid is arrived at through a formula which results in each board paying between approximately 49% and 51% of its annual budget.

COMMENT NO. 5: Linda Adkins, registered professional nurse with specialty recognition, expresses concern with her contention that the Department of Commerce is requiring the maintenance of approximately \$600,000 in the Board's reserve account. Ms. Adkins contends that the Board currently has \$196,000 in reserves, and the effect of the fee increase would increase the reserve account by approximately \$128,000 per year. Ms. Adkins opposes the fee increase unless a more specific accounting is provided with respect to the hiring of a full time nurse, the costs of the nurses assistance program, the 2100 series budget expenditures ("other services") and the 2800 series budget expenditures ("other expenses"). Ms. Adkins suggests that the Board explore the possibility of doing license renewals every other year as a cost cutting measure, and expresses interest in whether other states charge participating nurses to defray costs of running assistance programs. Ms. Adkins suggests raising the renewal fee to \$25.00.

RESPONSE: Please see Responses to Comments 1 with regard to the reserve fund and Comment 2 with regard to NAP and biannual renewal. Further, the Board responds that the current reserve fund is \$16,000. Again, the recommended reserve fund of one-half of the annual budget will be replenished only after expenses of the board are met.

Full Time Nurse - The Board of Nursing has not hired the FTE Nurse position as of this date.

Finally, the Board does not accept the comment that a renewal fee of \$25.00 is feasible given the budget constraints previously explained.

COMMENT NO. 6: Milly Gutoski, registered professional nurse, supports the fee increase provided that additional justification is provided than what was provided in the notice of proposed rule making. Ms. Gutoski states that the Board needs to communicate more frequently with nurses, and suggests a monthly newsletter as a means of improving such communication. Ms. Gutoski states that the reserve funds of the Board should be used for Board expenses, and not considered as possible funds for the general fund. Ms. Gutoski states that the reserve fund should be retained at its current level as a possible resource for litigation, but not as a potential source for non-nursing expenses. Ms. Gutoski states that other professions in the State of Montana are assessed license renewal fees ranging from \$25.00 (physical therapists) to \$100.00 (nursing home administrators). Ms. Gutoski further states that the Wyoming Board of Nursing charges nurses \$100.00 for renewal and endorsement, and \$88.00 for taking the licensing examination. Ms. Gutoski questions whether the LPN and RN should pay the same fee, and suggests that it might be more fair to charge the LPN less than the RN. Ms. Gutoski also suggests that the Board consider a two-year renewal cycle as a means of reducing costs.

RESPONSE: Please see Response to Comment 1 with regard to Justification for Additional Revenue and Comment 2 with regard to biannual renewal. Further, the Board responds that while it recognizes the need to better communicate with the

licensees, a monthly newsletter would require the hiring of extra staff and with printing and mailing costs, would be far too costly.

With regard to charging different renewal fees for RN and LPN, the Board responds that it costs the same amount of money to process LPN and RN applications and renewals and therefore rejects the suggestion.

With regard to reserve funds used to fund the general fund, the Board responds that this comment is beyond the scope of the fee increase; nonetheless the Board wishes to emphasize that the Board of Nursing intends that the income will be used to fund its licensing program and not the general fund. The Legislature has in the past considered and rejected use of special revenue to fund the general fund.

COMMENT NO. 7: Barb Booher, executive director of the Montana Nurses Association, stated that the MNA supports the proposed fee increases, provided that clarification is provided on a number of items, as expressed in comments above. The MNA supports a fee increase in a sufficient amount to meet existing expenses, and to increase the Board's reserve account to no more than 1/2 of 1 fiscal year's budget. The MNA seeks clarification as to what happened to the hiring of a full time nurse for the Board staff, requests whether certain equipment expenses totalling \$13,762 are 1 time costs or will be continuing costs, and seeks an explanation of how the "re-charges" are computed and assessed to the Board of Nursing by the Department of Commerce.

RESPONSE: Please refer to the Response to Comment 5 with regard to the Full Time Nurse and Comment 4 with regard to Recharges. The Board further responds that \$13,762 was a one-time cost.

COMMENT NO. 8: Kathy Mader, Bonnie Blevins, Sandra Friede, Mariann Miller, Karen Sloan, and Nancy Schatzka, all licensed nurses, submitted a joint written comment. While these individuals do not believe that a \$40.00 renewal fee is unreasonable, they do believe that they were denied the opportunity to provide input into the fee increase. They seek clarification as to how the additional fees will be put to use. They oppose any fee increase to the extent that it increases reserve funds, and contend that fees are not commensurate with costs if they are used to build a reserve.

RESPONSE: Please refer to Response to Comment 1.

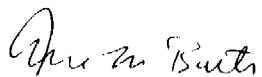
COMMENT NO. 9: Thirteen licensed nurses of the Havre Clinic submitted a joint written comment. The Havre Clinic Nursing Staff opposes the fee increase without an explanation as to why the fee increase is necessary, what the fee increase will be used for, how it will benefit nurses, why the fee increase is so large, and why nurses were not notified in writing prior to the increase with the justification for the fee increase. These nurses do not completely object to the fee increase, but want to make sure that the fee increase is being used "to further the nursing careers in our state."

RESPONSE: Please see Response to Comment 1. The Board appreciates the support of the fee increase but in response to the comment "to further the nursing careers," wishes to emphasize that its first goal is to protect the public, although in doing so, the nursing profession receives secondary benefits.

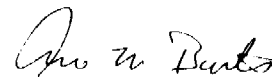
COMMENT NO. 10: A licensed nurse by the name of Julie from Butte submitted a written comment opposing any fee increase in the licensure fees. No further detail was provided. Jacqueline Chum, a licensed nurse, concurs with this comment, on behalf of "those of us that are not able to afford such an increase."

RESPONSE: The Board stands by its statutory authority to assess fees commensurate with costs pursuant to section 37-1-134, MCA.

BOARD OF NURSING
NANCY HEYER, RN, BS, CNA
CHAIRMAN

BY: 

ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE



ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 17, 1994.

BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of a rule pertaining to applica-) 8.34.414A APPLICATION FOR
tion for examinations) EXAMINATION

TO: All Interested Persons:

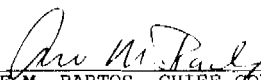
1. On April 28, 1994, the Board of Nursing Home Administrators published a notice of proposed amendment of the above-stated rule at page 993, 1994 Montana Administrative Register, issue number 8.

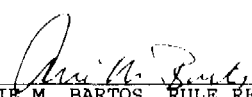
2. The Board has amended the rule exactly as proposed.

3. No comments or testimony were received.

BOARD OF NURSING HOME
ADMINISTRATORS
JOYCE ASAY, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 17, 1994.

BEFORE THE BOARD OUTFITTERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of rules pertaining to fees and) 8.39.518 FEES AND 8.39.
misconduct) 708 MISCONDUCT

TO: All Interested Persons:

1. On August 25, 1994, the Board of Outfitters published a notice of public hearing on the proposed amendment of the above-stated rules at page 2377, 1994 Montana Administrative Register, issue number 16. The public hearing was held on September 15, 1994, at 9:00 a.m., in the conference room of the Professional and Occupational Licensing Bureau, 111 N. Jackson, Helena, Montana.

2. The Board has amended ARM 8.39.518 exactly as proposed and amended 8.39.708 as proposed, but with the following changes:

"8.39.708 MISCONDUCT Misconduct, for purposes of defining subsection (9) of 37-47-341, MCA, is determined by the board to mean conduct of either a licensed outfitter or licensed professional guide which fails to conform to the accepted standards of the outfitting and guiding profession and which could jeopardize the health, safety and welfare of the public, and shall include the following:

(1) through (11) will remain the same as proposed.

(12) providing or offering to provide services as an outfitter or guide without a current, active license to do so, ~~whether before obtaining a license, or during a time when the license has not been renewed;~~

(13) taking or attempting to take a game animal, upland game birds, migratory birds, waterfowl, or fish whether providing services or not, in violation of legal limits or without a proper license to do so;

(14) will remain the same as proposed."

Auth: Sec. 37-47-201, MCA; IMP, Sec. 37-47-341, MCA

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

COMMENT NO. 1: MOGA submitted oral and written testimony on the proposed rule changes. MOGA comments that the proposed fee increase is poorly timed due to the lack of stability in the industry. Outfitters have lost income in the past three years and are unable to afford an increase in renewal fees. MOGA did, however, support an increase for license applications due to "a limited pool of nonresident licenses [that] cannot continue to be spread over an increasing number of outfitters without having a negative effect on existing businesses' ability to offer quality services."

On misconduct, MOGA supports proposed changes (4) and (14), but comments on (12) that the proposed amendment should appear as follows: "providing or offering to provide services

as an outfitter or guide without a current, active license to do so." This change is proposed so that outfitters are not penalized by staff problems in renewals. MOGA questions whether new (13) is necessary and suggests that (7) will become operative if a violation occurs to invoke the general hunting and fishing laws at Title 12.

RESPONSE: The Board acknowledges but does not accept MOGA's comment with respect to opposition to renewal fee increase. MOGA does not propose any alternative to raising the fees in order to make up the difference between current income and the Board's current budget as set by the Montana Legislature. The Board acknowledges MOGA's support for the fee increase for new applicants, and thanks MOGA for such support.

With respect to MOGA's comment on the misconduct rules, the Board acknowledges MOGA's support for the proposed changes to subsection (4) and (14). The Board accepts the proposed change to subsection (12). The Board acknowledges MOGA's reference to subsection (13), but does not accept MOGA's comment. Subsection (13) is necessary to cover situations in which hunting privileges are not suspended or where a criminal prosecution does not take place.

COMMENT NO. 2: Allen Schallenger submitted written comments on the proposed rule changes. Mr. Schallenger comments that the Board is increasing overall fees by 138% and some categories by 500%. He comments that 57% of the money raised will go to the Department of Commerce and will provide no benefit to outfitters. Fishing outfitters generate less investigative problems relative to the hunting outfitters, but have to pay an equal burden. He comments that an error by the board staff delayed his friend's license for two months.

With regard to the rule change on misconduct, he comments that upland game birds, migratory birds, and waterfowl are exempt (implying they shouldn't be; that the rule change is incomplete and fails to specify what particular license is needed). He would prefer Fish, Wildlife and Parks to handle hunting and fishing violations. Finally, he comments that he does not have available to him an outfitter rule book with all state and federal regulations.

RESPONSE: The Board acknowledges Mr. Schallenger's comment on the proposed fee increase, but does not accept such comments. The Board's responsibility is to protect the public. The fee increase is necessary to support a budget designed to increase protection of the public through necessary staffing for investigation and application processing. Increased viability of the industry will come only through increased protection of the public. With respect to the suggestion on charging a separate, lower fee for fishing outfitters, the Board is not prepared to make a breakdown on individual expenses or category of licensure.

With respect to Mr. Schallenger's comment on the misconduct rules, the Board agrees that the new proposed sections do not address upland game birds, migratory birds and waterfowl. The new sections are changed to include such categories. With respect to the suggestion that hunting and

fishing violations be dealt with by Fish Wildlife & Parks, the Board of Outfitters does not intend to interfere with such jurisdiction. The Board has simply identified conduct in the proposed rules that could result in disciplinary action, regardless of whether such conduct also constitutes a violation of separate laws.

COMMENT NO. 3: Chris Pragnell submitted a written comment opposing a proposed statutory change in the definition of guide as someone who is employed by an outfitter, rather than retained on independent contract.

RESPONSE: The Comment is beyond the scope of the proposed rule changes, which deal with fees and misconduct. Thus, the comment is acknowledged, but not accepted.

COMMENT NO. 4: Dave Kumlien of Montana Troutfitters Orvis Shop submitted written comments supporting the increase as long as Board operates efficiently. Mr. Kumlien opposes the proposal to remove independent contractor status of guides.

RESPONSE: With respect to the comment on independent contractor status, please refer to Board's response to comment 3. With respect to the comment on the fee increase, the Board thanks Mr. Kumlien for his support of the fee increase, and pledges to operate efficiently in using such fees.

COMMENT NO. 5: Thomas Fisher submitted written comments opposing the proposed fee increase and cites loss of 78% of booked clients through the drawing; suggests paying fees on a pro rata basis where an outfitter pays according to the number of clients he or she has. Suggests splitting the tag drawing in two categories to make it more fair.

RESPONSE: The Board acknowledges Mr. Fisher's opposition to the fee increase, but notes that the fees must be set commensurate with costs of the program, not with percentage of success in the drawing for set aside licenses. The Board has nothing to do with the splitting of drawings, and suggests that Mr. Fisher direct his suggestion to the Department of Fish, Wildlife & Parks.

COMMENT NO. 6: Edwin Johnson of Montana Guide Services submitted written comments stating that a 200% increase in guide fees is excessive. Mr. Johnson suggests raising fees \$25 this year and another \$25 in two years.

RESPONSE: The Board acknowledges Mr. Johnson's comment, but does not accept the comment. The Board has proposed a license fee structure that reflects program costs, and believes that a \$75.00 license fee for guides is appropriate.

COMMENT NO. 7: Richard C. Parks of Parks' Fly Shop submitted written comments opposing the proposed fee increase. Mr. Parks comments that, as proposed, the fee increase will raise more than needed (says board needs \$14,000 but proposed increases would raise \$100,000 and there is no rationale to explain the extra \$86,000). Proposes across the board

increase of \$10.00 per category to raise \$10,000, a more than sufficient figure.

RESPONSE: Mr. Parks' comment refers to a typographical error in the original notice of proposed rule making. The Board has sent out a memo to all licensed outfitters correcting the typo, and reflecting that the current fees generate only \$165,000.00. Thus, the fee increase is necessary to raise sufficient funds to meet the budget, which has been set by the legislature.

COMMENT NO. 8: Jack Rich of Rich's Double Arrow Outfitters submitted written comments opposing the proposed fee increase until a solution is found to allow booked clients to receive a license. This year, he lost over 20% of his booked clients because of the hunting license "crap shoot." It is a bad time to increase his costs. Noted that September 15 was a poor choice for the hearing due to it being the first day of early rifle season.

RESPONSE: With respect to the comments on the license draw, please refer to the Board's response to comment 5. With respect to the scheduling of the hearing date, the hearing date was set according to deadlines set by statute. The notice of proposed rule making was published in the MAR in compliance with notice requirements in the statutes. In addition, specific notice was provided to each licensed outfitter, notifying the outfitters that comments could be submitted in written form until September 22, 1994. Written comments and oral testimony are treated with equal weight by the Board in considering comments.

COMMENT NO. 9: Allan W. Gadoury of Al Gadoury's 6X Outfitters submitted written comments opposing the fee increase. Mr. Gadoury stated as follows: "I oppose any fee increase for Montana Outfitters. I know you need more money. I need it more than you do."

RESPONSE: The Board acknowledges, but does not accept Mr. Gadoury's comments. Mr. Gadoury's comment does not show that the proposed fee increase is not commensurate with costs.

COMMENT NO. 10: Phillip Ray "Slim" Keefer, Crazy Mountain Outfitters & Guides, submitted written comments opposing any increase in license fees for existing outfitters until there is a guarantee on nonresident licenses. States there was no cooperation from the Department of Commerce and the Board of Outfitters extended to the licensees at renewal time and that law enforcement from the Board hassles existing [licensed] outfitters rather than apprehending the unlicensed outfitters.

RESPONSE: With respect to the comments on the license draw, please refer to the Board's response to comment 5. In addition, the Board does not intend to harass licensed outfitters, and intends only to regulate the industry in a fashion sufficient to protect the public health, welfare & safety. The Board considers unlicensed and illegal outfitting to be a big problem, and is attempting to combat the problem with additional investigative staff. Additional investigative

staff requires additional funding. Thus, the fee increase is necessary.

COMMENT NO. 11: Le A. Zeller submitted written comments. Mr. Zeller states that increase ranging from 50% to 300% is ridiculous. Asks why it costs \$300.00 to process an application for a new outfitter. Comments that some increase of outfitter renewal is justifiable, but it is unfair to assess same fee to all outfitters, regardless of the size of their business.

He proposes to assess an annual license fee of one percent of gross annual income taken from schedule C of the federal income tax return, and suggests that the current fee structure forces smaller outfitters out of business to free big game licenses for bigger outfitters.

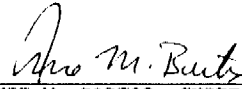
RESPONSE: The Board acknowledges, but does not accept the comment. Fees must be set commensurate with administrative costs, not with the profit or loss of an outfitting business.

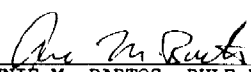
3. The notice of proposed rule amendments of the Board of Outfitters contained a typographical error in the statement of reasonable necessity. The rationale stated in the notice that current income brings in approximately \$306,151. This is incorrect. The income generated under current fees is approximately \$165,000. Staff noticed the typographical error approximately one week before the hearing on the proposed fee increase. A memorandum was sent to every licensed outfitter notifying them of the error, and providing correct information with respect to the disparity between current income and budgeted expenses. Colleen Graham, the hearing examiner, alerted individuals attending the hearing of the error, and provided copies of the follow-up memorandum for anyone who wanted one.

4. No other comments or testimony were received.

BOARD OF OUTFITTERS
O. KURT HUGHES, CHAIRMAN

BY:


ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE


ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, October 17, 1994.

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

In the matter of the amendment of)	NOTICE OF
rules 16.8.708, 16.8.946,)	AMENDMENT OF RULES
16.8.1120, 16.8.1429, 16.8.1702,)	
16.8.1802 and 16.8.2003, regarding)	
incorporation of federal air)	
quality rules and incorporation)	
of the Montana source testing)	
protocol and procedures manual)	

(Air Quality)

To: All Interested Persons

1. On August 11, 1994, the board published notice of the proposed amendment of the above-captioned rules at page 2043 of the Montana Administrative Register, Issue No. 15.
2. The board has amended the rules as proposed.
3. No comments were received.

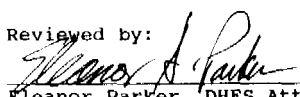
RAYMOND W. GUSTAFSON, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

by


ROBERT J. ROBINSON, Director

Certified to the Secretary of State October 17, 1994.

Reviewed by:


Eleanor Parker, DHES Attorney

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

In the matter of the amendment of)
rules 16.8.945, 16.8.947, 16.8.953)
& 16.8.960, regarding prevention of)
significant deterioration of air)
quality.)

NOTICE OF
AMENDMENT OF RULES

(Air Quality)

To: All Interested Persons

1. On August 11, 1994, the board published notice of the proposed amendment of the above-captioned rules at page 2048 of the Montana Administrative Register, Issue No. 15.

2. The board has amended the rules as proposed.

3. No comments were received.

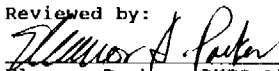
RAYMOND W. GUSTAFSON, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

by


ROBERT J. ROBINSON, Director

Certified to the Secretary of State October 17, 1994 .

Reviewed by:


Eleanor Parker, DHES Attorney

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT
rule 16.8.1908 concerning fees	)	OF RULE
for Christmas tree wastes and)	
commercial film production open)	
burning.)	

(Air Quality)

To: All Interested Persons

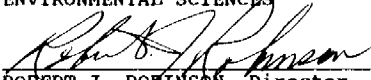
1. On August 11, 1994, the board published notice of the proposed amendment of the above-captioned rule at page 2054 of the Montana Administrative Register, Issue No. 15.

2. The board has amended the rule as proposed.

3. No comments were received.

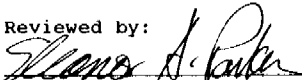
RAYMOND W. GUSTAFSON, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

by


ROBERT J. ROBINSON, Director

Certified to the Secretary of State October 17, 1994.

Reviewed by:


Eleanor Parker, DHES Attorney

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

In the matter of the repeal of)
rules 16.10.501, 16.10.502, and)
16.10.503 regarding bottled)
drinking water and ice regulations)

NOTICE OF
REPEAL OF RULES

(Bottled Drinking
Water & Ice)

To: All Interested Persons

1. On August 25, 1994, the board published notice of the proposed repeal of the above captioned rules at page 2404 of the Montana Administrative Register, Issue No. 16.

2. The board has repealed the rules as proposed.

3. One comment was received from the staff of the Administrative Code Committee concerning the assertion in the statement of necessity in the Notice of Proposed Repeal of Rules that the rules were being repealed because the Board of Health and Environmental Sciences did not have legal authority to promulgate such rules. However, the commentator pointed out that the board did have some rulemaking authority in this area and suggested that this issue should be clarified.

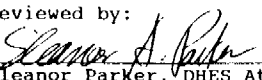
The board and the department agree that the original statement of necessity may have been flawed in that the board does have some authority to promulgate rules governing bottled water and ice, as does the department. The intent of the board's rule repeal and the department's subsequent adoption of rules under its own rulemaking authority for the same subject area was for the board to defer to the department any rulemaking regulating bottled water and ice, since the department licenses bottled water and ice producers and is therefore most closely involved with them. However, in agreeing with this comment, no change in the rules themselves needs to be made.

R.W. GUSTAFSON, Chairman
BOARD OF HEALTH AND
ENVIRONMENTAL SCIENCES

By: 
ROBERT J. ROBINSON, Secretary

Certified to the Secretary of State October 17, 1994.

Reviewed by:


Eleanor Parker, DHES Attorney

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

In the matter of the adoption of) NOTICE OF ADOPTION
rules I-III regarding drinking) OF RULES
water and ice regulations)

To: All Interested Persons

1. On September 8, 1994, the Department published notice of the proposed adoption of the above-captioned rules on page 2474 of the Montana Administrative Register, Issue No. 17.

2. The Department has adopted the rules as proposed.

RULE I (16.10.504) DRINKING WATER Same as proposed.

RULE II (16.10.505) ICE Same as proposed.

RULE III (16.10.506) COMMON CARRIERS Same as proposed.

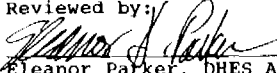
3. One comment was received from the staff of the Administrative Code Committee concerning the assertion in the statement of necessity in the Notice of Proposed Adoption of Rules that the board's rules governing bottled water and ice were being repealed (and replaced by the above new rules) because the Board of Health and Environmental Sciences did not have specific legal authority to promulgate such rules. The commentor pointed out that the board did have some rule-making authority in this area and suggested that this issue should be clarified.

The department agrees that the original statement of necessity may have been flawed in that the board does have some authority to promulgate rules governing bottled water and ice, as does the department. The intent of the board's rule repeal and the department's subsequent adoption of rules under its own rulemaking authority for the same subject area was for the board to defer to the department any rulemaking regulating bottled water and ice, since the department licenses bottled water and ice producers and is therefore most closely involved with them. However, in agreeing with this comment, no change in the rules themselves needs to be made.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State October 17, 1994.

Reviewed by:


Eleanor Parker, DHES Attorney

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

In the matter of the amendment of) NOTICE OF AMENDMENT
rule 16.32.399G regarding medical)
assistance facilities emergency)
services)

(Medical Assistance
Facilities)

To: All Interested Persons

1. On September 8, 1994, the department published notice of the proposed amendment of the above-captioned rule at page 2480 of the Montana Administrative Register, Issue No. 17.

2. The department has amended the rule as proposed.

3. No comments were received.


ROBERT J. ROBINSON, Director

Certified to the Secretary of State October 17, 1994.

Reviewed by:

Eleanor Parker, DHES Attorney

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the re-adoption,	)	NOTICE OF THE
re-amendment, and repeal of rules	)	RE-ADOPTION,
regulating public gambling	)	RE-AMENDMENT AND REPEAL,
	)	OF RULES REGULATING
	)	PUBLIC GAMBLING


TO: All Interested Persons.

1. On August 25, 1994, the Department of Justice published notice of the proposed re-adoption, re-amendment and repeal of certain rules regulating gambling at page 2406, of the 1994 Montana Administrative Register, issue number 16.

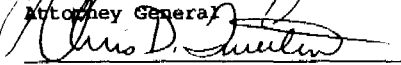
2. A public hearing was not requested by any person directly affected by these rules. No comments were received from any interested persons.

3. The Department has adopted rules I (23.16.105), II (23.16.111), III (23.16.125), IV (23.16.126), V (23.16.301), VI (23.16.130), VII (23.16.1001), VIII (23.16.1709), IX (23.16.1914), X (23.16.1915), XI (23.16.204), XII (23.16.3501), XIII (23.16.3502), XIV (23.16.3801); amended ARM 23.16.101, 23.16.103, 23.16.107, 23.16.115, 23.16.116, 23.16.117, 23.16.120, 23.16.1101, 23.16.1201, 23.16.1202, 23.16.1716, 23.16.1719, 23.16.1802, 23.16.1822, 23.16.1826, 23.16.1827, 23.16.1901, 23.16.1916, 23.16.1917, 23.16.1918, 23.16.1925, 23.16.1927, 23.16.1940, 23.16.2004, 23.16.2401, 23.16.2406; and repealed ARM 23.16.1808 as proposed.

By:


JOSEPH P. MAZUREK
Attorney General

By:


CHRIS TWEETEN
Chief Deputy Attorney General
Rule Reviewer

Certified to the Secretary of State October 4, 1994.

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

In the matter of the) NOTICE OF AMENDMENT OF
amendment of rules related to) ARM 24.11.202, 24.11.442,
unemployment insurance benefit) 24.11.451, 24.11.452
eligibility) 24.11.457, 24.11.463,
) 24.11.464 and 24.11.613

TO ALL INTERESTED PERSONS:

1. On August 11, 1994, the Department published notice at pages 2056 to 2063 of the Montana Administrative Register, Issue No. 15, to consider the amendment of the above-captioned rules.

2. On September 12, 1994, a public hearing was held in Helena concerning the proposed amendments at which oral comments on ARM 24.11.464 were received. Written comments were received prior to the closing date of September 19, 1994.

3. After consideration of the comments received on the proposed amendments, the Department has amended ARM 24.11.202, 24.11.442, 24.11.451, 24.11.452, 24.11.457, 24.11.463 and 24.11.613 exactly as proposed.

4. After consideration of the comments received on the proposed amendments, the Department has amended ARM 24.11.464 as proposed, except for the following changes: (new matter underlined, deleted matter stricken, additional changes shown in all capital letters)

24.11.464 BENEFITS BASED ON SERVICES IN EDUCATIONAL INSTITUTIONS AND EDUCATIONAL SERVICE AGENCIES (1) ~~The intent of 39-51-2108, MCA, is to deny unemployment benefits during periods when the claimant's unemployment is due to school not being in session.~~

~~(2) This provision applies if all the following factors are present:~~

~~(a) the claimant is an employee of an educational institution;~~

~~(b) the claimant's benefits are based on employment for an educational institution or governmental agency established and operated exclusively for the purpose of providing services to an educational institution. The service performed may be in any capacity including professional employees such as teachers and principals and non professional employees such as teachers aides and janitors;~~

~~(c) school is not in session or the claimant is on a paid sabbatical leave; and~~

~~(d) the claimant has reasonable assurance of returning to work at an educational institution during the next regular term or year or following a holiday recess or vacation period. The educational institution is not limited to the same school where the claimant was employed during the base period and includes~~

all elementary and secondary schools and institutions of higher education, including private and governmental schools.

(3) The phrase "reasonable assurance" as used in 39-51-2108, MCA, means a written, oral, or implied contract that a claimant will perform services in the same or similar capacity during the next academic year or following a holiday or vacation break. A claimant does not have reasonable assurance and may be eligible for benefits if:

(a) the commitment for rehire for the next academic year depends upon whether or not funding becomes available;

(b) the claimant will perform services during the next academic year as a substitute worker or the claimant's benefits are based on services as a substitute worker;

(c) the conditions and terms of the work to be performed during the next academic year are substantially less favorable than the work performed during the previous academic year;

(d) a "crossover" situation arises. This occurs when a claimant working in one capacity, such as a teacher, receives assurance of continued employment in the second academic term in another capacity, such as a teacher's aide. The claimant would not be denied benefits between academic terms but would be denied benefits during holiday or vacation breaks within terms.

(e) the claimant customarily works during a holiday or vacation break and is unemployed because funding is not available.

(f) the claimant has been advised that employment will not be offered when the next school term begins.

(4) To be an educational institution it is not necessary for the school to be non profit or controlled by a school district, however, the instruction provided must be sponsored by an "institution" which meets all of the following conditions:

(a) participants are offered an organized course of study or training designed to give them knowledge, skills, information, doctrines, attitudes or abilities from, by, or under the guidance of an instructor(s) or teacher(s);

(b) the course of study or training offered is academic, technical, trade, or preparation for gainful employment in an occupation;

(c) the institution must be approved, licensed or issued a permit to operate as a school by the office of public instruction or other government agency authorized to issue such license or permit.

(5) All employees of an educational institution, even though not directly involved in educational activities, are subject to these provisions.

(6) Employees of a state or local government entity are subject to these provisions, if the entity is established and operated exclusively for the purpose of providing services to or on behalf of an educational institution. For example, if the claimant is a school bus driver employed by the city, the claimant is not subject.

(7) A claimant may be denied benefits for weeks which begin during a period when school is not in session that are:

(a) between two successive academic years or terms, or

~~(b) during a break in school activity between two regular terms even if the terms are not successive, including school vacations and holidays as well as the break between academic terms; or~~

~~(c) during a paid sabbatical leave if the claimant has reasonable assurance of working in any capacity in the school term following the sabbatical leave.~~

~~(d) if the claimant's benefits are not based on services in an instructional, research or administrative capacity, retroactive payments may be paid if the claimant:~~

~~(a) continues to be unemployed when the second academic year or term commences;~~

~~(b) filed weekly claims in a timely manner;~~

~~(c) was denied benefits solely under 39-51-2108, MCA.~~

~~(e) A claimant who is subject to these provisions may be paid benefits based on non-school wages. If the claimant continues to be unemployed when school commences, the claimant may be entitled to benefits based on the combined school and non-school wages.~~

(1) For the purpose of this rule, the following definitions apply, unless the context clearly indicates otherwise:

(a) "Bona fide offer" means an offer of employment that:

(i) was made by an individual with the authority to make such an offer on behalf of the employer;

(ii) the circumstances under which the claimant would be employed are within the control of the employer or the employer can provide evidence that the employee would normally or customarily perform services under similar circumstances in the following academic year or term; and

(iii) the economic terms and conditions of the job offered in the second academic year or term are not substantially less than the economic terms and conditions for the job in the preceding academic year or term.

(b) "Educational institution" means all elementary and secondary schools and institutions of higher education, including private and government operated schools. To be an educational institution it is not necessary for the school to be non-profit or controlled by a school district, but the instruction provided must be sponsored by an institution which meets all of the following conditions:

(i) participants are offered an organized course of study or training designed to give them knowledge, skills, information, doctrines, attitudes or abilities from, by, or under the guidance of an instructor(s) or teacher(s);

(ii) the course of study or training offered is academic, technical, trade, or preparation for gainful employment in an occupation;

(iii) the institution must be approved, licensed or issued a permit to operate as a school by the office of public instruction or other government agency authorized to issue such license or permit.

(eb) "Educational services agency" means, as defined by 39-51-2108, MCA, a governmental agency of governmental entity which

is established and operated exclusively for the purpose of providing such service to one or more educational institutions.

(dc) "Non-professional" means services that are not in a professional capacity.

(ed) "Professional" means services that are in an instructional, research or principal administrative capacity.

(fe) "Reasonable assurance", as it relates to the probability of performing services in the next academic year or term, means a written, oral, or implied agreement that the employee will perform services in the same or similar capacity during the next academic year or term. However, term "reasonable assurance" as it relates to the probability of performing services following a customary vacation break or holiday recess, means a written, oral, or implied agreement that the employee will perform services in any capacity, professional or non professional, following the customary vacation break or holiday recess.

(i) AS IT RELATES TO THE PROBABILITY OF PERFORMING SERVICES IN THE NEXT ACADEMIC YEAR OR TERM, THAT THERE IS A WRITTEN, ORAL OR IMPLIED AGREEMENT THAT THE EMPLOYEE WILL PERFORM SERVICES IN THE SAME OR SIMILAR CAPACITY DURING THE NEXT ACADEMIC YEAR OR TERM. AN EMPLOYEE WHO PERFORMED SERVICES IN THE PRECEDING ACADEMIC YEAR OR TERM WILL BE CONSIDERED TO HAVE REASONABLE ASSURANCE OF PERFORMING SERVICES IN THE SAME OR SIMILAR CAPACITY IN THE NEXT ACADEMIC YEAR OR TERM IF THE EMPLOYEE HAS BEEN GIVEN A BONA FIDE OFFER OF A SPECIFIC JOB, THE ECONOMIC TERMS AND CONDITION OF WHICH ARE NOT SUBSTANTIALLY LESS THAN THE ECONOMIC TERMS AND CONDITIONS OF THE JOB IN THE PRECEDING ACADEMIC YEAR OR TERM, IN THE SAME OR SIMILAR CAPACITY IN THE NEXT ACADEMIC YEAR OR TERM. FOR THE PURPOSES OF THIS DEFINITION, A "BONA FIDE OFFER" DOES NOT EXIST UNLESS THE OFFER OF EMPLOYMENT:

(A) WAS MADE BY AN INDIVIDUAL WITH THE AUTHORITY TO MAKE SUCH AN OFFER ON BEHALF OF THE EMPLOYER; AND

(B) THE CIRCUMSTANCES UNDER WHICH THE CLAIMANT WOULD BE EMPLOYED ARE WITHIN THE CONTROL OF THE EMPLOYER OR THE EMPLOYER CAN PROVIDE EVIDENCE THAT THE EMPLOYEE WOULD NORMALLY OR CUSTOMARILY PERFORM SERVICES UNDER SIMILAR CIRCUMSTANCES IN THE FOLLOWING ACADEMIC YEAR OR TERM; OR

(ii) AS IT RELATES TO THE PROBABILITY OF PERFORMING SERVICES FOLLOWING A CUSTOMARY VACATION BREAK OR HOLIDAY RECESS, THAT THERE IS A WRITTEN, ORAL OR IMPLIED AGREEMENT THAT THE EMPLOYEE WILL PERFORM SERVICES IN ANY CAPACITY, PROFESSIONAL OR NON-PROFESSIONAL, FOLLOWING A CUSTOMARY VACATION BREAK OR HOLIDAY RECESS. IN THE ABSENCE OF SUBSTANTIAL EVIDENCE TO THE CONTRARY, AN EMPLOYEE WHO PERFORMED SERVICES IMMEDIATELY PRECEDING A CUSTOMARY VACATION BREAK OR HOLIDAY RECESS WILL BE CONSIDERED TO HAVE REASONABLE ASSURANCE OF PERFORMING SERVICES IN SOME CAPACITY FOR THE REMAINDER OF THE TERM FOLLOWING THE VACATION BREAK OR HOLIDAY RECESS.

(gf) "Same or similar capacity" means that THE employment offered is in the class of capacity (either professional or non-professional) as the previous academic year or term's service.

(2) 39-51-2108, MCA, provides that employees of

educational institutions will be ineligible to receive unemployment insurance benefits, based on such educational employment, between academic years or terms and during customary vacation periods and holiday recesses within terms if the employee has a "reasonable assurance" of performing services in any educational institution in the following year, term, or remainder of a term. These provisions also apply to employees of educational service agencies if the employee has a "reasonable assurance" of performing services in any educational service agency in the following year, term, or remainder of a term.

(3) An employee who is initially determined not to have reasonable assurance will be denied benefits between academic years or terms and during customary vacation periods and holiday recesses within terms from the point forward that the employee is determined to have subsequently received reasonable assurance.

(4) In the absence of substantial evidence to the contrary, an employee who performed services immediately preceding a customary vacation period or holiday recess will be considered to have reasonable assurance of performing services in some capacity for the remainder of the term following the vacation period or holiday recess. An employee who performed services in the preceding academic year or term will be considered to have reasonable assurance of performing services in the same or similar capacity in the next academic year or term if the employee has been given a bona fide offer of a specific job in the same or similar capacity in the next academic year or term.

(5) Employees of educational institutions or educational service agencies who customarily work during the period between academic years or terms or during customary vacation periods or holiday recesses within terms are not subject to the ineligibility provisions of this rule.

(65) If the claimant's benefits are based on services in a professional capacity and the claimant was previously determined to have reasonable assurance, but continues to be unemployed when school commences, the claimant may be allowed benefits from the date the offer of employment was withdrawn or from the date the claimant was given reasonable assurance if it is determined that the original offer of employment was not a bona fide offer.

(76) If the claimant's benefits are based on services in a non-professional capacity, retroactive payments may be paid if the claimant:

(a) continues to be unemployed when the second academic year or term commences;

(b) filed weekly claims in a timely manner; and

(c) was denied benefits solely because of the provisions of 39-51-2108, MCA.

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

IMP: Sec. 39-51-2108, MCA

5. The Department has thoroughly considered the comments and testimony received on the proposed amendments. The

following is a summary of the comments received, along with the Department's response to those comments:

Comment 1: The Montana School Boards Association commented that it supported the proposed amendments and asked that the amendments be adopted without substantial changes.

Response 1: The Department has amended the rules exactly as proposed, except for ARM 24.11.464. The Department believes that the changes to the proposed amendments for ARM 24.11.464 are appropriate and do not represent substantive changes. Please see the remaining comments and responses.

Comment 2: The Montana Education Association ("MEA") stated its opposition to any amendment that would limit or restrict its members' eligibility for Unemployment Insurance benefits.

Response 2: Only two provisions of the proposed amendments would have the effect of restricting eligibility for benefits: (1) Striking the blanket exclusion for substitute workers from the between and within terms denial; (2) Adding a "history of rehire" factor to be considered in conjunction with other factors in determining whether an individual has a "reasonable assurance" of returning to work. Both of these changes are necessary to conform to federal requirements concerning the mandatory between and within terms denial of benefits to employees of educational institutions.

Comment 3: The MEA commented that it was unsure of the effect and the necessity of deleting the explicit reference to "the commitment for rehire being conditioned upon the availability of funding" as a factor indicating a lack of "reasonable assurance" and, in essence, replacing it with "the commitment for rehire being conditioned upon any circumstance outside the control of the employer" as a factor indicating a lack of "reasonable assurance."

Response 3: The Department believes that the amendment has the potential effect of broadening, rather than restricting, eligibility for benefits because it allows the department to take into consideration all circumstances outside the control of the employer, rather than just one circumstance, that being the availability of funding. It also accurately reflects the federal draft language for implementing the mandatory between and within terms denial provisions.

Comment 4: The MEA commented that it was unsure of the effect of the change in the definition of "reasonable assurance" from "a written, oral, or implied contract" to "a written, oral, or implied agreement."

Response 4: The Department believes that the change in language is not a substantive change. Substituting the term "agreement" for "contract" accurately reflects the federal draft language for implementing the mandatory between and within terms denial provisions. The change should also lessen confusion by readers caused by the common misconception that a "contract" must, by definition, be a "legal document."

Comment 5: The MEA commented that the definition of "reasonable assurance" under subsection (1)(f) should include a reference to "bona fide offer," [defined under subsection (1)(a)], because the existence of a bona fide offer is an element necessary to establish that an individual has "reasonable assurance" under subsection (4).

Response 5: The Department concurs with the comment and has amended the rule accordingly.

6. The amendments to the rules are effective October 30, 1994.

Laurie Ekanger, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

David A. Scott
David A. Scott
Rule Reviewer

By: David A. Scott
David A. Scott, Chief Counsel
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: October 17, 1994.

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1994. This table includes those rules adopted during the period July 1, 1994 through September 30, 1994 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 1994, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1994 Montana Administrative Register.

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- Process - Election of Disability Coverage, p. 1191, 1816, 2106
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- I and other rules - Optional Deductible Plans - Retrospective Rating Plans - Premium Rates, p. 2690
- 2.55.320 and other rules - Method for Assignment of Classifications of Employments - Premium Ratesetting - Construction Industry Premium Credit Program - Medical Deductible, p. 597, 1423
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- 2.55.326 Minimum Yearly Premium, p. 981, 1817
- 2.55.327 and other rules - Construction Industry Program - Scheduled Rating for Loss Control Non-compliance Modifier and Unique Risk Characteristics Modifier, p. 2870, 292, 661
- 2.55.404 Scheduled Rating - High Loss Modifiers, p. 661

AGRICULTURE, Department of, Title 4

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- I-VIII Rinsing and Disposal of Pesticide Containers, p. 1317, 1988
- I-VIII Pesticide Disposal Program, p. 600, 1280
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- 4.5.202 and other rule - Category 1 Noxious Weeds, p. 93, 563
- 4.15.101 and other rule - Fees - Mediation Scheduling and Agreement Procedures, p. 1499, 1989

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- I-II Emergency Adoption - Allowing Credit to Domestic Ceding Insurers - Reduction of Liability for Reinsurance Ceded by Domestic Insurers to Assuming Insurers, p. 564
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- I-XIII Small Employer Carrier Reinsurance Program, p. 1200, 2111
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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 September, 1994, are published. Vacancies scheduled to appear from November 1, 1994, through January 31, 1995, are also listed, as are current recent vacancies due to resignations or other reasons.

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

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of October 5, 1994.

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 FROM SEPTEMBER, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
9-1-1 Advisory Council Mr. James Anderson Helena Qualifications (if required): none specified	(Administration) Director	not listed	9/26/1994 9/26/1996
Mr. Art Bicsak Great Falls Qualifications (if required): none specified	Director	not listed	9/26/1994 9/26/1996
Mr. Al Brockway Helena Qualifications (if required): none specified	Director	not listed	9/26/1994 9/26/1996
Dr. Drew E. Dawson Helena Qualifications (if required): none specified	Director	not listed	9/26/1994 9/26/1996
Sheriff Lee Edmisten Virginia City Qualifications (if required): none specified	Director	not listed	9/26/1994 9/26/1996
Ms. Judy Frazer Kalispell Qualifications (if required): none specified	Director	not listed	9/26/1994 9/26/1996
Major Irwin L. Garrick Helena Qualifications (if required): none specified	Director	not listed	9/26/1994 9/26/1996
Mr. Dan Green Helena Qualifications (if required): none specified	Director	not listed	9/26/1994 9/26/1996

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1994

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
9-1-1 Advisory Council (Administration) cont. Lieutenant Billi Heigh Helena Qualifications (if required): none specified	Director	not listed	9/26/1994 9/26/1996
Mr. Tom Kelly Columbus Qualifications (if required): none specified	Director	not listed	9/26/1994 9/26/1996
Mr. Marshall Kyle Missoula Qualifications (if required): none specified	Director	not listed	9/26/1994 9/26/1996
Mr. Dave Mason Helena Qualifications (if required): none specified	Director	not listed	9/26/1994 9/26/1996
Ms. Kay McKenna Helena Qualifications (if required): none specified	Director	not listed	9/26/1994 9/26/1996
Mr. Rick Newby Miles City Qualifications (if required): none specified	Director	not listed	9/26/1994 9/26/1996
Mr. Mike Sederholm Lewistown Qualifications (if required): none specified	Director	not listed	9/26/1994 9/26/1996
Mr. Don Taylor Belfry Qualifications (if required): none specified	Director	not listed	9/26/1994 9/26/1996

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
9-1-1 Advisory Council (Administration) cont. Mr. Bill Wade Director Circle Qualifications (if required): none specified		not listed	9/26/1994 9/26/1996
Board of Dentistry (Commerce) Ms. Kim Anderson Governor Great Falls Qualifications (if required): dental hygienist		Kiesling	9/7/1994 3/29/1999
Board of Medical Examiners (Commerce) Dr. James Bonnet Governor Kalispell Qualifications (if required): doctor/surgeon		reappointed	9/1/1994 9/1/1998
Dr. Donald Grewell Billings Qualifications (if required): doctor of osteopathy	Governor	Spahr	9/2/1994 9/1/1998
Mr. David B. Huebner Great Falls Qualifications (if required): doctor of podiatry	Governor	reappointed	9/1/1994 9/1/1998
Board of Passenger Tramway Safety (Commerce) Mr. Bill Flechsenhar Governor Cascade Qualifications (if required): skiing member of the public		Crabtree	9/15/1994 1/1/1996
Board of Psychologists (Commerce) Dr. James Murphey Bozeman Qualifications (if required): teaching psychologist	Governor	reappointed	9/1/1994 9/1/1999

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1994

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Veterinary Medicine	(Commerce)		
Dr. Don Smith	Governor	Woerner	9/14/1994
Livingston			7/31/1999
Qualifications (if required):	licensed veterinarian		
Developmental Disabilities Planning and Advisory Council	(Social and Rehabilitation Services)		
Dr. Timm Vogelsburg	Governor	Seekins	9/28/1994
Missoula			1/1/1996
Qualifications (if required):	represents university program		
Family Support Services Advisory Council	(Social and Rehabilitation Services)		
Ms. Linda Botten	Governor	reappointed	9/9/1994
Bozeman			9/9/1996
Qualifications (if required):	service provider representative		
Ms. Kathy Cashell	Governor	reappointed	9/9/1994
Butte			9/9/1996
Qualifications (if required):	parent representative		
Ms. Sylvia Danforth	Governor	reappointed	9/9/1994
Miles City			9/9/1996
Qualifications (if required):	service provider representative		
Ms. Sue Forest	Governor	reappointed	9/9/1994
Missoula			9/9/1996
Qualifications (if required):	personnel preparation representative		
Ms. Christine Gutschenritter	Governor	reappointed	9/9/1994
Great Falls			9/9/1996
Qualifications (if required):	Montana School for the Deaf and Blind		

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1994

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Support Services Advisory Council			
Senator Ethel Harding	Governor	(Social and Rehabilitation Services) reappointed	9/9/1994 cont.
Polson			9/9/1996
Qualifications (if required):	legislator		
 Ms. Lynda Hart	Governor	Fleming	9/9/1994
Helena			9/9/1996
Qualifications (if required):	represents Department of Family Services		
 Mr. John Holbrook	Governor	reappointed	9/9/1994
Helena			9/9/1996
Qualifications (if required):	state insurance governance representative		
 Ms. Jackie Jandt	Governor	reappointed	9/9/1994
Helena			9/9/1996
Qualifications (if required):	represents Department of Social & Rehabilitation Services		
 Ms. Beth Kenny	Governor	reappointed	9/9/1994
Helena			9/9/1996
Qualifications (if required):	parent representative		
 Ms. Janice Lane	Governor	reappointed	9/9/1994
Porsyth			9/9/1996
Qualifications (if required):	parent representative		
 Mr. Ted Maloney	Governor	reappointed	9/9/1994
Missoula			9/9/1996
Qualifications (if required):	public member		
 Ms. Sandi Mariadotter	Governor	reappointed	9/9/1994
Helena			9/9/1996
Qualifications (if required):	service provider representative		

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1994

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Family Support Services Advisory Council (Social and Rehabilitation Services) cont.			
Mr. Dan McCarthy	Governor	reappointed	9/9/1994
Helena			9/9/1996
Qualifications (if required):	represents Office of Public Instruction		
 Ms. Maria Pease	Governor	reappointed	9/9/1994
Lodge Grass			9/9/1996
Qualifications (if required):	parent representative		
 Ms. Barbara Stefanic	Governor	reappointed	9/9/1994
Laurel			9/9/1996
Qualifications (if required):	preschool services representative		
 Mr. Pete Surdock	Governor	reappointed	9/9/1994
Helena			9/9/1996
Qualifications (if required):	represents Department of Corrections and Human Services		
 Ms. Colleen Thompson	Governor	reappointed	9/9/1994
Glasgow			9/9/1996
Qualifications (if required):	Headstart representative		
 Ms. Chris Volinkaty	Governor	reappointed	9/9/1994
Missoula			9/9/1996
Qualifications (if required):	service provider representative		
 Independent Living Council (Social and Rehabilitation Services)			
Mr. Michael Copping	Director	Pouliot	9/23/1994
Billings			0/0/0
Qualifications (if required):	none specified		
 Mr. Larry Nitz	Director	Marks	9/23/1994
Havre			0/0/0
Qualifications (if required):	none specified		

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
Independent Living Council Ms. Jackie Whistling Elk Director Billings Qualifications (if required): none specified	(Social and Rehabilitation Services) cont. Lambert		9/23/1994 0/0/0
Lewis & Clark Bicentennial Celebration Advisory Council (Historical Society) Dr. Robert Bergantino Governor Butte Qualifications (if required): represents Gold West Country	not listed		9/19/1994 8/26/1996
Mr. Robert Doerk, Jr. Great Falls Qualifications (if required): represents Russell Country	Governor	not listed	9/19/1994 8/26/1996
Mr. Darrell Kipp Browning Qualifications (if required): represents Glacier Country	Governor	not listed	9/19/1994 8/26/1996
Ms. Nancy Maxon Missoula Qualifications (if required): represents Glacier Country	Governor	not listed	9/19/1994 8/26/1996
Ms. Mary Partridge Miles City Qualifications (if required): represents Custer Country	Governor	not listed	9/19/1994 8/26/1996
Mr. John Pretty On Top Crow Agency Qualifications (if required): represents Custer Country	Governor	not listed	9/19/1994 8/26/1996
Mr. Loren Stiffarm Harlem Qualifications (if required): represents Russell Country	Governor	not listed	9/19/1994 8/26/1996

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BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1994

Appointee	Appointed by	Succeeds	Appointment/End Date
Lewis & Clark Bicentennial Celebration Advisory Council (Historical Society) cont.			
Mr. Clarence Woodcock	Governor	not listed	9/19/1994
St. Ignatius			8/26/1996
Qualifications (if required):	represents Glacier Country		
Peace Officers Standards and Training Advisory Council (Justice)			
Mr. Thomas Bivins	Governor	Kent	9/26/1994
Helena			12/31/1995
Qualifications (if required):	represents Department of Fish, Wildlife & Parks		
Risk Management Advisory Council (Administration)			
Ms. Marcel Lynn	Governor	Muri	9/14/1994
Helena			6/22/1996
Qualifications (if required):	represents Department of Administration		
Tourism Advisory Council (Commerce)			
Mr. Terry Abelin	Governor	reappointed	9/21/1994
Bozeman			7/1/1997
Qualifications (if required):	skier		
Mr. Carl Kochman	Governor	Guthrie	9/21/1994
Great Falls			7/1/1996
Qualifications (if required):	public member		
Ms. Hazel Leuprecht	Governor	Leuprecht	9/21/1994
Butte			7/1/1997
Qualifications (if required):	public member		
Ms. Donna Madsen	Governor	Moe	9/21/1994
West Yellowstone			7/1/1997
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER, 1994

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Tourism Advisory Council (Commerce) cont.			
Mr. Craig Smith	Governor	Shelby	9/21/1994
Wolf Point			7/1/1997
Qualifications (if required): Native American			
Mr. Larry Tinchak	Governor	Gehl	9/21/1994
Stanford			7/1/1997
Qualifications (if required): public member			

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1994 through January 31, 1995

Board/current position holder	Appointed by	Term end
Agricultural Land Valuation Advisory Committee		
Mr. Jerry Allen, Corvallis	(Revenue) Governor	1/1/1995
Qualifications (if required): public member		
Mr. Jim Almond, Billings	Governor	1/1/1995
Qualifications (if required): represents grazing interests		
Ms. Marge Boulware, Miles City	Governor	1/1/1995
Qualifications (if required): represents multiple use farmers/ranchers		
Mr. Earl Bricker, Moore	Governor	1/1/1995
Qualifications (if required): represents non-irrigated cropland users		
Mr. Michael Grove, White Sulphur Springs	Governor	1/1/1995
Qualifications (if required): represents financial institution		
Mr. Chase Hibbard, Helena	Governor	1/1/1995
Qualifications (if required): legislator		
Ms. Carol Irvin, Columbia Falls	Governor	1/1/1995
Qualifications (if required): represents urban interests		
Ms. Mona L. Nutting, Red Lodge	Governor	1/1/1995
Qualifications (if required): represents local government		
Mr. Jerry Nypen, Fairfield	Governor	1/1/1995
Qualifications (if required): represents organized irrigation district water users		
Mr. Don Steinbeisser, Sidney	Governor	1/1/1995
Qualifications (if required): public member		
Mr. John Stienbasser, Sidney	Governor	1/1/1995
Qualifications (if required): public member		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1994 through January 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Agricultural Land Valuation Advisory Committee Mr. Bob Story, Jr., Park City Qualifications (if required): represents individual water users	(Revenue) cont. Governor	1/1/1995
Mr. Myles Watts, Bozeman Qualifications (if required): not specified	Governor	1/1/1995
Agricultural Loan Authority (Agriculture) Mr. Bernard Harkness, Dell Qualifications (if required): livestock farmer	Governor	1/7/1995
Mr. Everett Shortland, Conrad Qualifications (if required): Director, Department of Agriculture	Governor	1/1/1995
Mr. John Swanz, Judith Gap Qualifications (if required): grain farmer	Governor	1/1/1995
Mr. John Witte, Miles City Qualifications (if required): representative from a commercial lending institution	Governor	1/1/1995
Alfalfa Seed Committee (Agriculture) Mr. Thomas W. Matchett, Chinook Qualifications (if required): member for Alfalfa Seed Association	Governor	12/21/1994
Mr. Gayle Patrick, Malta Qualifications (if required): member from Alfalfa Seed Association	Governor	12/21/1994
Appellate Defender Commission (Administration) Mr. Ric Holden, Glendive Qualifications (if required): public member	Governor	1/1/1995
Mr. Tom McElwain, Butte Qualifications (if required): public member	Governor	1/1/1995

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1994 through January 31, 1995

Board/current position holder	Appointed by	Term end
Board of Aeronautics (Commerce) Mr. Leland F. Ford, Missoula Qualifications (if required): member at large	Governor	1/1/1995
Mr. Robert M. Hector, Billings Qualifications (if required): airline representative	Governor	1/1/1995
Mr. Greg Mecklenburg, Belgrade Qualifications (if required): actively involved in aviation education	Governor	1/1/1995
Ms. Sharel Stroh, Havre Qualifications (if required): fixed base operator	Governor	1/1/1995
Board of Chiropractors (Commerce) Dr. Marvin S. Harris, Great Falls Qualifications (if required): chiropractor	Governor	1/1/1995
Board of Crime Control (Justice) Mr. Craig Anderson, Glendive Qualifications (if required): representative of juvenile justice	Governor	1/1/1995
Mr. Randy H. Bellingham, Billings Qualifications (if required): represents Youth Justice Council	Governor	1/1/1995
Mayor Fred A. Brown, Libby Qualifications (if required): represents local executives	Governor	1/1/1995
Mr. Gary Buchanan, Billings Qualifications (if required): public member	Governor	1/1/1995
Sen. Delwyn Gage, Cut Bank Qualifications (if required): legislator	Governor	1/1/1995

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1994 through January 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Crime Control (Justice) cont. Judge Gregory P. Mohr, Sidney Qualifications (if required): represents lower courts	Governor	1/1/1995
Rep. Mary Lou Peterson, Eureka Qualifications (if required): represents House of Representatives	Governor	1/1/1995
Board of Health and Environmental Sciences (Health and Environmental Sciences) Mr. Remington Kohrt, Darby Qualifications (if required): active interest in public health & economic welfare of state	Governor	1/1/1995
Dr. Dennis Schreffler, Billings Qualifications (if required): licensed professional in human health service	Governor	1/1/1995
Mr. Jeremy Thane, Missoula Qualifications (if required): attorney	Governor	1/1/1995
Board of Horseracing (Commerce) Mr. Malcom E. Adams, Roscoe Qualifications (if required): resides in 2nd district	Governor	1/20/1995
Mr. Steve Christian, Whitefish Qualifications (if required): resides in 5th district	Governor	1/20/1995
Board of Housing (Commerce) Ms. Barbara Hamlin, Helena Qualifications (if required): public member	Governor	1/1/1995
Mr. Dean J. Mart, Great Falls Qualifications (if required): experienced in economics and finance	Governor	1/1/1995

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1994 through January 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Housing (Commerce) cont. Mr. Bob Thomas, Stevensville Qualifications (if required): informed and experienced in housing and economics	Governor	1/1/1995
Board of Investments (Commerce) Ms. Maureen J. Fleming, Missoula Qualifications (if required): representative of labor	Governor	1/1/1995
Mr. Earl W. Johnson, Helena Qualifications (if required): representative of business & finance	Governor	1/1/1995
Mr. Wm. S. Macfadden, Great Falls Qualifications (if required): public member	Governor	1/1/1995
Mr. F. Lee Robinson, Malta Qualifications (if required): representative of business and finance	Governor	1/1/1995
Board of Labor Appeals (Labor and Industry) Mr. Stephen A. Birch, Great Falls Qualifications (if required): state employee	Governor	1/1/1995
Board of Natural Resources and Conservation (Natural Resources and Conservation) Mr. John Bailey, Livingston Qualifications (if required): informed & experienced in natural resources & conservation	Governor	1/1/1995
Mr. Gerald Feda, Glasgow Qualifications (if required): informed & experienced in natural resources & conservation	Governor	1/1/1995
Mr. Jack Galt, Helena Qualifications (if required): informed & experienced in natural resources & conservation	Governor	1/1/1995

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1994 through January 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Occupational Therapy Practice Ms. Lynn Baden, Missoula Qualifications (if required): consumer	Governor	12/31/1994
Ms. Lynn R. Davis, Billings Qualifications (if required): occupational therapist	Governor	12/31/1994
Board of Oil and Gas Conservation (Natural Resources and Conservation) Mr. Waren H. Ross, Chinook Qualifications (if required): non-industry land owner	Governor	1/1/1995
Mr. Dean A. Swanson, Billings Qualifications (if required): representative of oil and gas industry	Governor	1/1/1995
Mr. Denzil R. Young, Baker Qualifications (if required): atty living in mineral producing county, doesn't own rights	Governor	1/1/1995
Board of Outfitters (Commerce) Mr. R. Craig Madsen, Great Falls Qualifications (if required): licensed outfitter from District 3	Governor	10/1/1995
Board of Pardons (Institutions) Rep. David Hoffman, Sheridan Qualifications (if required): attorney	Governor	1/1/1995
Board of Passenger Tramway Safety (Commerce) Mr. Merv Ericksson, Missoula Qualifications (if required): employee from U.S. Forest Service working in field	Governor	1/1/1995

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1994 through January 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Personnel Appeals (Labor and Industry) Mr. Don K. Kiepper, Missoula Qualifications (if required): management representative	Governor	1/1/1995
Mr. Willis M. McKeon, Malta Qualifications (if required): represents management	Governor	1/1/1995
Board of Social Work Examiners and Professional Counselors (Commerce) Dr. Leta Livoti, Helena Qualifications (if required): professional counselor	Governor	1/1/1995
Ms. Antoinette Fraser Rosell, Billings Qualifications (if required): professional counselor	Governor	1/1/1995
Mr. Richard A. Simonton, Glendive Qualifications (if required): public member	Governor	1/1/1995
Board of Social and Rehabilitation Appeals (Social and Rehabilitation Services) Ms. Jolene Goodover, Great Falls Qualifications (if required): public member	Governor	1/1/1995
Board of Speech Pathologists and Audiologists (Commerce) Mr. Christian D. Grover, Helena Qualifications (if required): audiologist	Governor	12/31/1994
Ms. Jane L. Hudson, Billings Qualifications (if required): speech pathologist	Governor	12/31/1994
Child Support Services Advisory Council (Social and Rehabilitation Services) Ms. Kathleen Fleury, Helena Qualifications (if required): none specified	Director	1/9/1995

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1994 through January 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Children's Trust Fund Board (Family Services)		
Mr. Gary Acevedo, Pablo	Governor	1/1/1995
Qualifications (if required): public member		
Mr. Kirk Astroth, Belgrade	Governor	1/1/1995
Qualifications (if required): state government agency involved in education & social work with kids		
Ms. Judy Birch, Helena	Governor	1/1/1995
Qualifications (if required): public member		
Mr. Larry Epstein, Cut Bank	Governor	1/1/1995
Qualifications (if required): public member		
Mr. Richard Kerstein, Billings	Governor	1/1/1995
Qualifications (if required): public member		
Mr. Randy Koutnik, Helena	Governor	1/1/1995
Qualifications (if required): public member		
Coal Board (Commerce)		
Dr. Thomas E. Finch, Butte	Governor	1/1/1995
Qualifications (if required): educator from first Congressional District		
Ms. Alice Jagiello, Colstrip	Governor	1/1/1995
Qualifications (if required): educator		
Ms. Helena S. Maclay, Florence	Governor	1/1/1995
Qualifications (if required): attorney from first Congressional District		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1994 through January 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Commission for Human Rights (Labor and Industry) Mr. Dennis Limberhand, Lane Deer Qualifications (if required): public member	Governor	1/7/1995
Ms. Jane Meyer, Great Falls Qualifications (if required): public member	Governor	1/7/1995
Developmental Disabilities Planning and Advisory Council (Social and Rehabilitation Services) Rep. Betty Lou Kasten, Brockway Qualifications (if required): representative	Governor	1/1/1995
Fish, Wildlife and Parks Commission (Fish, Wildlife and Parks) Ms. Elaine K. Allestad, Big Timber Qualifications (if required): from Fish & Game District IV	Governor	1/1/1995
Mr. James D. Rector, Glasgow Qualifications (if required): from Fish & Game District II	Governor	1/1/1995
Hard-rock Mining Impact Board (Commerce) Mr. John F. Gardner, Butte Qualifications (if required): representative of hard-rock mining industry & from Western Congressional District	Governor	1/1/1995
Mr. Mike Manuel, Fairfield Qualifications (if required): school board trustee	Governor	1/1/1995
Highway Commission (Highways) Mr. Roy M. Duff, Whitefish Qualifications (if required):	Governor	1/1/1995
Mr. Ed B. Smith, Dagmar Qualifications (if required): from District #4	Governor	1/1/1995

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1994 through January 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Judicial Nomination Commission (Judicial) Mr. Frank Stock, Polson Qualifications (if required): lay member	Governor	1/1/1995
Milk Control Board (Commerce) Dr. R. Clyde Greer, Bozeman Qualifications (if required): Democrat from Congressional District 1	Governor	1/1/1995
Mr. Michael P. Kleese, Stevensville Qualifications (if required): Democrat from Congressional District 1	Governor	1/1/1995
Montana Health Facility Authority Board (Commerce) Ms. Gayle Carpenter, Helena Qualifications (if required): public member	Governor	1/1/1995
Public Housing Task Force (Administration) Mr. Paul Bankhead, Heron Qualifications (if required): Governor's representative	Governor	12/1/1994
Ms. Ronda Carpenter, Great Falls Qualifications (if required): represents Montana Landlords Association	Governor	12/1/1994
Sen. Chris Christiaens, Great Falls Qualifications (if required): legislator	Governor	12/1/1994
Mr. Tim Evans, Missoula Qualifications (if required): represents Montana Realtors Association	Governor	12/1/1994
Mr. David Gentry, Missoula Qualifications (if required): represents physically disabled persons	Governor	12/1/1994

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1994 through January 31, 1995

Board/current position holder	Appointed by	Term end
Public Housing Task Force (Administration) cont.		
Mr. Kevin Hager, Great Falls	Governor	12/1/1994
Qualifications (if required): represents Association of Housing Officials		
Mr. Dan Hickey, Billings	Governor	12/1/1994
Qualifications (if required): represents Public Housing Authority		
Ms. Patt Leikam, Billings	Governor	12/1/1994
Qualifications (if required): represents low income groups		
Ms. Jan Martin, Helena	Governor	12/1/1994
Qualifications (if required): represents Montana Bankers Association		
Ms. Nora Nelson, Havre	Governor	12/1/1994
Qualifications (if required): represents Montana Association of Counties		
Mr. Bill Pierce, Helena	Governor	12/1/1994
Qualifications (if required): represents Montana Building Association		
Mr. Jeff Regnier, Billings	Governor	12/1/1994
Qualifications (if required): represents League of Savings Institutes		
Mr. Jeff Rupp, Bozeman	Governor	12/1/1994
Qualifications (if required): represents Human Resource Development Council		
Ms. Nancy Stephenson, Great Falls	Governor	12/1/1994
Qualifications (if required): represents Neighborhood Housing Services		
Rep. Norm Wallin, Bozeman	Governor	12/1/1994
Qualifications (if required): legislator		
Mr. Tom Welch, Dillon	Governor	12/1/1994
Qualifications (if required): represents League of Savings Institutes		

VACANCIES ON BOARDS AND COUNCILS -- November 1, 1994 through January 31, 1995

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Science and Technology Development Board (Commerce) Mr. Rick Hill, Helena Qualifications (if required): experienced in finance	Governor	1/1/1995
Dr. Rebecca W. Mahurin, Bozeman Qualifications (if required): from private sector w/ experience in technology development	Governor	1/1/1995
Mr. Robert B. Noble, III, Great Falls Qualifications (if required): public member	Governor	1/1/1995
Mr. James A. Stevenson, Billings Qualifications (if required): represents private sector	Governor	1/1/1995
State Lottery Commission (Commerce) Mr. Dwaine J. Iverson, Shelby Qualifications (if required): is a certified public accountant	Governor	1/1/1995
Try Another Way State Employees Task Force (Governor) Ms. Barbara Newerth, Helena Qualifications (if required): none specified	Director	1/1/1995
Ms. Judy Reese, Helena Qualifications (if required): none specified	Director	1/1/1995
Mr. David Rusoff, Helena Qualifications (if required): none specified	Director	1/1/1995
Ms. Jo Anne Thun, Helena Qualifications (if required): none specified	Director	1/1/1995
Water Pollution Control Advisory Council (Health and Environmental Sciences) Mr. Tom Lee, Kalispell Qualifications (if required): water recreation representative	Governor	11/7/1995